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The Commission of the Peace, 1675-1720

Thesis submitted for the degree of Doctor of Philosophy by
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Abstract

In the period from 1675 to 1720, the justices of the peace in the English and Welsh counties were appointed by royal authority delegated to the Lord Chancellor. The Chancellor thus possessed a formidable instrument of patronage, which he operated both by power of appointment and by power of dismissal. This patronage extended principally to a class of persons of considerable influence within the political nation of the seventeenth and eighteenth centuries, that is, the country gentry.

It has long been surmised that, within the period under review, the local patronage of the Chancellor was employed to secure political advantage. Such a purpose might be defensive, to safeguard the state against those not wholly committed to the Anglican Church, the principles of the Revolution of 1688, or the Hanoverian Succession; or it might be aggressive, to reward friends with, and deprive enemies a local authority which it was generally thought to be both honourable and desirable to exercise. The commission of the peace was thus a means by which changes in central policy, and shifts in central

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power, were extended into the localities. In a period when Parliamentary and electoral politics, and, to a lesser but still important extent, ministerial politics, became influenced by distinctions of party, it is a reasonable hypothesis that local politics became similarly influenced through the medium of appointments to the local magistracy.

The object of this study has been to confirm or deny this hypothesis. To do so, it is necessary to measure how widespread the regulations of the county commissions of the peace were; there were fifty-five counties, one county palatine, and two liberties analagous to counties (besides several small liberties and corporations) for which separate commissions of the peace were issued. Substantial changes in any one of these might attract attention from contemporaries of a kind which would give a possibly misleading impression that similar changes took place in other counties as well. It is also necessary to measure the relative scale of the alterations that were made. The bench of magistrates varied in size in different counties at the same time and in the same county at different times. The commission of the peace for a given county could be remodelled by adding names to the list of gentlemen who were empowered to act as justices, or by omitting names from it. Such remodelling can only be put in perspective in the context of the total length of the list at the time that the regulation took place. Furthermore, it is of importance to ascertain the precise timing of changes in the commissions, in order to

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judge how far such changes originated in changes at the centre of politics, and how far the changes at the local level themselves resulted in political consequences of wider significance, in, for instance, general elections.

The administrative records of Chancery provide the solutions to most of these problems. In particular, the transfer to the Public Record Office in 1968 of the Lord Chancellor's warrants (or 'fiats') to the Crown Office in Chancery for the renewal of the commissions of the peace makes possible near-comprehensive examination of the appointments to and dismissals from the commissions after 1705. Before 1705, the central records of Chancery require to be supplemented by records originating in Chancery and subsequently dispersed, notably the commissions of the peace themselves, which survive for some counties in the archives of the clerks of the peace; and by records which did not originate in Chancery at all, notably the lists of justices of the peace that were compiled for the use of assizes. A degree of selectivity proved to be necessary in making use of these dispersed sources.

The establishment of the extent, scale and timing of the alterations in the county magistracy leads naturally to an assessment of their political content. The principal sources for such an analysis are, most obviously, the papers of successive Lord Chancellors. These are, regrettably, rather uneven for this period. However, no Chancellor could possibly know the individual character of every gentleman in England and Wales whom it was proposed to appoint to or dismiss from the

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magistracy. He had to rely heavily on local recommendation, most often from the magnates who held the offices of lord-lieutenant or custos rotularum within the counties. Traces of this process of recommendation survive in the papers of the magnates themselves, in the archives of the central government (notably those of the Privy Council and the Secretaries of State) and in the records of Parliament, which from time to time took a critical interest in the composition of the commissions of the peace. It is usually possible to derive from these sources some impression of the purpose and character of the alterations in the commissions of the peace that took place during this period.

Of the changes that took place between 1675 and 1720, the most thorough and striking were those conducted by James II in 1687 and 1688. In some counties, less than ten per cent of the gentlemen named in the commission of the peace at the beginning of James' reign in 1685 were still entitled to act as justices of the peace by the summer of 1688. While the purge was not equally comprehensive over the whole country, in every county changes that were far more than routine were implemented. Those put out were wealthy Protestant squires; those put in were either technically criminals within the scope of the laws relating to religious disaffection, or persons regarded by the disgraced squires as disqualified by compromised political activity in the past, or by inferior fortune. It has often been argued that these alterations played a part in the Revolution of 1688 by which James was overthrown.

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This hypothesis has an incontrovertible foundation in fact. In less spectacular fashion, the judicious manipulation of the commission of the peace was evidently a substantial element in the temporary re-establishment of the stability of the Stuart monarchy in the early 1680's, in the suppression of disaffection to the regime of William III, and in the consolidation at local level of the success in central politics of the Whigs in 1705 and in 1714-15 and of the Tories in 1710. These conclusions again confirm hypotheses current in modern studies of the period.

However, it can be argued that the reliance of the Chancellor of the day on local suggestions, the administrative difficulties of making large-scale changes quickly, the government's recognition of the dangers of dismissing gentlemen willing to act as justices in remote areas (especially in wartime), and the doubts entertained in many quarters about the morality or wisdom of political change in judicial office, qualify to some extent the applicability of concepts such as 'ruthless purges' and 'comprehensive remodelling' on occasions other than 1687 and 1688.

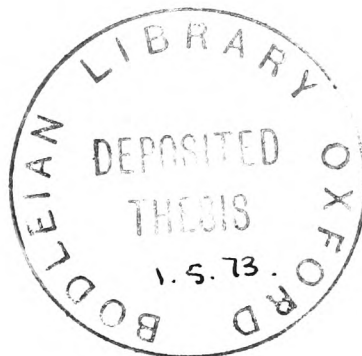
The commission of the peace is a large area of study, and attention has been concentrated on the political background to the choice of justices of the peace rather than on the activity of the justices within the framework of their county community. The social, administrative and economic aspects of the justices' work have not wholly been neglected, but the thesis is primarily a study of the operation of a field of government patronage in the context of the central politics of the period under review.

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Note on References and Dates

Two bodies of manuscript material used extensively in this study, the State Papers Domestic in the Public Record Office and the Portland Loan in the British Museum, have been printed, in the Calendar of State Papers Domestic and in the Reports on the MSS. of the Duke of Portland published by the Historical Manuscripts Commission, respectively. I have referred in the footnotes to the printed version unless the MS. adds further relevant information or unless some point of significance is lost in modernised punctuation or grammar.

Information relating to the issue of commissions of the peace and of commissions for lords-lieutenant and custodes rotulorum is taken from the docket books of the Crown Office in Chancery, now at the Public Record Office. In order to avoid overloading the footnotes, I have referred to this source only when the date of the docket book entry is of special importance.

The year is taken to begin on 1 January, not 25 March. Unluckily, this is more than a conventional reminder of a standard practice in studies of the early modern period. The Lord Chancellor's warrants to renew a commission of the peace generally followed the practice of the Crown Office in Chancery of beginning the year on 25 March. A nineteenth-century archivist has marked these warrants with the year to which it relates; he assumed that the year began on 1 January. In cases where his errors lead to confusion, I have referred to the year in the form: 24 March 1707/8.

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Abbreviations

Add. MSS.	Additional Manuscripts, British Museum
Bodl.	Bodleian Library, Oxford
Brit. Mus.	British Museum
<u>Bull.Inst.Hist.Research</u>	<u>Bulletin of the Institute of Historical Research</u>
<u>C.J.</u>	<u>Journals of the House of Commons</u>
<u>Cal.S.P.Dom.</u>	<u>Calendar of State Papers Domestic</u>
<u>Cal.Treas.Books</u>	<u>Calendar of Treasury Books</u>
Camden Soc.	Camden Society
Devon R.O.	Devon Record Office, Exeter
<u>Econ.Hist.Rev.</u>	<u>Economic History Review</u>
<u>Eng.Hist.Rev.</u>	<u>English Historical Review</u>
H.L.R.O.	House of Lords Record Office
Harl.	Harleian Manuscripts, British Museum
Herts.R.O.	Hertfordshire Record Office, Hertford
<u>Hist.Journal</u>	<u>Historical Journal</u>
Hist.MSS.Comm.	Historical Manuscripts Commission
<u>Hunt.Lib.Quart.</u>	<u>Huntingdon Library Quarterly</u>
<u>L.J.</u>	<u>Journals of the House of Lords</u>
Lancs.R.O.	Lancashire Record Office, Preston
Leics.R.O.	Leicestershire Record Office, Leicester
N.L.W.	National Library of Wales
N.U.L.	Nottingham University Library

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P.R.O.	Public Record Office
Rawl.	Rawlinson Manuscripts, Bodleian Library
Som.R.O.	Somerset Record Office, Taunton
Surrey R.O.	Surrey Record Office, Kingston-upon-Thames
<u>Trans.Roy.Hist.Soc.</u>	<u>Transactions of the Royal Historical Society</u>
<u>V.C.H.</u>	<u>Victoria County History</u>
Wilts.R.O.	Wiltshire Record Office, Trowbridge

1. Introduction

1. The Commission of the Peace.

In the seventeenth and eighteenth centuries a commission of the peace was a document directed to specified gentlemen who were to act as justices of the peace within the boundaries of a geographical area. The most extensive of these areas were the counties of England, Wales, and (after 1707) Scotland. New commissions to change the names of the justices were issued at irregular intervals for each of these areas independently. In every commission, the duties and powers of a justice of the peace were defined. Certain of these powers could only be exercised in the presence of one or more justices specially qualified by legal knowledge; the names of justices so qualified were repeated in a separate clause, and they are generally described as 'justices of the quorum'. The last clause of the commission, introduced by the phrase assignavimus denique, named the *custos rotulorum*, who was the keeper of legal records within the area. The form of the commission was standardised in 1590. It was anglicised, temporarily between 1649 and 1660, permanently after 1733; otherwise it remained unchanged until the late nineteenth century.¹ The counties were not the only areas to receive commissions of the peace; during the period from 1675 to 1720, similar

¹The form of a commission of the peace as it was between 1675 and 1720 is conveniently printed in: G. W. Prothero, Select Statutes and other Constitutional Documents illustrative of the reigns of Elizabeth and James (4th edn., Oxford, 1913), pp.147-9.

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commissions were issued to the liberties of Cawood, Ely, Peterborough, Ripon, St. Albans, St. Peter's York, Southwell, the Tower, and Westminster; and to the boroughs of Bedford, Buckingham, Cambridge, Haverfordwest, Oxford, St. Albans (the borough as distinct from the liberty) and Southwark.¹ The commissions of the peace for all of these liberties and boroughs, and for all except one of the counties, were granted by the Lord Chancellor under the great seal.² The odd county out was Lancashire, the commission for which was granted by the Chancellor of the Duchy under the seal of the county palatine. In boroughs other than those named, the justices of the peace were nominated in the charter by their offices, although separate commissions might be issued under the great seal for special purposes. To keep this study within reasonable bounds, attention has principally been concentrated on the commissions of the peace for the counties of England and Wales, except that two of the liberties - Peterborough and Ely - have been regarded as similar enough in size and character to the counties to be treated as such. If the three divisions of Lincolnshire, the three ridings of Yorkshire, Lancashire, Peterborough and Ely are included, there is a total of 58 English and Welsh counties receiving commissions of the peace.

¹ P.R.O., Records of Chancery, Crown Office Docquet Books, Index 4214-6, passim; S. and B. Webb, English Local Government, i, The Parish and the County (reprinted edn., London, 1963), pp. 310-8, 320n.

² To avoid confusion I have used the term 'Lord Chancellor' to mean 'the holder of the great seal' when dealing in general terms with the period 1675-1720. In the context of the commissions of the peace, the powers of a Lord Keeper or of Commissioners of the Great Seal were the same as

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It is in the names included in the commissions of the peace, the justices to whom the commission was directed, that interest lies. A number of names in each commission are, however, of little significance. The entire Privy Council, the Attorney-General, and the Solicitor-General normally headed the lists; they were put in as a courtesy rather than for any practical reason.¹ The assize judges for the circuit in which the county concerned was situated were also included. The commissions might contain, as a matter of course, office-holders and dignitaries of a local kind; for instance, the bishop of the see in most counties, the vice-chancellors of the universities in Oxfordshire and Cambridgeshire, various county palatine or duchy officials in Lancashire, Cheshire, Durham, and Cornwall, naval officials from Plymouth, Portsmouth and Chatham in Devonshire, Hampshire and Kent respectively.² Such 'courtesy' justices are naturally of less interest than the local, resident gentlemen who were named in the county commissions because they were expected to act as justices of the peace; it is with the selection and character of these gentlemen that this study is chiefly concerned.

The responsibility for the choice of local names had been confusingly obscured by early statutes. In 1414 it was provided that justices were to be appointed by the advice of the Chancellor and the

¹The holders of the great offices of state were the only Privy Councillors normally included in Peterborough, Ely, and some of the Welsh counties.

²When calculating the number of justices in commission for a particular county, or the extent of the changes made at any one time, the Privy Councillors, law officers, and judges have been ignored; but the justices included on account of local office have been counted among the local names.

Council.¹ This rule had been overlaid by subsequent statements. When a property qualification of £20 a year in land or tenements was established in 1439, the Chancellor was given discretionary powers to appoint unqualified men if necessary.² This discretionary power of the Chancellor seemed to be confirmed by a statute of 1535 establishing justices of the peace in the Welsh counties by commissions under the great seal, but an act of 1542 qualified the Chancellor's responsibility by giving the President of the Council of Wales and the Justices of the Welsh sessions advisory powers.³ Notwithstanding these contradictions, the constitutional position had become fairly clear by the early sixteenth century. The formal authority by which justices of the peace were appointed was the King's prerogative; the commission of the peace was an instrument under the great seal from the King to certain of his subjects who were to perform the duties of a justice of the peace. The practical responsibility for recommendation, selection and inclusion in the commission of the peace lay with the Lord Chancellor who held the seal.⁴ The Council occasionally exercised its advisory powers, but it did not do so as a matter of routine, nor is it easy to see how it could have enforced its will on an unwilling Chancellor.

¹ 2 Hen.V stat.2 c.1.

² 18 Hen.VI c.11.

³ 27 Hen.VIII c.5; 34 & 35 Hen.VIII c.26, section 21.

⁴ W. Lambard, Eirenarcha, or the Offices of the Justices of Peace (edn. of 1592), ch.5: 'By whose authority, and by what means, Justices of the Peace be appointed; and of what sorts they be.'

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The Chancellor's conduct of the business of selection was very largely his own affair; but from time to time a Chancellor was criticized in Parliament for mismanaging it.¹

It was easy enough for the Chancellor to make and unmake justices of the peace. A new commission superseded the old one. New justices were appointed by including their names in the list engrossed in the new commission. The names of persons who were to cease to be justices for any reason were left out of the new list. Since it was generally thought to be desirable to be a justice of the peace, it follows that the Chancellor, in conducting the practical procedure of appointment, enjoyed a considerable measure of patronage. A justice of the peace exercised economic, social, and police-keeping powers by enforcing statutes. He participated in local government at quarter sessions and at assizes, both of which courts were concerned with county administration as well as with the trial of criminals. He acquired social prestige by his association in the commission with Privy Councillors, bishops, and judges, and by the fact that as a royal officer he was entitled to the designation 'Esquire', even if he was not armigerous in a heraldic sense. This prestige, desirable in itself, might be turned to advantage in other ways, in relations

¹ ed. W. Cobbett, Parliamentary History (London, 1806), i, 953-4; A. Grey, Debates of the House of Commons, 1667-1694 (London, 1769), vii, 165-7.

with neighbours or in local politics.¹ It is a commonplace that justices of the peace in the counties were drawn from the class of property-owning gentry; while this assertion is not comprehensively true, the existence of a property qualification by the statute of 1439 suggests that the intention of the law was that only men of property should be entrusted with the extensive powers of magistracy. The place of the landed gentry in the political nation from the sixteenth to the nineteenth century hardly needs emphasising. Consequently the Chancellor's responsibility for appointing justices of the peace was patronage of a peculiarly valuable kind for the central government to have, in that it extended to the gentry all over the country, and in that it touched them at a sensitive point - their power and status within their local communities.

Furthermore, this patronage was not confined to appointment. The tenure of a justice of the peace was, and still is (in effect) durante bene placito regis, rather than quandiu se bene gesserint. Before 1675 it had not been especially unusual for justices to be dismissed for reasons other than death or their own desire. Burghley conducted purges of Catholic sympathisers in 1587.² Negligent, inactive magistrates were put out in the 1620's.³ Cromwellians would naturally be dismissed in

¹ E. Bohun, The Justice of the Peace, his calling and qualifications (London, 1693), p.135. '[Some justices] look to nothing but the Credit, Honour and Reputation they shall gain by it, and if they can gain the Title of Right Worshipful, and have their neighbours stand bare-headed to them, they have their Designs'.

² Brit.Mus., Lansdowne MSS. 121, fos.65-72: list of 330 justices put out of the commissions of the peace.

³ Hist.MSS.Comm., Thirteenth Report, Appendix VI, Fitzherbert MSS., p.2.

1660.¹ In such cases the disgraced justices were guilty of misdemeanours in their office, or of what amounted to treason; but purely political dismissals did occur. In 1626, seventeen former members of Parliament who would be likely to oppose a projected forced loan were omitted severally from ten county commissions.²

In the early eighteenth century, many took the view that such political dismissals had become, if anything, more common. Lord Chancellor Cowper observed in 1714:

... But so late as in my own memory of business, very few if any were displaced without cause assigned & provd, because it was justly thought to be an injurious disgrace on any Gent[leman] in his country to be turned out... unless for some known or evident reason, & I have been present at several formal Hearings of accusations & defences in order to determin, whether the person accusd should be turnd out of the Comm[ission] or not.

But as the two partys grew more & more set & violent against one another, this commendable tenderness,³ I may say Justice, began by degrees to be laid aside....

Party conflict thus tended to diminish scruples; the period of the

¹ See, for instance: J. Hurstfield, 'County Government, c. 1530-c.1660', V.C.H. Wiltshire, v (1957), 109.

² S. R. Gardiner, History of England 1603-42 (Cabinet edn., London, 1884), vi, 125-6, 126n., quoting Brit.Mus., Harl.MSS. 286,f.297 (Gardiner missed two names in the MS.). A recent study argues that in the early seventeenth century political dismissals were rare, and that in such cases restoration was rapid: J. H. Gleason, The Justices of the Peace in England, 1558 to 164 (Oxford, 1969), pp.63-6, 72-82.

³ Herts. R.O., Cowper (Panshanger) MSS., D/EP F152: Paper endorsed 'About the disposal of the Commissions for Justices of the Peace', to be translated into French for George I, no date but, from internal evidence, on or shortly before 16 July 1715. This memorandum is printed at: Lord Campbell, Lives of the Chancellors (London, 1846), iv, 373-6; although Lord Campbell aimed at an accurate transcript, there are a number of errors, including the omission of a negative. It is therefore preferable to use the original.

Revolution of 1688 and the Hanoverian Succession was one in which the boundary between political opposition and treason was ill-defined. It was not difficult to phrase a recommendation that a justice be dismissed in such a way that the Chancellor would feel justified in acting upon it. The practice of never leaving anybody out except for death or misconduct dates from after 1720. The Chancellor's powers of dismissing justices therefore supplemented his powers of appointing. It was, indeed, the reaction to dismissal that indicates most clearly the value of a place on the commission of the peace and the importance of the Chancellor's patronage. Cowper, when Chancellor, received an insulting Latin letter from a justice whom he had put out.¹ Ex-Lord Treasurer Oxford wrote of several gentlemen put out of the commission that they had been unjustly marked out by a 'brand of infamy'.² A justice who was dismissed in the 1690's for disaffection to the government brought an action for damages against the person who had blackened his character, and won the case in the Exchequer court, though the decision was subsequently reversed.³ 'It must be allowed,' wrote one of Cowper's correspondents, 'that the honour of being in, is not so great as the disgrace of being turn'd out

¹Herts. R.O., Cowper (Panshanger) MSS., D/EP F152: letter endorsed 'This Latin letter I received by the Penny P [ost] ... to thank me for removing the Anonymous author from the Commission of the Peace', 16 Dec. 1719. The 'anonymous author's' gratitude was, of course, ironical.

²H.U.L., Pw2 My 929: Oxford to Foley, 21 Dec. 1721.

³Hist.MSS.Comm., House of Lords MSS., N.S. i, 397: Case of Duvall v. Price.

of the Commission.¹

The Chancellor's exercise of his powers of patronage was not a simple matter. It was naturally impossible to expect him to assess the merits of gentlemen in every county in England and Wales. The method of selection was dictated, to a considerable extent, by the administrative procedures by which commissions of the peace were passed under the great seal. Much of the routine work was done by a Secretary for Commissions, who was not a royal official but an employee of the Chancellor.² The normal course was that lists of names to be added to or subtracted from the names already in the commission were drawn up outside the Chancellor's view by one or more of a variety of sources, both in the locality and at the centre. These lists were sent to the Chancellor's office, where the Secretary of Commissions would check the credentials of persons recommended and report to the Chancellor. When the changes to be made were settled, the Secretary wrote an instruction from the Chancellor to the Clerk of the Crown in Chancery 'or his deputy' to draw up a new commission of the

¹ Herts. R.O., Cowper (Panshanger) MSS., D/EP 855: Dr. William Lloyd to Cowper, 25 July 1709.

² It is not certain, though it is highly probable, that every Lord Chancellor of the period 1675-1720 employed such a secretary. Francis Bacon did in 1618; so too did every Chancellor after 1689. J. Spedding, Letters and Life of Francis Bacon (London, 1862-74), vi, 356; Cal. S. P. Dom., 1698, p.285 (for Lord Somers); P.R.O., State Papers Domestic, Queen Anne, S.P. 34/4, fos. 191-2: Certificate of Thomas Edwards, 17 Aug. 1704 (for Sir Nathan Wright); Brit. Mus., Stowe MSS. 416, fos 27-9 (for Lords Cowper, Harcourt, and Macclesfield). For a summary of the Secretary's duties, which extended to commissions of over and terminer, gaol delivery, sewers, and charitable uses as well as commissions of the peace, see: Parl. Papers 1814-5, xi, Report of Lords Commissioners... as to the Court of Chancery (1740), 69.

peace for the county concerned, putting specified names in or leaving other names out, or commonly both. When justices were to be left out, those who had died were generally, though not always, so described. Sometimes the instruction was simply a list of every name to be put into the new commission. The instructions are called fiats, from the order Fiat Commissio at the bottom. Once complete, the Secretary submitted the fiat to the Chancellor for signature. It was then taken to the Crown Office in Chancery, and the new commission was engrossed. After sealing, the commission was ready for delivery to the county; a record of the sealing, with a summary of the changes made according to the fiat, was entered in the Crown Office docket book. At an earlier period the commissions of the peace had also been enrolled on the dorse of the Patent Rolls, but this practice had ceased by 1675.¹ The system, so described, sounds straightforward; but it was not, in practice, a smooth administrative procedure. There were obstacles in the path of a Chancellor who wanted to operate it as an instrument of local patronage.

¹This account is based on: T. G. Barnes and A. Hassall Smith, 'Justices of the Peace from 1558 to 1688 - a Revised List of Sources', Bull. Inst. Hist. Research, xxxii (1959), 222-32; Minutes of Evidence taken by the Royal Commission on the Selection of Justices of the Peace, 1910, Cd.5358, Appendix I handed in by the Clerk of the Crown; and P.R.O., Justice of the Peace Fiats, C.234/1-99, arranged in bundles by county. For most counties a complete series begins with the first commission issued by Cowper after his appointment as Lord Keeper on 11 Oct. 1705; there are several scattered fiats of an earlier date.

One such obstacle was the fact that the Chancellor had to work through two different offices. The head of the Crown Office, the Clerk of the Crown in Chancery, was appointed for life, and might be on bad terms with the Chancellor. George Wright, appointed in 1701, was the son of Sir Nathan Wright, Lord Keeper from 1700 to 1705, and he remained Clerk of the Crown until 1725; Sir Nathan's successor, Cowper, went so far on one occasion as to call him 'the brute' whose 'malice' was responsible for an embarrassing error in a commission of the peace.¹ When such errors occurred they were usually blamed on the Crown Office; moreover, delays in issuing commissions might be caused by the Clerk of the Crown's insistence on his fees.² There is even a case of a Clerk of the Crown putting an unsuitable person into a commission of the peace without the Chancellor's knowledge for sordid motives.³ In the other office, that of the Secretary of Commissions, there was a break in continuity at each change of Chancellor caused by the appointment of a new Secretary. The new man was required to prepare himself for what was a difficult and complicated job.⁴ The methods of successive

¹ Hist. MSS. Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 555-6.

² Cal.S.P.Dom., 1680-1, p.395; Cal.S.P.Dom., 1696, p.392.

³ Bodl. MS. North c.5, fos. 44-5: Sir William Spring to (Sir Matthew Hale?), 18 Oct. 1675.

⁴ Letters by several eminent persons deceased, including the Correspondence of John Hughes, Esq., and several of his friends... (London, 1772), i, 116-7. Hughes, who earned a biography in Johnson's Lives of the Poets, was Cowper's Secretary of Commissions from October 1717; he was the only Secretary during the period who was continued in office by an incoming Chancellor.

Secretaries tended to differ slightly in detail. One good example lies in the method of dating the fiats and, subsequently, the commissions which they authorised. The Secretary usually wrote the date at the bottom of the fiat when he drew it up. The Chancellor's signature might be added days or weeks later. The commission, like all instruments under the great seal, bore a teste date, which was also the date entered in the Crown Office docket book. Of the twenty-two surviving fiats signed by Somers, Chancellor from 1693 to 1700, every one bears an earlier date than that adopted in the Crown Office as the teste date, the time lag varying from as little as one day to as many as seventy days. Under later Chancellors, however, it was exceptional for the teste date on the commission to differ from the date on the fiat at all. In the cases when it did, there was usually a note on the back of the fiat to the effect that it had been 'received' (in the Crown Office) at a later date than that on the fiat, and that this later date had been adopted as the teste date. The meaning of this change can only be conjectured; it is possible that after 1700 it became common practice for fiats to be drawn up, signed, and sent to the Crown Office on the same day. There are rare examples of fiats in which a space was apparently left for the date for the Chancellor to fill up when he signed it. Probably there is no great significance in the different methods of dating. Nevertheless, they illustrate how the Secretary's office was subject to changes in character; whereas the Crown Office was a permanent office of routine

business. This point suggests two conclusions. In the first place, it was difficult for a newly appointed Chancellor to make large-scale alterations in the commissions of the peace quickly; he had to wait for his Secretary to learn his job. Secondly, the Chancellor depended more than he might have liked on the willing co-operation of the Crown Office where the commissions were manufactured.

Another problem which hampered the free exercise of the Chancellor's powers of patronage was that of knowing who was in the existing commissions of the peace. It was not easy for either the Secretary of Commissions or the Crown Office to keep an up-to-date record of who the justices of the peace for a given county actually were. Until 1688, and probably for some years afterwards, the names were kept in entry books in the Crown Office.¹ Libri pacis, or copies of these entry books, were drawn up from time to time, at a fee of £3, for anyone who asked for them.² Entry books are, however, a clumsy method of recording long lists of names subject to frequent changes; they rapidly become a confusing muddle of blotted crossings-out and untidy insertions. There is some evidence that the fiats themselves were used in the Crown Office either as a supplementary record, or as the working registers themselves, from about 1700. This would explain why fiats began to be

¹T. G. Barnes and A. Hassall Smith, op.cit., pp.229-30.

²Brit.Mus., Add.MSS. 17748, fos. 2, 5, 9, 12.

kept at all, and why they were kept in bundles by county. These fiats which were in the form of a complete list of names to be inserted in a county commission were often corrected in accordance with later fiats over a period of several years, and endorsed with a string of notes of teste dates. This system did not much improve on the entry book procedure; the corrections on the fiats, often in several different hands, still made it difficult to ascertain who was in commission and who was not. It is not unusual to find marginal notes on the fiats by the clerk who engrossed the commission to the effect that gentlemen he was ordered to put in, were in already; or that gentlemen he was ordered to put out, were not in at all.¹ The use of the fiats as registers was made more complicated, too, by the occasional practice of incorporating changes for more than one county on the same fiat, which could only be kept in one of the bundles of fiats. The accidental loss of a single fiat would lead to disorganisation. Moreover, the demands by Parliament to inspect the fiats signed by Somers (in 1700) and Wright (in 1705) must have dislocated the system.² This was, however, a Crown Office problem; the Secretary continued to rely on unwieldy entry books.³ The central

¹ There is an example of both types of confusion in the same fiat at: P.R.O., C.234/14, Hampshire: 19 June 1716.

² C.J., xiii, 264; L.J., xvii, 483, 659. Only three fiats signed by Wright survive. These show that by 1704 the fiats were being used as working registers: P.R.O., C.234/31, Rutland: 7 July 1704; C.234/78, Anglesey: 5 April 1705; C.234/89, Pembrokeshire: 5 Aug. 1704.

³ P.R.O., Index 4216, pp.217, 314, 445: entries of libri pacis for the Chancellor's Secretary.

government's difficulty in knowing who was in the commissions is reflected in the appearance of the document that reached the county. Names were commonly erased and caretted. Sometimes a name which did not appear at all in the main list turned up in the quorum list. Christian names would be left blank if neither the Secretary nor the Crown Office knew what it was; a gentleman variously spelled Cok and Coke was in the Leicestershire commission for eight years without a Christian name.¹ Misnomers were common, often being corrected by a special order in the next fiat; for instance, it appears that in the Buckinghamshire commission of the peace for 1718, two names had been inserted twice, two gentlemen recently promoted to baron and baronet had been included among the esquires as before as well as under their new names, and the list of Privy Councillors was out of date.² Misspellings were also frequent; one fiat for Cheshire ordered that no less than seventeen misspelt names be corrected.³ Such ambiguities might be worse than a nuisance; in one case a Parliamentary candidate took advantage of the omission of a distinguishing place-name to have sworn in as a justice for the liberty of St. Albans a friend brought up from London who was not the gentleman intended to be named.⁴ Furthermore, the machinery for removing dead

¹Leics.R.O., Q.S. 1/2-8: commissions of the peace dated between 1689 and 1697.

²P.R.O., C.234/3, Buckinghamshire: 28 Feb. 1717/8.

³P.R.O., C.234/5, Cheshire: 22 March 1716/7.

⁴Herts. R.O., Cowper (Panshanger) MSS., D/EP F153: William Hale to Cowper, 18 Jan. 1714/5.

justices from the commissions was imperfect. The *custos rotulorum*, or the clerk of the peace, occasionally forwarded the names of justices who had died to the Secretary, who would either tie the list to the fiat, or copy the names onto the fiat and mark them 'dead'.¹ Alternatively it might be the Crown Office that heard of the deaths of justices, and their names would be crossed out of the entry books; in such cases the Secretary might not know of the removal. But custodes and clerks of the peace were not always conscientious, and the system was such that dead justices might remain in commission for years.

The most formidable obstacle to the use of the commissions of the peace by the Chancellor as an instrument of patronage was his reliance on local recommendation. By the early nineteenth century, the principle that the lord-lieutenant, acting in his capacity as *custos rotulorum*, made all recommendations, had become an established convention not lightly broken.² This convention dates from the second half of the eighteenth century. During the period from 1675 to 1720 the Chancellor received and acted upon suggestions from a great variety of local sources. He might, in addition to recommendations from the *custos rotulorum*, receive

¹There are good examples of both types of procedure in: P.R.O., C.234/9, Devonshire: 14 Feb.1710/1 and 27 Dec. 1714.

²Hansard, 1st series, 1819-20, xli, 810-4; ibid., 2nd series, 1828, xviii, 162, 253-4; ibid., 3rd series, 1838, xliii, 1268-82. Lord Halsbury, Chancellor at various intervals 1885-1905, stated roundly in 1910 that he had accepted the nominations of lords-lieutenant as a matter of course, and that he had further referred any other recommendations to the lords-lieutenant: Minutes of Evidence taken by the Royal Commission on the Selection of Justices of the Peace, 1910. Cd. 5358, p.54, questions 1124-6.

names of persons proposed to be put in or out from: a lord-lieutenant who was not also the custos;¹ a magnate who was neither lord-lieutenant nor custos;² the bishop of the diocese;³ the bench at quarter sessions;⁴ a single prominent justice,⁵ or group of justices;⁶ one of the members of Parliament for the county;⁷ even from the gentleman proposed himself.⁸ Sometimes these local sources went straight to the Chancellor. Sometimes they worked through sympathetic friends in the government; for instance,

¹Som. R.O., DD/SF 1747: Paper headed 'In the County of Somerset', 18 June 1700. This refers to justices put in by the duke of Ormond in 1696, when Ormond was lord-lieutenant and Viscount Fitzharding was custos. It is worth mentioning that the view that the lieutenancy and the custos-ship were 'nearly always' combined after the Revolution of 1688 - for which, see: S. and B. Webb, The Parish and the County, p.285 - is erroneous. It was exceptional for the lord-lieutenant of a Welsh county also to be the custos, at least until after 1720. The number of English counties of which the lord-lieutenant was not also the custos was twelve in 1691, ten at the end of Queen Anne's reign, and seven in 1722.

²Herts. R.O., Cowper (Panshanger) MSS., D/EP F153: Paper endorsed 'Kent. Received from the earl of Dorset', 27 July 1715. The earl of Rockingham was lord-lieutenant and custos of Kent.

³Longleat MSS., Coventry Papers, vii, f.152: Bishop of Bath and Wells to Coventry, 9 June 1679.

⁴Cal.S.P.Dom., 1682, pp.73-4.

⁵Herts. R.O., Cowper (Panshanger) MSS., D/EP F54: Sir Francis Drake to Cowper, 13 Sept. 1706.

⁶Hist.MSS.Comm., Twelfth Report, Appendix VII, Le Fleming MSS., p.169.

⁷Hist.MSS.Comm., Twelfth Report, Appendix III, Cowper MSS., iii, 14.

⁸Hist.MSS.Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 59.

Sir Joseph Williamson passed on names recommended by his northcountry friends from Queens' College, Oxford, when Secretary of State in the 1670's.¹ The central government also supervised the composition of the commissions. The Chancellor might receive instructions from: the Privy Council;² one of the Secretaries of State, in the name of the Crown;³ any other member of the Government;⁴ Parliament;⁵ the Treasury;⁶ the Lords Justices governing in King William's absences in the 1690's;⁷ the Cabinet, or 'Lords of the Committee', in Queen Anne's reign;⁸ even, sometimes, the Crown in a personal letter.⁹ Another important source, neither precisely local nor central in character, were the assize judges on their return from the circuits.¹⁰ Faced with this variety of sources, the Chancellor had to take many of the names

¹ Cal.S.P.Dom., 1675-6, pp.547-8.

² P.R.O., Privy Council Register, P.C.2/82, pp.277-8: 13 March 1709. The order itself is at: Herts.R.O., Cowper (Panshanger) MSS., D/EP F154.

³ For numerous examples, see, for instance: Cal.S.P.Dom. 1690-1, pp.9-10, 11, 54, 69, 315, 337, 397. Such instructions from the Secretary of State were less common after 1693 than before.

⁴ Brit.Mus., Add. MSS. 40775, £57: Vernon to the King, 5 Aug.1701, referring to Lord Rochester's nominations. Rochester was lord-lieutenant of Ireland.

⁵ C.J., xiii, 538-9, 550.

⁶ Cal.Treas.Books, v, 479.

⁷ Cal.S.P.Dom. 1697, p.170.

⁸ Blenheim MSS., Minutes of Cabinet, C I-6: 30 Jan. 1708/9.

⁹ Hist.MSS.Comm., Finch MSS., ii, 42. For an earlier example of the Crown exercising personal influence, see the passage from Hawarde's Reportes del Cases in Camera Stellata quoted in Gleason, The Justices of the Peace in England, 1558-1640, p.63.

¹⁰ P.R.O., P.C. 2/78, p.18: 2 May 1700.

offered as candidates for the commission of the peace on trust; to have checked the reliability of every recommendation would have involved his Secretary of Commissions in an impossible volume of correspondence.

It might seem that the local patronage exercised by a Chancellor was therefore of a mechanical kind, and that his role was confined to fixing the great seal on the commissions. This would be an oversimplification. The powers of the Chancellor were, admittedly, limited by the administrative routine by which commissions of the peace were issued; but the character of the Chancellor gave a general direction to the character of the commissions. He would naturally accept official nominations from the Council or the Secretary of State. However, the local recommendations might be judged by the character of the person making the recommendation. There was, for instance, little hope for the candidates of a Whig magnate during the 'Tory reaction' at the end of Charles II's reign, or for the nominees of a Jacobite after the Hanoverian succession. A Chancellor would not normally disregard the selections of *custodes rotulorum*; but he might subject the suggestions even of a *custos* to scrutiny with the help of local contacts thought to be more reliable.¹ Most Chancellors of the period from 1675 to 1720 were active in politics, in alliance with other politicians who could supply the blanks in their local knowledge. Some, like Guilford (Lord

¹P.R.O., State Papers Domestic, George I, S.P.35/22, fos.143-4: Coningsby, *custos* of Radnor, to Lord Chancellor, 16 June 1720 (Copy); *ibid*, fos.145-6: Lord Chancellor to Coningsby, 28 July 1720 (Copy).

Keeper from 1682 to 1685) had ridden several circuits as a common law judge, and knew the gentry well in at least some of the counties. Others, like Somers, Cowper, and Harcourt, had been members of Parliament, and had built up from their days in the Commons a network of local informants. The problems of utilizing tenure of the great seal as a means of local patronage were certainly formidable; but they were not, in practice, insoluble.

ii. The Character of the Commissions of the Peace, 1675-1720.

During the period from 1675 to 1720, some significant changes in the character and composition of the commissions of the peace took place.

The number of local gentlemen named in the lists rose in every county, in many cases to substantially more than double the 1675 figure by 1720. There were short-term fluctuations within this trend. The numbers in the commission for several counties actually fell slightly between 1680 and 1685, and again between 1714 and 1720; for example, in the earlier period the number of justices in Herefordshire fell by 25% from 56 to 42; in the later period the number of justices in Kent fell by 11% from 201 to 178.¹ But in no case did a temporary fall in numbers affect the overall rise. The figures for five counties selected

¹These judgments are based on: for 1680-5, a comparison of H.L.R.O., Main Papers, H.L., 9 Nov. 1680, and P.R.O., C.193/12/5; and for 1714-20, the fiats in P.R.O., C.234.

more or less at random illustrate this point well:

	1675 ¹	1685 ²	1702 ³	1720 ⁴
Cheshire	44	38	54	90
Hampshire	59	84	104	168
Northamptonshire	47	61	80	94
Oxfordshire	36	51	107	96
Westmorland	23	23	28	29

The spectacular increase of 183% in Hampshire was exceptional; but the much more modest increase of 26% in Westmorland probably represents the smallest percentage rise of any county.⁵

The great expansion of numbers in most counties came in the years immediately following the Revolution of 1688, and again in the summer of 1700, when in a regulation involving every county in England and Wales the Privy Council ordered the inclusion of a total of 960 gentlemen and the omission of only 74; an average addition of fifteen justices per county.⁶ There is, however, one curious exception to the

¹H.L.R.O., Main Papers, H.L., 9 Nov.1680, corrected back to 1675 from P.R.O. Index 4214 and Index 4215. This method is not wholly sound since the docquet books are unreliable, but the figures are unlikely to be wholly false.

²P.R.O., C.193/12/5

³Brit.Mus., Harl.MSS. 7512.

⁴P.R.O., C.234/5, /14, /27, /30, /39.

⁵There had been a similar expansion in Elizabeth's reign, but the numbers seem to have been relatively stable in the first half of the seventeenth century. Gleason, The Justices of the Peace in England, 1558-1640, pp.48-50.

⁶P.R.O., P.C.2/B, pp.63ff.

rule that the numbers of names increased after 1688. A statute of 1542 had provided that there should only be eight justices in each Welsh county besides the Privy Councillors. This rule was presumably evaded by a non obstante clause in the commissions. One of the provisions of the Bill of Rights of 1689 was that no dispensation of or to any statute by a non obstante clause should be allowed.¹ Consequently there were only eight justices in each Welsh county until 1693, when the 1542 act was repealed; the numbers in the Welsh commissions rose abruptly to, or beyond, the pre-1688 level.²

A number of reasons might be suggested for the rise in numbers in William's reign. The political factor was probably the most important; successive governments were anxious to buy support for the Revolution settlement with local office, without alienating opponents of that settlement by local disgrace. Probably, too, the administrative exigencies of the wars of 1689-1697 and 1702-1713 required more local agents. A social explanation presents certain problems, however. The

¹ 34 & 35 Hen. VIII, c.26; 1 Wm. & Mary, sess. 2, c.2.

² Leics.R.O., Finch MSS., Law Papers 15: Lists of justices put in for Anglesey, Carnarvon, and Merioneth in 1689; 5 Wm. & Mary, c.4. The extraordinary inconvenience caused by the rule is shown by a letter from Radnorshire complaining that of the seven justices in that county, one was 'as it were superannuated', another 'soe fatt that he can hardly Ride 3 miles to the sessions & when he is there does only sleepe... we want one of the Quorum to keep the sessions & therefore we force him to come...' Brit.Mus., Portland Loan 29/184, f.380: John Waltham to Robert Harley, 12 Dec. 1690.

old property qualification of £20 a year from land had clearly become obsolete long before the 1690's. Nonetheless, it is a generally accepted view that the late seventeenth and early eighteenth century saw the consolidation of large estates and the diminution of the estates of the smaller squires and lesser gentry.¹ This does not necessarily mean that gentlemen of old-established families, which had traditionally supplied their county's commission of the peace with names, fell below the social or economic standard that was required for a place in the commission; although, naturally, this did happen from time to time. All the same, the sharp rise in the number of justices does suggest two possibilities. One is that the commissions of the peace came to include, by 1720, persons of relatively lower economic standing than would have been acceptable in 1675. There is plenty of evidence that contemporaries thought that this was the case, although there is, equally, evidence that some thought that too many justices were of low calibre before 1688.² The other is that persons whose wealth was not principally associated with land - that is, clergymen, prosperous tradesmen, lawyers, doctors,

¹ H. J. Habakkuk, 'English Landownership, 1680-1740', Econ.Hist.Rev., 2nd series, x (1939-40), 4; G. E. Mingay, English Landed Society in the Eighteenth Century (London, 1963), p.50

² For the later period, see the preamble to the Justices of the Peace (Better Qualifications) Bill of 1711: 'Whereas it has been found by experience that the constituting persons of mean estates to be Justices of the Peace is highly prejudicial to the public welfare...'; Hist.MSS. Comm., House of Lords MSS., H.S. ix, [redacted] p.154. For the earlier period, see: A. Grey, Debates of the House of Commons, viii, 187-8, 190: speeches of Hampden and Sir William Jones.

retired army and navy officers - began to claim places in the county commissions in greater numbers. It seems likely that both these hypotheses are true; but this is clearly a problem that requires detailed case studies to resolve.

Another general point about the commission of the peace from 1675 to 1720 is that there was, during this period, a marked decline in the frequency with which commissions were issued by the Chancellor, with the turning point coming in the years 1689 and 1690.¹ Between 1675 and 1689, the lowest total of commissions issued in a single year had been 78, in 1686, and the average per year was 111.26. In 1690, the total was 74. Between 1690 and 1720, the total rose above 75 in only three years, in 1700, 1702 and 1714; and in 1702 and 1714 the commission for each county was renewed automatically on the demise of the Crown. The decline in frequency emerges clearly from a table of five-year averages:

1676-1680	115.1	commissions	per year	on average				
1681-1685	100.0	"	"	"	"	"	"	"
1686-1690	106.2	"	"	"	"	"	"	"
1691-1695	50.8	"	"	"	"	"	"	"
1696-1700	56.6	"	"	"	"	"	"	"
1701-1705	66.8	"	"	"	"	"	"	"
1706-1710	38.6	"	"	"	"	"	"	"
1711-1715	54.2	"	"	"	"	"	"	"
1716-1720	32.0	"	"	"	"	"	"	"

¹The following calculations are based on: P.R.O., Index 4214-6. Lancashire, the commission for which county was issued seperately, has been excluded; thus the total number of counties is 57.

These figures show that in the 1670's a county expected to receive a new commission more frequently than in the 1710's. Between the beginning of 1675 and the end of 1684, there were 68 Middlesex commissions; on average, one every seven weeks. Admittedly, Middlesex consistently received more commissions than other counties; but a number of counties reached the average of a commission every twenty weeks. For the comparable period of ten years from 1711 to 1720, Middlesex received 18 commissions, and the rate of frequency of issue dropped correspondingly for other counties.

The reason for this change was probably pressure of business in the Crown Office. A commission of the peace was a lengthy document, which presumably could not be drawn up quickly. The increase in the number of names in each commission aggravated this problem. To take one fairly typical example: in Northamptonshire, the total number of names, including Privy Councillors and judges, rose from about 100 in 1675 to about 165 in 1720; all of the extra names would also have to be added in the quorum list. In effect, the commission was about 130 names longer. Another point is that from 1692 the Irish Parliament, whose bills were approved under the great seal of England, began to meet comparatively regularly. These bills were engrossed in the Crown Office, and references to them take up a great volume of space in the docquet books.¹ Whatever the reason, the change was of some importance.

¹W.E.H. Lecky, A History of Ireland in the Eighteenth Century (Cabinet edn., London, 1916), i, 194; P.R.O., Index 4215, pp.295ff.

Commissions to add or subtract single names, or to change the names of Privy Councillors or assize judges only, became much more rare. Furthermore, new commissions tended to embody recommendations from several sources rather than from a single source; it was no longer practicable to embody each recommendation as it was made in a new commission.

Two modifications of the procedure of the issue of commissions of the peace, introduced at the end of the period from 1675 to 1720, were probably connected with this decline in the frequency of issue. The first of these was a practice instituted by Lord Chancellor Macclesfield of sending to the Crown Office, not fiats for the renewal of a commission to add names, but 'instructions' for names to be added to the 'last' commission. Such an instruction was issued on 27 February 1719 to add three names to the 'last' commission for Wiltshire. The 'last' commission bore the teste date 12 December 1718; it is now in the Wiltshire Record Office, and the three names are neatly caretted.¹ The transaction was not recorded in the docquet book. This procedure became fairly standard in the course of the eighteenth century; the Gloucestershire commission was not renewed for over forty years between 1767 and 1809, but numerous names were

¹P.R.O., C.234/40, Wiltshire: 27 Feb. 1718/9; Wilts.R.O., A 1/1/5.

added and subtracted by means of 'instructions'.¹ The second modification of existing practice was the revival of an old method of removing a justice who had not died, not by a new commission in which his name was left out, but by a writ of supersedeas. Only one such supersedeas was directed to a justice during the period from 1675 to 1720; this was John Rotherham, who was put out of the Middlesex and Westminster commissions in July 1719. In the course of the eighteenth century such writs were issued more frequently. Blackstone referred to them as one of the ways in which a living justice could be dismissed.² A supersedeas was generally associated with some misdemeanour by the justice concerned; John Rotherham had sent the Russian minister an insulting message, and had committed one of his servants to prison.³

Finally, it is worth pointing out that the distinction between justices of the quorum and other justices was not entirely defunct even by 1720. The assertion that 'By 1689... the [quorum] clause had become a mere form, as the practice was to name, in each

¹E. Moir, 'Local Government in Gloucestershire, 1775-1800', Bristol and Gloucestershire Archaeological Society, Records Section, viii (1969), p.76n. 25; P.R.O., C.234/13, Gloucestershire.

²W. Blackstone, Commentaries on the Laws of England (Oxford, 1765-9), i, 341. Blackstone distinguishes between a supersedeas to a single justice, and a supersedeas to a complete commission. There was one example of the second type of supersedeas during the period 1675-1720; in March 1685 the commission of the peace for the liberty of St. Albans was annulled, and the liberty was (temporarily) united with Hertfordshire. P.R.O., Index 425, p.120.

³P.R.O., S.P.44/281, p.107: Delafaye (Secretary of the Lords Justices) to Lord Chancellor, 2 July 1719; P.R.O., Index 4216, p.474.

commission, all the justices as of the quorum' is incorrect.¹ The number of justices not in the quorum in the first post-Revolution commissions was quite high. In Leicestershire, for example, 8 out of 42 were not in the quorum in March 1689; by 1690, when the number of justices had risen to 62, 11 were not of the quorum.² In Devonshire, the figures in July 1689 were 19 out of 84.³ This substantial proportion had not diminished much by 1702 in either county: in Leicestershire, 9 justices out of 78, in Devonshire, 16 out of 119, were not of the quorum. Nor were these counties unusual; in Norfolk, as many as 30 out of 117 were not of the quorum in 1702, and counties where all the justices except one or two were in the quorum, like Oxfordshire and Denbighshire, were the exception rather than the rule.⁴ During Anne's reign the proportion did drop. Lord Chancellor Harcourt, who held the great seal from 1710 to 1714, never added a justice who was not to be in the quorum. In the nineteenth century, it was thought that it had been customary for a long time to omit one justice from the quorum.⁵ This had not become standard practice even by 1720, although it had become rare for more than three or four gentlemen not to be in the quorum even

¹S. and B. Webb, The Parish and the County, p.303.

²Leics.R.O., QS. 1/2, QS. 1/4.

³Devon R.O., Q/JC: commission dated 11 July 1689.

⁴Brit.Mus., Harl. MSS. 7512.

⁵F. W. Maitland, Justice and Police (London, 1885), p.81 and n.2; see also W. Blackstone, Commentaries on the Laws of England, i, 340.

in the biggest commissions. It was still possible as late as 1715 for gentlemen who had been in the quorum to be removed from it.¹ The quorum was a minor distinction to be prized, and it could be a weapon in county politics. The earl of Carlisle had Sir John Ballantyne included in the Cumberland quorum in 1676, and a neighbour noted sarcastically that '... this much exalts him.'² One of the members of Parliament for Thetford from 1708 to 1710 was in the commission, but not in the quorum, for Norfolk; he was placed in it just before the 1710 election.³ Admittedly, the quorum had become rather irrelevant in practical terms, and it bore no relation to legal learning. All the same, its lapse into disuse should not be predated; indeed, its revival as a serious distinction between two kinds of justice has been twice suggested in the twentieth century.⁴

iii. The Justices of the Peace

A gentleman did not become qualified to act as a justice of the peace simply by insertion in the commission. He was obliged to

¹ P.R.O., C.234/14, Hampshire: 5 Oct. 1714, 5 Aug. 1715; a comparison of these lists shows that four justices were put out of the quorum; C.234/34, Staffordshire: 22 Feb. 1714/5; three justices were put out of the quorum.

² Cal.S.P.Dom., 1675-6, pp.573.

³ Thomas de Grey; P.R.O., C.234/26, Norfolk: 16 March 1709/10.

⁴ Minutes of Evidence taken by the Royal Commission on the selection of Justices of the Peace, 1910, Cd.5358, pp.26-8, questions 428-9, 465-75; Minutes of Evidence taken before the Royal Commission on Justices of the Peace, Supplements i-ii (London, 1946), para.22.

take the oaths of allegiance and supremacy. After 1673, he had to declare that he did not believe in transubstantiation, and he required a certificate that he had taken the sacraments according to the usages of the Church of England. After 1701, he had to take an oath abjuring the Pretender. In addition, he took a special oath of office.¹ This oath was administered on the authority of a writ of dedimus potestatem from Chancery; these writs normally accompanied a new commission into the county. They could also be obtained through the office of the Secretary of Commissions.² Very occasionally a special dedimus was issued, probably when it was thought to be urgently necessary for a new justice to qualify himself.³

Not everyone named in the commission chose to act. There were a number of reasons for this reluctance. It was, in the first place, quite expensive to qualify; fees of upwards of £4 were payable. The Secretary of Commissions received £1-5-0, the Clerk of the Crown £1-7-8; the clerk of the peace and his deputies would receive variable fees.

¹The oath of office is conveniently printed in: G. W. Prothero, Select Statutes and other Constitutional Documents, pp.149-50.

²Dedimuses sent out in this way were entered in a special register. Those for 1675-1701, and 1713-20, do not survive, but the register covering the years 1701-13 is at: P.R.O., C.193/43.

³Special dedimuses were fairly common from 1660 to 1667, but the only examples thereafter are in 1680-1 (17 counties) and 1709 (3 counties): P.R.O., Index 4215, pp.30, 31, 36, 40, 41, 45; Index 4216, p.196. See also T. G. Barnes and A. Hassall Smith, op.cit., pp.226-7.

Payment for the certificate of taking the sacraments, for the crier, and for other incidentals, added to the expenses.¹ Justices sometimes scrupled the purchase of a judicial office.² Sometimes, strangely for persons supposed to have £20 a year from land, they appeared not to be able to afford the fees. Edmund Bohun, for example, who published moral reflections on the duties of justices as well as his charges to the Suffolk grand jury, was highly incensed on his first appearance in the commission of the peace to find that he had to part with £4.³ The House of Commons investigated the grievance of the fees in 1710; in the following year an assize judge reported from Cornwall that quite large numbers of justices refused to qualify because of the price of the dedimus.⁴ Some justices found it not only expensive to qualify, but also expensive to act. A justice of the peace under the rank of baronet received four shillings for each day's attendance at quarter sessions, a sum which by 1675 had in most counties been commuted into a lump-sum

¹An exact breakdown of the cost of becoming a justice would be impossible; the fees paid varied in different areas at different times. In 1684 the sum for a Westmorland justice was £4. By 1743 a Wiltshire justice paid £5-5-6. The fees were rather more for peers, rather less for justices not in the quorum. Parl. Papers 1814-5, xi, 27, 36, 69, 92-3; Hist. MSS. Comm., Twelfth Report, Appendix VII, Le Fleming MSS., p.401; S. and B. Webb, The Parish and the County, p.303n. 3.

²Cal.S.P.Dom., 1682, p.145.

³Bodl. MS. Tanner 290, f.143: Edmund Bohun to Sancroft, 20 Nov.1674.

⁴C.J., xvi, 376, 380; Hist. MSS. Comm., Portland MSS., v, 72.

received by the sheriff and used by him to provide a dinner for the justices. A justice also received a number of inconsiderable perquisites, such as a portion of forfeited 'Egyptian' property; the most considerable of these, a fee for enrolling deeds of sale of land, seems to have lapsed anyway after the Restoration.¹ However, it was common to speak of the justices as 'unpaid', and the office was sometimes described as unprofitable and burdensome, though it was usual to reserve the case of the Middlesex justices, who, it seems, were able to profit from the office.² Another substantial reason for reluctance to act was that the duties of a magistrate were troublesome, and even, on occasion, dangerous. The justice might be threatened with violence from rioters, or exposed to insults from malefactors.³ He might also incur severe legal penalties for an innocent error.⁴ Also, some justices were unwilling to associate

¹ C. A. Beard, The Office of Justice of the Peace in England (New York, 1904), pp.150-1; J. C. Cox, Three Centuries of Derbyshire Annals (London, 1890), ii, 261-2.

² Memoirs of the Life of Charles Montague, late Earl of Halifax (appended to the 2nd edn. of his Poetical Works, London, 1716), p.228.

³ Hist.MSS.Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 335; for spectacular insults offered to justices, see: Bodl.MS.Rawl. D.1136, p.27: Diary of Sir Thomas Selater, 26 July 1668; Brit.Mus., Add.MSS. 34515, fos.51-3: Newsletter describing Lord Lovelace's reaction on being served with a warrant, 27 Feb. 1688; P.R.O., S.P.35/6, fos.136-52: Examinations relating to a quarrel at the house of Brook Boothby; Esq., 24 Nov. 1716.

⁴ A Middlesex justice claimed to have been fined £500 and imprisoned for a year for binding as apprentices two youths who had really been kidnapped; Cal.Treas.Books, viii, 671.

themselves on the bench with political enemies.¹ Others, like John Evelyn, simply did not choose to take the trouble.² Cowper thought that vanity was responsible for some justices' inactivity; they affected to be 'titular' justices like the Privy Councillors, '... to enjoy the credit & title in their county without giving themselves the trouble of doing the Duty...'³

The problem of justices who did not act was not new. It had been particularly severe at the end of Elizabeth's reign, in the 1630's, and again in 1665.⁴ It is difficult to estimate what proportion of justices did not act at any given time. The judgment that only about 700 or 800 justices out of a total of 2500 to 3000 - 32% at the most favourable estimate - acted at all during the period from 1650 to 1700, is pure hypothesis, though it does echo Cowper's verdict that not one in three of these he put in condescended to act.⁵ The number of inactive justices would naturally vary from county to county, and from year to year. There are distinctions between justices who acted only when called upon to do so and never went to sessions, justices who were

¹Bodl.MS. Carte 109, fos.67-8: Westmorland justice to Wharton, 29 April 1704.

²ed. E. S. de Beer, The Diary of John Evelyn (Oxford, 1955), iii, 433-4.

³Herts.R.O., Cowper (Panshanger) MSS., D/EP F152: Memorandum for George I.

⁴Acts of the Privy Council, New series, xxviii, 1597-8, 388-9; T. G. Barnes, Somerset 1625-40 (Oxford, 1961), pp.303-6; Hist.MSS.Comm., Various Collections, ii, 379-80.

⁵S. and B. Webb, The Parish and the County, p.321; Herts.R.O., Cowper (Panshanger) MSS., D/EP F152: Memorandum for George I.

inactive through ill-health or non-residence, and justices who did not even take out the necessary dedimus.

What is certain is that, in the vast majority of cases, the gentlemen who were named in the commissions of the peace valued the distinction, whether they chose to exercise the powers it gave them or not. To be included in the commission of the peace gave them an opportunity to associate themselves with county administration and to figure among the leaders of county society. The principal attraction of the office for the justice who did choose to act was possibly the extensiveness of his local power, which defies precise definition.¹ Out of quarter sessions, a single justice, acting in his own house, could issue warrants against suspected persons, conduct preliminary enquiries into criminal cases, and investigate minor misdemeanours like drunkenness and swearing. He could punish, by summary conviction, such petty offenders as players of unlawful games and wandering vagrants. The single justice could take, from more serious offenders, recognisances, or sureties for good behaviour, until the next sessions; or he could commit them to gaol. This exercise of criminal jurisdiction was derived from the function of the justice as a keeper of the peace, as

¹It would be impossible, even if it were desirable for the purposes of this study, to describe fully the powers of a justice of the peace. In the sketch which follows, I have relied on editorial introductions to quarter sessions records for the period 1675-1720, especially: Minutes of proceedings in Quarter Sessions held for ... Kesteven... 1674-1695, ed. S. A. Peyton (Lincoln Record Society, xxv, 1931), pp.xxv-xxxvi, lxiii-cxxv; on the numerous contemporary handbooks for justices; and on S. and B. Webb, The Parish and the County, Book II, Chapters III and IV.

outlined in the commission, although many of the offences of which he had cognisance had been created by statute. The single justice outside sessions also had various administrative functions. He could, for instance, supervise the routine (but not the extra-ordinary) repair of roads; he could sign the certificates of travelling soldiers and sailors; and he could administer certain oaths. His supervisory authority over the numerous county, hundred and parish officials extended to presenting them at sessions for negligence, appointing them if the proper appointing body defaulted, and in some cases examining their accounts.

Two justices acting together had further powers, especially if one was of the quorum. Those which involved most work were probably the provision of maintenance for paupers and illegitimate children and the grant of licenses to keep alehouses. Two justices also had a wide jurisdiction over matters as various as the preservation of game, the manufacture of cloth, Roman Catholic recusancy, and the relations of masters and servants. The powers of more than one justice might be exercised in a private, unannounced meeting. However, in the course of the seventeenth century, such meetings tended to become advertised and formal, and the justices who attended them began to be identified, unofficially, with the particular 'division' of the county in which the meetings were held. Such meetings were described variously as 'petty sessions' and 'special sessions'. Petty sessions were regular meetings of justices in a division, attended by subordinate officials; principally

designed to provide a more continuous execution of the poor law than could be achieved in quarter sessions, they were a convenient forum for the conduct of other business as well.¹ Special sessions were largely administrative in character, and were institutionalised by statute in 1691 and 1729 as the appropriate occasions for highway supervision and alehouse licensing respectively. After 1729 they were often referred to as 'Brewster Sessions.'²

It was, however, in quarter sessions that the collective jurisdiction of the justices was most extensive. Quarter sessions were held four times a year, although the manner of holding them varied from county to county. In some counties the court was always held at the county town. In others, the court was peripatetic; it might be held on a circuit of four towns in the county through the year, or it might at each sessions begin at one centre and be adjourned to several others in a regular sequence, the same circuit being repeated at the next quarter sessions.³ But the powers of quarter sessions were the same, whether it met at the county town or not, by adjournment or otherwise. The criminals committed by the justices out of sessions were tried by

¹T. G. Barnes, Somerset 1625-1640 (Oxford, 1961), pp.81-5. The chief stage in the development of petty sessions in Somerset is here described as the publication of the Book of Orders in 1631.

²3 & 4 Wm. & Mary, c.12; 2 Geo.II, c.28; S. and B. Webb, The Parish and the County, p.396-7.

³S. and B. Webb, op.cit., pp.425-31.

a jury impanelled by the sheriff; serious felonies were, however, usually sent to assizes. The orders made by justices out of sessions were confirmed, and appeals against them heard. The grand jury of the county, made up of substantial freeholders, presented county grievances which were dealt with by the justices. Hundred juries and hundred constables were also supposed to present criminals and nuisances within their jurisdiction, and at the beginning of the period 1675-1720 they occasionally did so; but the practice of returning the presentment omne bene seems to have been almost universal by George I's reign. The administrative powers of the justices at quarter sessions included the assessment of wages and prices by fixing maximum rates; they also fixed the costs of land carriage. This was normally done at Easter sessions each year. They assessed county rates for different purposes; some traditional and customary, like the Marshalsea rate for the relief of prisoners for debt, some for special purposes, like the repair of the county gaol or of county bridges presented to be in decay. The justices administered the finances of the gaol and of the house of correction. They investigated misdemeanours by other royal officials within the county: the sheriff, the coroners, and the clerk of the market. They examined the accounts of the militia. In short, they exercised either direct or supervisory authority over virtually every aspect of local government.

It had been the practice since the sixteenth century for a senior justice to deliver the charge to the grand jury at the beginning

of quarter sessions. This was principally an enumeration of the jury's functions, but it might be preceded by a lecture in law and political philosophy, a moral homily, or a discussion of matters of national interest; or a combination of all these.¹ Sometimes the justice acted under direction from the centre - in response to a proclamation, for instance - in drawing attention to particular offences which were to be treated with more severity.² The justice who delivered the charge probably acted as the unofficial chairman of the court. When the names of justices who attended sessions were entered in the rolls, the order of the names usually followed that in the commission of the peace; but it is common to find one name out of order at the head of the list. It is reasonable to suppose that this was the 'chairman'. However, the chairmanship of sessions was not a recognised office, as it became later in the eighteenth century. There is some evidence of dislike of standing chairmen.³ The chair was often taken with expressions of modest reluctance.⁴ Nevertheless, the justice who regularly received

¹Charges to the Grand Jury at Quarter Sessions, 1660-1677, by Sir Peter Leicester, ed. E. M. Halcrow (Chetham Society, 3rd series, v, 1953), pp.xxx-xxxv.

²Queen Anne's distaste for vice and profaneness were reflected in a number of charges delivered after her accession. Especially interesting, because not prepared for subsequent publication, is Simon Harcourt's charge at Buckinghamshire sessions in July 1704: Brit.Mus., Harl.MSS. 5137, f.251.

³S. and B. Webb, The Parish and the County, pp.434-5.

⁴The charge delivered by a Surrey justice in 1701 or 1702 begins '... there seems to be some kind of necessity of a charge to be given you & these gentlemen, whose commands I dare not disobey, have imposed this task upon me...': Bodl.MS. Rawl. D.1041, fos.72-86.

an invitation to deliver the charge was a respected figure among his colleagues, and he possessed a powerful means of influencing opinion. The phrase used to describe the position in Norfolk in the 1680's expresses this well; there the presiding justice was said to 'have the cushion'.¹

The justices at quarter sessions were assisted by a small bureaucracy. The principal servant of the county was the clerk of the peace, who was appointed by the *custos rotulorum*.² As clerk to the *custos*, he kept the records of the court; as clerk of quarter sessions, he conducted its voluminous paperwork; as unofficial secretary to the justices he received communications addressed to them, both from subordinate officers within the county and from the organs of central government. The clerk of the peace in Somerset was already employing a fairly large staff as early as the 1630's.³ The fees taken varied from county to county; the office of clerk of the peace was quite lucrative, and was often held by a member of a family of justice rank. The counties would also employ inferior officials:

¹Bodl.MS. Tanner 259 (Sir John Holland's Letter Book), fos.1-2, 18, 19.

²Until 1689, the clerk's tenure ceased with the demise of the appointing *custos*. Thereafter, under 1 Wm. & Mary c.21, he held the place 'during behaviour'. There is, however, a late case of an incoming *custos* dismissing his predecessor's clerk of the peace in: J. C. Cox, Three Centuries of Derbyshire Annals (London, 1890), i, 28.

³T. G. Barnes, The Clerk of the Peace in Caroline Somerset (Leicester, 1961), pp.8-9.

a gaoler, and a keeper of the house of correction, especially. The appointment of other officers proceeded rather haphazardly. In some cases, the various county rates were handled by justices nominated for the purpose; sometimes, treasurers for particular funds were appointed who were not justices. It was, however, unusual, though not unknown, for a county to employ a salaried treasurer responsible for all the county rates before 1739, when the justices were authorised to consolidate their various sources of income into a single fund by statute. County surveyors, who inspected roads and bridges, seem to have been appointed and paid by quarter sessions rather earlier in many counties, but the appointments were generally temporary and the experiment might be abandoned on the grounds of expense.¹ The expansion of the county bureaucracy, and its professionalisation, proceeded at different speeds in different counties, and many counties were still backward in this respect in the early nineteenth century. What remained true in every county was that the justices of the peace at quarter sessions retained control of the appointment, the salaries, and the performance of duties of all their officials except the clerk of the peace; and even the clerk of the peace was in a real sense the servant of quarter sessions.

¹S. and B. Webb, The Parish and the County, pp.515-6.

Since quarter sessions was an occasion when members of leading county families met to transact county business, it naturally became an opportunity to transact other kinds of business as well. Quarter sessions was from time to time a forum for the choice of Parliamentary candidates.¹ After elections, members of Parliament found attendance at sessions a useful means of keeping in touch with county opinion.² Indeed, after the election of 1702, the first session of the new Parliament was postponed so that members who were justices could attend sessions to be sworn; the consideration that weighed with the ministers in granting the request was that the members' appearance at sessions would be 'of good use in the country'.³ Petitions from quarter sessions, signed by the grand jury as well as the justices, were thought to be peculiarly influential as representing the considered opinion of a county. The classic example of such a petition was that presented from Kent quarter sessions held at Maidstone on 29 April 1701, urging Parliament to grant supplies to enable William III to assist his allies.

¹ Hist.MSS.Comm., Fourteenth Report, Appendix IV, Kenyon MSS., pp.110-1; Hist.MSS.Comm., Downshire MSS., i, Part ii, 562; G. S. Holmes, British Politics in the Age of Anne (London, 1967), p.316.

² J. H. Plumb, Sir Robert Walpole, The Making of a Statesman (London, 1956), pp.46-7.

³ Brit.Mus., Add.MSS. 29588, f.123: Sir C. Musgrave to Nottingham, 8 Aug. 1702; ibid., fos. 171-2, Hedges to Nottingham, 2 Sept. 1702; Cal.S.P.Dom., 1702-3, pp.235-6.

This was voted to be scandalous, the leading justices in the county were imprisoned, and the 'Kentish Petition' became a cause célèbre in national politics. Quarter sessions were also an opportunity for pugnacious gentlemen to conduct quarrels, sometimes personal, sometimes political. The Norfolk justices were in two camps in 1682; in the following year, business at Northumberland sessions was transacted by 'clamour and voting', not by reasoned argument.¹ When two political opponents sat together on the Buckinghamshire bench in 1699, the Tory Lord Cheyne objected to the Whig Lord Wharton's place on the chairman's right hand, and at the conclusion of business they retired to duel.² The importance of quarter sessions in the social life of a county is underlined by the curious frequency of disputes over where sessions should be held; these could be very bitter, and required judicious compromise solutions, usually from the assize judge.³

Admittedly, while quarter sessions had a fundamental place in county government, the court was not all-powerful. Cases could be removed to higher courts by writs of certiorari. The administration of quarter sessions was limited by the inefficiency of inferior officers

¹ Cal.S.P.Dom., 1682, p.55; Cal.S.P.Dom., 1683, p.72.

² Brit.Mus., Add.MSS. 40774, fos.104-5: Vernon to William III, 18 July 1699.

³ See, for instance: R. North, Lives of the Norths (London, 1826), i, 291-3.

such as the hundred and parish constables. The conduct of the justices was to some extent supervised by higher authorities: the assize judges, the Privy Council, the Secretary of State. Furthermore, the commission of the peace was not the only means of acquiring local power and prestige. The land tax acts regularly included the names of men who were not justices among the commissioners. Lords-lieutenant occasionally gave deputy-lieutenancies in the militia to non-justices. Commissions of sewers and of charitable uses, also issued under the great seal, conferred certain powers not shared by the justices, although the justices supervised the work of the commissioners of sewers and indeed took over their functions if a commission of sewers lapsed.¹ The justice was not at the summit of county society; a place in the assize commission of oyer and terminer, in association with the judges, represented a further step reserved for a few senior justices of the peace. It was at assizes, not at quarter sessions, that Sir Roger de Coverley 'kept up his credit in the country' by adding some remarks to those of the judge.²

Notwithstanding the reluctance of some justices to act, the limitations on the power of sessions, and the possibility of

¹13 Eliz. I, c.9.

²The Spectator, ed. D. F. Bond (Oxford, 1965), No.122, i, 499.

acquiring status by other means, a place in the commission of the peace was highly valued. A justice of the peace possessed local powers, local responsibility, and local prestige. It is not an exaggeration to ascribe to him, as historians frequently do, a crucial place in government and society, from the sixteenth to the nineteenth century.¹ There are few cases of gentlemen refusing the honour if it was offered to them, even if they did not intend to act. 'Through the ambition of many', as one contemporary law student succinctly put it, 'it is accounted a credit to be burthened with that authority.'²

¹F. W. Maitland, 'The Shallows and Silences of Real Life', in: ed. H.A.L. Fisher, Collected Papers of F. W. Maitland (Cambridge, 1911), i, 468-9.

²Brit.Mus., Lansdowne MSS. 569, f.30.

2. The Commission of the Peace and the Origins of Party,
1675-85.

Sir Thomas Osborne, created Lord Treasurer in 1673 and earl of Danby in 1674, was at the head of the ministry in 1675. His political career under Charles II was an exercise in building a stable court party in both houses of Parliament, to assist in the repair of the King's finances, to sustain the Anglican church, and to consolidate the independence of the Crown in policy formulation. In order to achieve this end, he organised the political patronage available to the ministers of the Crown in a more systematic way than his predecessors had done.¹ The great seal was in the hands of Heneage, Lord Finch, who was elevated from Lord Keeper to Lord Chancellor in December 1675. Finch was a close political ally of Danby. His place in legal history is that of the greatest lawyer of the Restoration period; he is traditionally known as 'the Father of Modern Equity'. A judge of the highest distinction, he developed many of the modern principles of Chancery jurisdiction.² He was, like Danby, a royalist and an Anglican;

¹ A. Browning, Thomas, Earl of Danby (Glasgow, 1951), i, 167-73, 191-2, 273-5; K. Feiling, A History of the Tory Party, 1640-1714 (reprinted edn., Oxford, 1963), pp.154-7; J. H. Plumb, The Growth of Political Stability in England, 1675-1725 (London, 1967), p.47.

² Lord Campbell, Lives of the Chancellors, iii, 392-425; E. Foss, The Judges of England, with Sketches of their Lives (London, 1848-64), vii, 93-7; W. S. Holdsworth, A History of English Law (reprinted edn., London, 1966), vi, 539-48.

and there is some evidence that he and Danby wanted to make use of local patronage to create a grass-roots court party in the localities which would give a stable base to the court party in Parliamentary politics.¹

The commission of the peace was not, however, manipulated systematically during the period from the establishment of Danby's regime in the summer of 1674 to his fall in March 1679; that is, there was no simultaneous regulation, directed by the central government, of all the county commissions together. Commissions of the peace were certainly sealed frequently, and the number of commissions renewed tended to be higher in February and March, and again in July (the months before assizes), than in other months of the year; but this was the normal pattern.² The court dealt with the county benches ad hoc; it does not seem in this period to have treated the magistracy of England and Wales as a collective whole.

This is not to say that the commissions for individual counties were not regulated from time to time. In 26 out of the 57 English and Welsh counties (not counting Lancashire), gentlemen still living were put out of the commission of the peace between 1675 and March 1679.³ In at least three of these counties the bench was

¹Browning, Danby, ii, 66.

²P.R.O., Index 4214.

³This figure is reached by combining the entries in the Crown Office docquet books with a list, compiled by Finch in late 1678 and annotated by his son Daniel Finch, of justices put out since 1674. P.R.O., Index 4214-5; Hist. MSS.Comm., Finch MSS., ii, 43-6.

apparently remodelled from the centre. The Middlesex bench was purged in 1676 for political reasons. Sir John Robinson, the lieutenant of the Tower, wrote to the Secretary of State, Sir Joseph Williamson, that several Middlesex justices, especially all 'Sir Robert Peyton's gang', should go. 'It is', wrote Robinson, 'of great concern to his Majesty [and] the good government of the city and the adjacent parts that nobody be in Commission either military or civil but such as are faithful and love and affect the government...'¹ Peyton had already been put out in February 1676 by the King's order; several more Middlesex gentlemen were dismissed in commissions sealed in March, April and May.² Norfolk was another county where a regulation with political overtones took place. The lord-lieutenant, Lord Townshend, had been replaced by the earl of Yarmouth in March 1676 as part of Danby's campaign to consolidate the court party in readiness for the parliamentary sessions of February 1677.³ Townshend, disgruntled, joined forces with the ex-Cromwellian M.P. for the county, Sir John Hobart, and an anti-court interest began to gather strength. In June 1676, Hobart, Sir Robert Kemp (the other M.P. for Norfolk), and Sir John Holland (M.P. for Aldborough) were left out of the Norfolk commission. The request that these three be dismissed

¹P.R.O., State Papers Domestic, Charles II, S.P.29/379, f.209: Robinson to Williamson, 6 March 1676.

²P.R.O., Index 4214, pp.508-12; Hist.MSS.Comm., Finch MSS., ii. 44.

³Browning, Danby, i, 196 and note 6; J. R. Jones, 'The First Whig Party in Norfolk', Durham University Journal, New Series, xv (1953), 14-15.

came from the old cavalier gentry of Norfolk, who asked Yarmouth for a complete sweep of all supporters of the earl of Shaftesbury, the leader of the 'country' opposition to Danby.¹ It is probable, though evidence is lacking, that a similar situation developed in Kent. In that county, four prominent gentlemen, of whom two were baronets and one was a Knight of the Bath, were put out by the King's order in March 1678.² Two of them, Sir Vere Fane and Sir John Tufton, were M.P.'s.

If similar regulations involving leading local figures took place in other counties, evidence has not survived; and three counties is a small proportion of the whole. In many of the counties where living justices were put out, the reasons were negligence, misdemeanour, or occasionally opposition to government policy in an administrative matter. For example, two North Riding justices and two Nottinghamshire justices were dismissed for disregarding the assize judges' rule that hearth duty was payable on smiths' forges.³ Cases of individual discipline were common in Middlesex; three justices were put out together in that county for 'abetting an offender and going off the bench', and three more at different times for 'dispensing of libells'.⁴ More serious were cases

¹ P.R.O., Index 4214, p.514; Hist.MSS.Comm., Sixth Report, Appendix, Ingilby MSS., p.374.

² Hist.MSS.Comm., Finch MSS., ii, 44; P.R.O., Index 4214, p.542.

³ Hist.MSS.Comm., Finch MSS., ii, 45-6; P.R.O., P.C.2/66, p.78; Memoirs of Sir John Reresby, ed. A. Browning (Glasgow, 1936), p.125.

⁴ Hist.MSS.Comm., Finch MSS., ii, 44.

of religious disaffection. These were not common, but Catholic gentlemen were put out in Monmouthshire and the North Riding, at least one notorious Protestant dissenter (William Trenchard in Wiltshire) lost his place in the commission, and justices were dismissed in Essex, Hertford and Surrey for not taking the oaths.¹

In a number of counties, justices were dismissed on the recommendation of local magnates, possibly but not certainly for political or quasi-political reasons. Finch seems to have accepted such recommendations without question when they came from reliable courtiers. Thus, the earl of Bath had four gentlemen dismissed in Devon in 1675, the earl of Lindsey one in Kesteven in 1676, and the marquess of Worcester a total of twelve in Breconshire, Glamorgan and Monmouthshire between 1674 and 1677.² However, when the less reliable Lord Newport wanted to have one Daniel Wycherley put out in Shropshire, Wycherley put up a spirited case before the Privy Council before Finch decided that there was some substance in the allegations against him.³

There was nothing new about such regulation of the bench; justices had always been liable to dismissal for misdemeanour, for

¹ Ibid., pp.43-6; for Trenchard, see: D. R. Lacey, Dissent and Parliamentary Politics in England, 1661-1689 (New Brunswick, 1969), p.452.

² Hist.MSS.Comm., Finch MSS., ii, 43-5.

³ Ibid., p.45; P.R.O., P.C.2/64, pp.317, 344, 392, 397; Index 4214, p.494.

religious disaffection, or for incurring the dislike of a local magnate. There was nothing new, either, about cases in which the composition of a county's commission of the peace became an issue in local politics after a quarrel over purely local issues. This happened in Westmorland in the 1670's over the problem of where quarter sessions should be held. The justices in the vicinity of Kendal insisted that sessions should be held permanently in that town, instead of alternating between Kendal and Appleby. The factious spirit engendered by the dispute led to a tug-of-war over nominations to the county bench between the Musgraves on one side and the Howards, Fletchers and Flemings on the other.¹ Neither side was successful in displacing rivals; but in a similar situation in Montgomeryshire, when three justices set up a 'splinter' quarter sessions in defiance of the official writ, the custos rotulorum (Lord Herbert of Cherbury) secured the omission of at least one of the rebels.²

On the whole, it seems a reasonable assumption that, with a few exceptions, the political influence on the county magistracy exercised by the court was so exercised by accepting nominations from

¹The course of the quarrel can be followed in: Hist.MSS.Comm., Twelfth Report, Appendix VII, Le Fleming MSS., pp.115ff.; P.R.O., S.P.29/378, f.20: Sir P. Musgrave to Williamson, 3 Jan.1676; S.P.29/379, f.22: Fleming to Williamson, 10 Feb.1676; ibid., fos.99-100: Sir P. Musgrave to Sir C. Musgrave, 24 Feb. 1676; S.P.29/381, f.150: Sir P. Musgrave to Williamson, 11 May 1676; S.P.29/385, f.180: Sir C. Musgrave to Williamson, 18 Sept. 1676.

²P.R.O., P.C.2/65, p.216; Hist.MSS.Comm., Finch MSS., ii, 44.

court party supporters that well-disposed gentlemen should be added, rather than by removing opponents; thus, for example, a Suffolk justice sought in 1677 to balance his enemies by the addition of his friends, rather than by exercising his influence with the bishop to disgrace those he disliked.¹ The commission of the peace in the majority of counties remained fairly stable during the Danby regime. The changes made in Warwickshire can be described as 'routine'.² Dead justices were omitted, and replacements of suitable social standing were found. The court did not remove some gentlemen who had sat on the bench during the Interregnum. Even so, Warwickshire was one of the counties for which a living justice was removed.³ Cheshire, which received one commission in April 1675 adding one gentleman, and then nothing for four years, or Anglesey, which did not receive a commission at all between July 1670 and April 1680, were perhaps extreme examples of stability. However, counties as large and as electorally important as (for example) Buckinghamshire, Dorset, Somerset, Sussex, and the

¹Diary and Autobiography of Edmund Bohun, ed. S. Wilton Rix (Beccles, 1853), p.37.

²Warwickshire Quarter Sessions Records, Easter, 1674 to Easter, 1682, ed. S. C. Ratcliffe and H. C. Johnson (Warwick County Records, vii, 1946), xxi.

³William Palmer, whose omission was ordered in 1677, although there is some doubt as to whether he was in fact put out. Hist.MSS.Comm., Finch MSS., ii, 46; Cal.Treas.Books, v, 479; Warwickshire Quarter Sessions Records, 1674-82, p.xxi.

West Riding did not receive commissions putting justices out; as far as can be judged, gentlemen were simply added in ones and twos. Thus, in spite of the exceptional cases of Middlesex and Norfolk, it is hard to escape the conclusion that the years of Danby's ministry were among the more tranquil in the seventeenth century as far as the commission of the peace was concerned.

It is something of a paradox, therefore, that in early 1678 the house of Commons made the commission of the peace into one of the major issues in politics. It expressed concern over what it conceived to be, at best, neglect in examining the credentials of those put into the commissions of the peace, and, at worst, the manipulation of the commissions in the interests of Catholicism. The court, it was argued, was trying to prevent the execution of the laws against recusants. A committee appointed by the Commons to enquire into the growth of Catholicism in South Wales reported that four justices of the peace and the coroner in Monmouthshire were all Catholics, and that the presentment and conviction of recusants at quarter sessions had been obstructed. The two principal witnesses before the committee, John Arnold and Henry Probert, claimed to have been turned out of the Monmouthshire commission because of their Protestant zeal, and there was a strong hint that the Catholic heir to the throne, the duke of York, had recommended their disgrace. The committee also received information that one William Fenwick had been put into the Northumberland commission, although the

M.P.'s for that county had represented to Finch that he was a suspected Catholic; they had unsuccessfully recommended a suitable replacement.¹ The Commons voted to raise the matter at a conference with the Lords on the growth of popery, and ordered the chairman of their committee to ask the Chancellor why the two Monmouthshire justices had been turned out.² Finch's reception of the deputation from the Commons is variously described. One M.P. later alleged that the Chancellor refused to answer the members.³ The chairman told the Commons a year later that the deputation had decided that, since Arnold in particular had been put out at the instance of the duke of York, it was not worth complaining to Finch; but he also said that Finch had promised to put one of the Catholic justices out of the Monmouthshire commission.⁴

There was very little substance in the case against Finch, at any rate in those counties on which the Commons concentrated. The court's defence over the controversial Monmouthshire commission was fairly strong. One of the Catholic justices named by Arnold had, in fact, been put out as early as 1676, as soon as Finch had learned about his recusancy from the bishop of Llandaff. Arnold and Probert may

¹C.J., ix, 466-70: 29 Apr. 1678; Herbert Correspondence, ed. W. J. Smith (Board of Celtic Studies, University of Wales History and Law Series, xxi, 1963), 197, 220.

²C.J., ix, 470-1; Poems and Letters of Andrew Marvell, ed. H. M. Margoliouth (2nd edn., Oxford, 1952), ii, 221-2.

³Grey, Debates, vi, 181.

⁴Ibid., vii, 166-7.

possibly have offended the duke of York, but the marquess of Worcester had also represented that they had committed misdemeanours, admittedly unspecified, in their office.¹ Furthermore, Finch acted promptly on receiving the views of the Commons. One of the Catholic justices in South Wales, Henry Milborne, was put out for three counties in May 1678, and William Fenwick was dismissed without delay from the Northumberland bench.²

Although the country party campaign has a flavour of shadow-boxing, it is easy to see why the complaints over the magistracy were inflated. The opposition politicians in the Cavalier Long Parliament were eager to mount an attack on Danby's ally Finch as part of their campaign against the court. The country gentlemen in the Commons feared nothing more than government intrusion into the closed world of county society. The success of the country party in 1678 - the addresses remonstrating against evil counsellors and the defeat of a motion for an increase of £300,000 in the King's annual revenue - can be attributed, at least in part, to the judicious handling of back-bench opinion on the subject of Catholic influence in the choice of justices of the peace.³ In the late summer and early autumn of 1678, the issue

¹ Hist.MSS.Comm., Finch MSS., ii, 44.

² Ibid., pp.43, 45; P.R.O., Index 4214, pp.543, 544.

³ Grey, Debates, vi, 134, 281; Cal.S.P.Dom., Charles II, Addenda, p.474.

became merged in the national panic of the 'Popish Plot': the general belief, based on the disclosures of the informer Titus Oates and others, that there existed a Catholic conspiracy to assassinate the King and extirpate Protestantism. During the Cavalier Parliament's last session in the last three months of 1678, the opposition kept the subject of the magistracy alive, to convince the country gentry of the iniquity of the court while Oates made sensational accusations and the former ambassador to France exposed the King's receipt of French subsidies in Parliament. The Commons ordered the Clerk of the Crown to submit a list of justices on 8 November; a similar order was later given to the Chancellor of the Duchy of Lancaster; and the House further requested a list of justices who had been dismissed within the last seven years.¹ Finch prepared to meet criticism with the help of his son Daniel, who was an M.P.² The prorogation on 30 December forestalled an attack on Finch as well as an attack on Danby.

The court was now hard pressed. The Cavalier Parliament was dissolved on 24 January 1679, and elections were held in February. Danby, who was threatened with impeachment, reshuffled the ministry by sacrificing Williamson and bringing in the earl of Sunderland as Secretary of State. An approach was made to the duke of York to change

¹C.J., ix, 535, 539, 540.

²The frequently quoted list at Hist.MSS.Comm., Finch MSS., ii, 43-6, was almost certainly drawn up for this purpose.

his religion; James rejected the suggestion completely.¹ The survival of Danby depended on the elections; however, the court was not in a position to exert much influence on them.² Finch was not able to assist the return of court party supporters by changing the commissions of the peace. In the first place, there was not enough time between the decision to dissolve, which was a sudden one, and the elections themselves. In the second place, there was probably little that Finch could do to help; it would have been unusual for the court's candidates and their supporters not to have been in the appropriate commissions anyway, and to have ejected country party candidates immediately before the elections would have done more harm than good. Only fifteen commissions of the peace were sealed in January and February, and the changes that were made seem to have been routine; no living justices were put out, according to the docket books. The court was thus not able to exert its powers of patronage. If anything, it was seeking to mollify the opposition. Even so, Finch was not prepared to give way completely to the demands of the country party. In January, the King in Council gave orders for justices 'disaffected to the government and the true Protestant religion'

¹Browning, Danby, i, 313-4.

²J. R. Jones, The First Whigs (London, 1961), pp.36-41.

³The docket book entries for these months are at the end of P.R.O., Index 4214, and the beginning of Index 4215.

to be removed and replaced by 'persons, who may be likely to act with more vigour and good affection'.¹ Finch, to whom the order was addressed, was to act if he received complaints. No machinery for a systematic regulation was set up, and the only tangible result of this order was that an obscure justice in the liberty of Southwark was dismissed for discharging a person suspected of complicity in the murder of Sir Edmund Berry Godfrey, the Middlesex justice whose death had first aroused public interest in the Plot.² When Parliament met, the King promised that, in future, only sincere Protestants would be chosen as justices of the peace.³ This, too, was a gesture. A debate on the case of John Nalson, in commission for Ely, illustrated the way in which the court's handling of the commission of the peace could be made the subject of attacks on the old ministers; Nalson had published a pamphlet attacking some of the opposition M.P.'s, and they recommended his omission from the Ely magistracy. During the debate, the opposition spokesmen Titus, Powle and Williams all criticised recent appointments to the bench, and Shaftesbury's secretary moved an address for the removal of all popishly affected justices. Even when the Commons descended from the general to the particular, Finch stood firm; the Ely commission

¹P.R.O., P.C.2/67, p.64; Hist.MSS.Comm., Thirteenth Report, Appendix VI, Fitzherbert MSS., p.12.

²P.R.O., P.C.2/67, p.76.

³C.J., ix, 607: 30 Apr. 1679.

was not renewed in 1679.¹

Finch's position was growing more difficult, however. Two circumstances combined to bring the commission of the peace more into central politics in the spring of 1679. In the first place, Danby's failure to secure the election of his candidate as Speaker revealed that he had lost control of the Commons, and he fell in March. In April, the King remodelled the Privy Council, admitting to it many of the opposition leaders, especially Shaftesbury who became Lord President. Charles' motives in this change were tactical; he was partly trying to gain time, and partly trying to divide the opposition leaders from the country party rank and file, since the latter distrusted politicians in office impartially.² Although the King's attitude to his new councillors was equivocal, they were in a position to exert influence on the Chancellor to remodel the commissions of the peace in the interests of their friends and supporters. In the second place, the emergence of divisive issues on a national scale sharpened the quarrels dividing local communities.³ One such issue was Exclusion: that is, the policy

¹Grey, Debates, vii, 166-7; C.J., ix, 608; [E. Bohun], The Second Part of an Address to the Freemen and Freeholders of the Nation (1682), p.26.

²The Works of Sir William Temple (Edinburgh, 1754), i, 413-7; Memoirs of Thomas, Earl of Ailesbury, ed. W. E. Buckley (Roxburghe Club, London, 1890), i, 34-5; Jones, The First Whigs, pp.61-3; J. P. Kenyon, Robert Spencer, Earl of Sunderland, 1641-1702 (London, 1958), pp.25-6.

³J. R. Jones, 'The First Whig Party in Norfolk', Durham University Journal, New Series, xv (1953), 13, 15.

advocated by Shaftesbury's country party, shortly to be called the Whig party, of excluding Charles' brother James, the duke of York, from the succession to the throne. An Exclusion bill was progressing through the Parliament elected in February 1679 before the King prorogued it on 27 May. A secondary issue, stimulated by the Popish Plot, directly affected the magistracy. This was the desirability of compelling the agents of government to enforce the recusancy laws. The admission to the Council of those committed both to Exclusion and to the enforcement of anti-Catholic legislation suggested that changes in the composition of the county benches were in prospect. This was what contemporaries expected.¹ This, indeed, was what Shaftesbury and his friends tried to do in the spring of 1679. In May a 'regulation of justices' was proposed in Council. The Clerk of the Crown was ordered to send in lists of justices as fast as they could be copied, '... his Majesty's Service requiring a more than ordinary diligence in this matter'.² Shaftesbury suggested that two or three magnates be appointed for each county, to consult about the commission of the peace for that county with the Chancellor, the lord lieutenant, the bishop of the diocese, the custos

¹Hist.MSS.Comm., Ormonde MSS., N.S.iv, 505; ibid., v, 58.

²P.R.O., P.C.2/68, pp.30, 42.

rotulorum, and the judges; this method was adopted.¹ The names of these magnates indicate the Whiggish nature of the proposed regulation. For instance, Bedfordshire was assigned to Lord Russell and Lord Cavendish; Cheshire was to be regulated by the duke of Monmouth and the earls of Shaftesbury and Bridgwater; the duke of Monmouth had Staffordshire to himself; Sussex was to be managed by the earls of Essex and Shaftesbury, and Lord Holles. Although, in some counties, peers who could not have been sympathetic to a regulation in the Whig interest were named, they were, with a very few exceptions, accompanied by committed country party politicians. Thus, for instance, although the marquess of Worcester was named for Gloucestershire, he was to be joined by Henry Powle and Sir Henry Capel. A partisan takeover of local power was in prospect. The country party wanted to build up a stable interest in the countryside by rewarding their friends with, and depriving their enemies of, local office. The adoption of such country measures in office would also quiet the suspicion of the Commons, that the leadership of the country party had been corrupted by the court.

Eager as the Whigs were to instal their supporters in local office and to disgrace their opponents, the King's hostility defeated

¹ Brit.Mus., Add.MSS. 15643 (Minute Book of the Council's Committee of Intelligence, 1679-81), f.2; P.R.O., P.C.2/68, pp.47-8: 21 May 1679; Brit.Mus.. Loan 29/236, fos.407, 409: the Privy Council orders sent to the duke of Newcastle, lord-lieutenant of Northumberland and Nottinghamshire, apparently enclosing lists of justices for comment.

them. Roger North described what happened as follows:

... the Rolls of the Justices were ordered to be laid before the Council, in order to be reformed. And (as some present related) it was pleasant to see with how much Wit and good Humour, the King ordered Affairs, to disappoint these Reformers. He would not suffer the Roll, that was begun with, to be out of his own Hand, but pretended to mark the Alterations upon it himself. Then, as many of the Council moved for Alterations upon the Account of good or bad Men (Terms of Art, which, for Brevity, they used to signify such as the Party liked, or would have put out, or not) if the King was content a Man should out, he made a Mark at his Name; but if he would not part with him, he found some jocular Reason to let him stand; as that he was a good Cocker, understood Hunting, kept a good House, had good Chines of Beef, kept good Fox Hounds, or some such indifferent Matter, which it was ridiculous to contradict or dispute upon. And, in this Manner, he frustrated all their Intent, as to Removes, and, by crossing and puzzling the Work, made a plain Demonstration to his factious Counsellors, that they should not have their Will of him in what they intended, *viz.* to dash the best Friends he had, all over England, in the Face with such Affronts. In short, finding they could not prevail, they let the Business drop; and I do not know that any one Roll was, in this Manner, thoroughly perused...¹

The King and the inner circle of courtiers thus disregarded the reports of the Whig magnates, and events moved too quickly for the attack on the

¹ Roger North, Examen, or an Enquiry into the credit and veracity of a Pretended Complete History... (London, 1740), pp.77-8. See also the same author's Lives of the Norths, ii, 59-60. Roger North's brother, then Lord Chief Justice, was a Privy Councillor at this time.

commissions of the peace to be renewed. The dissolution of the first Exclusion Parliament and the elections in the summer of 1679 absorbed the energies of the regulators. A rising in Scotland, the political complications consequent upon the King's illness in August, and their own enmities, diverted the attention of the Council. The brief Whig ascendancy was not, however, entirely without effect, as Roger North implies. Some changes in the Whig interest were made in May - that is, before the organised Privy Council regulation. Sir John Hobart, Sir Robert Kemp, and Sir John Holland, the three Norfolk justices disgraced in 1676, were restored; among anti-court M.P.'s who were placed on the bench in their home counties were John Speke in Somerset, John Ashburnham in Sussex, and Sir John Darell in Kent; while, again in Somerset, the royalist Edward Phelps was put out, to the consternation of the bishop of Bath and Wells.¹ But the Council regulation itself was ineffective. Commissions of the peace were sealed for 27 counties between June and October 1679; in 15 of these, according to the docket book, the assize judges only were altered. In none of the 12 remaining counties were the regulators exclusively Whig, and, except in Kent, where 14 gentlemen were added in two commissions, the alterations were unspectacular.² Indeed, if anything, they show a tendency to favour

¹P.R.O., Index 4215, pp.6-8; Longleat MSS., Coventry Papers, vii, f.152: Bishop of Bath and Wells to Coventry, 9 June 1679.

²Gloucestershire (two), Kent, Kesteven, Norfolk, Northamptonshire, Oxfordshire, Warwickshire, Wiltshire, Carnarvonshire, Cardiganshire, Flintshire, and Radnorshire. P.R.O., Index 4215, pp.8-15.

the court. In Norfolk, for example, Hobart, Kemp and Holland, restored in May, were left out again in June after the King had written to Finch that 'ther is no objection against it but in disobligeing those sorte of people who will never be obliged, and any countenance I give them is only used against myselfe and government'.¹ Two loyal courtiers with interests in Worcestershire, Lord Windsor and Henry Coventry (one of the Secretaries of State) were actually conspiring in June to leave out the Whig knight of the shire, Thomas Foley, and also Edward Lechmere, the son of an active rebel of Cromwell's time.²

The Whig takeover of local power thus broke down. Finch sealed only three commissions of the peace in August 1679, and none at all in September. Meanwhile, the Whigs were losing ground. Parliament was dissolved on 12 July; elections, held in August and September, produced a house of Commons even more intransigent than the last had been, but this Parliament was immediately prorogued, and it remained prorogued by successive adjournments for twelve months until October 1680. The duke of Monmouth, the protégé of the Whigs as Charles' illegitimate son and an alternative Protestant heir, was dismissed as commander-in-chief of the army and exiled in Holland; while James, who had been banished to Brussels in March, returned to stiffen the resolution of the court

¹Hist.MSS.Comm., Finch MSS., ii, 42, where the letter is wrongly conjectured to be dated 1678; P.R.O., Index 4215, p.12.

²Longleat MSS., Coventry Papers, vi, f.76: Windsor to Coventry, 16 June 1679.

in September. In October, the earl of Radnor replaced Shaftesbury as Lord President. The earl of Essex resigned as head of the Treasury commission in November. Laurence Hyde and Sidney Godolphin, the new heads of the Treasury, and Sunderland, Coventry's partner as one of the two Secretaries of State, were thought to be the most influential ministers. The remaining Whigs resigned from the Privy Council in January 1680.¹

A commission of the peace for Warwickshire sealed in November 1679, in which Sir Richard Newdigate and Thomas Marriot were put out at the instance of the earl of Denbigh and Lord Brooke for standing against two 'court' candidates in the August election for knights of the shire, was a foretaste of a comprehensive remodelling of the bench conducted by the reconstituted ministry.² Unlike that planned in the spring, this was to be a court regulation, fully backed by the King. A committee consisting of the Chancellor, the Lord President, and the two Secretaries of State was appointed in early December to review the lists of justices.³ There was no clumsy farming out of counties to individual magnates. The experience of the Whig regulators led Sir Robert Southwell to suggest pessimistically that

¹ Jones, The First Whigs, pp.87-92; Kenyon, Sunderland, pp.29-34; K.H.D. Haley, The First Earl of Shaftesbury (Oxford, 1968), pp.547-51, 556.

² Warwickshire Quarter Sessions Records, 1674-82, p.xxii.

³ P.R.O., P.C.2/68, p.309.

the work of this committee would be 'tedious, if not difficult and thankless'.¹ However, this time the review proceeded rapidly. The committee worked on local recommendations invited and collated by the Secretaries of State. Henry Coventry wrote to the earl of Longford that his list would be shown to the King - presumably Longford's list was for Surrey, though this is not made clear. Coventry said that he was unable to comment on the 'good and bad marks on so many men', not knowing the county. He did not think that any one list would be accepted entire, but that the committee would consolidate the several lists received for each county and present the results to the King for final corrections.² The earl of Conway, whose main interests were in Warwickshire, was informed in January that the earl of Denbigh had represented Colonel Archer, a colleague of the already disgraced Newdigate and Marriot in Warwickshire elections, as a man not fit to be in commission, and that if he wanted to recommend anybody himself he had better do it quickly. Conway was able to use his influence to keep another justice in the commission.³

¹Hist.MSS.Comm., Ormonde MSS., N.S. iv, 566.

²Brit.Mus., Add.MSS.25125 (Henry Coventry's Letter Book), f.81: Coventry to Longford, 23 Dec. 1679.

³Cal.S.P.Dom., 1679-80, pp.378, 393.

The King, Finch and Radnor reviewed the provisional lists compiled by the Secretaries in a series of meetings in the first six weeks of 1680; by 16 February they had perfected the lists for all the counties.¹ By the end of March, every county in England except Cheshire had received a new commission; Cheshire and the Welsh counties followed in April.² In 46 of the 57 English and Welsh counties, at least one local justice was left out.³

Another regulation took place almost immediately. The judges, who had recently returned from the Lent assizes, were directed to return the names of justices who were not sworn or who had not acted. Three days later, on 17 April 1680, the Council ordered the inclusion and omission of justices in a total of 30 counties.⁴ On 13 April Sunderland had written to the earl of Rutland, lord-lieutenant of Leicestershire, sending a list of justices for that county, which was one of those involved in the regulation; this suggests that the secretaries again prepared draft lists with the help of local courtiers for submission to the King, Finch, and Radnor.⁵ The warrants were issued within a week, and the commissions embodying these changes were

¹Hist.MSS.Comm., Ormonde MSS., N.S.iv, 574; ibid., v, 269, 270, 276.

²P.R.O., Index 4215, pp.19ff.

³The exceptions were: Cumberland, Huntingdonshire, Lindsey, Rutland, Staffordshire, Westmorland, Anglesey, Cardiganshire, Carmarthenshire, Merionethshire, and Radnorshire.

⁴Hist.MSS.Comm., Ormonde MSS., N.S.v, 301-2; P.R.O., P.C.2/68, pp.475, 480, 482-4.

⁵Hist.MSS.Comm., Twelfth Report, Appendix V, Rutland MSS., ii, 54.

sealed by June or July.¹ The committee continued through the summer to make regulations in the commissions for single counties. The Wiltshire commission, for instance, received no less than 15 new additions in July.²

There were naturally rumblings of discontent in the counties. The duke of Newcastle complained bitterly about the omission of Samuel Eyres in Northumberland. Newcastle, who had nominated Eyres, felt himself insulted.³ When Parliament met on 21 October 1680 after its year-long prorogation, it was expected that there would be strong objections to the waves of changes. It was in the house of Lords that the main assault on the court over the commissions of the peace developed. This may, in conjunction with Newcastle's protest, reflect a change of emphasis in the opposition's attitude to the regulation. The country gentry certainly resented the admission of new and unsatisfactory colleagues, or their own fall from local grace; but the magnates, who saw their control of the counties they dominated vanish into the hands of the central government, took the lead in criticizing the court. The Lords ordered that a committee be appointed to enquire into 'abuses' in altering the commissions. This was composed

¹P.R.O., Index 4215, pp.29ff.

²P.R.O., P.C.2/69, p.24: 29 June 1680; Index 4215, p.32: 10 July 1680.

³Hist.MSS.Comm., Finch MSS., ii, 82.

largely of Whig magnates; some of them had been allotted counties in the abortive Whig regulation in the spring. Shaftesbury, Monmouth, Essex, Macclesfield, Lord Grey of Warke, Lovelace, Wharton, and Delamere were all members.¹ This committee was supplied with a book of the peace by the Crown Office, and between 9 and 22 November 1680 it diligently studied the lists.² After the first day, Shaftesbury supplanted Anglesey in the chair. The committee's deliberations ended abruptly on 22 November after it had considered about half the counties, though it is possible that it convened again on 9 December. It never reported; there is no doubt that any report would have drawn attention to the large number of M.P.'s and men of substance put out, and to the unsatisfactory character of those put in or kept in.³

The Commons does not seem to have debated the subject, although members expressed their views on several occasions. In a debate ostensibly about Tangier on 17 November, Whig spokesmen argued

¹ L.J., xiii, 655.

² During this period, the Exclusion Bill was passed in the Commons and defeated in the Lords.

³ H.L.R.O., Main Papers, H.L., 9 Nov. 1680. This MS. consists of the Crown Office lists of justices for the several counties (except Nottinghamshire), and the minute book of the committee in a pocket of the cover of the modern binding. It is calendared, though unreliably, in Hist.MSS.Comm., Eleventh Report, Appendix II, House of Lords MSS., 1678-88, pp.172-193. A paper headed 'List of the Justices lately ordered to be left out and inserted in the Commissions of the Peace of the several counties in the Oxford Circuit' and endorsed 'Alterations in the Commissions of the Peace in the Oxford Circuit. March 1679 [/80]' adds some names to the house of Lords' findings and confirms that the Lords ignored the omission of dead justices: Brit.Mus., Loan 29/183, fos.5-6.

that the King had remodelled the bench to serve his purpose of preventing Exclusion; Sir Henry Capel saw the hand of the duke of York in the changes.¹ On 15 December, the leading Whigs insisted on the need for having 'good justices'; according to Sir William Jones, the court had put in clergymen and 'men of mean quality', and had put out M.P.'s who had voted for Exclusion and active magistrates zealous against Popery. Boscawen hinted again at the sinister influence of the duke.² It was possibly in this debate that Henry Booth, M.P. for Cheshire, argued persuasively that the county he represented had been greatly harmed by the dismissal of Sir Thomas Mainwaring, an experienced and popular justice. Booth declared ironically that he himself was glad to have been put out. He saved money; he was protected from assassination by papist plotters; his neighbours thought more highly of him for having so manifestly incurred the court's displeasure. But justices of the peace, as a class, were honest men, and to put any one of them out unheard was a great reflection on their character. 'God be thanked', he said, 'the nation sees very plainly who and what sort of persons rule the roost; by all the enquiry I can make I do not find that any man is put out but such as are very active against the papists,

¹Grey, Debates, viii, 192, 194, 200.

²C.J., ix, 665-6, 685; Hist.MSS.Comm., Finch MSS., ii, 99.

such as are against arbitrary power, and such as opposed the bill against the duke'.¹ These sentiments (assuming that the speech was, in fact, delivered) must have appealed more strongly to the squires in the House than Garroway's assertion that the office of justice of the peace was burdensome, brought no honour, and was beneath consideration at a time of national crisis; this view was repudiated by later speakers.² An address to the King on 27 November hinted that 'Jesuits' had secured the dismissal of worthy justices. Another address on 29 December referred to the dismissal of eminently qualified justices and the inclusion of 'countenancers of papists' and 'men of arbitrary principles'. It requested that justices might in the future be men who were well-affected to the Protestant religion, and of estates and interest in their counties.³

It was certainly true that many justices were dismissed for the reasons Booth gave. Between 45 and 50 of the M.P.'s who had voted for Exclusion in May 1679 had been put out for their counties in the

¹The Works of Henry, late Lord Delamere and Earl of Warrington, ed. J. Delaheuze (London, 1694), pp.129-132. Sir Richard Newdigate reacted with similar ironic pleasure when put out for Warwickshire in November 1679. Brit.Mus., Add.MSS. 34730, f.54: Sir Richard Newdigate to Thomas Marriot, 12 Jan. 1680.

²Grey, Debates, viii, 192, 194, 200.

³C.J., ix, 665-6, 685; Hist.MSS.Comm., Finch MSS., ii, 99.

winter and spring of 1679-80.¹ Among them were such prominent figures as Hugh Boscawen in Cornwall, Colonel Birch in Herefordshire, Silas Titus in Hertfordshire, Sir Trevor Williams in Monmouthshire, Sir John Hotham in the East Riding, Thomas Wharton in Buckinghamshire, and William Williams in Shropshire and Denbighshire. The purge of Exclusionist M.P.'s was not, however, comprehensive; more than sixty remained in commission, and certain inconsistencies reveal that the court's system of synthesizing local recommendations was not foolproof. Hector Philips, M.P. for Cardigan borough, who had voted for Exclusion, was actually put into the Pembrokeshire commission de novo, and kept in that for Cardiganshire. In Devonshire, three Exclusionist M.P.'s were put out, including two baronets, one of whom was the county member; seven were allowed to remain. In Hampshire, three Exclusionists were put out, two kept in. Six justices were put out who had actually voted against Exclusion in May 1679.² Admittedly, one of these, Sir John Guise, may have been disgraced because he had killed his opponent in a duel.³

¹This calculation, and the information following, is based on a comparison of the lists in H.L.R.O., Main Papers, H.L., 9 Nov. 1680, and the division list printed by A. Browning and D. J. Milne, 'An Exclusion Bill Division List', Bull.Inst.Hist. Research, xxiii (1950), 207-225.

²Walter Kendall (Cornwall); Sir John Guise (Gloucestershire); Edward Hales (Kent); earl of Ancram (Berkshire, Surrey, and Buckinghamshire); William Harbord (Hertfordshire); Sir Francis Winnington (Worcestershire).

³W. R. Williams, Parliamentary History of Gloucestershire (Hereford, 1898), p.60.

These cases suggest that it would be an oversimplification to regard the changes as a ruthless campaign against the Exclusionists. Most of the M.P.'s were put out in the first of the court's purges in January and February 1680, and it is at least possible that a carefully calculated distinction was being made between intransigents and men who might be won over, although this is never explicitly stated. It is, on the whole, more probable that, while the regulation took place simultaneously and seemed to proceed from the will of the King, local influence at court played, as usual, a large part in the remodelling of individual county benches. In particular, a number of Whigs of great social prominence were left in; the court undoubtedly felt that the omission of certain magnates would be dangerous, and, for example, Lord Russell remained in commission for Bedfordshire, Lord Sherrard for Leicestershire, Lord Fairfax for the West Riding, Lord Townshend for Norfolk, and Lord Fitzwilliams for Northamptonshire.

Booth was also right when he said that some justices had been put out because of their zeal against Catholics. Henry Probert, one of the Monmouthshire justices who had been put out and then restored after giving evidence to the Commons in 1678, was put out again.¹ Two notoriously anti-Catholic justices, Sir William Waller and Sir Gilbert Gerard, were dismissed in Middlesex; admittedly, the Council had further

¹H.L.R.O., Main Papers, H.L., 9 Nov. 1680, f.38.

reasons for putting both out, since Waller had committed a prisoner without preferring any charges against him, while Gerard was discrediting himself by an ostentatious search for a 'black box' allegedly containing a certificate of marriage between the King and the duke of Monmouth's mother.¹ Booth claimed to have been dismissed himself because he had secured the conviction of five thousand recusants in Lancashire.²

Others put out had been active in the promotion of petitions to the King in the winter of 1679-80, requesting that Parliament be allowed to sit. This was why, for instance, Broome Whorwood was put out in Oxfordshire.³ One of the very few counties where changes in the Whig interest had taken place in 1679 was Kent; the new justices, led by Sir John Darell, petitioned that Parliament should sit, and promptly all of them lost their places on the bench.⁴ One contemporary later wrote that the petitioning movement had been carried on in each county by some hotheaded, busy justice of the peace, a significant association of ideas.⁵ Also, the troublemakers in local disputes were

¹P.R.O., P.C.2/68, p.471; The Hatton Correspondence, ed. E. H. Thompson (Camden Soc., New Series, xxii, xxiii, 1878), i, 216, 225.

²Works of Henry Lord Delamere, p.130.

³Life and Times of Anthony Wood, ii, 1664-81, ed. A. Clark (Oxford Historical Society, xxi, 1892), 476-7.

⁴Longleat MSS., Coventry Papers, vi, f.230: [Sir] Thomas Peyton to Coventry, 23 Jan. 1680; H.L.R.O., Main Papers, H.L., 9 Nov. 1680, f.27.

⁵Ailesbury, Memoirs, i, 45; Hist.MSS.Comm., Ormonde MSS., N.S. v, 276, 502.

put out. Some of the Kendal justices in Cumberland and Westmorland were dismissed, illustrating the continuity between such disputes and the growth of party during the Exclusion crisis. Animosities lingered on when first causes had been forgotten.¹

Notwithstanding Booth's opinion that the changes were uniformly anti-Whig, not all the alterations were politically inspired. William Barnesley, left out of the Surrey commission, had endeavoured to corrupt a witness against the duke of Buckingham on a sodomy charge.² Equally, it would have been hard to criticize the Chancellor for leaving out Philip Champernoone in Devonshire, since that gentleman was, according to the bishop of Exeter, derided by the county for notorious incest with his wife's sister.³ About a quarter of those ordered to be put out in April 1680 are described as 'dead' in the Privy Council register; the operation could have been represented as one of rationalisation, as well as manipulation, of the commissions of the peace. However, the court could not have denied that Booth's analysis of the

¹In Roger North's account of the quarrels in 1676, he described the Musgraves as Tories and the Fletchers and Lowthers as Whigs; although he admits that this is an anachronistic distinction: Lives of the Norths, i, 291.

²P.R.O., P.C.2/68, p.466; Hist.MSS.Comm., Ormonde MSS., N.S. v, 296-7.

³Bodl.MS. Tanner 37, fos.17, 47: Bishop of Exeter to Archbishop Sancroft, 24 Apr., 6 June 1680; H.L.R.O., Main Papers, H.L., 9 Nov. 1680, f.16.

nature of the changes was, though oversimplified, substantially correct. The court's purge of factious men varied in intensity from county to county, but everywhere it had a clear end in view: each county was to have a preponderance of magistrates who were sympathetic towards the court.

Charles dissolved Parliament on 18 January 1681 and summoned another to meet at Oxford in March. The changes in the commissions of the peace in 1680 did not assist the court in the elections of February and early March; the new house of Commons was to be as Exclusionist as the last.¹ Indeed, the court made some concessions, suggesting a new timidity, during the election period. Henry Booth and Sir Thomas Mainwaring were restored to the Cheshire commission, and Booth once again became custos. He drew attention to the fact, saying that he had not desired the favour, in a speech to the freeholders after his election.² However, some changes seem to have been designed to encourage the supporters of the court, rather than to conciliate its opponents; for example, 'a worthy member of the last Parliament', already in the Herefordshire commission, was added to that for Worcestershire.³

¹ Jones, The First Whigs, pp.159ff.

² P.R.O., P.C.2/69, p.207: 4 Feb. 1681; Index 4215, p.42: 12 Feb. 1681; The Speech of the Hon. Henry Booth Esq.... 2 March 1681, at his being elected one of the Knights of the Shire... (1681).

³ Cal.S.P.Dom., 1680-1, p.176.

The next major changes took place after the Oxford Parliament was dissolved after sitting for only a week. Sir Leoline Jenkins and the earl of Conway, who had replaced Coventry and Sunderland respectively as the Secretaries of State, endeavoured, in the spring and summer of 1681, to push to a logical conclusion the policy of removing from the commissions of the peace those men who had shown themselves to be disaffected to the government of the court. Unfortunately, the process remains obscure; there was no Parliamentary enquiry into the methods employed as there had been in 1680. Some light is shed on the court's tactics by a letter from Jenkins to the marquess of Worcester, in which he refers to a general review of the English commissions of the peace made before the summer circuit of 1681 by Finch, Halifax, Conway, Laurence Hyde, and Edward Seymour. Nothing, wrote Jenkins, was then done about the Welsh counties because Worcester had not then been present; and he drew Worcester's attention to some suggestions made by a well-affected gentleman from Denbighshire.¹ Presumably a similar operation of local recommendation and consultation had earlier taken place in England. There is a little evidence to suggest that the regulation was conducted rather hastily and inefficiently in some counties. The earl of Lindsey was told that the King would take notice of his list of nominations for Lincolnshire, being satisfied that he would recommend

¹Cal.S.P.Dom., 1680-1, pp.476-7. The letter is dated 29 Sept. 1681.

'none but such as are of ancient, unblemished families and such who for their fortune and capacity will bring no disreputation on his Majesty's commission'.¹ Lindsey responded in August with a list of deputy-lieutenants and justices who had refused to join in a loyal address to the King.² He had, however, been forestalled. Commissions for the three divisions of Lincolnshire had already been sealed on 8 July, presumably after recommendations from some source other than Lindsey had been received. One of the justices added in 1680, Sir William Ellys, was now put out in 1681.³ Lindsey complained in 1683 that 'many disaffected persons are still in power and commission' in Lincolnshire.⁴

The 1681 regulation, though imperfectly organised at any rate in some counties, was nevertheless wide-ranging. Between 8 July and 23 August, new commissions were sealed for every English county except Cambridgeshire, Dorset, and Norfolk.⁵ Distinguished Parliamentarians not put out in 1680 now suffered disgrace; Sir Henry Capel in Surrey, for example, and Warwick Bampffield and Edward Strode in Somerset. Others, less well-known, were dismissed with their leaders. John Kelland

¹P.R.O., S.P.44/62, p.230: Jenkins to 'Lord Chamberlain' (Lindsey), 28 July 1681.

²P.R.O., S.P.29/416, Nos.107, 107 I: Lindsey to Jenkins, 20 Aug. 1681.

³P.R.O., Index 4215, pp.31, 51.

⁴Cal.S.P.Dom., Jan.-June 1683, p.367.

⁵P.R.O., Index 4215, pp.51-4.

was put out in Devonshire; so was Samuel Rolle. Sir John Cope, in Oxfordshire, and Sir John Bowyer, in Staffordshire, were among the rank and file Exclusionist M.P.'s who lost their places on the bench. A number of the great Whig magnates kept in commission in 1680 now ceased to be magistrates: notably the earls of Manchester, Bedford, and Macclesfield, in Huntingdonshire, Bedfordshire, and Cheshire respectively.¹ Sir Thomas Mainwaring, restored in Cheshire after Booth had defended his reputation in the Commons, was humiliated by a second disgrace. The extent of the changes, and the disregard shown for considerations of social standing, almost justify one contemporary description of this purge: 'None were left either on the bench or in the militia, that did not with zeal go into the humour of the court'.²

If the court's intention was to absolutely comprehensive, it did not succeed. The eleven gentlemen who, according to Lindsey, had not signed the loyal address from Lincolnshire, were still in the Lincolnshire commissions in 1685.³ The Northumberland bench was still dominated by men hostile to the 'King's interest', when a furious dispute, similar in character to the quarrel in Westmorland in the 1670's, broke out in 1683 over the management of the Sheriff's county court.

¹Ibid., pp.45, 51, 54

²Bishop Burnet, History of his own Time (Oxford, 1833), ii, 285

³P.R.O., C.193/12/5, fos.65-85.

The justices on the bench split into parties for and against the Tory sheriff. The factious men were in a majority of twelve to ten, and they actually succeeded in blackening the reputation of two of the Tory justices so that they were put out of the commission - this at the height of what is often called the 'Tory Reaction'. The loyal party was horrified by the willingness of the opposite party to carry matters in dispute by voting at quarter sessions, and appealed for a 'speedy regulation' of the bench.¹ The matter was of real importance, since the sheriff had been active in packing juries to secure the conviction of dissenters; the factious party countered by acquitting persons charged on what the loyal party considered to be clearly proved evidence of sedition.² Elsewhere, Whig justices were less active, but there were a handful of men whose past or future careers showed them to be, broadly speaking, Whig in sympathy in most county commissions of the peace at the end of Charles' reign.³

Nevertheless, the view that the county benches were controlled by Tory justices by 1685 is substantially correct. The

¹P.R.O., S.P.29/422, No.95: eleven Northumberland justices to Jenkins, no date [Feb. 1683?]; *ibid.*, No.107: 'I.B.' [Isaac Basire] to Widdrington, 26 Feb.1683; *ibid.*, No.129: Basire to Jenkins, 6 Mar. 1683; S.P.44/66, p.214: the King to the Northumberland justices, 16 Apr. 1683; S.P.29/424, No.146: Widdrington to Jenkins, 6 June 1683.

²P.R.O., S.P.29/424, No.154: Declaration by several Northumberland justices, 8 June 1683.

³P.R.O., C. 193/12/5, *passim*; and see Warwickshire Quarter Sessions Records, 1674-82, p.xxvii n.3.

'Tory Reaction' was not complete in all counties by the autumn of 1681; further adjustments took place, not as a collective regulation, but in the shape of removals or additions for single counties on recommendations from local sources or assize judges. For example, nine Hertfordshire justices were supplanted on the bench by five well-affected gentlemen in May 1682; the fiat for this quite severe alteration also contained orders for the omission of one justice each in Surrey and Essex.¹ The bishop of Chichester thought that the factious party in Sussex retained its vigour because Henry Shelley and Robert Palmer were still in the commission of the peace; Shelley certainly, and Palmer probably, were dismissed.² Some Exclusionist M.P.'s were belatedly put out, like Bussy Mansell for Glamorgan and Arthur Onslow for Surrey, both in 1682.³

The Whig Rye House Plot in 1683 does not seem to have had much effect on the composition of the magistracy, perhaps because the plotters were committed Whigs who had already been put out. However, there were occasions when the court felt obliged to make sweeping changes in individual counties. The duke of Monmouth's triumphal progress through the north midlands, ostensibly to a race-meeting, in September 1682 was one such occasion. The Secretaries investigated, with

¹ Cal.S.P.Dom., 1682, p.218; P.R.O., C.234/16, Hertfordshire: 31 May 1682.

² Cal.S.P.Dom., July-Sept. 1683, p.380; P.R.O., Index 4215, p.106.

³ Cal.S.P.Dom., 1682, p.548; P.R.O., Index 4215, p.62.

scrupulous attention to detail, the names of those who had entertained Monmouth at their homes, formed part of his entourage, or incited the rabble to shout for him.¹ The results of their investigations were changes in the commission for Cheshire. One of those dismissed was Henry Booth; the court seized the opportunity to deprive him of his local power for the second time.² Seven reliable court-party supporters were added to take the places of the disgraced followers of Monmouth.³

The Cheshire commission for removing Booth as custos was dated 14 December 1682. Finch (who had been created earl of Nottingham, the name by which he is usually known, in May 1681) died four days later. Sir Francis North, the Lord Chief Justice of the Common Pleas, received the great seal as Lord Keeper on 20 December. He was raised to the peerage as Lord Guilford in 1683. Guilford's political views were similar to those of Nottingham, although he never enjoyed the same reputation as a lawyer or the same influence with other ministers.⁴

Perhaps surprisingly, there is little evidence of any willingness on the part of either Nottingham, or, towards the end of Charles' reign, Guilford, to conciliate by restoration gentlemen who

¹ P.R.O., S.P.29/420, passim.

² Cal.S.P.Dom., 1682, p.441.

³ P.R.O., Index 4215, pp.74, 75.

⁴ Holdsworth, History of English Law, vi, 531, 534-5.

were anxious to recover their lost local influence by repudiating their past. John Harington, who was apparently dismissed for Somerset for having the same name as one of Shaftesbury's followers, may have been put back for that county on the representation of the custos, Viscount Fitzharding.¹ Thomas Herbert regained his place in the Monmouthshire commission in November 1683, but he had been dismissed in 1679, not for political disaffection, but for obstructing bail granted by an assize judge.² Sir Richard Brooke was reappointed to the Cheshire lieutenancy after confessing that he had erred in voting for Henry Booth in the 1681 county election; but he does not seem to have been put back in the Cheshire commission of the peace.³ The only really clear-cut example of restoration was in the Holland division of Lincolnshire, where two gentlemen were put back in September 1681 after disgrace by the Privy Council in April 1680.⁴ As a general rule, however, the Whigs were kept out of the magistracy once they had been dismissed.

¹ Cal.S.P.Dom., July-Sept.1683, pp.238-9, 272.

² P.R.O., P.C.2/68, pp.224, 271; P.R.O., Index 4215, p.15; Cal.S.P.Dom., 1683-4, p.101.

³ Cal.S.P.Dom., July-Sept.1683, pp.289, 350; P.R.O., C.193/12/4, f.13; C.193/12/5, fos.14-16.

⁴ P.R.O., P.C.2/68, p.483; Index 4215, p.55.

The commission of the peace emerged during the Exclusion Crisis as a weapon in politics controlled by the court. Nottingham and especially Guilford exercised a considerable degree of influence in making suggestions and vetoing unsatisfactory nominations.¹ The tardy issue of commissions after the attempted Whig regulation in May 1679, and the speed with which the Crown Office translated the regulation of the Secretaries of State into omissions and inclusions in the countryside in February and March 1680, illustrate the practical power of the great seal. In the last resort, however, the King himself supervised changes that were serious departures from routine. He intervened in person in Norfolk in July 1679. Francis Gwyn wrote that the King attended all the meetings of the Council committee of regulation in February 1680, and again that 'the king intends to take a new review of the commissions' in April of the same year.² Secretary Jenkins generally began his letters to the Chancellor with the phrase 'His Majesty has commanded me to signify his pleasure' that names be added to or subtracted from the commissions of the peace.³ Control of the commission, then, never passed out of the hands of the court. The same was true of two other areas of local government which were

¹North, Lives of the Norths, i, 240-1; Cal.S.P.Dom., 1682, p.145.

²Hist.MSS.Comm., Ormonde MSS., N.S. v, 270, 301-2, 306

³P.R.O., S.P.44/62, several letters.

regulated during the Exclusion Crisis and the Tory reaction of 1681-5: the militia and the corporations.¹

This vigorous manipulation of local government by the court had serious disadvantages. The regulation of the commission of the peace left the ministers vulnerable to attack in Parliament. If the opposition politicians could represent to the gentry that zealous anti-Catholics and honest squires had been disgraced through sinister and obscure influence, then they had a formidable weapon. The commission of the peace was a matter close to the hearts of the country gentlemen in Parliament; it was a 'great affliction' to a justice to be dismissed.² The traditional view that all gentlemen of substance should be appointed whatever their opinions was still strong; and in some parts of the country the omission of active justices led to administrative inconvenience. For instance, the clerk of the peace for Holland wrote to the custos that the county was greatly embarrassed by the lack of active justices, and that no sessions had been held at Spalding for six months. He added that the replacements for the active

¹For the militia, see J. R. Western, The English Militia in the Eighteenth Century (London, 1965), pp.81-2. The independence of the lords-lieutenant in choosing militia officers was curtailed by a Council order that disgraced justices of the peace should also lose their commands in the militia; P.R.O. P.C.2/69, p.295: 2 June 1681. For the corporations, see J. Levin, The Charter Controversy in the City of London, 1660-1688, and its consequences (University of London Legal Series, ix, 1969), pp.82-9.

²Letters of Humphrey Prideaux, ed. E. M. Thompson (Camden Soc., New Series, xv, 1875), 89.

justices who had been left out were inadequate, since 'either conscious of their own imbecility, or out of a wilful humour', they refused to act or even to be sworn.¹

Another target for Parliamentary attack was the allegedly low social status of those put in commission by the court. Sir William Jones' attack on clergymen and 'persons of mean quality' was echoed elsewhere.² The house of Lords committee discovered several of small estate or ill repute, some younger brothers or younger sons who would be 'justices in the house of their fathers', and other varieties of unfit person: a brewer in Cambridgeshire, for instance, and a prisoner in the King's Bench in Leicestershire.³ In counties where large additions were made, the new justices were often men without a family tradition of justice-ship.⁴ It is hard to tell how many clergymen were put in; they were the natural choices of the party of Church and prerogative, but even in Oxfordshire only two justices held the degree of doctor between May 1680 and July 1683.⁵ By 1685 they had been joined by two more, but these additions took place after

¹P.R.O., S.P.29/415, No.15: Nathaniel Smyth to earl of Lindsey, 22 Jan.1681.

²Narcissus Luttrell, A Brief Historical Relation of State Affairs from September 1678 to April 1714 (Oxford, 1857), i, 37.

³Most of the committee's comments are printed in Hist.MSS.Comm., House of Lords MSS., 1678-88, pp.172-93.

⁴This was especially true in Essex, Hampshire and Wiltshire.

⁵P.R.O., C.193/12/4, fos.94-5. One was a doctor of medicine.

Jones' criticisms.¹ One of the three clergymen in the Norfolk commission, Dr. Hylyard, was represented even by the loyal party to be troublesome. 'Exceedingly ambitious', he made disturbances everywhere by his 'pragmaticalness and unskilfulness in the laws'.² Hylyard, however, had already been in commission in 1676; his inclusion was not the result of the court's policy in 1680. In spite of his unpopularity, he survived a massive purge of the Norfolk bench in March 1682 when no less than fourteen justices were put out.³ The old Cavalier gentry would not necessarily disapprove of clergymen in commission on social grounds; but other cases of Royalist doubts about the credentials of new justices occur during the years after the dissolution of the Oxford Parliament. Jenkins received a letter in the spring of 1683 describing a campaign by the justices of an unspecified county or liberty against a Mr. Duck, who was allegedly of inferior birth, or 'an upstart in point of fortune'. Jenkins had to explain that, if other counties followed their example, 'the greater men would jostle out the lesser', to the disquiet of the county and the prejudice of the King's service.⁴ These examples suggest that it is possible that

¹P.R.O., C.193/12/5, fos.113-4.

²P.R.O., S.P.29/418, No.67: Account of affairs in Norfolk, 2 Feb.1682.

³Hist.MSS.Comm., Sixth Report, Appendix, Ingilby MSS., p.382; P.R.O., Index 4215, p.63.

⁴Cal.S.P.Dom., Jan.-June 1683, p.164

well-affected men in the counties may have felt that their loyalty was beginning to be somewhat devalued by the court's policy.

Perhaps more serious than the doubts of the squires were the complaints of the grandees. The Commons, after all, had no constitutional grounds for attack on the Chancellor; commissions of the peace were letters patent and the names inserted therein were a matter for the King. The house of Lords was concerned for a different reason. Lords-lieutenant, custodes, and other magnates enjoyed constitutionally unrecognised but conventional surveillance over the magistracy. They may well have been disconcerted by the changes made by the Secretaries of State and the Privy Council in 1680 and 1681, even if they agreed with these changes in principle. When they did not so agree, they complained bitterly.

There were thus serious disadvantages for the government arising from the manipulation of the commission of the peace for political purposes during the Exclusion Crisis. These disadvantages were balanced by advantages. Open expressions of discontent were firmly opposed by legally constituted authority. A loyal bench meant a campaign against non-conforming Protestants of questionable political allegiance, rather than against Catholics, of whose loyalty to the Stuart monarchy there was no doubt.¹ The propaganda weapon of the charge to

¹Several letters to Archbishop Sancroft from the bishops of Norwich, Exeter, Bristol and Peterborough illustrate this: Bodl.MS. Tanner 37, f.114; MS. Tanner 36, fos.11, 214, 218; MS. Tanner 35, fos.67, 107.

the grand jury was in Tory hands. Henry Booth scandalised the loyal gentlemen of Cheshire at Michaelmas sessions in 1682 by a charge defending Monmouth's claim to the succession. After he was dismissed, the charge could only have been delivered by men of impeccable loyalty.¹

Most important, the court demonstrated, by its handling of the commissions of the peace, that it was not going to abandon its supporters; and in so doing it gave the commission a significant role in the formation of the embryo Whig and Tory parties. Family rivalries, differing views on religion, the distinction between courtiers and stay-at-homes, and the careers of family representatives in the Civil War, had all tended to split county communities after the Restoration. During the Exclusion Crisis, these inchoate divisions crystallised. The poles of party conflict were Loyalty and Faction. Faction, in the eyes of the loyal party, meant intemperate hostility towards recusants and a leaning to non-conformity. It also meant unconstitutional pressure on the royal government reminiscent of 1641. It expressed itself in opposition to the duke of York, and it led to turbulence in county affairs. Factious men should not be kept in commission; they were not sound or reliable servants of the King. A correspondent of Jenkins summed up the attitude of the loyal party immediately after the dissolution

¹P.R.O., S.P.29/420, fos.307-8, 311, 313: three letters to Jenkins, all dated 7 Oct. 1682.

of the Oxford Parliament:

Many of the best subjects hope there will be great care throughout the nation for good justices of the peace and for the militia, and indeed that none but persons of known integrity be preferred to any office in the King's dispose, and that those who behave themselves best be advanced as opportunity serves and not a sort of men for affronting the Crown as has too often been done...¹

This was not sycophancy, but the expression of a widespread opinion.

It is arguable that the Tory party had been, if not created, at least knit together, by the court itself through the medium of the commission of the peace. The future James II wrote to William of Orange that:

... The judges and all that are come to towne do say they find... the greatest alteration for the better that can be imagined, and what his Ma [jesty] has done in purging the commissions of the peace of all disaffected people to him has contributed very much to it by encouraging her [sic] old freinds, the Cavallere or Church party...²

Lord Chief Justice Jeffreys observed after the Western Circuit in March 1684 that the Cornish gentry were reassured in their loyalty on learning that the King proposed to be loyal to them.³ The Tory reaction was possible because of this loyalty in the counties; loyalty in the counties was stimulated by the Tory reaction.⁴ At the end of Charles' reign, the party committed to the support of Church and King was firmly in control of county government.

¹P.R.O., S.P.29/415, No.121: Thomas Langham to Jenkins, 11 Apr. 1681.

²G. Groen van Prinsterer, Archives de la Maison d'Orange Nassau (Utrecht, 1861), second series, v, 393.

³Cal.S.P.Dom. 1683-4, p.328.

⁴Plumb, The Growth of Political Stability in England, pp.54-7.

3. The Commission of the Peace in the Reign of James II.

Charles II died on 6 February 1685. James announced almost immediately the summoning of Parliament, and the first six weeks of his reign were marked by intense activity in the constituencies, where the court was endeavouring to secure the return of loyal members.¹ At the same time, the demise of the Crown made it necessary to seal new commissions of the peace. By the end of March this had been done for every English county. Some of the Welsh counties had to wait until April, and Flintshire did not receive its new commission until June.² Even so, there was an opportunity to review nearly all the lists of county justices, immediately before and during an election in which the court was making unprecedented efforts to 'pack' the Commons.

The evidence that the court made use of this opportunity is rather slight. Admittedly, changes were made for political reasons in a very few counties. Guilford possessed local influence in Suffolk, and it is probably more than a coincidence that Suffolk received as many as three commissions while the election was still in progress; Guilford seems to have contented himself with adding the names of supporters.³

¹C. J. Fox, History of the Early Part of the Reign of James II (London, 1808), Appendix, pp.xviii, xlv.

²P.R.O., Index 4215, pp.116ff.

³Ibid., pp.117, 125-6.

In Northamptonshire, too, three commissions were sealed during the election period. In one of these a justice was left out. This was Edward Harby, who had set up as the 'factious' candidate in the county election in opposition to Sir Roger Norwich and Sir John Egerton, the candidates of the loyal gentlemen.¹ These counties seem to have been exceptional, however, and there is reason to believe that relatively few of the commissions of the peace sealed at this time were designed to influence the elections. The entries describing the first commissions of the reign in the docket book mention the reappointment of custodes rotulorum, but do not in many cases refer to any other changes. It is a plausible supposition that the last commission of Charles' reign was simply renewed, or at most that the routine additions pending immediately before Charles' death were incorporated without any more drastic alterations. After the remodelling that had followed the dissolution of the Oxford Parliament, further regulation would in many counties have been superfluous, if not actually counter-productive. The principal manager of the 1685 election was Sunderland, reappointed as one of the Secretaries of State in 1683. He worked by advising lords-lieutenant and other prominent court supporters in the constituencies to promote the interest of candidates of approved loyalty, and by assisting court candidates and their supporters in their

¹Ibid., pp.119, 125, 126; Cal.S.P.Dom., 1685, p.115.

tactical manoeuvres.¹ There are, however, no examples in Sunderland's surviving correspondence of orders to Guilford to add or omit county justices. Guilford's relations with Sunderland, who was the patron of his rival Jeffreys, were bad,² and it is unlikely that such instructions were transmitted verbally.

These inferences are not conclusive, but they can be supported by further evidence. The commission of the peace was not remodelled for electoral purposes even in those counties where some moderate Whigs survived on the bench. An obvious case where manipulation might have been desirable was Buckinghamshire, where the elections for the county and for several of the boroughs were vigorously fought by a strong Whig opposition.³ The extreme Whig candidates, like Thomas Wharton, Richard Hampden, and Richard Ingoldsby, had long been omitted from the commission of the peace, but the less violent Whigs, such as Sir Thomas Lee, Sir Richard Temple, and Sir Ralph Verney, and their supporters Sir Peter Tyrrell, Sir Francis Leigh, and Alexander Denton were still justices of the peace at the start of James' reign.⁴ Lee was defeated at Aylesbury,

¹R. H. George, 'Parliamentary Elections and Electioneering in 1685', Trans. Roy. Hist. Soc., Fourth Series, xix (1936), 168-73; Kenyon, Sunderland, pp.113,114.

²North, Lives of the Norths, ii, 127; G. W. Keeton, Lord Chancellor Jeffreys and the Stuart Cause (London, 1965), pp.244-5.

³R. H. George, op.cit., pp.186-94; Frances P. and Margaret M. Verney, Memoirs of the Verney Family during the Civil War and from the Restoration to the Revolution (London, 1892-9), iv, 321-48.

⁴P.R.O., Assizes 16/49/1: Buckinghamshire nomina ministrorum, Lent 1685.

but Temple and Verney were successful at Buckingham as were Wharton for the county and Hampden, apparently, at Wendover. Jeffreys, whose interest had been thrown into the elections in his dual capacity of Buckinghamshire landowner and Lord Chief Justice, was furious at Wharton's success, and threatened to inform Guilford of Verney's activities on Wharton's behalf.¹ Notwithstanding this hint that he would be dismissed from the commission of the peace, Verney remained on the county bench both during and after the election, as did the other moderate Whigs.² Another county where a regulation of the bench would have been valuable, and was, indeed, recommended, was Hampshire. Sunderland received a note that Dr. Harrison and two other unspecified names should be left out of the Hampshire commission for abusing court supporters at Winchester, but this was too late to take effect in the commission sealed on 26 February, the next Hampshire commission was delayed until May, and in any case Harrison was still in commission in October.³

¹Memoirs of the Verney Family, iv, 338.

²It should be added, however, that the commission of the peace for the borough of Buckingham, which like that for the county was issued under the great seal, was altered substantially during the election, probably through Jeffreys' influence. Two commissions were sealed in eight days, on 16 and 24 April 1685, and a Whig alderman, George Dancer, was left out in a third commission dated 12 May, three days before the election. P.R.O., Index 4215, pp.126, 127, 128; Memoirs of the Verney Family, iv, 343-5.

³Cal.S.P.Dom., 1685, pp.96-7; P.R.O., Index 4215, pp.119, 128; C.193/12/5.

Thus it is by no means clear that the election of 1685 was the occasion for a remodelling of the magistracy in more than a very few counties. Equally, there is almost no evidence that the rebellion of the duke of Monmouth in the West of England in the summer of 1685 had any effect on the commissions of the peace. Monmouth had stayed at the houses of several of the West Country Whigs in late 1680; all of these had then been dismissed from the bench. In 1685, only a handful of gentry of the justice class joined in the rebellion. Of these, Lord Grey of Warke had been put out for Northumberland in 1680; the Somerset commission had been purged of John Speke, William Strode of Barrington and his brother Edward of Downside, and Warwick Bampfild in 1680 and 1681.¹ There is no evidence that any of the other figures prominent during the rebellion, such as Edmund Prideaux, Thomas Dore of Lymington, or Nathaniel Wade of Bristol, were in any county commissions of the peace in 1685. Thirty-five commissions of the peace were sealed in May, June and July 1685, but there is nothing to suggest that these were not routine commissions in preparation for the summer assizes. Twelve more counties, among them Devon, Dorset, Hampshire, Somerset, and Wiltshire, received new commissions in August. The purpose of the new commissions for these West Country counties was probably to include Jeffreys and his colleagues, who were about to set out

¹H.L.R.O., Main Papers, H.L., 9 Nov. 1680; P.R.O., Index 4215, pp.25, 53. For the gentry supporters of Monmouth, see: B. Little, The Monmouth Episode (London, 1956), especially pp.47-58. Another William Strode remained a Dorset deputy-lieutenant and justice during and after the rebellion.

on the 'Bloody Assizes', rather than to make substantial alterations in the local names.¹

It is surprising that as many as forty-seven commissions were sealed between May and August, since Guilford was taken ill before Parliament rose on 2 July and retired to his house at Wroxton, in Oxfordshire, apparently taking the great seal and the administrative staff of Chancery with him.² He died there on 5 September, and the great seal was brought back to London, where the King retained it until 28 September, when Jeffreys returned from the West Country.³ Although Halifax and Sir Robert Sawyer seem to have been mentioned as possible candidates,⁴ Jeffreys was the natural successor, and he received the seal with the full title - denied to Guilford - of Lord Chancellor.

'Judge' Jeffreys was portrayed as a brutal, ignorant drunkard after his death in 1689, and Campbell and Macaulay perhaps followed hostile authorities too uncritically in their estimates of his career.⁵ One re-assessment argues that Jeffreys was generous, warm-hearted, and

¹ P.R.O., Index 4215, pp.127ff. Monmouth had landed on 2 May, and was executed on 30 June. The assizes began at Winchester on 24 August.

² North, Lives of the Norths, ii, 134-5, 144.

³ During this interregnum, the King himself supervised the sealing of two commissions of the peace, for Warwickshire and Leicestershire. Both were dated 3 September, so the fiats had presumably been signed by the dying Lord Keeper. P.R.O., Index 4215, p.135.

⁴ Bodl.MS.Rawl., Letters 48, f.41: Sir Edmund Warcup to Hugh Jones, 14 Sept. 1685.

⁵ Campbell, Lives of the Chancellors, iii, 495, 580-95; Lord Macaulay, History of England (ed. C. H. Firth, London, 1913-5), i, 444-9.

witty; an exceptionally handsome man of cultured conversation, a charming and accomplished host, and a judge conspicuously fair in political trials, though regrettably prone to a weakness for bullying witnesses.¹ The case that Jeffreys has been underestimated as a lawyer is perhaps more plausible. His promotion after being called to the bar at the age of 24 was phenomenally rapid. He was Recorder of London at 34, Chief Justice of Chester at 36, and Lord Chief Justice of the King's Bench at 39. His rise was the reward of industry and competence and he seems to have been an able judge in the courts in which he presided.² His rôle in politics was straightforward. Like most contemporary lawyers, he took the view that judges were agents of the royal administration. He had been active in the court interest in London politics during the Exclusion Crisis, and he played a leading part in the surrender of several municipal charters between 1683 and 1685. In James' reign, his respect for the prerogative and his loyalty to his patron Sunderland over-rode his otherwise unshakeable Anglicanism.³ In spite of his estates in Shropshire, Leicestershire and Buckinghamshire, he

¹Keeton, Lord Chancellor Jeffreys and the Stuart Cause, pp.469-70, 496-8.

²Lord Birkenhead, Fourteen English Judges (London, 1926), pp.71-4, 83-98; H. Montgomery Hyde, Judge Jeffreys (London, 1940), pp.153, 253-61; Keeton, op.cit., pp.218-29, 377-95.

³Hist.MSS.Comm., Ormonde MSS., N.S.vi, 441; Levin, The Charter Controversy in the City of London, 1660-1688, pp.55, 82, 90; Kenyon, Sunderland, pp.89, 124.

was always a London lawyer rather than a country gentleman. He never sat in the house of Commons. He did, however, attend quarter sessions in Middlesex and Surrey; indeed, he gave the charge at Middlesex sessions in Michaelmas 1684 when Lord Chief Justice.¹ A final point of some relevance to Jeffreys' career as Chancellor is that he was periodically handicapped by illness, especially by crippling attacks of the stone.

During Jeffreys' first twelve months of office, that is until October 1686, he neglected most of the county commissions of the peace. Naturally, he ordered a liber pacis from the Crown Office; this survives.² Although he corrected the names of Privy Councillors and assize judges as late as the summer of 1686, he left the local names mostly untouched.³ This does not mean that no changes were made at all in the local names until after the summer assizes in 1686; only that Jeffreys kept his liber pacis up to date in a somewhat cursory fashion. In fact, there was a substantial alteration in the commission of the peace for at least two counties: Middlesex, which received six commissions in seven months between November 1685 and May 1686, and Surrey, which received three commissions in February, March and April 1686.⁴ The details of the changes

¹Keeton, op.cit., pp.124, 187.

²P.R.O., Index 4215, p.136; C.193/12/5.

³In the list for Warwickshire, the two assize judges put in on 6 July 1686 are inserted, but a local name, Robert Feilding, put in on 17 November 1685, is not: P.R.O., Index 4215, pp.139, 158.

⁴P.R.O., Index 4215, pp.139ff.

are obscure, but Jeffreys was clearly employing his own local knowledge in a regulation of the county benches close to London, on which he had himself sat. Rather strangely, however, he neglected Buckinghamshire until July 1686, and there is little evidence of changes that were more than routine in most of the commissions which he sealed for the English and Welsh counties in his first year of office. Only two entries in the docket book in the whole of 1686 record the omission of a justice from a county commission.¹ Most of the commissions probably added local gentlemen in ones and twos. One reason for this rather slow start to the manipulation of his local patronage is that in February 1686, and again in July, Jeffreys was suffering severely from the stone, on the first occasion apparently as the result of spectacular debauchery.²

This neglect of the commission of the peace was exceptional. In other areas of patronage, James' government was in 1686 beginning to favour Catholics in the distribution of place and office. In November 1685, the King informed Parliament that in view of the utility of some ~~any~~ officers who were Catholics he proposed to retain them in his service.³ Four judges were dismissed in the following April to prepare for the collusive judgment in the case of Godden versus Hales, which would enable

¹ Thomas Earsby for Middlesex in May and John Willoughby for Northampton in June: P.R.O., Index 4215, pp.153, 154.

² Memoirs of Sir John Reresby, p.411; Luttrell, Brief Relation, i, 371; Cal.S.P.Dom., 1686-7, p.204.

³ C.J., ix, 756; Fox, Early Part of the Reign of James II, Appendix, cxxxiii-cxxxv, cxi.

office-holding Catholics to plead, if prosecuted, the King's power of dispensing with the Test Act which required all office-holders to receive the Anglican sacrament. One of the replacements, Sir Christopher Milton, was himself a Catholic.¹ The judgment in Godden versus Hales in June was followed in July by the admission of four Catholic peers to the Privy Council, and by the establishment in August of a commission for ecclesiastical affairs. At Oxford, two Catholics became heads of houses. The King's policy of infiltrating Catholics into office in both church and state was thus under way by the autumn of 1686.² In Ireland, moreover, Catholics and dissenters were added to the commissions of the peace in the summer and autumn of 1686, in spite of the misgivings of the lord-lieutenant, the earl of Clarendon.³

There is no evidence that, as yet, avowed Catholics were being admitted to the active county magistracy in England and Wales. This judgment is based on a comparison of the notices of new justices in the docket book, with a list of Catholics residing in the several counties drawn up five years before for the house of Commons.⁴ The changes ordered

¹Milton became one of the Barons of the Exchequer: Foss, Judges of England, vii, 255-8.

²Feiling, History of the Tory Party 1640-1714, pp.212-5; D. Ogg, England in the Reigns of James II and William III (Oxford, 1955), pp.167-8.

³Hist.MSS.Comm., Ormonde MSS., N.S.vii, 428, 456, 460; N.S. viii, 347; Cal. S.P.Dom., 1686-7, p.182; J. G. Simms, Jacobite Ireland, 1685-91 (London, 1969), p.27.

⁴H.L.R.O., Main Papers, H.L., 3 Dec. 1680, fos. 15-131.

in the nine commissions sealed between August and December 1686 were unremarkable.¹ However, Sunderland's close contact with the Catholic advisers of the King, his drift to conversion in the autumn of 1686, and his struggle for ascendancy over Lord Treasurer Rochester, the remaining Protestant minister opposed to the King's Catholicising policy, meant that a review of the English and Welsh magistracy by the Secretary and his ally the Chancellor could not be long delayed.²

Such a review was conducted by a committee of the Privy Council appointed on 22 October 1686. The Committee was headed by Jeffreys and Sunderland and contained, among others, the Protestant peers Craven, Dartmouth, and (surprisingly) Rochester, the Catholics Powis and Arundell of Wardour, and the crypto-Catholic Peterborough.³ There is very little evidence to illustrate the committee's methods of working. Presumably its members employed their own local knowledge in conjunction with recommendations from senior Catholic gentry and Catholic sympathisers in the counties. This seems to have been the procedure in Northamptonshire, where Peterborough recommended names and obstructed the suggestions of the custos, Viscount Hatton. Elsewhere, the lords-lieutenant and custodes seem to have been by-passed.⁴ The committee had been briefed to report

¹ P.R.O., Index 4215, pp.159ff.

² Kenyon, Sunderland, pp.128, 137-9.

³ P.R.O., P.C.2/71, pp.325, 332; and Index 4215, p.162, for the issue of a liber pacis for the use of the King and the Privy Council.

⁴ Brit.Mus., Add.MSS. 29594, fos. 6, 9: Nottingham to [Hatton], 19 Nov., 9 Dec. 1686; J. P. Kenyon, The Nobility in the Revolution of 1688 (Hull, 1963), p.8.

to the King in Council such alterations in the commissions as were requisite for his service, and it is quite possible that the King himself supervised at any rate the final stages of the work.

There was an inexplicable delay in implementing the recommendations of this committee. Its proceedings were a subject of gossip in November and December, the lists of changes were entered in the Council register after the record of a meeting on 17 December, and accurate reports about the proposed changes were circulating in the counties before the end of the year.¹ Sunderland wrote to Jeffreys that the new justices should be included in the commissions before the next sessions, and that they should be advised of their inclusion so that they might attend.² Only in Middlesex, however, did this prove possible. The commission for that county was entered in the docquet book on 3 January 1687 and the new Middlesex justices attended Hilary quarter sessions.³ The other commissions were delayed. Jeffreys' fiat for Northamptonshire survives, and this too is dated 3 January, but the docquet book entry is dated 23 February.⁴ Sunderland's intention that the new justices should be active

¹ Cal.S.P.Dom., 1686-7, p.307; Ellis Correspondence, ed. G. A. Ellis (London, 1829), i, 197; P.R.O., P.C.2/71, pp.363-79; Autobiography of Sir John Bramston, ed. Lord Braybrooke (Camden Soc., First series, xxxii, 1845), 251; Memoirs of the Verney Family, iv, 425, where the marginal date '15 Dec.1687' should almost certainly be '1686'.

² Cal.S.P.Dom., 1686-7, p.325.

³ P.R.O., Index 4215, p.165; Luttrell, Brief Relation, i, 390, 391-2.

⁴ P.R.O., C.234/27, Northamptonshire; Index 4215, p.167.

as soon as possible was thus frustrated. Reresby, who had received exact information about the extent of the Council's changes in the West Riding, noted that quarter sessions passed off at Doncaster without any unusual alterations in the commission.¹ It was not until February and March 1687 that the Crown Office set to work in earnest; in these two months a new commission of the peace was sealed for all but four of the English counties. The commissions for the Welsh counties were sealed in August 1687.²

While there is no reason to suppose that the Council's regulation, as recorded in its register, was not implemented in the commissions of the peace sent to the counties in February and March, there are some minor problems involved in regarding the changes authorised by the Privy Council as an exact reflection of the changes actually made. In the first place, the few names recorded unsystematically in the docquet book do not always correspond to the names in the Council's list.³ In the second place, some of the names that the Council ordered to be included were already in.⁴ In the third place, some justices were left

¹ Memoirs of Sir John Reresby, pp.440-1.

² P.R.O., Index 4215, pp.166ff. The exceptions were Cheshire, Ely, Peterborough, and Westmorland.

³ For example: in February 1687, Daniel White and Samuel Tomlyn were put in for Kent, George Evans for Surrey, William Fynmore for Berkshire, Henry Stonor for Oxfordshire, and William Clarke for Somerset, but none of those inclusions appear to have been ordered by the Council.

⁴ The Council ordered that '--- Wood' be put in for Devon, but Thomas Wood had been a justice at least since 1685, and he remained the only Wood in the commission. Devon R.O., Q/JC: 18 Feb. 1685, 2 March 1687.

out whose exclusion had not been ordered by the Council.¹ However, these anomalies are not of great significance, and in counties for which confirmatory evidence is available it seems clear that the changes ordered by the Council were carried out, and that those alterations that had not been ordered by the Council were not of a kind greatly to affect the character of the regulation.

It is apparent that the primary purpose of the Council's regulation was to add Roman Catholic gentlemen to the commissions of the peace. The four Catholic Privy Councillors were to be included as 'courtesy' justices over the whole country.² A total of 498 local inclusions was ordered.³ As far as can be judged, the great majority of these were Catholics of high social status.⁴ Of the 498 inclusions,

¹For example, two of the Middlesex justices described as disgraced by Luttrell do not appear in the Council list.

²P.R.O., P.C.2/71, p.379.

³This figure excludes thirteen commissioners of the navy, headed by Samuel Pepys, who were to be added to the commissions for seven counties in the south-east. The number of gentlemen added was slightly less than 498, as some were added for more than one county.

⁴The principal sources of information used for the Catholicism of individual gentlemen were: H.L.R.O., Main Papers, H.L., 3 Dec. 1680; J. Gillow, A Literary and Biographical History or Bibliographical Dictionary of the English Catholics, from the Breach with Rome to the Present Time (London, n.d. [1885-1902]), and H. Foley, Records of the English Province of the Society of Jesus (London, 1875-1884), both of which contain much biographical information about gentry families; and a number of studies of local Catholicism, of which G. Oliver, Collections illustrating the History of the Catholic Religion in the Counties of Cornwall, Devon, Dorset, Somerset, Wiltshire and Gloucestershire (London, 1857); J. A. Williams, Catholic Recusancy in Wiltshire (Catholic Record Society, Monographs series, 1, 1968); and H. Aveling, Northern Catholics; The Catholic Recusants of the North Riding of Yorkshire, 1558-1790 (London, 1966) were especially useful.

134 were peers, baronets, or knights. Many of the remaining names were those of heads of armigerous families entitled to the designation 'Esquire'. Thus the King was giving to the Catholic aristocracy and gentry the position in local government to which their social status entitled them, and which they had not enjoyed, as a class, since the reign of Queen Mary. Some were put in commission in all the counties in which they had estates. Lord Gifford, for instance, was added in Devon, Middlesex and Warwickshire, Lord Herbert of Montgomery in Middlesex, Northamptonshire and Montgomeryshire, and the wealthy Catholic baronets Sir Walter Blount in Devon, Herefordshire, Shropshire and Worcestershire, Sir Thomas Haggerston in Durham, Northumberland and Middlesex, and Sir John Webb in Dorset and Wiltshire. In such cases, the Catholic magnates were presumably not expected to be active. A place in the commission was a courtesy to which they were entitled by rank. Other Catholic squires were clearly expected to be active; they were put in only for the county in which they resided. Thus Sir Walter Blount was joined in Herefordshire by at least 11 Catholics out of a total of 15 put in. In Cumberland, all 7 justices put in were Catholics who regularly lived in the county.

While the majority of the names were those of Catholics, there were exceptions. The Middlesex commission, which contained 41 new names, was stocked with officers in the regular army. Nine colonels and two majors were among the names to be added, and the Protestant generals, the earl of Feversham and John Churchill, were to be included too.¹ Also, some

persons not identifiable as Catholic gentry were put in for a number of counties.¹ However, the Catholic character of the changes ordered by the Council was clear enough. The regulation was a logical and predictable extension of the Court's policy of Catholicizing the administration at both the central and the local level. Indeed, only one feature of the Council regulation, insofar as it involved a policy of adding names, can have aroused much surprise, and that was that the opportunity was not taken to include more Catholics. Several Catholic gentry of high status were not included in the commissions of the peace. The inclusion of Sir Philip Hungate, Sir Thomas Gascoign, John Middleton, and other noted Yorkshire Catholics in the West Riding commission was reasonable, but it is odd that Thomas Tempest of Broughton, of an old and famous Catholic family, should not be put in when John Ryder, who was described in 1680 as 'Gentleman' rather than 'Esquire', became a justice. Equally, it is odd that Richard Crofts, possessed of £50 a year in Monmouth in 1680, should be included for that county when Francis Hall, with £400, Thomas Jones, with £700, and several others with £100, should be ignored.²

The Council regulation was also a purge. The number of justices put out amounted to less than half of the number of justices put in: 245

¹This was especially true in Sussex, Hampshire and Surrey.

²H.L.R.O., Main Papers, H.L., 3 Dec. 1680, fos.68-9, 116. The list of Catholics in Monmouthshire was annotated with notes about size of estates and degree of zeal by Lord Herbert of Cherbury.

as against 498. Even so, a living justice was put out in all but six of the new commissions.¹ Again, the justices put out were often of high social status. Among them were two peers: Viscount Swords in Leicestershire and Lord Willoughby in Holland, Kesteven and Lindsey. No less than 66 individual knights and baronets were left out of the commission of the peace. The Council was especially severe on Buckinghamshire, where four of the five justices disgraced were baronets or knights. One, Sir Ralph Verney, was M.P. for Buckingham; another, Sir Peter Tyrrell, had been a Whig M.P. in the Exclusion Parliaments. The Whig candidate for Aylesbury in the 1685 election, Sir Thomas Lee, was also dismissed. Arguably, Buckinghamshire was unusual in that a purge of the county's 'men of faction' was long overdue, but similar alterations took place elsewhere. In Essex, every one of the six justices dismissed was either a knight or a baronet. In Devon, ten justices were put out; three were sitting M.P.'s,² Richard Hillersden had voted for Exclusion in 1679, and a fifth was Sir Henry Fane, Knight of the Bath. John Coke, M.P. for Derby, who had been sent to the Tower in 1685 by the Commons for words reflecting on the King,³ was put out for Derbyshire. Altogether, nineteen M.P.'s were put out for

¹The counties which were not purged were: Cambridgeshire, Cumberland, Huntingdonshire, Merionethshire, Rutland, and Warwickshire.

²Edward Yarde, William Stawell and Edmund Walrond, whose name is mistakenly given as Edward in the Council register.

³C.J., ix, 760.

the counties in which their constituencies were situated, and several more who had sat in the Exclusion Parliaments were belatedly dismissed. In many counties, the disgraced justices were of the leading families in the shire. Three Pelhams were dismissed in Sussex, a Bulkeley in Anglesey, and a Bertie and a Whitlock in Oxfordshire. Two future archbishops were left out of commission: John Tillotson, then dean of Canterbury, for Kent, and John Sharp, then dean of Norwich, who had recently been suspended for an anti-Catholic sermon, for Norfolk. This purge was, of course, far from complete, and the great majority of justices remained on the bench. The high social status of those dismissed suggests a policy of selectivity on the part of the Council committee. It seems a not impossible hypothesis that so many prominent figures were disgraced pour encourager les autres. James' government was demonstrating to gentlemen who were doubtful about the increasing influence of Catholicism at court that a firm line would be taken towards those wavering in their loyalty to the King's Catholic regime, irrespective of social rank or local position.

There seems to have been little comment when the names of the new justices were made known in the counties. It was impossible to argue that the King had acted in any way unconstitutionally. The Test Act still applied. The King had given certain loyal subjects an opportunity to qualify themselves to serve him if they chose to do so. If they were prevented from doing so by their religion, this was the King's misfortune, but at least there was no constitutional impropriety in adding their names to the commissions sealed in February and March 1687, which did not contain

a clause dispensing the justices from taking the oaths and the Test. There was no way in which the Catholic gentlemen whose names appeared in the commissions of the peace could act as justices until they had taken the oaths and secured a certificate that they had taken the Anglican sacraments in accordance with the Test Act of 1673 for civil office-holders. Thus James' first attempt to bring the Catholic gentry into the county magistracy misfired.

The court remedied this deficiency as speedily as possible. In April the Chancellor received a warrant from Sunderland to insert a clause of dispensation in the commissions of the peace. This was to exempt all the gentlemen named in the commission from taking the oaths and from the sacramental qualification required by the Test Act.¹ In the months from June to September 1687, the commission of the peace was renewed to add the dispensation clause for every county except four.² The Welsh counties and Cheshire all received new commissions in August embodying both the Council alterations for the first time, and also the clause of dispensation. However, as far as can be judged, this mass renewal was not made the occasion for further large-scale changes in the

¹P.R.O., S.P.44/337, p.421: placed out of sequence in a series of entries dated April 1688 and subsequently corrected to 10 April 1687.

²P.R.O., Index 4215, pp.173ff. The exceptions were Bedfordshire, Ely, Peterborough, and Rutland.

lists of justices. The docket book does not record any dismissals in these months, and only a few unremarkable additions. The duke of Beaufort recommended one name for each of six counties; at least two of these were Catholics, but this was hardly a striking revision, although it is possible that changes from other sources were implemented.¹

In spite of the dispensation clause, there was still no guarantee that the Catholic justices could act. At the end of March 1688, the King was incensed at the discovery that the Clerk of the Crown had neglected to issue writs of dedimus potestatem to swear the new justices in 'several' counties. Consequently few justices of the peace remained to execute the laws. Jeffreys, to whom the matter was referred, found something like wilful obstruction of the government's intentions. The Clerk of the Crown, Henry Barker, had disobeyed a direct order to issue the necessary writs. Barker was instantly replaced by a more subservient official.² It is not clear how many counties were affected by Barker's inefficiency (or intransigence), but it seems that in some, at least, of the counties, Catholic justices were not able to act until the summer of 1688, although they had been named in commissions sealed as much as eighteen months before.

¹N.L.W., MSS. 11020E, Nos. 12, 13: recommendations of duke of Beaufort, 18 May, 26 June 1687.

²G. W. Sanders, Orders of the High Court of Chancery and Statutes of the Realm relating to Chancery, from the Earliest Period to the Present Time (London, 1845), pp. 381-2; Luttrell, Brief Relation, i, 436.

Leaving aside the question of whether or not the Catholics could act as justices, the commission of the peace had by the autumn of 1687 been brought into line with other areas of local and central government where similar changes were taking place. Lord Belasyse, the new head of the Treasury commission following Rochester's dismissal, was a Catholic. In the early months of 1687, the King conducted a series of interviews with officeholders and peers to ascertain their views on the repeal of the penal laws imposing penalties on Catholics, and the Test Act. Subsequently, the royal household was remodelled in February and March. In April and May the ecclesiastical commission established in 1686 began to attack the Universities, and the long campaign to install a President of Magdalen College in Oxford favourably disposed to Catholicism began.¹ The correspondence, newsletters and diaries of the first six months of 1687 are full of descriptions of removals from office in the armed forces, the customs, and the law courts.² By the end of the year, fourteen counties had new lords-lieutenant.³ Meanwhile, James was taking steps

¹Kenyon, Sunderland, pp.145-9, 153-4; Feiling, History of the Tory Party, 1640-1714, pp.217-8.

²For instance: Luttrell, Brief Relation, i, 391ff; Ellis Correspondence, i, 219ff.; North, Lives of the Norths, iii, 179-82; Memoirs of Sir John Reresby, pp.444-5.

³Buckinghamshire, Cumberland, Hampshire, Lancashire, Leicestershire, Oxfordshire, Shropshire, Somerset, Staffordshire, Warwickshire, Westmorland, Worcestershire, Yorkshire East and North Ridings. Jeffreys himself became lord-lieutenant of Buckinghamshire and Shropshire, and Sunderland lord-lieutenant of Warwickshire. The changes in the lieutenancy in James' reign are printed in: Sir G. F. Duckett, Penal Laws and Test Act (London, 1882-3), i, 3-18.

towards removing the disabilities on Catholics. On 4 April he issued a Declaration of Indulgence in which the penal laws were suspended by an exercise of prerogative, and the oaths and the sacramental test imposed on officeholders were declared unnecessary.¹ After a tour of the south and west midlands and the Welsh border in August and September, the King's confidence in the popularity of his Catholic policies seemed greater than that of his ministers; but the political situation changed in November with the announcement that the Queen was pregnant, a development that held out the hope for the Catholics that a permanent Catholic dynasty would be established on the throne. Sunderland privately committed himself to Catholicism in December.² Against this background, the alterations in the commissions of the peace in 1687 had followed a regular course in which a clear pattern can be discerned. The counties had received commissions roughly simultaneously in February and March 1687 to embody the Council changes, and again in July-September 1687 to incorporate the dispensation clause. The extent of the changes varied from county to county, no doubt because of differing degrees of local pressure, but the

¹The Test Acts were not explicitly suspended, and the Declaration promised that the King would continue to issue dispensations. The Declaration is conveniently printed in: W. C. Costin and J. S. Watson, The Law and Working of the Constitution: Documents 1660-1914 (2nd edn., Oxford, 1961-4), i, 343-5.

²Kenyon, Sunderland, pp. 159-68; Sir J. Dalrymple, Memoirs of Great Britain and Ireland (London, 1771-3), ii, Appendix, Part I, 272.

central government had apparently retained an overall view. The pattern of tidy national regulation prevailing in 1687 gave way in the winter of 1687-8 to a more confused pattern, persisting until the autumn of 1688, in which the composition of the magistracy even in neighbouring counties took on different characters.

The reason for this was the dissolution of the Parliament elected in 1685 on 2 July 1687, and the decision to embark on preparations to secure a new Parliament which would comply with the King's intention of repealing the penal laws and the Test Acts. In the counties, these preparations took the form of an inquisition to ascertain the attitude of the political nation towards the King's proposals. The lord-lieutenant of each county was to ask every justice of the peace, and every militia officer

1. If in case he shall be chosen Knight of the Shire, or Burgesse of a town, when the King shall think fit to call a parliament, whether he will be for taking off the Penal laws, and the Tests.
2. Whether he will assist, and contribute, to the election of such member, as shall be for taking off the Penal laws, and Tests.
3. Whether he will support the King's declaration for liberty of conscience, by living friendly with those of all persuasions, as subjects of the same Prince, and good Christians ought to do.

This operation presaged a regulation of the commissions of the peace, since, although it was not explicitly stated that those who returned uncompromising negatives to these questions would be dismissed, the

lord-lieutenant was directed to write down the answers. He was further required to recommend to the King 'What Catholicks, and what dissenters are fit to be added either to the list of the deputy-lieutenants, or to the commission of the peace' throughout his lieutenancy.¹

These orders were not given to the lords-lieutenant by the formal Privy Council, but by a 'Cabinet Council' in which the King, Sunderland and Jeffreys sat. It seems likely that the original intention had been to summon the lords-lieutenant personally to London in order to interview them about the character of the militia officers and the justices, but that this idea was abandoned in favour of the 'questionnaire' method at some point between 13 and 25 October.² By November and December the more active lords-lieutenant began to put the questions and to send their returns to London. The earl of Lindsey was the first to send in his account from the three divisions of Lincolnshire; he had met the gentry of the county on 10 November at Sleaford. The majority of the returns were dated December 1687 and January and February 1688, but some lords-lieutenant were more dilatory. The earl of Bristol did not send in his report for Dorset until May 1688. In a few counties the delay was the result of a change in the

¹Dalrymple, op.cit., ii, Appendix, Part I, 223-4; also printed several times in Duckett, Penal Laws and Test Act.

²Kenyon, Sunderland, p.171 and note; Hist.MSS.Comm., Twelfth Report, Appendix IX, Beaufort MSS., p.91.

lieutenancy. The questions do not seem to have been put to the West Riding gentry until August 1688 after Lord Howard replaced the earl of Burlington in March.¹

The returns survive for about three-quarters of the English and Welsh counties.² There have been several attempts to analyse them.³ A numerical calculation of the extent and distribution of support for James' policy presents certain difficulties, however. The returns take different forms reflecting the different methods of the lords-lieutenant. For example, the duke of Newcastle canvassed the gentlemen of Northumberland by post and simply forwarded the letters he received in reply to London. The duke of Berwick reported the replies he had received from Hampshire in the third person. The earl of Huntingdon entered the names of the justices of Leicestershire under appropriate headings. Also, lords-lieutenant presented the questions to the justices in different ways. Lord Yarmouth, for instance cajoled reluctant Wiltshire justices into giving affirmative answers, but the earl of Northampton announced to the Warwickshire gentlemen that he did not intend to comply with the King's

¹Duckett, Penal Laws and Test Act, i, 84, 152; ii, 39.

²They are at: Bodl.MS.Rawl.A.139A, from which they were printed by Duckett, op.cit. Duckett's editorial methods were deplorably idiosyncratic; however, although there are some minor errors, his version is basically a full and accurate transcript.

³The most recent of such attempts are at: J. Carswell, The Descent on England (London, 1969), pp.238-243; J. R. Western, Monarchy and Revolution: The English State in the 1680's (London, 1972), pp.211-22.

proposal to repeal the penal laws and the Test Act himself. His replacement as lord-lieutenant of that county, Sunderland, does not seem to have found time to canvass the Warwickshire gentry at all.¹ The answers themselves are also difficult to assess. The plain acceptances are simple enough, but only one justice in the whole country (Thomas Boothby in Leicestershire) returned an uncompromising negative to all three questions.² Analysis of the temporising answers is difficult. It was common for a gentleman to reply that the first question was irrelevant since he had no intention of standing for Parliament. Another common reply for potential M.P.'s was that they would listen to the debates of the House before committing themselves. Some were in favour of repealing the penal laws, but wanted to retain the Tests; some were willing that both be repealed, but insisted

¹The circumstances in which the question were put to the gentry are described by Duckett, Penal Laws and Test Act, as a preface to the transcriptions of the county returns. There are several accounts of the methods followed by the lords-lieutenant in individual counties, notably: Ailesbury, Memoirs, i, 163-4; Memoirs of Sir John Reresby, pp.478-9, 494; The Autobiography of Sir John Bramston, pp.306-7; J. Nicolson and R. Burn, History and Antiquities of the Counties of Westmorland and Cumberland (London, 1777), i, 167-70; Hist.MSS.Comm., Twelfth Report, Appendix VII, Le Fleming MSS., pp.205-9; Lord Lonsdale, Memoirs of the Reign of James II (York, 1808), p.17; Burnet, History, iii, 193-4, especially Dartmouth's note; Bodl. MS. Tanner 259, fos. 52ff.: series of letters to and from Sir John Holland relating to the canvassing of the gentry of Norfolk, from 10 Dec. 1687; Bodl.MS.Rawl.D.851, fos. 34-6: 'A Short Relation of the Queries Maliciously dispersed up and down under the notion of the Bishop [recte Dean] of Durham's Queries', 6 May 1688; Brit.Mus.Add.MSS. 33923 (diary of Sir John Knatchbull), fos. 430-3: Jan.-April 1688.

²Duckett, op.cit., ii, 104.

on a security for the Protestant religion. In a number of counties, the answers were manifestly collusive. For example, Sir Edward Seymour in Devon was doubtful about repeal until Parliament had debated the security of the Anglican church, and he promised non-committally to contribute to the election of loyal subjects who would faithfully serve the King; 48 Devon gentlemen, and 15 gentlemen in Cornwall, answered word for word the same.¹ The fine shades of equivocation which appeared when the justices' answers were sent to London direct were obscured when the lords-lieutenant returned a condensed account or when the identity of the gentlemen was submerged in a collective answer. Moreover, the opinions of many justices were not ascertained, because they were absent, ill, resident in another county, reluctant to meet the lord-lieutenant, or, occasionally, for some more bizarre reason: Richard Lyster of Leicestershire had absconded for debt, Richard Tolson was so little known to his colleagues on the Cumberland bench that they did not know how to direct a letter to him, and Dr. Lamphire of Oxfordshire was not asked for his answers since he was 'not well in his senses'. These considerations make it difficult to make use of the returns for any assessment of national public opinion, although some conclusions about individual counties can be drawn from the justices' answers.²

¹ Ibid., i, 49, 333; ii, 103.

² Of the counties in which a reasonably high proportion of the total number of justices gave answers, Kent, Worcestershire and Herefordshire were most disposed to favour repeal; Dorset, Shropshire and Norfolk were least co-operative.

The relevance of the returns is that they were associated with a regulation of the commission of the peace which began in December 1687 and continued fitfully until the summer of 1688. A committee of regulation had been established to remodel the corporations in November 1687, and in December this committee, usually described as the 'Board of Regulators', began to consider the county commissions of the peace as well. On 12 December an announcement appeared in the London Gazette that the King proposed to review the commission of the peace in order to maintain and strengthen his Declaration of Indulgence. The committee was not the same as the Council committee of a year earlier; its members were Sunderland, Jeffreys, Sir Nicholas Butler, the Jesuit baronet, Father Petre, and two Catholic peers, Castlemaine and Powis. The obscure Butler seems to have been influential; he had kept his place as one of the Customs Commissioners in April by a timely conversion to Catholicism, and he had recently been admitted to the Privy Council.¹ The first substantial alterations seem to have been made in Cambridgeshire and Ely on 29 December. Although there are no extant replies from either county to the Three Questions, it seems clear that in Cambridgeshire eight justices headed by Sir Christopher Hatton were left out and six came in, on the recommendation of the Catholic lord-lieutenant Lord Dover.² Jeffreys was ill in December

¹Luttrell, Brief Relation, i, 400, 420-1; Autobiography of Sir John Bramston, pp.301-2; Ailesbury, Memoirs, i, 164, 174.

²P.R.O., Index 4215, p.184; Duckett, Penal Laws and Test Act, i, 321-2.

and January, which perhaps accounts for a lull in January when only one commission - for Middlesex - was sealed, but in the three months from February to April 1688 the commissions for 42 counties were renewed. There was another lull in May, although again several Middlesex justices were dismissed. Then in June and July another series of commissions was sealed, so that by the end of July every county except five - Peterborough, Rutland, Warwickshire, Westmorland, and the East Riding - had received a new commission since the Gazette announcement in the previous December.¹

The docket book entries for these commissions are uninformative; few names are given and a common formula was that the commissions had been renewed 'for leaving out of several persons, placing therein several others'. However, one important source remains for ascertaining the extent and scope of the changes made during these months: the lists approved by the Board of Regulators itself.² These lists are arranged under four headings for each county: 'Persons proposed to be Deputy-Lieutenants', that is, existing deputy-lieutenants to be retained; 'New Ones', that is, new deputy-lieutenants; 'Justices of the Peace', that is, existing justices to be retained; and 'New Ones', that is, new justices. Jeffreys sent

¹P.R.O., Index 4215, pp.186ff. The Regulators produced a list for the East Riding in March 1688 (Duckett, op.cit., ii, 256-7) but the commission was never sealed.

²Bodl.MS.Rawl.A.139B: printed in Duckett, op.cit., i, 228-9, 320-1, 327-9, 346-50, 403-5, 419-20, 435-7, 443-51; ii, 254-99. The lists survived the Revolution in the possession of one of the clerks of the Privy Council, William Bridgman, and they were probably purchased by Rawlinson in 1743 from Bridgman's daughter.

copies of these lists directly to the Crown Office as the fiat for a new commission. The old and new deputy-lieutenants were included in the commission of the peace as well as the old and new justices. This conclusion rests on the Regulators' lists for certain counties for which other evidence is available. The list for Northamptonshire is dated December 1687 and was apparently based on a careful sifting by the Board of recommendations sent by the lord-lieutenant, Peterborough.¹ The fiat for this commission is dated 12 December 1687, although, probably because of Jeffreys' illness, the commission itself does not seem to have been sealed until 11 February 1688.² The Regulators' list, and the fiat signed by Jeffreys, are identical. One gentleman whose name appears twice in the Regulators' list, as a 'new deputy-lieutenant' and as a justice of the peace to be retained, also appears twice in the fiat and presumably, twice in the Northamptonshire commission of the peace. This evidence is supported by the example of Leicestershire. Two of the Regulators' lists survive. One is an earlier draft with five names crossed out, the other is a fair copy dated 16 February 1688.³ The Leicestershire commission of the peace dated 28 February 1688 corresponds exactly to the second Regulators' list except that the order of names is rearranged and that ten local peers, with whom the Regulators were not concerned, are included.⁴ Similarly,

¹Duckett, op.cit., ii, 90-1, 275-6.

²P.R.O., C.234/27, Northamptonshire; Index 4215, p.186.

³Duckett, op.cit., ii, 98-101, 294-6.

⁴Leics.R.O., QS/1; P.R.O., Index 4215, p.187.

the Regulators' list for Devon, dated 2 July 1688 was embodied in a commission for that county sealed on 7 July 1688; seven local peers and, in this case, two extra local names, were included in the commission, but otherwise the Regulators' list was followed exactly.¹ It thus seems a reasonable conclusion that the Regulators' lists give at least a close approximation to the names of the justices in commission following the remodelling in the winter of 1687 and the spring and summer of 1688.

The names of the justices had been changed by the summer of 1688 on an extraordinary scale. One reason for the extent of the changes was that the Regulators were not revising the existing commissions of the peace.² They were constructing completely new lists on the basis of the answers to the Three Questions and the lord-lieutenants' response to the invitation to recommend Catholics and dissenters. The scope of the remodelling is illustrated by a comparison between the names of the justices in commission in late 1685 with those in commission in 1688 after the activities of the Regulators, for a group of counties selected at random:

¹Duckett, op.cit., ii, 298-9; Devon R.O., Q/JC: 7 July 1688. One of the additional names in the commission was that of a Catholic added in 1687 and probably missed out in the Regulators' list by a mistake corrected between 2 and 7 July. It is worth mentioning that the commissions of the peace sealed in the summer of 1688 were more than usually untidy documents, with numerous erasures, insertions, and blottings, suggestive of second thoughts at a late stage in their production.

²There is no record in the docket book that the Regulators were ever issued with a liber pacis.

Comparison of justices of the peace in commission,
1685-8

Column A Number of local justices in commission, October 1685^{*}
 Column B Number of local justices in commission by the summer of 1688
 Column C Number of local justices surviving from 1685 to 1688
 Column D Number of local justices put out between 1685 and 1688.

	A	B	C	D
Cumberland (May) ⁺	35	17	7	28
Devon (July)	69	42	15	54
Hampshire (April)	72	44	18	54
Leicestershire (February)	33	24	5	28
Lincolnshire - Kesteven (February)	39	23	6	33
Norfolk (February)	79	49	11	68
Northamptonshire (February)	49	30	10	39
Oxfordshire (March)	41	40	8	33
Wiltshire (June)	64	40	7	57

^{*} P.R.O., C.193/12/5. The local peers are ignored, since the Crown Office seems to have taken the view that they should be reincluded notwithstanding omission from the Regulators' lists. The local names are thus taken to begin with the first baronet.

⁺ The month is that in which the commission based on the Regulators' list was sealed in the Crown Office.

The justices who survived from 1685 to 1688 were, for the most part, men who had given favourable answers to the Three Questions.¹ By the

¹ There were a very few exceptions to this rule: Richard Bishopp in Hampshire, Sir William Pennington in Cumberland, and Sir James Long and John Wyndham in Wiltshire, for instance, were retained although they had returned equivocal answers. Possibly they were retained because their homes were remote from those of any plausible alternative magistrates.

summer of 1688 they had been joined on the bench by three groups. The Catholic squires added in 1687 were, on the whole, entitled in social terms to be justices, although possibly their legal education and experience was inclined to be faulty. The Catholics added by the Regulators in 1687-8 tended to be of lesser status. Although some were respectable enough, others were members of cadet branches of Catholic gentry families and a few were younger brothers or sons of fathers who were still living. The third group is perhaps the most interesting. A number of names were of Protestant dissenters and former Exclusionist Whigs. The King took the view that the dissenters were likely to support his Declaration of Indulgence for the same reasons as the Catholics, and that their support was worth having as a counter-balance to the Anglican squires.¹ Some dissenters had received deputy-lieutenancies at the King's request during his Western tour in the summer of 1687.² The lords-lieutenant had been required to recommend dissenters for the commission of the peace in the instructions which accompanied the Three Questions. The commission in almost every county which the Regulators remodelled contained some identifiable ex-Whigs and dissenters.³

¹ Lacey, Dissent and Parliamentary Politics in England, pp.175ff.; J. R. Jones, 'James II's Whig Collaborators', Hist.Journal, iii (1960), 65.

² Hist.MSS.Comm., Fourteenth Report, Appendix II, Portland MSS., iii,402.

³ Duckett, Penal Laws and Test Act, passim (sometimes gentlemen are described as dissenters in the recommendation that they be put in); Lacey, op.cit., Appendix II, Biographical notes on M.P.'s with probable or possible dissenting sympathies, pp.373ff.

Exclusionists such as Sir William Courtenay in Devon, William Trenchard in Wiltshire, John Swynfen in Staffordshire, Thomas Foley in Worcestershire, and Richard Hampden in Buckinghamshire; elderly ex-Parliamentarians and Cromwellians such as Edward Herle and Edward Nosworthy in Cornwall, Sir John Fagg and John Bremen in Sussex, and Thomas Reynell in Devon; rebels of 1685 such as John Speke, Warwick Bampffield, and William and Edward Strode in Somerset; these and several more were added or restored to the commissions of the peace. The duke of Beaufort obediently recommended about 25 dissenters for the Welsh commissions, and Jeffreys canvassed Sir William Williams, the Recorder of Chester, for the names of more Welsh dissenters.¹ Edward Harley wrote in February 1688 that 'in Northampton, Nottingham, Norfolk and Somersetshire are put in commission all the old Whigs' and Luttrell observed that 'those that were in former times the tories are turn'd out, and the then Whiggs are put in'.²

The traditional magistracy, the Anglican squires 'that were in former times the tories' lost their places on the bench. In each of the nine counties chosen to illustrate the activities of the Regulators,

¹A. H. Dodd, Studies in Stuart Wales (Cardiff, 1952), pp.221-3; T. Richards, 'Declarasiwn 1687: Tipyn o'i Hanes a Barn Cymru am Dano', Cymdeithas Hanes Bedyddwyr Cymru (Trafodion, 1924), pp.40-1, 46 (this study was kindly translated for me by Mr. Geraint Jones). Dodd follows Richards in concluding, from the absence of evidence that the dissenters acted, that most of them were not put in at all, and that consequently the changes of James' reign had little effect in Wales; however, their names appear in the Regulators' lists for the Welsh counties dated 23 February 1688 (Duckett, op.cit., i, 443-50), and they were presumably added in the Welsh commissions sealed in April.

²Hist.MSS.Comm., Fourteenth Report, Appendix II, Portland MSS., iii, 405; Luttrell. Brief Relation. i. 429. 431.

three-quarters or more of the justices in commission in 1685 had ceased to be justices by the summer of 1688. In Cumberland, the rulers of the county were almost without exception dismissed: Sir Christopher Musgrave, Sir George Fletcher, Sir John Lowther of Lowther, Sir John Lowther of Whitehaven, Sir Daniel Fleming, and Sir John Ballantyne. The bishop of Carlisle noticed that only eight of the 'old justices of the county' remained.¹ The two county members in Norfolk in 1685, Sir Thomas Hare and Sir Jacob Astley, had both been dismissed, as were squires as locally prominent as Sir William Cooke, Sir Christopher Calthorp, Sir Neville Catelene, William de Grey, and Colonel Robert Walpole, the father of the future Prime Minister. Again the bishop commented on the changes: 'indeed', he wrote 'all the most considerable gentry in the county are out of the commission'.² In Northamptonshire, Sir Justinian Isham and Richard Reynesford, the two M.P.'s for Northampton in 1685, were out, as was Sir Roger Norwich who had been knight of the shire; while, in a complete reversal of fortune, the factious Whig candidate who had been disgraced in 1685, Edward Harby, was now restored. The heads of the colleges were put out of the commission for Oxfordshire along with squires

¹Hist.MSS.Comm., Twelfth Report, Appendix VII, Le Fleming MSS., p.212.

²Bodl.MS.Tanner 29, f.135: Bishop of Norwich to Archbishop Sancroft, 20 Feb. 1688.

such as Sir Robert Jenkinson, Sir Fairmedow Peniston, Sir Edward Norris, Sir Robert Dashwood, and Sir William Walter.¹ The Devon Anglicans who had survived the Privy Council's purge in 1687 remained on the bench in a commission sealed as late as 1 June 1688, but on 7 July they too were displaced in a commission which contained less than half as many names as that of five weeks before; 52 gentlemen were dismissed. Sir Arthur Northcott had died, but Sir Edward Seymour, Sir Copplestone Bampffield, Sir Courtenay Poole, Sir Peter Prideaux, Sir Hugh Acland, Sir John Rolle, Richard Annesley the dean of Exeter, Sir William Drake and many more were still alive. Sir Ames Pollard, Sir Bouchier Wray, William Cary, and one or two others who had been added by the Council in 1687 were now put out. The Anglican squires in Devon must especially have resented the retention of a small group of justices, headed by Sir William Bastard and Sir John Davy, apparently because of their connections with dissent, even though their answers to the Three Questions had been as equivocal as their own had been. In Leicestershire, only one of the eight knights and baronets in commission in 1685 - Sir Henry Beaumont - returned a favourable answer to the Three Questions; he was retained in February 1688, but the other seven, headed by Sir Thomas Haslerigge and Sir Beaumont Dixie, had gone, and they were accompanied in disgrace by 20 out of the 24 rank and file squires. There is no reason to suppose that

¹Life and Times of Anthony Wood, iii, 1682-95, ed. A. Clark (Oxford Historical Society, xxvi, 1894), 260.

the changes in most other counties did not follow broadly the same pattern. In Essex, for instance, six of the county's eight members of Parliament in 1685 were not in the regulated commission. In Derbyshire, in spite of appeals for moderation even from Catholic sympathisers,¹ only a handful of Protestant justices survived regulation in March 1688; of the ten names not described as 'new justices' in the Regulators' list, four were Catholics, one was an officer in the army, and another lived in Nottinghamshire. Nor were the changes confined only to wealthy counties plentifully supplied with gentry families. In north-west Wales, 13 justices were turned out in Anglesey, 14 in Carnarvonshire, and 14 in Merionethshire. Richard Bulkeley, the head of a powerful Welsh family, and Sir John Wynne, custos of Merionethshire, were among those disgraced. In their places, persons variously described by an admittedly hostile pen as 'a drover of cattle', 'a furious Independent', 'Independents of no considerable estate or quality' became justices of the peace, along with a number of 'Papists', the son of the regicide John Jones, and the agent to Lord Powis and his brother.² Perhaps Kent suffered less severely than elsewhere; as many as 60 justices seem to have survived the Regulators' purge in February 1688, and only a small

¹ Hist.MSS.Comm., Hastings MSS., ii, 182-3.

² Leics.R.O., Finch MSS., Law MSS. 15: 'An Account of Such Justices of the Peace... as were turned out of Commission upon the Regulation made in the late Reigne after the 3 questions about the penall Laws and Test had been proposed...', n.d. [1689].

proportion of these were Catholics added in 1687. Also, the Anglican magistracy would obviously remain relatively intact, except for those dismissed in 1687, in the five unregulated counties of Peterborough, Rutland, Warwickshire, Westmorland, and the East Riding. Even so, a purge of unprecedented thoroughness had clearly taken place in the great majority of counties.

In the spring of 1688 the Regulators began another campaign of adjustment to the commissions of the peace. This was based, not on the recommendations of lords-lieutenant and the answers to the Three Questions, but on the reports of the agents who were touring the countryside in order to assess the prospects of packing a house of Commons to repeal the penal laws and the Test Acts.¹ The instructions issued to these agents did not include any reference to the county commissions of the peace,² but the agents recommended some alterations in the spring and summer of 1688 for about twenty counties, and possibly more.³ These suggestions were presumably sent to the government's election manager, Robert Brent of the Middle Temple, who forwarded them either through Sunderland to Jeffreys, or possibly to Jeffreys directly. Most, though not all, of their recommendations seem to have been acted upon.⁴

¹ Lacey, Dissent and Parliamentary Politics in England, pp.202, 218; Kenyon, Sunderland, pp.192-3, 202; Jones, 'James II's Whig Collaborators', Hist. Journal, iii (1960), 67-8, 70-2.

² Duckett, Penal Laws and Test Act, i, 194-9

³ Ibid., ii, 233, 251-2, 300-1.

⁴ P.R.O., Index 4215, pp.197ff. Some alterations were suggested for Norfolk and Surrey in July 1688; Surrey did not receive a new commission until November/

Commissions continued to be sealed throughout the summer: 16 in July, 8 in August. Wiltshire received a commission in August after two in June; the two commissions for the West Riding in August and September both left out some justices; Devon and Gloucestershire each received two commissions in June and July; Dorset received no less than three; while Sussex and the North Riding each received two commissions in July and August. There is very little evidence to show what the sources of these changes were. Probably the frequent commissions reflected overlapping recommendations from the government agents, the court's candidates in the impending elections, lords-lieutenant, and opportunist local politicians eager to exploit the state of flux in the composition of the magistracy. Three persons appointed to the Privy Council in July 1688, Christopher Vane, Silas Titus, and Sir John Trevor, were thought to have had some influence.¹ The Board of Regulators still seems to have been exercising a general supervision, but the changes in the summer of 1688 were not really part of a national, government-controlled remodelling. They rather reflected government willingness to respond to local pressure. In late July it was rumoured that yet another regulation would shortly take place that would again be tightly controlled from the centre.²

(contd.) November, and Norfolk not until after the Revolution. But most of the counties concerned received new commissions making changes among which are those recommended by the agents.

¹Autobiography of Sir John Bramston, p.311.

²Hist.MSS.Comm., Fourteenth Report, Appendix IV, Kenyon MSS., p.196.

James' programme of incorporating Catholics and dissenters into the political nation had advanced in other areas - the court, the law, the corporations, the London companies, the armed forces, and the administration in Scotland and Ireland. The King's second Declaration of Indulgence, issued in April 1688, was to be read in churches to the congregations, and the case of the seven bishops, tried for seditious libel in petitioning the King not to insist that the clergy read the Declaration, occupied attention in June. In the same month the Queen gave birth to a son, an event which signified to Catholics and Protestants alike that the Counter-Reformation in the British Isles would be permanent, not temporary; and Sunderland openly declared himself a Catholic. On 30 June, the day on which the seven bishops were acquitted, William of Orange, the husband of the King's elder daughter, was invited to land in England to 'protect' an unspecified change in the conduct of the government desired by 'much the greatest part of the nobility and gentry', who were 'much dissatisfied'.¹ William began to make preparations to invade. The news that he intended to do so reached James and Sunderland at some time in mid-September.²

¹Kenyon, Sunderland, pp.194-202; Feiling, History of the Tory Party, 1640-1714, pp.224-8; Browning, Danby, i, 384-91; Ogg, England in the reigns of James II and William III, pp.198-204. The Invitation has been reprinted many times from the original, which is at: P.R.O., S.P.Dom., King William's Chest, S.P.8/1, fos.226-9.

²Kenyon, *op.cit.*, pp.214-5.

There can be no doubt that the massive changes made in the commissions of the peace in 1687 and especially in 1688 played a significant part in the 'Glorious Revolution' of the winter of 1688-9.¹ The loyalty of 'much the greatest part of the nobility and gentry' to the Stuart monarchy had been vindicated in 1660 and had remained a fundamental feature of their political philosophy ever since. It was not necessarily broken altogether in 1688; but James' programme strained it severely. A political revolution had taken place on a huge scale in 1687 and 1688, and it is reasonable to regard the subsequent 'Glorious Revolution' essentially as a Counter-Revolution. The general admission of Catholics to the county magistracy in 1687, less than ten years after the Commons had taken fright at the thought of a small handful of Catholics in the Monmouthshire and Northumberland commissions and the populace had given way to the hysterical fears of the Popish Plot, was naturally unwise. The further admission of dissenters in 1688 raised the ghost of the Cromwellian 1650's. But the crucial fact was that the appointment of these new and unsatisfactory justices was coupled with the dismissal and disgrace of the Anglican squires. The threat to property, liberty and the Church posed by a Catholic King was associated by the traditional rulers of the counties with a more mundane

¹Plumb, The Growth of Political Stability, pp.60-1; Feiling, op.cit., pp.219-20; L. Pinkham, William III and the Respectable Revolution (Cambridge, Mass., 1954), p.132.

concern for the loss of the offices which conferred authority and status within their local community. Two further considerations increased the gentry's antagonism to the court's policies. One was that the changes were inefficiently carried out. Those of 1687 were backed by Privy Council authority, but the absence of the dispensing clause and the delay in issuing the writs of dedimus suggested that the court had bungled its regulation. Those of 1688 were carried on in a confused welter of commissions, in such a way that by the early autumn of 1688 it must have been a matter of serious difficulty, both in the counties and at the centre, to discover who was in the commission of the peace and who was not. The ineptitude of the court led to embarrassment. Some gentlemen only learned of their dismissal at sessions or at assizes, when the whole county witnessed their humiliation. Most, like Henry Lambton in Durham who gracefully withdrew from the bench, disguised their resentment; but they are unlikely to have been as indifferent to the tactlessness of the King as they pretended.¹ The second consideration, which applies especially to the alterations of 1688, was that the purge of the squires had been conducted by sinister figures at the centre such as Father Petre, the converts Sunderland and Butler, and the obscure Robert Brent; by Catholic magnates and subservient Anglicans in the

¹ Hist.MSS.Comm., Twelfth Report, Appendix VII, Le Fleming MSS., p.210. The Leicestershire justices were treated more courteously: Hist.MSS.Comm., Hastings MSS., ii, 183.

counties; and, worst of all, by peripatetic royal agents of humble origin who could not possibly appreciate the complexities of county hierarchy. In particular, the reappearance of Nathaniel Wade, the Bristol lawyer who had been pardoned after playing a leading role in the Monmouth rising, as one of the agents for Somerset and Devon,¹ can only have antagonised the gentlemen who had prided themselves on their loyalty in 1685.

The real effect on local government of this revolution among those holding county office is difficult to measure. If it is true that in some counties the issue of writs of dedimus was delayed until early April 1688, Catholic and dissenting justices cannot have begun to act until the early summer of 1688 and the Catholic magistracy must have been a short-lived phenomenon. This may have happened in, for instance, Wiltshire, where no Catholic justices attended quarter sessions until July 1688 when Lord Stourton sat on the bench at Warminster.² In other counties, Catholic justices were active earlier. Lord Carrington and another Catholic attended Warwickshire sessions in the autumn of 1687. In the West Riding, where the Catholic justices apparently sent for their own writs of dedimus, two Catholics attended sessions in August 1687. One of the justices put in for Oxfordshire

¹Duckett, Penal Laws and Test Act, i, 101 note.

²Wilts.R.O., Q.S. Great Rolls, Minute Book, Order Book.

by the Privy Council in 1686-7 attended quarter sessions as early as Easter 1687, and in 1688 the majority of justices attending each sessions in that county was a recent appointment.¹ There is a little evidence to suggest that a body of opinion among the Catholic and dissenting gentry was less than enthusiastic about elevation to public office. The Catholic Sir William Goring in Sussex, for instance, warned his co-religionists against the 'folly and vanity' of acting as justices.² The earl of Clarendon dined in August 1688 with a 'rigid fanatic' who declined to act and asked to be put out.³ On the other hand, Reresby found so many 'papists and fenaticks' at Middlesex quarter sessions in July 1688 that he remained aloof from business.⁴

As far as can be judged, there was no radical change in the administration of the counties, beyond the obvious fact that the prosecution of recusants and non-conformists ceased from early 1687 onwards.⁵ The transference of local power was not, of course, always

¹ Warwickshire Quarter Sessions Records, 1682-90, p.liv; Memoirs of Sir John Reresby, pp.449-50, 451 and note, 463; Oxfordshire Justices of the Peace in the Seventeenth Century, ed. M. S. Gretton (Oxfordshire Record Society, xvi, 1934), pp.121-3. If it is true that Sir Henry Hunlock sat on the Derbyshire bench at Michaelmas sessions in 1686, his inclusion in the commission must have been untypically early: Cox, Three Centuries of Derbyshire Annals, i, 307.

² Ailesbury, Memoirs, i, 152.

³ The Correspondence of Henry Hyde, earl of Clarendon..., ed. S. W. Singer (London, 1828), ii, 186.

⁴ Memoirs of Sir John Reresby, p.502.

⁵ Cal.S.P.Dom., 1686-7, pp.345, 389.

smooth. In Somerset, where in January 1688 the former Monmouth rebel Edward Strode was sheriff and the ex-Tories were still in a majority on the bench, a quarrel broke out at quarter sessions in which insults were exchanged at dinner and Strode arrested the deputy clerk of the peace as an outlaw. Even so, at the next sessions in April, most of the Anglicans had gone, eighteen justices approved by the Regulators attended, the dissenting Recorder of Ilchester delivered a Ciceronian charge, and business was conducted without 'the usual clashing and violence'.¹ There may have been doubts about the authority of justices who acted without having qualified themselves according to law, and in Norfolk, where the bishop vainly exhorted the dismissed gentry to swallow their pride and co-operate with the new regime, some of the new justices displayed a certain ignorance of legal procedures.² Nevertheless, there does not seem to have been anything in the nature of a 'breakdown' of local government until the winter of 1688-9. In Kesteven, for instance, the average number of justices attending sessions fell after regulation in February 1688, but those who did attend were the few experienced justices retained by the Regulators and the newcomers seem to have been almost entirely inactive.³ It is possible that the clerks of the peace,

¹ Duckett, Penal Laws and Test Act, ii, 19-29; E. Green, The March of William of Orange through Somerset (London, 1892), pp.33-43; P.R.O., S.P.31/4, f.32: Bridges to Sunderland, 28 Apr. 1688.

² Luttrell, Brief Relation, i, 432; Hist.MSS.Comm., Eleventh Report, Appendix VII, Le Strange MSS., p.107; Bodl.MS.Tanner 259, fos.61-5: correspondence between Sir John Holland and Sir Francis Jerningham, Mar.-Apr. 1688.

³ Minutes of Proceedings in Quarter Sessions held for... Kesteven... 1674-95, ii, 334ff.

who do not seem to have lost their office in more than a very few counties, supplied a continuity of tradition and routine.

The news in September 1688 that William's naval and military preparations were directed towards an invasion of England led to further changes in the county commissions of the peace, which aggravated the confusion into which they had fallen. In October as many as thirty-five commissions were sealed, among them two each for Bedfordshire, Herefordshire, Hertfordshire and Huntingdonshire. Another seventeen followed in November.¹ Gloucestershire received two after one in October, Bedfordshire, Herefordshire and Huntingdonshire each received a third commission, and several counties, including some of the smaller ones like Anglesey and Cardiganshire, received a second commission to follow that sealed in October.² These commissions constituted an incomplete reversal of the political revolution of the preceding twenty months. In the third week in September there were several reports that Jeffreys was proposing to restore the justices who had been dismissed.³ Some lords-lieutenant were invited to notify Jeffreys of the names of justices who would be willing to act if restored; it is, however, significant

¹The total number of commissions sealed in October and November in the early years of James' reign had been: 1685, 3; 1686, 4; 1687, 6.

²P.R.O., Index 4215, pp.199ff.

³Hist.MSS.Comm., Downshire MSS., i, Part I, 301; Luttrell, Brief Relation, i, 463; Ellis Correspondence, ii, 219; Ailesbury, Memoirs, i, 177-8; Autobiography of Sir John Bramston, p.316.

that they were not also invited to suggest names that might profitably be omitted.¹ The earl of Bath thought that the news of a mass restoration of justices had had a good effect in Cornwall. Other lords-lieutenant were less sanguine. The duke of Newcastle, restored to the lieutenancy of the three Ridings of Yorkshire, reported that the king's offer to restore disgraced justices had not been well received, although he thought that the gentry were basically loyal.²

The lists of justices in the commissions sealed in October and November must have been hastily compiled. The docquet book records that, for a number of counties, the justices 'who were in commission in 1687' were put in;³ but Jeffreys probably found it difficult to ascertain who these persons were. Even so, many Anglican squires seem to have found their way back into commission; for instance, Sir Christopher Musgrave in Cumberland, Sir Thomas Hussey in Kesteven, Sir Richard Everard in Essex, Sir Charles Rawleigh in Wiltshire, and Sir William Twisden in Kent. Recently appointed justices - the Catholics and dissenters - seem not to have been dismissed in these panic commissions,

¹P.R.O., S.P.44/56, p.441: Sunderland to Berwick, 22 Sept.1688; *ibid.*, p.446: same to Bristol, 2 Oct. 1688; S.P.31/4, f.100: Bristol to Sunderland, 8 Oct. 1688; Hist.MSS.Comm., *Hastings MSS.*, iv, 220.

²P.R.O., S.P.8/2, f.46: Bath to [Sunderland], 28 Sept. 1688; S.P.31/4, fos.106-7: same to Sunderland, 9 Sept. 1688; *ibid.*, f.135: Newcastle to same, 15 Oct. 1688.

³P.R.O., Index 4215, pp.200-4; *Ellis Correspondence*, ii, 246-7.

except perhaps in a very few counties for which the docket book records the omission of justices.¹ In the last commission of the peace sealed in James' reign, on 30 November, 'Sir Edward Hales and other Roman Catholics' were left out for Middlesex.²

The haphazard nature of the panic restorations is well illustrated by what happened in the West Riding. Sir Henry Goodricke, a prominent member of William's party in Yorkshire,³ was restored on 17 November. Only two days earlier, the Yorkshire gentry received news of a commission sealed in September, in which Goodricke and twenty more of 'the most eminent for quality and estates', had been left out. Among those put in were a landless illiterate and the bailiff of the duke of Norfolk's mother. This commission is often quoted in accounts of the Revolution, but it was not really typical; it must have been one of the last to be sealed before the panic began, and its arrival in Yorkshire was delayed for nearly two months. Yet when the commission restoring Goodricke reached the county on 26 November, it was discovered that Sir John Reresby himself, who was still clinging to his loyalty to James, had now been put out.⁴ Possibly something similar happened in other

¹ Bedfordshire, Hertfordshire, Huntingdonshire, and Shropshire. It is, however, plausible that, in those counties which received more than one commission during this period, the first restored the Anglicans and the second dismissed the Catholics and the dissenters.

² P.R.O., Index 4215, p.204.

³ Browning, Danby, i, 390.

⁴ Memoirs of Sir John Reresby, pp.526, 533, 584.

counties receiving two or more commissions during this period of panic, with the timelag between the sealing of a commission and its arrival in the county introducing further complications.

The reversal did not take place in every county. No commissions of the peace were sealed at this time for eighteen counties, and the Catholics and dissenters added in 1687 and 1688 remained justices of the peace throughout the period of the Revolution, while the Anglican squires remained in the wilderness.¹ One explanation for this might be that it was the lords-lieutenant that took the initiative. The duke of Beaufort apparently supervised the restoration of Welsh justices, and he wrote to them individually to inform them that they were restored.² Bedfordshire and Huntingdonshire, where Ailesbury was lord-lieutenant, experienced a violent reshuffling of the magistracy, while the neighbouring counties of Cambridgeshire and Northamptonshire, where the lords-lieutenant were the discredited Catholics Dover and Peterborough respectively, were left untouched.

In view of the impending invasion, the militia was thought to be more important than the commission of the peace. The militia, too,

¹Berkshire, Cambridgeshire, Cheshire, Derbyshire, Ely, Hampshire, Leicestershire, Norfolk, Northamptonshire, Northumberland, Nottinghamshire, Suffolk, and Worcestershire; plus Peterborough, Rutland, Warwickshire, Westmorland, and Yorkshire East Riding, which did not receive a commission at all in 1688.

²Hist.MSS.Comm., Third Report, Appendix, MSS. of Whitehall Dod, p.259.

was in a state of confusion. James' appointment of Catholic lords-lieutenant had arguably been intended as a social and political manoeuvre rather than as an attempt to monopolise military power, and the fighting capacity of the militia had been allowed to run down.¹ Ailesbury had been compelled to give militia commissions in his two counties to gentlemen he did not know and could not trust, and he found in the autumn of 1688 that the 'prime gentry' of Bedfordshire were unwilling to accept their commissions again. The earl of Oxford experienced similar difficulties in Essex. The Lincolnshire militia was in grave disorder. The earl of Bristol had unofficially retired as lord-lieutenant of Dorset, and the Dorset militia had virtually ceased to exist. The militia in Staffordshire and Kent had also almost vanished.² Another area of county government where confusion prevailed was the shrievalty. The sheriffs had been pricked on 5 November. The choices reflected an attempt to conciliate the Protestant gentry, but the new sheriffs had not time to take out their patents and in many counties the Catholics chosen in late 1687 had not been replaced as sheriffs until well into 1689.³

¹Kenyon, The Nobility in the Revolution of 1688, p.7.

²Ailesbury, Memoirs, I, 166-7, 181-2; Autobiography of Sir John Bramston, pp.325-6; P.R.O., S.P.31/4, f.79: Lindsey to Sunderland, 27 Sept. 1688; ibid., fos.81, 100, 158: Bristol to same, 29 Sept.. 8 Oct., 20 Oct. 1688; ibid., f.82: Aston to same, 29 Sept. 1688; ibid., fos.101-3: Teynham to same, 8 Oct. 1688.

³P.R.O., P.C.2/72, p.789; Warwickshire Quarter Sessions Records, 1682-90, pp.lxii, 249-50.

In some cases, the Anglican squires did not respond to the offers of restoration, either to the commission of the peace or to the militia. They refused to act as magistrates alongside Catholics and dissenters. The Norfolk gentry explained with great clarity in October 1688 that they did not conceive that it was possible to serve the King by acting in conjunction with persons disqualified by law in the administration of that law.¹ In attempting to restore the status quo, the court was manifestly acting from panic; the gentry recognised this, and they were understandably reluctant to co-operate. After William had landed, however, the squires reasserted a sense of responsibility, and even the recalcitrant gentry of Norfolk were issuing orders in December to disarm Catholics who were still technically justices of the peace for the county.²

Thus, in the winter of 1688-9, local government was in a state of chaos appropriate to a revolutionary situation. On 8 December, James received from Jeffreys the great seal and the writs for a Parliament which was to have been summoned in January. He burned the writs and on 11 December he left London, dropping the great seal in the Thames as he went in a spirit of apres moi le deluge. After his departure, a

¹Hist.MSS.Comm., Lothian MSS., pp.132-3.

²Norfolk Lieutenancy Journal, 1676-1701, ed. B. Cozens Hardy (Norfolk Record Society, xxx, 1961), p.95.

meeting of peers at Guildhall assumed temporary powers of civil government and issued a Declaration which, among other things, continued all Protestant justices in office until further notice.¹ Subsequently, James, having been recaptured on the Kent coast, escaped a second time to France in late December. William summoned a Convention Parliament, which met on 22 January 1689. This Parliament offered the English throne to William and his wife Mary jointly, and they accepted on 13 February. The period between 11 December 1688 and 13 February 1689 was thus one of uncertainty; the King had effectively thrown up his responsibility for the administration of civil government, and it was by no means clear whether any legally constituted civil authority existed at all. In the counties, little notice was taken of the last commission of the peace sealed by Jeffreys. Protestant gentlemen of experience and established social position simply assumed office as 'Keepers of the Peace', whether they were technically in the commission of the peace or not.² In those counties for which quarter sessions were held in January 1689, business was confined to a brief meeting of gentry, the transaction of commonplace business of a kind that could not be postponed, and an adjournment. A principal duty of the new regime would therefore be the re-establishment of the routine of county government.

¹R. A. Beddard, 'The Guildhall Declaration of 11 December 1688 and the counter revolution of the Loyalists', Hist. Journal, xi (1968), 404-6.

²Bodl.MS.Rawl. Letters 48, f.70: Sir Edmund Warcup to Hugh Jones, 22 Dec. 1689; W. L. Sachse, 'The Mob in the Revolution of 1688', Journal of British Studies, iv (1964), 37-9.

4. The Commission of the Peace and the Establishment
of the Revolution Regime, 1689-1700.

During the confused period of the interregnum and the first weeks of the reign of William and Mary, the Protestant gentlemen in commission at the end of James' reign were authorised in a series of official pronouncements to act as justices of the peace.¹ This could only be a temporary expedient, and the new court rapidly proceeded to reconstitute local government. Jeffreys, on his deathbed in the Tower, was replaced by putting the great seal in commission; partly because of the increased weight of chancery business, partly because of the difficulty of finding suitably qualified lawyers to accept the seal, and partly as an experiment to bring the court of equity into conformity with the common law courts, where several judges sat simultaneously. Sir John Maynard, Sir Anthony Keck, and Sir William Rawlinson were appointed Commissioners of the Great Seal on 1 March 1689.² On 16 March the King announced in Parliament that he was filling up vacancies in offices and places of trust as quickly as possible.³ In particular, the appointment of lords-lieutenant proceeded without delay because of

¹ London Gazette, 3 Jan. 1689; 14 Feb. 1689.

² Campbell, Lives of the Chancellors, iv, 1-3; P.R.O., Index 4215, p.209.

³ C.J., x, 51.

the need to revitalise the militia in view of the threat of armed revolt in support of James.¹ A committee of the Privy Council had been appointed before 8 March to 'make lists of justices of the peace', but no indication of the membership of this committee survives and indeed the only record of its existence was an order to it to make short lists of candidates for the office of sheriff.² It is far from clear by what process the lists of justices were drawn up. It is a reasonable hypothesis that the committee requested that those persons whom the King was about to appoint as lords-lieutenant should submit the names of suitable gentlemen. The 'lords-lieutenant that were' took a hand on their own initiative. There are indications that the county M.P.'s in the Convention Parliament played a prominent part. They had already been asked to supply the names of gentlemen who were to act as Commissioners for levying an aid in the counties. Colonel Henry Sydney, one of William's English friends and a Privy Councillor, invited the two knights of the shire for Kent to his house to nominate the justices of the peace for that county; they worked by going through the list they already had for 'the tax'.³ The Council committee's assessment of the names they received was finished within days. The earl of Shrewsbury, appointed

¹Most lords-lieutenant had been appointed by the end of March, although Durham and Rutland were without a lord-lieutenant as late as July: Cal.S.P. Dom., 1689-90, pp.20-1; London Gazette, 21 March 1689.

²P.R.O., P.C.2/73, p.30.

³Hist.MSS.Comm., Fourteenth Report, Appendix IV, Kenyon MSS., p.219; C.J., x, 41, 57 (the number of Commissioners for the aid was greater than the anticipated number of justices); Brit.Mus., Add.MSS. 33923, f.464: '7 & 8 March' [1689].

Secretary of State a month before, forwarded the completed lists for most of the counties to the Commissioners of the Great Seal on 15 March, with a note that the King desired the commissions of the peace to pass forthwith.¹

So far the operation had proceeded smoothly, but at this point it broke down. Six commissions of the peace were sealed in March, and only three in April.² The King considered that the delay in issuing the others was prejudicial to his service, and on 18 May he ordered in Council that the Commissioners should act with 'all expedition' in the matter.³ Twenty-six commissions were sealed in May, and most of the remainder in June, but even so a number of counties remained without a commission dated after the Revolution until July 1689 or later.⁴ Furthermore, these commissions were so imperfect that as many as thirty-three counties needed another before the end of the year.⁵

There were a number of reasons for these delays and imperfections. One is that the Commissioners of the Great Seal were not men of sufficient

¹P.R.O., S.P.44/97, p.42: Shrewsbury to [Commissioners of the Great Seal], 15 March 1689. The names were not included in the Secretary's entry book, and seem not to have survived.

²Derbyshire, Huntingdonshire, Leicestershire, Northamptonshire, Sussex, and the West Riding in March; Dorset, Durham, and the East Riding in April: P.R.O., Index 4215, pp.211 ff.

³P.R.O., S.P.44/97, p.77: Shrewsbury to Commissioners of the Great Seal, 15 May 1689; B.C.2/73, p.118.

⁴Buckinghamshire, Ely, and Peterborough did not receive new commissions until July 1689; Anglesey and Carnarvonshire, not until September 1689; Flintshire and Merionethshire, not until January 1690.

⁵Twelve counties needed more than one more, and Middlesex received six commissions between May and December.

stature to take much part in the actual choice of new justices of the peace. They were not even Privy Councillors. They operated, in a subordinate position, the machinery by which commissions were passed. A single Chancellor would have provided the contact between Privy Council and Crown Office that would have enabled the Clerk of the Crown to issue commissions more quickly. Moreover, the Commissioners were initially somewhat unprofessional in their methods. Their only surviving fiat is one of their first, that for Northamptonshire dated 23 March 1689. Signed by Keck and Rawlinson, it was still headed 'A list of names of such Gentlemen in Northamptonshire who are fitt for Justices of the Peace,' two of the names are distinguished from the 'Esquires' by the suffix 'Gent.', and the absence of any reference to the quorum must have disconcerted the Crown Office.¹ The Crown Office was overburdened anyway, with patents for judges, patents for peers, and commissions for lords-lieutenant. Also, the delays in the appointment of custodes rotulorum led to delays in the issue of commissions of the peace, since the custos appeared in the commission in the assignavimus denique clause. The Commissioners of the Great Seal had informally 'appointed' custodes as early as March 1689, but their choice and the King's did not always coincide.² The Commons proposed to vest in the Commissioners the power

¹P.R.O., C.234/27.

²Brit.Mus., Add.MSS. 29594 f.143: Nottingham to Hatton, 30 Mar. 1689.

to appoint custodes, but the Lords took the view that the nomination of custodes belonged to the King, and a compromise had to be worked out whereby the appointments made by the Commissioners before 1 May 1689 were confirmed, but thereafter the King's nominations stood.¹ The King was obliged to disappoint some peers. The earl of Rutland, who had been promised the custos-ship of Leicestershire, had to be persuaded not to throw up the lord-lieutenancy in disgust when the earl of Stamford (the Commissioners' choice) was continued. The custodes of the English and Welsh counties were not all certain of their appointment until late September.² These difficulties delayed, not only the reconstitution of the county magistracy, but also, in some counties, the appointment of clerks of the peace.³

The revision of so many commissions during the summer and autumn of 1689 was necessary because local recommendations were still coming to the notice of the government. The earl of Kingston, for instance, named four for Nottinghamshire, eleven names from an unspecified source were put forward for Leicestershire, and Lord Paget recommended four fit persons for Staffordshire.⁴ Consequently, a stream of emendations to

¹ William and Mary c.21; C.J., x, 153, 193.

² Hist.MSS.Comm., Twelfth Report, Appendix V, Rutland MSS., ii, 125-6; Cal.S.P.Dom. 1689-90, pp.164, 171, 173, 210, 271.

³ Cal.S.P.Dom., 1689-90, pp.32,35; Brit.Mus., Add.MSS. 29594, fos.147, 157, 180: Nottingham to Hatton, 4 Apr., 2 May, 8 Oct. 1689.

⁴ P.R.O., S.P.Dom., William and Mary, S.P.32/2, f.184: [Kingston's recommendations, n.d., before 20 Apr. 1689] ; ibid., f.182: [Leicestershire names, n.d., before 4 June 1689] ; S.P. 32/13, f.118: [Paget's list, n.d., before 23 June 1689].

the original lists of 15 March issued from the offices of Shrewsbury and Nottingham, the two Secretaries of State. The list for Suffolk had to be sent for revision to Lord Cornwallis, and it arrived at the Crown Office a week later than the lists for the other counties.¹

Between 15 March and the Council order to speed the sealing of commissions on 18 May, the Secretaries ordered changes for nine counties, two of them twice, and eleven more counties were revised in this way before the end of the year.² This ad hoc method of appointing justices of the peace left the central government itself confused. Shrewsbury, on receiving a complaint from one of the Welsh judges about a Herefordshire justice, had to write to ask the lord-lieutenant whether he was in commission or not; he did not know and there was no quick way of finding out.³

Another reason for the fluidity in the composition of the bench was that those who had constructed the lists in the confusion of the early months of 1689 had overlooked obvious names. Second thoughts were quite common; the Middlesex clerk of the peace suggested to the custos, the earl of Clare, that he ought to consider making changes in the commission, 'some left out and others put in', in November 1689 after

¹P.R.O., S.P.44/97, p.48: Shrewsbury to Commissioners of the Great Seal, 23 Mar. 1689.

²P.R.O., S.P.44/97, pp.43 ff.: same to same, several dates; S.P.44/98, pp.5 ff.: Nottingham to same, several dates.

³P.R.O., S.P.44/97, p.109: Shrewsbury to Macclesfield, 22 June 1689: ibid., p.110: same to Hopton, 22 June 1689.

the county had already received four commissions since the Revolution.¹ More serious than such oversights was the uncertainty about who was willing to serve. Not all the 'old gang' of Tory justices, placed in the commissions of the peace by optimistic lords-lieutenant in the early months of the year,² were prepared to endorse the Revolution to the extent of accepting office under the new regime. A justice of the peace had to take the revised oath of allegiance. Admittedly, the oath could be taken by anyone who accepted William and Mary as de facto monarchs, as the phrase 'rightful and lawful' was deliberately omitted from the description in the oath of the nature of their authority. Even this aid to tender consciences could not, however, persuade some of the Tory squires to act as justices.³ The lord-lieutenant of Northumberland wrote that his choice of gentlemen to serve in the commission of the peace had been limited.⁴ In Wales, where the problem of inactive justices was aggravated by the revival of the statutory limitation of the number of justices in each county to eight,⁵ the gentlemen of Merionethshire declined to act with the 'Whig collaborator', Sir William Williams, who was custos, while in Anglesey the custos himself refused to act.⁶ The problem was

¹Hist.MSS.Comm., Thirteenth Report, Appendix II, Portland MSS., ii, 162.

²Hist.MSS.Comm., Fourteenth Report, Appendix II, Portland MSS., iii, 435.

³1 William and Mary c.8; Hist.MSS.Comm., Fourteenth Report, Appendix IV, Kenyon MSS., pp.223-4.

⁴Cal.S.P.Dom., 1689-90, p.153.

⁵See above, pp.21-2.

⁶Leics.R.O., Finch MSS., Law Papers 15.

such that the King asked for returns both of non-juring justices, and of justices who, being sworn, refused to act, to be drawn up.¹ The purpose of these lists was to arm the assize judges with a list of justices divided into zealous and lukewarm supporters of the Revolution, with a possible view to future regulation of the bench on their report. No record of the returns, if any were made, has survived. Notwithstanding the various complaints about disaffected justices that reached the government, very few seem to have been put out of the commission during 1689. The court may have been giving them a chance to accept the Revolution as a fait accompli. For instance, the request that Mr. Lechmere might be put out in Herefordshire for 'much alienating the hearts of true Protestants and loyal subjects' does not seem to have had any effect.² The only justice put out by direct government order during the whole of 1689 was Thomas Steward in Ely.³ It thus seems likely that the 'revising' commissions sealed in 1689 were for the purpose of adding gentlemen who were willing to act as justices, but that they were not designed to remove justices who were reluctant to serve the Revolutionary regime.

In many ways, the appointment of justices in 1689 was carried on with less central control than ever before. The King could not take

¹Cal.S.P.Dom., 1689-90, p.148.

²P.R.O., S.P.32/1, f.234: H. Pughe to Shrewsbury, 3 Aug. 1689.

³P.R.O., P.C.2/73, p.148: 19 June 1689.

the informed interest in the composition of the county benches that his predecessor had done. William could hardly be expected to distinguish between the merits of English squires. The Commissioners of the Great Seal were merely lawyers, though Maynard, in his 88th year, might have enjoyed some local influence in the West Country. The Privy Council committee and the Secretaries of State seem to have confined their activity to the transmission of recommendations to the Commissioners of the Great Seal. Consequently, the local magnates who drew up the lists had the field to themselves. By 1689, there were seven classes of gentlemen available to be placed in the commissions of the peace. The 'men of faction' put out in 1680 and 1681 divide into two categories: some had not been restored since their omission during the Exclusion Crisis, others had collaborated with James II and had been restored in 1687 or 1688. The 'men of loyalty' of the Tory reaction of 1680-5, who had dominated the bench in 1685, also divide into two types: those who had been put out for refusing to comply with James' intentions respecting the Test Act, and those who had remained continuously in commission throughout James' reign. Next there were the justices put in during James' reign. These might be either Anglican 'men of loyalty' put in during the early part of the reign; or Catholics and dissenters added in 1687 and 1688. Finally there were gentlemen who had not been named in the commission before the Revolution. The proportions in which these seven classes of justice were mingled in the commissions sealed in 1689 seems to have varied from county to county according to the character

of the persons making the recommendations.¹ In Northamptonshire, for instance, the Whig lord-lieutenant, Lord Mordaunt, who was created earl of Monmouth in 1689, was responsible for the commission sealed in March 1689. This contained a relatively high proportion of Exclusionist Whigs and 'Whig collaborators' put out during the 'Tory reaction' of 1680-5; at least 8, and possibly 10, out of a total of 70. At the same time, the number of Tory squires who were not restored after dismissal in 1687 and 1688 was surprisingly large.² It is probable that later in 1689 the appointment of the Tory, Viscount Hatton, as custos produced a more balanced commission. In Devon, the earl of Bath, who retained the lord-lieutenancy he had held in James' reign, restored rather more of those dismissed by James, and the proportion of those in commission in 1689 who had been in commission in 1685 was higher than in Northamptonshire.³ Bath was prepared to restore at least some of the Whigs put out between 1680 and 1685, and he retained 19 of the 48 justices put in by James, but even so there was an abrupt break at the Revolution; only 16 of the 119 justices

¹The following calculations are based on a comparison of some surviving lists for 1689 with the lists for 1680 and 1685 at: H.L.R.O., Main Papers, H.L., 9 Nov. 1680; P.R.O., C.193/12/4; C.193/12/5, and also with the information contained in: P.R.O., Index 4215, passim. Privy Councillors, unless they had local connections, are ignored.

²P.R.O., C.234/27, Northamptonshire: 3 Jan. 1687, 12 Dec. 1687, 23 Mar. 1689. Monmouth's politics are confused by his subsequent development into a Tory, but he had spent James' reign in Holland and his Whiggism in 1689 is indisputable.

³Devon R.O., Q/JC: commission sealed 27 July 1689. This was the second commission after the Revolution; it added 34 names to the first, which had been dated 11 July 1689.

in the Devonshire commission in 1689 had been in James' last commission sealed in the summer of 1688. Warwickshire had suffered less from regulation in 1687 and 1688 than other counties, but the moderate Tory lord-lieutenant, the earl of Northampton, was unwilling to bring back two of the four surviving Whigs put out in the early 1680's, while nearly half of the Tory justices of 1685 were back in the Warwickshire commission in 1689 compared with less than a quarter in Northamptonshire.¹ The earls of Rutland and Stamford, respectively lord-lieutenant and custos of Leicestershire, produced a balanced commission between them, in which those of James' inclusions who were retained roughly equalled the Whigs restored from before 1685, and more than half of the 1685 justices supplied an experienced nucleus of about 40% of the 1689 commission.² Two features are common to all these counties. The number of local justices rose in every case, most notably from 37 in 1685 to 61 in 1689 in Warwickshire; and the proportion of completely new justices was surprisingly high, being more than 40% of the 1689 commission in each county. If the experience of these four counties was repeated elsewhere, there was a striking dislocation of the continuity of membership of the

¹ Warwickshire Quarter Sessions Records, 1682-90, pp.xxix-xlix. The first two post-Revolution commissions do not survive, and the calculations are based on a commission sealed in March 1690. This possibly makes the comparison with Northamptonshire misleading.

² Leics.R.O., QS 1/2, 1/3: commissions sealed 25 Mar., 1 Aug. 1689. The second, used as the basis for calculation, added 15 names to the first, and omitted one, possibly as a result of the discovery of a misnomer.

bench at the Revolution. The qualification for a place on the bench must have been lowered, not necessarily to include persons of less wealth, but to include persons of less status than the heads of the long-established families whose predecessors in former generations had recorded pedigrees at the heraldic visitations of the counties. It is a platitude that the Revolution ushered in an oligarchic regime, but its immediate effect in the localities was to complete the destruction of the old oligarchy of the county families. Not unnaturally, the county families complained. However, it is plain that it was necessary to have more justices of the peace. There were more persons within the scope of the treason laws than there had been since the 1650's. The country was committed to a European war in which a French invasion receiving substantial support from within the British Isles was a real possibility. This administrative necessity made for an expansion of the commissions of the peace, while the combination of weak central control and the fracturing of political uniformity in the counties meant that the composition of the bench was a matter for local rather than central politics.

William's ideal was to rule without party; his first ministry contained both extreme Whigs and 'men of loyalty' from the early 1680's. One of the means used to establish a balance between the parties was to distribute lord-lieutenancies and custos-ships in equal proportions.¹

¹Feiling, History of the Tory Party, 1640-1714, p.257.

The effect of the King's 'trimming' policy was unsatisfactory, both at the centre and in the localities. At the centre, William's hands were tied; the Whigs were indignant at the employment of those who had regulated the charters and beheaded Lord William Russell, but the Revolution would have been impossible without the assistance of Tory politicians such as Charles II's minister Danby, created Marquess of Carmarthen in 1689, whose experience in government was invaluable. Carmarthen, and the other Tories in the ministry, were dissatisfied with the Tory share of the spoils, while the King thought that the Whigs lacked responsible leadership. There was, therefore, no alternative to a mixed ministry. In theory a mixed ministry won moderate support and divided the opposition between unemployable extremists on both sides. In practice it made for administrative paralysis. Nothing else could have been expected when, for instance, James' servant Godolphin found himself yoked to Whigs like Monmouth and Henry Booth, now earl of Delamere, in the Treasury Commission.¹ In the localities, the sharing of spoils at the Revolution had a different effect. This was because the authority delegated was to be exercised over a geographical area by a single individual. The result was that the dominant political influence in

¹E. L. Ellis, 'The Whig Junto in relation to the development of Party Politics and Party Organisation, from its inception to 1714' (Oxford University D.Phil. thesis, 1961), pp.134-140.

neighbouring counties might be exercised by lords-lieutenant of different political views, and, consequently, with different intentions respecting the commissions of the peace. Thus, for instance, the earl of Abingdon, who had voted with the Tories for Regency in the Lords' debate of 29 January 1689, and who was lord-lieutenant of Oxfordshire, was sandwiched between two peers who had spent James' reign in exile at the Hague: the earl of Macclesfield in Gloucestershire, and the earl of Monmouth in Northamptonshire. Except in Wales, where every county was entrusted to Macclesfield, this fragmentation was repeated elsewhere. Moreover, in at least some counties, the custos seems to have been appointed on the principle that he would balance the influence of the lord-lieutenant. Carmarthen and Malifax, two politicians who hated each other bitterly, were respectively lord-lieutenant and custos of the West Riding. Viscount Hatton countered the Whig influence of Monmouth in Northamptonshire. In Worcestershire, where the earl of Shrewsbury was lord-lieutenant, the custos was Lord Coventry, who had voted for a Regency in the Lords. The office of county vice-admiral offered another opportunity of balancing a lord-lieutenant. Two such unlikely pairings were the earl of Bristol and the earl of Shaftesbury in Dorset, and the duke of Norfolk and Sir Henry Hobart in Norfolk. 'Trimming' at a county level could not really be a systematic or comprehensive policy; in some counties, the influence of a dominating magnate was too overpowering to be balanced, and in wartime the need for

co-operation was stronger than the need to maintain political equilibrium. Even so, in the years following the Revolution, England became a patchwork, and the English localities lost the relatively homogenous character they had possessed in 1685.

It was immensely difficult for the central government to reassert control over the composition of the county magistracy as long as the great seal remained in commission. The Commissioners were, virtually, mindless automata as far as the administrative business of chancery was concerned.¹ They were, for instance, reluctant to dismiss justices of loose moral principles when the suggestion that they should came from outside government circles.² When the King wanted the Commissioners to discover more about the character of nine persons recommended to be put in for Essex, the result was that their appointment was delayed for well over eighteen months; not surprisingly, such instances of the Commissioners being required to do more than seal commissions are rare.³ Their

¹ Maynard and Keck were replaced by Sir George Hutchins and Sir John Trevor in 1690. The change was not without some significance; Maynard had been a firm Whig, Trevor was a Tory. There was, however, no discernible effect on the commissions of the peace. The experiment of putting the great seal in commission was a failure in other ways. Suits were slower and more expensive, the Commissioners' judgments were not respected, and there was no adequate provision for the Speakership of the house of Lords: Campbell, Lives of the Chancellors, iv, 51-3; H. C. Foxcroft, A Supplement to Burnet's History of My Own Time (Oxford, 1902), pp.381-2.

² Letters Illustrative of the Reign of William III. From 1696 to 1708. Addressed to the duke of Shrewsbury by James Vernon [subsequently cited as Vernon Correspondence], ed. G.P.R. James (London, 1841), ii, 133.

³ Cal.S.P.Dom., 1690-1, p.11; Cal.S.P.Dom., 1691-2, p.157.

status was revealed in a Council order for them to attend to explain why they had not issued a commission for Northumberland in accordance with recommendations forwarded by the clerk of the peace on the instructions of the earl of Scarborough.¹ It is hard to imagine a Lord Keeper, still less a Lord Chancellor, suffering the humiliation of such discipline.

Developments at the centre seem to have had little effect in the counties. The non-party coalition of 1689 broke up early in 1690; the King was disgusted by the factiousness of the more extreme Whigs, and turned to those men whose administrative experience he trusted, forming a ministry of moderate Tories and non-party courtiers, with a number of Whigs who did not regard Whiggery as the doctrine of permanent opposition - the Junto of the future - in minor office. This combination lasted, with variations, until 1693, when its inability to do the King's business in the Commons discredited it in the Closet and its mismanagement of the war discredited it in the country. Under the guidance of its figurehead, Carmarthen, this ministry might have been expected to attempt to strengthen its position by judicious manipulation of the offices of power and status in the localities. Carmarthen, however, fails to conform to his reputation as a master of local patronage in the 1690's as he does in the 1670's. It is true that the London lieutenancies were remodelled in the interests of Tories to the exclusion of Whigs; this

¹P.R.O., P.C.2/75, p.99.

was a Whig grievance for years.¹ A constant Whig complaint was that men who had complied with James were preferred to offices of trust, while they themselves, who had borne the heat and burden of the Revolution, were passed over. But there is little trace in the counties of a general proscription of Whigs. Delamere and Monmouth, extreme Whigs, kept their lord-lieutenancies even after they had been dismissed from their other places; Macclesfield, another Whig, retained his lord-lieutenancies until his death in 1694. Indeed, of the list of 35 lay peers in opposition which Carmarthen drew up early in 1690, ten held lord-lieutenancies and four more were custodes. Carmarthen revealed his motives for keeping them in office in a later memorandum on the lords who opposed a ministerial proposal to discharge certain Jacobite peers in the Tower. The earls of Bath and Macclesfield were 'easy to be made follow the King's mind by what [they] hold under him', while Delamere, now earl of Warrington, 'would not loose his leitenancy which supports his popularity'.² The Revolution had made purges of 'men of faction', as in 1681, impracticable. They were now to be wooed with favours and local office, in the hope that they would follow the Court's lead. This was the sensible course, at any rate in the Parliamentary context; but it did limit the court's power over the composition of the commission of the peace. Tory lords-lieutenant do seem occasionally to have contemplated remodelling the militia.

¹Burnet, History, iv, 72-3; Luttrell, Brief Relation, ii, 21, 25.

²Browning, Danby, iii, 175-6, 180-1.

Carmarthen was reported to have dismissed some "Whiggishly inclined" gentlemen from their deputy-lieutenancies in Yorkshire. The duke of Ormond and the earl of Lindsey were said to have remodelled the lieutenancy of Somerset and Lincolnshire respectively. Six of the reputedly disgraced deputy-lieutenants had voted for the 'factious' Sacheverel Clause, debarring persons named in corporation charters issued after quo warranto proceedings in the 1680's from holding office for seven years.¹ Even so, these rumours were unreliable,² and this purge of the lieutenancies does not seem to have extended to the bench. It would, of course, have been absurd to have expected changes in support of the court's policy in, for instance, Hampshire, where the lord-lieutenant's son voted for the Sacheverel Clause, or in Cambridgeshire, where the custos voted for it himself.³

There were, from time to time, hints that the ministers planned a revision of the commission of the peace. For instance, in the spring of 1691, a gentleman in the office of Lord Sydney, who had replaced Shrewsbury as Secretary of State, reported that the Commissioners of the Great Seal had directions to make lists of the names of justices of the peace who refused to act.⁴ Only one commission of the peace, for

¹ Brit.Mus., Loan 29/185, fos.81, 86: Robert Harley to Sir Edward Harley, 19 May 1691, 23 May 1691; Luttrell, Brief Relation, ii, 230; Browning, Danby, iii, 164-172.

² Only one gentleman was dismissed in Yorkshire. Brit.Mus., Loan 29/185, f.89: Robert Harley to Sir Edward Harley, 29 May 1691.

³ Lord William Paulet and Edward Russell.

⁴ Northern Ireland Public Record Office, De Ros MSS., 13/52: John Pulteney

Montgomeryshire, was issued in the two months immediately following this report, and although 32 commissions were sealed in July and August, this was only slightly above the average for these two months, when commissions were normally revised to put the assize judges in. The entries in the Crown Office docket book - admittedly an unreliable source - suggest that the commissions issued at this time were routine. Only in Hampshire were justices dismissed.¹ The Devon commission sealed in July 1691 left out one justice who had died and added his heir and one other.² Warwickshire, where the justices of 1685 had been strongly represented in 1690, did not receive a commission at all at this time, and when a new commission was sealed for that county in 1692 it left out one justice for 'stealing horse-traces', while one local name was added.³ Again, there was a strong impression in the Welsh counties that their commissions had been remodelled in the summer of 1692, and some gentlemen in Radnorshire complained that their omission branded them as 'criminals or malefactors'. But Robert Harley, who as a leader of the 'Country Whigs' had little reason to defend the ministers, argued that the changes that had then been made were an unavoidable result of the need for active justices combined with the

¹P.R.O., Index 4215, p.275.

²Devon R.O., Q/JC, comparison of commissions sealed 6 Mar. 1691, 24 July 1691.

³Warwickshire Quarter Sessions Records, Easter 1690 to Michaelmas 1696, ed. H. C. Johnson and N. J. Williams (Warwick County Records, ix, 1964), pp.xvi-xvii.

limitation of the Welsh commissions to eight names.¹

The most likely time for changes in the commission of the peace was when a lieutenancy changed hands. Replacements of lords-lieutenants and custodes seem to have been conducted during Carmarthen's ministry with a view to winning friends rather than punishing enemies, and the ensuing remodelling of the commission of the peace owed nothing to central direction. Thus, for instance, when the earl of Bedford replaced the earl of Clare as lord-lieutenant of Middlesex in March 1692 he wanted sixteen justices put out as 'not proper to be continued', and seventeen gentlemen put in. Among those to be put out was Sir James Smith, one of London's foremost Tories, who had been described as a non-juror in a hostile news-sheet when he had been put into the London lieutenancy in 1690.² The Tories fought back; the bishop of London asked Queen Mary to reconsider the lists, and a month later Nottingham wrote that the tardiness of the Commissioners of the Great Seal in passing the commission had enabled Bedford to change his mind. Six of the sixteen justices formerly ordered to be left out were now to be continued, including Sir James Smith, who had, probably, taken the oaths in the interval.³ Occasions like this

¹ Brit.Mus., Loan 29/186, fos.193-4: Robert Harley to Samuel Morgan, 3 Nov. 1692. There is, however, some trace of government intervention in the Radnorshire changes in Harley's postscript to the effect that Carmarthen and Nottingham had pressed for the addition of one gentleman.

² Cal.S.P.Dom., 1691-2, pp.165-6; Luttrell, Brief Relation, ii, 399; A List of the Commissioners of Lieutenancy of the City of London as constituted in 1690 (London, 1690?).

³ Cal.S.P.Dom., 1691-2, pp.220-1, 250; Luttrell still thought the alterations would be severe, however: Brief Relation, ii, 437.

were infrequent, and the central government played no part in promoting such alterations, except indirectly by appointing a lord-lieutenant of different political views from his predecessor. There is no real evidence of a systematic purge directed by the central government during the period when the Commissioners of the Great Seal were in office. For the most part, justices put out during these years had generally committed some misdemeanour, like Julius Deedes, whose servants had assaulted the customs officers and taken part in the rescue of his contraband; he was put off the bench in Kent.¹

The situation appeared to change when a Whig lawyer was appointed Lord Keeper in March 1693. Sir John Somers, the son of Worcestershire attorney, was aged 41 when he accepted the great seal. He had written pamphlets for Shaftesbury during the Exclusion Crisis, and he had rapidly acquired a formidable reputation as a barrister, appearing as counsel for the seven bishops in 1688. He had sat for Worcester in the Commons since 1689, and he associated himself with the group of younger Whigs who, unlike the rank and file members of Shaftesbury's Whig party in the early 1680's, were ambitious for office and court favour - the future Whig Junto. Solicitor-General in 1689 and Attorney-General in 1692, Somers was a man of polished manners, considerable learning, and wide interests, who is generally acknowledged to have been one of the ablest

¹P.R.O., P.C.2/74, pp.396, 425.

lawyer-statesmen who have ever held the great seal.¹ His appointment was expected to have political results. Since early 1692, Sunderland, now reconverted from Catholicism and acting as William's adviser after a period in exile, had been urging that the Whigs were more committed to the Revolution and the War, and more likely to command Parliamentary majorities, than the Tories.² The Council was planning a revision of the commissions of the peace immediately before Somers' appointment. The assize judges were required to compile lists of non-juring and inactive justices of the peace in which those who were disaffected were to be distinguished from those who were merely idle. The judges were also to report on the general state of the commission of the peace in their circuits.³ The change from Commissioners to a single Lord Keeper was probably designed to facilitate this revision. The Council was concerned to eliminate disaffection, cut out dead wood, and provide for a more active enforcement of the law. Somers would doubtless have subscribed to this, but he wanted to do more; he was a leading member of a group of politicians anxious to build up a position of strength in the countryside from which to demand their own advancement at the centre and the proscription

¹ Memoirs of the Life of Lord Somers (London, 1716); Foxcroft, Supplement to Burnet's History, pp.382, 396; Campbell, Lives of the Chancellors, iv, 62ff. Holdsworth, History of English Law, iv, 535-7; Ellis, 'The Whig Junto', pp.58-77.

² Kenyon, Sunderland, pp.250-5; Ellis, 'The Whig Junto', p.218.

³ P.R.O., P.C.2/75, p.97: 23 Feb. 1693.

of their political enemies. One of Sancroft's correspondents hinted at this when he wrote that Somers would remodel the commissions of the peace 'till all is made fit for a Parliament'.¹ In a number of areas of local and central government, changes were made in 1693 and 1694 which suggested that the Whigs were in the ascendant. The old Whig grievance of the London lieutenancy was remedied in February 1694, and Somers took a leading part in remodelling the customs and excise commissions in June 1694, when Godolphin protested at the influence of party in putting men out and in.²

Somers' regulation of the commission of the peace started very slowly, however. During the first year after his appointment, he sealed fewer commissions than his predecessors had done over comparable periods. He was isolated among the ministers, apart from the Whig Secretary of State Sir John Trenchard; but the dismissal of Nottingham, the admission to office of the Junto politicians Charles Montague and the earl of Oxford, the readmission of Shrewsbury, and a number of Whig promotions in the peerage, all in the winter of 1693-4, might have been expected to have led to an intensification of Whig policy towards the commission of the peace. But in no one month in 1694 and 1695 did Somers seal more

¹ Bodl. MS. Tanner 25, f. 21: [Sir Henry North] to Sancroft, 27 Mar. 1693.

² Luttrell, Brief Relation, iii, 265, 266, 269; Cal. S.P. Dom., 1694-5, pp. 179-80, 184-5.

than eleven commissions.¹ There was thus no simultaneous remodelling of the bench, such as those of 1680 or 1687, during the three years after Somers' appointment, in spite of various reports that such a regulation was intended or had taken place.² During these three years, however, Somers sealed at least one commission for every county except four - Shropshire, Warwickshire, the North Riding, and Breconshire.

Somers would, hypothetically, have wanted to put out gentlemen who had been included after the Revolution for reasons of local status, but who refused to co-operate with the Revolution regime, declined to act, and were in some cases Jacobite in sympathy. He found this programme difficult to carry through. The judges fulfilled the Council's instructions to report on the county benches very imperfectly. After the Lent assizes in 1693, Somers complained that only Lord Chief Justice Holt, who had ridden the Norfolk circuit,³ had submitted a satisfactory return; the instructions had to be repeated for the summer assizes.⁴ Of the counties in the Norfolk circuit, Suffolk and Buckinghamshire received new commissions in March, and Norfolk and Bedfordshire in July. That for

¹From the beginning of April 1693 to the end of March 1694, Somers sealed 24 commissions of the peace. The corresponding figures for earlier years were: 1690-1, 69; 1691-2, 64; 1692-3, 75. Eleven commissions were sealed in July 1694 and in July 1695.

²Luttrell, Brief Relation, iii, 237, 272, 274, 305; Burnet, History, iv, 222-3; Hist.MSS.Comm., Seventh Report, Appendix, Denbigh MSS., iii, 218.

³London Gazette, 9 Feb. 1693.

⁴N.U.L., PwA 1172: Somers to Portland, 25 July 1693.

Bedfordshire left out 'several', among whom were Robert Bruce and Sir John Cotton who both had Jacobite connections. The new Middlesex commission also contained substantial changes, and a gentleman was left out in Cornwall 'by the King's command', but otherwise little evidence survives of this small-scale regulation in 1693.¹

Another difficulty that Somers faced was that in these years, the King and also some of the ministers, notably Godolphin, exercised a restraining influence. When Somers found various categories of disaffected justices in the imperfect returns made by the assize judges in 1693, he felt it necessary to ascertain the King's views on the proper action to take.² Sunderland observed in May 1694 that 'small progress' had been made in 'the business of the commissions and the Justices' because of Godolphin's obstruction, and moreover that 'the affaire of the Justices will be done with Moderation'.³ The King's absences abroad in the summer of each year also delayed Somers' campaign. This was especially true in 1695, when, following the death of the Queen, the exercise of royal power in domestic government was entrusted to Lords Justices. The Lords Justices

¹P.R.O., Index 4215, pp.302ff.; Luttrell, Brief Relation, iii, 131, 134; Brit.Mus., Loan 29/187, f.105: Robert Harley to Edward Harley, 24 June 1693.

²N.U.L., PwA 1171: Somers to Portland, 20 June 1693.

³N.U.L., PwA 1234: Sunderland to Portland, 28 May 1694. It is tempting to think that Sunderland was remembering the results of lack of moderation in 1687 and 1688.

had no scruples about putting justices of the peace off the bench on their own initiative for misdemeanour, but they referred suggestions in which there was a political element to the King.¹ Sunderland wrote to Portland at the same time that the remodelling of the bench was postponed until the King's return.² In general terms, William distrusted party spirit and it is unlikely that he would have agreed to a comprehensive removal of men from the local magistracy by Somers, since such dismissals, though ostensibly on the grounds of disaffection, might in reality be of men whose only fault was that they were obnoxious to the party in office.

Also, most counties in the years after the Revolution had a stubborn group of magistrates of Tory sympathies, who might have been regarded by Somers and his friends as 'disaffected to the government', but who were firmly entrenched by virtue of family and status in the commission of the peace, and who were willing to act with William's government just so far as to give no clear grounds for dismissal. They were, in some cases, too indispensable in county administration to be removed, and the replacements found by the Whigs were not always of the same status.³

¹Cal.S.P.Dom., 1694-5, p.493. Admittedly the doubtful proposals related to Lancashire, and possibly Somers would not have troubled the King had the county fallen within his jurisdiction. But from the King's point of view there could be no differences between Lancashire justices and other justices, and if he was required to supervise alterations in Lancashire he would presumably have wanted to supervise them elsewhere.

²N.U.L., PwA 1248: Sunderland to Portland, 28 July 1695.

³Hist.MSS.Comm., Thirteenth Report, Appendix VI, Fitzherbert MSS., p.34; The Diary of Mr. Justice Rokeby (Privately printed, 1887), p.30.

Somers, unlike, for instance, his Junto colleague Thomas Wharton, may not have wished to alienate the self-styled 'honest party' by dismissal from the bench. The 'honest party' in many counties was still to be conciliated and gratified with local power, rather than punished by exclusion.

It is difficult to come to firm conclusions about the collective character of the 110 commissions that Somers sealed during his first three years in office, simply because of lack of evidence. The docquet book entries become unreliable. According to the docquet book, 29 of the 110 commissions left justices out, but the real figure is probably higher. Somers, in spite of his problems, did make substantial changes, involving in some cases a purge, in a number of counties. For instance the Leicestershire commission sealed on 24 July 1694 added 10 gentlemen and left out as many as 14, some but not all of whom had died. Among the living justices left out were the notorious rake Lord Lovelace and the prominent squires Sir Wolstan Dixie and John Verney. This was quite a severe regulation, but the docquet book entry contains no information.¹ On the other hand, many of the commissions sealed at this time made only the most routine modifications of the magistracy. The West Riding received two commissions in 1694; the first, in March, added two justices, the

¹Leics.R.O., QS 1/7: 24 July 1694, compared with QS 1/6: 26 Nov. 1692; P.R.O., Index 4215, p.325.

second, in December, added one. No commission was sealed in 1693 after Somers' appointment, or in 1695.¹ However, enough evidence can be pieced together from sources other than the docket book to suggest tentative conclusions about the nature of Somers' exercise of local patronage.

In a number of counties, there was a regulation of the bench directed in accordance with political considerations of a local kind. The Middlesex magistracy, predictably, was reshuffled fairly severely in July 1693 and again in December of the same year.² In Devon, at least one crypto-Jacobite justice, Thomas Hele, was dismissed in April 1694, probably on the report of the assize judge.³ Sir Haswell Tynt was left out in Somerset in 1693 for not taking the oaths.⁴ In Radnorshire, conflicting local interests suggested different sets of names following the repeal of the statute limiting the number of Welsh justices. Robert Harley thought that his list was unobjectionable,⁵ but his persuasive concern for administrative needs did not prevent Somers from discarding at least one of his names. Probably the recommendations of Sir Rowland Gwynne carried more weight with Somers; Gwynne was custos

¹P.R.O., C.234/44, West Riding: 6 Feb., 13 Feb., 30 Nov. 1694.

²P.R.O., Index 4215, pp.306, 312; Luttrell, Brief Relation, iii, 134, 274.

³P.R.O., Index 4215, p.318; Diary of Mr. Justice Rokeby, p.30.

⁴Som.R.O., DD/SF 1747: Paper headed 'In the County of Somerset'.

⁵Surrey R.O., Somers MSS. A, Nos.2, 2B: Robert Harley to Somers, 3 Sept. 1693.

of Radnorshire and a committed Junto supporter. Another county where substantial changes took place was Suffolk. One of those put out was Edmund Bohun, a target for Whig hostility when he was deprived of his place as licenser of the press by the Commons for licensing a book entitled King William and Queen Mary Conquerors. Also dismissed were Sir Robert Bacon, four more baronets, and at least eight other gentlemen. Bohun stated explicitly that the object of the regulation in Suffolk was to 'lift up a party' of inconsiderable Whigs at the expense of the Church of England squires. The initiative came from below, from the Whig party in the county. Bohun blamed Sir Robert Rich, M.P. for Dunwich, Mr. Whitacre, the Recorder of Ipswich, and 'one Mr. Haveingham'.¹ Somers later defended his conduct by saying that the ministry had moderated the wishes of the Whig lord-lieutenant, Lord Cornwallis, respecting the Suffolk commission of the peace on this occasion.² It may well have been the weakness of Suffolk Toryism that encouraged the local Whigs to press for regulation of the bench. Somers may have been persuaded to implement the changes by electoral considerations; only one of the three managers of the purge was an M.P. in August 1694, when the commission reached the county, but all three were elected in 1695.

¹Diary and Autobiography of Edmund Bohun, pp.120-2, 124.

²Vernon Correspondence, ii, 436.

On the other hand, the justices put out at this time were not necessarily all dismissed for political reasons. Henry Cooper, put out for Sussex, had taken part in a riot at Greenwich; George Vernon, put out in Derbyshire and Staffordshire, had caused disturbances in Needwood Forest; George Evans and James Lugg were put out in Surrey 'upon complaints against them', which suggests misdemeanour; Sir James Buller, put out in four counties, had not re-committed an escaped pirate.¹ The oddest case was that of Richard, Viscount Wenman, put out of the Oxfordshire commission in June 1695.² He was seven years old and an imbecile. His name was the same as that of his father, whose death in 1690 had passed unnoticed at the Crown Office.

The difficulties of interpreting the evidence mean that the period from 1693 to 1695 remains something of a mystery as far as the scope of changes in the magistracy is concerned. Somers was willing to make changes in some counties when these were recommended from below, as the example of Suffolk shows, but it is not clear how many counties were treated this way. However, in the early months of 1696 an opportunity for more systematic regulation arose. On 24 February 1696, the King reported to Parliament the discovery of a conspiracy to assassinate him. Instantly, Parliament and the Privy Council took

¹P.R.O., Index 4215, pp.308, 336, 339, 340, 346; Luttrell, Brief Relation, iii, 199, 507, 558-9; Cal.S.P.Dom., 1694-5, p.493; P.R.O., P.C.2/76, p.225.

²P.R.O., Index 4215, p.336.

emergency measures.¹ Enthusiasm for William's escape, and fear lest a Catholic, Jacobite conspiracy was about to blow up into armed revolt, found expression in the Commons in the Association to defend the person of the 'rightful and lawful' King and if necessary to avenge his death. There is no clear evidence that the leaders of the Junto planned the spread of the Association into the counties, to be signed by the gentry at assizes and quarter sessions, as a test for office. The promotion of the Association in the countryside was conducted by M.P.'s, perhaps with a view to attracting attention of the court to their conspicuous loyalty.² Nevertheless, the Junto lords were quick to see that the Association provided an opportunity to define, in the country as well as in Parliament, those members of the political nation whose commitment to the Revolution was conditional. The use of the phrase 'rightful and lawful' was unacceptable to men who believed that, while William was King de facto, the 'rightful and lawful' King was in exile. Refusal to subscribe was thought to imply Jacobitism; and justices of the peace who had not signed began to be removed in the early summer of 1696.³

The court's use of the Association movement to purge the commissions of the peace was a clumsy administrative operation: inconsistent,

¹C.J., xi, 465-7; P.R.O., P.C.2/76, pp.293ff.; Surrey R.O., Somers MSS.J, No.14: 'Things to be don at Council', 23 Feb. 1695 [/6].

²Brit.Mus., Portland Loan 29/147: Edward Howarth to Robert Harley, 15 Mar. 1696; Add.MSS.36913, f.221: Sir John Mainwaring to Sir Willoughby Aston, 29 Feb. 1696.

³P.R.O., P.C.2/76, pp.458ff.; Burnet, History, iv, 307.

haphazard, and, above all, slow. There were several reasons for this. The Associations of the house of Commons, the counties, the boroughs, and other miscellaneous institutions that forwarded signatures, were lodged in the Tower as a memorial to the loyalty of the nation.¹ However, it was difficult for the government to use the 'Association Rolls' to discover whether or not a particular individual had subscribed. The Northamptonshire roll, for instance, contained about 11,000 signatures.² Also, the more extreme Whigs, and the more cunning Tories, ruined the value of the Association as a political test, paradoxically, by passing the Act for the Security of the Crown which made the Association obligatory for all office-holders. This received the royal assent on 21 April 1696.³ Some Tories regarded this statute as confirming that their view of William as de facto monarch was correct, submitted cheerfully to Whig bullying, and signed.⁴ For instance, three M.P.'s who had refused the Association in Parliament signed the Oxfordshire roll, ostentatiously dating their signatures 1 May 1696 although the roll itself was dated 21 April.⁵

A second reason for the clumsiness of the remodelling of the county benches was that it was conducted by the Privy Council, not by the

¹C.J., xi, 544; Cal.S.P.Dom., 1697, p.266.

²P.R.O., C.213/188. Other counties submitted equally voluminous rolls.

³7 & 8 William III c.27, clause IV.

⁴Hist.MSS.Comm., Fourteenth Report, Appendix II, Portland MSS., iii, 575.

⁵Montagu, Lord Norris (M.P. Oxfordshire), Sir Edward Norris (M.P. Oxford) and Simon Harcourt (M.P. Abingdon): P.R.O., C.213/207.

Junto politicians. A week after the Act for the Security of the Crown had passed, the Council sent letters to all the custodes, requiring them to send in the names of justices of the peace who had refused, or neglected, to sign the Association.¹ The Lords Justices, who as in the previous year were entrusted with domestic responsibilities during the King's absence abroad, wrote to William asking for instructions when the first returns began to come in, which suggests a division of the authority by which the regulation was to be carried out.² The Council does not seem to have appointed a committee to deal with the returns. It is true that when, in November 1696, some tardy custodes had to be reminded that the Council was expecting lists of non-subscribers, the letters were signed by a small group of Councillors.³ But one Councillor, not among this group, left fragmentary notes on the regulation,⁴ all the decisions relating to the omission of justices were entered in the Council Register, and

¹P.R.O., P.C.2/76, p.417: 30 April 1696.

²Cal.S.P.Dom., 1696, pp.213-4.

³Earl of Dorset, earl of Stamford, Sir William Trumbull, Sir Henry Goodricke, Sir Joseph Williamson, duke of Norfolk, earl of Pembroke, earl of Montagu, duke of Bolton (the circumstances in which Pembroke was signing letters identical to those he received in respect of his neglected duties in Cardigan-shire and Breconshire was symptomatic of the atmosphere in which the regulation was conducted): P.R.O., P.C.2/76, pp.544-6. This group of Councillors contained a strong Tory element. If it really was a committee of regulation, this evidence rather modifies the view that the 'active' members of the Council were men of Junto sympathies, for which see: Ellis, 'The Whig Junto', p.297.

⁴Recusant Documents from the Ellesmere Manuscripts, ed. A. G. Petti (Catholic Record Society, lx, 1968), 305-9.

rumours that the lists of justices had been considered referred to days when the full Council met.¹ Also, the operations conducted with comparative speed in 1680, 1681, and 1687 had depended on the Secretaries of State, who had gathered and collated information. Of the two Secretaries in 1696, Shrewsbury was in retirement from the early summer of 1696 until his resignation in December 1698, while Sir William Trumbull was never fully in the confidence of the Junto.

A third reason for the inefficiency of regulation on the basis of the Association was that the local agents with whom the Council was compelled by traditional practice to do business were in some cases less than enthusiastic about the Association themselves. The Association taken by the house of Lords employed the phrase 'by right of law' rather than the phrase 'rightful and lawful', but even so, some of the custodes were reluctant to sign.² Moreover, some counties were temporarily without custodes, and the Council's letters had to be addressed to the clerk of the peace or to 'The Justices'.³ It is hardly surprising, therefore,

¹Cal.S.P.Dom., 1696, p.320; Bodl.MS.Carte 233, fos. 1A, 7, 16, 26A: News-letters [Vernon to Wharton], 4 July, 16 July, 4 Aug., 29 Sept. 1696; Luttrell Brief Relation, iv, 88, 91, 99, 110.

²Viscount Weymouth, custos of Wiltshire, refused on 31 March 1696; Viscount Hatton, custos of Northamptonshire, pleaded illness, without much conviction, as an excuse for not signing; the earl of Oxford, custos of Essex, never signed in the house of Lords, although he signed a form of Association for the Bedchamber; Sir Richard Middleton and Andrew Newport, custodes respectively of Denbighshire and Montgomeryshire, both refused in the house of Commons. Hist.MSS.Comm., House of Lords MSS., N.S. ii, 212, 213; Browning, Danby, iii, 188-213; P.R.O., C.213/365.

³Derbyshire, Herefordshire, Monmouthshire, Nottinghamshire and the West Riding had no incumbent custos; Lord Paget, custos of Staffordshire, was abroad.

that the returns from some of the counties should have been slow and unsatisfactory.

Lastly, the attempt to remodel the commission of the peace was hampered by a lack of liaison between the Privy Council and the great seal, or, alternatively, between the great seal and the Crown Office. In seven counties, the Council ordered the omission of justices of the peace, but there is no evidence in the Crown Office docquet book that Somers ever passed commissions embodying the changes.¹

For these reasons, the remodelling of the bench after the Association movement was condemned to a slow start and a delayed consummation. It may well have been that the King was reluctant to give the Whig leaders carte blanche.² Although he dismissed Nottingham and Sir Edward Seymour from the Council for Parliamentary opposition to the Association, he distrusted Whig party spirit and probably preferred the method of proceeding through the Council. The Council muddled through, but the operation was not complete until over two years after the Assassination Plot. It is true

¹Cambridgeshire, 11 justices to be put out, Council order dated 15 July 1696; Monmouthshire, 2, 15 July 1696; Suffolk, 6, 29 Sept. 1696; Cheshire, 7, 26 Nov. 1696; Anglesey, 7, 11 Feb. 1697; Montgomeryshire, 8, 11 Feb. 1697; Cardiganshire, 4, 25 Mar. 1697. Somers was not present at the Council on 29 Sept. 1696 or 11 Feb. 1697. In each case, the next commission for the county was dated some months or even years later. P.R.O., P.C.2/76, pp.470, 522, 543, 580, 598; P.R.O., Index 4215, pp. 356ff.

²Kenyon, Sunderland, p.278; Plumb, The Growth of Political Stability, p.137.

that in 11 counties out of the 57, precise returns were quickly received, the Council confirmed the recommendations from the localities that justices should be put out, and Somers sealed a new commission of the peace embodying the changes, all within six months of the original Council order to investigate the attitude of justices to the Association. The custodes of these counties were, perhaps surprisingly, not all committed Junto supporters.¹ The custodes of the remaining 46 counties either did not send returns of non-Associating justices, and had to be reminded, sometimes more than once, that the Council was waiting for them; or sent returns that did not distinguish between those who refused, and those who merely neglected, to sign the Association, did not say whether individuals had signed before or after the passage of the Act for the Security of the Crown, mixed up justices and militia officers, or were otherwise imprecise.² In six of these counties, the Council received information from other sources, and commissions leaving justices out were sealed in the summer and autumn of 1696. These included four counties where the Junto enjoyed

¹ Buckinghamshire (Thomas Wharton, custos), Devon (earl of Stamford), Dorset (earl of Bristol), Durham (earl of Scarborough), Gloucestershire (Viscount Dursley), Huntingdonshire (earl of Manchester), Middlesex (duke of Bedford), Northamptonshire (Viscount Hatton), Nottinghamshire (no custos; duke of Newcastle, as lord-lieutenant, probably recommended changes), Shropshire (earl of Bradford) and Sussex (earl of Dorset).

² No returns were sent from 27 counties before 26 November 1696; unsatisfactory returns were acknowledged from 16 counties, several of them twice, between 2 July 1696 and 25 March 1697: P.R.O., P.C.2/76, pp.460 ff.

local influence: Westmorland and the West Riding were probably remodelled by Wharton, while Somers himself no doubt took part in the regulation of Herefordshire, where there was no custos, and Worcestershire.¹ In other counties, the investigation dragged on long after the excitement of the Assassination Plot had faded into apathy. The last cases were in North Wales. The Flintshire bench was purged in July 1698 of two justices who had not permitted persons wishing to sign the Association to do so. Even then, the earl of Macclesfield's letters describing the subscription of the justices in North Wales to the Association did not reach the Privy Council until 1699.² As many as 24 counties escaped regulation by the Council altogether.³

By the middle of 1698, the Council had ordered the commission of the peace in 33 counties to be purged, and these orders seem to have been obeyed in 26 counties.⁴ The operation was a gallant but only partially successful attempt to be comprehensive. The character of those omitted needs little comment. The disgraced justices were Tory squires

¹The other two counties regulated by the Council notwithstanding an imperfect return from the custos were Derbyshire and Flintshire.

²P.R.O., P.C.2/77, pp.208, 340, 355; Index 4215, p.394.

³Berkshire, Breconshire, Carnarvonshire, Carmarthenshire, Cornwall, Cumberland, Essex, Glamorgan, Hampshire, Hertfordshire, Kent, Leicestershire, Merionethshire, Northumberland, Pembrokeshire, Peterborough, Radnorshire, Rutland, Somerset, Staffordshire, Warwickshire, Wiltshire, East Riding, North Riding. It is, of course, possible that the custodes of these counties reported that all the justices signed the Association.

⁴There was also at this time a comparable purge of the militia, involving in many cases the same persons.

who did not disguise disaffection to the party in power at court. They were not necessarily disaffected to the Revolution settlement or to the rule of King William. They were, rather, discontented with the monopolisation of power at the centre by ambitious court Whigs, with the sinister influence of the traitor Sunderland, with the conduct of the War, with high taxes, a debased coinage, Dutch favourites, and insolent dissenters; and they displayed their discontent in local politics, or at assizes or quarter sessions.

It was clear from fairly early in 1696 that subscription to the Association was hardly relevant as a test for office as a justice of the peace. Shrewsbury wrote to William to suggest that the basis of the regulation be changed from non-subscription to 'notorious disaffection', so that some of those who had signed might be put out with the rest.¹ Whatever the King's views, it is plain that the way in which the purge was organised led to the omission of some who had taken the Association. Custodes may have had some difficulty in establishing who had signed and who had not (especially as the original rolls had been taken to London), and which of those who had not might conceivably have signed elsewhere. A good example of the confusions that arose occurs in Cheshire, one of the

¹Cal.S.P.Dom., 1696, p.216; also printed in Private and Original Correspondence of Charles Talbot, Duke of Shrewsbury, ed. W. Coxe (London, 1821), pp.122-3.

counties ignored by Somers although the Council ordered changes. Earl Rivers, the custos, was on the continent with William, and the list of non-subscribers was drawn up by the earl's secretary in correspondence with Sir Willoughby Aston. This list included only one justice. The Council ordered his omission, and the omission of six others as well, at least one of whom (Richard Legh) appears to have signed the Cheshire Association. Moreover, when acknowledging a second return of non-subscribers in Cheshire, the Council noted Rivers' report that Sir Robert Cotton had not signed, but his signature is on the Cheshire roll. It may have been doubts about the validity of Rivers' reports that led Somers to disregard the Council's order to leave Cheshire justices out.¹ Probably similar confusion resulted from insufficient information in other counties; at any rate, in Cheshire and probably elsewhere, the Association seems only to have been of academic interest as a political test.

The chief interest in this regulation naturally attaches to the eleven counties in which the custodes made speedy returns and a new commission was issued, and to the six more in which the Council ordered the omission of justices, before the excitement of the period of the Association had time to cool. In two of these the changes do not seem

¹ Brit.Mus., Add.MSS.36913, f.287-9: Newdigate Ouseley to Sir Willoughby Aston, 8 August 1696; *ibid.*, f.233: list of persons refusing the Association, n.d.; P.R.O., P.C.2/76, pp.543, 545; P.R.O., C.213/27. Richard Legh is a common name in Cheshire, but two different gentlemen of that name signed the Cheshire roll among the first forty names, among the other justices of the peace.

to have been especially severe. These were Middlesex, where two persons were put out,¹ and Nottinghamshire, where the duke of Newcastle wrote that everybody had taken the Association except John Digby of Mansfield Woodhouse; he was accordingly dismissed from the militia and put out of the commission of the peace.² Elsewhere, the number of justices put out was also small, but these justices were important people. In 1694, M.P.'s had not been dismissed;³ now, in 1696 and 1697, the Council ordered the omission of 23 M.P.'s.⁴ Of the four justices put out in Sussex, three were M.P.'s, one of whom, John Lewknor, had actually taken the Association, though only after some delay. In both Buckinghamshire and Huntingdonshire one of the two justices put out was an M.P., and Anthony Hammond, knight of the shire for Huntingdonshire, wrote that he had been dismissed for 'voting against the court'.⁵ The only justice

¹ Sir William Clarges and Ralph Hawtrey. Hawtrey had stood against Sir John Wolstenholme and Admiral Russell, both Junto candidates, in the 1695 election for Middlesex. P.R.O., P.C.2/76, p.470; Luttrell, Brief Relation, iii, 557.

² Brit.Mus., Loan 29/237, f.637: duke of Newcastle to Privy Council, 13 June 1696 (draft); P.R.O., P.C.2/76, p.487; P.R.O., Index 4215, p.357.

³ Diary and Autobiography of Edmund Bohun, p.121.

⁴ Edward Brereton, Robert Byerley, William Carey, Sir John Conway, Francis Courtenay, Gilbert Dolben, Montagu Drake, Sir Thomas Dykes, Anthony Hammond, Simon Harcourt, John Howe, Richard Howe, Edward Kynaston, John Kynaston, John Lewknor, Sir Richard Middleton, Sir William Morley, Sir Christopher Musgrave, Sir Robert Owen, William Trye, George Weld, Sir Michael Wentworth, and Sir William Williams. In addition, Price Devereux should have been put out for Montgomeryshire, but Somers did not seal a commission for that county. P.R.O., P.C.2/76, pp.460ff. To make the list complete, the names Thomas Brotherton and Peter Shakerley, left out for Lancashire, can be added: Lancs. R.O., QSC/118, 119A, 119, 120: commissions of the peace dated 1696 and 1697.

⁵ Bodl.MS.Rawl. A 245 (Autobiographical notes of Anthony Hammond), f.62.

put out in Northamptonshire was Gilbert Dolben, M.P. for Peterborough. In the West Riding, three justices were put out; one was the notoriously dissipated Sir John Bland, the other two, Sir Michael Wentworth and Robert Byerley, were both M.P.'s. Byerley was also put out, with three others, for Durham.

This leaves a handful of counties where the purge of justices was really thorough. In Gloucestershire, sixteen justices were put out, including Viscount Tracy, an Irish peer who lived in the county, and three M.P.'s, including the prominent 'country party' spokesman Jack Howe. In Shropshire four M.P.'s and five others were dismissed. In both Herefordshire and Dorset, five justices were dismissed, and five more in Worcestershire of whom three were baronets and one a knight. Sir Christopher Musgrave, one of the most prominent Tories in the Commons, who had been an M.P. continuously since the Convention Parliament of 1660, was put out in Westmorland with four others. The most comprehensive of all the regulations was that for Devon. Baron Powys, one of the assize judges, had discovered that several Devon justices, influenced by the clergy, were reluctant to accept 'rightful and lawful' and had framed a loyal address for separate presentation. In spite of the well-meaning but politically unsophisticated attempts of moderate squires like Sir Francis Drake to persuade them to amend their address, and to compose the quarrels on the bench, the evidence against no less than eighteen of the justices was strong enough to secure their dismissal. Among those put out were

the knight of the shire, Francis Courtenay; the dean of Exeter, Richard Annesley; and Sir George Chudleigh, whose conduct had been 'insufferably insolent'.¹ Sir Edward Seymour, a powerful figure in the West Country, was also left out of the Devon commission, and out of the commission for every county, by the Clerk of the Crown without Somers' warrant following his dismissal from the Privy Council;² and the Whig earl of Stamford replaced the earl of Bath as lord-lieutenant. The Devon case was a cause célèbre, and news of what had happened spread through the country.³ It was, however, exceptional. It is worth pointing out that Baron Powys also wrote to Somers about Cornwall, where the negligent Bath had also been lord-lieutenant. No change took place in the Cornwall commission of the peace at the instigation of the Privy Council.⁴

These more spectacular purges took place in counties, either where the court Whigs - not simply the Junto - enjoyed sufficient local power to be able to crush opposition, as in Buckinghamshire, Westmorland, Gloucestershire and Shropshire; or where the Junto felt it to be feasible

¹Hist.MSS.Comm., Thirteenth Report, Appendix VI, Fitzherbert MSS., pp.38-41.

²N.U.L., Pw2 Hy 486: Paper headed 'Justices Out', n.d., but clearly relating to Devon in 1696; Som.R.O., DD/SF 1747: Paper headed 'In the County of Somerset'.

³Luttrell, Brief Relation, iv, 99, 110.

⁴Hist.MSS.Comm., Thirteenth Report, Appendix VI, Fitzherbert MSS., p.38.

to support the local Whig party and discredit the opposition by a massive assertion of the power of the central government, as in Devon. Where such an assertion of power would have been impracticable, where the local Whigs were weak, or, simply, where a purge of Tory justices would have left too few active magistrates, the Council refused to meddle. In Warwickshire, six out of eight M.P.'s refused the Association in the Commons. Four of them were county justices and not one of them was dismissed.¹ Luttrell reported that Sir John Bolles, who refused the Association as M.P. for Lincoln, was on the bench at Lincoln assizes in 1699, which suggests that he was in the commission of over and terminer. If so, then he was almost certainly in the commission of the peace as well. On this occasion he insulted the judges and kicked the sheriff. The other justices tried to excuse him by saying that when drunk and tired he tended to be distracted. Still he does not seem to have been put off the bench.²

The changes made in consequence of the enthusiasm for the Association continued long after the political situation at the centre had changed. The triumph of the Whigs in 1696 was shortlived. Shrewsbury

¹William Bromley, Andrew Archer, Lord Digby, and Francis Greville: Warwickshire Quarter Sessions Records, 1690-96, pp.xv-xvi.

²Luttrell, Brief Relation, iv, 545; Vernon Correspondence, ii, 337-8; Brit.Mus., Add.MSS. 40774, f.137: Vernon to the King, 8 Aug. 1699.

retired following disclosures about his Jacobite proclivities, and the Junto lost a valued link with the King. Sunderland opposed the attainder of the plotter Sir John Fenwick, and adopted 'country' attitudes on, for instance, the Parliamentary power of nomination to the Council of Trade. He too thus became increasingly estranged from the Junto. Consequently the Junto became isolated in office. The King relied on Portland as the peace negotiations developed in 1697. Moreover, the Junto was losing support in Parliament. Montague was still able to pilot the King's financial business through the Commons, but the back benchers grumbled at the burden of the War on the landed interest and at Montague's cultivation of moneyed men who profited from war contracts and invested in the Bank of England but not the Land Bank. After the end of the war in 1697, the independent gentry defeated the ministers on the issue of the standing army in December 1697. The Junto thus lost its ability to do the King's business in the Commons; in William's eyes, this had been its great advantage over other combinations of ministers. William responded by appointing Vernon instead of Wharton to the Secretaryship of State vacated by Trumbull. The Junto was thus on the defensive by the winter of 1697-8, when the operation mounted by the Privy Council to purge the commission of the peace of disaffected magistrates had barely been completed. The ministers' future depended on their ability to dominate the house of Commons elected under the provisions of the Triennial Act in 1698. If they could retain their Parliamentary strength, then the King

could hardly dispense with them.¹ Somers, Lord Chancellor and a peer since 1697, now made an attempt to follow up the regulation of the commission of the peace conducted by the Council after the Assassination plot with another more private remodelling based on Junto interests. This private manipulation of the commission was contemporaneous with the later stages of the wearisome Privy Council operation. From September 1696 to July 1698, commissions leaving justices out were sealed for twenty counties without Privy Council authorisation.² Admittedly, some of these were issued as a matter of routine. That for Staffordshire left out justices who had died.³ The changes in the East Riding had been planned before the Assassination plot.⁴ Sir Edward Phelipps was put out in Somerset following a complaint from the Admiralty.⁵ A Leicestershire justice, Roger Rooe, was put out by Somers on instructions from the Lords Justices during the Association purges for using the emotive word 'sequestrators' to describe the tax commissioners.⁶ Somers and Harley co-operated over the Radnorshire commission in what may have been a routine

¹Kenyon, Sunderland, pp.281-300; Ellis, 'The Whig Junto', pp.323-51.

²Breconshire, Cornwall, Devon, Ely, Essex, Herefordshire, Hertfordshire, Leicestershire, Northumberland, Nottinghamshire, Oxfordshire, Pembrokeshire, Radnorshire, Shropshire, Somerset, Staffordshire, Surrey, all three Ridings of Yorkshire: P.R.O., Index 4215, pp.358ff.

³Ibid., p.384.

⁴Hist.MSS.Comm., Downshire MSS., i, Part II, 620-1.

⁵Som.R.O., DD/SF 1747: Paper headed 'In the County of Somerset'.

⁶Cal.S.P.Dom., 1697, p.170; Brit.Mus., Add.MSS.40777, fos.182-3: Vernon to Somers, 27 May 1697; P.R.O., Index 4215, p.369; Leics.R.O., QS 1/8: 1 June 1697. The omission of Rooe was the only change made in Leicestershire between 1694 and 1700.

revision. At least two of those put out were dead, and it seems that the county itself was anxious to have more justices appointed for administrative reasons.¹ But some of Somers' changes were of significance. He was not afraid to leave out powerful figures like Francis Molyneux, a member of the wealthy Tevershall family, with several others, in Nottinghamshire.² Somers' colleague Wharton replaced the earl of Abingdon as lord-lieutenant and custos of Oxfordshire in May 1697. He secured the dismissal of four gentlemen who had signed the Association only after the passage of the Act for the Security of the Crown, but who had survived the Council's investigations. Sir Edmund Warcup was also put out with another elderly gentleman who never acted. In the course of 1697, more than twenty new names were added to the Oxfordshire commission.³

In carrying out this regulation - that is, the regulation not authorised by the Privy Council - Somers was faced with two serious difficulties. In the first place, the King was as hostile as ever to any attempt by his ministers to win party advantage through the exercise of the power of their offices; for instance, he expressly desired that the militia should not be altered before the elections.⁴ Even so, Somers

¹P.R.O., Index 4215, p.358; Brit.Mus., Loan 29/188, f.141: Robert Harley to Sir Edward Harley, 15 Sept. 1696; *ibid.*, fos.148-51: Presentment of Grand Jury of Radnorshire, 21 Sept. 1696, enclosed in a letter to Robert Harley, 2 Oct. 1696.

²P.R.O., Index 4215, p.363.

³*Ibid.*, pp.368, 376; Bodl.MS.Carte 79, fos.702, 706: lists of justices put in and out of the Oxfordshire commission since 1693, annotated by Wharton, n.d. [c. 4 Mar. 1700]; Luttrell, *Brief Relation*, iv, 298.

⁴Hist.MSS.Comm., Twelfth Report, Appendix V: *Rutland MSS.*, ii, 163.

issued more commissions of the peace in the two months, June and July, before the elections of July and August 1698 than for any two consecutive months since he had become Lord Keeper.¹ Admittedly, with the single exception of Pembrokeshire, these commissions seem to have put gentlemen in rather than to have left them out, and it was normal for large numbers of commissions to be issued in June and July anyway in readiness for the assizes. It seems a fair conclusion that Somers was anxious to use the resources of his patronage as Chancellor to strengthen the Junto's hand at the elections, but that he was restrained from comprehensive and vigorous action as the election drew near by the will of the King, implied if not explicit.

The second handicap under which Somers was labouring was a partial breakdown in the machinery by which commissions of the peace were issued under the great seal. In September 1696, Somers had complained that the commissions of the peace were delayed because the counties scrupled the payment of the necessary fees to the Clerk of the Crown. The Lords Justices had then ordered that the Clerk of the Crown should be compensated from the Hanaper, but in June 1698 the Clerk of the Crown and the Secretary for Commissions were again petitioning that the fees customarily received at the Crown Office had not been paid.² Two years

¹P.R.O., Index 4215, pp.390-4.

²Brit.Mus., Add.MSS. 40777, f.139: Vernon to Somers, 18 Sept. 1696; Cal.S.P.Dom., 1696, p.392; Cal.S.P.Dom., 1698, p.285.

later, after Somers had been dismissed, the Clerk of the Crown claimed that his arrears of fees for putting 454 names in the English and Welsh commissions of the peace between 1694 and 1698, when the King's service had required exceptional haste and speed, amounted to over £800. He was allowed half of this by the Treasury.¹ However, this was in 1700; in 1698 the Clerk of the Crown was disconsolate at his losses, incurred because of his zeal in the King's service; and he was presumably grudging in his co-operation with Somers in the speedy issue of further commissions.

The remodelling of the commission of the peace since the Assassination plot, both officially by the Privy Council and privately by Somers and the Junto leaders, produced some effect on the elections of July and August 1698, but it was hardly decisive one way or the other. Of the twenty-three M.P.'s who had been put out of the commission for not subscribing the Association, fifteen were returned in 1698 for the same constituency. Two more were elected elsewhere: Jack Howe's reputation in Gloucestershire was so little affected by his omission that he was returned as knight of the shire, while Sir Christopher Musgrave came in for Oxford University. Two justices put out in the period after the Association, who had not then been M.P.'s, were returned in 1698 for their counties. These were Sir John Packington in Worcestershire, put out by

¹P.R.O., S.P.44/100, pp.443-5: Jersey to the Treasury, 17 June 1700, enclosing petition of Thomas Chute, the Clerk of the Crown; Cal.Treas.Books, xv, 107, 387, 421.

the Privy Council, and Sir Edward Phelipps in Somerset, put out by Somers at the request of the Admiralty. It is tempting to think that at least part of the reason for their success was that they were able to claim that they were the victims of court hostility. Against this must be set the cases of at least four, and perhaps more, M.P.'s who had been put out of the commission of the peace in 1696 and 1697, and who were not re-elected in 1698.¹ It is arguable that omission from the magistracy had blighted the chances of some M.P.'s.

However, it is more likely, though difficult to prove, that Somers' supervision of persons to be put into the commission since 1694 bore more fruit than his endeavours to put persons out. The commission of the peace had been used as a means of binding together the families disposed to support the Whigs. The inclusion in 1698 of Sir Thomas Alston and Sir John Phillips for Pembrokeshire, shortly before their respective elections for Bedford and Pembroke boroughs, may have been calculated either to assist their candidature or to gratify them in the hope of winning supporters in the event of their success.² But it is noticeable that in, for instance, Oxfordshire, where the bench had been regulated by Wharton in September 1697, only three new members were elected in 1698, of which only one, James Isaacson, was thought to be a supporter

¹H. Horwitz, 'Parties, Connection, and Parliamentary Politics, 1689-1714; Review and Revision', Journal of British Studies, vi (1966-7), 68-9. These were William Trye, Richard Howe, Gilbert Dolben, and Sir Thomas Dykes.

²P.R.O., Index 4215, pp.389, 392.

of the court, and he was expelled the House shortly after the election anyway.¹ Also, the use of the commission of the peace as an instrument of patronage was not always successful. Eleven days before the election of Sir Brian Stapylton for Boroughbridge in Yorkshire, Somers signed a fiat to add him to the West Riding commission; the commission was sealed four days after the election; but Sir Brian was, and remained, an opponent of the Whigs.² The limitations of the commission of the peace as an aid to electoral and Parliamentary management is further illustrated by the fact that of the 92 county members returned in 1698, 58 - nearly two-thirds - were not expected to support the court, while the counties that returned at any rate one knight of the shire thought to be a potential supporter of the court do not correspond significantly to those counties in which the bench had been purged or otherwise remodelled.³ It is clear that other influences on county elections were more important.

Somers thought that the election had been unfortunately timed and mismanaged, and he viewed the future of the Junto ministry with foreboding.⁴ There were several reasons for the Junto's lack of success at the polls. Taxes remained heavy in spite of the peace; a pamphlet

¹Horwitz, op.cit., p.65.

²P.R.O., C.234/44, West Riding: 15 July 1698; Index 4215, p.393.

³Horwitz, op.cit., pp.62-7.

⁴Miscellaneous State Papers, 1501-1726, ed. Philip Yorke (London, 1778), ii, 435-6.

controversy on the issue of the standing army highlighted the remodelling of local government by advancing arguments for and against an efficient militia; William was not supporting his ministers and the exercise of patronage was restrained. The result was a house of Commons not susceptible to Junto control, in which the ministers found it impossible to guarantee that the king's business would be done. The court was defeated in a series of votes on the disbanding of the army. William spoke bitterly of abdication during the 1698-9 session, and turned from the Junto Whigs to the Dutchmen Portland and Albemarle, leaving Somers with the impression that he would accept a mixed or even Tory ministry if this would be effective in the Commons.¹ Deserted by the King, and subject to attacks in the Commons, the Junto ministers lost their nerve and resigned one by one. By the autumn of 1699, Somers was the only one left. His colleagues in the great offices of State were inoffensive courtiers who performed routine duties without arousing the wrath of the Commons.² There was no real ministry. The French envoy thought that domestic government had broken down altogether, and his view was echoed by the Secretary of State, James Vernon, himself.³

¹Shrewsbury Correspondence, pp.559-61.

²Ellis, 'The Whig Junto', pp.381-409.

³Letters of William III and Louis XIV and of their Ministers, ed. P. Grimblot (London, 1848), ii, 316, 317; duke of Manchester, Court and Society from Elizabeth to Anne (London, 1864), ii, 49-50.

In this situation, the Whigs could only hope to restore their fortunes with the King by re-establishing their power in the Commons. Chancery patronage remained a potential trump card as long as Somers kept the great seal. It is clear that Somers was active in issuing commissions of the peace. Fifty-nine were sealed in the course of 1699, more than in any one year since 1692. Somers was principally concerned to put gentlemen in. Substantial numbers were added for at least eight counties, including Wharton's county of Buckinghamshire. Elsewhere, many of the commissions seem to have been for the routine addition of one or two names.¹ The allegiance of local placemen and committed or potential Whig supporters was consolidated, either by putting them in for the first time, or by including them in the commission of the peace for counties other than those in which their main influence lay.² A very few persons who had been dismissed for misdemeanour or alleged disaffection before 1698 were restored where there seemed to be a possibility of gaining political advantage. The most interesting case is that of George Vernon, put out

¹The docquet book entries at this time generally indicate the number of gentlemen added and left out in each commission, a temporary improvement on the practice of the early 1690's. This gives an impression of the scale, if not of the specific characters of the changes. The 59 commissions were not evenly spread; 18 counties did not receive a commission at all in 1699. P.R.O., Index 4215, pp.401ff.

²Examples of such inclusions are: Lord William Paulet for the three divisions of Lincolnshire, James Isaacson for Essex (after his expulsion from the Commons), and Thomas Mansell for Breconshire shortly before he fought a successful bye-election in Glamorgan; and, at a lower level, the receiver of taxes in Berkshire for Hampshire.

in 1695 after quarrelling with the duke of Devonshire over their respective rights in Needwood forest. He was restored to the Derbyshire commission of the peace after his election to the 1698 Parliament as M.P. for Derby borough, as a reward for his profession of good intentions. He voted with the Whig ministry in a division on the bill for disbanding the army in 1699, and was, shortly afterwards, restored in Staffordshire also.¹

The number of justices who were restored after having been put out during the Association regulation was very small indeed, however.² Somers did not put justices out on a large scale, as his hands were tied by political expediency. The most celebrated case of omission in 1699 was that of Sir Harry Dutton Colt for Middlesex in July, but Somers was not really responsible for this. Colt was a 'busy justice' who had embarrassed the Whigs in 1696 by agitating for a witch-hunt among Jacobite justices far beyond what the ministers thought reasonable. He opposed Montague and Vernon in the Westminster election of 1698 with extraordinary factiousness, and he was put out by the King's order at the request of the Commons.³ Otherwise, those put out were either dead, or persons guilty of misdemeanour,

¹ Brit.Mus., Add.MSS.40771, f.323: James Vernon to George Vernon, 13 Aug. 1698; P.R.O., Index 4215, pp.394, 404; Browning, Danby, iii, 217.

² There are no certain cases in 1699. Cyprian Thornton had been restored for Kesteven in 1697: P.R.O., Index 4215, p.372.

³ Vernon Correspondence, i, 268-70, ii, 135-7, 139-40; N.U.L., PwA 1468A: Vernon to Portland, 3 Sept. 1697; Cal.S.P.Dom., 1698, pp.430, 434; P.R.O., Index 4215, p.401; C.J., xii, 365-7; Luttrell, Brief Relation, iv, 465, where his dismissal is attributed, rather oddly, to his hindering the quartering of soldiers in inns.

like Thomas Smith, the clerk of the cheque to the messengers of the Chamber, dismissed from that office for fraud in February 1699 and put out of the Middlesex commission of the peace in the same month.¹

Somers, isolated from his friends, was the subject of heavy attack in the Commons in 1699, and his appointments to the county commissions of the peace were used as one of the grounds for criticism. Admittedly, it was not the main accusation. The commission to Kidd, the pirate, and Somers' part in passing grants of Irish land to royal favourites, were the main targets.² But manipulation of the commissions of the peace, in a spirit of party and also, allegedly, with a view to favouring dissenters, was a useful secondary issue which appealed strongly to the country gentry who made up a majority of the opposition.³ The squires' discontent in the matter had been apparent as early as 1696, when Sir Edward Seymour had objected to the omission of members of the house of Commons from the commission of the peace in their counties.⁴ By 1699 the time was ripe for Seymour's grievance to be examined at length. At the beginning of the 1699-1700 sessions, a committee to

¹P.R.O., Index 4215, p.403; Cal.Treas.Books, xiv, 40, 58, 275.

²Clayton Roberts, The Growth of Responsible Government in Stuart England (Cambridge, 1966), pp.292-4.

³J. Oldmixon, History of England during the Reigns of King William and Queen Mary, Queen Anne, King George I.... (London, 1735), pp.192-3.

⁴Vernon Correspondence, i, 34-5.

examine the commissions of the peace and the lieutenancy as they then stood, with power to examine also the lists of those added and left out over the past seven years, was appointed; after the inclusion of all the knights of the shires a week later, this committee contained at least eight, and possibly more, gentlemen who had themselves been dismissed from the commission of the peace during this period.¹ The committee reported on 4 March 1700, and the lists were ordered to lie upon the table. After taking three weeks to ponder them, the members produced a motion for an address to the King that it would be for the good of the nation that 'Gentlemen of Quality and good Estates' be put in, and restored to, the commissions of the peace and lieutenancy, and that 'Men of small Estates' be neither continued in, nor put in.² The country party had won a clear victory. It was implied that Somers had tampered with the magistracy to deprive honest gentlemen of the local powers to which their status, property, and wealth entitled them. The Commons thus echoed the Lords' criticism of Lord Chancellor Nottingham nearly twenty years before, but William did not support Somers as Charles had supported Nottingham. He returned the conciliatory answer 'I am of

¹C.J., xiii, 8, 39. The members named in this committee who had been dismissed from the bench were Sir Christopher Musgrave, Jack Howe, Edward Kynaston, Sir Edward Phelipps, Sir John Packington, Sir Richard Middleton, Sir John Conway, and Francis Courtenay.

²C.J., xiii, 264, 301-2; D. Rubini, Court and Country, 1688-1702 (London, 1967), p.200, quoting Shrewsbury MSS. at Boughton House.

the Opinion that Men of the best Quality and Estates are most proper to be intrusted in the Commission of the Peace and Lieutenancy; and Directions shall be given accordingly'.¹ It was rumoured that several justices had been removed only a fortnight after the King's answer to the Commons, while Somers was still in office,² but this is not borne out by the facts. Twelve commissions of the peace were issued for ten counties between the first appointment of the Commons' committee and Somers' fall in April 1700, and these added a total of thirty and left out two.³

Somers had a good case against his critics. The accusation that the persons put in by Somers were men of low calibre would have been difficult to prove. Moreover, in leaving justices out of commission after April 1696, Somers was arguably following the principle laid down in the Act for the Security of the Crown, that those who did not sign the Association should not hold office. The real significance of the Commons' address lies in its Parliamentary context, as part of the country party's attack on the last Junto statesman still in office. Somers was the last representative of the ministry of ambitious party men, of high taxation,

¹C.J., xiii, 308.

²Luttrell, Brief Relation, iv, 634.

³The flats for these commissions survive. The highest number of justices put in was six in the West Riding. Carmarthen and Glamorgan each received two commissions. The only justices put out were Sir Nicholas Toke in Kent and Thomas Wrentmore in Somerset. P.R.O., Index 4215, pp.419-20; Index 4216, pp.1-3; C.234/7, /12, /18, /22, /33, /40, /44, /81.

Dutch finance, continental war, and a standing army. The Irish land grants, ~~Midd~~, Somers' own fruits of office, the commission of the peace - all were means to an end, that end being the overthrow of the Chancellor. Somers met the attacks bravely. His supporters in the Commons' committee kept him informed of the tactics planned.¹ He was not going to resign, and the defeat of a motion for his permanent removal from the ministry seemed to vindicate his courage in resisting attack. But this success was illusory. Sunderland was arguing that the King must join hands with the Tories. Although there was no obvious Tory candidate for the great seal, the King became convinced that he could not persevere with a minister as unpopular in the Commons as Somers was. Somers, in Whig eyes a martyr to a conspiracy of Sunderland and a Tory clique, was dismissed on 27 April 1700.²

Somers had been a leading member of an organised and disciplined party which dominated the King's ministry. Other prominent members of his party took a strong interest in local affairs with a view to influencing elections. The King was absent from the country for long periods, and in any case he knew little of provincial England. Yet Somers' achievements

¹Vernon Correspondence, ii, 370.

²Rubini, Court and Country, pp.201-3; Clayton Roberts, Growth of Responsible Government, p.295; Feiling, History of the Tory Party, 1640-1714, pp.336-40; Kenyon, Sunderland, pp.314-6; P.R.O., Index 4216, p.3.

were, perhaps, rather limited where the commission of the peace was concerned. The men who were put in were mostly those who could be relied upon to maintain the Revolution Settlement in their counties. Some counties were purged of opponents of the ministry. But Somers' handling of the commission in the years 1693-5 seems, as far as can be judged, to have depended on local recommendation rather than on the implementation of a central policy. The result was that while some counties like Suffolk were vigorously remodelled, others, perhaps more than half the total number, were left alone. The opportunity to go further, created in 1696 by the Assassination plot, was only partially taken. The initiative was taken out of Somers' hands, and the Privy Council performed a laboured and inefficient purge of justices whose enthusiasm for the Revolution was lukewarm. In a few counties, the energy of magnates sympathetic to the Junto enabled a more thorough regulation to take place in 1697 and early 1698, but the heavy Parliamentary pressure against the ministers from the election of 1698 onwards put a stop to such remodelling, and the last eighteen months of Somers' Chancellorship saw little change in the commissions of the peace.

There were several reasons for this curiously unimpressive record. The legacy of the Commissioners of the Great Seal and the period of a mixed ministry was a set of county commissions differing in character according to the political complexion of the lords-lieutenant and the custodes rotulorum. Political and administrative expediency dictated the

nature of the changes that could be made thereafter - the Junto lords could only really act decisively in areas which they either dominated or hoped to dominate. In some of the more remote counties it was not always feasible to dismiss justices willing to act. The Secretaries of State had been active in collecting information in 1680 and 1687, but in the 1690's they were of little help to Somers. A final, and most important factor was the restraining influence of the King, who distrusted party distinctions in the abstract and the ambitions of the Junto lords in particular. He wanted to be kept informed of projected large-scale purges; it was probably his wish that the Association regulation should be conducted by the Council not the ministers; he was reluctant to allow his ministers, in whom he was losing confidence, to manipulate local patronage before the 1698 election. In 1680 and again in 1687, the Crown's weight had been firmly behind the efforts of successive Chancellors to regulate the county bench; in the 1690's this was not the case, and the Whigs were never able to set in motion the really systematic, comprehensive revision of local office that probably they would have desired.

5. The Commission of the Peace and Party Conflict,
1700-05.

After Somers had been dismissed in April 1700, the King believed that a mixed ministry of moderate Tories, country leaders, and Whigs might yet be practicable.¹ Harley held out against a 'patched' ministry, Shrewsbury pleaded ill-health, and the scheme fell to the ground. An important secondary reason for its failure was the difficulty of finding a successor to Somers who would fit into such a ministry. Lord Chief Justice Holt was approached, but he refused on the grounds that he was not familiar with the law of equity. The Attorney General, Sir Thomas Trevor, declined because of ill-health. The Junto pressed the claim of Sir John Powell, a judge in the Common Pleas. The earl of Nottingham was rumoured to be a serious candidate.² After three weeks of negotiation, during which Chancery business was executed by the three senior common law judges and no commissions of the peace at all were sealed, the King fell back on a sergeant-at-law, Sir Nathan Wright, who received the great seal on 21 May 1700. Wright is generally thought to have been an obscure figure, a High Church Tory

¹Kenyon, Sunderland, pp.316-7.

²Luttrell, Brief Relation, iv, 639; Brit.Mus., Add.MSS. 34730, f.227: Richard Pusey to [John Marriot], 30 April 1700; N.U.L. PwA 833: Lonsdale to Portland, 1 May 1700; Brit.Mus., Add.MSS. 30000 D, fos.164, 174: Bonet's despatches, 3/14 May 1700, 14/25 May 1700; Leics.R.O., Finch MSS., Box vi, Bundle 22: Edward Southwell to Nottingham, 11 May 1700; ibid., unsigned memorandum dated 14 May 1700.

forced on the King through inability to find anyone else.¹ His career at the bar had, in fact, been moderately distinguished, and in early life he was, if anything, a Whig in politics. He had been Recorder of Leicester since 1680, having been put out in 1684 and restored in 1688; and he was knighted in 1697 for his arguments in support of the attainder of Sir John Fenwick, which apparently raised his reputation considerably. When appointed Lord Keeper he was still thought of as a Whig, if only by the possibly ill-informed Prussian ambassador. His reputation as a judge is low, but it is hard to say why; his judgments were respected, and although his conduct of business was slow he was allowed to have been prudent and fair.² He suffered from almost complete lack of personality - the single recorded example of his judicial wit is colourless in the extreme - and his political influence is thought to have been small.³

A regulation of the county commissions of the peace had been planned and half completed when Wright was sworn Lord Keeper. This regulation was carried on by the Privy Council in response to the King's

¹ See, for instance, Feiling, History of the Tory Party, 1640-1714, p.340; Clayton Roberts, Growth of Responsible Government, p.296.

² Campbell, Lives of the Chancellors, iv, 242-5; Foss, Judges of England, vii, 408-10; Burnet, History, iv, 446; v, 224, and note by Onslow; Brit.Mus., Add.MSS. 30000D, f.179: Bonet's despatch, 21 May/1 June 1700; R. W. Greaves, 'The Earl of Huntingdon and the Leicester Charter of 1684', Hunt. Lib.Quart., xv (1952), 389-90.

³ Holmes, British Politics in the Age of Anne, p.370, where he is described as a "passenger" in the cabinet. For his one, incomprehensible, joke, see Campbell, op.cit., iv, 254.

answer to the Commons' address criticising Somers' appointments. The matter had thereafter been dropped in the Commons, but the King felt obliged to honour his promise to order an investigation of the commission of the peace.¹ As in 1696, he felt that the proper place for this to be done was the Council, and Somers was ordered to supply lists of justices for its inspection shortly before his dismissal.² On the 25th April the whole Privy Council was constituted a committee to investigate the lists of justices. In effect this entrusted the regulation to the great officers of state and a handful of other active members, meeting at Whitehall rather than at Hampton Court or Kensington. The committee reported on the 29th that all persons put out by order of the Council since 30 April 1696 should be restored, if they had in the interval taken the oaths and signed the Association. The committee further recommended that lists of justices in commission for the appropriate counties, and lists of justices put out since 1696, be sent to the lords-lieutenant, the custodes, and the assize judges, for their comments, and that they be invited to make suggestions as to new names to be put in. Three days later this was done.³ The returns came in during May. The Lords of

¹ Brit. Mus., Add.MSS. 30000D f.116: Bonet's despatch, 2/13 April 1700. The commission of the peace was not specifically mentioned among the articles to Somers' impeachment the following year.

² Vernon Correspondence, iii, 19.

³ P.R.O., P.C.2/78, pp.13, 16, 17-19. The active committee consisted of: the archbishop of Canterbury; Pembroke (Lord President); Lonsdale (Lord Privy Seal); Devonshire (Lord Steward); Bridgewater; Marlborough; and James Vernon (Secretary of State).

the Treasury and those custodes and lords-lieutenant who were in London were called in to advise.¹ The changes to be made had been decided by the end of June, and were entered in the Privy Council register.²

Wright was entrusted with an investigation into cases of fathers and sons being named in the same commission, but otherwise he had nothing to do but seal the new commissions, which he did in July and August 1700.³ As in 1696, there was a simultaneous examination of the militia.

Compared to the regulation of 1696, this was a smooth and speedy operation. There were several reasons for this. The regulation was not linked, as that of 1696 had been, to a test involving complicated research by unenthusiastic local magnates. The Council eased the administrative problem in 1700 by sending lists of justices to the custodes. This was not difficult, as lists had already been laid before the Council in March, and only needed to be recopied by the Council's clerks. The Commons' address and the King's answer had made the composition of the county benches an issue of public interest, and the custodes were receptive to the idea of changes. The judges showed themselves efficient agents of the government on this occasion; even

¹P.R.O., P.C.2/78, p.32; Luttrell, Brief Relation, 1v, 655, 659.

²P.R.O., P.C.2/78, pp.58, 63-9.

³P.R.O., Index 4216, pp.8-10. A new commission was sealed for every English and Welsh county except two: for some unaccountable reason, Shropshire, where changes had been ordered, was overlooked, receiving its next commission only in July 1701; and no change was thought to be necessary in Carmarthenshire.

before the regulation had begun, Lord Chief Baron Ward reported from the Western Circuit on the inadequacy of the Cornwall bench, where only twenty gentlemen condescended to act.¹ Finally, the regulation was not carried on by the whole Council in the ordinary course of its meetings, as in 1696, but by an active committee.

There is some evidence that the Council's regulation in 1700 was executed in a mechanical way. It authorised the restoration of all the justices put out for Cambridgeshire by its own order recorded in the register under the date 15 July 1696. The order for their restoration in 1700 follows that for their omission exactly - the names are in the same sequence - except for one clerical error, corrected three weeks later. It seems plausible that the clerk simply copied out the list from the earlier register. The fact that Cambridgeshire had not received a commission since before the original order of 1696, was ignored. The justices had been in commission all the time.² Another example concerns the three divisions of Lincolnshire. In 1696 five justices had been left out for 'Lincolnshire'. In 1700 the Council ordered that three of them be restored to the commission 'for the division in which they formerly served'. The task of discovering precisely where these gentlemen were to be justices was left to the Crown Office. One of the three had, in

¹P.R.O., Privy Council Miscellaneous Papers, P.C.1/1/50: Ward's account from Cornwall, 18 April 1700.

²P.R.O., P.C.2/76, p.470; P.C. 2/78, pp.63, 71.

fact, been restored for Kesteven in 1697.¹ It seems, therefore, that on this occasion the Council sacrificed precision to speed; the exact reverse of what had happened in 1696.

The regulation reflected a conscious decision to reverse the changes made by the Junto Whigs in their heyday. Nevertheless, it was essentially non-party in character. The great officers of state who composed the active committee conceived their task to be to settle the commission of the peace in response to complaints from the King's high court of Parliament. The proper persons to advise on the matter were the custodes and the judges, and their wishes were scrupulously observed. The custodes had not changed much since 1696.² Consequently the Council accepted, apparently with impartiality, the reports of Junto politicians like Wharton, custos of Buckinghamshire and Oxfordshire, the earl of Oxford, custos of Cambridgeshire, and the duke of Bolton, custos of Dorset and Hampshire, as well as those of Tories like the duke of Norfolk, custos of Berkshire and Norfolk, and Viscount Weymouth, custos of Wiltshire. All Wharton's recommendations for his two counties were accepted. The assize judge made nine further recommendations for

¹P.R.O., S.C.2/78, p.65; Index 4215, p.372.

²The duke of Bolton had replaced the earl of Bristol in Dorset; the duke of Newcastle and the earl of Burlington had replaced the duke of Leeds, formerly earl of Danby in Charles II's reign, in the East and West Ridings respectively (Leeds having been 'dismissed' on a mistaken rumour that he was dead, for which see Browning, *Danby*, i, 548). Sir Robert Cotton had replaced Sir Richard Middleton in Denbighshire, and the custos-ships of Lincolnshire and Montgomeryshire were vacant.

Oxfordshire, of which Wharton agreed to two.¹ In some counties, the non-party character of the ministry resulted in a similarly non-party approach. Thus, for example, the Whig courtier Coningsby left the list he had been sent as custos of Herefordshire with the country party leader Harley for his suggestions.²

The operation was manifestly a 'putting-in' rather than a 'putting-out' exercise. The Council ordered the inclusion of a gross total of 919 new justices, and the omission of 73.³ Thirty or more justices were added for six counties;⁴ but ten or more were left out for only three counties.⁵ Inevitably, some of the new men were either members of families which, a generation before, would not have aspired to a place in the commission, or members of cadet branches of established families. Some justices had, in the years since 1689, neglected their duties, because of political discontent, unwillingness to associate with socially inferior gentlemen, or laziness. It was doubtless hoped that the new men would supply the want of active justices; this, for instance, was explicitly the principle behind the duke of Newcastle's recommendations for Nottinghamshire.⁶ Also, members of the Parliament

¹ Bodl.MS. Carte 79, fos. 694, 696, 698-9; P.R.O., P.C.2/78, pp.63, 66.

² Hist.MSS.Comm., Fourteenth Report, Appendix II, Portland MSS., iii, 619.

³ These figures are based on the entries in the Council register. No adjustment is made to take account of anomalous or ambiguous orders like those relating to Cambridgeshire and Lincolnshire.

⁴ Gloucestershire (44), Suffolk (42), Leicestershire (41), Devon (34), Cornwall (33), Oxfordshire (33).

⁵ Suffolk (14), Leicestershire (11), Kent (10).

⁶ Brit.Mus., Loan 29/237, f.7: Newcastle to Privy Council (draft), 5 June 1700

elected in 1698 who were not already justices were added, apparently as a conscious policy. Nearly one-fifth of the total number of inclusions - 176 out of 919 - were M.P.'s. Admittedly, it had in the past been a polite convention, irregularly observed, that newly elected M.P.'s should be included if they were not already justices. However, about 60 per cent of the M.P.'s added in 1700 had been members at least since the 1695 elections. In Hampshire, for instance, eight of the ten members to be put in had been members since before 1698. Not surprisingly, a number of the M.P.'s now put in were Tories and country party supporters. Among them were Sir Edward Seymour, put in for Devon and Wiltshire; Sir Christopher Musgrave, put in for Cumberland, Westmorland, and Durham; Jack Howe, put in for Gloucestershire; and Edward Harley, Robert Harley's younger brother, put in for Herefordshire. However, the non-party character of the 'putting-in' operation is illustrated by the appearance of a number of committed Whig Junto supporters; for example, Henry Blaake for Wiltshire, Christopher Montague, the Junto leader's brother, for Northamptonshire, and Lord William Paulet for Hampshire. In view of the complaints about non-active justices, it is perhaps surprising that the Council should have chosen to fill up the commissions with justices who could not be expected to be consistently active. It was, however, characteristic of the whole tone of the operation that the Council should have felt it to be desirable to make comprehensive, irrespective of politics, the courtesy of making members of Parliament justices of the peace.

Of the justices put out of the commission between 1696 and 1698 because of non-subscription to the Association, either by the Council or by Somers acting independently of the Council, at least 120, about two-thirds of the total, were restored.¹ In addition, several of those put out by Somers on his own initiative before 1696 were put back.² This high proportion of restorations suggests that the Council was taking seriously the advice of the committee, to put back those dismissed on account of non-subscription to the Association. Some of those not so restored, had, of course, died or sold their estates in the county; it is possible that, in some counties, Whig custodes succeeded in preventing the return of gentlemen who had not died, but this was exceptional.³ It would be easy to see, in this restoration of justices left out by Somers, evidence of political motivation, but this would be a misinterpretation. The gentlemen involved were of high social status; they were by tradition entitled to a place on the bench. The danger of a Stuart restoration was temporarily remote; Louis XIV had tacitly recognised William III's claim to the English throne at Ryswick, and the dominant issue in foreign politics was the Spanish, not

¹These figures cannot be precise because of uncertainty as to the exact numbers put out by Somers independently of the Council in 1696-7.

²For instance, six of the gentlemen put out in Suffolk in 1694 were restored in 1700.

³In Devon, 10 of the 17 justices put out in the purge of July 1696 were not restored in June 1700. The earl of Stamford was the custos.

the English, succession. Consequently the proscribing spirit of the Association movement was dormant, and there was no reason why those who tolerated William as de facto king should not serve him in the local magistracy.

Little need be said about the 72 justices dismissed by the Council in 1700. Some of them had died, and the Council was carrying out the routine duties of the Chancellor's office during the period when the great seal was in commission.¹ Otherwise the Council seems to have been acting in response to the Commons' complaint that 'men of small estates' had been put into the commissions. Again, the advice of the custodes was scrupulously observed. Wharton, perhaps out of loyalty to his Junto colleague Somers, reported that all the justices in Buckinghamshire and Oxfordshire were fit to be continued, and all of them were.² In Somerset, the report on justices put in by Somers was, on the whole, favourable, with three exceptions: Henry Reynon, originally put in on the advice of the duke of Ormond, was now 'a beggar'; George Fenn, also put in by the duke, had married Viscount Fitzharding's widow, but apparently had no other claim to be a justice of the peace; John Dutton Colt had been in Parliament when first put in, and was the

¹For instance, two of the three put out in Berkshire, and seven of the eleven in Leicestershire, were dead.

²Bodl.MS. Carte 79, fos.698-9.

Collector of Customs at Bristol, but he had not been elected to the 1698 Parliament. These three were put out, the rest left in.¹

During July a number of adjustments were made in several counties. Misnomers and Crown Office errors were corrected. Some names ordered to be added in June were now left out again.² Late reports from negligent lords-lieutenant like Shrewsbury, who was told by Vernon that the Council had proceeded to regulate the commissions for Herefordshire and Worcestershire without his advice, were dealt with.³ These adjustments were without much political significance. However, the settlement of the commission of the peace on a 'broad bottom' had become out of date in the context of politics at the centre almost before it had been achieved. During the summer it had become plain that Sunderland's scheme to patch up a reconciliation between the court and the Whigs had failed. The death of the duke of Gloucester, Princess Anne's only son, at the end of July, made a strong ministry with reliable Parliamentary support necessary to confirm the Protestant succession. This meant that the King had to trust himself to the Tories, and in particular to Harley. In the course of the autumn the ministry was reconstructed along Tory lines, and Harley persuaded the king to agree to

¹Somerset R.O., DD/SF 1747: Paper headed 'In the county of Somerset'.

²P.R.O., P.C.2/78, pp.71, 74: 18 July 1700, 25 July 1700.

³Vernon Correspondence, iii, 109-110. Shrewsbury was lord-lieutenant but not custos of these counties. One name was added for Herefordshire a fortnight after Vernon's reminder.

a dissolution. The influence of Godolphin and Rochester had revived, even before their appointments as First Lord of the Treasury and lord-lieutenant of Ireland respectively.¹ The new ministers were dissatisfied with the non-party regulation of the commission of the peace by well-meaning courtiers in the spring. Harley belied his avowedly non-party attitude by his assertion to Vernon that the regulation had not gone far enough; while Vernon expressed the view that the Commons would object to the part played by the lords-lieutenant in the regulation - plainly enough hinting at the Junto lords who had kept their local offices.²

The immediate consequence of these developments at the centre was another, small-scale, regulation of the commission of the peace by the Privy Council in September 1700. Though it took place only a few weeks after the last set of changes ordered in Council, it was clearly distinguished from those changes by the fact that it was not described, as they had been, as clarifying the alterations ordered in late June. Ten counties were involved.³ The greatest changes were made in three counties where the custodes were 'inner ring' Junto lords.

¹Feiling, History of the Tory Party, 1640-1714, pp.340-2; Clayton Roberts, Growth of Responsible Government, pp.296-7; Kenyon, Sunderland, pp.318-20; H. Horwitz, Revolution Politics, The Career of Daniel Finch, second Earl of Nottingham, 1647-1730 (Cambridge, 1968), p.160.

²Vernon Correspondence, iii, 91, 110.

³Buckinghamshire, Cambridgeshire, Essex, Norfolk, Oxfordshire, Rutland, Staffordshire, Surrey, Wiltshire, and the West Riding. P.R.O., P.C. 2/78, p.83: 26 Sept. 1700. The commissions were sealed on 29 October 1700: P.R.O., Index 4216, p.12.

Fifteen gentlemen were put in for Oxfordshire, including six recommended by the judge in June, when they had been vetoed by Wharton. Simon Harcourt, Rochester, and Harley took an interest in this commission.¹ Four gentlemen were added for Buckinghamshire, and six for Cambridgeshire. The other changes were measured in ones and twos; only one county justice, Civet Rich in Norfolk, was left out. The Tories could not, as yet, afford to offend potential enemies by a purge on a larger scale. This regulation was probably planned too early to have been consciously designed to assist an election, though it is interesting that Sir Thomas Mackworth was put in for Rutland. He was elected knight of the shire for the first time in that county three months later. However, the intention of the changes was to undermine the strength of the local Whig parties, built up during the years of Junto supremacy, in those counties where the Council had failed to do this decisively in the earlier regulation.

Only one more commission of the peace - an apparently routine one for Westmorland - was issued during the winter of 1700-1. Possibly the Tories would have liked to have done more in the counties to consolidate their position in time for the elections in January 1701; but circumstances were against them. Wright had run into the same

¹Bodl.MS. Carte 79, f.696; Hist.MSS.Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 2.

difficulty with the Crown Office that Somers had done. The Privy Council had ordered that the new justices added in June and July 1700 should not be required to pay fees, in order to induce them to qualify themselves to act. No alternative gratification was provided and the grievance of the Crown Office clerks was renewed.¹ Moreover, the Clerk of the Crown died in early May 1701. Wright secured the appointment of his son George to the place, but there was probably some temporary disorganisation in the Crown Office.² Nonetheless, it was to be expected that the ministers would, sooner or later, endeavour to revise the commissions of the peace in the Tory interest. Such a programme was indirectly foreshadowed during the early months of 1701, by attacks in the Commons on Whig lords-lieutenant for partiality in appointing Whigs to militia offices. The duke of Newcastle asked his brother-in-law Thomas Pelham, M.P. for Lewes, to protect him; he explained that he had excluded Tory gentlemen from the Nottinghamshire militia for justifiable, even creditable motives.³ The Commons' intention, partially successful, was to compel lords-lieutenant to choose deputy-lieutenants from among the Tory gentlemen in the counties.

¹P.R.O., P.C.2/78, p.84; Brit.Mus., Loan 29/29/11: case and annexed petition of Thomas Edwards, no date.

²Luttrell, Brief Relation, v, 45; Cal.S.P.Dom., 1700-02, pp.312-3.

³Brit.Mus., Add.MSS. 33084, f.165: Newcastle to Pelham (draft), 15 Mar. 1701.

At the same time a vigorous remodelling of the Irish commissions of the peace was taking place.¹

A purge of the Whig justices in the English and Welsh counties was, however, delayed until after the prorogation of Parliament on 24 June. Several commissions leaving out justices were sealed during March and April, but the justices involved were for the most part dead.² It is hard to assign a reason for this delay. The King was in England; his well-known dislike of purges may have exercised a restraining influence. The Tory ministers were divided between the 'Church party', led by Rochester, who were opposed to the King's preparations for war, and the moderate men led by Harley, anxious to prove to the King that they could do his business in the Commons by securing the Protestant Succession and suitable supply.³ While Parliament was sitting the overriding need was to placate the Commons, which throughout the sessions was engaged in violent party conflict over foreign policy and the impeachment of the Whig lords. In March and April the Commons considered the lists of justices of the peace as they stood after the Privy Council's operation of 1700, and apparently pronounced themselves satisfied;

¹Cal.S.P.Dom., 1700-02, p.188.

²P.R.O., Index 4216, pp.22-4.

³Clayton Roberts, Growth of Responsible Government, pp.298-9.

at any rate the issue of the composition of the bench was dropped.¹ The country gentlemen took the same view that the non-party ministers of 1700 had taken, that all gentlemen qualified by wealth and status should be in the commission. The more extreme Tories introduced a bill to raise the property qualification of justices of the peace to £500 in land - an indirect way of supporting the impeachment of Somers - and the country gentlemen readily supported it.² They could not, however, have been relied upon to maintain this support if the Tory ministers had proscribed the Whigs in local politics as the Whigs were alleged to have proscribed the Tories. Harley and the moderates, anxious to minimise divisive issues in the Commons, may well have felt that a general purge of the commissions of the peace would have been out of place.

However, the events of the spring and summer made regulation of the bench absolutely necessary if the Tories were to maintain their ministry. At the beginning of 1701, the bench in most counties was constructed on a 'broad bottom'. The gentlemen put in by Somers had not been put out in any numbers except in a handful of counties,

¹C.J., xiii, 377, 378, 384, 390, 489. The liber pacis ordered by the Commons on 5 March 1701 survives at: N.L.W., MS. 17071E.

²C.J., xiii, 516, 523, 627; Clayton Roberts, Growth of Responsible Government, pp.316-7. Such bills had been proposed in the 1698-9 and 1699-1700 sessions, and were to be proposed at regular intervals in Queen Anne's reign.

conspicuously Suffolk, but the Whigs had been joined by new men, chosen for the most part, though this was not a deliberate policy, from among the country gentlemen of Tory sympathies. Therefore, the balance of power within the counties was determined by the degree of activity of the two parties on the bench. In most counties the Whigs seem to have stirred themselves to combat the danger of numerical domination. For a short time the activity of the justices at quarter sessions became a matter of European concern. The Whig grand jury and justices in Kent petitioned the Commons from Easter quarter sessions at Maidstone that the King might be supported by grants of supply to enable him to assist his allies. The Commons treated the petition as a breach of privilege, and recommended that the offending justices be dismissed. Accordingly they were put out in a commission sealed on 31 May.¹ The Whigs recognised the value of such addresses in embarrassing the ministers, and they promoted more petitions from summer quarter sessions in counties where a Whig majority of active justices could still be found, and from summer assizes in counties where a Whig sheriff could pack the grand jury.² Consequently, it became necessary for the ministers to forestall such manoeuvres, either by swamping the 'factious' justices, or

¹C.J., xiii, 518, 538-9, 550; P.R.O., Index 4216, p.25.

²Feiling, History of the Tory Party, 1640-1714, p.351; Rubini, Court and Country, p.219.

by putting them out. Such a regulation could not be conducted by the Council. The King, apart from his general aversion to dismissals, could hardly be expected to have agreed to the disgrace of justices who supported his foreign policy.

Thirty-four commissions of the peace, involving twenty-nine counties, were sealed in June and July 1701. The character of these is not always clear from the docket book,¹ but a comparison between two libri pacis drawn up in March 1701 and April 1702 indicates the extent of the alterations in at least those counties which received commissions only in the summer of 1701 during the intervening period.² It seems clear that a fairly high proportion of these commissions were merely routine. For instance, one dead justice was left out for Herefordshire, and one new name was added; the bishop of Bristol was included for Dorset, but no other changes were made; three were put in for Nottinghamshire, and some dead justices were omitted. However, there were more substantial alterations in a small number of counties, especially in the North of England. These changes had a political content and were apparently conducted in a manner which can almost be described as clandestine by the earl of Rochester before his departure for Ireland, in conjunction with the leading Tory gentlemen in the counties.³ In Warwickshire, six gentlemen

¹P.R.O., Index 4216, pp.25-9.

²N.L.W., MS. 17071E; Brit.Mus., Harl.MSS. 7512.

³Brit.Mus., Add.MSS. 30000E, f. 313: Bonet's despatch, 25 July/5 Aug. 1701.

who were still alive were left out; in Hampshire and Wiltshire, five; in Durham, three. Eleven names were missing from the Norfolk commission sealed in July. Eight had died, but the other three were still alive, and as many as twenty-nine new justices were appointed. Four living justices at least were dismissed in Hertfordshire, and eleven were added. In Westmorland, Rochester and Sir Christopher Musgrave secured the disgrace of Dr. Henry Fleming, Thomas Hebblethwaite, and Thomas Pullin in June, but in July they were mysteriously restored.¹ Sir Christopher, 'out of humour', appealed for assistance to Rochester, who delayed his journey to Ireland to help. Harley thought that Musgrave's wishes in the matter should be gratified to keep his Parliamentary support. The outcome of the affair is obscure. Westmorland's next commission was not sealed until June 1702, yet Fleming and the others had inexplicably disappeared from the list drawn up in April 1702, possibly by some irregular method. Meanwhile, seven new Westmorland justices had been appointed.² The neighbouring county of Cumberland received no less

¹ P.R.O., Index 4216, pp.25, 28.

² Brit.Mus., Add.MSS. 40775, fos.47, 57: Vernon to the King, 1 Aug., 5 Aug. 1701; Loan 29/186, f.81: Musgrave to Harley, 11 Aug. 1701, misplaced among papers dated 1692; Hist.MSS.Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 19; Leics.R.O., Finch MSS., Box vi, Bundle 22: Normanby to Nottingham (in very cryptic terms, but hinting that Rochester and Musgrave had secured the expulsion of the justices against the King's explicit orders), 4 Sept. 1701; Brit.Mus., Harl.MSS. 7512, f.56, where in the Westmorland list the names of Fleming and Hebblethwaite are crossed out.

than three commissions in three weeks in July 1701, although, whatever the hypothetical pattern of inclusion, exclusion, and restoration, the net effect was only to leave out three dead justices and to put in two new names. No living justices were certainly left out in the North Riding, but seven new justices were included. In Middlesex, Sir Joseph Tilly and 'several' others were put out; Luttrell says that 'several' amounted to more than thirty. Tilly was the defendant in an impending forgery trial, but it is improbable that all the others were open to accusations of misdemeanour.¹ It seems that the Tories were engaged in a quite extensive (though far from comprehensive) operation covering, perhaps, between a quarter and a third of the counties, designed principally to add Tory squires to the commission. To a lesser extent, it was also designed to eliminate a very few Whigs. Rochester was not certainly involved in every case, but Wright was evidently a passive agent. One curious feature of the changes was that in many counties, as in Dorset, the bishop of the diocese, who would normally expect to be in commission anyway, was added.

It was clear that, by the autumn, the Tory ministers were on the defensive. European tension during the spring and summer became acute in the autumn after Louis XIV had recognised the Pretender. Sunderland and Somers advised the King to dissolve, arguing persuasively that the

¹ P.R.O., Index 4216, p.27; Luttrell, Brief Relation, v, 73, 104.

Whigs, backed by public opinion, would support him during the inevitable war, that the Tories' promises were not to be trusted, and that the ministers' unpopularity made them useless for the King's service. They also suggested a renewal of the Association, possibly in the form of an oath abjuring the Pretender.¹ The King was convinced, dissolving Parliament in November. The Tory ministers were clearly discredited, though the King preferred not to dismiss them until after Parliament had been elected.

Between Rochester's offensive against Whig justices in July, and the elections of November and December 1701, only four county commissions of the peace were issued. The Tory squire Sir George Darlow was put in with seven others for Wembrookshire: in Anglesey, Carmarthen-shire and Gloucestershire one or two gentlemen were added, but that was all.² There was thus no serious attempt to influence the 1701 election by remodelling the county commissions of the peace. The changes of June and July had been made before the dissolution had been decided upon. Nonetheless, those changes had at least one unexpected result. In Westmorland, Sir Christopher Musgrave lost his seat for the county, partly through the animosity of Thomas Pullin, one of the displaced justices.³

¹ Miscellaneous State Papers, 1501-1726, ii, 443-61; Kenyon, Sunderland, pp.322-4.

² P.R.O., Index 4216, pp.30-1; M.L.W., MS. 17071E; Brit.Mus., Harl.MSS., 7512.

³ Rubini, Court and Country, p.246, quoting a letter from Pullin to Lord Irwin in Leeds Public Library.

Over the rest of the country, the regulation seems to have had little discernible effect. The Whigs did rather better than in the previous election, but apart from the Westmorland case this cannot be proved to have been linked to gentry discontent at unwarrantable omissions from the commission of the peace. Among Tory knights of the shire who might have co-operated with Rochester in remodelling the commissions in their counties, and who lost their seats, were Jack Howe in Gloucestershire, Sir Jacob Astley in Norfolk, and Lord Cheyne in Buckinghamshire; it would be pure conjecture to say that these were comparable cases to that of Sir Christopher Musgrave, but it is at any rate possible that resentment at changes in the commission of the peace was a contributing factor. There are only two cases of a newly elected member having been recently made a justice in the same county as his constituency.¹ On the whole, the safest conclusion is that the composition of the county bench played no decisive part one way or the other in the overall course of the election.

The ministry with which William met has last Parliament was no longer Tory. Godolphin had gone; Rochester was to follow in January. The new ministers were not exclusively Whig, though the Junto had high hopes of infiltrating the ministry when, as they anticipated, the need

¹ Sir Harry Dutton Colt, restored for Middlesex only days before his election for Westminster; and Henry Thynne, elected for Milborne Port after inclusion in the Somerset commission in July. The Middlesex commission was the only one sealed during the election period.

for vigorous prosecution of war discredited the courtiers in office.¹ The Commons proved to be balanced equitably, with the courtiers able to carry on the King's business, though debates on matters other than supply were hotly contested, and majorities on both sides were small.² The new ministry, with its non-party flavour, would not, presumably, have been anxious for any violent changes in the commission of the peace. Moreover, the Tories were shrewd enough to provide for compulsory subscription of the new test for office-holders - the oath of abjuration of the Pretender - to quiet the consciences of justices of the peace and others who would have scrupled voluntary subscription.³ This meant that the Whigs, had they been given the opportunity to enforce abjuration as a political test, would have run into the same difficulties as they had done with the Association in 1696. Thus, after the change of ministers, no very significant alterations were to be expected in the commissions of the peace beyond the routine ones associated with the approach of the Lent assizes. Newly elected M.P.'s were put in irrespective of party. The Junto supporter Richard Hampden, M.P. for Wendover, was put in for Buckinghamshire; at the other end of the spectrum, the Tory Sir Thomas

¹Ellis, 'The Whig Junto', pp.455-6.

²Feiling, History of the Tory Party, 1640-1714, pp.356-8; Clayton Roberts, Growth of Responsible Government, pp.323-5.

³13 & 14 William III c.6; Rubini, Court and Country, pp.255-6; Horwitz, Revolution Politicks, p.164.

Hanmer, elected for Flint borough though he preferred to serve for Thetford, was put in for Flintshire.¹ Otherwise, the changes in the admittedly quite large number of commissions of the peace issued at this time do not seem to have been politically motivated. The only justices known to have been left out were dead. There is little or no evidence that the Whigs had enough weight in the new ministry to make any attempt to begin the reversal of Rochester's remodelling of the commission of the peace in June and July 1701. Some of the counties receiving new commissions were among those for which justices had then been put out, but it is not clear that any of these justices were restored.² It is noticeable that the great majority of the counties that received new commissions had Whig custodes or lords-lieutenant or both, and a feasible hypothesis is that the Whig lords were taking advantage of the decline of Tory influence at the centre to re-assert their control of the localities. In this case, however, the changes might have been expected to have been more spectacular. One might, for instance, ask why the heroes of the Whig opposition to Sir Christopher Musgrave in Westmorland were not restored; why Wharton was able to secure a new commission for

¹P.R.O., Index 4216, pp.38, 39.

²This conclusion is based on a comparison of the admittedly incomplete lists of justices known to have been left out in 1701 with the equally incomplete lists of justices known to have been put in early in 1702, from the docket book and from the liber pacis at Brit.Mus., Harl.MSS. 7512.

Buckinghamshire, but not for Oxfordshire; or why the duke of Bolton did not restore any of the five living justices put out for Hampshire during 1701 in either of the commissions issued in January or March 1702.

The commission of the peace was thus in a state of some confusion. After Somers' dismissal it had been rationalised by the Privy Council on an all-inclusive basis. The Whig magnates who held lord-lieutenancies and custos-ships found their wishes, not over-ruled, but at any rate supplemented. In the summer of 1700 the principle of 'broad-bottom' triumphed in an efficiently executed regulation. Thereafter the commissions for many - but not all - of the counties had been subjected for twenty months to the fluctuations of party warfare. The changes of ministries, at the centre, and the exigencies of two general elections and the division of opinion on the desirability of assisting the King to prepare for war, in the localities, made for changes in the composition of the bench. These changes were not uniform over England and Wales; no valuable geographical pattern emerges. Wales remained relatively untouched after the Privy Council regulation in the summer of 1700; so too did certain English counties, including such widely separated examples as Northumberland, Berkshire, Cheshire, and the three divisions of Lincolnshire. On the other hand, Middlesex received seven commissions in eighteen months, and in fact most English counties experienced some change. Lords-lieutenant and custodes pulled one way, ministers another; leaders of county society like Sir Christopher Musgrave

took a hand, sometimes in conjunction with, sometimes in opposition to, the court. The King himself clung to his broad-bottom ideal. His death on 8 March 1702 stabilised the situation, paradoxically, by creating a state of flux. All commissions were determined, though as usual they were held to be in force until new ones could be issued.¹ Queen Anne had the disposal of lord lieutenancies and custos-ships; in spite of her professed antipathy to party, no-one could doubt at the beginning of her reign that the loaves and fishes of power would be distributed to the 'Church party', in local as well as central politics.² The Whigs resigned themselves to a period in the wilderness. The combination of freshly commissioned lords-lieutenant and custodes, the need for a new commission of the peace in every county, and the lapse of royal reluctance to remove persons from office, gave the Tories an opportunity to establish a more complete dominance of local society than had been possible at any time since the early 1680's.

A reshaping of the government at the centre took place shortly after the Queen's accession. Godolphin and Marlborough, who both had great personal influence with the Queen, and who were supported by those

¹P.R.O., P.C.2/79, p.8: 8 March 1702.

²Hist.MSS.Comm., Various Collections, viii, 86.

who conceived their political role to be faithful service to the Crown, were joined in office by the High Churchmen. Rochester received a new patent as lord-lieutenant of Ireland. Sir Edward Seymour replaced Wharton as Comptroller. Nottingham, who became Secretary of State, held out successfully for the appointment of Sir Charles Hedges to succeed Vernon, with his lingering Junto connection, as Secretary for the northern department.¹ The Queen's Privy Council included the new holders of office, like Seymour and Nottingham, and also a handful of leading Tories without important office, like Abingdon, Weymouth, John Granville, and Jack Howe; Shrewsbury, Portland, Somers, Charles Montague (now Lord Halifax), and Trumbull were dropped.² The abjuration oath did not prove an obstacle to the acceptance by the Churchmen of place and power.³ In the midst of these changes, Wright was continued as Lord Keeper, simply because there was no-one else. The Queen told him, when he surrendered the great seal just after William's death, that it would not have been restored to him if she had known a fitter person in the kingdom - a curiously ungracious tribute.⁴

¹ Feiling, History of the Tory Party, 1640-1714, pp.364-5; R. Walcott, English Politics in the Early Eighteenth Century (Oxford, 1956), pp.96-9; Clayton Roberts, Growth of Responsible Government, p.330; Horwitz, Revolution Politicks, p.166. Minor offices went to the Tories as well: A. Boyer, History of Queen Anne's Reign digested into Annals, Year the First (London, 1703), pp.50-3.

² P.R.O., P.C.2/79, p.i.

³ Horwitz, Revolution Politicks, pp.165-6; G. Holmes and W. A. Speck, The Divided Society: Party Conflict in England (London, 1967), p.101: Weymouth to James Thynne.

⁴ Cambridge University Library, Baker MSS.29, pp.189-90: Account of Lord Keeper Wright, sent by Dr. Thomas Littel to Laurence Echard.

This ministry grew progressively weaker until its downfall in the spring of 1704. Briefly stated, the reason was the lack of any common ground between the Queen's friends - pre-eminently Godolphin and Marlborough, the 'duumvirs' - and the Tory leaders.¹ During the two years from 1702 to 1704, the composition of the commissions of the peace was an issue dividing the two elements in the ministry and contributing to its downfall, as much as the war or religion.² The Tories wanted to drive the Whigs from all offices of trust. Rochester, in particular, was anxious to complete in 1702 the interrupted purge begun in 1701. The Occasional Conformity Bills of these years were intended to give statutory sanction to this policy of proscription. The duumvirs, on the other hand, were anxious to keep the Queen out of the grip of the ruthless men of party, and they deprecated the establishment of a Tory monopoly of place. Godolphin was fighting the same battle against the Tories that he had fought against the Whigs in 1694.³

The Queen reappointed all but a handful of the lords-lieutenant who had served under William, and a Tory was substituted for a Whig in only four counties, in one of which the incumbent lord-lieutenant was on

¹Holmes, British Politics in the Age of Anne, pp.198-9.

²G. M. Trevelyan, England under Queen Anne (new impression, London, 1948), i, 207-8.

³Feiling, History of the Tory Party, 1640-1714, p.367.

his deathbed anyway.¹ A Tory was substituted for a Whig as custos in six counties.² Several Whig magnates thus retained their county offices: for instance, the duke of Bolton in Dorset and Hampshire, the earl of Orford in Cambridgeshire, and Lord Cornwallis in Suffolk. However, it is clear that the surviving Whig lords-lieutenant were subjected to heavy pressure from the ministers in making militia appointments. The earl of Berkeley, lord-lieutenant of Gloucestershire, was told that the approbation of his choices would not be a formality.³ The earl of Carlisle's list for Cumberland was vetted by Nottingham, who took out two names.⁴ When the earl of Rutland protested about some Tory squires recommended to him as deputy-lieutenants for Leicestershire, it was explained to him that the Queen was resolved to be 'Queen of all her Subjects', and that party considerations would not weigh with her. In effect the Queen was recommending deputy-lieutenants to Rutland, rather than the reverse, and Rutland contemplated resignation in protest.⁵ The lists of the deputies appointed by the lord-lieutenants between May

¹ Normanby for Irwin in the North Riding - Irwin died a fortnight after his removal; John Granville for Radnor in Cornwall; Poulet for Stamford in Devon; and Abingdon for Wharton in Oxfordshire.

² Cheyne for Wharton in Buckinghamshire, and Ashburnham for Herbert of Cherbury in Breconshire, in addition to changes corresponding to the changes in the lord-lieutenancies. In addition, Wharton lost the custos-ship of Westmorland and Stamford that of Leicestershire, though their respective replacements (the earls of Carlisle and Rutland) cannot be described as Tories.

³ P.R.O., S.P.44/104, pp.40, 46-7; Nottingham to Berkeley, 4 June, 9 June 1702.

⁴ Ibid., p.124: Nottingham to Carlisle, 3 Oct. 1702.

⁵ Ibid., pp.179-80: Nottingham to [Sir John Leveson Gower], 14 Dec. 1702; Hist.MSS.Comm., Twelfth Report, Appendix V, Rutland MSS., ii, 173.

and December 1702 show how the Whig magnates had been persuaded to appoint men of decidedly Tory complexion. For instance, Berkeley had to accept Jack Howe in Gloucestershire, and the duke of Bolton named two Jacobites, Sir Nathaniel Napier and George Pitt, in Dorset.¹

As with the militia, so with the commissions of the peace. The Queen's professed determination to bury party differences was used by the ministers, where necessary, to put Tories in, and Whigs, who could be represented to the Queen as dissenters, out. The well-documented case of Derbyshire illustrates how the commission of the peace was reconstructed during the summer of 1702. It was not the custos, the Whig duke of Devonshire, who made up the list. The work was done by the Tory knights of the shire in William's last Parliament, Thomas Coke and John Curzon, with a view to establishing a numerical majority to counter the Whig justices, headed by Sir Philip Gell. They added Brook Boothby and John Beresford, and left out two gentlemen called Spateman and Cotchett, notwithstanding a chorus of protests that Mr. Cotchett was an amiable man who 'would not give trouble in elections'; even his replacement, Beresford, spoke up for him. The commission was sealed in July. The duke of Devonshire wrote a bewildered note to the duke of Somerset in August, in which he declared that Wright had ignored him completely in making the

¹P.R.O., S.P.44/170, p.19; S.P.44/171, p.78. For Napier and Pitt, see: duke of Manchester, Court and Society from Elizabeth to Anne, ii, 115, 116.

list of justices. The men put in were Jacobites and men of no estates, with nothing to recommend them but that they were 'violently of a party', while some of the 'usefullest men' had been left out. Earlier, Devonshire had protested to Wright, who had written to Coke to say that he was totally unacquainted with the gentlemen involved. He could not, therefore, explain to Devonshire what was happening, and he hoped that Coke and Curzon, who had advised the changes, would send him a detailed account of the persons put in and left out. The Tory magnate Lord Scarsdale also wrote to Coke, warning him that Devonshire was disgruntled, and advising him to tell Nottingham that Spateman was a constant frequenter of conventicles who had built a meeting house at Alfreton, whereas Beresford was in every way qualified. Nottingham could then pass this information on the Queen or to Wright before Devonshire could represent his grievances to either.¹

What happened in Derbyshire, happened elsewhere. Devonshire decided to let the matter of the Derbyshire commission drop, because, as he told Somerset, 'his' (that is, Wright's) 'practice has been the same in most places'. This is borne out by other evidence. For instance, in Northamptonshire the Tory squire Sir Justinian Isham suggested that

¹Hist.MSS.Comm., Twelfth Report, Appendix III, Cowper MSS., iii, 10-15; P.R.O., Index 4216, p.56; Holmes and Speck, The Divided Society, p.47.

two justices be left out 'to put the rest in awe'.¹ Jack Howe recommended the exclusion of four clergymen who were willing to act with dissenters, for Gloucestershire.² In Suffolk, Sir Richard Gipps was convinced that he had been left out by the malevolence of Sir Edward Seymour, and he let fall some injudicious remarks on the Queen's government.³ Fifty-seven justices were reported to have been left out for Middlesex - almost a quarter of the total - and forty-three were added, among them several Tory M.P.'s.⁴ In Worcestershire, only three justices were left out, but one of them was the ex-Lord Chancellor Somers, and swords were drawn over an election quarrel at the quarter sessions at which this commission was published.⁵

It is difficult to say whether changes took place in every county. However, every county did receive a new commission of the peace during the summer of 1702. The balance of probability is that the bench was purged to a greater or lesser extent in all but a very few counties

¹ Brit.Mus., Add.MSS. 29568, fos.67-8: Sir Justinian Isham to Mr. Griffin, no date but bound with papers dated May 1702.

² Brit.Mus., Add.MSS. 29588, f.257: Howe to [Nottingham], 6 May 1702.

³ The Letter Books of John Hervey, First Earl of Bristol (no editor's name; Wells, 1894), pp.170-8. Hervey told Sir Richard that he was not among those to be put out, but, in fact, he was to be dismissed.

⁴ Luttrell, Brief Relation, v, 204; Oldmixon, History of England, p.293. Among those put out were Sir Harry Dutton Colt, for the second time, and Luttrell himself.

⁵ Brit.Mus., Add.MSS. 29579, f.400: Sir Charles Littleton to Hatton, 18 July 1702. Somers was probably left out by the Crown Office without Wright's warrant as a dismissed Privy Councillor.

during the months after the Queen's accession. This conclusion rests on the evidence of lists of justices put out between 1700 and 1704, presented to the house of Lords in 1704.¹ A comparison between these lists and the liber pacis dated April 1702² gives the names of those put out between April 1702 and March 1704. The names in the house of Lords' lists are arranged in 'sequences' corresponding to the order of names in the liber pacis in such a way that the fiats from which these lists were compiled can be distinguished. On the basis of this evidence, it seems that, to take the West Country as a specimen area, four living justices were left out at this time for Cornwall, five for Devon, and eleven for Dorset. In Wales, as many as eleven justices were left out for Denbighshire and nine for Cardiganshire. A very few counties did escape; only one gentleman was dismissed in Bedfordshire, and none at all in Northumberland and the East Riding; but these counties were exceptional.

There are, however, one or two indications that the Tories did not have everything their own way. Weymouth complained to Nottingham that his list of Wiltshire justices to be dismissed had been overlooked, and that the dedimus potestatem for the county did not include the newly

¹ H.L.R.O., Main Papers, H.L., 20 Mar. 1704.

² Brit.Mus., Harl.MSS. 7512.

appointed justices, who were therefore required to pay £4 each for a separate dedimus.¹ If the same thing happened elsewhere, the cupidity of the Crown Office may well have taken the edge off the Tory regulation. Less serious than this, but still important, was the difficulty of finding Tory gentlemen fit and willing to undertake the troublesome duties of a country justice. Two gentlemen recommended by Coke for the Derbyshire bench asked him to take their names off the list.² On the whole, however, there seems no reason to doubt that the Tories in most counties took advantage of the changes at the centre and the warm support of the new ministers (and their anxiety for a 'good Church of England Parliament') to remodel the magistracy in accordance with their wishes.

The Tories were materially assisted by these changes in the election of 1702. The Queen's High Church sympathies, the revised Privy Council, and the vigorous exercise of government patronage, combined to produce a swing towards the Tories compared with the balanced house of Commons elected some months before.³ The commissions of the peace were sealed in most counties while the elections were actually in progress - indeed, the Whigs thought that this was a deliberate strategem by the ministry.⁴

¹ Brit. Mus., Add. MSS. 29588, fos. 83-4: Weymouth to Nottingham, 7 July 1702.

² Hist. MSS. Comm., Twelfth Report, Appendix III, Cowper MSS., iii, 10, 12.

³ Walcott, English Politics in the early Eighteenth Century, ch. vi, especially p. 109.

⁴ P.R.O., P.R.O. 30/24/20/65: earl of Shaftesbury to Furley, 10 Aug. 1702. The commissions for Middlesex, Northamptonshire, and, possibly, some of the Welsh counties, were sealed too late to affect the elections: P.R.O., Index 4216, p. 68.

The reading out of the new names at quarter sessions must have produced a powerful impression in the minds of voters that the High Churchmen were all-powerful at court, and that the Whigs were disgraced. The commission of the peace was not 'government patronage' at this election, in quite the same way as that exercised by the Treasury or the armed forces. It was patronage exercised by the High Churchmen in the ministry. The precise nature of the electoral advantage gained remains obscure, since it is difficult to establish the exact date when it became known that individuals had been dismissed. In particular, it is hard to tell whether Whig candidates for Parliamentary seats were left out. It is certain that, for example, three Whigs who had been members in William's last Parliament, and who were not re-elected in 1702, were left out of the Wiltshire commission of the peace at some time between the Queen's accession and March 1704, but, in view of Weymouth's complaint, they were probably left out after the election was over.¹ Whether or not candidates were left out, it is plain enough that the relations and supporters of Whigs were, in many counties, omitted before the elections, and that the relations and supporters of Tories replaced them. Unlike the changes in favour of the Tories in 1701, when the ousted justices might combine to defeat at the polls those like Sir Christopher Musgrave

¹Carey Raleigh, Henry Blaake, and Walter White.

whom they blamed for their disgrace, the changes in 1702 took place in a radiant atmosphere of Tory optimism. Moreover, the Tories had by now conformed to public opinion by committing themselves to the war. They preached, too, a less expensive strategy than the Whigs. Hence the reconstruction of the commission of the peace contributed to, rather than detracted from, the Tory success at the election.

The Tories were not satisfied by the changes of 1702, extensive as these probably were. The High Churchmen in the ministry continued to work for more changes in individual counties in the course of the next two years. Rochester, it is true, was forced out of the ministry in February 1703, but Nottingham and Hedges, especially the former, retained control of domestic government. In March 1703, some of the Whig peers who had retained their lord-lieutenancies and custos-ships were replaced. Rutland, no doubt disgusted by his inability to choose his own deputy-lieutenants, was supplanted by the Tory earl of Denbigh in Leicestershire; the Whig Lord Cornwallis lost both offices to the Tory earl of Dysert in Suffolk. These alterations were accompanied by the issue of twenty-eight commissions of the peace in February and March 1703, an unusually high number for any two months even in view of the approaching Lent assizes. In the summer of 1703, another batch of commissions was sealed; fifteen in June alone, nine of which explicitly left justices out. Thirty-six English counties received commissions at one or both of these times.¹

¹P.R.O., Index 4216, pp.89-90, 97-8.

It seems fairly clear that the changes made followed the pattern of those made in the summer of 1702. Local Tory leaders represented to Nottingham, or to Hedges, the desirability of removing Whigs and adding gentlemen whose credentials were respectable in Tory terms. However, there are signs that the courtiers were, by the summer of 1703, uneasy at the progress of Tory proscription. Wales was almost completely untouched at this time; and a Tory attempt in Flintshire misfired. Two Tory squires, Sir Thomas Hanmer and Sir Roger Mostyn, had recommended names to Nottingham, which were forwarded to Wright. Wright sealed the commission, but the entry in the Crown Office docquet book is marked 'stopped'. Godolphin had been moved to protest. He was prepared to take the matter to the Queen for her decision on the merits of the Flintshire recommendations. The next commission for Flintshire was not sealed until twelve months later.¹ Godolphin also complained of the extravagance of Sir Christopher Musgrave's recommendations in the North, and though he added 'I shall meddle in it as little as I can', Nottingham had to write to James Grahme, one of Musgrave's Westmorland friends, that he had been 'unsuccessful in the case of your two justices'. Meanwhile, Grahme lamented the inactivity of the Tory justices, who had only just managed to block a petition to the Queen from assizes specifying the changes desired by the grand jury in the commission of the peace.²

¹Cal.S.P.Dom., 1702-3, p.536; P.R.O., Index 4216, p.86; Brit.Mus., Add.MSS. 29589A, fos.95-6: Godolphin to Nottingham, 19 Aug. 1703.

²Hist.MSS.Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 65; Tenth Report, Appendix IV, Bagot MSS., p.337; Brit.Mus., Add.MSS. 29588,

The changes made in the commissions sealed in 1703 were less spectacular than those of 1702. No M.P.'s seem to have been put out, and one Whig was actually put in. This was Horatio Walpole, M.P. for Castle Rising, who was added for Suffolk. More naturally, a number of government supporters were included: Henry St. John for Berkshire, William Gifford for Hampshire, and John Wicker for Sussex, for instance.¹ Even so, the addition of Walpole and the cases of Flintshire and Westmorland suggest that the High Churchmen were beginning to meet with obstructions in the pursuit of their local ambitions.²

The reason for the uneasiness felt by Godolphin and others was that the magistracy was in disrepute. In Monmouthshire, Michaelmas sessions could not be held in 1703 because so few justices condescended to act.³ The recruitment of soldiers - a matter of importance in 1703 - was obstructed by justices of the peace in several counties.⁴ A much publicised case of misdemeanour by a Middlesex justice helped to discredit the magistracy. Mr. Tracy was tried in the Queens Bench for encouraging the Gatehouse gaoler to put a gentleman accused of highway robbery in irons, so that he would offer bribes to have them taken off.⁵ Other

¹P.R.O., Index 4216, pp.89, 91, 103.

²Horwitz, Revolution Politicks, pp.188-9.

³Cal.S.P.Dom., 1703-4, p.183. Most of those put out in Monmouthshire since 1702 had died, but the Whigs might have argued that their logical replacements had not been included in the commission.

⁴Cal.S.P.Dom., 1702-3, pp.542, 573-5, 626.

⁵Luttrell, Brief Relation, v, 292, 296-7, 309, 426-7.

complaints about individual justices were made to the offices of the Secretary of State.¹ Such complaints were not unusual in themselves, but they could be used to cast doubts on the character of the gentlemen in the commissions of the peace under the Tory ministry. The Whigs began to mount a campaign on this issue in the house of Lords in the 1703-4 session, as part of a wider campaign against the High Tories in office, especially Nottingham.² Thus, when an act to authorise justices to deliver able-bodied vagabonds to the press was debated, it was argued that the justices of the peace had been appointed in so strange a manner recently that they could no longer, as a body, be entrusted with such great powers.³

The climax to this campaign came in March 1704. The Lords ordered that complete lists of justices for every county, and lists of those justices dismissed since Wright had been appointed, be laid before them.⁴ When these were debated, the Lord Keeper was roughly handled, particularly over the case of his distinguished predecessor Somers in Worcestershire.⁵ Wright offered an excuse for the first name on the list -

¹ Cal.S.P.Dom., 1703-4, pp.373, 580.

² Horwitz, Revolution Politicks, pp.191-6. The main charge against Nottingham was his conduct over 'the Scotch Plot', a matter involving Jacobite intrigues.

³ Burnet, History, v, 137-8.

⁴ L.J., xvii, 482, 483, 484, 489; H.L.R.O., Main Papers, H.L., 20 March, 1704.

⁵ Vernon Correspondence, iii, 256-7.

a Berkshire justice called Medlicott who had been put out because he was a practising attorney who took bribes. He may have prepared similar excuses for the whole list, but he was abruptly cut short, and it was proposed to declare in general that no-one should be continued who had not taken the oaths to King William. An address to the Queen to this effect was prepared. This further advised the Queen to order a general review of all the commissions, so that no persons but men of quality and estates, of known affection to the Queen's title, the Protestant Succession, and the Church of England, might be continued; and that men so qualified who had been unjustly turned out, might be restored. The Queen's answer agreed with the Lords on the character of the gentlemen who should ideally be in the commissions, and she promised to give directions accordingly.¹

The Whigs in the Lords had made out a strong case against Wright, and they were supported by some courtiers. Indeed, the duke of Somerset, who was still in the ministry, seems to have been the chief manager of the attack on his colleague. The accumulated purges since 1702 had certainly been extensive.² Nineteen justices in Oxfordshire, eight in Warwickshire,³ fourteen in Cheshire, seven in Kesteven, ten in

¹H.L.R.O., MS.Min., H.L., 30 Mar., 31 Mar. 1704.

²Justices put out after their deaths are disregarded.

³One of those put out in Warwickshire was Sir Richard Newdigate, a veteran of the Tory purge almost a quarter of a century before; but he was now a lunatic. Luttrell, Brief Relation, v, 50, 54.

Northamptonshire, twenty-nine in Devon, eight in Somerset, twenty-three in Gloucestershire, had all suffered the indignity of dismissal. Pockets of Whig resistance such as Hampshire and Northumberland, where the Whig peers Bolton and Scarborough were the respective custodes, were exceptional, and they were overlooked in the outcry over Tory iniquity.

Wright was thus the victim of Parliamentary hostility as Somers had been in 1700. His case was different from that of Somers in two respects. In the first place, the attack (as on Nottingham in 1680) came in the Lords, not in the Commons. The Whigs' strength lay in the Lords. They could rely on the support of aggrieved custodes and of non-party peers who had subscribed to William's ideal of a county magistracy founded on a broad bottom. The Commons might have been expected to have objected strongly to an attack on the county status of the country gentry, but they remained relatively indifferent. This suggests that the squires had not yet accepted the view that the Tory remodelling had gone beyond bounds. In the second place, Wright, unlike Somers, did not have the authority of recent statute to fall back on for those who had been put out. Wright could conceivably have defended himself by quoting the advice of the custodes and of the Tory squires, that specific justices, like Medlicott in Berkshire, were unfit. He may even have tried to do so. This would have been to no avail; the Whigs considered that they had proved a case of party proscription.

The principle laid down in the Lords in March 1704, that the county magistracy was no longer to be trusted, intensified the flow of complaints to the court. Sir Richard Cocks wrote from Gloucestershire that since 'the papists' had remodelled the bench, the justices had not acted for the Queen's service.¹ Richard Duke complained from Exeter that the Devonshire justices put out by Sir Edward Seymour had not been restored since the Lords' address; he enclosed a formidable list of ex-sheriffs, ex-Parliament men, and other gentlemen of unimpeachable integrity and enormous estates who had been put out, to the detriment of the popularity of the Queen's government.² A Westmorland gentleman wrote to the ex-custos of that county, Lord Wharton, describing the insolence of the non-jurors of the last reign on the bench. He said that he was the only magistrate left active who had owned William's government.³ More complaints about justices of the peace who discouraged recruitment were received at Whitehall.⁴

Wright's position in the ministry was now very difficult. The High Churchmen had gone into opposition; Seymour and Nottingham were

¹Hist.MSS.Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 86-7.

²Brit.Mus., Loan 29/191, fos.235-6, 274, 276: Richard Duke to Harley, two letters and an enclosure, Sept. 1704.

³Bodl.MS.Carte 109, fos.67-8: Westmorland justice to Wharton, 29 Apr. 1704.

⁴Hist.MSS.Comm., Portland MSS., viii, 123-4; Luttrell, Brief Relation, v, 429, 485.

now engaged in planning to force Occasional Conformity through the Lords by the 'Tack'. The ministry had assumed a moderate Tory character. Harley, who had reluctantly accepted the Secretaryship vacated by Nottingham, had been brought into the forefront.¹ Wright, in these circumstances, might have resigned without dishonour; in which case, presumably, the Privy Council would have implemented the royal promise to review the commissions of the peace, as in 1700. In 1704, however, Wright refused to be intimidated by the house of Lords' address, by popular hostility to the justices in the countryside, or by the fall of the High Churchmen in the ministry. During the 1704-5 sessions the Whigs in the Lords found it necessary to renew their attack on his abuse of local patronage. They ordered a list of the justices who had been put in and out since the last sessions of Parliament to be submitted, and a committee was appointed to consider them.² Again, the duke of Somerset managed the business of this committee, which came to the conclusion, by a vote of 18 to 1, that the well-qualified gentlemen left out since 1700 had not been restored, and that the unfit gentlemen complained of the previous year had been continued.³ The Lords accepted this report, and another address was presented to the Queen asking for a review of the

¹A. McInnes, 'The Appointment of Harley in 1704', Hist. Journal, xi (1968), 266-8.

²L.J., xvii, 659, 665; H.L.R.O., Main Papers, H.L., 16 Feb. 1705.

³H.L.R.O., Committee Book, H.L., 22 Feb. 1705, pp.76, 85.

commissions. The Queen had not, she said, expected to be troubled again in the matter, but she promised to give such directions as would seem to be necessary.¹ Meanwhile the Commons joined in the attack on Wright by introducing a bill for qualifying justices of the peace similar to that introduced to discredit Somers in 1701.² This marked a new development since the previous sessions, but too much significance should not be attached to it. Among those who brought in the bill was the Tackler Sir Thomas Hanmer, whose recommendations for the Flintshire bench had been thwarted in January 1703. He, no doubt, saw in the measure an alternative to the Occasional Conformity Bill as a means of keeping dissenters out of the commission of the peace. It was to some extent a country measure, analagous to a place bill; there is no evidence that the Whigs approved of it as intensifying the pressure on Wright.

Was the critical report of the Lords' committee in February 1705 justified? The evidence of the Crown Office docquet book suggests that Wright had made a conscientious effort to reorganise the magistracy. No commissions at all had been sealed in April, May, and June 1704, the months following the Queen's answer to the first Lords' protest in March 1704. It was rumoured at this time that new commissions making the

¹ L.J., xvii, 671, 672, 673.

² C.J., xiv, 465, 508, 546; Hist.MSS.Coms., House of Lords MSS., N.S.vi, pp.260-1.

required changes were being prepared.¹ Then in less than five weeks, in July and August, a new commission of the peace was sealed for every English and Welsh county; a simultaneous issue almost without precedent.² Thereafter no new commissions were issued until January 1705. Notwithstanding this apparent willingness to co-operate by comprehensive regulation, the evidence submitted to the house of Lords indicates that the changes made did not correspond to those implicitly promised in the Queen's answer to the Lords' protest four months before. Wright, with what can be interpreted either as courage or folly, had restored justices put out between the summer of 1700 and March 1704 in only thirteen counties, out of the total of fifty-seven. Even in these thirteen counties, the number of restorations in proportion to the numbers of living justices put out were so small as to be derisory. The only county where the Whigs might feel that their wrongs had been righted was Cheshire.³ In several counties where removals had been extensive, like Devon and Kent, where thirty-four and thirty-eight living justices had been left out respectively, no restorations at all were made. Nor was this all; very few of those

¹ Luttrell, Brief Relation, v, 416.

² P.R.C., Index 4216, pp.113-5. Most were described as renewed 'for placing therein the several justices'.

³ The figures following the counties in the list are, respectively, the number of living justices put out between 1700 and March 1704, and the number of these who were restored between March 1704 and February 1705: Anglesey, 12, 1; Buckinghamshire, 18, 5; Cheshire, 14, 12; Cumberland, 12, 1; Derbyshire, 5, 1 (the single restoration being the popular Mr. Cotchett); Glamorgan, 2, 1; Gloucestershire, 26, 3; Middlesex, 61, 2; Nottinghamshire, 6, 1; Pembrokeshire, 8, 2; Sussex, 18, 1; Westmorland, 7, 1; and Wiltshire, 23, 1. W.L.R.O., Main Papers, H.L., 20 Mar. 1705, 16 Feb. 1705.

who had been put in during the period from 1700 to March 1704 were now put out, and the great majority of these were among those put in, not by the Tories in 1701 or in 1702-3, but by the Privy Council in 1700. Probably most of these were dead. Moreover, the Tackers Orlando Bridgeman and Sir John Packington had been put in respectively for Suffolk and Pembrokeshire - counties other than those where their main influence lay.

It is surprising that Wright remained in office until after the election of May and June 1705. The triumvirs - the duumvirs plus Harley - wanted his immediate dismissal so that the county commissions could be manipulated to assist the proscription of the Tackers. Their candidate was Lord Chief Justice Trevor, who was approached in March. The Queen approved, but Trevor declined.¹ Less plausible was the rumour that Buckinghamshire would be appointed.² The election therefore took place when Wright was still in office, and there is no evidence that the Whigs received any assistance from the remodelling of county commissions of the peace. Admittedly, changes among officeholders were expected after the dissolution.³ A general shift in the balance of local power seemed foreshadowed by the replacement of five Tory lord-lieutenants

¹Holmes, British Politics in the Age of Anne, p.204.

²Hist.MSS.Comm., Tenth Report, Appendix IV, Bagot MSS., p.339.

³Hist.MSS.Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 169-70.

in April.¹ A total of thirty-eight commissions of the peace was issued in February and March 1705, offering Wright the opportunity to comply with the wishes of the house of Lords.² The nature of these changes is obscure, but those put out seem to have died, and Wright apparently refused to dismiss the Tackers and their supporters, despite appeals from 'great men in posts of honour'.³ When in the summer of 1705 it was rumoured that his dismissal was impending, one of the reasons alleged was that he had not complied with Wharton and other Whig peers, in the matter of country justices.⁴ During the summer and autumn of 1705, Defoe was sending to Harley reports on the political complexion of the county magistracy; he found that Tories were still in commission in most places, and that they were a great obstruction, next to the clergy, to the Queen's service in the countryside. He observed, for instance, that nothing would help future elections in Wiltshire more than the dismissal of the Tacker Henry Chivers.⁵ It is true that Wright did, in fact, put Chivers out in September 1705, shortly before a bye-election for Chippenham which Chivers lost; but this was probably on the representation of

¹ Godolphin replaced Grawille in Cornwall; Rivers replaced Guilford in Essex; Grafton replaced Dysert in Suffolk. Winchelsea and Buckinghamshire resigned as lords-lieutenant of Kent and the East Riding respectively, and they were replaced by Rockingham and Newcastle.

² P.R.O., Index 4216, pp.122-3. Several of these were sealed before the Lords' address to the Queen on 23 February 1705.

³ Hist.MSS.Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 189-90.

⁴ Margaret, Lady Verney, Verney Letters of the Eighteenth Century (London, 1930), i, 227.

⁵ The Letters of Daniel Defoe, ed. G. H. Healey (Oxford, 1955), pp.103-4, 108, 113.

Burnet, as bishop of Salisbury, who had a clearly proved case of scandalum magnatum against him.¹ Wright did restore a very few of the justices that he had hitherto put out, but he does not seem to have done this on a large scale. The magistracy was therefore probably left much as it had been during the period of Tory dominance throughout the 1705 election.²

The changing situation at court had made Wright's continuance in office impossible. Before the election, the triumvirs had hoped that a ministry could be supported in the Commons without concessions to the Junto Whigs. The return of more Tackers than had been expected - possibly because of the Court's refusal to deprive them of local office - made it necessary to prevent a country party combination of Tories and Whigs in opposition. Consequently, the triumvirs backed the Whig John Smith for the Speakership of the new Commons, and undertook to have Wright dismissed.³ It was rumoured as early as June that he would be replaced by William Cowper, a prominent Whig leader in the Commons.⁴ The problem was to persuade the Queen, who wanted a moderate Tory in the office. She

¹ P.R.O., Index 4216, p.132; Luttrell, Brief Relation, v, 505, 614. The earl of Peterborough was able to secure the dismissal of a Northamptonshire justice for the same reason: Luttrell, op.cit., v, 546.

² Burnet said that the Whigs had received no help from the ministry in the election: History, v, 223.

³ Trevelyan, England under Queen Anne, ii, 25-32; Clayton Roberts, Growth of Responsible Government, pp.334-5; Horwitz, Revolution Politics, pp.203-4; W. A. Speck, 'The Choice of a Speaker in 1705', Bull.Inst.Hist. Research, xxvii (1964), 21-46; G. Elisabeth Cunningham, 'The General Election of 1705', ibid., xvii (1939-40), 145-6.

⁴ Luttrell, Brief Relation, v, 566.

was reluctant to put herself into the hands of the Junto. A Whig Lord Keeper, she explained to Godolphin, would be 'an inexpressible uneasiness and mortification to me'.¹ Notwithstanding this appeal, Godolphin urged Cowper's claims, and the duchess of Marlborough brought her influence to bear, against Wright as much as on behalf of Cowper.² Wright was at last dismissed in October, to the general satisfaction of the Whigs.

It is difficult to come to a final conclusion about Wright's handling of the commission of the peace. Burnet, whose verdict is usually followed, represented him as a Tory zealot,³ although he had begun his career as a Whig. He had held the great seal in successive ministries of different character, when he seems to have accepted uncritically the names forced on him by politically committed colleagues. Naturally the gentlemen anybody chose to recommend would be distinguished for 'loyalty', 'integrity', or 'estates'; naturally any gentleman recommended to be put out would be 'disaffected', 'corrupt', 'impoverished', or otherwise unfit. Wright, like every Chancellor, had no obvious means of checking the characters of country squires in every corner of the kingdom. Unlike some Chancellors, he accepted in good faith assurances from every quarter

¹ Brit.Mus., Add.MSS. 28070, f.12: Queen Anne to [Godolphin], 11 July 1705; Holmes, British Politics in the Age of Anne, p.253.

² Account of the Conduct of the duchess of Marlborough (London, 1742), p.159.

³ Burnet, History, v, 137, 223-5.

that they were fit, or otherwise, to be in commission. This led him into trouble with Tories as well as Whigs. He had to write an apologetic letter to Nottingham in the summer of 1702 after leaving out a Northamptonshire justice on local recommendation. He explained ingenuously that he knew nothing about this gentleman and bore him no ill will; he had been advised to dismiss him, and had thus done so.¹ Admittedly, he seems to have shown a certain obstinacy in neglecting to put in, or restore, well-affected Whigs following the censure of the house of Lords in March 1704. On the other hand, if this sprang from Tory conviction on Wright's part, why did he restore twelve gentlemen in Cheshire? One possible reason may have been that conflicting recommendations from different party sources made him ultra-cautious in the face of Parliamentary criticism. Harley thought that he would have to be bullied to implement Newcastle's recommendations for Nottinghamshire in 1704.² Another possible explanation is that the Whigs blackened his character in general terms and then gave him no specific help in putting the commission of the peace in order. He could not have restored all those put out before March 1704 without any authorisation from local sources - how was he to know if they were still alive? The Cheshire case is perhaps to be explained by the hypothesis

¹ Brit. Mus., Add.MSS. 29588, f.135: Wright to Nottingham, 19 Aug. 1702.

² Brit. Mus., Loan 29/191, f.164: Sir Willoughby Hickman to Sir Christopher Musgrave, 17 July 1704, sent by Musgrave to Harley; Loan 29/237, f.80: Harley to Newcastle, 29 July 1704.

that Sir Joseph Jekyll, a Junto lawyer who had retained the Chief Justice-ship of Chester throughout the Tory ministry, had been kind enough to submit suggestions as to the gentlemen to be put back, while the Whigs in other counties had either maintained silence or had concentrated on persuading him to put Tory gentlemen out. This argument cannot be proved. Whatever justification is urged in Wright's defence, it is clear enough that, when he surrendered the seal, he had totally lost the esteem of all parties. Godolphin said that it would have been 'ridiculous' to have kept him in office.¹ His replacement, Cowper, was not much more distinguished in the legal profession than Wright had been at the time of his appointment. Unlike Wright, however, Cowper was trusted by his colleagues in the ministry. One of his first tasks was to establish the stability of that ministry by judicious manipulation of the patronage of the great seal.

¹Hist.MSS.Comm., Bath MSS., i, 64 (misdated 1704).

6. The Commission of the Peace and the Whigs, 1705-10.

The new Lord Keeper's background was impeccably Whig.

The Cowpers had been settled in Hertfordshire since the time of James I. Sir William Cowper, the Lord Keeper's father, had supported Exclusion, and he had been concerned with Shaftesbury in the indictment of the duke of York as a recusant in 1680. In 1689 he had voted for the Sacheverel Clause. He was still alive in 1705. His son had been elected M.P. for Hertford in 1695. He voted consistently along Junto lines, and rapidly acquired a high reputation in the Commons as a Whig spokesman. He played a part in the prosecution of the Assassination plot conspirators in 1696, supported Somers in 1701, and defended Halifax against the accusation of malpractices as Auditor of the Exchequer in 1704.¹ Like Wright, he had not held high legal office before he accepted the great seal. His personal reputation was rather doubtful. He was rumoured to have contracted a bigamous marriage. There were stories of illegitimate children. His brother had been the defendant in a sensational murder trial in 1700. His second marriage, though respectable, was yet conducted in secrecy before he had held the great seal a year.² Unlike Wright,

¹ Jones, The First Whigs, p.118; Browning, Danby, iii, 167; Ellis, 'The Whig Junto', Appendix G, p.6; V.C.H., Hertfordshire, Genealogical Volume (1907), 133-9.

² Campbell, Lives of the Chancellors, iv, 260-1, 274-83, 290-1.

however, Cowper was eloquent, witty, and polished in manner. He was a man of much greater personal distinction. He immediately won the applause of laymen, if not of lawyers, by his lofty refusal of the 'New Year Gifts' traditionally made to the Keeper or Chancellor by the subordinate officers of Chancery.¹ He overcame the Queen's initial dislike of him fairly quickly by permitting her to nominate to all ecclesiastical appointments in the gift of the great seal worth more than £40 a year.² After his appointment, Cowper lost some of his Junto connections, and became, to some extent, a Court Whig. Admittedly, he was surrounded by high-spirited Whig ladies: his wife; the duchess of Marlborough, who had pressed for his appointment and who was a close friend; and particularly his formidable sister-in-law, Anne Clavering, whose partizan Whiggishness led her to badger him to put Tories whom she disliked out of the commission of the peace.³ Notwithstanding this domestic background, Cowper was quite capable of taking a different line from his Junto colleagues.

In 1705, Cowper was expected to exercise the patronage of the great seal in the interests of the Whigs in the localities, and in particular

¹Ibid., pp.296-9.

²Brit.Mus., Loan 29/263, unf.: Harley to Cowper, 23 Sept. 1706; Blenheim MSS., B I-23: Cowper to Marlborough, 13 Oct. 1709, apologising for not appointing Marlborough's candidate to a great seal living: 'Your Grace knows I am particularly obliged to obey the Queen in things of that kind'.

³The Correspondence of Sir James Clavering, ed. H. T. Dickinson (Surtees Society, clxxviii for 1963, 1967), 8, 12, 27-8, 29, 80, 81, 88.

to balance the Tory ascendancy in the commission of the peace that had marked the Queen's accession. Years later he described his programme to George I:

... as the two partys grew more & more set & violent against one another... Gentlemen well qualify'd wer put out of that Commission [of the peace] without formal hearings or even so much as proof ex parte of any misbehaviour in their Duty. When I had the Honour of the Great Seale the first time, I cannot accuse my self of that last mention'd practise, & yet by perseverance in putting in those who wer best inclin'd to the Protestant Succession & leaving out, as fast as I could discover them, those who wer of too inferiour a Condition ['as well as ill intentioned' crossed out] & taking all just advantages of proof against those who discovered a disaffection to the true interest of their country, I can truly say, the Commissions of the Peace wer at my surrendring the Seale in a very good state with a sufficient balance in favour of the honest interest.¹

Cowper's description makes the remodelling sound like a long-term policy rather than a comprehensive, simultaneous purge. The evidence suggests that this is a correct impression. Fifteen months after Cowper had accepted the seal, at some time between 14 January 1707 and 4 February 1707, he had prepared for him an analysis, county by county, of the justices of the peace whom he had ordered to be put in

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F152: Memorandum for George I (see above, p.7 note 3).

and out since his appointment.¹ During this fifteen-month period, new commissions had been sealed for forty counties, nearly all of them during the months from February to June 1706.²

Cowper was not, during this period, simply reversing the changes made by his predecessor. Of the total of 355 gentlemen put in, only 47, or about 13%, were restorations of justices who had been left out by Wright during the period from the summer of 1700 to 20 March 1704; and only one was the restoration of a justice left out by Wright during the period from the end of the 1703-4 session to 16 February 1705. Oxfordshire had most restorations, with 9 out of 26 put in; Cardiganshire had the highest proportion of restorations to gentlemen put in de novo, with five restorations out of nine to be added. Dr. Henry Fleming and Thomas Hebblethwaite, the two Westmorland justices who had caused so much difficulty in 1701, were restored for that county. In general, however, Cowper was not principally concerned at this time to put back into the commission those gentlemen whom Wright had put out at the height of the

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F152. This list complements the fiats in the Public Record Office at P.R.O., C.234/1-95, passim; there are some minor discrepancies, but in general the list and the fiats tally. The most serious inaccuracy is that Cowper thought that changes had been effected in the East Riding, but no commission was sealed for that county during this period. In the numerical calculations which follow, the figures are adjusted to take account of this slip.

²P.R.O., Index 4216, pp.135 ff. The seventeen neglected counties were Anglesey, Carnarvonshire, Cornwall, Derbyshire, Dorset, Flintshire, Glamorga, Herefordshire, Leicestershire, Merionethshire, Pembrokeshire, Peterborough, Radnorshire, Rutland, Shropshire, Somerset, and the East Riding.

Tory ministry's influence.¹ This is rather surprising and unexpected. In Devon, for instance, where in 1704 Richard Duke had lamented the omission of 29 wealthy and respectable gentlemen since 1702, only four of those put in by Cowper during his first fifteen months of office were restorations, and those among the least distinguished of those who had been put out by Wright.

More than thirty of those who were put in, were members of the house of Commons. Most of these had been elected for the first time in the election of 1705. These M.P.'s were of several types. Several had strong Junto connections; for example, the two M.P.'s for Lymington, Paul Burrard and the marquess of Winchester, were now put in for Hampshire. Others were non-Junto Whigs of an independent type, like John Dibble, M.P. for Okehampton, who was put in for Devon, and Langham Booth, knight of the shire for Cheshire, who was put in for that county.² Some of the M.P.'s were government servants, like Walter Whitfield, Paymaster of the Marines, and Josiah Burchett, Secretary to the Admiralty, who were put in for Middlesex and Kent respectively. However, few, if any, of these M.P.'s now put into the commission were identifiable Tories; of those who

¹The calculations are based on a comparison of the list at Herts. R.O., Cowper (Panshanger) MSS., D/EP F152, with: H.L.R.O., Main Papers, H.L., 20 March 1704; and H.L.R.O., Main Papers, H.L., 16 Feb. 1705. It is possible that some more restorations, of justices put out between February and October 1705, might have taken place, but it is unlikely that these were significantly numerous. An attempt has been made not to confuse gentlemen of the same name.

²Ellis, 'The Whig Junto', Appendix G, pp.3, 17, 42, 47.

had sat in the 1702-5 Parliament, none had voted for the Tack.

It is difficult to say much about those appointed to the magistracy during this fifteen-month period, who were not M.P.'s. Some were famous men: Sir Godfrey Kneller became a justice in Surrey, and Joseph Addison, recently made Under-Secretary of State, was included for Middlesex. Oxfordshire had 26 new justices; Middlesex, 21; Surrey and Wiltshire, 17 each; but with the exception of Ely, which received a commission adding 13 names, the numbers added were not disproportionate to the relative size of the counties. In Wiltshire the intention seems to have been to put into commission a number of gentlemen of moderate political views who could be relied on to fulfil the duties of a justice of the peace. Of the seventeen added in that county in April 1706, three became regular attenders at quarter sessions, during the following four years, five more occasional attenders, at least two acted sporadically as justices out of sessions, and two more were active justices in neighbouring counties who, if nothing else, took out their writs of dedimus for Wiltshire.¹ The government was still receiving complaints, as when Wright had held the seal, about the lack of active justices.²

¹ Wilts.R.O., Q.S. Minute and Order Books for the years 1706-10; Q.S. Great Rolls, Trinity 1706 - Michaelmas 1710; P.R.O., C.193/43, Dedimus Potestatem Book, 1701-13.

² See, for instance, Brit. Mus., Loan 29/193, f.262: Baron Price to Harley (from the Midland Circuit), 2 Aug. 1706.

It is probable that one consideration in Cowper's programme was the need to restore the general reputation of the magistracy by providing counties like Wiltshire with resident justices willing to undertake the responsibilities of county administration.

The number of living justices left out at this time was 84.¹ This was quite a high total for a fifteen-month period, but with the exception of two counties, Gloucestershire and Hertfordshire, the omissions were spread thinly among the counties. In Gloucestershire, twenty-two justices were put out in two commissions, much the highest number for any one county. Of these, three had been victims of the Association purge of 1696, having been restored in the summer of 1700; a fact which suggests a certain continuity of Whig-Tory animosity.² A significant shift in the balance of political power had clearly occurred in the Gloucestershire election of 1705, when the Junto supporter Sir John Guise had replaced the formidable Jack Howe as one of the knights of the shire; but this was not the immediate cause of the disgrace of sixteen Gloucestershire justices. They were dismissed on 14 January 1707, and their names are bracketed in the fiat 'They refusing to act'. In Hertfordshire, fourteen gentlemen were left out in two commissions. These counties together made

¹In Cowper's list at Herts.R.O., Cowper (Panshanger) MSS., D/EP F152, dead justices are ignored.

²Robert Pleydall, Walter Estcourt, and Brereton Bouchier. P.R.O., P.C. 2/76, p.463; P.C. 2/78, p.68; C.234/13, Gloucestershire: 6 Apr. 1706, 14 Jan. 1706/7.

40% of the total number of omissions. The next highest numbers of dismissals for single counties were six, perhaps disproportionately, in Carmarthenshire, and five apiece in Middlesex, Essex, and Northamptonshire.¹ Only two of those put out were sitting M.P.'s. Both were Tackers. One was Thomas Rowney, M.P. for Oxford, who was one of the sixteen put out in Gloucestershire for 'refusing to act'. The other case was more conspicuous. This was Charles Caesar, M.P. for Hertford, who had been sent to the Tower in October 1705 for hinting in Parliament at Marlborough's Jacobite tendencies. Eight months later he endeavoured to present an address to the Queen from Hertford. The Queen rejected it and issued a special order that Caesar be put out of the commission of the peace and the lieutenancy for Hertfordshire. This was accordingly done.² A handful of M.P.'s in the 1702-5 Parliament who had voted for the Tack, and who had not been re-elected in 1705, were also put out.³

In most of the counties affected by these changes, it was not so much direct supervision by Cowper as a shift in the balance of power

¹ Carmarthenshire was an unusual case. No justices at all were put in, and of the six put out, three had been put in by Wright in July 1704. These were the only cases in any county of justices put in at this time now suffering dismissal.

² Luttrell, Brief Relation, v, 625-6; vi, 62; Hist.MSS.Comm., Thirteenth Report, Appendix II, Portland MSS., ii, 194; H.U.L., Pw2 Hy 617: Queen's warrant to Cowper, 26 June 1706; Brit.Mus., Loan 29/263, unf.: Harley to Cowper, 26 June 1706; P.R.O., C.234/16, Hertfordshire: 12 July 1706; Hist.MSS.Comm., Bath MSS., i, 83.

³ John Drake, M.P. Amersham 1702-5, put out for Buckinghamshire; William Levinz, M.P. East Retford 1702-5, put out for Hertfordshire (but not for Nottinghamshire); Sir Charles Barrington, M.P. Essex 1702-5, put out for Hertfordshire (but not for Essex). Sir Charles had been in trouble in June 1705 for listing a licenced pedlar. Luttrell, Brief Relation, v, 567.

within the counties that influenced the alterations in the commissions of the peace. Hertfordshire was an exception. Cowper's own local connections were in that county, and his personal knowledge presumably dictated changes outstripping in intensity those made for most other counties. Elsewhere, it was a switch in the lord-lieutenancy or custodianship in 1705 that was probably behind the revision of the commission of the peace. In Kent, where 14 were put in, the Whig Lord Rockingham had replaced the Tory earl of Winchelsea. In Oxfordshire, where 26 were put in, the duke of Marlborough had replaced the Tory earl of Abingdon. In Suffolk, where 15 were put in and 2 left out, a Court Whig, the duke of Grafton, had replaced the Tory earl of Dysert. A change in the lieutenancy represents the use of government influence, reflected at second hand in changes in the commission. In other cases, the initiative for alteration came from below. One interesting example is Cardiganshire. In 1705 and 1706, Lord Lisburne, who lived in the county, was pressing Harley and Cowper for changes in the commission made urgently necessary by the 'insults and injuries' suffered by certain persons. He does not say whether this was because they had been left out, or because those who had been left in were insolent. Cowper told him that he would obey the Queen's commands in the matter. Lisburne, unsatisfied, informed Harley that in the summer of 1702 several non-jurors had been put in, and other faithful servants of King William had been left out, and that in consequence the people were subject to 'violent humours'. Lisburne, who was neither

lord-lieutenant nor custos, presumably had his way; the new commission for Cardiganshire, sealed in February 1706, made the most sweeping changes in any Welsh county. Nine were put in, of whom five had been put out by Wright, and one, John Pughe, was M.P. for the county; two were left out.¹

On balance, the changes made in the first fifteen months of Cowper's tenure of office were less spectacular than the Whigs had hoped for, and the Tories had feared. The reason for this is that the ministerial 'triumvirate' of Godolphin, Marlborough and Harley exercised a restraining influence. Godolphin was always averse to gratifying the wishes of a predominant party. He had himself replaced the Tory Granville as lord-lieutenant and custos of Cornwall in April 1705, but no commission of the peace was issued for that county between July 1705, when Wright still held the seal, and September 1709. Harley took a similar view, observing at the time of Cowper's appointment that the country gentry should not be embodied against the Queen's service, and that the ministry should guard against the Whigs' desire to proscribe their enemies. A year later, he thought that the independent gentry would support any government which left them alone.² As Secretary of State, Harley exercised some influence

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F155: Lisburne to Cowper, 12 Nov. 1705; Brit.Mus., Loan 29/192, f.394: Lisburne to Harley, 20 Dec.1705; N.U.L., Pw2 Hy 834: List of Cardiganshire justices enclosed in a letter from Lisburne to Harley, 3 Jan. 1706.

²Hist.MSS.Comm., Bath MSS., i, 74-5, 110-11.

over the appointment of magistrates; for instance, in June 1706 he stopped the sealing of commissions for the divisions of Lincolnshire, and Cowper had to write to ask him what alterations he wanted to make.¹ It was quite probably Harley, too, who moderated the demands of the Whig custos of Worcestershire, the earl of Coventry, who complained of the arbitrary practices of the justices, some of whom were furious High Church zealots. Coventry's nominees were, with one exception, put in, but only one of those he denounced was put out.² Furthermore, the Whig peers might themselves be divided on the merits of those they wanted put in or out. The duke of Bedford protested at the omission of a Middlesex justice, but the earl of Orford wrote that he deserved disgrace. Orford complained in his turn that an honest man had been left out in Cambridgeshire.³ In Suffolk, the duke of Grafton wanted to put out a justice called Taylor, but the Whig earl of Bristol persuaded him, in the interests of domestic tranquility, not to press the demand, as Sir Thomas Hanmer, Grafton's stepfather and a Tacker, objected.⁴ These fragments of evidence of Whig indecisiveness, coupled with the nature of the alterations that

¹ Brit.Mus., Loan 29/132, f. L.157: Cowper to Harley, 21 June 1706.

² Herts.R.O., Cowper (Panshanger) MSS., D/EP F154; Coventry to Cowper, 13 Jan. 1706; P.R.O., C.234/41, Worcestershire: 18 Feb. 1705/6, 9 Dec. 1706.

³ Herts.R.O., Cowper (Panshanger) MSS., D/EP F153: Bedford to Cowper, 23 Aug. 1706; Orford to Cowper, 7 Sept. 1706.

⁴ Letter Books of John Hervey, First Earl of Bristol, i, 220-1.

were, in fact, made, suggest that the appointment of Cowper did not make for a take-over of local power by the Whigs in the months that followed; at any rate, not in the great majority of counties.

The situation at the centre was, however, changing, and Cowper's control of the patronage of the great seal moved into a second phase at about the time - January 1707 - when he reviewed his achievements in the alteration of the commissions of the peace. The Whigs slowly increased their dominance in the ministry.¹ Charles, third earl of Sunderland, became Secretary of State in December 1706, after long opposition from the Queen and the beginnings of a quarrel between Harley and Godolphin on the desirability of the appointment. In May 1707 the Privy Council was remodelled. Fourteen Tory Councillors (among them Sir Nathan Wright) were displaced.² Notwithstanding these concessions, the Whigs were discontented with their comparatively small share of the places of profit and power, and in the 1707-8 sessions they entered into factious opposition - of which Cowper, in his continued disentanglement from the Junto, disapproved - in the hope of increasing the value to the

¹ Cowper was elevated to a peerage late in 1706, and in May 1707 he became the first Lord Chancellor of Great Britain.

² W.Coxe, Memoirs of the Duke of Marlborough (new edition revised by John Wade, London, 1847-8), ii, 1-25; Trevelyan, England under Queen Anne, ii, 167-71; P.R.O., 2/81, p.361: 20 May 1707. Wright now lapsed into a long and obscure retirement, from which he emerged briefly to assist the Tories at Leicester in the 1715 election. He died in 1721.

ministry of their support. During the winter of 1707-8, the government was under severe internal strain, as Godolphin was by now convinced of the need to woo Parliamentary support, while Harley was dissatisfied with any tendency towards party faction.¹ The climax came in February 1708, when Harley, who had been approaching the younger Tories with a view to building a Parliamentary majority independent of the Junto Whigs, was caught out in what looked like an intrigue to displace Godolphin. After a spirited resistance from the Queen, he was forced out of the ministry.² Against this background of events at the centre, Cowper's handling of the commission of the peace in 1707 and the early part of 1708 might have been expected to have played some part in the development of the political situation.

The evidence is that Cowper took the Harley view, that manipulation of local patronage in the Whig interest should be kept to a minimum. During the period from the end of January 1707, when Cowper reviewed the achievements of his first fifteen months in office, and 13 February 1708, when Harley was dismissed as Secretary of State, Cowper sealed a total of 52 commissions spread over 39 counties. Most of these

¹Holmes, British Politics in the Age of Anne, pp.110-11, 242; A. McInnes, 'The Political Ideas of Robert Harley', History, New Series, 1 (1965), 318.

²G. Holmes and W. A. Speck, 'The Fall of Harley in 1708 Reconsidered', Eng.Hist.Rev., lxxx (1965), 673-98.

were issued, as was usual, in the months before assizes, in February-March and in June-July 1707.¹ Of the counties which did not receive commissions, seven - Cornwall, Derbyshire, Dorset, Flintshire, Pembrokeshire, Peterborough, and Rutland - had not, by February 1708, received a commission at all since Wright had held the seal. In itself, this is a powerful argument that Cowper had been unwilling or unable to carry on a comprehensive revision of the county commissions in the Whig interest.² Leaving aside Middlesex and Durham, for which the fiats do not survive, the commissions that were sealed during this period added 234 gentlemen and left 41 living justices out.³

The dismissals were concentrated in a few counties. Ten were dismissed in Leicestershire, four in Warwickshire, and two in Montgomeryshire, all for 'refusing to act'. Eight were left out in Breconshire, but it is possible that some of these had died, since their names are noted on the back of a list serving as a fiat, not embodied in a specific order describing the reason for their omission. The Tory family of Hatton suffered in Cambridgeshire with the exclusion of

¹P.R.O., Index 4216, pp.151ff. These figures include Herefordshire, for which county Cowper signed a fiat dated 5 Feb. 1708, although the commission was not sealed until March.

²The ambiguous case of the East Riding is an eighth such county. Besides these eight, Denbighshire, Ely, Gloucestershire, Hampshire, Huntingdonshire, Monmouthshire, Holland, Kesteven, Northumberland, and Worcestershire were neglected in 1707.

³21 justices described as dead were also left out. P.R.O., C.234/1-95, passim.

Sir Christopher and Thomas Hatton, the only two justices left out in that county. In about half-a-dozen other counties, justices were left out in ones and twos. There seems, however, to have been a feeling that Cowper was reluctant to dismiss justices. When Charles Sergison, of the Admiralty, complained about an obnoxious justice in Sussex who had over-assessed him for the land tax, he recommended another gentleman as a balance, on the assumption that his offensive neighbour could not be removed.¹

The bench in Leicestershire was quite substantially remodelled, since not only were ten left out, but also twelve came in: the earl of Gainsborough, Lord Rockingham, and ten squires. The highest number added was twenty-three in Surrey, followed by thirteen in Buckinghamshire and, rather oddly, thirteen in Anglesey and eleven in Glamorgan. The majority of the commissions were, however, of the most routine kind, in which a few gentlemen of established county families were added: five in Northamptonshire, three in Cheshire, five in Staffordshire, eight in Norfolk, for example.

The political element in these changes was not strongly marked. There was nothing in the nature of a Whig attack on the Tory squires in Warwickshire, where the four gentlemen who refused to act had all been

¹Brit.Mus., Loan 29/194, fos.97-8: Sergison to George Tollett, 17 May 1707. Sergison observed that he did not trouble to act himself; his nominee was not added.

put in by Cowper himself the previous year. The Tories suffered a little more in Leicestershire, where Sir Wolstan Dixie and Sir Thomas Cave were among those dismissed. Some of those added in several counties were local Whig leaders, like Josiah Diston, who was engaged in an intense and occasionally violent struggle for power in Devizes, and who was added for Wiltshire shortly after winning a bye-election for that town in December 1706. He was, and remained, a firm Junto supporter.¹ The Whig Marsham interest at Maidstone was temporarily in eclipse following the death of Sir Robert Marsham, the fourth baronet, in 1703. His son, another Sir Robert, was 21 in 1706; he was added to the Kent bench in 1707 and elected for Maidstone in 1708. There were some restorations of justices put out by Wright, including Medlicott, the Berkshire attorney who, according to Wright, took bribes, but in 1707 as in 1706 this was not a prominent feature of the commissions sealed. The overall impression left by the alterations is that Cowper was, at this time, engaged in discreet adjustment in the Whig interest rather than in conspicuous and comprehensive regulation.

This is not to say that during this period of complex struggle at the centre, the commission of the peace was neglected as an instrument

¹For Diston and Devizes, see: Hist.MSS.Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 175-6, 486; Letters of Daniel Defoe, p.104; Blenheim MSS., C I-35: Papers relating to Devizes riots, 22 Apr.-25 Oct. 1707; P.R.O., S.P.44/106, p.125: Sunderland to Sir James Long, 28 Oct. 1707; Ellis, 'The Whig Junto', Appendix G, p.6.

of politics. Though the changes were on a limited scale, Cowper had to tread warily, to avoid offending friends and driving enemies into committed opposition. The reason for this was that the ministry was still mixed in spite of increasing Whig pressure. Both Godolphin and Harley resisted a full-scale purge of local office-holders, but Harley was more in favour of conciliating the Tories on local matters, a policy of which Godolphin disapproved lest the Whigs be made uneasy. The result was that a proposal to add names to the commissions for single counties led to a tug-of-war at the centre, with each side unwilling to allow advantages to the other; the changes eventually agreed on were non-committal, with both Whigs and Tories protesting from the county that worthy men were kept out and unsatisfactory justices continued. When Harley's friend Lord Poulet complained about a Somerset justice, Henry Brett, who was an 'officious drudg of the tacking party', Harley noted on the back of Poulet's letter 'H. Bret to be removed', but Brett was not dismissed.¹ Again, Sir Robert Davers, the knight of the shire for Suffolk, was a High Churchman and a Tacker who was also on friendly terms with Harley;² when his nominations for the Suffolk bench were not included in a commission sealed in July 1707, in spite of a promise from

¹Brit.Mus., Loan 29/193, fos.306-7: Poulet to Harley, 18 Sept. 1706.

²Holmes, British Politics in the Age of Anne, pp.265, 327.

Cowper that he would accept such nominations, Davers turned to Harley, who agreed to speak to the Chancellor.¹ Nothing further was done, but Harley was able to appear, in spite of a certain asperity in Davers' letters, as a sympathetic friend against the hypocritical Whig chancellor. In counties where Harley himself enjoyed influence, it was the Whigs who complained that their candidates were left out. Special interest attaches to Radnorshire, where Harley himself was custos. Lord Bradford, who lived at Wroxeter in Shropshire, and who was a staunch Whig, recommended two gentlemen for the commission of the peace for Radnorshire. Cowper wrote to Harley to say that he knew he would have no objection to one of the names, and asking him if he had any complaint against the other.² Before the commission could be sealed, however, Cowper received an infuriated letter from Bradford, alleging that Harley kept his recommendations out to keep up his own electoral interests, and that those who were in, were 'mean persons' included for the same reason. Bradford's own nominations were gentlemen of greater wealth in the county than Harley himself. He conceded that there was an unspecified accusation

¹Brit.Mus., Loan 29/194, f.178: Sir Robert Davers to [Harley], 18 June 1707; ibid., f.197, same to same, 6 Sept. 1707. It appears that Cowper had at first agreed to Davers' names, but subsequently objected that one had been an attorney and that the others were too young. Davers impatiently brushed these objections aside.

²Brit.Mus., Loan 29/132, f.L.180: Cowper to Harley, 20 June 1707.

against one of his candidates, but countered with the curious argument that the gentleman should have been put in notwithstanding, as the disgrace would be greater if he had to be put out again.¹ The result was a compromise. One of Bradford's names was put in, but the other was not included.² Thus, in Suffolk Whig pressures prevented a Tacker from bringing his candidates on to the bench; in Radnorshire, Harley had partially blocked a Whig magnate's attempt to nominate new justices.

The ministry's attitude to the commissions of the peace was typically that of a coalition. A place on the bench was a useful minor concession for potential supporters, but when leading ministers held different views on which set of potential supporters should be conciliated, the result was stalemate. Harley's rôle was partly to resist over-bearing Whig demands, and partly to use his position as Secretary as an indirect channel for nominations from potential Parliamentary supporters. He was not always successful, but he was the champion of those who distrusted Whig ambitions to engross local power, and when in January 1708 he attempted to explore openly the possibility of accommodation with the Tories, one of the baits he offered was a bill for the Qualification of Justices.³ This policy of conciliating the Tories through local office

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F152: Bradford to Cowper, 30 June 1707. Bradford was, at this time, 87 years of age.

²P.R.O., C.234/90, Radnorshire: 10 July 1707.

³Holmes and Speck, 'The Fall of Harley in 1708 Reconsidered', Eng.Hist.Rev., lxxx (1965), 654.

was in direct conflict with the Junto's hopes of establishing Whig benches of justices in every county, which hopes the Junto conceived to have been obstructed while Harley had been Secretary of State. When he fell in February 1708 it seemed that the stalemate had been broken. It was expected that Cowper's tenure of office would move into a third phase, of assertion of the Whig interest in the localities in time for the election due in 1708.

The fall of Harley in 1708 did not result in a reconstitution of the ministry along Junto lines. 'Lord Treasurer's Whigs' rather than Junto Whigs were promoted to fill up the vacancies left by Harley and his friends. The Junto was supporting the court in the house of Commons, but it had not, as yet, been admitted to supremacy in the ministry.¹ Consequently, the election of May 1708 was not fought by the Junto with the backing of court patronage. Court and Junto candidates sometimes even conflicted.² Changes in the county commissions of the peace played some part in the election, but in a random fashion. Twelve English counties, and five Welsh counties, did not receive a commission at all during the twelve months before the election, among them the electorally important counties of Cornwall, Gloucestershire, Oxfordshire, and Somerset.

¹Walcott, English Politics in the Early eighteenth Century, pp.148-150; Holmes, British Politics in the Age of Anne, p.199 note.

²Ellis, 'The Whig Junto', pp.609-18.

In several more, the changes that were made before the elections were insignificant, as, for instance, in Herefordshire and Norfolk, in each of which two gentlemen were put in and none put out in February 1708.¹ The number of counties where significantly large changes took place was relatively small. Sometimes the number of gentlemen put in was above the average. In Cheshire as many as nine gentlemen were added in March 1708, among them Charles Stanley, about to be re-elected knight of the shire in the neighbouring county of Lancashire. In Devon, twelve new justices were included.² Three counties were substantially remodelled. In Peterborough, twenty new justices were appointed, and two put out; admittedly, this was the first commission since the Queen's accession six years before.³ In Wiltshire, nine gentlemen were added, among whom were Matthew Ducie Morton, about to be re-elected knight of the shire in Gloucestershire, and John Webb, shortly to be re-elected at Ludgershall. Fourteen gentlemen who refused to act were dismissed. On the same day, fifteen were added for Dorset, and ten were put out as refusing to act.⁴ The coincidence of dates and of reasons for dismissal suggest that the proposals for Dorset and Wiltshire came from the same source. It is a

¹P.R.O., C.234/15, Herefordshire: 5 Feb. 1707/8; C.234/27, Norfolk: 10 Feb. 1707/8.

²P.R.O., C.234/5, Cheshire: 22 Mar. 1707/8; C.234/9, Devon: 1 Mar. 1707/8.

³P.R.O., C.234/92, Peterborough: 24 Feb. 1707/8.

⁴P.R.O., C.234/40, Wiltshire; C.234/10, Dorset: both 1 Mar. 1707/8.

feasible conjecture, in the absence of further evidence, that this source was either the marquess of Dorchester or the duke of Bolton, two magnates of considerable local influence in both counties. It is difficult to relate the dismissals in these counties to the progress of the election. In Surrey, however, there is a possible connection between the removal of a justice and electoral success. Charles Cox, the sitting member for Southwark, himself took an affidavit that one John Ladd, a Surrey justice, was unwilling to co-operate in the summoning of suspected persons to take the oaths, that he had dismissed the case of a papist who had refused the oaths, that he had been a non-juror in King William's time, and that he still referred to William as a usurper. Cox sent this to Sunderland, who showed it to the Queen. Ladd was promptly dismissed from the Surrey commission, just twenty days before Cox was re-elected.¹ In another case a Whig attempt to remodel the commission for electoral purposes misfired. This involved John Gape, M.P. for St. Albans in the 1705-8 Parliament and a strong Tory. Sunderland wrote to Cowper that the Queen was informed that Gape had 'misbehaved himself on several occasions where her Majesty's and the publick service were concerned'; he was to be turned out of the Hertfordshire commission.² Cowper issued a fiat leaving

¹Blenheim MSS., C I-36: affidavit of William Puryour, 27 Mar. 1708; *ibid.*, Charles Cox to Sunderland, 27 Mar. 1708; P.R.O., S.P.44/106, p.207; Sunderland to Cowper, 31 Mar. 1708; C.234/36, Surrey: 10 Apr. 1708; Index 4216, p.372.

²P.R.O., S.P.44/106, p.213: Sunderland to Cowper, 10 Mar. 1708.

Gape and four others out, and putting ten gentlemen in.¹ However, the docket book does not record the sealing of a commission for Hertfordshire between March 1707 and July 1709, and Gape was re-elected for St. Albans in May 1708. Lady Marlborough lamented that he had been left with 'the power of justice' in St. Albans; this, she thought, was the reason for the defeat of her brother in that election.² It seems a reasonable conclusion that, overall, there was no very coherent attempt by the court to use the commission of the peace to influence the elections. The number of counties where the bench was remodelled was comparatively small. One point may be of some significance, however. Harley, and his friends Sir Simon Harcourt, the Attorney-General, and Henry St. John, the Secretary at War, ceased to be named ex officio in the commissions for all the counties after the loss of their offices in February 1708. This may have had some effect in a general sense. But the Harcourt counties of Berkshire and Oxfordshire did not receive a new commission at all in 1708, and it is difficult to trace a connection between St. John and the justices put out in Wiltshire. On the whole, the complaint of the Whigs that the ministers were reluctant to use their patronage seems to have been justified.³

¹ P.R.O., C.234/16, Hertfordshire: 11 Mar. 1707/8.

² Correspondence of Sarah, Duchess of Marlborough (London, 1838), i, 116, 130. Sarah meant that Gape had not been put out for either the town or the liberty of St. Albans, both of which received commissions like counties; the Queen's order had been for Hertfordshire. The confusion was not such as to defeat Cowper's purpose and the reason for Gape's reprieve was probably a Crown Office muddle.

³ Sir John Cropley to Shaftesbury, 15 Jan. 1708; quoted in Holmes, British Politics in the Age of Anne, pp.351-2.

The electoral success of the Whigs was really attributable to the Jacobite invasion of Scotland, and to a run on the Bank of England engineered by the Tories.¹ When Parliament re-assembled in the autumn of 1708, the Junto was at last able to use its parliamentary strength to storm the Closet, in spite of a stubborn resistance by the Queen. Somers, as Lord President, and Wharton, as lord-lieutenant of Ireland, entered the Cabinet in November 1708. Orford replaced Pembroke as First Lord of the Admiralty in October 1709. At a lower level, Junto supporters were brought into minor office. Godolphin and Marlborough phlegmatically accepted the colleagues forced on them by parliamentary necessity, but both regretted the Queen's uneasiness, and Godolphin in particular was uncomfortably aware that the only Junto lord not in major office was Halifax, the natural Whig candidate for the Treasury.² It would be natural to expect that, during the period from the election of 1708 to the beginning of 1710, the Junto leaders would set themselves to complement their success in London with the consolidation of their power in the localities. This, in fact, was what they did, but as far as the commission of the peace was concerned, they achieved their local aims by bringing supporters in rather than by putting opponents out. Compared with the

¹Letters of Joseph Addison, ed. W. Graham (Oxford, 1941), p.107; Trevelyan, England under Queen Anne, ii, 349-50; Holmes, British Politics in the Age of Anne, p.219.

²Ellis, 'The Whig Junto', pp.621-4, 625-38; Holmes, British Politics in the Age of Anne, pp.377-8.

ones and twos included in 1707, the numbers added in late 1708 and 1709 were, in several counties, fairly high: for instance, sixteen in Derbyshire, twelve in Kesteven, nine in Kent, nine in Herefordshire, seven in Hampshire, and six in Cumberland. Devon, which had received twelve additional names in March 1708, received ten more in March 1709.¹

However, the initiative for such additions was not the result of planned policy at the centre. Cowper sealed fewer commissions of the peace in each of the years 1708 and 1709 than had been sealed in any year since before 1675. Most of the commissions he did seal, were dated in the routine period before the assizes. Several counties were passed over, especially in Wales.² It is a reasonable conclusion that Cowper responded to requests, but that these requests were unsolicited. It was natural that the Whigs in the localities should, at the zenith of their party's fortunes, desire the Chancellor to include their supporters in the commission of the peace, but it was not inevitable that this would happen in every county. Indeed, in some places it was the Tories who forced changes on the unsuspecting Chancellor. This happened in Staffordshire, where a sound Whig, Brian Broughton, was put out in July 1709. The

¹P.R.O., C.234/8, /21, /18, /15, /14, /7, /9, respectively: various dates between 12 Feb. 1708/9 and 26 July 1709.

²All the counties for which Cowper had not yet sealed a commission were now dealt with, except Flintshire.

suggestion that he be restored was couched in a defensive tone. The need was for justices of 'good Revolution Principles' to meet the threat from a local Toryism made more, not less, vigorous by the triumph of the Whigs at the centre.¹ Moreover, even where such requests were forwarded to the central government, Cowper was not prepared to examine them uncritically. For instance, Sir Francis Drake wrote from Devon that, though he was pleased that one of his recommendations had been accepted, he was surprised that others whom he had named were not included.² This was in the one county where a striking number of additions had, in fact, been made - 22 in twelve months.

It was unusual for justices to be put out of the commission in 1708 and 1709. There is some evidence that, after the fall of Harley in February 1708, the Queen herself took over Harley's rôle as a moderating influence in the government against Junto pressures. When William Lowther, the Junto M.P. for Pontefract, wrote that a West Riding justice, one of four in a single parish, had maliciously issued warrants to cause inconvenience to himself and was, moreover, 'one of the Discontented Party', the Queen, in referring the matter to Cowper, charged him to 'hear both sides'. The next commission for the West Riding did not omit Lowther's

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F55: Dr. William Lloyd to Cowper, 25 July 1709. Broughton was restored in August. P.R.O., C.234/34, Staffordshire: 5 July, 22 Aug. 1709.

²Herts.R.O., Cowper (Panshanger) MSS., D/EP F54: Sir Francis Drake to Cowper, 12 Dec. 1709.

enemy and was not, indeed, issued until eight months later.¹ Again, in November 1709 the Queen desired the Chancellor to investigate a complaint against a Surrey justice called Shem Bridges. Again, Bridges was not dismissed.² It is also possible that Cowper, mindful of the fate of his predecessors Somers and Wright, was unwilling to arouse Parliamentary antagonism. The fiats note, more frequently than usual at this time, such acceptable reasons for the omission of living justices as 'at his own request' or 'left the county'.³

In only one county is there much evidence of a systematic purge at this time. This is Wiltshire, where in March 1708, before the election, fourteen living justices had been left out. Another was dismissed in March 1709 and fifteen more were dismissed from the commission in December 1709.⁴ Some names appear in more than one fiat, but even so at least 27 justices were dismissed between March 1708 and December 1709. The reasons are probably the substitution of the Whig marquess of Dorchester for the Tory Viscount Weymouth as custos in June 1706, and the exertions of the Junto caucus at Devizes. Possibly the duke of Bolton took a hand. But Wiltshire is the only county where large

¹P.R.O., S.P.44/107, pp.183-6: Henry Boyle to Cowper, 1 March 1709, enclosing the petition of William Lowther, P.R.O., C.234/44, West Riding: 7 Nov.1709.

²P.R.O., S.P.44/108, f.167: Sunderland to Cowper, 17 Nov. 1709. The complaints came from the contentious Sir Harry Dutton Colt.

³For instance: P.R.O., C.234/35, Suffolk: 25 Mar. 1709; C.234/31, Rutland: 8 Mar. 1708/9.

⁴P.R.O., C.234/40, Wiltshire: 1 Mar. 1707/8, 17 Mar. 1708/9, 6 Dec. 1709.

numbers were put out. Admittedly, justices were dismissed in smaller numbers in other counties too, and these cases have sometimes been interpreted as evidence that the Junto exercised its local patronage in an arrogant way in 1708 and 1709.¹ Hertfordshire, where Cowper doubtless drew on his local knowledge again to dismiss four justices in two commissions in 1709, might be a valid example of such arrogance.² But with the exceptions of Wiltshire and Hertfordshire, Cowper was generally acting on the authority of the Queen in Council in dismissing justices at this time, and the reason for omission was clearly proved misdemeanour. In one case, involving a justice whose support for the Tory candidate in the Surrey election of 1708 had been too enthusiastic, the Queen signified that she was entirely convinced of his 'disaffection' before Cowper was permitted to put him out.³ Three justices in Cambridge town - a corporation where justices were appointed by the Chancellor - were dismissed in January 1709. The decision to put them out was taken by the Committee of Council after the Attorney General's report showed that they had taken bribes to release listed soldiers.⁴ Five Suffolk justices,

¹Ellis, 'The Whig Junto', p.657.

²P.R.O., C.234/16, Hertfordshire: 23 July 1709, 26 Nov. 1709.

³P.R.O., S.P.34/9, No.100: Sir John Buckworth to [Sunderland], 7 June 1708, enclosing affidavits that John Mitchell, justice for Surrey, insulted the supporters of Sir Richard Onslow and Mr. Scawen; S.P.44/106, p.322: Sunderland to Cowper, 15 June 1708; C.234/36, Surrey: 2 July 1708.

⁴Blenheim MSS., C I-6: Minutes of Cabinet, 20 Dec. 1708, 30 Jan. 1709; ibid., C I-36: Sunderland to Cowper, 28 Jan. 1709, signifying the Queen's order that the justices be put out and noting that one of them was dead anyway.

including Leicester Martin who had briefly sat as knight of the shire in 1708, were put out in March 1709 for very similar reasons. They had not taken bribes, but they had obstructed the press in a riotous manner. William Churchill, the Whig M.P. for Ipswich, advised the government to discount their defence. Nevertheless, it was the Queen's order in Council that secured their dismissal.¹ The evidence for and against the disgraced gentlemen was weighed carefully by the Attorney-General. His report was, on the whole, favourable to them, and in March 1710 the Queen decided that three of them should be restored to the Suffolk bench, which was accordingly done.²

Over the country as a whole, the number of counties in which living justices were put out without royal authorisation, for reasons that could be construed as party factiousness, was small between the election of 1708 and the winter of 1709-10. One explanation for this is that it was more necessary in 1709 than it had been for many years past for the central government to have the full co-operation and support of its local agents. In the first place, the justices of the peace were

¹P.R.O., P.C.2/82, pp.277-8, 296, 299: 13 Mar., 31 Mar., 10 Apr. 1709; P.R.O., S.P.34/10, No.77: William Churchill to Sunderland, 27 Mar. 1709, enclosing No.77/I: C. Grovenor, Bailiff of Ipswich, to William Churchill, 24 Mar. 1709; C.234/35, Suffolk: 18 Mar. 1708/9.

²Bodl. MS.Rawl. D.383, fos.1-53: Copies of affidavits prescribed to the Attorney General, and reports of the Attorney-General and the Solicitor-General, 2 July 1709; P.R.O., S.P.44/108, f.206: Sunderland to Cowper, 28 Mar. 1710; C.234/35, Suffolk: 5 Apr. 1710.

still indispensable to the system of recruiting soldiers and sailors, in spite of attempts to limit their authority. Any threat to put justices out for neglect would lead to insolent bullying of the magistrates by the officers of the press.¹ In the second place, 1709 was a year of serious economic hardship.² The justices' functions of regulating prices and enforcing the statutes relating to forestalling and engrossing became of great importance, while hardship in the parishes apparently led to an increase in the number of justices' indictments.³ The Secretaries of State received numerous reports of corn riots. It was represented from some counties that the ordinary local authority of the justices had broken down.⁴ The ministers possibly felt that a remodelling of the county benches would be inopportune. To put justices out of the commission of the peace, on account of their Tory principles only, would have been folly, if those justices were prepared to act. Where justices openly flouted their duty, they were disciplined, as for instance the Cambridge town justices discovered. Their neglect of their duties had to be made

¹Vernon Correspondence, iii, 322

²M. Beloff, Public Order and Popular Disturbances, 1660-1714 (reprinted edn., London, 1963), pp.68-70; Trevelyan, England under Queen Anne, iii, 33-8.

³J. S. Cockburn, 'The North Riding Justices, 1690-1750. A Study in Local Administration', Yorkshire Archaeological Journal, xli (1966), 490-1.

⁴For instance: Blenheim MSS., C I-37: Sunderland's domestic correspondence, 1709-10, passim; C I-40: Lord Chief Justice Holt to Sunderland, 24 July 1709, describing disorder in Northamptonshire.

clear, however. Otherwise, with possible exceptions in the cases of Wiltshire and Hertfordshire, Cowper was reluctant to purge the bench for purely party reasons when no dereliction of duty could be proved.

In the winter of 1709-10 the Junto had been forced on to the defensive for the first time since 1704. The country was undergoing economic distress. The war was going badly. The Queen, who saw Harley every day, was hostile. Above all, the popular support for Dr. Sacheverell, whose impeachment for a political sermon in February and March 1710 had been intended by the ministers as an exercise in discrediting the Tories, illustrated how far opinion at all levels had swung against the Whigs. During the spring and summer of 1710 the ministry slowly collapsed. Harley, supported by courtiers who distrusted the Junto, adroitly widened the breach between the Godolphin-Marlborough duumvirate and the Junto, and between the duumvirs and the Queen. In June Sunderland was dismissed; in August, Godolphin fell. Harley was anxious not to put himself wholly into the hands of the Tories and tried to win some of the Whigs. He even approached Somers and Halifax. His aim was to create a coalition ministry to avert an election, which, as everybody realised, would lead to a Tory landslide. However, the Junto held firm, and the remaining Whigs had all resigned by September, except for Robert Walpole, who lasted until January 1711 as Treasurer of the Navy. Harley accepted the situation, agreed to an election, and reconstructed the ministry, as places fell vacant, with Tories. The earl of Dartmouth became one Secretary of State,

Henry St. John, the other; Poulet was appointed to the Treasury; Rochester became Lord President, Buckinghamshire, Lord Steward.¹ It is sometimes said that this ministerial revolution was accompanied by changes among the lords-lieutenant. In fact, only two lieutenancies that were not vacant by death changed hands before the 1710 election: Rochester replaced Godolphin in Cornwall, and Beaufort replaced Bolton in Hampshire. The reason for both these changes was not necessarily the wish to mobilise Toryism in these counties in readiness for an election. If this had been so, Bolton would not have remained lord-lieutenant and custos of Dorset. Harley seems rather to have been trying to gratify those territorial magnates who had no Junto connections. He did not find this easy. Beaufort had set his heart, not on Hampshire, but on Gloucestershire, but the earl of Berkeley was appointed to that county in succession to his father, who died in September 1710. The earl of Scarsdale, who 'above all things' desired the lieutenancy of Derbyshire, was passed over.² Cowper himself became lord-lieutenant of Hertfordshire in 1710 in succession to the dead earl of Essex, an appointment which admittedly caused mild

¹ Feiling, History of the Tory Party, 1640-1714, pp.416-423; Trevelyan, England under Queen Anne, iii, chapter IV; Holmes, British Politics in the Age of Anne, pp.112, 167-8, 376; Ellis, 'The Whig Junto', pp.677-705.

² Hist.MSS.Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 545-6.

surprise.¹ The lords-lieutenant of only two counties, therefore, were dismissed, and the opportunity to appoint Tories in other counties was neglected until after the election and Cowper's dismissal. As far as the magnates at the top of county society were concerned, it seems that, in the majority of cases, local politics did not, as yet, reflect the great changes taking place in the ministerial politics of Whitehall.

During this upheaval, Cowper retained the great seal. In this, the last phase of his Chancellorship, the commission of the peace became a possible means of strengthening Junto influence, not to confirm the Whigs' central power, but to stave off the loss of it. The localities had become positively anti-Whig. A series of riots in London and the provinces, and a number of loyal addresses engineered by High Churchmen from assizes and quarter sessions, convinced the Whigs that those in authority in the countryside were hostile to the Junto.² One answer was to carry out that purge of the county commissions of the peace that had been expected, but had never fully taken place, since Wright had been replaced in 1705. Cowper now felt himself unable to risk conducting such a purge. The opportunity had gone. From January 1710 to September, when he resigned, he sealed twenty-five commissions of the peace. These were

¹ Ibid., pp.563-4

² Ibid., p.539; Boloff, Public Order and Popular Disturbances, pp.51-4; Holmes, British Politics in the Age of Anne, p.93; P.R.O., S.P.34/12, No.41: Jekyll to [Sunderland?], 4 Apr. 1710; Ibid., No.49: G. Parker to Lord Chief Justice Parker, 8 Apr. 1710.

spread over twenty counties, so that more than half of the counties of England and Wales did not receive a new commission at this time.¹ The evidence of the commissions that were sealed suggests that in 1710, when the Junto was on the defensive, as in 1708, when it was at the height of its power, Cowper was willing to respond to demands from the counties themselves; but that there was no initiative from the centre to change the commission of the peace on a large scale. Consequently most of the commissions sealed in the first nine months of 1710 are of a routine character. Names were added in small numbers, and dead justices were left out. The most striking changes in the early part of the year were in the Huntingdonshire and Norfolk commissions. Huntingdonshire's first commission for two years added thirteen names. In Norfolk, seven were added, and Thomas de Gray, the Whig M.P. for Thetford, was added to the quorum.²

Later in the year, in June and July, Cowper ceased, to some extent, to be a free agent. Tory gentlemen began to be restored to the commission of the peace in some counties. A commission sealed for Oxfordshire in July 1710 restored Sir Simon Harcourt. Harcourt had resigned as Attorney-General when Harley had fallen in 1708; as Attorney-

¹P.R.O., Index 4216, pp.197 ff.

²P.R.O., C.234/17, Huntingdonshire: 22 Feb., 26 Feb. 1709/10; C.234/26, Norfolk: 16 Mar. 1709/10.

General, he had been in commission for all the English and Welsh counties, and when he lost the office he was put out everywhere, including Oxfordshire where he lived. Cowper thought it prudent to restore him in Oxfordshire in the summer of 1710. In the same commission he included Sir Robert Jenkinson, who had been elected knight of the shire in succession to his father in a bye-election in February 1710 in time to vote for Sacheverell.¹ Also in July, the Queen herself ordered Cowper to put as many as nine gentlemen into the commission of the peace for Derbyshire. Cowper obeyed.² He fought, deviously but unsuccessfully, against the Tory takeover of Hampshire. By a lapse of memory, the Queen forgot to order him to replace Bolton by Beaufort in the custos-ship as well as in the lord-lieutenancy. The Whigs were anxious to place one Robert Foarder in the commission of the peace, and Cowper accordingly issued a fiat to include him. Harcourt rightly discerned a conspiracy to have the commission sealed and sent to the county with Bolton's name in the assignavimus denique clause as custos, 'that it may be understood by this stratagem that the D[uke] of B[olton] is since his being removed from the lieutenancy restored to her Majesty's favour'. Harley intervened in the nick of time. Cowper

¹P.R.O., C.234/30, Oxfordshire: 7 July 1710; A Collection of White and Black Lists... (Fourth, corrected, edition, 1715), p.17.

²P.R.O., S.P.44/110, p.8: Dartmouth to Cowper, 29 June 1710; C.234/8, Derbyshire: 6 July 1710.

was ordered not to seal any commissions for Hampshire until further notice, and the fiat had to be corrected to ensure that Beaufort was named as custos.¹

The fact that Cowper was to some extent the prisoner of the new ministers in the summer of 1710, is obscured by an episode open to misinterpretation. Harley himself was left out of the commission of the peace for Herefordshire. His name had originally been in the commission, but it had been scraped off the parchment, and he sent a stinging letter to Cowper, resenting the mortification he had received, and adding, in the best tradition of the Whigs in the early 1680's, that he was rather pleased to have been left out.² This affair caused a sensation. Letters of surprise and sympathy, comparing Harley's omission with that of his father, Sir Edward, in 1687, passed between Hereford and London.³ Cowper was appalled. His first impulse was to think that Harley's name had been erased in the country. Then he tracked down the mistake to a Crown Office blunder. When Harley ceased to be Secretary of State he also

¹Brit.Mus., Loan 29/312: [Harcourt] to Harley, 13 Sept. 1710; P.R.O., S.P.44/110, p.86: Dartmouth to Cowper, 13 Sept. 1710; P.R.O., C.234/14, Hampshire: 18 Sept. 1710. The date of the fiat is changed from 9 September, and the instruction to put Beaufort in as custos is caretted, which confirms Harcourt's suspicions.

²Brit.Mus., Loan 29/196, f.58: Harley to Cowper, 2 Aug. 1710 (draft).

³Brit.Mus., Loan 29/196, f.84: William Bromley to Harley, 12 Aug. 1710; ibid., f.59: Edward Harley to --, 3 Aug. 1710.

ceased to be a Privy Councillor, and, like Harcourt, he had been put out of the commissions of the peace for all the English and Welsh counties. An unlucky clerk, seeing his name in the Herefordshire commission about to be sealed, crossed it out in ignorance of Harley's local claim to be included. Cowper's letters to Harley explaining this reflect extreme distress.¹ Harley was restored in a new commission issued in August, but bearing the date 17 July 1710 - that is, the date of the commission sealed without Harley's name. This was sent to the clerk of the peace with a covering letter explaining the cause of the mistake.²

Harley allowed himself to be mollified by Cowper's explanations about Herefordshire, because he had no alternative to Cowper as Chancellor. Harcourt was destined for the post of Attorney-General. The Queen had overcome her initial dislike of Cowper, and Harley wanted to keep him as a balance in the Cabinet to the High Churchmen, who, he feared, would swamp the new ministry.³ Harley first approached Cowper in late August, and continued through September to persuade him to retain the seal.

¹ Brit.Mus., Loan 29/196, f.63-4: Cowper to Harley, 4 Aug. 1710; *ibid.*, f.68-9: same to same, 6 Aug. 1710. Cowper's draft of his second letter is at: Herts.R.O., Cowper (Panshanger) MSS., D/EP F152. Numerous crossings out and insertions betray his agitation.

² P.R.O., Index 4216, pp.209, 210; Brit.Mus., Loan 29/196, fos.68-9: Cowper to Harley, 6 Aug. 1710. No trace of the operation to restore Harley's name appears in the Herefordshire flats. Cowper probably gave the instruction verbally.

³ Feiling, History of the Tory Party, 1640-1714, pp.418-9; Trevelyan, England under Queen Anne, iii, 68; Holmes, British Politics in the Age of Anne, pp.378-9.

His quarrel with the Chancellor over the Herefordshire commission forgotten, he protested that 'a Whig game was intended at bottom'. The Queen added her influence.¹ During these two months Cowper issued two commissions of the peace in addition to the revised Herefordshire commission and the commission for Hampshire intended to disguise Bolton's dismissal as custos. That for Middlesex added two Under-Secretaries of State in Dartmouth's office.² The commission for Cheshire is more interesting and may reflect a despairing attempt by Cowper to assert the Whig interest in the localities in time for the approaching election. In late August two Cheshire Tories complained to Harley that the bench was dominated by Whigs who in their charges to the Jury 'preach up Resistance or anything to Poyson the People against an Election & in their private Acting declare they may expect to be dealt with, as they shall give their vote'. They enclosed a list of the changes they desired.³ Cowper's fiat, dated 9 September, ignored these recommendations and put in four gentlemen, three of whom were to be removed after he had resigned the seal.⁴ This is, however, the only case of Whig resistance.

¹The Private Diary of William, First Earl Cowper, ed. E. C. Hawtrey (Roxburghe Club, Eton, 1833), pp.42-6.

²P.R.O., S.P.44/110, p.8: Dartmouth to Cowper, 1 July 1710.

³Brit.Mus., Loan 29/196, f.134: G. Warburton and C. Cholmondeley to Harley, 30 Aug. 1710.

⁴P.R.O., C.234/5, Cheshire: 9 Sept. 1710 (and see that for 10 March 1710/1).

Cowper was determined not to stay in office without his Whig colleagues in a ministry dominated by Harley, whom, in spite of his protestations of respect at the time of the Herefordshire incident, he regarded with mystified distrust. He was at last permitted to give up the great seal on 23 September 1710. He had held it for three weeks short of five years.

During his Chancellorship, Cowper's manipulation of the county commissions of the peace had been inconspicuous. He never issued more than 15 commissions in a single month, whereas his predecessor Wright had sealed 40, 32 and 42 commissions in consecutive Julys between 1700 and 1702.¹ Though there were some complaints about the composition of the bench in single counties, there were none relating to Cowper's overall handling of the commission. There was no Parliamentary demand for an enquiry into his conduct of local patronage, before or after his fall. It is true that he had been appointed as a Whig, with a view to redressing the balance between Whig and Tory in the localities which had been disturbed by Wright, and that he did not lose his Whig connection. He was not tempted by Harley's desire for a coalition of moderate men, in 1708 or in 1710. But he does not, on the surface, seem to have pursued a Whig policy of party proscription. One explanation that has been advanced

¹Cowper issued fifteen commissions in March 1707.

for this is that it was the Tories who were pre-eminently the party of the country gentry. The Whigs lacked supporters of sufficient calibre for the commission of the peace, and Tories had to be kept in perforce.¹ This argument is plausible, though it rests on a letter to the effect that in Surrey the Whigs could not muster enough respectable followers to fill the bench in 1710. This is very surprising in view of the fact that Wright had put out twenty-two living Surrey justices between 1700 and 1705, of whom only two were restored by Cowper.² Moreover, the Surrey freeholders had in 1705 and 1708 elected two knights of the shire, Sir William Scawen and Sir Richard Onslow, who are thought to have been among the 'friends and allies' of the Junto.³ It might be argued, too, that the Whigs did not experience the same problem in 1714-5, when the commissions for most counties expanded in size although Tories and Jacobites were put out.⁴ A different, perhaps preferable explanation is that Cowper's discreet handling of the commission creates a misleading impression. It is true that he did not approve of large-scale purges. In only six counties were more than ten living justices dismissed.⁵

¹Holmes, British Politics in the Age of Anne, p.171.

²H.L.R.O., Main Papers, H.L., 20 March 1704, 16 Feb. 1705; P.R.O., C.234/36, Surrey.

³Ellis, 'The Whig Junto', Appendix G, pp.32, 35.

⁴See below, Chapter 8.

⁵Dorset (10), Essex (10), Hertfordshire (24), Gloucestershire (22); Hertfordshire (24), Leicestershire (12), and Wiltshire (29).

But it is also true that many counties received commissions which, in aggregate over the period from 1705 to 1710, added gentlemen to the bench in substantial numbers. Excluding Middlesex and Durham, for which the fiats do not survive, Cowper added 1044 names to the commissions, and he left out about 195 gentlemen who were still living.¹ On average, therefore, Cowper added 18.9 justices and left out 3.5 justices per county. This is, of course, too crude. In Kent, for instance, 52 new justices were appointed, but the only justices put out were the deceased admirals Sir Cloudesley Shovell and Sir George Rooke.² On the other hand, Holland received one commission adding two names,³ and Flintshire did not receive a commission at all, while Cowper held the great seal. Even so, it is probably the case that in most counties, as Cowper subsequently claimed, his adjustments had created by 1710 a Whig preponderance of power at quarter sessions. Preponderance is not the same as monopoly. The Tories had not been ruthlessly excluded, except in a few counties where local initiative had demanded such exclusion, and it is arguable that the Whigs

¹These figures look exact, but they can only be approximate; although an attempt has been made to take account of: duplication in consecutive fiats; cases in which fiats were not implemented in commissions; dead justices not so described in the order to leave them out; 'inclusions' which were merely the promotion of an esquire to a place among the baronets; and other ambiguities, the margin of error remains considerable.

²P.R.O., C.234/18: four fiats from 5 Mar. 1705/6 to 13 June 1710.

³P.R.O., C.234/21, Kesteven: 6 June 1706 (a combined fiat for all the divisions of Lincolnshire).

paid dearly for Cowper's moderation after the Sacheverell trial. However, there is no reason to suppose that Cowper's subsequent claim to George I, that in 1710 the commissions of the peace were 'in a very good state with a sufficient balance in favour of the honest interest', was unjustified.

After Cowper's resignation, the great seal was put into commission while Harley cast about for a successor. During this interregnum, which lasted for four weeks during the height of the 1710 election campaign, no commissions of the peace were sealed at all. Among the names bandied about were those of Sir Edward Northey, Sir Thomas Trevor, Lord Guernsey, and Baron Price. As term drew on, the Commissioners of the Great Seal grew alarmed at the prospect of sitting judicially, and Harley at last persuaded the reluctant Sir Simon Harcourt to accept. He took the oaths before the Council on 19 October 1710.¹ Just as, five years before, the appointment of Cowper had seemed to foreshadow a Whig remodelling of the commission of the peace, the appointment of Harcourt now was expected to herald changes in the interests of the Tories.²

¹ Luttrell, Brief Relation, vi, 633, 643, 644; Letters of Joseph Addison, pp.233-4; W. S.Churchill, Marlborough, His Life and Times (edition in two volumes, London, 1947), ii, 758-9; Clayton Roberts, Growth of Responsible Government, p.352; Brit.Mus., Loan 29/196, f.266: Harcourt to Harley, 17 Oct. 1710; P.R.O., P.C.2/83, p.123.

² James Brydges to Drummond (before the election and Cowper's resignation), printed in Clayton Roberts, Growth of Responsible Government, p.351 note.

7. The Commission of the Peace and the Tories, 1710-14.

Sir Simon Harcourt, who was aged about fifty in 1710, came from an ancient family settled in Oxfordshire. Like Cowper, Sir Simon had made his reputation in Parliament. In Fenwick's case, and in the impeachment of Somers, he was a prominent spokesman on the Tory side. In 1702 he was appointed Solicitor-General, in 1707 Attorney-General. In 1708 he resigned when Harley fell, and for a short time he lost his seat in the house of Commons. In 1710, however, he was elected for Cardigan in a bye-election in time to take a leading part in the defence of Sacheverell. He accepted the great seal on 19 October 1710. Subsequently he was raised to the peerage as Viscount Harcourt in September 1711, and he was elevated from Lord Keeper to Lord Chancellor in April 1713. The verdict of legal historians is that he was a thoroughly able lawyer, without being one of the great Chancellors.¹ In the early years of the Tory ministry of 1710-14, he was generally regarded as third to Harley and St. John. After the gradual split between the two senior ministers, Harcourt was aligned with St. John, and was therefore associated with the Secretary's policy of the ruthless exclusion of Whigs from the

¹Campbell, Lives of the Chancellors, iv, 430-479; Foss, Judges of England, viii, 33-41; The Harcourt Papers, ed. E. W. Harcourt (Privately printed, no date), ii, 1ff; Holdsworth, History of English Law, xii, 201-3.

civil administration, rather than with the Treasurer's desire for moderation and conciliation.¹ Like Somers and Cowper, but unlike the unlucky Wright, he was a convivial man of presence and style. In his relations with the justices of the peace, Harcourt was fortunate in that he had himself been an active country justice. He had attended Oxfordshire quarter sessions in the 1690's. Moreover, he had firsthand experience of the humiliation of dismissal, since in 1697 he had been put off the Oxfordshire bench for refusing the Association.² His Secretary of Commissions between 1710 and 1714 always wrote fiats for new commissions of the peace in the form of an instruction to put gentlemen in and out, never in the form of a complete list of all the gentlemen to be in. Numerical calculations are therefore fairly straightforward. Completely comprehensive coverage is not, however, possible, since there are no surviving fiats for Middlesex or Durham.

Between 1705 and 1710, Cowper had established Whig superiority of numbers in the county magistracies, not so much by putting out Tories as by putting in Whigs. Harcourt now set himself to redress the balance in favour of the Tories. A wave of commissions in the winter of 1710-1

¹ Jonathan Swift, 'An Enquiry into the Behaviour of the Queen's Late Ministry', Jonathan Swift's Political Tracts, 1713-19, ed. H. Davies and I. Ehrenpries (Oxford, 1964), p.144; G. S. Holmes, 'Harley, St. John, and the Death of the Tory Party', in: ed. G. S. Holmes, Britain after the Glorious Revolution, 1689-1714 (London, 1969), p.225.

² P.R.O., P.C.2/76, p.580.

represents his first campaign to revive Tory strength in the localities. Harcourt's first county commissions of the peace appeared in December 1710, when 6 were sealed; 3 more followed in January 1711, then 26 in February and 8 in March. Thus, 43 commissions, for 42 out of the 57 counties were issued in four months.¹ After this activity, no more commissions were sealed until June 1711. Harcourt had therefore had an opportunity to remodel the bench in nearly three-quarters of the counties by the spring of 1711.

The most striking feature of the 43 commissions sealed in the winter of 1710-1 was the large number of gentlemen put in. Harcourt added a total of 919 names.² In most of the 42 counties which received a new commission, the number of gentlemen put in is significantly higher than would have been normal in a 'routine' commission. More than forty new names were added to the bench in three counties: there were 73 new justices in Kent, 56 in Gloucestershire and 42 in Sussex. Eight counties found between thirty and forty new names in their new commissions; eleven more had between twenty and thirty; and fifteen counties received between ten and twenty additions, among them some of the smaller counties.³

¹P.R.O., Index 4216, pp.420ff. The East Riding received two commissions. The neglected counties were: Breconshire, Carnarvonshire, Cumberland, Derbyshire, Dorset, Durham, Flintshire, Glamorgan, Herefordshire, Leicestershire, Merionethshire, Northumberland, Peterborough, Radnorshire, and Wiltshire.

²P.R.O., C.234/1-95, passim; not counting Middlesex. It was reported that 25 gentlemen were included in the new Middlesex commission at this time: Luttrell, Brief Relation, vi, 665.

³Small counties which received relatively large additions at this time to the number of justices in commission were Ely (18), Rutland (13), Anglesey, Carmarthenshire, Huntingdonshire (11) and Pembrokeshire (10).

Only five counties received commissions making less than ten additions; these also were among those with the shortest lists of justices.¹

It would be an obvious assumption that Harcourt was putting into the commissions of the peace, Tory gentlemen who had been put out or kept out by his Whig predecessor. St. John, who had been Harcourt's ally in 1711, later wrote that Tory policy was

to break the body of the Whigs, to render their supports useless to them, and to fill the employments of the kingdom, down to the meanest, with tories.²

Possibly this represents Harcourt's intentions with regard to the commission of the peace fairly accurately. However, there are some qualifications to the view that Harcourt was putting gentlemen into the commission of the peace in large numbers in the winter of 1710-1, in order to wrest local power from the Whigs by mobilising all the available resources of grass-roots Toryism.

In the first place, Harcourt was not as eager as might have been expected to put justices who had been dismissed by Cowper back into the commissions. The proportion of justices put out by Cowper and now restored by Harcourt, to justices put in by Harcourt *de novo*, was fairly small; the number of restorations was 44, or less than 5% of the total

¹Denbighshire, Westmorland (3), Cardiganshire (7), Montgomeryshire (4), and Holland (3).

²Viscount Bolingbroke, A Letter to Sir William Wyndham (1753), pp.21-2.

number of additions.¹ To some extent, this low proportion of restorations reflects Cowper's moderation in purging the bench of living justices. Nevertheless, in the course of this first campaign, Harcourt restored less than a quarter of the living justices whom Cowper had put out. He pursued an inconsistent course in each of the three counties for which Cowper had put out more than twenty living justices. In Hertfordshire, where Cowper had dismissed 24 justices, Harcourt's total of 29 additions included as many as 9 restorations. However, in Gloucestershire only 3 of the 22 gentlemen disgraced by Cowper were among Harcourt's 56 additions. Harcourt did not seal a commission at all at this time for the third county, Wiltshire, where Cowper had dismissed 29 justices. Admittedly, in some counties Cowper did restore a substantial proportion of gentlemen who had been in the commission before: 4, out of 7 put out by Cowper, among 27 additions in Buckinghamshire; 4 out of 5 among 35 additions in Suffolk; 3 out of 4 among 11 additions in Carmarthenshire. In other counties, however, there were no restorations. For example, none of the four Warwickshire justices put out in 1707 by Cowper for 'refusing to act' were brought back. It seems a reasonable conclusion that Harcourt was not at this time principally concerned to reverse the small-scale purges of his Whig predecessor except in one or two exceptional cases.

¹This figure is if anything likely to be an over-estimate, although an attempt has been made to rule out cases in which a man of the same name as a dismissed justice was put in by Harcourt.

This view is supported by a piece of negative evidence. Some of the counties for which Harcourt made very large additions were among those which Cowper had not purged at all. Kent, with 73 new names, is an obvious example. Shropshire and Cornwall, with 39 and 38 additions respectively, were two more counties for which Cowper had not left anybody out between 1705 and 1710.

A second qualification to the hypothesis that Harcourt's additions were simply Tory changes reversing Cowper's Whig changes emerges from consideration of those members of the Parliament elected in the autumn of 1710 now added to the commissions of the peace. Of Harcourt's 919 additions, 119, or just under 13%, were sitting M.P.'s, and the number of M.P.'s put into one or more commissions of the peace was 94.¹ It is true that as many as 49 of these had sat for the same constituency in the 1708-10 Parliament, having, presumably, been kept out by Cowper. It is also true that among them were some of the leading Tories in the House of Commons. For example, Sir William Wyndham came in for Somerset where he was knight of the shire; Allen Bathurst, who sat for a Gloucestershire constituency and lived in Bedfordshire, became a justice for both counties and also for Oxfordshire; George Granville, Secretary at War and M.P. for Cornwall, was put in the Cornwall, Berkshire

¹ Again, this figure is likely to be imprecise, though not significantly so. Several doubtful but possible cases have been omitted.

and Surrey commissions. The names of 48 of the 94 M.P.'s appear in a list of 'members' of the Tory October Club.¹ It was natural enough that Harcourt should include identifiable Tories in the commission of the peace for the counties in which their constituencies or their residences were situated. However, not all of the M.P.'s added to the commissions of the peace were reliable Tory supporters. Of the 94 M.P.'s put into the commissions in the winter of 1710-1, as many as 26 cast 'opposition votes' in the course of the 1710-3 Parliament, according to the three surviving division lists.² Opposition votes did not necessarily mean Whig votes. The third of these divisions was on an issue, the French Commerce Bill, which divided the Tories. The reasons for the defection of such persons as Daniel, Lord Finch, who was put in for Rutland, and Sir Thomas Hanmer, who was put in for Surrey, are well known; they could not have been regarded as anything but Tories when Harcourt was remodelling the commissions of the peace early in the life of the new Parliament.³ Even so, it seems significant that more than a quarter of the 94 M.P.'s were not so pleased to have been added to the commission of the peace as

¹Abel Boyer, The Political State of Great Britain (2nd edn., 1718), iii, 117-21.

²J. G. Sperling, 'The Division of 25 May 1711 on an amendment to the South Sea Bill; a note on the reality of parties in the Age of Anne', Hist. Journal, iv (1961), 193, 198-9; G. S. Holmes, 'The Commons' Division on "No Peace without Spain", 7 December 1711', Bull.Inst.Hist.Research, xxxiii (1960), 233-4; A Collection of White and Black Lists, pp.23-30.

³Horwitz, Revolution Politicks, pp.234, 239.

to be unable to side with the opposition in some house of Commons divisions. The point is given further weight by the fact that as many as 9 of the 94 M.P.'s were described as either 'Whig' or 'Doubtful' in an analysis of the political character of the new house of Commons drawn up shortly after the 1710 election.¹ It is probable that Harcourt was not only distributing the loaves and fishes of local power to loyal supporters, but that he was also tempting persons who were not loyal supporters to change their allegiance and persuading persons whose sympathies were unknown to commit themselves to the Tories. An extension of this hypothesis would be that Harcourt was prepared to gratify potential but not actual supporters outside as well as inside Parliament by putting them in the commission of the peace. It is thus by no means certain that the 919 gentlemen placed in commission at this time were all committed Tories.

The case that Harcourt's additions were exclusively Tory is weakened further by a third qualification, that apparent at every large-scale

¹Brit.Mus., Stowe MSS. 223, fos.453-6. The 'Whigs' were Richard Harnage, M.P. for Bishops Castle (put in for Shropshire), and Edward Jeffreys, M.P. for Brecon Borough (put in for Surrey). For Jeffreys' connection with Surrey, see: W. R. Williams, Parliamentary History of the Principality of Wales (Brecknock, 1895), pp.24-5. The 'Doubtfuls' were: John Drake, M.P. for Amersham (put in for Buckinghamshire); Leonard Gale, East Grinstead (Sussex and Surrey); Francis Gwyn, Totnes (Somerset); James Herbert, Queenborough (Kent, and also, probably, Buckinghamshire and Oxfordshire); Sir Thomas Lee, Chipping Wycombe (Buckinghamshire); Philip Rashleigh, Liskeard (Cornwall); and Samuel Robinson, Cricklade (Hertfordshire).

addition to the lists of names in the commissions. Harcourt could not have checked the character of everyone of his 919 new justices, any more than his predecessors in similar circumstances. The new names had to be recommended. It is unlikely that these persons in each of the several counties who were nominating additions to the bench conducted a consistent uniformly Tory campaign. Unfortunately, it is not clear who was making recommendations in the winter of 1710-1. A recent political dismissal had taken place in the lieutenancy of only two of the counties, Cornwall and Hampshire, receiving a new commission between December 1710 and March 1711.¹ In two more counties, the appointment of Tory custodes rotulorum - the earl of Cardigan in Northamptonshire and the earl of Plymouth in Worcestershire - perhaps had some significance; they replaced dead, not disgraced incumbents. However, the recommendations probably came, not from the peers in the great shire offices, but from caucuses of gentlemen within the counties. In Cornwall, for example, it was probably the Tory knight of the shire, George Granville, who recommended the changes, rather than Rochester, the custos, who died in May 1711. Granville had certainly remodelled the Cornish stannaries

¹ See above, p.283.

by October 1711.¹ Lack of evidence means that an assessment of the source of recommendations cannot be made for every county, but it seems probable that, whoever did make the suggestions, there was some variation in the criteria of choice from county to county. It is implausible that the policy of 'filling the employments of the kingdom..... with Tories' associated with St. John was wholly dominant in all the counties.

Another striking feature of the commissions of the peace sealed between December 1710 and March 1711 is the high total number of living justices dismissed. The fiats give orders for the omission of 183 gentlemen who were not specifically described as dead, and who were, so far as can be ascertained, still alive.² Harcourt was apparently conducting a substantial purge among justices of the peace. As many as 97 of the dismissed justices - more than half the total of 183 - had been put into the commission over the previous five years by Cowper, and in these cases it is probable that Harcourt saw himself to be eliminating the undesirable Whig element on the county bench introduced by his predecessor. However, just as there are qualifications to the

¹Hist.MSS.Comm., Portland MSS., v, 97.

²135 dead justices were ordered to be left out. These figures do not include Middlesex or Durham.

view that Harcourt's inclusions were all inspired by considerations of Tory supremacy, so there are qualifications to the view that all his dismissals represented a desire to put the Whigs to the sword.

In the first place, Harcourt's purges were not especially spectacular in any one county. The dismissals were spread fairly evenly over 27 of the 42 counties for which a new commission was sealed. Two counties close to London, Kent and Surrey, were treated much more harshly than other counties, with 30 and 24 justices omitted respectively, but both counties had proportionately large numbers of justices in commission anyway.¹ In thirteen counties, no justices at all were left out.² In only one county other than Kent and Surrey were more than ten justices dismissed: eleven in Cheshire. The number of justices put out in some counties with large commissions was quite small. For example, seven were put out in Devon, eight in Essex, seven in Hertfordshire, and only three apiece in Gloucestershire and Hampshire. The aggregate total of justices dismissed in more than twenty-five simultaneous small-scale purges thus gives a possibly misleading impression of the severity of Harcourt's campaign in counties other than Kent and Surrey. The point is confirmed by the negative evidence

¹ On the analogy of Kent and Surrey, the number of dismissals quoted by Luttrell for Middlesex - 5 - seems to be too small: Brief Relation, vi, 665.

² Buckinghamshire, Cardiganshire, Carmarthenshire, Denbighshire, Huntingdonshire, Holland, Montgomeryshire, Nottinghamshire, Rutland, Shropshire, Staffordshire, and the East and North Ridings of Yorkshire.

of the apparent absence of protests about Harcourt's handling of his local patronage in the months following the changes made in the winter of 1710-1.

Also, while it is true that over half of Harcourt's dismissals were of justices put in by his Whig predecessor Cowper, it is also true that Harcourt did not put out at this time the vast majority of all the justices put in by Cowper. Cowper had authorised the inclusion of 1044 justices in counties other than Middlesex and Durham. Harcourt put out 97 of these who were still living and 22 more who had died. A few of Cowper's early inclusions had been put out by Cowper himself, and some, having died, may have been left out without appearing in the fiats; but neither of these categories is likely to have been large, and it is probable that at least 80% of the justices put in by Cowper between 1705 and 1710 remained in commission during and after Harcourt's campaign in the winter of 1710-1.

Finally, the dismissed justices were not, for the most part, gentlemen of outstanding social or political prominence. The exceptions to this rule can be counted fairly briefly. The former bishop of Oxford, who had been translated to Lichfield and Coventry as long ago as 1699, was left out for Oxfordshire. He was a steady Whig whom Cowper had been content to leave in the Oxfordshire commission. A handful of baronets and knights were put out, among them at least one whose dismissal cannot be regarded as politically motivated: Sir John Bolles in Kesteven, who

was enough of a Tory to have refused to sign the Association in 1696. Three sitting M.P.'s were dismissed, one of whom - John Dibble, M.P. for Okehampton, put out for Devon - was actually described as a Tory just after his election, although he had voted on the Whig side in the Sacheverell trial.¹ Six more justices who had been M.P.'s in the 1708-10 Parliament, but who had not been re-elected in 1710, were put out for the county in which their former constituency had been situated. One of them, David Polhill, was the former knight of the shire for Kent.² A very few other gentlemen of consequence were dismissed. For example, Sir John Elwell, the leader of the Exeter Whigs, whose omission from the Devon commission in 1702 or 1703 had caused a stir in the West Country,³ was left out again for both Devon and Surrey. George Booth, the uncle of the earl of Warrington, and Sir Robert Duckinfield, an influential Presbyterian baronet, were dismissed for Cheshire. In Northamptonshire the senior baronet, Sir Robert Haslerig, and the second name in the list of esquires, Christopher Montague, were both put out. But these cases were exceptional. Again in Northamptonshire, the four gentlemen dismissed besides Haslerig and Montague were among the

¹Brit.Mus., Stowe MSS.223, f.454; A Collection of Black and White Lists, p.19. The other two were John Coter, M.P. for Bedford (Surrey) and Walter Whitfield, M.P. for New Romney (Hertfordshire).

²The other five were George Balch (Somerset), John Borlase and Anthony Nichol (Cornwall), Nicholas Carew (Surrey) and William Lowther (West Riding).

³Brit.Mus., Loan 29/191, fos.234-5: Richard Duke to Harley, Sept. 1704.

lowest names in the list.¹ No lay peers were left out at all. The great majority of the justices dismissed by Harcourt in the winter of 1710-1 were squires of relatively humble status.

The view that Harcourt was extending a Tory triumph and a Whig defeat in central politics and in Parliament into the counties, through the medium of the commission of the peace, can thus be hedged about with qualifications. Even so, these qualifications arguably arise from a rather mechanical counting of heads. When the changes for most of the counties which received a new commission at this time are considered individually in more detail, a distinct party flavour is immediately apparent. For example, Cowper's old enemies in Hertfordshire and St. Albans politics, Charles Caesar and John Gape, were restored for Hertfordshire along with four more 'members' of the October Club in the 1710-3 Parliament; while four of the seven justices dismissed in that county had been put in by Cowper.² The eighteen new justices in Cheshire included representatives of the Tory families of Shakerley, Oldfield, Grosvenor, Warren, and Egerton of Tatton, and Harcourt left out at least three justices who had used their local influence in the Whig interest during the 1710 election, plus three more who had been put in by Cowper

¹ Edmund Bateman, John Clendon, John Weaver, and John Winston; P.R.O., C.234/27, Northamptonshire: fiats in the form of a complete list, 12 Feb. 1705/6, and also 7 Oct. 1714.

² P.R.O., C.234/16, Hertfordshire: 11 Dec. 1710.

in a commission of the peace sealed in September 1710.¹ The 56 new justices in Gloucestershire included nine M.P.'s. all described as Tory after their election, and headed by the future October Club stalwarts Allen Bathurst and George Pitt; and although only three gentlemen were left out (all of them originally put in by Cowper in 1706 and 1707) the Gloucestershire commission was certainly swamped.² The pattern was the same in Hampshire, except that at least two of the three justices put out had first been put in by an earlier generation of nominating Whigs. Wolfran Cornwall and Robert Foyntz, had been included by Somers in 1697. The third, Richard Cobb, is possibly but not certainly identical to a gentleman of the same name added as long ago as the time of the capture of the Privy Council by the Exclusion Whigs in 1679.³ These examples indicate the general tendency of Harcourt's changes. Furthermore, there is no doubt that Harcourt was making alterations on a more extensive scale than Cowper had ever attempted. Whereas Cowper had held the great seal for almost a year when he sealed his fortieth commission, Harcourt had sealed more than forty within six months. Cowper had added just over 350 names and put out about 85 more in the first phase of his tenure of office, which lasted for about fifteen months - and these figures

¹ P.R.O., C.234/5, Cheshire: 10 March 1710/1; Brit.Mus., Loan 29/196, f.134.

² P.R.O., C.234/13, Gloucestershire: 2 Feb. 1710/1.

³ P.R.O., C.234/14, Hampshire: 16 Jan. 1710/1; Index 4215, pp.5, 382.

include Middlesex and Durham.¹ In less than half the time, Harcourt added 919 names and put out 183, and indeed this total of 183 dismissals in six months is not far short of the total of about 195 living justices left out by Cowper during the whole period of just less than five years when he had held the great seal. For these reasons, it is quite possible that Harcourt was embarrassed in the spring of 1711 by a Qualification of Justices Bill, which suggested that too many gentlemen of low calibre had recently been appointed to the bench.² Otherwise, however, the scale of Harcourt's alterations seems to have attracted little attention. The difference in the degree of intensity with which the two Chancellors conducted their initial campaigns is not necessarily to be explained by an inherent difference between Whig and Tory approaches to the local rewards of central power, or even by the hypothesis that there were more Tories than Whigs among the country gentlemen. In 1705-7, Cowper had been a Whig in a non-party ministry, the leaders of which distrusted party factiousness in local politics. Harcourt, on the other hand, was an influential figure in a ministry with a strong party bias and a large Parliamentary majority.

Harcourt sealed no commissions of the peace at all during April and May 1711, but a second wave of commissions followed in June, July and

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F152.

²C.J., xvi, 536, 609, 668, 674, 691; and see above, page 23, note 2.

August, when twenty were issued in readiness for the summer assizes.¹ It would, however, be misleading to describe this as Harcourt's second campaign to implement a policy of remodelling the commissions of the peace. Thirteen of these twenty commissions were for counties which had already received a commission in the winter of 1710-1. For the most part, the alterations in the lists of justices of the peace in these thirteen counties were unexciting. The highest number of living justices put out was two (one a baronet) in Northamptonshire, and only in Kent and Norfolk were as many as ten put in. Six of the 'second commissions' were for counties in the Welsh circuits, and the need for a new commission of the peace was probably dictated by changes in the Welsh judiciary.² However, one interesting feature of five of these thirteen commissions is that Harcourt was restoring some justices whom he had dismissed earlier in the year. In Kent as many as five gentlemen put out in February reappeared in July, along with five new names.³ George Booth was re-admitted to the Cheshire commission,⁴ and Harcourt restored one of the justices whom he had earlier dismissed in Kesteven,

¹ P.R.O., Index 4216, pp.235ff.

² The fiats for the Carmarthenshire and Denbighshire commissions are missing. It would not have been necessary to have preserved them if they had only changed the names of the judges.

³ P.R.O., C.234/18, Kent: 4 July 1711. The restored justices were Paul D'Aranda, Henry Deeds, Thomas March, John Stevens, and Snelling Thomas.

⁴ P.R.O., C.234/5, Cheshire: 9 July 1711.

Lindsey and Norfolk.¹ The restoration of Booth suggests that Harcourt may have recognised the danger of disgracing Whigs of more than ordinary social status. Alternatively, the changes of mind may reflect conflicting advice given to Harcourt from the localities, or the problem of finding magistrates willing to act in remote or under-justiced areas. Whatever the reason, as many as nine of the 183 gentlemen disgraced by Harcourt in the winter of 1710-1 were back in the commission of the peace by the following August.

Seven counties received new commissions in the summer of 1711 for the first time since Harcourt had accepted the great seal.² In three of these, the changes were inconspicuous. The Flintshire commission had not been renewed since March 1705, when Wright had still been Lord Keeper. Cowper had neglected the county completely, and Harcourt was now content to add the Cheshire squire Sir Richard Grosvenor and one other, and to leave out one John Parry. The elevation of Robert Harley to the peerage in May as earl of Oxford, and to the Lord Treasurership, was marked by the inclusion of his son Edward in the Herefordshire commission under his new courtesy title of Lord Harley, sixteen days

¹ P.R.O., C.234/21, Kesteven: 7 July 1711 (Gilbert Bury); C.234/22, Lindsey: 7 July 1711 (John Disney); C.234/26, Norfolk: 18 June 1711 (Edward Carter).

² Carnarvonshire, Durham, Flintshire, Glamorgan, Herefordshire, Leicestershire, Northumberland. The information which follows is derived from the fiats for these commissions, at P.R.O., C.234.

before his election to his father's vacated seat of Radnor borough. Five others were added, and one justice (John Shepheard) was left out. Seven new names were added to the Glamorgan bench in a commission which also left out Sir Humphrey Mackworth, M.P. for Cardiganshire, who had been exposed by the house of Commons as guilty of fraudulent management of the Mine Adventurers' Company in March 1710.¹

Thus four counties are left in which the alterations in the summer of 1711 were on a large scale. The Northumberland bench was swamped with additions. No justices were left out, but 49 gentlemen were put in. Rather surprisingly, the list of names was headed by Algernon Seymour, son of the duke of Somerset, who was M.P. for Northumberland and a consistent Whig. Also, Cowper's last fiat for Northumberland, dated the year before, does not seem to have been implemented by the sealing of a commission, and it is interesting to see that Harcourt included two of the names that Cowper had intended to add, one of them being that of the stout Whig Sir John Delavall.² However, Harcourt also added the Tory M.P. for Newcastle, Sir William Blackett; a number of country squires whose political allegiance seems to have been Tory; a group of Newcastle coal-owners, such as Ralph

¹For Mackworth, see: Mary Ransome, 'The Parliamentary Career of Sir Humphrey Mackworth, 1701-13', University of Birmingham Historical Journal, 1 (1948), 233-4.

²For Delavall, see The Correspondence of Sir James Clavering, p.81; the other name added in both fiats was Arthur Hepburne or Hebburne.

Brandling, Robert Fenwick, and Matthew White; and the goldsmith and merchant William Ramsey, who had recently bought a large estate at Gateshead.¹ The fiat for the Durham commission sealed the previous month does not survive, but it is highly probable that the commission followed the same pattern as that for Northumberland. The new commission for Leicestershire was along different lines, however. Unlike Northumberland, Leicestershire had been purged by Cowper, who had put out twelve living justices, ten of them for 'refusing to act', in July 1707. Harcourt now restored nine of the twelve, and also added eighteen new names, headed by the Tory baronet Sir Justinian Isham from the neighbouring county of Northamptonshire. Seven justices were dismissed, among them four who had been put in to replace those who had 'refused to act' in 1707 and one who had originally been put in by Somers in 1697. These changes were possibly the work of a new Tory lord-lieutenant and custos, the earl of Denbigh, who had replaced the Whig duke of Rutland after the latter's death in January 1711; although admittedly Denbigh's appointment was not confirmed immediately and it is equally probable that a Tory caucus led by Isham, Sir Thomas Cave, and Sir George Beaumont were active in selecting names.² Finally, Carnarvonshire received a new

¹E. Hughes, North Country Life in the Eighteenth Century: The North-East, 1700-1750 (London, 1952), passim.

²Hist.MSS.Comm., Fifteenth Report, Appendix IV, Portland MSS., iv, 694; Holmes, British Politics in the Age of Anne, p.301 and note.

commission making alterations which, for a Welsh county, were substantial. Sixteen new names were added and three gentlemen, two of whom had been put in by Cowper in 1707, were dismissed.

Harcourt again rested on his oars after August 1711, sealing only one commission - for Middlesex - before December. He had, after his first year in office, sealed at least one commission of the peace for 49 out of the 57 counties.¹ In a third wave of commissions in the winter and early spring of 1711-2 he dealt with four of the remaining eight. Derbyshire was let off lightly, probably because the remodelling of the bench for that county had been forced on Cowper at the Queen's express desire in July 1710. Now, eighteen months later, eleven inconspicuous squires were added, but no-one was left out. In Breconshire, too, the names included were unremarkable. Six gentlemen were added to the 47 already in the list. Two justices were left out, of whom one had been put in by Cowper in 1705. The alterations in Merionethshire were even less spectacular. The name of the judge was changed and William Wynne, who had been put out by Cowper in 1707, was restored. However, in Dorset the commission was remodelled on a scale commensurate with earlier changes in other large counties. Nineteen gentlemen were put in. The list in the fiat is headed by three Tory M.P.'s, Sir William Poole, Sir

¹ Those still neglected were Breconshire, Cumberland, Derbyshire, Dorset, Merionethshire, Peterborough, Radnorshire, and Wiltshire.

Jacob Bancks, and Thomas Strangeways junior, while further down come Nicholas Hardy and Harry Chafin, who had been put out for 'refusing to act' in 1708, and two more October Club M.P.'s, Thomas 'Diamond' Pitt and Henry Whitaker. Two gentlemen, Anthony Flyer and George South, were left out; both had been added by Cowper in that commission in which Hardy and Chafin had been disgraced.¹

In addition to these four 'first' commissions, Harcourt sealed twenty more commissions between December 1711 and April 1712 for counties which had received at least one commission already since he had accepted office. These were for the most part routine commissions, sealed in readiness for the Lent assizes, and they did not make alterations on a large scale. Setting aside Middlesex, Montgomeryshire (for which the fiat is missing) and the four 'first' commissions, the total number of gentlemen added to the lists in eighteen counties is only 74. The number of justices omitted is 24. Two gentlemen whom Harcourt had already put out in the winter of 1710-1 were restored.² Harcourt also dismissed two justices whom he had put in.³ The highest number of inclusions was

¹P.R.O., C.234/10, Dorset: 14 Apr. 1712.

²P.R.O., C.234/87, Monmouthshire: 25 Feb. 1711/2 (Henry Ramsey); C.234/16, Hertfordshire: 3 Mar. 1711/2 (David Hecksletter).

³P.R.O., C.234/22, Lindsey: 10 Mar. 1711/2 (John Disney); C.234/89, Pembrokeshire: 14 Apr. 1712 (John Warren).

for Gloucestershire, where Harcourt had already added 56 names in February 1711; now, just over a year later, he put in ten more. The new dean of Christ Church, Francis Atterbury, was put in with two others for Oxfordshire, and the dean of Lichfield with one other for Staffordshire. Sir Nathan Wright, who had presumably been left out of all commissions of the peace after he had ceased to be a Privy Councillor on 20 May 1707, was re-included in the commission for Leicestershire, presumably as a mark of respect rather than because the ex-Lord Keeper was thought to be a potentially useful country justice. Among those dismissed from the bench were Robert Foarder, who had been included in that commission for Hampshire in which Cowper had tried to keep the duke of Bolton's name as custos in September 1710; Robert Kercher, also for Hampshire, who had been put in by Somers in 1697; and Dr. Robert Cox or Cocks, one of Wharton's nominees for the Oxfordshire commission in 1700.¹ However, the highest number of dismissals in the winter of 1711-2 was in Shropshire, a county which had received a commission putting 39 names in, but none out, in February 1711. Now, a year later, the Shropshire bench was purged with the omission of seven justices, of whom four had been put in by Cowper between 1705 and 1710.

¹P.R.O., Index 4216, p.212 (for Foarder); Index 4215, p.373 (for Kercher); P.C.2/78, p.66; Bodl.MS.Carte 79, f.696 (for Cox).

Harcourt thus sealed 24 commissions in the winter of 1711-2, and there was an identifiable political weighting in many of the changes that he made. However, the alterations in the counties involved, except for Dorset and Shropshire, were on too small a scale for these commissions to be regarded collectively as a widespread regulation. Perhaps the most interesting feature of the commissions sealed at this time is that there is some evidence that Harcourt was trying to use his patronage for the purposes of electoral and Parliamentary politics. Several sitting M.P.'s were put in, among them some who had been successful at bye-elections during the previous year. Most of these M.P.'s were identifiable Tories to whom inclusion in the commission of the peace was in the nature of a reward or perquisite, although there were some exceptions such as William Dowdeswell, a Junto supporter elected for Tewkesbury in Gloucestershire in January 1712 and apparently put into the Worcestershire commission in the following March.¹ In this case, Harcourt was possibly advised to attempt to convert the new generation of Dowdeswells, who had a powerful interest at Tewkesbury, to Toryism after the death of the head of the family, Richard, a staunch Whig, in 1711. Also, some future candidates in bye-elections, and, looking further ahead, in the next general election which was to be held in August and September 1713, were already being put in.

¹P.R.O., C.234/41, Worcestershire: 3 Mar. 1711/2.

Again, there are some exceptions to the rule that these were all reliable supporters of the ministry. For instance, Francis Lewis, elected for East Retford in April 1713, had been put in for Leicestershire a year earlier, but he voted with the Whigs against the French Commerce Bill in June 1713.¹ It is easier to account for the inclusion of men like the Jacobite Sir Charles Kemys, who was to be elected knight of the shire for Monmouthshire in September 1713 after being put into the commissions of the peace for Glamorgan in August 1711 and Monmouthshire in February 1712.² However, the most striking example of the use of the commission of the peace at this time for electoral purposes, albeit unsuccessfully, was the omission of John Turner, Robert Walpole's friend and cousin, in Turner's native county of Norfolk, one month before his election for King's Lynn in place of Walpole who had been expelled the House.³

Harcourt had now developed a routine in which the issue of new commissions of the peace was concentrated in the months before the Lent and summer assizes. This pattern was followed for his fourth wave of changes in June and July 1712, when eleven commissions were sealed

¹ P.R.O., C.234/19, Leicestershire: 17 Mar. 1711/2.

² P.R.O., C.234/85, Glamorgan: 6 Aug. 1711; C.234/87, Monmouthshire: 25 Feb. 1711/2. For Kemys, see Holmes, British Politics in the Age of Anne, p.332.

³ P.R.O., C.234/26, Norfolk: 17 Mar. 1711/2. For Turner, see Plumb, Sir Robert Walpole - The Making of a Statesman, p.182. It is worth observing that Walpole himself apparently remained in the Norfolk commission throughout the period 1710-4.

before a lapse until December 1712. Several of these are of interest. Wiltshire received its first commission since December 1709, and Harcourt made up for his tardiness with really sweeping alterations. Cowper had dismissed more living justices - 29 - for Wiltshire than for any other county, except, probably, Middlesex; Harcourt now restored 19 of them, including 8 of the 14 disgraced for 'refusing to act' in March 1708, and he added 44 more new names. For the most part these were undistinguished squires, but among them were Robert Loggan and John Younger, the chancellor and dean of Salisbury respectively, and five M.P.'s, all members of the October Club. Cowper had put in 41 justices; Harcourt now dismissed 12 of them. Those disgraced included some members of traditional 'justice families' in Wiltshire - Joseph Ashe, Walter Ernle, and Thomas Long, for instance - and also some of the county's leading Whigs, most notably Josiah Diston, who had been unseated for Devizes after the 1710 election.¹ Peterborough received its first commission since as long ago as February 1708. The nine gentlemen put in were unremarkable except for Richard Halford, the Tory M.P. for Rutland, but the nine put out to make room for them included six put in by Cowper in 1708. Edward Wortley, the 'Country Whig' M.P. for Huntingdon, was one of these. Also dismissed were White Kennett, dean of Peterborough, then a

¹ P.R.O., C.234/40, Wiltshire: 17 June 1712. The five M.P.'s put in were John Codrington (Bath), Benjamin Gifford (Dorchester), Thomas Lewis (Winchester), George Pitt (Hampshire), and Thomas 'Diamond' Pitt (Old Sarum).

target for High Tory antagonism; the sub-dean, Richard Reynolds; and Archdeacon Richard Comberland. These three clergymen were often divided over diocesan matters, but in 1712 they were united in their Whig political stance in Church and State.¹

In four counties receiving their second commissions from Harcourt in the summer of 1712, quite substantial changes were made. In Sussex, the 42 gentlemen added in February 1711 were joined in July 1712 by nine more, and five justices, every one of whom had been put in by Cowper in 1706 or 1707, were dismissed. Nine were also added in Devon to bring the total of Harcourt's additions for that county to 33. Harcourt's first commission for Buckinghamshire had added gentlemen in large numbers, but there had been no purge. Now that county received a commission which left eighteen justices out, of whom nine had been put in by Cowper in 1706. Simon Mayne, who as M.P. for Aylesbury between 1705 and 1710 had voted consistently Whig, was also among those dismissed. In their places, twelve gentlemen were put in. Seven justices were dismissed in Glamorgan, although here the pattern was less clear-cut. The veteran Whig Sir Rowland Gwynne was among those discarded, along with two justices put in by Somers in 1699 and 1700, but Harcourt also put out two justices whom he had himself included in August 1711, while the wealthy and independent

¹P.R.O., C.234/92, Peterborough: 22 July 1712; G. V. Bennett, White Kennett, 1660-1728, Bishop of Peterborough (London, 1957), pp.120-1, 198-9, 208-9.

Whig M.P. for Monmouthshire, John Morgan of Tredegar, was one of the three gentlemen put in. Morgan was perhaps being rewarded for his promised support for an attack on Marlborough earlier in the year.¹ The changes in these four counties and in Wiltshire and Peterborough were the only really significant alterations in the summer of 1712; but two more otherwise routine commissions for counties on the Welsh border are worthy of notice. Both were sealed on the same day as that for Glamorgan, which suggests the same guiding hand, possibly that of Lord Treasurer Oxford himself. Lord Herbert, a former Junto supporter in the Lords now compelled by financial necessity to conciliate the Tory administration, was gratified by insertion in the commissions for Shropshire and Worcestershire. Oxford's brother, Edward Harley, was also put in for Shropshire.²

Harcourt's concern with electoral politics naturally intensified during the election year of 1713, when he departed to some extent from his routine of concentrating the issue of commissions of the peace into the months of February, March and June-July. Between December 1712 and August 1713, when the elections began, he sealed 42 commissions for 34

¹P.R.O., C.234/85, Glamorgan: 22 July 1712; Index 4215, p.404; Index 4216, p.3; for Morgan, see Holmes, British Politics in the Age of Anne, pp.142, 480n. 102.

²P.R.O., C.234/32, Shropshire: 22 July 1712; C.234/41, Worcestershire: 22 July 1712. For Herbert, see Holmes, op.cit., p.393.

counties. Of course, some of these were of a routine and unremarkable character; among them, perhaps surprisingly, that for Surrey in March 1713 which added two names, and that for Somerset in July which added three. Less surprisingly, those for Holland, Lindsey, Kesteven, Westmorland, Carmarthenshire and Pembrokeshire made little significant alteration. Eight counties received two commissions, so that the total number of counties which did not receive a commission at all in the year before the election was as high as twenty-three. All the same, it was not a coincidence that, while the remodelling was not especially severe in any one county, the greatest changes were made in counties boasting large numbers of seats: in Cornwall (fourteen put in, eight put out), Devon (fourteen put in, in two commissions), Kent (nineteen put in, twelve put out), Hampshire (fourteen put in, in two commissions), and the West Riding (sixteen put in, two put out). Twenty-six sitting M.P.'s were among those put in, and all but three of these were re-elected in 1713. Seventeen more gentlemen were added to the commissions who were to be elected for the first time in 1713. The most obvious example of the remodelling of a county commission in a manner slanted towards the election is Cornwall, with its 44 seats. Seven of the fourteen put in were sitting M.P.'s, two more were subsequently successful candidates, and one sitting M.P. was put out along with four more justices who had been put in by Cowper

in September 1709.¹ This was the most striking alteration involving M.P.'s, but in eighteen more counties at least one sitting or future M.P. was added to the list of justices. However, two points arise which perhaps modify the straightforward conclusion that the commission of the peace was being manipulated to win elections for candidates of whom Harcourt and his ministerial colleagues approved. The first is that less than half of the M.P.'s put into commission were put in for counties in which their present or future constituency lay. The intention was thus not necessarily to strengthen the candidate's appeal to, or influence over, the voters by elevating him to the county bench. The second is that, while the majority of M.P.'s put in were clearly Tory in sympathy, as measured by 'membership' of the October Club or by voting behaviour, some M.P.'s were put in who cannot be described as Tories at all. For example, four of those about to be elected in September 1713 who were added to the commission by Harcourt shortly before the election, were to vote with the Whigs against the expulsion of Richard Steele in

¹ P.R.O., C.234/6, Cornwall: 27 Apr. 1713. The M.P.'s put in were: John Anstis (St. Mawes); Paul Orchard (Camelford); Thomas Pask (Cambridge University); Francis Robarts (Bodmin); John Rolle (Devon); Henry Vincent, junior (Fowey); and Sir Bouchier Wray (Camelford). The successful candidates were Sir John Coryton (Callington) and Sir Edmund Prideaux (Tregoney). The M.P. put out was John Worth (Tiverton), who had been described as 'Doubtful' in 1710 and who was to vote with the Whigs against the French Commerce Bill in June 1713. He was, however, re-elected in 1713.

1714.¹ One explanation of both these points might be that Harcourt, or those making the recommendations to Harcourt's office, were not concerned so much with the progress of the elections themselves, as with the goodwill of those elected towards the court, which distributed local power and local office.²

The commissions sealed between December 1712 and August 1713 present few features of interest apart from the Chancellor's pre-occupation with the impending election. Apart from Kent and Cornwall, the only county in which justices were put off the bench in significant numbers was Rutland. Six were dismissed, three of whom had been put in by Cowper in 1709, and six more were brought in. Cumberland belatedly received its first commission since Harcourt's appointment, but Harcourt was content to add Viscount Lonsdale, who had just come of age, and one other. The addition of Lonsdale was the only change made in Westmorland.³ In most of the commissions sealed at this time, Harcourt's main concern

¹ Edward, Lord Hinchinbrooke (Huntingdon), put in for Huntingdonshire; Sir Samuel Ogley (Maidstone), put in for Kent; James Brudenell (Chichester) put in for Northamptonshire; Henry Pierce (Northallerton), put in for the North Riding. A Collection of White and Black Lists, pp. 30-2. Lord Hinchinbrooke was a bizarre choice as a justice of the peace on other grounds. He was a member of the notorious London gang of street terrorists, the 'Mohocks'. Jonathan Swift, Journal to Stella, ed. H. Williams (Oxford, 1948), ii. 511 note 19; P.R.O., S.P.44/113, p.71: Memorandum by the Treasury Solicitor, 24 Apr. 1712.

² George Lockhart hinted at both motives in requesting changes in the Tory interest in the Scottish commissions of the peace in December 1712. Hist. MSS. Comm., Portland MSS., v, 252-3.

³ It was hoped to win Lonsdale away from the influence of Whig friends, but he died in December 1713. Hist. MSS. Comm., Portland MSS., v, 343.

seems to have been to strengthen Tory representation in the magistracy, with moderate rather than swamping additions: typically, twelve in Bedfordshire, ten in Buckinghamshire, fourteen in two commissions in Devon, ten in two commissions in Northamptonshire. Mostly the names are of Tory squires. Some were young men, just come of age, like Sir Thomas Seabright, who was added for Bedfordshire and Hertfordshire, or the marquess of Carmarthen, heir to the dukedom of Leeds, who was put in for all three Ridings of Yorkshire. Others had recently come into their inheritances, like Thomas Cowlade, Richard Head, Sir Robert Rich, and Richard Stonhouse in Berkshire, who replaced respectively Joseph Cowlade, John Head, Sir William Rich, and James Stonhouse, put out in the same fiat as having died.¹ A secondary consideration was to discomfit with dismissal a very few local Whig leaders, like William Monson in Hertfordshire and Sir Henry Peachey in Sussex.² However, the totals of 213 gentlemen put in and 37 gentlemen put out during the period from December 1712 to August 1713 indicate the emphasis on inclusion rather than exclusion in what remodelling there was before the election.

¹ P.R.O., C.234/2, Berkshire: 24 Feb. 1712/3.

² Monson and Peachey had both formerly been Whig M.P.'s connected with the Pelhams of Sussex.

The 1713 election reflected the continuing dominance of the Tories in the countryside by strengthening Tory representation in the house of Commons.¹ However, during the three years in which Harcourt had held the great seal, the political situation both at court and in Parliament had changed. In Parliament, issues had emerged which tended to divide the Tories: the Peace with France, the French Commercial Treaty, and, perhaps most of all, the attitude to be taken by the ministers to the Queen's Protestant successor in Hanover. A substantial group of moderate Tories was acting with the Whigs at Westminster.² At court, a deep-rooted antipathy between Lord Treasurer Oxford, with his deprecating approach towards party faction, and Secretary St. John, created Viscount Bolingbroke in 1712, had become intense by the summer of 1713.³ The estrangement between the two ministers was a complex development; one of the elements in it was a difference of opinion over the treatment of office-holders who were not committed Tories. There is some evidence that, as far as the commission of the peace was concerned, Oxford had restrained the desire of the more extreme Tories

¹W. A. Speck, Tory & Whig, The Struggle in the Constituencies 1701-1715 (London, 1970), pp.110, 113; Ellis, 'The Whig Junto', pp.775-788.

²Feiling, History of the Tory Party, 1640-1714, pp.449-51, 454-5; Holmes, British Politics in the Age of Anne, pp.280-4; A. McInnes, Robert Harley, Puritan Politician (London, 1970), pp.156-7.

³Holmes, 'Harley, St. John, and the Death of the Tory Party', p.225.

to purge the Whigs.¹ It is perhaps significant that, by September 1713, every county in England and Wales except one in which Oxford himself took an interest - Radnorshire - had received a new commission of the peace from Harcourt's hands; the Radnorshire bench had, however, remained unchanged since Cowper had added four gentlemen in 1707. Oxford had then strenuously objected to one of these gentlemen, but he had since taken no steps to have the obnoxious justice removed. Oxford's own county of Herefordshire had also been treated very mildly by the standards of other English counties. Since 1710, only eight justices had been put in and two dismissed, in two commissions. This kind of moderation had, in the past, appealed to the Queen. In the winter of 1713-4, however, Oxford's influence over Anne was weakening. She was beginning to show signs of surrender to the committed party men among the Tories.² Bolingbroke was pressing for a more ruthless purge of office-holders in order to consolidate the divided Tory party before the anticipated crisis of the Queen's death. He openly expressed a desire to eliminate the Whigs from any share in central and local government. As Secretary of State, he embarked on a programme of dismissing Whig army

¹J. Macpherson, Original Papers containing the Secret History of Great Britain ... (London, 1775), ii, 420; Lockhart Papers, ed. A. Aufrere (London, 1817), i, 411; Trevelyan, England under Queen Anne, iii, 259, 262.

²H. T. Dickinson, Bolingbroke (London, 1970), pp.116-7.

and navy officers in the early spring of 1714.¹ From Bolingbroke's point of view, Harcourt's changes in the commission of the peace down to the election of September 1713 had not gone far enough. He had been assiduous in putting gentlemen in, for most of the counties; a total of 1505 justices had been added to the commissions of the peace in England and Wales.² It would be impossible to say that all were Tories, but there was clearly a heavy weighting towards gentlemen of Tory sympathies in these inclusions. But there had not, as yet, been anything like a comprehensive purge of Whig justices of the peace. Harcourt had dismissed fifteen or more living justices in four counties: Buckinghamshire, Kent, Surrey and Wiltshire.³ Even in Kent, the county in which most dismissals - 42 - had been ordered, more than half of those included by Cowper between 1705 and 1710 remained in commission by September 1713, while the figure of 42 put out is swollen by four justices who were subsequently put back again by Harcourt and four more who had originally been put in by Harcourt himself.⁴ A block of counties in the north and midlands had not, as yet, been purged at all. No living justices had been

¹ A. N. Newman, 'Proceedings in the House of Commons, March-June 1714', Bull. Inst.Hist. Research, xxxiv (1961), 213, 214; Dickinson, Bolingbroke, p.120.

² Excluding Middlesex and Durham.

³ Middlesex would almost certainly make a fifth; eighteen had been left out by Harcourt's fiats for the liberty of Westminster, the commission for which ran closely parallel to that for Middlesex.

⁴ P.R.O., C.234/18, Kent: comparison of all fiats signed by Cowper and Harcourt to 14 July 1713.

put out since 1710 in Northumberland, the North and East Ridings, Derbyshire or Nottinghamshire. Moreover, in spite of the large aggregate total of gentlemen put in, the commissions of the peace for some of the smaller counties in Wales and the north of England had hardly been enlarged sufficiently to allow for a preponderance of Tories on the bench at quarter sessions. In Cumberland, especially, the Tory squires and clergy were begging Oxford in the summer of 1713 to counter-balance the continuing dominance of Whigs in positions of local power.¹ Bolingbroke's anxiety for a more vigorous approach to local office thus had some point.

Harcourt sealed no county commissions of the peace during September and October 1713, except one for Middlesex for which the fiat does not survive.² Then thirteen commissions were issued between November 1713 and March 1714, and twenty-four more between May and July 1714. Seven counties received two commissions, so that altogether Harcourt had an opportunity to change the justices in thirty counties between the election and the Queen's death on 1 August 1714, which ended the implementation of Bolingbroke's root-and-branch programme. Twenty-seven counties were neglected. Among them were Kent and Wiltshire, where

¹ Hist.MSS.Comm., Portland MSS., v, 304-5, 342-3.

² The fiat for a simultaneous commission for Westminster added six and left out Horatio Walpole, Richard Steele, and two others, P.R.O., C.234/25, Westminster: 15 Oct. 1713.

substantial changes had already taken place; those counties in the north-east and north midlands which had not so far been purged by Harcourt and which therefore remained unpurged until the end of Anne's reign; and the counties in North Wales. The fiats for nine of the commissions which were sealed during this period simply added justices in small numbers without leaving any out. Counties treated in this way included two groups of counties, in the West Country and in the midlands.¹ The commission for another West Country county, Dorset, left out one justice put in by Cowper and added two more; hardly a severe regulation.² The remaining counties, which received commissions making more significant alterations, were concentrated in three areas: the north-west; South Wales; and the south and east.

In the north-west, new commissions were sealed for Cumberland and Westmorland in July 1714. In Cumberland, two young baronets, Sir Charles Delston and the sitting M.P. for Carlisle, Sir Christopher Musgrave,³ were put in, with Thomas Gibbon, the newly appointed dean of Carlisle, and also Alexander Carleton and Dr. Hugh Todd, who had both complained to Oxford about Whig domination of the Cumberland bench the year before.

¹ Cambridgeshire (4 added), Carmarthenshire (3), Cornwall (4), Devon (4), Herefordshire (1), Hertfordshire (2), Northamptonshire (2), Somerset (4), and Warwickshire (4).

² John Strangeways replaced Thomas Strangeways senior, deceased. The justice dismissed was John Henley. P.R.O., C.234/10, Dorset: 24 June 1714.

³ The successor to the squire of the same name active in the north-west in William III's reign, Sir Christopher was aged 25 in 1714.

Twelve more second-rank Cumberland squires brought the number of additions for that county to seventeen. Five were dismissed, among them two put in by Cowper in 1707 and one put in by Somers in 1700. Dean Gibbon was also put in for Westmorland with one other clergyman and five more, and as many as eight Westmorland justices were left out. Admittedly, two of these had been put in by Harcourt himself in 1711, and two more by Wright in 1704. Even so, when rumours of these changes reached Westmorland, they alarmed the Whig gentry of that county, since those left out were all 'hearty and sincere' for the Protestant succession.¹ These changes in the north-west are probably to be explained by the replacement in May 1714 of the earl of Carlisle and the earl of Wharton, two Whigs, as custodes of Cumberland and Westmorland respectively by the Tory earl of Thanet in May 1714.

In most of the counties in South Wales that received new commissions, the emphasis was on inclusion rather than dismissal. In Breconshire, five were added, three apparently the heirs of justices who had died. The first Radnorshire commission for seven years was sealed in July 1714. It added four names and brought the list up to date by leaving out six who had died. The Glamorgan commission, also dated July,

¹ P.R.O., C.234/7, Cumberland, C.234/39, Westmorland: both dated 9 July 1714; Brit.Mus., Stowe MSS., 750, f.55: Edward Wilson to Lord Chief Justice Parker, 5 Aug. 1714.

added as many as nine. Here the Tories seem to have been rather pressed for suitable candidates among the squires, for three of the nine were clergymen and another had been among those put out by Harcourt two years before. Monmouthshire was severely treated, however, Six justices were dismissed in March, and eleven came in, headed by the Tory M.P. for Bramber, Andrews Windsor, who was to attempt to exchange Bramber for Monmouth borough in the next Parliament. Three more gentlemen, all M.P.'s, were put in four months later to bring the total included during this period to 14.¹ Montgomeryshire in central Wales also received two commissions. The first added only two but dismissed four, two of them Cowper's inclusions from 1707, and the second added three and dismissed one more. A total of five inclusions and five dismissals for a county with one of the smallest commissions in the country marks a remodelling which, if inconspicuous, was still more than routine. These alterations in Wales are not readily explained in terms of changes in the lieutenancy or among the custodes; one feasible hypothesis is that those persons in the area who were pressing for more vigorous regulation, led by the Jacobite duke of Beaufort, were at last undermining the restraints placed upon them by Oxford and his friends.

¹The three M.P.'s were James Bertie (M.P. Middlesex), Francis Clarke (M.P. Oxfordshire), and Dodington Greville (M.P. Warwick); none of them had any obvious connection with Monmouthshire. P.R.O., C.234/87, Monmouthshire: 9 July 1714.

The changes in the south and east varied in intensity from county to county. Four counties were purged fairly drastically. The remodelling of the Essex bench was the most spectacular and is almost certainly to be explained by the appointment of Bolingbroke himself as lord-lieutenant and custos following the death of Lord Rivers in August 1712.¹ Before the 1713 election, Bolingbroke had made extensive changes in the lieutenancy.² Now he turned to the commission of the peace. Harcourt had so far only once renewed the Essex commission, in December 1710, when thirty-one had been added and eight dismissed. In March 1714 twenty-three more gentlemen were put in. Three of them were sitting M.P.'s and one was a candidate in an impending bye-election at Harwich. Thirteen were put out, and Bolingbroke was not afraid to disgrace a baronet and two knights.³ In July 1714 three more were added, and also Dr. Thomas Dent was restored after being among those put out in March. Bolingbroke was apparently satisfied that the Whigs had all been purged, as no more justices were dismissed.⁴ Roughly the same pattern was followed in Surrey. In March seventeen new names were added to the list,

¹ Bolingbroke is explicitly said to have been responsible in a letter written in 1715. Herts.R.O., Cowper (Panshanger) MSS., D/EP F153: earl of Suffolk to Cowper, 6 Jan. 1715.

² Dickinson, Bolingbroke, p.115.

³ P.R.O., C.234/12, Essex: 2 Mar. 1713/4. The M.P.'s put in were Thomas Bramston (Maldon), Clement Currance (Oxford), and Richard Goulston (Hertford); the future M.P. for Harwich was Carew Harvey alias Mildmay; the baronets and knights put out were Sir Samuel John Tryon, Sir William Cole, and Sir Godfrey Webster.

⁴ P.R.O., C.234/12, Essex: 9 July 1714.

of which five were sitting M.P.'s. Eighteen justices were dismissed. There were no baronets or knights among them, but John Weston, the second esquire in a list of about 150, was disgraced, as was John Dibble, M.P. for Okehampton in the 1710-3 Parliament. Then, in July, four more names were added, among them William Jordan who was one of the eighteen dismissed four months earlier.¹ Some of Bolingbroke's ruthlessness in Essex spilled over into the neighbouring county of Suffolk. Seven gentlemen, including the Tory M.P. for Cambridge, Sir John Hynde Cotton, were added in two commissions in December 1713 and July 1714. More significantly, ten were left out in the July commission, among them three baronets, one knight (Sir Isaac Rebow, M.P. for Colchester in the 1710-3 Parliament, whose petition on his re-election had failed in May 1714), and one of Walpole's Whig friends from Norfolk, Waller Bacon.² The last of the four comparatively heavily purged commissions in the south was Oxfordshire, the county which Harcourt himself knew best. Seven were put out. One of these was Francis Atterbury, the late dean of Christ Church, whose removal is explained by his translation to the bishopric of Rochester;

¹P.R.O., C.234/36, Surrey: 20 Mar. 1713/4, 9 July 1714. The five sitting M.P.'s put in were Clayton Milborne (Monmouth), Sir William Pole (Bossiney), John Sharpe (Ripon), Thomas Vernon (Whitchurch), and Sir John Walter (Oxford City); all these names except Milborne's are carettered in the fiat as later insertions, suggesting that the decision to put the M.P.'s in was an afterthought.

²P.R.O., C.234/35, Suffolk: 1 Dec. 1713, 5 July 1714. The three baronets put out were Sir Robert Barnardiston, Sir Cane James, and Sir Edward Ward. Thomas Betts, put in in December, was put out again in July.

but three of the remaining six had been put in by Cowper, another by Somers, and a fifth was Sir John Clerke, who had been added in February 1711 as the Tory M.P. for Haslemere but who had defected to the Whigs over the French Commerce Bill. George Smalridge, the new dean of Christ Church, was put in, with the young M.P. for Banbury, Sir Jonathan Cope, and seven more, two of them clergymen.¹

The changes in most of the other southern and eastern counties were less drastic but still more than routine. Sussex, Buckinghamshire and Huntingdonshire were not really purged, although one or two inconspicuous justices were left out in each, but the number of justices added was relatively high: thirteen in Sussex, seventeen in Buckinghamshire in two commissions, and nine in Huntingdonshire. On a slightly smaller scale, Bedfordshire's new commission was similar, with five gentlemen put in and one left out. No justices were put out in Hampshire or Berkshire, but three counties received nine and six additions respectively.²

The grievance of Bolingbroke and the more extreme Tories in the summer of 1713, that too many Whigs were left in office, had thus been partially met in some areas of the country by July 1714. Bolingbroke expressed a wish in April 1714 that ruthless action against the Whigs

¹P.R.O., C.234/30, Oxfordshire: 24 Feb. 1713/4, redated to 2 Mar. 1713/4.

²The only county outside the geographical pattern for which a commission was sealed at this time, Lindsey, also received six additions without any dismissals.

had been tried a year earlier, implying that he was pleased with the belated results of such opposition.¹ But Bolingbroke's promise not to leave a Whig in employment by the end of the 1713-4 session had not really been fulfilled as far as the commission of the peace was concerned. Five or more living justices had been disgraced since the election in eight counties, but a great deal more remained to be done, especially in the midlands and the north, before Bolingbroke could be satisfied. The Queen's death probably forestalled an extension of the campaign. It is, however, unlikely that Bolingbroke's own efforts in Essex could have been duplicated elsewhere on the same scale. Moreover, in those commissions that were sealed in the last nine months of Anne's reign there were some odd anomalies illustrating how difficult it was even for a Chancellor who was a committed party politician to control the nominations to the county magistracy. There are several cases of Harcourt restoring justices whom he had himself put out, such as Dent in Essex and Jordan in Surrey; and he also dismissed some justices whom he had himself put in, such as Clerke in Oxfordshire. Another feature of these commissions was the quite high number of sitting M.P.'s put in, as was usual during the year after an election. Many of these were Tories, who were already justices in other counties, but in

¹Brit.Mus., Add.MSS. 49970, unf.: Bolingbroke to Strafford, 23 Apr. 1714.

Huntingdonshire, for instance, two gentlemen were put into the commission of the peace just fifteen days before they joined the Whigs in voting against the expulsion of Richard Steele.¹ Also, Harcourt's apparent concern to put in unusually high numbers of peers and peers' sons produced some unexpected results. Three added for Bedfordshire in June 1714 were unexceptionable: Oxford's son, Edward Lord Harley; William Lord St. John of Bletsoe, who had succeeded to that title in May; and Thomas Trevor, son of Lord Trevor, who had just come of age. A fourth, John Lord Ashburnham, was, however, a very unreliable Tory who had once sworn never to support the Tory ministers, although admittedly by 1714 he seems to have been classed among the supporters of the Court in the Lords.² The earl of Suffolk's son, Lord Walden, who after 1714 proved to be a firm Whig, was included shortly after his 21st birthday in July 1714 for Bolingbroke's own county, Essex. Even stranger was the inclusion of the youthful John, second duke of Montagu, who was of impeccable Whig lineage, for Buckinghamshire, Huntingdonshire, Northamptonshire, and Warwickshire, all in the first six months of 1714. Such appointments suggest that the Court was fishing for supporters. They reflect a rather less violent

¹ John Fitzwilliams (M.P. Peterborough) and Sir John Brownlow (M.P. Grantham); P.R.O., C.234/17, Huntingdonshire: 2 Mar. 1713/4.

² P.R.O., C.234/1, Bedfordshire: 24 June 1714. For Ashburnham's erratic politics, see Holmes, British Politics in the Age of Anne, pp.227n., 331-2, 425.

approach to party in the choice of names for the commission than might have been expected after Bolingbroke's promises to his impatient friends.

The political crisis at the centre of politics came to a climax on 27 July 1714, when Oxford was dismissed. Less than a week later, the Queen died. The Whig peers, who had never lost their places on the Privy Council, now returned to it. A Council of Regency assumed control of domestic government until the arrival of George I from Hanover. Harcourt, as Lord Chancellor, was ex officio one of these Regents, but his colleagues included several Whigs appointed by King George, among them ex-Chancellor Cowper.¹ The Whigs were confident of the major share of the King's favour. Cowper was their natural choice as Lord Chancellor. Harcourt, with his close association with Bolingbroke, could not expect to keep the great seal much longer.

Under the terms of the Regency Act, the commissions of the peace, like other commissions, did not determine until six months after the death of the Queen, and the authority of the justices of the peace was confirmed by proclamation on 5 August. All existing justices could be resworn; writs of dedimus potestatem were issued for this purpose a week later.² The change of sovereign did, however, make new commissions necessary. Harcourt resisted the temptation to mark his last weeks as

¹ Trevelyan, England under Queen Anne, 111, 292-6.

² 6 Anne c.41, clause VIII; P.R.O., P.C.2/85, pp.34-5; Index 4216, p.312.

Chancellor with a desperate campaign against Whig justices, and indeed it is unlikely that he even contemplated such action. He could not have found out at short notice whom he should put in or out. Moreover, during his whole tenure of office only two commissions of the peace had ever been sealed in the months of August and September, and it would have been difficult to have interfered with the routine of the Crown Office. Consequently, Harcourt signed only one fiat after the Queen's death, for Gloucestershire. This made no additions at all, but it dismissed one justice, James Rooke, whom Harcourt had himself included in February 1711.¹ On 21 September, the King sent for the great seal and bestowed it upon Cowper, who accepted it gratefully. The four-year period of Tory control of the commissions of the peace was over.²

Harcourt's handling of the commission of the peace over his whole period of office can be summed up fairly briefly in numerical terms. He had sealed 167 commissions.³ In these commissions, a total of 1725 justices had been put in, and 405 living justices had been put out. Cowper, who had held the great seal a year longer, had added 1044 justices

¹P.R.O., C.234/13, Gloucestershire: 4 Sept. 1714.

²Cowper's Diary, pp.57-8; Campbell, Lives of the Chancellors, iv, 345-6, 483.

³Not counting four for Durham and nine for Middlesex. Three fiats for commissions for Welsh counties are missing, and five fiats seem not to have been implemented in commissions; these have been ignored in the calculations which follow.

and left out 195, so Harcourt's alterations had manifestly been more extensive. But it should be stressed again that the Tory Harcourt's changes were not simply a reversal of those made by the Whig Cowper. Admittedly, Harcourt's total number of 405 justices dismissed included 180 justices who had been put in by Cowper. But of Cowper's 1044 inclusions, probably between two-thirds and three-quarters remained in commission when Harcourt surrendered the great seal in September 1714.¹ Equally, Harcourt restored 78 of the 195 put out by Cowper - exactly 40%, leaving 60% unaccounted for, not all of whom can have died. Thus, while there is a discernible element of straightforward transposition, this was not as strongly marked as perhaps might have been expected.

The timing of the changes that Harcourt made is fairly clear. The closest he came to a simultaneous regulation was in the first phase of his period of office, down to March 1711, when he sealed commissions of the peace for about three-quarters of the counties, most of which made large-scale changes. Thereafter he tended to concentrate the issue of commissions into the months before assizes, and he generally sealed several commissions of a routine nature, making unremarkable changes, along with those that did make significant alterations. Thus the

¹Harcourt had put out 180; 62 more had been put out, dead; more may have been left out, having died, without appearing in the fiats; and Cowper himself had dismissed a few of his own inclusions.

most common pattern was for a county to receive one commission making fairly extensive changes, perhaps involving a sizeable purge, in the course of Harcourt's first year in office, and thereafter to receive commissions which, even when they were more than routine, did not remodel the bench to any very spectacular extent. There was clearly some connection between the commissions of the peace and the election of 1713 in the eight or nine months before the election, but this connection was not so marked as to make it possible to call the changes a full-scale, comprehensive regulation for electoral purposes. Similarly, the alterations made in the months of Oxford's decline and Bolingbroke's ascendancy were confined to certain areas of the country only. After March 1711, Harcourt tended to treat the commissions for individual counties separately, rather than to think of the commission of the peace collectively for the country as a whole.

The nature and scale of the changes made by Harcourt varied from county to county. The heaviest additions to the lists of justices were naturally in the southern counties: Kent with 102, Gloucestershire with 78, Buckinghamshire with 66, and eight others with fifty or more.¹ Eight Welsh counties were among the thirteen which received less than fifteen additions, though it is perhaps surprising to find Derbyshire

¹Wiltshire (63), Hampshire (62), Essex, Shropshire, Surrey (58), Cornwall (56), Berkshire (51), and Devon (50).

and Nottinghamshire also in this category.¹ Again, it was the counties in the south which were most extensively purged. Surrey and Kent lost 43 and 42 living justices respectively, and in five more southern and eastern counties, fifteen or more living justices were dismissed.² Of the twenty counties which were not purged at all heavily - that is, which lost two or less living justices - only two, Berkshire and Huntingdonshire, were within fifty miles of London.³ The counties in the south and east thus tended to receive commissions making alterations which were more extensive than those in the more remote northern and western counties; this remains true even if allowance is made for the relative difference in size of the commissions involved.

Some general points remain to be made about Harcourt's manipulation of the commissions of the peace. The first is that Harcourt and his Secretary of Commissions seem to have supervised all nominations to the commissions themselves. There was no example during the period when he held the great seal of either the Privy Council or the Secretaries of State forwarding instructions to put specified gentlemen into or out of the commission for a particular county. The absence of at least a few

¹Denbighshire (15), Anglesey (13), Nottinghamshire, Montgomeryshire (12), Breconshire, Derbyshire (11), Peterborough (10), Herefordshire, Cardiganshire (9), Holland (8), Radnorshire (4), Flintshire (2), Merionethshire (1).

²Essex (21), Buckinghamshire (19), Oxfordshire, Suffolk (17), Wiltshire (16).

³Anglesey, Berkshire, Breconshire, Cardiganshire, Carmarthenshire, Denbighshire, Derbyshire, Flintshire, Herefordshire, Huntingdonshire, Holland, Kesteven, Lindsey, Merionethshire, Northumberland, Nottinghamshire, Radnorshire, Staffordshire, and the East and North Ridings of Yorkshire.

authorisations of changes, involving, however formally, the Queen's pleasure, is a small break with previous practice. A very few communications from other ministers requesting changes in the commissions of the peace occur after 1714, but on the whole it is fair to say that Harcourt's Chancellorship marks a development in the independence of the Chancellor's control over this area of his patronage.

A second general point of interest is the effect that the changes made by Harcourt in the commission of the peace actually had in local government. In those counties which did not receive a commission until late in Harcourt's period of office, such as Cumberland and Radnorshire, and in those in which the changes were comparatively moderate, such as Herefordshire, Nottinghamshire, and the East Riding, the bench of magistrates may well have retained throughout the last years of the Queen's reign the complexion which Cowper had given it. Also, it is not necessarily true that even in counties where substantial changes had been made (including purges), the character of the active magistracy changed very markedly during Harcourt's Chancellorship. The Crown Office, as usual, obstructed the process by which magistrates were appointed by demanding individual fees from each justice for the dedimus potestatem. Baron Price wrote in August 1711 from Cornwall, where 38 gentlemen had been added in February, that there was an acute shortage of justices who would act in that county, and indeed all over England, simply because the gentlemen put in would not pay the fees. In the same year, the judges

recommended, apparently collectively, that justices who neglected to act should automatically be removed from the commission of the peace.¹ It is thus possible that, in some counties, Harcourt's alterations had little practical effect. For instance, the long-established active magistrates of Hampshire found some difficulty in persuading four of Harcourt's additions to act even in the emergency of severe corn-riots in December 1712.² On the other hand, the Tory justices in other counties seem to have been more active. Although only seven gentlemen out of twenty-seven put in for Buckinghamshire in January 1711 acted as justices out of sessions in the course of the following year, and although only four out of eighteen put out in July 1712 had been active magistrates, yet the Tories dominated the bench at Buckinghamshire quarter sessions in October 1712, when only two Whigs were present among sixteen or eighteen justices.³ The Crown Office dedimus book is admittedly unreliable as a guide to the willingness of justices to act since it only records the names of justices who took out their dedimus through the office of the Secretary of Commissions, but even so, it affords some suggestive evidence. In Kent and Essex, for example, over

¹Hist.MSS.Comm., Portland MSS., v, 72; Hist.MSS.Comm., House of Lords MSS., N.S. ix, 157.

²P.R.O., S.P.34/37, No.171: Attorney-General's report on Hampshire riots, 18 Dec. 1712, with several enclosures.

³P.R.O., C.234/3, Buckinghamshire: 16 Jan. 1710/1, 15 July 1712; Buckinghamshire Sessions Records, ed. W. Le Hardy and Geoffrey L. Reckitt (Aylesbury, 1933-9), ii, 454-6, iii, 306-8; Verney Letters of the Eighteenth Century, i, 243.

half of the gentlemen added in 1711 had acquired a dedimus by the beginning of 1714, and several more presumably qualified themselves at assizes, so arguably the reluctance of Cornish justices to pay for a dedimus was not universal.¹ Also, Cowper's correspondence in 1715 indicates that, in several counties, men described as violent Tories, put in 'to serve a turn', had been active as justices at quarter sessions in the last years of the Queen's reign.²

A final, related problem in Harcourt's handling of his local patronage is that of the extent to which he was prepared to favour committed Jacobites who were willing to use their local power to facilitate the Stuart Succession on the Queen's death. There is no doubt that prominent Jacobites were put into the commission of the peace by Harcourt. Some notable examples are Sir William Wyndham in Somerset and Lord North and Grey in Essex, who both subsequently became Privy Councillors and, in consequence, justices of the peace in every county; also, Charles Caesar in Hertfordshire, John Anstis in Cornwall, Francis Atterbury in Oxfordshire and later in Kent, and Sir John Hynde Cotton in Cambridgeshire and Suffolk, were four more whose sympathies after 1714 were notoriously with the Pretender. 'General' Thomas Forster,

¹ P.R.O., C.193/43.

² Herts.R.O., Cowper (Panshanger) MSS., D/EP F153, F154, passim. Some more detailed evidence, relating to Wiltshire and bearing on the effect of political change on the active magistracy, is reserved for Chapter 9; see below.

who rose for the Pretender in 1715 in the north-east, and John Hall, who retained the nickname 'Justice' Hall when executed for treason in 1716, were both justices of the peace for Northumberland, who had been put in by Harcourt in 1711.¹ Harcourt had put in for Cheshire three of the gentlemen of that county who met to consider whether or not to join the Pretender in 1715, subsequently commemorating their decision to refrain by commissioning their portraits.² In some counties, Harcourt was to be accused of an attempt to swamp the bench with Jacobites immediately before the Queen's death; this rather unconvincing 'conspiracy theory' prevailed, for instance, in Glamorgan, where seven of the nine gentlemen added in July 1714 were later said to have been Jacobites.³

However, in cases like that of Bishop Atterbury in Kent, the inclusion of a Jacobite in the commission of the peace amounted to routine recognition of a position of authority within the county. In other examples, Harcourt was simply putting in young men of high social position who had recently attained their majority or inherited their estates.

¹For Hall, see Diary of Mary Countess Cowper, 1714-1720, ed. S. Cowper, (London, 1864), p.113.

²G. Ormerod, History of the County Palatine and City of Chester (2nd edn., London, 1882), i, 557 note 'b'.

³Herts.R.O., Cowper (Panshanger) MSS., D/EP F155: anonymous list of Glamorgan justices put into commission, n.d. [1715?].

Gentlemen such as Sir Coplestone Warwick Bampffield in Devon and Somerset, Sir William Carew in Cornwall, Corbet Kynaston in Shropshire, and Sir Thomas Seabright in Bedfordshire, Hertfordshire, and Oxfordshire, all Jacobites, were aged 25 or less in 1710. Sir John Hynde Cotton was only 22 when added for Cambridgeshire. Jacobites of this type could be set against those young men of high rank, and, subsequently of Whig principles, whom Harcourt presumably included because it would have been unusual to have kept them out: for example, Lord Hinchinbrooke in Huntingdonshire, or Lord Walden in Essex. It would almost certainly be wrong to assume that the insertion of some notorious Jacobites in the commissions of the peace was part of a conscious system of preparation for a Stuart counter-revolution. There is, too, no evidence that the magistrates' bench in any county was dominated at any time by Jacobites. The succession of King George passed off peacefully in London and the localities. Harcourt's Whig successor had already held the great seal for some months before Jacobite riots took place on a large scale in the spring and summer of 1715. As far as the isolated disturbances before then are concerned, there always seems to have been a number of active magistrates ready to take affidavits and forward them to the Secretaries of State, to be thanked for their zeal in the King's service.¹ Although there are a

¹ P.R.O., S.P.44/115, pp.280-1: Bromley to two Hampshire justices, relating to a case of drinking damnation to King George, 2 Sept. 1714; S.P.44/116, unp.: Townshend to Joseph Earle, relating (probably) to riots at Bristol, 26 Oct. 1714; ibid., series of letters from Townshend to the Attorney General and the Solicitor General, relating to riots at Salisbury, Taunton, Birmingham, Tewkesbury, Canterbury, and Shrewsbury, beginning 8 Nov. 1714; S.P.44/117, pp.52, 56, 58: three more letters from Townshend to the Attorney-General, relating to riots at Shrewsbury, Worcester, and Hertford, 26 Nov., 13 Dec., 16 Dec. 1714.

few cases of gentlemen using their powers as justices to demonstrate distaste for the Hanoverian Succession, these were not especially serious.¹ It seems a reasonable conclusion that Jacobitism was not obviously made more of a threat to the Hanoverian regime than it already was, because a number of Jacobites were in the commissions of the peace.

After Harcourt had been dismissed, he retired, though only temporarily, into private life. Although he claimed that he had not made much money from the great seal, his complaints may have been somewhat disingenuous.² He was in possession of three large estates - Stanton Harcourt, Cockthorpe, and Nuneham Courtenay. He devoted much time after 1714 to the patronage of literature.³ His later career in active politics is not relevant to the present study, but it is worth noticing that he took no part in Jacobite conspiracy, that he concerted with Townshend

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F152: affidavit of Richard Scolfield that two Worcestershire justices had allowed the oaths to be taken in an improper manner, no date [1714?]; *ibid.*, affidavits of Stephen Newton and John Oldham that three Warwickshire or Staffordshire justices, including the two M.P.'s for Tamworth (Samuel Bracebridge and William Inge), had prosecuted persons celebrating King George's coronation as rioters, 27 Nov. 1714.

²Hist.MSS.Comm., Portland MSS., v, 247: letter from Harcourt to Oxford dated 24 Nov. 1712. Five days later, Canon Stratford wrote to Edward Harley describing Harcourt's purchases of land and concluding 'It is plain there is money to be got by the seals'; Hist.MSS.Comm., Portland MSS., vii, 115.

³Campbell, Lives of the Chancellors, iv, 484-500.

in the defeat of the impeachment of Oxford in 1717, and that in 1721 he accepted an earldom and a place on the Privy Council from Walpole.¹

He died in 1727, having weathered the transition from the Bolingbroke era to the Walpole era with characteristically discreet dignity; certainly more skilfully than any of his colleagues in Queen Anne's last ministry.

¹Plumb, Sir Robert Walpole - The Making of a Statesman, p.255; A. S. Foord, His Majesty's Opposition (Oxford, 1964). p.68.

8. The Commission of the Peace and the Hanoverian Succession,
1714-20.

George I's ministry, as everyone had expected, was constituted along Whig lines. The Privy Council was overwhelmingly Whig. The five senior Junto lords were in high positions, including Somers, who was not given office because of declining health, but who was in the Cabinet. Sunderland was lord-lieutenant of Ireland, and two younger Whigs, Townshend and James Stanhope, were the Secretaries of State. Walpole was Paymaster-General and Leader of the house of Commons. The only Tory in office was Nottingham, who was Lord President, and he had acted with the Whigs in opposition to Oxford since 1711.¹ The Parliament elected in 1713 was dissolved on 5 January 1715, and elections were held in late January and early February. During the autumn of 1714, Tory officeholders of all kinds were dismissed and replaced by Whigs, partly to guard against the possibility that the Tories in positions of responsibility were unreliable supporters of the Hanoverian Succession, partly to ensure the return of a Whig majority in the new house of Commons.² In more than half the counties, living

¹W. Michael, England under George I: The Beginnings of the Hanoverian Dynasty (London, 1936), pp.92-102; Ellis, 'The Whig Junto', pp.789-94.

²The Wentworth Papers, 1705-1739, ed. J. J. Cartwright (London, 1883), pp.419-20; Verney Letters of the Eighteenth Century, i, 316; W. R. Ward, The English Land Tax in the Eighteenth Century (Oxford, 1953), p.64; Clayton Roberts, Growth of Responsible Government, p.383; Foord, His Majesty's Opposition, p.49 and note 3.

lords-lieutenant and custodes were replaced between October 1714 and January 1715.

The appointments made by Harcourt to the commissions of the peace had attracted some attention even before the King reached England. The Regents seem to have been especially concerned to investigate Harcourt's purges.¹ It was to be expected that Cowper would reverse these purges by bringing back gentlemen whom Harcourt put out, and by excluding those Tories whom Harcourt had put in. He was, as an ex-Chancellor, already familiar with the workings of the Crown Office, and his Secretary of Commissions, Richard Woollaston, was an experienced member of the Chancery secretariat who had been Cowper's pursebearer from 1705 to 1710.² Woollaston's book of the peace was prepared during the week following Cowper's appointment on 21 September,³ and by the end of September Cowper had already signed three fiats, for Buckinghamshire, Peterborough, and Worcestershire. Ten followed in October, nine in November, nineteen in December, and thirteen in January. The only English counties not dealt with before the election were Berkshire and Rutland. On 3 March 1715, Cowper, reviewing his labours, noted that the commission

¹ Letters of Joseph Addison, p.418.

² Luttrell, Brief Relation, v, 601.

³ P.R.O., Index 4216, p.314.

for every county except Breconshire, Carmarthenshire, Denbighshire, and Flintshire had been renewed since the Queen's death.¹ Breconshire, the last county, received a commission sealed in May 1715.

Cowper's method of working seems to have been to send a Crown Office list of the justices in commission for a county at the Queen's death to a prominent Whig magnate of influence within that county, usually the peer who was shortly to be appointed custos. He may not have done this for every county, and he may have sent such lists to more than one magnate in some counties, but the regular pattern seems to have been that Cowper relied in the first instance on one influential Whig. When the lists reached the counties, the Whig grandee would consider it, probably in conjunction with the leading Whig squires in the county. He would then either return the list to Cowper, annotated with his comments about justices who were to be continued or removed, and recommending gentlemen as fit to be added; or he would keep the list and send Cowper a set of suggested changes. Examples of both types of recommendation survive among Cowper's papers.² The flats Cowper signed at this time are sometimes in the form of a complete list of all the justices who were to be in the

¹P.R.O., Index 4216, pp.314ff.; Herts.R.O., Cowper (Panshanger) MSS., D/EP F152: paper endorsed 'An account of what Commissions of the Peace have been renewed & what not to the 3rd of March 1714/5'.

²Herts.R.O., Cowper (Panshanger) MSS., D/EP F153, F154, F155.

new commission, in which cases Woollaston was presumably recopying the list Cowper had received from the county with the proposed alterations incorporated. Alternatively, the fiats were in the more usual form of an instruction to put some gentlemen in and to leave other gentlemen out.¹ Cowper also received some apparently unsolicited recommendations, and he probably invited verbal recommendations from peers who happened to be in London.

In the course of this first revision of the commissions of the peace, extending to the election of 1715 or shortly after, Cowper did not conduct a comprehensive purge of Tories in any one county, and the number of counties where the Tory justices were even outweighed by the addition of new and restored justices was extremely small. Perhaps the most substantial purge was in Sussex in December 1714. As many as 42 justices who had been put in by Harcourt between 1710 and the Queen's death were put out, while 6 of the 13 dismissed by Harcourt were restored. But even in Sussex, 27 justices included by Harcourt remained in commission, and among those left in were Tories such as Sir William Wyndham, Leonard Gale, Charles Eversfield, Thomas Chowne, Henry Campion, Robert Leves,

¹P.R.O., C.234/1-95, passim. Unless otherwise stated, the information which follows about the changes in the commissions is derived from the fiats. The presence of complete lists serving as fiats makes it impossible to compile aggregate totals of justices put in and put out, as can be done for the period 1710-14. Even so, the changes made since the last commission sealed by Harcourt can sometimes be deduced from the order of the names in the lists.

and William Elson.¹ Similarly, in Leicestershire 18 out of the 33 gentlemen put in by Harcourt were excluded in January 1715, apparently on the recommendation of the duke of Rutland. Most of these were of 'small estates' or were not sworn, and one was Samuel Bracebridge, a Tory shortly to be elected at Tamworth. Even so, Sir Thomas Cave, Sir John Chester, and Sir Justinian Isham, along with 12 more Tory squires, remained on the bench.² These counties were perhaps the only two in which a conspicuous purge took place. A few counties where Harcourt's changes had been relatively mild were now remodelled in such a way as to give a clear Whig superiority of numbers. Harcourt had added twelve justices in Nottinghamshire; Cowper left out three of these, including one described by the earl of Clare as a 'flaming Tory', and three more, and added eleven completely new names.³ The commissions for Holland, Ely, and Peterborough (where the ecclesiastics left out by Harcourt in 1712 were restored as early as September 1714) were also revised in such a way as to outnumber the justices added by Harcourt and suffered to remain,

¹The gentlemen named had been M.P.'s in one or both of the last two Parliaments of the Queen's reign, when they had displayed Tory proclivities.

²Herts.R.O., Cowper (Panshanger) MSS., D/EP F153: annotated list of Leicestershire justices in 1714; list of gentlemen 'turned out by Lord Denbigh'; duke of Rutland's recommendations, none dated but all clearly c. December 1714.

³Ibid., D/EP F154: paper endorsed 'My Lord Clare's list for Nottinghamshire given in the 13 Jan. 1714/5'.

by justices now restored or put in for the first time.

Taken collectively, these counties do not add up to a very comprehensive remodelling of the bench in the Whig interest. Cowper was more often content to add names in just sufficient numbers to 'balance' the gentlemen added by Harcourt who remained in the commission. Among counties treated in this way were some where what looks superficially like a considerable regulation took place. One such case was Gloucestershire. In October 1714, 63 gentlemen were added (including 5 left out by Harcourt, a complete reversal of his purge) and 15 gentlemen put in by Harcourt were left out, only one of whom was dead. But Harcourt had added 78 gentlemen altogether, so that 63 of his justices remained in; his inclusions and those made by Cowper exactly equalled each other. Gloucestershire had an inexhaustible pool of gentry of justice status - 141 had been added to the magistracy since 1710 - and it is surprising that the opportunity was not taken in 1714 to dismiss from an overloaded bench such prominent Tories as Sir Robert Jenkinson, Thomas Masters, Thomas Rowney, and John Snell, all of whom were elected to Parliament in 1715,¹ and other gentlemen of Tory sentiments such as John Essington, formerly M.P. for Aylesbury, and Thomas Webb, formerly M.P. for Gloucestershire. The same thing happened in Essex, where 39 names were added to

¹R. Sedgwick, The House of Commons 1715-1754 (History of Parliament, London, 1970).

balance (inadequately) the 50 retained from the period from 1710 to 1714. Harcourt's list was kept almost intact, as only five of his inclusions were certainly left out in 1714. Cowper was clearly trying to bring Whig numbers on the bench up to the level of the Tories. Among those retained were Tories of the calibre of Clement Curran, John Comyns, William Gore, Richard Goulston and Thomas Bramston, all of whom were past or future M.P.'s who recorded Tory votes; and in January the earl of Suffolk was agitating for the removal of more of the gentlemen added by Bolingbroke in 1714.¹ In two commissions in Bedfordshire, 24 new justices roughly balanced 22 of Harcourt's justices still left in, notwithstanding a quite severe purge of 19 justices recommended by the duke of Kent, whose reasons for their exclusion were sometimes political ('put in by the late ministry to serve a turn') and sometimes routine ('gone out of the country', 'his father in commission', 'a violent irregular man in his office' or 'oppressive to his neighbours').² In Shropshire, too, the net effect of what appears on the surface to have been a major revision in the Whig interest was, in fact, to 'balance' the bench. Every one of the 6 dismissed by Harcourt was put back in December 1714, on representations from the earl of Bradford that 'the

¹ Herts.R.O., Cowper (Panshanger) MSS., D/EP F153: Suffolk to Cowper, 6 Jan. 1714/5.

² Ibid., D/EP F153: paper endorsed 'The Duke of Kent's list for Bedfordshire for a second commission', no date but c. December 1714.

worst justice in England', one Eldred Lane Lee, had secured their dismissal by Harcourt. A total of 39 gentlemen was added, and of the 15 put out, 14 had been added by Harcourt. Despite these apparently severe changes, 42 of Harcourt's inclusions remained in commission as against the 39 added by Cowper.¹ These examples illustrate what was a common pattern, followed in electorally important counties like Cornwall where if anything the Tories retained a slight majority.

In some counties, Cowper tried to secure a balanced bench by inclusions rather than by a purge. Only two of Harcourt's justices were dropped in Surrey (one of them, however, was Sir Thomas Hanmer) and 53 were retained. The order of names in the list serving as a fiat suggests that 55 gentlemen were brought in.² Similarly, only two justices were put out in Lindsey, both 'practising Sollicitors and Attorneys' according to the custos, but 20 were added, and these nearly, but not quite, balanced the 24 included between 1710 and 1714 and still retained.³ Cowper was more successful in outnumbering the Tories in Dorset, where there was no significant purge but where 37 new names came in to swamp the 19 gentlemen appointed by Harcourt who survived.

¹ Ibid., D/EP F154: Bradford to Cowper, 27 Dec. 1714, ten days later than the date of the fiat but recommending changes which were incorporated in the new commission.

² P.R.O., C.234/36, Surrey: 12 Oct. 1714, where the last name added by Harcourt is followed by a knight, who is clearly out of place, and 54 more names, some of which are marked to remind the engrossing clerk to put them in above the 'Esquires'.

³ Herts.R.O., Cowper (Panshanger) MSS., D/EP F153: Castleton to Woollaston, 12 Nov. 1714; paper endorsed 'Lincoln, Lord Finch', no date; recommendations of the earl of Lindsey, the custos, 'given in' 12 Jan. 1715.

A number of counties - more, in fact, than had been remodelled in the Whig interest - were still dominated in numerical terms by Tory appointments after the receipt of the first Hanoverian commission. Even after two commissions, sealed in September 1714 and February 1715, 58 gentlemen included by Harcourt were still justices in Buckinghamshire, and only 22 new justices had been appointed.¹ Only 10 new names were included for Hampshire, where 53 gentlemen put in between 1710 and 1714 made up about one-third of the total commission. A surprising feature of the Hertfordshire commission sealed in December is the small number of restorations. Only 2 of the 28 put out by Harcourt were put back; 33 gentlemen added by Harcourt remained, and only 10 were brought in. Moreover, Cowper, who knew Hertfordshire well, inexplicably left in crypto-Jacobites and Tories, such as Charles Caesar, John Gape, Richard Goulston, Samuel Robinson, Sir Thomas Seabright, and Sir George Warburton. Another county in which the Tories retained at any rate a theoretical numerical superiority was, predictably, Oxfordshire, where Cowper left out 2 of Harcourt's 42 inclusions and 3 more, restored 6 of Harcourt's omissions, and appointed 8 new names. The custos had sent a formidable list of justices who had not qualified themselves to act, but this was ignored, although it included several Tories. Cowper evidently felt that

¹Ibid., D/EP F153: paper endorsed 'Bucks. From Lord Bridgwater'; no date.

he had to sure of his ground before disgracing the Oxfordshire Tories. Of the 5 put out, one was 'distracted once again', another was guilty of administrative rather than political misdemeanours, and a third was not merely unsound politically, but also lived in a 'scandalous manner'.¹ The omission of 14 justices added by Harcourt in 1712 in Wiltshire looks like a severe purge, but the addition of 29 names (9 of them restorations) hardly balanced the 49, who had been added in 1712 and were still in commission. Cowper had put 14 gentlemen out between 1705 and 1710, mostly for 'refusing to act', and Harcourt had restored them; Cowper might have been expected to have left them out again in 1714, but he did not.² All 14 of those to be left out for Kent had originally been added by Harcourt, but 85 gentlemen in the first Hanoverian commission, between one-third and one-half of the total list, had been added during the last four years of the Queen's reign. Cowper added 34 gentlemen for the first time and restored 24 more who had been left out by Harcourt, but these 58 additions fell short of balancing Harcourt's inclusions. Cumberland, Northumberland, and Glamorgan were similarly purged in such a way as still to leave a majority of gentlemen put in by Harcourt over gentlemen put in by Cowper. Perhaps the strangest case of remodelling occurs in Worcestershire.

¹ Ibid., D/EP F154: paper endorsed 'List of alterations in the Commission of the Peace for the County of Oxford'; separate paper endorsed 'Oxford. B[arl] of G[odolphin]'.

² The fiat was dated 2 Dec. 1714, the commission itself 27 Dec., but even so, some suggestions made by the custos, the marquess of Dorchester, early in January 1715 seem to have been incorporated. P.R.O., C.234/40: 2 Dec. 1714; Wilts.R.O., A 1/1/2; Herts.R.O., Cowper (Fanshanger) MSS., D/EP F154, Dorchester to Cowper, 1 Jan., 6 Jan. 1715.

Two commissions were sealed. The first, in September 1714, left out 8 of Harcourt's 28 inclusions, restored all 8 gentlemen whom Harcourt had dismissed, and added at least 5, and probably more, new justices. This was clearly a prompt, if not quite complete, 'balancing' operation. But the second commission, a month later, displaced well known Whigs such as Sir Joseph Jekyll, and Charles and Richard Dowdeswell; restored the Jacobites John Parsons, Sir John Packington, and Sir William Keyt, who had been left out in September; and retained Sir Thomas Seabright and other Tories.

The overall impression left by Cowper's first set of commissions is that, while he was making what were undeniably quite substantial changes in the Whig interest, he was not as yet prepared to conduct a comprehensive reversal of the Tory changes made by his predecessor.¹ An unexpectedly high number of Tory and even Jacobite gentlemen remained in the commission of the peace for most of the counties during and after the 1715 election. The effect of the changes that Cowper did make on the progress of the elections is difficult to measure. A very few Tory candidates were turned out but were elected nonetheless, like George

¹The view that the months after the Queen's death saw a purge of 'systematic ruthlessness', for which see Speck, Tory and Whig, p.82, is thus open to qualification. The example of the omission of the earl of Oxford, formerly Robert Harley, in Herefordshire, suggested as evidence of large-scale purges, is probably to be explained by the fact that Oxford had ceased to be a Privy Councillor and was therefore omitted from all the commissions of the peace without Cowper's warrant. He was probably put back again for Herefordshire shortly afterwards, as he was again left out on his death in 1724.

Bruere, elected for Great Marlow although displaced in Buckinghamshire. Several Tory candidates remained on the bench. Even in Sussex, where a substantial purge had taken place, the Jacobite Sir Harry Goring was not removed, and he came top of the poll at Horsham, although he was subsequently unseated on petition. Some of the recommendations which Cowper received specifically referred to the elections. George Lucy wrote from Warwickshire

I take this occasion to observe to you that in case there is not some Regulations here in the Commission of the Peace as well as in other Places, the Tory Interest will always inevitably prevail, for the Bench of Justices have such an Influence over the Freeholders in this County that they insult those poor wretches to such a degree that out of fear they seem to loose all sense of liberty...

Of the 'middle sort of gentry', put in by the late Tory ministry, Lucy singled out five for disgrace who had small estates, and suggested seven in their places. He added that since the Tory gentry did not act, the Whigs would, after this relatively modest regulation, be the greater party on the bench.¹ Adolphus Oughton, the Whig candidate for Coventry, suggested at least three more names, plus himself, to help the 'poor depress'd Whiggs' in the Warwickshire elections.² In the event, William

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F154: George Lucy to [Woollaston?], 21 Nov. 1714.

²Ibid., D/EP F154: Oughton to [Woollaston?], 30 Nov. 1714.

Inge was dismissed, but was elected unopposed for Tamworth. Sir William Keyt, who according to Lucy had a very small estate, and had been put in only as a check on the Whigs in Barlichway Hundred, was kept in; Inge, who had originally been put in by Wright, was the only justice put out. Adolphus Oughton was not put in, possible because Cowper remembered dismissing him in 1707 for 'refusing to act', but, as in Inge's case, it does not seem to have mattered much whether or not he was a justice of the peace, since he was elected for Coventry. However, as all 25 of Harcourt's justices remained in the commission and only 11 were added, it is not surprising that the 'poor depressed Whigs' were unable to oppose the election of two Tories for the county. Changes to assist the elections were also suggested in the neighbouring county of Staffordshire. An anonymous source recommended William Chetwynd to help the Chetwynd interest at Stafford, and also suggested the omission of an enemy to the Protestant Succession, Henry Vernon. The custos, Lord Uxbridge, returned an annotated list which recommended Walter and William Chetwynd, and he also suggested that several be disgraced: besides those of small estates, Henry Vernon and John Congreve abused the office of justice of the peace for Tory electoral purposes, while Richard Dyott was a flagrant Jacobite.¹ In January 1715, the two Chetwynds were added

¹Ibid., D/EP F154: unsigned paper, no date, recommending William Chetwynd; list annotated by Uxbridge, no date; separate paper endorsed 'Received the 5 Jan. 1715 of My Lord Uxbridge'.

and they were duly elected unopposed at Stafford. The gentlemen of small estates, plus Congreve, were dismissed. Richard Dyott, however, was one of the Tory candidates at Lichfield, yet he remained in the commission of the peace, as did his Tory partner, John Cotes. Neither was elected. Henry Vernon also remained in commission and was elected for Newcastle-under-Lyme after a stiff fight with two Whigs. Cowper sealed another commission in February, after the election; Vernon, Cotes and Dyott all reappear (the latter as 'Pyott'), but - a delicate touch - William Inge, the member for Tamworth recently dismissed for Warwickshire, was left out of the Staffordshire quorum. Vernon's continued status as a magistrate perhaps assisted his election, although he was unseated on petition in June.¹

These cases of what almost amounts to neglect of Whig electoral interests may not be typical, but, in both Warwickshire and Staffordshire, Cowper had received explicit suggestions for desirable changes but had not acted upon them. Also, among the Tories he permitted to remain in the Hertfordshire commission, Sir Thomas Seabright and Ralph Freman were elected knights of the shire, and Charles Caesar and Richard Goulston came top of the poll at Hertford although both were subsequently unseated. Probably in many counties the publication of the new commission at quarter sessions

¹For details of the elections and the political outlook of the candidates, see Sedgwick, The House of Commons 1715-1754.

in January confirmed in a general way an impression that Whig influence was dominant in the control of patronage, but specific cases of manipulation in the Whig interest seem to have been unusual, and it is possible that Cowper took the view that an over-vigorous regulation among justices of the peace would have done more harm than good.

In the course of 1715, the Whigs consolidated their hold on the ministry and on patronage. Bolingbroke fled to France in March and became, shortly afterwards, the Pretender's Secretary of State. The Jacobite rising in Scotland and the north of England in the autumn of 1715 confirmed in Whig eyes the identification of Toryism with treason. The younger Whigs in the ministry, notably Walpole and Townshend, were as much in favour of proscription in local office as a weapon in central politics as their Junto predecessors or Bolingbroke had been.¹ There is a widely accepted hypothesis that during the months after the election, and especially during and after the Jacobite rising, the Whigs completed a wholesale regulation of the commissions of the peace.² During the rising, Townshend wrote to reassure a gentleman in the north that 'the Commissions of the Peace will... be put into such hands as the Government

¹Holmes, 'Harley, St. John, and the Death of the Tory Party', pp.234-5.

²Plumb, The Growth of Political Stability, p.165.

can depend on'.¹ This hypothesis has taken the place of the older view that the whigs behaved with considerable moderation by leaving Tory squires in the commission of the peace, so as not to provoke them with the loss of local as well as central power.² There is no doubt that, had he chosen to do so, Cowper might have remodelled the bench by proscribing the Tories in most counties by the end of 1715. Without at any time conducting a simultaneous regulation, Cowper continued to seal second and for some counties third commissions until the beginning of 1716, when, in January and February, he was compelled by illness to abandon business temporarily.³

At the end of 1715, the number of counties where a significant purge of Tory justices had taken place was still very small: a dozen at the most. The changes in Peterborough, already remodelled in September 1714, were completed in July 1715 in a commission which contained 38 names, of which 2 had been added by Harcourt and 16 by Cowper since the death of the Queen. Cowper was following the recommendations of the Fitzwilliam family. John Fitzwilliam stigmatised several Peterborough

¹P.R.O., S.P.44/118, unf.: Townshend to Mr. Maxwell, 27 Oct. 1715. This seems to be the only evidence for the view that the purges in 1715 were directed by the Secretaries of State as well as by Cowper, for which see Plumb, Sir Robert Walpole, The Making of a Statesman, pp.213-4.

²Trevelyan, England under Queen Anne, iii, 319.

³P.R.O., Index 4216, pp.348ff.; Diary of Mary, Countess Cowper, p.75.

justices as violent Tories put in by Lord Exeter during the Oxford ministry; they had no estates in Peterborough (and two of them had no estates anywhere). Accordingly, they were put out.¹ Dorset, where Cowper had already conducted a policy of swamping the Tory justices with inclusions, was purged of 23 justices in September, among them Sir William Pole, who had been M.P. for a number of West Country constituencies in Anne's reign, but who did not stand in 1715. Only 10 gentlemen added by Harcourt remained on the bench. Among these, admittedly, were the Tory knights of the shire, Thomas Strangeways and George Chafin, but Cowper's earlier inclusions meant that the Whigs dominated the Dorset bench. In Kent, too, the number of gentlemen in the commission who had been included by Harcourt (80 or more at the time of the election) was whittled down to 43 in July 1715, while over 70 names, some new, some restorations of those dismissed by Harcourt, had been added since the death of the Queen. The purge of Tory justices was conducted on the advice of the earl of Dorset and Lord Rockingham, who described several of those disgraced as violent Tories, Jacobites, or men of small estates. Even so, it was not complete. Not all of Rockingham's suggested removals were implemented, and Sir Edward Knatchbull and Percival Hart, the

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F154: list of gentlemen to be in the Peterborough commission, sent by Lord Fitzwilliam; paper signed by John Fitzwilliam, the son of Lord Fitzwilliam and M.P. for the borough of Peterborough; neither dated but c. July 1715.

Tory candidates defeated in the 1715 county election, and John Hardres, the Tory M.P. for Canterbury, remained in commission.¹ Shropshire was purged of 33 of Harcourt's 58 inclusions in two commissions sealed in August and December 1715, and the survivors - among whom, admittedly, were one or two recognisable Tories like Whitmore Acton and Acton Baldwyn - were swamped by the 47 gentlemen brought in since 1714. Sussex, purged already in December 1714, received another commission in August 1715. About 25 of Harcourt's 71 inclusions survived, among them Sir Harry Goring, but the marquess of Hertford, when recommending the changes, observed that the number of justices to be left out might have to be increased at a future time, which implies that the policy of keeping them in, at any rate temporarily, was deliberate.² Edward and Thomas Harley were dismissed for Radnorshire in December 1715, and only 2 of the 28 justices for that county had been added by Harcourt. In Middlesex, too, purges on a large scale seem to have taken place. The fiats do not survive, but the earl of Clare had certainly recommended changes that were accepted before the end of 1714, and 44 were added and 68 dismissed in July 1715.³ It is,

¹ Ibid., D/EP F153: paper endorsed 'Kent. Received from the E. of Dorset', 27 July 1715; paper headed 'Kent. Justices to be left out' and endorsed 'From E. of Rockingham's hand, July 1715'.

² Ibid., D/EP F154: Hertford to Cowper, 18 Aug. 1715.

³ Ibid., D/EP F153: Clare to Cowper, 7 Dec. 1714; Brit.Mus., Stowe MSS. 228, f.205: list of persons left out of and put into the commission of the peace for Middlesex, no date but attributed to July 1715 by internal evidence.

however, worth remembering that the Middlesex commission was the largest in the country, and that even 68 put out does not necessarily mean that a comprehensive purge of Tory justices took place. One ambiguous case is that of Anglesey, where a fiat for September 1715 embodies a savage purge of the Tory, pro-Bulkeley justices. Not one of the 13 gentlemen added by Harcourt would have been left in the commission, but the docquet book does not record the sealing of a commission of the peace for Anglesey at this time.¹ Possibly Cowper did not approve of the violence of the proposals, especially as Lord Bulkeley, a Jacobite, was counter-attacking by complaining of riots at Beaumaris quarter sessions committed by several of the justices who were to have been retained.²

These counties, plus those in which justices had been left out in relatively large numbers before the election, were the only ones in which, by the end of 1715, anything in the nature of a severe purge had taken place. It seems inappropriate, therefore, to describe these alterations collectively as 'ruthless' or 'comprehensive'. Perhaps the only real example of 'ruthless' changes directed by the central government was Lancashire, the one county that was not within the field of Cowper's

¹ P.R.O., C.234/82, Carnarvonshire: strayed fiat for Anglesey, 17 Feb. 1714/5; C.234/78, Anglesey: 24 Sept. 1715.

² Herts.R.O., Cowper (Panshanger) MSS., D/EP F155: information against several justices in North Wales, 1, 2 Aug. 1715.

patronage. The majority of the Lancashire justices were Tory or Jacobite in sympathy early in 1715, and the county was an obvious centre of Jacobite rebellion. In November 1715, during the crisis of the rising, the Privy Council abandoned all precedents and simply nominated a completely new bench for Lancashire which made virtually a clean sweep of the Jacobites.¹ Elsewhere, however, Cowper had continued to 'balance' the county benches, by inclusions and by modest purges which left some Tories in commission. A good illustration of his methods is provided by the case of Pembrokeshire. In November 1714, Cowper had dismissed 8 gentlemen put in by Harcourt and added 16 to outnumber the 9 survivors from the period of Tory supremacy. This was quite a substantial remodelling, but Sir Arthur Owen, the custos, was not satisfied, and in January 1715 he complained to Cowper about the scandalous practices and unabashed Toryism of some of those left in. He enclosed an annotated list of gentlemen in commission, which was then annotated again, probably by Woollaston, in such a way that the commission for Pembrokeshire sealed in August 1715 can be reconstructed with a reasonable degree of certainty

¹ Ibid., D/EP F153: paper endorsed 'From Lord W[illoughby of Parham?]' relating to Lancashire; paper headed 'The names and characters of all the Justices of Peace in Lancashire who now Act'; paper headed 'Justices of the Peace for Lancashire. The Names of those who are desired to be put in', none dated but all c. autumn 1715; P.R.O., S.P.35/2, f.127, another set of recommendations for Lancashire; S.P.35/3, f.212, justices added for Lancashire in 1715; P.C.2/85, pp.303-4: 3 Nov. 1715; S.P.44/118, unf.: Townshend to Daniel Wilson, 8 Nov. 1715; Lancs.R.O., QSC/155, QSC/156: commissions of the peace sealed 5 Aug., 3 Nov. 1715.

although the fiat for that commission does not survive.¹ It appears that Cowper left out those of low social status whom Owen described as Tories, those who never acted, and those who refused the oaths to King George. However, Sir George Barlow, 'The Head of the Tory Party on all Occasions', John Barlow, his brother, 'as violent', William Allen, who 'joyns in all violent measures with the Tories', and Thomas Knowles 'A Violent man in acting with the Tories in all matters' were left in. Thus, while the bench was predominantly Whig by the end of 1715, some Tories remained in commission although Cowper had been informed about their character. Sir George Barlow was a notorious Jacobite who had made two attempts in the 1715 election, at Pembroke and Haverfordwest; he remained a justice of the peace for Pembrokeshire until his death in 1721. Cowper was thus not prepared to disgrace socially prominent justices of Tory principles, and the evidence suggests that although he conducted mild purges of the socially inferior squires in a number of counties, he left the Tory grandees on the bench. Cheshire, Cornwall, Hampshire, Hertfordshire, Northamptonshire, and several Welsh counties besides Pembrokeshire are all examples of a

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F155: paper headed 'A List of the Justices of the Peace of the County of Pembroke as it was November the 27th 1714'. All the names marked 'Dead' are crossed. Some of the other names indicated by Owen to be unsuitable are also crossed and were presumably left out. Owen recommended several men 'well-affected to the present government', signed the list, and dated it 9 August 1715. His animosity to one of those added by Harcourt was such that he advanced two reasons for his dismissal: one, that he did not act, and two, that he was dead.

similar pattern. In Staffordshire, William Inge was belatedly dismissed in December 1715, but after this commission the inclusions since 1714 balanced those put in by Harcourt exactly; there were 17 of each in the commission, and Richard Dyott and Henry Vernon were still Staffordshire justices. Sir John Hynde Cotton, Sir Christopher Hatton, and other Tories survived as Cambridgeshire magistrates. Cotton was still in commission in Suffolk, with Tories such as Clement Currance and Dudley North, while, rather oddly, many of the Whigs put out by Harcourt in that county were not restored. Waller Bacon and Sir Isaac Rebow, two consistent government supporters in the house of Commons, were among those not gratified by re-inclusion in the Suffolk commission. Essex was not significantly purged, although 20 justices of the peace drank the health of their late lord-lieutenant, Bolingbroke, after Easter quarter sessions at Chelmsford in 1715; by the end of the year, all but 3 of the 27 added by Bolingbroke in early 1714 were still in commission.¹ Somerset was another county where socially prominent Tories were not dismissed. Sir Coplestone Warwick Baupfield, Francis Gwin, John Rolle, the Colstons of Bristol, Thomas Strangeways, Sir William Wyndham and Francis Popham had not been removed by the end of 1715, although Cowper had probably included enough new names to submerge the Tories on the bench.

¹ *ibid.*, D/EP F153: certificate signed John Wroth and F. Gardiner, 19 May 1715.

Cowper's handling of the patronage of the great seal thus fails to confirm the hypothesis that by the end of 1715 the Whigs had established a monopoly of local office. The reason for this was probably that he remembered the treatment that Nottingham, Somers and Wright had received in Parliament. In July 1715 a group of Tories in the house of Commons, led by Samuel Bracebridge, whom Cowper had dismissed in Leicestershire six months earlier, mounted an indirect attack on the Chancellor by drawing attention to the neglect of some justices in failing to suppress riots at Wolverhampton. Bracebridge made his description of these riots a heavily ironical piece of Tory propaganda. He suggested that the defaulting justices should be dismissed, and that the names of justices in commission should be investigated in comparison with the names of those in commission at the death of Anne.¹ Cowper's friends defeated this proposal, and Cowper revenged himself on Bracebridge by leaving that gentleman out of the Warwickshire commission in October. However, Cowper knew that, limited as his changes had been, they were still extensive enough to leave him exposed to Tory malice in the Commons. Cowper used this argument to defend himself to the King against Whig colleagues in the ministry who complained that he had not left enough Tories out. The theme of the memorandum to George I, composed at about

¹C.J., xviii, 227-8.

the time of Bracebridge's attack, was that it would not have been wise, or just, to have displaced the Tories put in by Harcourt wholesale. After describing Harcourt's purges, Cowper continued

... accordingly all the Commissions of the Peace being to be renewed on your Majesty's accession to the Crown, I did as much as the hurry of doing such a work all at once... would permit, turn out according to the best accounts I could get, great numbers of persons disaffected & otherwise not well qualifyd, & put in all I could have well recommended as to Estate & affection to your Government: and as to those who were of Estate & quality Sufficient in their Country, but wer represented by your Majesty's friends as of suspected inclinations; I thought it for your Majesty's interest not to displace them on bare general Suspicion; unless they who sollicitied their Removal would give in writing some particular instance or objection to their Conduct.... This I requird not that [it] would have been any defence to me in case the contrary party had provd strong enough to call my Conduct in Question; but that at least I might by having recourse to my papers, be able to alledge a reason for my proceeding to any that should come to expostulat with me...

Few such written reasons for disgracing justices were forthcoming.

Cowper argued that it was therefore unreasonable for anybody to expect him to displace any more than he had done without credible reasons that he could cite in his defence; the gentlemen recommended for dismissal, he wrote, were in most cases 'perfect strangers' to him. It would have been 'partial and unjust' to have gone any further, and it would have done more harm than good. However, Cowper said that a revision of the commissions was in hand which was designed to remove those who displayed their disaffection by neglecting to act as justices. He added a postscript which referred to the defeat of Bracebridge's proposal; this, he said, showed

That at the same time the Whigs complain the alterations have been too few, the Torys are of opinion that so many have been removed as could not well be justified, if they might appear before the House at one view.¹

Local factors of an intangible kind may also have played a part in Cowper's reasoning. In some of the counties, the necessity of keeping gentlemen on the bench in default of suitably qualified alternatives may have been an important consideration. A modest addition of Whigs to the magistracy would have sufficed to have given them a preponderance of local power without the political dangers involved in putting Tories out. But he was principally concerned to avoid the mistakes of his predecessor, Sir Nathan Wright. Chancellors were vulnerable. Cowper was not prepared to gratify his more extreme colleagues with draconian purges, without adequate safeguards for himself.

In 1716, after his illness, Cowper sealed a number of commissions which met the grievances of the more violent Whigs in about half a dozen counties. Gloucestershire was purged of 40 second rank Tory squires in March. The Bedfordshire commission lost 13 names, among them Sir John Chester, Sir George Warburton, Sir George Downing, and William Levinz, and also the Whig lawyer Nicholas Lechmere, temporarily in disgrace with his party for eccentric voting in Parliament following his forced resignation

¹ Herts.R.O., Cowper (Panshanger) MSS., D/EP F152: Memorial to George I.

as Solicitor-General in December 1715. The M.P.'s Richard Goulston and Clement Currance were put out in Essex along with 16 less noteworthy squires. Surrey was purged of 21 justices, among them William Newland, the Tory M.P. for Gatton; Arthur Moore, a Lord of Trade from 1710 to 1714 and an associate of Bolingbroke; John Ward, M.P. for Reigate from 1710 to 1713; and a future knight of the shire, Thomas Scawen.¹ In Anglesey, a slightly more moderate version of the comprehensive purge planned in September 1715 was implemented in March 1716 with the omission of 12 justices. In June, 10 gentlemen were put out for Cornwall, headed by the knight of the shire, Sir William Carew, who had been arrested on suspicion during the Jacobite rising the year before. These relatively severe assaults on the Tory gentry were accompanied by dismissals on a less striking scale in most of the commissions sealed in the spring and early summer of 1716. Thomas Thoroton, Recorder of Lincoln, was left out in all three divisions of Lincolnshire. Five rather undistinguished gentlemen were dismissed in Buckinghamshire.² Walpole's enemy Richard Ferrier was disgraced in Norfolk with Sir Robert Kemp and four other

¹The fiat is dated 24 Mar. 1716 which is to be understood as 24 Mar. 1715/6. P.R.O., C.234/36, Surrey.

²Verney Letters of the Eighteenth Century, ii, 38.

gentlemen.¹ Six were omitted from the Hertfordshire commission, but none of them were among the leading Tories in that county. In August, Sir William Wyndham was put out in Somerset with four others and in Cambridge-shire with seven others, while five undistinguished gentlemen were dismissed in Wiltshire.

These alterations in the spring and summer of 1716 reflect the aftermath of the Jacobite rising rather than any centrally directed intensification of the Whig programme of proscription.² Possibly the second-rank gentry now purged had attracted unfavourable notice for their neglect of the government orders for the seizure of the arms and horses of Catholics, or for their lack of enthusiasm for the 'Voluntary Associations' promoted in some counties by zealous Whigs on the model of 1696.³ The omission of some justices was wholly predictable. It was hardly to be

¹For Ferrier, see Plumb, Sir Robert Walpole, The Making of a Statesman, pp.210-2. Special interest attaches to Norfolk as the home county of the allegedly more intransigent Whig politicians. In fact, in 1715 Cowper's policy of 'balancing' the bench was well illustrated in that county, since by the end of the year 39 gentlemen had been added since the Queen's death and 16 of Harcourt's inclusions had been dismissed, leaving 33 originally added between 1710 and 1714 still in commission. Townshend and Sir Charles Turner had recommended the dismissal of some of Harcourt's inclusions on the grounds of inactivity or non-residence. Herts.R.O., Cowper (Panshanger) MSS., D/EP F154: paper endorsed 'Norfolk. From Lord Townshend and Sir Ch. Turner', no date but c. April 1715. The Tories still in commission were outnumbered, but, for instance, George England, the Tory M.P. for Great Yarmouth, remained in commission until the 1720's, as did the Jacobite Sir John Wodehouse.

²Although a number of M.P.'s were left out at this time, there seems to have been no obvious connection with the debates on the Septennial Bill in April.

³P.R.O., S.P.44/118, unpaginated: Townshend to Dodington and others, 25 Oct. 1715; same to Lord Sondes, 15 Nov. 1715.

expected, for instance, that the leader of the rising in England, Thomas Forster, should remain a justice of the peace for Northumberland, and he was put out with four others in May 1716.

During the period from the summer of 1716 to Cowper's resignation in April 1718, the great majority of the commissions of the peace were of a routine character. New names were added, sometimes in quite large numbers, but it was unusual for living justices to be left out. When they were, the reason was often simple misdemeanour. John Dineley alias Goodeve was left out for Worcestershire in December 1716 following lurid descriptions of his indecent behaviour while swimming and his brutality and inexpertise as a justice.¹ Only two counties received commissions which left justices out in significant numbers. The purge of Essex justices in March 1716 was followed by another, smaller purge in November in which 7 gentlemen were dismissed, among them Anthony Bramston of Skreens, whose son Thomas was M.P. for Maldon. In March 1717, 21 justices were left out of the Oxfordshire commission; 18 of these had been added by Harcourt. Elsewhere, Charles Caesar was left out in Huntingdonshire in March, Robert Leves in Sussex in April, and, belatedly, Viscount Bolingbroke in Cumberland in May,² but on the whole the commissions sealed in 1717 and

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F154: informations of Edward Corner, 5 Oct. 1716, and Samuel Jackson, 26 Oct. 1716.

²Bolingbroke can only have been left in the Cumberland commission by an oversight in the Crown Office.

early 1718 were remarkable only for the absence of severe regulation. The changes in central politics in 1717 were not reflected in local government at all. Townshend was dismissed from the ministry in April, and he was followed out of office by Walpole, the duke of Devonshire, George Dodington, and a group of M.P.'s who thereafter embarrassed the ministers by voting with the Tories against the government. From November 1717 this group of Opposition Whigs was associated with the Prince of Wales, who had quarrelled with the King.¹ However, Townshend retained the lord-lieutenancy of Norfolk; Dodington, that of Somerset; Devonshire, that of Derbyshire; and none of the recalcitrant M.P.'s were dismissed from the commission of the peace.² Cowper, himself a confidant of the Prince of Wales, was possibly estranged from his ministerial colleagues at this time. However, another, more concrete reason for his relative inactivity in 1717 as far as the commissions of the peace were concerned, was that Woollaston, his Secretary, had made frivolous and untrue accusations against certain Middlesex justices, who had refused to lend him money, to secure their dismissal from the bench. Cowper sacked him and appointed John Hughes, the poet, whose health was if anything worse than Cowper's own. There was a marked lapse in the frequency with which

¹Sedgewick, The House of Commons, 1715-1754, i, 26, 82; Foord, His Majesty's Opposition, pp.61-2; Plumb, Sir Robert Walpole, The Making of a Statesman, pp.241 ff.

²It is possible, but unlikely, that some of them may have been left out for Middlesex.

commissions were sealed in the autumn of 1717 during these upheavals in the Chancellor's secretariat.¹

Cowper had contemplated resignation in early 1716, and in fact his health was poor until his death in 1723, although the real reason for his resignation in April 1718 was probably the tension in the ministry. When out of office, he provided a focus for opposition in the house of Lords, reconciled himself to the retired earl of Oxford, and found himself almost in the position of an unofficial crypto-Jacobite leader. At the end of their lives, therefore, Cowper and Harcourt had exchanged their political roles more or less completely.²

The career of Cowper's successor, Thomas Parker, Lord Chief Justice since 1710, Lord Parker from 1716, and subsequently earl of Macclesfield, is overshadowed by his dismissal in 1725 for conniving at fraudulent irregularities practised by the Masters in Chancery. He was impeached, found guilty, and briefly imprisoned in the Tower, living thereafter in retirement until his death in 1732. Notwithstanding this disgrace, he was a distinguished judge.³ Among other improvements in

¹ Herts.R.O., Cowper (Panshanger) MSS., D/EP F157: Ashurst to [Cowper], 23 Oct. 1717; Woollaston to Cowper, no date, defending himself.

² Campbell, Lives of the Chancellors, iv, 380-91; Foord, His Majesty's Opposition, pp.61, 64, 74 and note 3.

³ Campbell, Lives of the Chancellors, iv, 522 (misprinted 552) - 560.

the administrative work of Chancery, he initiated the practice of adding names to the commissions of the peace under the cold seal, without the need for the lengthy preparation of a new commission, and he revived the process of disgracing justices guilty of misdemeanour by writs of supersedeas.¹ On his appointment in May 1718, he was a firm supporter of the Stanhope-Sunderland ministry, and he retained his connections with these ministers after the reconciliation of the Opposition Whigs in 1720, later acting with Carteret rather than with Walpole after Stanhope and Sunderland had died.²

Parker had held the great seal for two months before he ordered a liber pacis for his own use.³ He sealed six commissions of the peace in the summer of 1718, in one of which, for Buckinghamshire, seven gentlemen put in by Harcourt were dismissed with four more, among them Sir James Etheridge. Some gentlemen were also left out for Oxfordshire, although the fiat is missing.⁴ Parker sealed no commissions

¹See above, pp.26-7.

²C. B. Realey, The Early Opposition to Sir Robert Walpole, 1720-1727 (Kansas, 1931), pp.98, 137-9; J. M. Beattie, The English Court in the Reign of George I (Cambridge, 1967), p.150.

³P.R.O., Index 4216, p.454; c. 23 July 1718.

⁴P.R.O., Index 4216, p.454; Hist.MSS.Comm., Portland MSS., vii, 239. The rumour there reported that clergymen were being displaced 'all over England' was without foundation.

of the peace at all in the autumn of 1718, possibly because of the indisposition of John Hughes, his Secretary of Commissions, whom he had inherited from Cowper.¹ If Parker conceived his role in the ministry to be to improve on the arguably somewhat languid performance of Cowper in exercising the patronage of the great seal, he started slowly.²

However, in the winter of 1718-19, a number of commissions making substantial changes were sealed. The most serious purge was in Kent, where 31 justices were put out, headed by Sir Edward Knatchbull, the Parliamentary diarist, who was a moderate Tory, Sir Thomas Twisden, whose Toryism was rather more extreme, Archdeacon Spratt of Rochester, and several more justices appointed by Harcourt. Parker added 24 new names, so that by 1719 the survivors of the 102 gentlemen included by Harcourt were fairly heavily outweighed on the Kent bench. Also, 14 justices were dismissed in Surrey,³ and justices were left out in small numbers for Wiltshire, Staffordshire, Berkshire, Bedfordshire, Cambridgeshire, and the three divisions of Lincolnshire. In the spring

¹ For Hughes' illness, see: Bodl.MS. Montagu d. 13, fos.295-6: Hughes to Cowper, 25 Oct. 1718; Letters by several eminent persons deceased, i, 141; iii, 65-6.

² Hist.MSS.Comm., Portland MSS., v, 559; for a suggestion that Parker was hostile to Cowper, see: E. Hughes, 'Some Clavering Correspondence', Archaeologia Aeliana, Fourth series, xxxiv (1956), 25.

³ The fiat is dated 21 Mar. 1719, which is to be understood as 21 Mar. 1718/9. P.R.O., C.234/36, Surrey.

and summer of 1719, several more counties received commissions of the peace which did not embody a major purge, but which nevertheless did leave a few justices out. Parker was not afraid to disgrace prominent and influential Tories. Edward Harley, Thomas Foley, and Walwyn Shepherd were dismissed in Herefordshire in May 1719, with four more who 'never acted'. Samuel Robinson, who had been put out of the Hertfordshire commission in 1709 and restored by Harcourt in 1710, and who as M.P. for Cricklade had been a 'member' of the October Club in the last years of the Queen's reign, was put out again for Hertfordshire in June. Clement Currence was at last put out for Suffolk in July, with one other. Two Tory justices of the peace in Somerset, Sir John Smith and John Codrington, the M.P. for Bath, had discouraged zeal against sedition; they were dismissed by order of the Lords Justices who were responsible for domestic government while the King was in Hanover, and they were subsequently convicted at Taunton assizes for abusing their powers as magistrates in a factious spirit.¹ Also put out in this commission was another Tory, Giles Strangeways, represented to the government by John Speke of Whitelackington as inactive and disaffected to the government.²

¹P.R.O., S.P.44/279, unpaginated: Lords Justices' minutes, 30 July 1719; S.P.44/278, p.18: Delafaye to Parker, 1 Aug. 1719; S.P.35/21, f.43: Adderley to Delafaye, 7 Apr. 1720; J. Oldmixon, History of England, p.669.

²P.R.O., S.P.34/12, unfoliated: John Speke to Stanhope, 10 May 1718.

After these exertions in 1719 (which probably reflect the ministers' uneasiness at Jacobite activity abroad, which culminated in an abortive invasion in March and April), Parker's manipulation of his patronage in 1720 and in subsequent years became moderate. One commission for Cornwall in July 1720 left out twelve peers, but these were Queen Anne's Privy Councillors who had inexplicably been retained in the Cornwall commission for six years after the Hanoverian Succession. Otherwise, the reasons for dismissal are noted in the *fiats* with increasing frequency and few of these reasons are exceptionable. 'At his own request' is common, one East Riding justice was 'infirm', and some justices in Berkshire had left the county. One gentleman, Henry Whitehead, was left out in Hampshire for conniving at smuggling.¹ One commission of the peace, that for Radnorshire, did, however, prove difficult to settle. The trouble had started in May 1719, when Parker had signed a fiat which embodied some suggestions made by the lord-lieutenant, the earl of Coningsby, who desired, among other changes, the omission of the father of Thomas Lewis, M.P. for Radnorshire - Thomas Lewis senior, of Harpton. Thomas Lewis junior was a steady government supporter by 1719, and after he had protested, Parker revised his fiat by revoking the order to leave the father out, although he ignored some of Lewis' other

¹P.R.O., S.P.44/280, unpaginated: 15 Oct. 1719; C.234/14, Hampshire: 29 Feb. 1719/20.

recommendations of 'Whigs who would be answered for'.¹ The following year, Coningsby proposed the omission of both Lewises and of several more of his enemies in Radnorshire local politics. This time, after the matter had been discussed by the Lords Justices, Parker accepted the recommendations of Lewis and ignored those of Coningsby.² Coningsby retaliated with a stream of paranoic letters directed against the Chancellor. In 1721 he lost the lieutenancy and found himself in the Tower, his sanity in some question.³ The difficulties in Radnorshire were unusual, however. The routine commissions sealed in 1720 suggested that the transitional period of the Hanoverian Succession was over, and that the county magistracy was settling into a stable form. It had become unusual for severe changes to be made in any one county, and extraordinary (except after the demise of the Crown) for a general, simultaneous regulation to take place with similar criteria applying to all the changes.

¹ P.R.O., C.234/90, Radnorshire: 6 May 1719, re-dated to 27 July 1719; S.P. 35/17, fos.93-8: Paper book endorsed 'Mr. Lewis. Radnor', 16 July 1719.

² P.R.O., S.P.44/283, p.9 and subsequently unpaginated: Minutes of Lords Justices, 23 June, 14 July, 19 July 1720; S.P.44/285, pp.15-16: Delafaye to Lewis, 24 June 1720; S.P.35/22, fos.64-5: Lewis to Delafaye, 19 July 1720; ibid., fos.133-147, Coningsby to Lords Justices, 3 Aug. 1720, with copies of several earlier letters; C.234/90, Radnorshire: 22 Aug. 1720.

³ P.R.O., S.P.35/23, f.466: Coningsby to Parker, 29 Nov. 1720 (copy); S.P.35/24, f.7, same to Delafaye, 3 Dec. 1720; ibid., fos.52-5: same to Stanhope?, 9 Dec. 1720; ibid., fos.158-63: same to same?, 31 Dec. 1720; Sedgwick, The House of Commons, 1715-1754, sub. Coningsby.

Neither of the contradictory hypotheses about the extent of Whig manipulation of the commissions of the peace after the Hanoverian Succession is wholly wrong. The evidence suggests that it is inaccurate to suppose that the Whigs, led by Townshend and Walpole, ruthlessly purged the Tories in 1714 and 1715 to establish a cast-iron Whig monopoly of local power. By the end of 1715, Tories remained in the commission of the peace in greater or lesser numbers in almost every county. It is, however, also inaccurate to argue that the Tories were everywhere gratified with local power to compensate them for proscription in central politics. Many Tory justices were, in fact, put out, in some counties in quite substantial numbers, although the timing of the purges should include the spring of 1716 and the spring and early summer of 1719 as well as 1715. The cumulative effect of a series of commissions in the years from 1714 to 1720 was, in some counties like Kent, effectively to purge the bench fairly thoroughly of the Tory squires added between 1710 and 1714. In the 1720's and 1730's, the Tories were conscious of a grievance at being excluded from the bench. The proposals to raise the property qualification for justices, which bore fruit in 1732, implied Tory resentment at a Whig usurpation of local power. The Tories were anxious to be reinstated on the county benches when some of their leaders were taken into the ministry in 1744, and when in 1747 the Prince of Wales made advances to the Tories, one of the baits he offered was a Bill empowering all who paid the Land Tax

for £300 a year to act ipso facto as justices of the peace.¹

On the other hand, while the magistracy in Kent and other counties was remodelled in the years after 1714, the changes in some counties were relatively light. Derbyshire, Parker's home county, received a commission in June 1720 which added 29 gentlemen, but this was the first commission since December 1714. The 1714 commission had dismissed one justice out of the eleven added by Harcourt. That for 1720 did not leave out any who were still alive, although the names of several dead justices were removed to make room for the new men. Other counties where the commission remained surprisingly stable during the decade from 1710 to 1720 were Monmouthshire, where the second post-Hanoverian Succession commission was sealed in July 1720, adding two names, after the first such commission in 1714 had retained Sir Charles Kemys and several more active Jacobites; and Leicestershire, where changes in 1715 that were admittedly severe, but not comprehensive, were followed by a blank period until 1720, and where the Tory Sir Thomas Cave grumbled in 1717 that he had been cashiered from all his offices except that of 'a Puny Justice of Quorum'.² Clearly, in this period as in others, the Chancellor of the day was limited by the nature of local recommendation. In counties

¹ Sedgwick, The House of Commons, 1715-1754. sub. Lord Charles Noel Somerset; J. B. Owen, The Rise of the Pelhams (London, 1957), p.313.

² Verney Letters of the Eighteenth Century, i, 341.

influenced by powerful magnates who were also party zealots, the changes would be naturally more extensive than those in counties where the influence of those making recommendations was exercised in favour of moderation. On the whole, although this would be difficult to measure accurately, moderation seems to have been more common than proscription. Cowper told George I explicitly that he preferred not to leave justices out unless they gave clear grounds for dismissal. Others took the same view. The duke of Newcastle threatened to quarrel with Parker 'for ever' and to leave the ministry, if the Tory Sir Harry Goring was put out for Sussex during the changes in 1719.¹ Some of the leaders of the Tory party were left in, like Sir John Hynde Cotton in Cambridgeshire,² while Sir William Wyndham was actually restored in 1727 to the Somerset bench, from which he had been dismissed in 1716.³ Cowper's principle was that the Whigs should enjoy a slight rather than an overwhelming preponderance on the bench. This was, on the whole, acceptable to both George I and George II,⁴ and it appears to have been the theoretical foundation on which the majority of the commissions of the peace were constructed after the Hanoverian Succession.

¹ Brit. Mus., Add.MSS.32686, f.53: Newcastle to ---, 29 Sept. 1719.

² He was eventually put out by the King's command in 1726, and he was restored on taking office as Treasurer of the Chamber in the 'Broad-Bottom' coalition of 1744. P.R.O., C.234/4, Cambridgeshire: 26 July 1726, 28 Oct. 1745.

³ P.R.O., C.234/33, Somerset: 3 Aug. 1716, 11 Nov. 1727.

⁴ Lord King, Notes of Domestic and Foreign Affairs during the last years of the Reign of George I and the Early Part of the Reign of George II, appended to, and paginated separately from, his Life of John Locke (London, 1830), ii, 48-50.

9. Conclusion - The Commission of the Peace in Politics,
1675-1720.

The names in the commission of the peace for most or all of the English and Welsh counties were reshuffled in what amounted to a simultaneous regulation on eleven occasions between 1675 and 1720: in 1680, 1681, 1687, 1688, 1689, 1700, 1702, 1704, 1705-6, 1710-11, and 1714-15. On two of these occasions, in 1702 and 1714-15, the government was taking advantage of its obligation to renew the commissions of the peace on the demise of the Crown to introduce some changes which reflected a different political situation in the new reign. In 1689, also, a post-Revolutionary regime was reversing the alterations made by the government it had overthrown in what was, effectively, an analagous situation. The magistracy was also revised, less comprehensively but still on a relatively large scale, in 1694, 1696-7, 1698-9, 1701, early in 1714, 1716, and 1719. Of course, at any time the commission of the peace for a single county was liable to be remodelled, usually in response to local pressures; Norfolk in 1676 at the beginning of the period, and Radnorshire in 1720 at the end of it, are examples of such cases.

Of the eleven comprehensive or near comprehensive revisions of the magistracy, six were markedly more successful in political terms than the others. Those of 1680 and 1681 were conducted by the same government for similar purposes. In 1680 the ministers prepared to meet the second Exclusion Parliament by an assertion of royal favour in the

countryside designed to consolidate the King's loyal friends in a party confident enough to meet the challenge of Shaftesbury's Whigs. In 1681, they built on their success in central politics to demonstrate the reward of loyalty and the penalty of faction. These operations contributed substantially to the quiet succession of a Roman Catholic to the throne and to the election of a loyal Parliament in 1685. At the beginning of Anne's reign, the Tory ministers, secure in the Queen's favour, conducted a regulation which helped to produce a majority in the 1702 Parliament. The Whigs, in what was perhaps an unexpectedly restrained remodelling in 1705-6, nevertheless conducted a discreet revision of the magistracy in their interests. In 1710-11, the Tories built on their success in central politics and in the election of 1710 to establish Tory domination (if not quite monopoly) of the county bench. In 1714-15, these changes were subtly reversed; the commissions were manipulated in such a way as to leave no doubt that local patronage was in the hands of the Whigs, although considered as a purge this regulation was rather less ruthless than has generally been supposed.

Three of the revisions were relatively neutral operations. That of 1689 was designed to restart the machinery of local government after it had ground almost to a standstill in the winter of 1688-9. It established the magistracy on a wide basis, not necessarily because the first ministry of William III's reign had any special commitment to non-party principles, but because, in the confusion of the immediate post-Revolution period, the central government was obliged to abdicate its

overall supervision of the personnel of local government to the magnates entrusted with the great county offices. The regulation of 1700 was conducted by a conscientious Privy Council anxious to investigate and remedy complaints that the magistracy was not in a satisfactory condition. It appointed large numbers of new justices in an apparently deliberate desire to establish a 'broad-bottomed' bench. In response to similar complaints in 1704, a well-intentioned but possibly bewildered Lord Keeper renewed the commissions of the peace for every county in a regulation of which the underlying purpose was probably as obscure to contemporaries as it is today.

Two of the regulations were failures. In 1687, the Privy Council implemented the King's desire that Roman Catholic gentlemen who were suitably qualified by ancestry and estates should share with Protestants the honour and responsibility of acting as justices of the peace. In 1688, in purges of unprecedented comprehensiveness, the Protestant squires were dismissed and the Catholics were joined on the bench by other persons alleged to be unqualified because of their dissenting views on religion, their shady political past, or their inferior estates and birth. The collective result of two such political revolutions in the localities in two consecutive years was a counter-revolution, in which the disgraced squires demonstrated their resentment at indiscriminate interference with their local status.

Of the less intensive regulations of the county magistracy which took place in this period, that of 1696-7 possesses several features of interest. It was manifestly a politically motivated operation, designed to give the Whig ministry established in 1693-4 a solid base of support in the countryside by eliminating from the magistracy those whose opposition could be interpreted as treason. It was intended to be more comprehensive than it was. The implementation of the alterations was clumsily conducted, and the changes that did take place seem to have done little to assist the Whigs in the election which followed in 1698. The 1696-7 regulation illustrates well a number of qualifications to the view that the commission of the peace was an instrument of patronage which the ministry of the day could turn easily to profitable account. In the first place, some persons in high places disapproved of making the commission of the peace into a weapon of party advantage. William III and Godolphin took this view in the 1690's; later, Robert Harley in 1710-13 and Lord Chancellor Cowper himself in 1714-15 resisted demands for excessive change made by zealous colleagues. In the second place, the Chancellor was always compelled to depend on advice from the counties. It was difficult for him at any time to discover which gentlemen to retain and which to leave out, and this was never more true than in 1696-7, when Somers was required by the Privy Council to rely on tardy custodes rotulorum. In the third place, the process by which commissions were written and sealed was complex, and in 1696 and 1697, Somers discovered that he could

not work the machinery smoothly. The Clerk of the Crown was disgruntled because he was not receiving all his fees, some changes were decided upon, but were not implemented, and the government experienced some difficulty in remembering what changes had been made.

The successful regulations were those which confirmed an already discernible trend in ministerial or electoral politics, or, as in the case of the changes of 1680 and 1681, those which contributed to a hypothetical but politically plausible change at the centre. This suggests that the commission of the peace was most valuable to ministries as part of a 'spoils' system. A ministry which enjoyed the favour of the Crown and a majority in Parliament might enhance its position in the localities by using the patronage of the great seal to gratify already euphoric friends and to discourage already disconsolate opponents. But ministries past their heyday, or struggling against difficulties, like the Junto whigs in 1698-9, the Tories in 1704, and the whigs in 1708-9, discovered that the commission of the peace was not patronage of a kind that could be employed to turn weakness into strength. Even for ministries enjoying success at the centre, extensive remodelling was dangerous. Purges that were too severe were counter-productive; they created a group of discontented men united in their resentment at a common disgrace. Inclusions on too large a scale led to suggestions that the newcomers were men of mean estates, low social position, or moral or intellectual inferiority. Such claims were a regular tactic of opposition, and they could usually be relied upon to arouse the indignation of the back-bench

country squires in the house of Commons against the Chancellor. Nottingham, Somers, Wright and Cowper were all subjected to sharp criticism for their handling of the patronage of the great seal; Harcourt seems to have escaped specific attack, but the promotion of a Qualification of Justices Bill in 1711 may well have been accompanied by complaints about the extensive changes he had made; and it is probable that one of the reasons why Jeffreys was so bitterly unpopular when he fell, was the upheaval in local government during his Chancellorship.

The connection between changes in the commission of the peace and success in elections is difficult to measure. There were sixteen general elections within the period from 1675 to 1720. Recent manipulation of the commission of the peace contributed to the overall success of the ministry in only three of these elections: those of 1685, 1702, and 1713. Even then, the precise nature of this contribution is obscure. To dismiss a rival candidate or his friends from the bench was to give him an opportunity to pose as a victim of court malice. A place in the county commission of the peace was possibly a somewhat irrelevant reward for supporters in borough elections. It would have been difficult in the extreme to win county seats, with their large electorates, by distributing justice-ships to even a small proportion of the forty-shilling freeholders. More probably, the advantage conferred by control of the commissions of the peace was of an indeterminate kind. The arrival of a new, revised commission of the peace might produce a general impression in the minds

of uncommitted voters that a particular group of men possessed the kind of influence that controlled admission to the world of county authority. Admittedly, judicious regulation of a county bench for a specific electoral purpose might, in some circumstances, produce the right result. Charles Cox seems to have had a clear grasp of the possibilities of the exercise at Southwark in 1708.¹ Examples such as this are infrequent, however, and such manoeuvres might rebound on those that employed them, as Sir Christopher Musgrave discovered in 1701 when he found himself at the bottom of the poll in Westmorland after exerting himself to dismiss opponents from the bench in that county.² Some ministries found it more profitable to appoint newly elected M.P.'s as justices in their counties, and, for instance, a man like Josiah Diston at Devizes might well find a place on the Wiltshire bench a useful extension of his local power.³ On the other hand, Sir Brian Stapylton was evidently not overcome with gratitude towards the Whigs for putting him in the West Riding commission as a newly elected M.P. in 1698; he remained a firm Tory to the end of Queen Anne's reign.⁴

¹See above, p.273.

²See above, pp.219-21.

³See above, p.267.

⁴See above, p.191.

One point that is in danger of being overlooked in any description of the commission of the peace as a weapon in central politics, is that the magistracy in each county was an organic body, in spite of variations in membership and size. Except possibly for the brief period of violent remodelling in 1688, the bench of justices reflected the county community in a continuous existence. This consideration raises the problem of whether the changes in the commissions of the peace affected the active or the inactive magistracy. This is clearly a large question to which only tentative answers can be given. However, the evidence of one case study, for Wiltshire, indicates that local administration was less affected by the alterations in the list of justices than the scale of those alterations might suggest. In 1712, Wiltshire received a commission which added 63 names and left out 16 more. Of the 16 disgraced justices, 9 were justices who had attended quarter sessions or had been active out of sessions or both, so the regulation was reasonably effective insofar as it was a purge.¹ However, if it was intended to swamp the Wiltshire bench with new justices, the results were disappointing; 51 out of the 63 included never acted as Wiltshire justices. If the names of those attending quarter sessions in the year of 'Whig predominance'

¹The information about the activity of Wiltshire justices is taken from: Wilts.R.O., Q.S. Great Rolls; Minute Book; Order Book. See also above, p.319.

from April 1709 to January 1710 are compared with the names of those attending during the year of 'Tory predominance' from April 1713 to January 1714, it appears that at least two-thirds of those who had attended in 1709-10 were still in commission in 1713-14, and that at all but one of the four towns at which quarter sessions were held in Wiltshire, at least 40% of the magistrates who had attended in 1709-10 chose to attend again in 1713-14.¹ Similarly, if the year of 'Tory predominance' is compared with the corresponding period from April 1716 to January 1717, following the changes made at the Hanoverian Succession, it again appears that a substantial nucleus of active justices survived. At Salisbury, for instance, out of the 13 gentlemen on the bench in January 1717, 7 had attended in January 1714, and of the 4 who had attended in 1714 but did not reappear in 1717, 2 were still in commission and could presumably have attended if they had chosen to do so, and a third had died.² It thus appears that there was in Wiltshire no block transference of local power from Whigs to Tories in 1712, or from Tories back to Whigs after the Hanoverian Succession, in spite of striking alterations in the commissions of the peace. In Wiltshire, and perhaps

¹The exception was Marlborough, where Michaelmas sessions were usually held. In 1709, 9 justices attended, of whom 6 were still in commission in 1713 and one more had died; but only 2 of the 6 were present in 1713 out of a total attendance of 7.

²The fourth was Robert Loggan, Chancellor of Salisbury, who had been included by Harcourt in 1712 and dismissed by Cowper in 1714.

in other counties as well, the active magistrates seem to have been a minority of the whole commission who bore the burden of county government regardless of the changes made in the list of their nominal but inactive colleagues. For this reason, it might be the case that the importance of the changes in the commissions of the peace can be overestimated in terms of local administration, if not in terms of local politics.

A justice of the peace was not quite an 'office-holder' who 'ate the King's bread'. His livelihood did not depend on his place. Many found the duties of magistracy tedious and chose not to act. Admittedly, even the inactive justice regarded the place on the bench as a valued concomitant of his social position; he would resent the implied disgrace of losing it. But few ministries dared to put magistrates who were reliably active out of the commission of the peace in large numbers, especially after the experience of 1688. It is at any rate possible that the regulations of the commission of the peace, especially those that took place late in the period, were to some extent a notional exercise, without much relevance to the real exercise of local power in the countryside.

Notwithstanding this reservation, there is no doubt that the county commissions of the peace were a factor in central as well as local politics during the period from 1675 to 1720. The alterations that were made in the lists of magistrates during the reign of James II played a significant part in conditioning the gentry to acquiesce in the Revolution of 1688. Subsequently, manipulation of the commissions in the years after

the Revolution promoted the development of a party system in the country-side complementary to that in Parliamentary politics. Lord Chancellor Cowper protested to George I¹ that he had exercised the delegated royal power to choose magistrates with appropriate integrity, but he also assured the King that nobody could be more anxious than himself to 'weaken a set of men who will never be cordial freinds to your government'. When he modestly admitted that, on his resignation in 1710, the commissions of the peace had been 'in a very good state, with a sufficient balance in favour of the honest interest', it was apparent that even this self-confessedly moderate Chancellor thought of the county magistracy in terms of national politics.

¹Herts.R.O., Cowper (Panshanger) MSS., D/EP F152: Memorandum for George I.

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C.193/43	<u>Dedimus Potestatem</u> Book, 1701-13
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