

Parliament and the Trial of the ‘Peers of the Land’ in Henry of Lancaster’s Revolt, 1328-29

The medieval origins of parliament – as attendees of this seminar will be aware – is an old subject of study. Some prime areas of historical importance have been much discussed with reference to the fourteenth century in particular: the consolidation of the parliamentary Commons as a force in its own right, the need for parliamentary consent to direct and indirect grants of taxation, a rise and then decline in private petitioning in parliament, the beginnings of common petitions and, from 1341, the existence of a regular series of parliament rolls in a recognisably ‘late medieval’ form.¹ One of the areas considered as part of this wider historiography is the consolidation of a parliamentary peerage, a subject of importance to social historians interested in social gradation as well as to peerage lawyers and historians of parliament. As is well known, the increasing stability of summonses issued to members of the same aristocratic families make the demarcation of a hereditary parliamentary peerage by 1400 an observable phenomenon; and this development of the fourteenth century was in turn crucial to the formation of a distinct ‘House’ of Lords.² One of the rights which came to be enjoyed by those in receipt of a summons to sit among the Lords was, of course, the right to be tried for felonies and trespasses by their peers in parliament.³ It is the origin of this right which forms the subject of this paper. The intention here is to revisit the question of its chronology in light of an understudied episode – an unsuccessful revolt by Henry, earl of Lancaster, in 1328 – and to suggest that this needs to be worked into our understanding of the topic. More broadly, the intention is to disturb a historiography of a parliamentary privilege which – latently, but nonetheless – seems to have underestimated the instability surrounding its early application. We will begin with a more detailed tour of the historiography of the medieval origins of trial by peers in parliament before turning to the events on which it is based.

The long importance of the right to trial by peers in parliament (which was only abolished in 1948) in law and politics prompted a keen early interest from both lawyers and historians, who often ventured into both teleology and anachronism with some enthusiasm: in 1678, for example, High Steward Heneage Finch confidently told the Lords that their right to be tried by their peers was ‘a privilege as ancient as monarchy’ and placed its origins back far beyond the Conquest.⁴ Lawyerly mangling of this kind resulted in a stinging attack from J. H. Round – ‘The Muddle of the Law’ – in 1910, and in 1928 led T.F. Tout to decry the ‘monstrous and unhistorical theory of the modern peerage lawyers’.⁵ The battle fought by Round and Tout need not be fought again. Important modern work historicised the use of the very term ‘the peers of the land’ as used to refer to the collective magnates and dated this use to the factional politics of Edward II’s reign (1307-27), which was characterised by political strife in the end resolved through the king’s deposition and probable murder.⁶ In 1312, a group of lords undertook to attempt to secure a tax for Edward II ‘when they will have their peers more fully with them...’. In 1317, Thomas, earl of Lancaster, the opponent of Edward II’s favourites, argued that certain matters needed to be discussed ‘in full parliament and in the presence of the peers of the land’

(*en plein parlement et en presence des peers de la terre*). In 1321, the Despensers (Edward II's favoured courtiers) were disinherited and exiled by the 'peers of the land' after being found guilty 'through questioning of the earls, barons and other peers of the land'.⁷ We know, therefore, that the phrase has a lineage stemming from the need for political legitimacy in the struggles of the early fourteenth century.

Similarly, modern work has traced the origins of the right of trial by peers in parliament enjoyed by these 'peers of the land' through the early- to mid-fourteenth century and situated this in the growing importance of meetings of parliament more generally. In 1322, Thomas, earl of Lancaster, was killed on Edward II's orders after the battle of Boroughbridge. In January 1327, the decision to remove Edward II from the throne was announced in parliament. The judgments levelled on Thomas of Lancaster and his supporter Bartholomew Badlesmere in 1322 were annulled in this parliament in part because they had not been tried by their peers (this point is returned to below).⁸ The story of the confluence between the histories of parliament and of trial by peers then usually moves to 1330. The 'minority' government of Queen Isabella and Roger Mortimer, which held power over the youthful Edward III, imposed a sentence of treason on Edmund, earl of Kent and Edward III's uncle, in parliament in March 1330 after accusing the earl of plotting against the young king. Edmund was subsequently executed, apparently by a convicted murderer in return for a pardon. After Mortimer was overthrown in dramatic fashion by Edward III in October, he himself was judged and sentenced to a traitor's death by the 'peers of the land' in parliament in November 1330. Parliament was therefore twice used as a venue for high profile judicial proceedings against individual 'peers of the land' in 1330. From here, the historiography of the privilege of trial by peers enjoyed by the Lords moves to 1341. Edward III had quarrelled very publicly with John Stratford, archbishop of Canterbury, over the winter of 1340-1 and considered bringing judicial proceedings against the archbishop.⁹ In the parliament of April 1341, a committee of twelve lords found in accordance with Stratford's argument that 'all the peers of the land, ministers or others, should not...be brought to judgment...except in full parliament and before the peers'. This was then embodied in statute.¹⁰ Even though this statute was subsequently revoked, '1341' has been considered as the culmination of an evolution towards the establishment of trial by peers in theory as well as practice.¹¹ '1341' is the date noted, for example, in Charles Donahue Jnr's aptly titled 'What Happened in the English Legal System in the Fourteenth Century and Why Would Anyone Want to Know': after 1341, 'Trial of peers by peers in Parliament remained into the twentieth century'.¹² The origins of the right of trial by peers in parliament, therefore, is a route that has been navigated with the aid of an accepted series of signposts: through 1321 (the Despensers), 1327 (the reversal of the judgements on Lancaster and Badlesmere) and 1330 (the earl of Kent and Roger Mortimer) through to 1341 and the Stratford controversy.¹³

This paper illuminates a hitherto overlooked episode in the confluence of the use of ‘the peers of the land’ as a phrase and the principle that parliament in particular was the proper place for legal proceedings against them. From September 1328, Henry, earl of Lancaster, brother and heir to Earl Thomas, led a revolt against Queen Isabella and Roger Mortimer, who had monopolised control of Edward III’s person and who used his government for their own ends.¹⁴ This revolt failed in all its aims: after a series of tense negotiations and several armed confrontations, Lancaster submitted to a royal group led by Roger Mortimer at Bedford in mid January 1329 and was subjected to a bond of £30,000 guaranteeing his future conduct.¹⁵ I want in essence to explore the statements made about the place of parliament and the ‘peers of the land’ during the course of Lancaster’s revolt, which was characterised by a very public search for legitimacy in the eyes of wider political society; and to suggest that an appreciation of these themes in Lancaster’s revolt is significant for our understanding of the development of the right held by the Lords to be tried by their peers in parliament. This emerged not as a natural right inevitably bound up with the development of parliament and the notion of a parliamentary peerage but as a tool of argument proffered in desperation, and this in turn throws some light on how parliament was thought of at an important but under-documented point in its history.

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The assemblies of 1328–9 and the dynamics which lay behind them have not received sustained attention. This is due to a combination of reasons. First of all, the Commons were insignificant in Lancaster’s revolt and it is the make-up and role of the Commons and not the Lords who have generally enjoyed the majority of scholarly attention – a dynamic which can be found, of course, in the volumes of the *History of Parliament*, which deal with the later fourteenth century onwards. (The omission of the Lords from this project is in many ways understandable, and it does not lessen the achievement of the *History*, but it may be noted that at least three great historians of medieval England – K. B. McFarlane, G. O. Sayles, and H. G. Richardson – raised the issue of this omission when they disengaged themselves from earlier iterations of the project.¹⁶) The most comprehensive work on the medieval Lords remains that of Enoch Powell (unfortunately) and Keith Wallis, published in 1968 but conceived by Powell many years earlier.¹⁷ More specifically, ‘1328-9’ sits in a ten-year period falling between the end of Edward II’s reign – an end in which parliament played a prominent role – and the growth in the importance of the Commons which intensified with Edward III’s need for frequent grants of taxation from 1336, and therefore occupies a kind of historiographical ‘No Man’s Land’. A recent study by J. R. S. Phillips, who edited the section of the *Parliament Rolls of Medieval England* covering 1307–37, takes the reign of Edward II as its parameters and therefore has a *terminus ad quem* of 1327, as does J. R. Maddicott’s monumental account of the origins of parliament.¹⁸ G. L. Harriss’s equally monumental exploration of the emergence of public finance and the associated admission of the Commons ‘to the threshold of the ark of government’, meanwhile,

passes over the years 1328-9 into the 1330s.¹⁹ The most detailed study of parliament in Edward III's minority is by T.F.T. Plucknett (originally published in 1940) which, although of enduring value in many ways, does not link Lancaster's revolt with the history of parliament or the application of 'trial by peers'.²⁰ Indeed, some studies actively side-line parliament from their analyses of Lancaster's revolt in favour of an emphasis on 'crude demonstrations of power politics' by those magnates 'who possessed sufficient strength or cunning to bring about change'.²¹

The lack of analysis into the place of parliament in 1328-9 is related to the relative absence of sources: none of the assemblies of September 1327, February 1328, April 1328, July 1328, October 1328 or February 1329 left parliament rolls to posterity. Only the meeting of April 1328 resulted in the promulgation of statutes and their subsequent enrolment by the royal chancery; and the evidence of private petitions submitted to all but this assembly is scanty.²² We therefore lack the kind of directly 'parliamentary' evidence which forms the basis for accounts of the parliamentary sessions of 1321, 1327, 1330 and 1341.²³ Instead of using the records generated by the clerks of parliament, then, it is necessary to use less direct material to establish how the occasion of parliament was projected as the proper place for political mediation and the trial of the peers of the realm. The records forming the basis for the following sections principally consist of political statements and justifications made during the course of Lancaster's rebellion, of which letters between the royal household and the mayor, aldermen and commonalty of London enrolled on the plea and memoranda roll of the city corporation are the most important.²⁴ The political place of London through 1328-9 was of primary importance and efforts were made both by the Lancastrian contingent and by the royal party to win support in the capital: these partial and indirect records therefore provide a window into the place of parliament for those at the heart of the struggle for power in 1328-29.²⁵

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First, however, it is interesting to establish a possible context for the place of parliament in Lancaster's revolt which stemmed from Henry of Lancaster's formal restoration to his brother's lands and titles (which included the earldoms of Lancaster and Leicester) on 3 February 1327. Earl Henry's perceived duty to oust evil counsellors from the royal household may have been associated with a claim to the stewardship of England. This office was associated with the earldom of Leicester – Simon de Montfort had acquired the title in 1231 and seems to have placed emphasis on it in the early 1260s – and it had been confirmed to Earl Thomas in 1308.²⁶ It had become politically important to Thomas, who advanced the right of the steward to supervise important aspects of the royal household in a Lancastrian tract which seems to have reached its final form in 1321.²⁷ In this tract, it was asserted that it was the steward's special duty to intervene against ill counsellors, firstly by suggesting the relevant counsellor's expulsion from court, then by appealing to the king, and finally, if all else failed, by arresting the counsellor and holding them for judgment in the next parliament. Parliament

therefore provided the venue for the regulation of the royal household and the implementation of reform in the arguments put forward by Earl Thomas as Steward of England, as indeed had been envisioned for parliament in the Ordinances of 1311.

It seems probable that Earl Henry claimed the stewardship by right of inheritance from February 1327 and therefore that this claim may have pushed him towards the view of parliament expressed in the Tract. In his *own* letters patent dated 20 October 1327, in which he declared the manumission of John Hulles, a serf, he was styled ‘Henry, earl of Lancaster and Leicester, steward of England’.²⁸ In the account of the minority in the ‘long continuation’ of the Brut chronicle (probably written 1333x37), which looked upon Earl Henry favourably and which may well have been associated with him, the compiler took care to introduce him as ‘Earl of Lancaster and of Leicester, and also steward of England, as his brother was in his time’.²⁹ The emphasis laid on parliament as a legitimising venue for the pursuit of aristocratic politics in the Tract on the Steward would certainly have been attractive to Earl Henry in his polemic against Mortimer and well-suited to the period 1327–29, which featured frequent meetings of parliament. However, Lancaster’s claim to the Stewardship seems to have been contested by the government of Mortimer and Isabella, which was doubtless aware of the vibrantly political claims associated with this office by Earl Thomas. There is no mention of the stewardship in the *royal* enrolments recording Henry’s petition for his brother’s inheritance submitted to the January parliament of 1327; the parliament roll itself does not mention the title of steward; and the royal charters enrolled on the charter rolls only begin to style Earl Henry ‘steward of England’ after Mortimer’s fall in November 1330.³⁰ This may, then, be a late instance of a title being assumed by a magnate irrespective of whether it had been formally awarded to him by the king, of the kind explored with reference to comital style by David Crouch.³¹ Be that as it may, while there is no conclusive evidence of Henry of Lancaster’s use of the title ‘steward of England’ in ‘1328–9’ (which is recoverable largely from the evidence of *royal* letters), it is possible that a claim to the stewardship was indeed made and paralleled the claims for parliament as the proper place for political mediation and trial put forward in the crisis by Lancaster’s supporters, which can now be discussed.

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Parliament had provided a setting for the appropriation of political legitimacy in the eyes of a wider public through Edward II’s reign.³² The aristocratic and civic factions who attempted to out-manoeuvre one another through a combination of armed threat and political justification in 1328–9 tried to use meetings of parliament in the same way. Tensions had risen between Lancaster and Isabella and Mortimer through the summer of 1328, and a parliament was summoned by writs dated 28 August to meet at Salisbury and open on 16 October.³³ This assembly was called because Lancaster had decided not to attend a meeting of the council at York and nothing could be decided without his presence. By September, the latent tension over misgovernance and recent military

failings against the Scots hinted at in Lancaster's absence from the York council could no longer be ignored. The mayor of London, Hamo Chigwell, and his supporters viewed the programme of reform offered by Earl Henry with favour: already, in August they had expressed guarded support for Lancaster.³⁴ On 24 September, the *commune* of London drafted letters addressed to the king in word and to Isabella and Mortimer in practice which prayed that the king would hold the coming parliament at Westminster rather than at Salisbury.³⁵ These letters were not dispatched. Instead, on 26 September, the *commune* attempted to achieve the same aim by a more circuitous route, through figures of greater authority than themselves. They wrote to William Melton, archbishop of York, Thomas Charlton, bishop of Hereford, Henry Burghersh, bishop of Lincoln, William Airmyn, bishop of Norwich, Stephen Gravesend, bishop of London, John Hotham, bishop of Ely, Thomas of Brotherton, earl of Norfolk, and John de Warenne, earl of Surrey, and prayed that they might use their influence to convince the king to hold the October parliament at Westminster.³⁶ These men comprised many of the realm's most powerful figures outside of Lancaster, Queen Isabella, Roger Mortimer and Bishop Stratford themselves, and some held the minority government's favour (Charlton was treasurer and Burghersh was chancellor at the time, and all except Melton and Gravesend had provided some measure of support for Isabella in 1326).

The desire of London's government to have parliament held near the city was clearly prompted by more than simple convenience. The course of the Westminster parliament in January 1327 (as Edward II was removed from the throne) had been greatly influenced by the crowds of Londoners who heard the articles of accusation levelled at Edward II read out by Thomas Wake, Lancaster's son-in-law, and 'whose clamour both inside and outside Westminster Hall punctuated the whole proceedings'.³⁷ Letters sent to the king by the *commune* dated 27 September 1328 reveal the immediate political dynamics at play in their efforts towards the relocation of parliament. The city informed the king that Bishop Stratford and Thomas Wake had come to London and had publicly put forward the stated aims of the Lancastrian reform movement at the Guildhall on 14 September: that the king was not being governed by the council agreed at his coronation; that he should live off his own; and that the peace should be well kept.³⁸ The citizens gathered before Stratford and Wake, the letters stated, 'had answered that if these things were so, it would be well that they should be amended in parliament, which the citizens considered should be held at Westminster, and this desire of theirs they beg again to recommend to the King'. Parliament was the space and the occasion projected by the *commune* as the proper forum for political dialogue and, if necessary, the implementation of the reforms suggested by the earl of Lancaster and his supporters. Moreover, it was a parliament at Westminster that offered the reform movement the security they needed. Parliament became subject to a contested politics of space in the autumn of 1328, with the royal party favouring Salisbury as a venue and the Lancastrians and their sympathisers in London pushing for parliament to gather at Westminster.

The decision of where to hold a meeting of parliament (and whether to call a meeting at all) was, of course, a monarchical prerogative. In September 1328 this meant it was a decision taken by Isabella and Mortimer. Parliament was therefore formally opened at Salisbury – and not at Westminster – on 16 October by the archdeacon of Salisbury and the bishop of Lincoln (who clearly ignored the Londoner's plea of 26 September). Lancaster did not attend. His case and the reason for his absence were put to parliament by Bishop John Stratford, who argued that Earl Henry feared for his safety after a recent dispute with Roger Mortimer, who opposed Henry's rightful claim to act as the king's chief counsellor for the good of the realm.³⁹ Mortimer countered these allegations by publicly swearing an oath on the cross of Simon Mepham, archbishop of Canterbury, to the effect that he intended Lancaster and his followers no harm; but this proved insufficient to induce Lancaster to join parliament, which was dissolved on 31 October to be reconvened at Westminster in the near future. Lancaster's attempt to force a meeting at Westminster seemed, on the face of it, to have worked. However, tensions had only been raised in the course of the Salisbury assembly, and Bishop Stratford had even been forced to flee in fear of his life under cover of darkness before the end of parliament. A confrontation at Winchester between the Lancastrian retinue and the royal household followed the end of parliament and both sides then regrouped to gather their forces and doubtless consider their options. As the Salisbury parliament had failed to secure either victory for one party or compromise between them, a struggle for legitimacy developed. In a highly partial account, the royal party described the confrontation at Windsor as a Lancastrian assault 'in a warlike manner' on the king's followers.⁴⁰ In turn, Lancaster portrayed himself as having sought to enter the Salisbury parliament and engage in mediation as was proper: in letters to the city of London (dated 5 November), Earl Henry said he had signified his intention to enter parliament and treat with Isabella and Mortimer before the king but claimed that he had been denied a proper hearing. He then noted that parliament had now adjourned to Westminster, which laid emphasis on this coming parliament as the appropriate place for the mediation which had been denied to him at Salisbury.⁴¹

It was at this stage (through November into December 1328) that the possibility of armed conflict increased and the rhetoric of the rebellion became increasingly alarming. A summons for a negotiation (*tractandum*) to be held at London one week before Christmas was issued in the names of the earls of Kent and Norfolk, who were broadly supportive of the Lancastrian movement.⁴² This claimed that the king was riding with a multitude of armed men, devastating the land and seizing the goods of laymen and churchmen contrary to the Great Charter and his coronation oath. Most importantly for our purposes here, it used the concept of the 'peers of the land' in an attempt to raise support for the Lancastrian cause: 'and also [the king was] destroying his faithful peers of the realm' (*necnon et fideles suos regni pares destruendo*). This attempted association of the 'peers of the land' with the reform movement paralleled the allegations levelled against the Despensers in 1321, who

‘falsely and wickedly counselled our lord the king [Edward II] to go with horses and arms...to attack his good people, against the terms of the Great Charter, and the judgment of the peers of the land’.⁴³

The royal party countered these allegations in letters read out before a great crowd at the London Guildhall on 20 December, which tried to justify the royal household’s actions by placing the blame for disorder firmly on Earl Henry and his followers.⁴⁴ After this had been read to the gathered citizenry, the mayor wrote to the king and brought together the twin themes of parliament and peerage.⁴⁵ In the oaths sworn in support of the deposition/abdication parliament over 13-15 January 1327, this confluence had been made in favour of Isabella: those who swore undertook to maintain Isabella’s actions and all the acts taken in parliament by the peers of the land.⁴⁶ The mayor’s letter of c.21 December 1328 again associated the ‘peers of the land’ with parliament but this time adopted Lancaster’s portrayal of the occasion of parliament as a venue for mediation between the earl and the royal party. The mayor informed the king that several prominent Lancastrians (including Wake) had been present as the royal letters were read on 20 December, and that they had responded that Earl Henry could not answer the king without first taking the counsel of the ‘peers of the land’.⁴⁷ For their part, the *commune* assured the king of its loyalty and again prayed that he should order ‘all enmities cease until these matters can be redressed in the coming parliament’. The link between peerage and parliament was reinforced in letters sent to the king on 23 December by Archbishop Simon Mepham.⁴⁸ The archbishop reminded the king that it had been proclaimed at the Salisbury parliament ‘that no proceedings should be taken against the magnates of the realm till the coming session [of parliament] at Westminster’, that the king had sworn to do justice to all at his coronation, and that Magna Carta bound the king to proceed against his subjects only by due process and in accordance with the judgment of their peers. Mepham went on to say that the king should cease his progress against certain peers of the land and instead should wait for the coming parliament, ‘at which any peer or other who had offended might make amends and be punished according to due process of law’. Mepham may well have been a ‘political ignoramus’ (in the words of his biographer, Roy Martin Haines) but his projection of parliament as the most politically appropriate place for due process of law to be taken against the peers of the land tallied well with the messages of the *commune* of London and with Lancaster’s own account of his intent to gain a hearing in parliament.⁴⁹ The Lancastrian movement had managed to force the minority government to reconvene a meeting of parliament at Westminster and it was in this meeting that they placed their hope for the implementation of reform in accordance with the advice of the peers of the realm. This emphasis on parliament also underlay an explosive allegation made by the Lancastrian reform movement at the start of January, after news of Edward II’s (presumed) death had become common knowledge: ‘through the counsel of Roger Mortimer and Queen Isabella, *without the consent of any parliament*, they took him and led him [Edward II] away so none of his kindred might speak or see him, and traitorously murdered him’.⁵⁰ Blame for Edward II’s assumed fate was an extraordinary accusation which perhaps reveals the

desperation Earl Henry and his supporters felt by January 1329, but it provides another useful indication of the place of parliament at this time in the Lancastrian arguments. It was at this particular point in time that the issue of trial by peers in parliament became a subject of political contestation, as a series of statements took the historical semantics of the 'peers of the land' and situated parliament as the proper forum for legal process against them.

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Mortimer and Isabella chose not to wait for parliament: they forced Lancaster to choose between submission and opposing the royal household, including the person of the king, with force of arms. By the time the Westminster parliament opened on 9 February, Lancaster and his supporters had submitted to the king's party at Bedford and suffered the humiliation of the bonds imposed on their future conduct.⁵¹ Parliament had opened too late to be of use to the earl of Lancaster and his cause, and when its business was enacted no great precedents for the trial of peers in parliament were established for the peerage lawyers and historians of later centuries who scoured the evidence of the rolls of parliament. Instead, the assembly of February 1329 was probably occupied primarily with the demand made by the recently crowned king of France, Philip VI, for Edward III to perform homage for the duchy of Aquitaine.⁵² However, the immediate utility of the right of trial by peers in parliament happened upon by the reform movement in December was not entirely laid to rest by Lancaster's submission at Bedford. Bishop Stratford found himself summoned before the court of King's Bench to answer a charge of contempt in Hilary term 1329, and this case was continued in Easter term (where it is illuminated by both the plea roll record and a 'Year Book' entry).⁵³ Adam Fincham, a long-standing crown attorney in the King's Bench, alleged that Stratford had left parliament while it was still in session without the king's leave (i.e. when he had fled in fear of his life).⁵⁴ By bringing this case, the minority government attempted to use parliamentary procedure as a political tool with which to beat one of their foremost opponents. Stratford, however, appeared in his own person before the royal judges and articulated a powerful argument in defence of his conduct. He said that he was a 'peer of the realm' (*unus de paribus regni*) and that parliament was an assembly of such peers gathered for the profit of the king and his people, that his case should therefore be judged in parliament and not in a lesser court because the matter touched the people, and thus that he should be judged only by the peers in parliament and not before the justices of the King's Bench. The need for the peers of the realm to try their own in parliament thus tallied with the elevated place of parliament in the hierarchy of royal courts developing at this time to provide the bishop with his defence in court.

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Stratford's defence in 1329 was similar to that which he used with greater publicity (and to much greater acclaim by later lawyers and historians) in 1341. Clearly, as Mark Ormrod has suggested, Stratford's use of the principle of trial by peers in parliament on this latter occasion built on his earlier experience of Lancaster's revolt and its aftermath.⁵⁵ The central involvement of Stratford and, of course, Earl Henry himself through '1328-9' raises the spectre of the 'Lancastrian constitutionalism' integral to Bishop Stubbs's overall vision of the fourteenth century and, in his interpretation, to the progression towards a limited monarchy and parliamentary democracy itself.⁵⁶ This parliamentary 'constitutionalism' was supposed to have included the desire to force upon the crown the principle that the lords could only be tried by their peers in parliament. T.F. Tout, who followed Stubbs's outline of the Lancastrian constitutional tradition, thus wrote that the significance of the lords' findings in 1341 lay

in the virtual imposition on the crown of the whole Lancastrian constitutional programme, and notably the Lancastrian doctrine of the peerage... What had been a party programme for more than twenty years was now accepted as a constitutional principle, and the baronial conception of peerage became in the course of the next generation the recognised theory of the English state.⁵⁷

Subsequent generations of historians dismantled the lens of the Lancastrian 'constitutional' tradition as a viable way of viewing the constitutional and political history of the fourteenth century.⁵⁸ This is true for historians' views of Earl Henry, as well as for their evaluations of the even more dramatic lives of Thomas of Lancaster and Henry Bolingbrook. Michael Prestwich, for instance, in his magisterial volume in the *New Oxford History of England* series, points out that while there were parts of Henry of Lancaster's rebellion in 1328-9 that recalled his brother's life 'earl Henry's programme, such as it was, had none of the familiar Lancastrian demands for the maintenance of the Ordinances. These were different times, and it would be wrong to see too much continuity in the 'Lancastrian' opposition'.⁵⁹ These are undoubtedly wise words and following them with an attempt to resurrect the viability of the Stubbsian 'Lancastrian tradition' would be most unwise. Instead, it is possible to see the general place of parliament put forward during the course of Lancaster's revolt and the argument for parliament as the proper place for proceedings against the 'peers of the land' in particular as acts which were conducted in and modified an existing political vocabulary. These acts were performed as a result of desperation and the difficulties of confronting those who controlled the king's own person in 1328-9. But they also drew on a paradigmatic set of political statements which had been made as part of the opposition to Edward II. Recognising both their embeddedness in a tradition of political argument which offered linguistic tools to those who sought reform *and* the immediacy behind their use in Lancaster's rebellion in 1328-9 enables us to view the place of parliament and the issue of trial by peers as part of a wider historical trajectory, while stressing that parliamentary 'constitutionalism' in the Stubbsian sense was not in the minds of Earl Thomas, Earl Henry, Archbishop Mepham, the Londoners, or John Stratford.⁶⁰

Approached in this way, a meeting of parliament in the favourable location of Westminster was pushed by the reform movement as they searched for political legitimacy. This was done in much the same way as on previous occasions: in the Ordinances of 1311, in Earl Thomas's letter to Edward II that business affecting the realm 'ought to be done in full parliament and in the presence of the peers of the land' in 1317, in Earl Thomas's own holding of 'parliaments' in 1321, and in the January parliament of 1327.⁶¹ In part, parliament became a constitutional tool because it was being used politically by aristocratic factions who desired to be seen to be acting in accordance with their peers and with the gathered representatives (who were of course starting to assert a claim to represent the community of the realm more generally).⁶² The conflation made in 1328-9 between meetings of parliament and the issue of trial by peers for those accustomed to receiving an individual summons depended on the standardisation of those summonses which had taken place in the preceding years. But it was not an inevitable corollary to the development of a parliamentary peerage, and it came out of the anxiety to avoid armed conflict which became increasingly prevalent during and following the Salisbury parliament of October 1328. If we agree with the suspicion that Lancaster tried to make use of his claim to the stewardship of England and the supposed right of the steward to bring those accused of providing the king with ill counsel to justice in parliament, this too can be seen as the reuse of a claim to political legitimacy in new but comparable political circumstances.

Furthermore, the Lancastrians had recent familiarity with using the principle of trial by peers to their advantage. In 1327, Henry of Lancaster had petitioned the king praying – a prayer which was then answered – that the sentence of execution and forfeiture imposed on Thomas in 1322 should be reversed in part because Thomas had not been judged by his peers.⁶³ In 1328–9, Earl Henry and his supporters turned to parliament as the most favourable forum they could find in which to answer the legal proceedings which seemed to be about to be levelled against them in the king's name. They therefore raised the same issue of trial by peers, although as part of a live conflict rather than a retrospective reversal of judgement. In turn, the language Stratford employed in his defences of 1329 and 1341 built upon statements made in 1328. The place of parliament and the language of the 'Lancastrian doctrine of the peerage' had lineages as tools brought to bear against immediate problems between 1317 and 1341: this dual lineage may perhaps be described as a 'Lancastrian' tradition, but it was a linguistic and semantic tradition built on political necessity rather than a conceptual tradition centred around parliamentary 'constitutionalism'.

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This paper has tried to use the evidence of political statements made during Lancaster's revolt to illuminate how the pressure for the holding of parliament in 1328–9 intertwined with arguments which situated parliament as the proper place for the 'peers of the land' to be tried: in effect, to portray how the principle of trial by peers in parliament was applied as part of an increasingly

desperate political dispute. It is suggested here that Lancaster's revolt should occupy a significant place in our understanding of the development of trial by peers, since it was in 1328-9 that parliament was projected as the proper venue for proceedings against the peers of the land. And, looking beyond Lancaster's revolt itself, the much remarked upon trial of Roger Mortimer by his peers in parliament in November 1330 surely built directly upon the demands made during '1328-9', given both the publicity surrounding the revolt and the important part the earl of Lancaster played in the coup at Nottingham Castle which brought about Mortimer's downfall.⁶⁴ Even as they failed in the field at Bedford in January 1329, Lancaster's arguments drew upon, brought together and consolidated an established political vocabulary which portrayed parliament as a proper venue for political mediation and which demarcated the 'peers of the land' as a social group endowed with special rights and duties. This paper has, however, sought to do more than simply establish '1328-9' as a hitherto unrecognised part of the chronology of the right of the Lords to be tried by their peers in parliament: it has also sought to destabilise the lingering tendency to plot the establishment of this right by following a linear trajectory of growth through the judgments of 1321, 1327 and 1330 to 1341, a course which risks an assumption of inevitable historical progress towards the 'fully-fledged' rights of later centuries. In effect, to take heed of Maddicott's approach of 'emphasizing the countervailing elements of the contingent and the unexpected which went to parliament's making' and to position Lancaster's revolt as one of the 'twists and turns [which] meant that the course of parliamentary history was far from steady or predetermined or purely evolutionary, but was affected at every stage by chance and accident'.⁶⁵ It is important to recognise that the issue of trial by peers in parliament was raised in argument, not stated as an inalienable right or a mere declaration of fact, and that Earl Henry did *not* then get the opportunity to make his case in a parliamentary trial before his peers. This enables us to glimpse just how uncertain the establishment of the right later venerated with such eloquence by High Steward Finch really was.

Matt Raven

¹ For a recent historiographical survey, see G. Dodd, 'Historians of the Late Medieval English Parliament', *History Compass*, 12 (2014), 473–88.

² Fundamental studies include K.B. McFarlane, *The Nobility of Later Medieval England* (Oxford, 1973), esp. 122–5, 142–3, 268–9, 272–75; C. Given-Wilson, *The English Nobility in the Late Middle Ages* (London, 1987), 55–68. The parliamentary peerage is often used to demarcate the subjects of inquiry by historians, for instance J. Rosenthal, *Nobles and the Noble Life 1295–1500* (London, 1976), 18; J. Bothwell, *Edward III and the English Peerage: Royal Patronage, Social Mobility and Political Control in Fourteenth-Century England* (Woodbridge, 2004), 2–3.

³ See F. Pollock and F.W. Maitland, *The History of English Law before the Time of Edward I*, 2nd ed., 2 vols., (Cambridge, 1923), I, 392–4; J.H. Baker, *Introduction to English Legal History*, 5th ed. (Oxford, 2019), 506.

⁴ William Cobbett et al., ed., *Cobbett's Complete Collection of State Trials*, 33 vols. (London, 1809–26), vii, 147–8.

⁵ J. H. Round, *Peerage and Pedigree*, 2 vols., (London, 1910), I, 103–283; T.F. Tout, *Chapters in the Administrative History of Medieval England*, 6 vols., (Manchester, 1920–33), III, 136 n. 2.

⁶ For this and the following sentences, see M. Prestwich, 'Parliament and the Community of the Realm in Fourteenth Century England', in A. Cosgrove (ed.), *Historical Studies XIV* (Belfast, 1983), 5–24; M. Prestwich, *Plantagenet England: 1225–1360* (Oxford, 2005), 193; J.R. Maddicott, *The Origins of the English Parliament, 924–1327* (Oxford, 2010), 350.

⁷ *Parliament Rolls of Medieval England, 1275–1504* [henceforth *PROME*], gen. ed. C. Given-Wilson, 16 vols. (Woodbridge: Boydell Press, 2005), iii, July 1321, items 1 and 2: 'si come trove est par examinement des countes, barons et autres piers de la terre... Par quoi nous, piers de la terre, countes et barons, en la presence nostre seigneur le roi, agardoms qe sire Hugh le Despenser le fuitz et sire Hugh le pierre soient desheritez a touz jours...' (editor's translation).

⁸ J.H. Baker, *The Reinvention of Magna Carta 1216–1616* (Cambridge, 2017), 54–5.

⁹ W.M. Ormrod, *Edward III* (New Haven & London, 2011), 233–40.

¹⁰ *PROME*, iv, 308–9 ('Est avis as pieres de la terre qe touz les piers de la terre, officer ou autre... menez en jugement... forsqe en pleyn parlement, et devant les piers ou le roi se fait partie...') (editor's translation); *Statutes of the Realm*, ed. A. Luders et al, 11 vols., (London, 1810–28), I, 295.

¹¹ As Mark Ormrod has suggested (*PROME*, iv, 304), the whole statute of April 1341 was revoked and trial by peers was probably not foremost amongst the reasons for this revocation.

¹² Charles Jr. Donahue, 'What Happened in the English Legal System in the Fourteenth Century and Why Would Anyone Want to Know', *Southern Methodist University Law Review*, 63 (2010), 949–66, at 958–9.

¹³ Modern historical studies include: L.O. Pike, *A Constitutional History of the House of Lords* (London, 1894), esp. 177–9; L.W. Vernon Harcourt, *His Grace the Steward and Trial of Peers* (London, 1907), 276–361; A.F. Pollard, *The Evolution of Parliament*, 2nd ed. (London, 1926), 81–106; Tout, *Chapters*, III, 137–9; M.V. Clarke, *Fourteenth Century Studies* (Oxford, 1937), 127–30; T.F.T. Plucknett, 'The Origin of Impeachment', *Transactions of the Royal Historical Society*, 24 (1942), 47–71, at 57–60, 68–9; B.C. Keeney, *Judgment by Peers* (Cambridge, MA., 1949); G.T. Lapsley, *Crown, Community and Parliament in the Later Middle Ages: Studies in English Constitutional History* (Oxford, 1951), 11–13, 266, 312; J.E. Powell and K. Wallis, *The House of Lords in the Middle Ages: A History of the House of Lords to 1540* (London, 1968), esp. 300–2; J.G. Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge, 1970), 64–7; R. Butt, *A History of Parliament: The Middle Ages* (London, 1989), 291, 293–4; M. Prestwich, *Plantagenet England, 1225–1360* (Oxford, 2005), 223, 276–7; C. Given-Wilson, 'The House of Lords, 1307–1529', in C. Jones (ed.), *A Short History of Parliament* (Woodbridge, 2009), 16–28, at 16; Ormrod, *Edward III*, 92–3, 235; Baker, *Reinvention of Magna Carta*, 62–6. M. Phillips, 'Bishops, Parliament and Trial by Peers: Clerical Opposition to the Confiscation of Episcopal Temporalities in the Fourteenth Century', *Journal of Ecclesiastical History*, 67 (2016), 288–305 focuses on the middle of the century.

¹⁴ For narratives, see Ormrod, *Edward III*, 75–8; R.M. Haines, *King Edward II: Edward of Caernarfon – His Life, his Reign, and its Aftermath, 1284–1330* (London, 2003), 201–10.

¹⁵ Lancaster's bond had been settled by 21 January, although the relevant entry on the close roll is dated 9 February, the opening day of parliament, when Lancaster received all of the castles and lands taken into the king's hand because of his rebellion: TNA E 159/106, rot. 43d; *CCR 1327–1330*, 528; Ormrod, *Edward III*, 77 n. 115. Payment of this sum was held over him until the bond was abolished in the parliament of November–December 1330 by letters patent dated 12 December: TNA E 159/106, rot. 77; TNA E 159/107, rots. 21, 49d; *PROME*, iv, 108; *CPR 1330–1334*, 26.

¹⁶ K. B. McFarlane, *Letters to Friends, 1940–1966*, ed. G.L. Harriss (Magdalen College, Oxford, 1997), 54; G.O. Sayles, 'Richardson, Henry Gerald, 1884–1974', *Proceedings of the British Academy*, 61 (1976), 496–521, at 509–10.

¹⁷ Powell and Wallis, *The House of Lords*.

¹⁸ J.R.S. Phillips, 'Parliament in the Reign of Edward II', in G. Dodd (ed.), *Fourteenth Century England X* (Woodbridge, 2018), 25–46; Maddicott, *Origins*, 352–75.

¹⁹ G.L. Harriss, *King, Parliament, and Public Finance in Medieval England to 1369* (Oxford, 1975), 178–80 (quotation at 508).

²⁰ T.F.T. Plucknett, 'Parliament', repr. in E.B. Fryde and E. Miller (eds), *Historical Studies of the English Parliament*, 2 vols., (Cambridge, 1970), I, 195–241. Plucknett's contribution was originally published in volume one of *The English Government at Work, 1327–1336*, ed. J.F. Willard, W.A. Morris, W.H. Dunham and J.R. Strayer, 3 vols. (Cambridge, MA., 1940–50).

²¹ Butt, *A History of Parliament*, 237.

²² *Statutes of the Realm*, I, 257–61; *Rotuli Parliamentorum Anglie Hactenus Inediti MCCLXXIX–MCCCLXXIII*, ed. H.G. Richardson and G.O. Sayles (London: Camden Society, 1935), 180–85; *PROME*, iv, 88–91; G. Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford, 2007), 115.

- ²³ Furthermore, there has been no parallel to Fryde's study of parliament from 1336-40, which made extensive use of unpublished evidence to overcome the loss of numerous parliament rolls: E.B. Fryde, 'Parliament and the French War, 1336-40', repr. in Fryde and Miller, *Historical Studies of the English Parliament*, I, 242-61.
- ²⁴ London Metropolitan Archives [LMA], CLA/024/01/02/002 (plea and memoranda roll covering 1327-36). The relevant portion is calendared in *Calendar of Plea and Memoranda Rolls Preserved among the Archives of the Corporation of the City of London at the Guildhall, AD. 1323-1364* [henceforth *CPMR*], ed. A.H. Thomas (Cambridge, 1926), 65-93.
- ²⁵ For London's role, see E. Hartrich, 'Urban Identity and Political Rebellion: London and Henry of Lancaster's Revolt, 1328-29', in W.M. Ormrod (ed.), *Fourteenth Century England VII* (Woodbridge, 2012), 89-105.
- ²⁶ J.R. Maddicott, *Simon de Montfort* (Cambridge, 1994), 239-40, 332-3. My thanks to Dr Sophie Thérèse Ambler of Lancaster University for discussion of the stewardship.
- ²⁷ It is edited in Vernon Harcourt, *His Grace the Steward*, 164-7. For Lancaster's use of the stewardship, see J.R. Maddicott, *Thomas of Lancaster, 1307-22: A Study in the Reign of Edward II* (Oxford, 1970), 76-7, 241-3; Phillips, *Edward II*, 298, 334-5, 338-9, 381-3, 399-400.
- ²⁸ *Calendar of the Register of Adam de Orleton, Bishop of Worcester 1327-1333*, ed. R.M. Haines (London, 1979), 5-6.
- ²⁹ E.g. 'The Anglo-Norman Prose Brut: An Edition of British Library, MS Cotton Cleopatra D III', ed. M.L. Maxwell (unpublished doctoral dissertation, Michigan State University, 1995), 254; *The Brut*, ed. F.W.D. Brie, 2 vols., (Early English Texts Society, 1906-1908), I, 248 (Middle English translation, made in the later fourteenth century).
- ³⁰ Henry's petition has been edited in full in *Rotuli Parliamentorum*, 7 vols., (London, 1767-1832), ii, 3-5; and Vernon Harcourt, *His Grace the Steward*, 327-9; and calendared in *CCR 1327-30*, 105-6. For the charter rolls, see Vernon Harcourt, *His Grace the Steward*, 171-2.
- ³¹ D. Crouch, *The Image of Aristocracy in Britain, 1000-1300* (London, 1992), 32, 45, 50-4.
- ³² C. Valente, 'The Deposition and Abdication of Edward II', *English Historical Review*, 113 (1998), 852-81; G. Dodd, 'Parliament and Political Legitimacy in the Reign of Edward II', in G. Dodd and A. Musson (eds), *The Reign of Edward II: New Perspectives* (Woodbridge, 2006), 165-89, esp. 167-73; Maddicott, *Origins*, 359-66.
- ³³ *Reports from the Lords' Committees Touching the Dignity of a Peer of the Realm: With Appendixes*, 5 vols., (reprint, London, 1829), iv, 386-9.
- ³⁴ LMA, CLA/024/01/02/002, m. 22d; *CPMR*, 66.
- ³⁵ LMA, CLA/024/01/02/002, m. 23; *CPMR*, 67.
- ³⁶ LMA, CLA/024/01/02/002, m. 23d; *CPMR*, 68.
- ³⁷ J.R.S. Phillips, *Edward II* (New Haven & London, 2010), 536. See *ibid.*, 524-33.
- ³⁸ LMA, CLA/024/01/02/002, m. 23d; *CPMR*, 68-9; for the dynamics behind this letter, see Hartrich, 'Urban Identity and Political Rebellion', esp. 90-4, 98-102.
- ³⁹ For the following, see R.M. Haines, *Archbishop John Stratford. Political Revolutionary and Champion of the Liberties of the English Church ca. 1275/80-1348* (Toronto, 1986), 196-9.
- ⁴⁰ LMA, CLA/024/01/02/002, m. 27d; *CPMR*, 82-3.
- ⁴¹ LMA, CLA/024/01/02/002, m. 24d; *CPMR*, 72.
- ⁴² *Anglia Sacra*, ed. H. Wharton, 2 vols., (London, 1691), I, 368-9.
- ⁴³ *PROME*, iii, July 1321, item 2.
- ⁴⁴ LMA, CLA/024/01/02/002, m. 27, 27d; *CPMR*, 78-83.
- ⁴⁵ LMA, CLA/024/01/02/002, m. 28; *CPMR*, 83-4.
- ⁴⁶ *CPMR*, 12; Hartrich, 'Urban Identity and Political Rebellion', 96 and n. 29.
- ⁴⁷ LMA, CLA/024/01/02/002, m. 28; *CPMR*, 83-4. The city itself may have been included among these 'peers', as argued in Hartrich, 'Urban Identity and Political Rebellion', 103.
- ⁴⁸ LMA, CLA/024/01/02/002, m. 28; *CPMR*, 84.
- ⁴⁹ Haines, *King Edward II*, 203.
- ⁵⁰ Summarised in J. Barnes, *The History of That Most Victorious Monarch Edward III* (Cambridge, 1688), 31-2 from an unspecified manuscript in Canterbury Cathedral Chapter Archives (my italics). The manuscript used by Barnes would appear to be Canterbury Cathedral, Archives of the Dean and Chapter, Dcc Register I, fos. 427, which I have not yet had chance to examine myself.
- ⁵¹ See G.A. Holmes, 'The Rebellion of the Earl of Lancaster, 1328-9', *Bulletin of the Institute of Historical Research*, 28 (1955), 84-9 for the royal itinerary.
- ⁵² See *PROME*, iv, 95-6.
- ⁵³ TNA KB 27/275, Rex side, rot. 18d; TNA KB 27/276, Rex side, rot. 9d; TNA KB 29/1, rot. 21. The last of these entries is translated in G.O. Sayles, *The Functions of the Medieval Parliament of England* (London, 1987), 392-3, although with a slip in the rot. number of the plea roll in the reference. The relevant law report can be accessed through *An Index and Paraphrase of Printed Year Book Reports, 1268-1535*, ed. D.J. Seipp (Online, Boston University School of Law, <https://www.bu.edu/phpbin/lawyearbooks/search.php>): Seipp Number

1329.071. For comment, see Pike, *Constitutional History of the House of Lords*, 242; H.G. Richardson, 'Year Books and Plea Rolls as Sources of Historical Information', *Transactions of the Royal Historical Society*, 5 (1922), 28–70, at 59–60; Haines, *John Stratford*, 198–200. Divergences between the plea roll record and the report are noted in E. Coke, *The Institutes of the Laws of England*, 1st ed., 4 vols., (London, 1628–44), iv, 17. The plea was adjourned until Hilary term 1330, when the process was ended without proceeding to judgment.

⁵⁴ For Fincham's career, *Select Cases in the Court of King's Bench*, ed. G.O. Sayles, 7 vols., (London: Selden Society, 1936–71), V, xxxviii; *The Eyre of Northamptonshire, 3–4 Edward III, A.D. 1329–1330*, ed. D. Sutherland, 2 vols., (London: Selden Society, 1981–82), I, 1.

⁵⁵ Ormrod, *Edward III*, 235 '[Stratford's argument in 1341], which drew very clearly on his long experience in the arduous politics of the 1320s, was that the secular and spiritual lords of the realm ought only to answer charges brought against them by the king when they had the opportunity to be heard before their peers in full parliament'.

⁵⁶ Stubbs's views are well-known: for recent summaries, see Dodd, 'Historians', 474–6; C. Given-Wilson, *Henry IV* (New Haven & London, 2016), 583–4.

⁵⁷ Tout, *Chapters*, III, 136.

⁵⁸ See e.g. Phillips *Edward II*, 28–30.

⁵⁹ Prestwich, *Plantagenet England*, 222–23.

⁶⁰ I have profited from reading P. Bradford, 'Parliament and Political Culture in Early Fourteenth Century England' (University of York unpublished PhD thesis, 2007), 176–86 on the 'Lancastrian Agenda', although my emphasis on parliament in Earl Henry's rebellion is very different from Dr Bradford's interpretation.

⁶¹ For 1317: A. Murimuth, *Continuatio Chronicarum*, ed. E.M. Thompson (London: Record Society, 1889), 273; J.R.S. Phillips, *Aymer de Valence, Earl of Pembroke 1307–1324: Baronial Politics in the Reign of Edward II* (Oxford, 1972), 121. For 1321, see Maddicott, *Thomas of Lancaster*, 268–79, 295–200.

⁶² For the role of the representatives around this time, see Maddicott, *Origins*, 352–66.

⁶³ '... absque arenamento seu responsione seu legali iudicio parium suorum contra legem et contra tenorem magne carte': Vernon Harcourt, *His Grace the Steward*, 329; Baker, *Reinvention of Magna Carta*, 54–55.

⁶⁴ C. Shenton, 'Edward III and the Coup of 1330', in J. Bothwell (ed.), *The Age of Edward III* (Woodbridge, 2001), 13–34, at 18, 26–9.

⁶⁵ Maddicott, *Origins of the English Parliament*, ix.