Robert Harley, Christmas and the House of Lords’ Protest on the Attainder of Sir John Fenwick, 23 December 1696: The Mechanism of a Procedure Partly Exposed *

Clyve Jones

Sir John Fenwick was an M.P., army officer and jacobite conspirator, who after the death of Queen Mary II had become involved in a plot in 1695 to assassinate King William III. His trial for treason was compromised by the absconding of one of the two witnesses against him, two witnesses being the minimum required for a guilty verdict in treason trials. On 6 November the whigs obtained a surprise vote in the house of commons for a bill of attainder, which, if passed, would simply declare Fenwick guilty of treason. The bill passed its third reading in the Commons by 189 to 156 and was sent up to the house of lords, where it passed its first and second readings on 15 and 18 December, and finally passed its third reading on 23 December, immediately before the House rose for the Christmas recess. The bill received the royal assent on 11 January 1697, and Fenwick was beheaded on 27 January.

Fenwick’s trial and the bill of attainder naturally aroused widespread public interest. This is attested to by the fact that the division on the third reading on 23 December produced far more manuscript copies of a list than any other Lords’ division in the reigns of William III and Anne. This interest was shared by Robert Harley, the up-and-coming leader of the Country party in the Commons, in which House he had opposed the bill. Harley’s opposition was based on constitutional issues:

He was careful not to defend Fenwick himself, ‘who, he was satisfied, was the worst of men’, but to concentrate on the danger of proceeding by means of a bill of attainder in a cause in which there were not two witnesses present to prove the charge, an argument which accorded with previous speeches on the issue of trials for treason, but also had the tactical virtue of giving a pretext to oppose the bill without laying him open to allegations of favouring Jacobites.

Harley stressed the constitutionality of the case as ‘of the greatest consequence’ for the liberties of Englishmen. Though parliament had the power to act by bill of attainder, should it do so in this case? Harley expounded the view shared by many that, ‘while it was important to show a zeal for the maintenance of the government, it was no less vital to show a zeal for the preservation of

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1 For the voting in the Lords on 23 Dec. 1696 see Appendix 3 below.


liberty’. Harley’s attack on the bill has been described as ‘perhaps the most effective aspect of the Country party campaign in the 1696-7 session [of parliament].’

Having taken this position in the Commons, it was natural that Harley would have had an interest in the progress of the bill in the upper House. It is possible that he attended the Lords’ proceedings on more than one occasion on which he noted down the dissenters and protestors on the final division on the bill on 23 December 1696.

After the House of Lords had reached a decision, either by acclamation or by a formal division, the members of the House had the right to express their disagreement with the decision by means of a dissent, whereby their names were entered into the Journal as dissenters to the result of the vote, or, more elaborately, by means of a protest which normally consisted of a series of reasons which were entered into the Journal, together with the signatures of the protestors. None of this required the consent of the House. Only the peers and bishops present at the House on the day of the decision or represented by a proxy could subscribe their names to a protest. The 1642 standing order on protests laid down that to be valid the protest had to be entered into the record – the ‘Clerk’s Book’ – and signed by the end of the next sitting day of the House. One exception, possibly unprecedented and certainly rare in the years following, appears to have been made to this rule: on 23 December 1696 when a protest was lodged against the division on the attainder of Sir John Fenwick. Before the vote, leave was asked of the House, ‘and [was]
given, for any Lord to dissent, if the Question was carried for passing the Bill, intituled, “An Act to attaint Sir John Fenwick Baronet, of High Treason.” It was agreed, that in Consideration some Lords were going out of Town, and might not return the next Sitting-day, that any Lord might enter his Dissent the next Time he came to the House.’ This leave had been preceded earlier in the day by the House granting leave of absence to some lords to go into the country, ‘so as they be present in the House the next Sitting after Christmas’. It was also ordered ‘That all Business appointed for several Days shall come on successively the next Sitting of the House after Christmas’, which turned out in fact to be 7 January 1697. The 23 December sitting was indeed the last day parliament sat before the Christmas recess started. The recess was only a day or so later than usual in 1696, but the ministry must have been anxious to have the bill passed before Christmas, when traditionally many members of both Houses left London for their country estates. The size of any immediate post-Christmas attendance by both lords and M.P.s was unpredictable, and a bill so contentious as the Fenwick attainder might possibly have been lost by the ministry in January 1697.

The historian of procedure in parliament has very little evidence on how the system of protesting actually worked in the upper chamber. So we are fortunate that a list of dissenters and protestors to the 23 December 1696 division on the Fenwick attainder was copied by Robert Harley and has survived in his papers at the British Library (see Appendix 1 below). A study of this document will help to understand something of the procedures involved in protesting, though it raises almost as many questions as it answers and some of the scenario that follows is partly based on speculation. The value of Harley’s list of dissenters and protestors as evidence is based very largely on the protest being on a vote so very close to Christmas that the normal mechanism for protesting could not be used on this particular occasion. Though why the House gave leave to allow lords to sign the protest at any time they returned to the Lords after the Christmas recess is not entirely clear; it may have been that the ministry wished to calm the heated atmosphere in the chamber on 23 December 1696 by allowing the maximum number of potential dissenters to the vote to ‘let off steam’ even if they were about to rush out of town for Christmas in the country. The majority for the ministry on the 23 December vote was only seven: 68 Content to 61 Not Content (see Appendix 3 below). The two previous votes on the attainder had given the government majorities of 20 (15 December) and 18 (18 December), but the fall in the majority between these two dates was not due to a fall in attendance; in fact attendance rose between 15 and 18 December from 126 to 128. The fear of a possible further fall in the ministry’s majority probably dictated sitting as late as the 23rd rather than postponing the final vote on the attainder until after Christmas, for there was the distinct possibility that some supporters would not be back at Westminster when the Lords returned in January, and indeed the majority did drop to seven on the 23rd. The same fear of a lower majority, or even no majority for the ministry, may well have contributed to the concession over the signing of the protest.

12 L.J., xvi, 48.
13 A similar concession was not made on the two other occasions between 1660 and 1730 when a protest was entered on the last sitting day before the Christmas recess: 22 Dec. 1693 (when the House next sat on 29 Dec. 1693), and 21 Dec. 1721 (when the House next sat on 9 Jan. 1722). L.J., xi, 327-8; xxi, 638-9.
14 As we shall see, some whigs changed from supporting the bill to opposing it between the votes on 18 and 23 December, and the ministry may have feared that the Christmas break would give time for others to change their minds.
Harley’s list at first glance might be mistaken for an incomplete list of the minority in the division on the Fenwick attainder on 23 December 1696, but a closer inspection reveals that it is in fact an incomplete list of the dissenters and the protestors to that vote: the dissenters are listed in the shorter column on the left-hand side and the protestors in the two longer columns on the right-hand side of a folded letter. There are several indications that Harley probably was in the house of lords when he noted down his list. First, it is in his hand, and is written on the back of an undated letter of business to him from one John Pack, asking for Harley to use his influence with the earl of Tankerville, whose approval had to be gained for the job which Pack wanted, the job of secretary to Ralph Grey ‘who is going to be Governor or Barbados’. The fact that Harley wrote his list on the back of this business letter may indicate that it was noted down on 23 December. Having decided to list the dissenters to the vote, he grabbed the nearest piece of ‘scrap’ paper (or it was conveniently already in his pocket) as he set out for the upper House. A more planned expedition to peruse the clerk’s record after the entry of the protest might have seen Harley using a fresh piece of paper. Secondly, the letter has been folded vertically down the middle and the three columns of names occupy the left-hand half of the folded letter. This technique of folding paper to produce a long, thin sheet which could conveniently be placed on a knee if sitting, or, if standing, on a piece of furniture, to write on was common and can be found in the collection of papers of other politicians of the period, most notably, perhaps, in the papers of the 2nd earl of Nottingham, where there are many examples of such notes on debates giving the abbreviated contents of speeches. Lastly, there is the use by Harley of abbreviated forms for most of the names (see Appendix 1 below), a possible indication of the list being noted down at some speed in an inconvenient location. The use of abbreviations is also a possible function of the use of a narrow folded piece of paper.

Despite occasionally ejecting ‘strangers’, including M.P.s, from the House, the members of the Lords more often than not tolerated the presence of M.P.s and others at their proceedings. Apart from the erection of a gallery in the House in 1704, designed to provide seating for all ‘strangers’ in the upper chamber, the Lords did not reciprocate the Commons’ provision of ‘official’ seats in the lower House for peers and bishops. M.P.s had to make do with standing below the bar of the Lords. This would probably have been Harley’s position in the Lords if he had been taking down the list of the minority vote, and might have also been his position if he noted down the lords while they were signing the protest and entering their dissents. But (though the circumstantial evidence presented below makes this less
likely) he also might have copied it from the papers of one of the clerks, while they were on the clerks’ desk, after the House had finished the rest of its proceedings for the day, which only consisted of the examination of the duchess of Norfolk about what she knew of the letters delivered to the House on the 22nd by Fenwick’s wife. The fact that the list of dissenters is in exactly the same order as the list in the printed Lords Journal, and that the list of protestors follows closely the order in the Journal, could indicate that Harley copied his list from a document in possession of the clerks. The fact that Harley heads his list with the day as well as the date could also point to his taking his information from a document rather than observing the peers and bishops signing the protest.

The most interesting aspect of the list in helping to illuminate the procedure on protests is that Harley’s is not a full list of all the dissenters and protestors: Harley’s list is one short of the total of the dissenters (viz: Torrington), and four short of the total of 41 protestors (viz: Abingdon, Bath, Fitzwalter and Normanby). This very incompleteness enables the historian to tentatively put forward a scenario on how the mechanism of entering this protest might have worked.

Though Harley’s interest in the bill’s progress through the house of lords is understandable, it is a matter of speculation why Harley noted down the dissenters and protestors to the vote on its third reading. It was always possible that such a contentious piece of legislation would see the production of a division list by one, if not several hands, and because of the undoubted public interest, it might possibly even have seen the publication of a printed version of the division for sale to the politically literate public, though this does not seem to have happened. If Harley’s list was noted down by him on the 23rd, he would have had no knowledge that any division list might be drawn up by others, let alone whether one would eventually appear in print. But Harley’s list was not a list of the minority on the vote but one of the dissenters to that vote. This leads to the speculation that Harley might have had a

19 The fact that Harley’s list is in ink, when in the Commons he frequently used a pencil (The House of Commons, 1690-1715, ed. Cruickshanks, Handley and Hayton, i, 25), may point to him taking down the names from a document on the clerks’ desk where ink would have been readily available. However, many examples exist of peers noting down proceedings in the Lords in ink when they would have been sat on the benches in the House. At this time, and earlier, it was not uncommon for persons to carry a supply of ink around in a container on a strap slung around their necks. There is, however, no known evidence of this happening in the Lords, but it is the most likely explanation of how peers could make such notes.

20 L.J., xvi, 49. This could mean that some peers and bishops left the House immediately after the division, thinking that there was little business to follow, and possibly hoping to get away early from London for the recess. As we shall see (below n. 25) the House sat for approximately a further one and a half hours after the division on the third reading.

21 Though he could have observed from the bar of the House the peers and bishops signing the protest, and the order in which they signed.

22 For the Lords’ proceedings on the bill, which started on 30 November, see L.J., xvi, 25-6, 33, 39-40, 43-4, 46, 48.

23 Several manuscript copies do survive (see n. 2 above) and were distributed to individuals who, presumably, were thought to be interested in the vote. There is even a reference to a Mr Price (possibly a government double agent) taking ‘lists of the Members of both Houses that were for and against the late Bill of Attainder’ to his jacobite contacts in France (H.M.C., Downshire Mss., ii, pt. 2, 757: John Robins to Sir William Trumbull, secretary of state, 11 Aug. 1697).
hand in the composition of the reasons which formed the text of the protest, which certainly reflected the arguments he had used in speeches in the Commons. Those lords who opposed the attainder could have been in little doubt that they would lose the vote on 23 December, so one or some of them (possibly with Harley’s assistance) might have drafted the text of a protest beforehand for use if it proved necessary. This was a technique that was sometimes used. The fact that the third reading of the attainder bill was likely to be very close to the start of the Christmas recess would also have encouraged the preparation of the text of a protest before the actual vote. As, by the standing orders of the House, protests had to be entered by the end of the day of the next sitting of the House, which might well be in January 1697 (and as it turned out this is what actually happened), then the dispersal for Christmas of the lords who planned to protest would make the composition after the vote on the 23rd of a text acceptable to all would-be protestors exceedingly difficult. To prepare a text ahead of the vote solved this difficulty, and it also had the advantage that those voters on the minority side on 23 December, if they remained for the end of the day’s sitting, could sign the protest before they left London for Christmas.

Further reasons behind the recording of a division list or a list of protestors by, or on behalf of, a politician were many and various, but one was to build up a record of ones ‘friends’ and ‘enemies’ in parliament. Harley had opposed the bill, as he was opposing the ministry, in the Commons, and he may have wanted a list of peers and bishops who might share his views and with whom he might work in the future. A more pressing reason for compiling a list of names would be that Harley and the opposition leaders in the Lords might have had plans to publish the protest together with the signatories. Such a publication would serve as propaganda with which to try to influence public opinion. Not the least interesting information so made public would be the names of those whigs (together with some, as we shall see, of the lords justices, who ruled the kingdom in William’s absences abroad) who, had voted and protested against the bill of attainder. Such details could only have been an embarrassment to the ministry.

24 James Vernon noted that in the Lords ‘the same objections are made against allowing several parts [of the evidence] as in the house of commons: Letters Illustrative of the Reign of William III from 1696 to 1708 Addressed to the Duke of Shrewsbury, ed. G. P. R. James, 3 vols (London, 1841), i, 126: 15 Dec. 1696.
26 Standing Order no. 87 of 5 Mar. 1642, see H.M.C., Lords MSS, new ser., xii, 21
27 James Vernon regarded the adjournment to 7 January as ‘pretty extraordinary, so many bills being depending’: Letters … of the Reign of William III, ed. James, i, 143: to Shrewsbury, 24 Dec. 1696. Vernon’s surprise is understandable: from 1691 to 1695 the Christmas break was between three and six days; in 1696 it was fourteen, and between 1697 and 1699 it was between ten and sixteen days (L.J., xv, xvi passim), a rise in the average from nearly four and a half days to just under thirteen. Why was there this change? In 1696 the House may have decided that the unusual number of late sittings over the Fenwick attainder warranted a longer recess over Christmas, which would have allowed tempers to cool. The extended break probably suited the peers as it enabled them to go into the country to celebrate Christmas. Vernon’s comment shows that the longer recess was probably not directly related to the level of business.
28 There is no evidence that the protest was published, but at least one manuscript copy was in circulation: Staffordshire R.O., Persehowse papers, D260/M/F/1/6, f. 98.
The following is the possible scenario of what might have happened leading up to the entering and signing of the protest on 23 December 1696 and what happened when the Lords reconvened after Christmas in January 1697. First, by mid December at the latest it would probably have become clear to the leading lords opposing Fenwick’s bill of attainder that the proceeding might well run up to very near Christmas and that the ministry would be pressing for the passing of the third reading before the recess. These leading lords may well have decided that after the first two votes on the bill that they would also lose the vote on the third reading, and would thus want to enter a protest against the final vote on the bill. It would be clear to them that according to the standing orders of the House they would have to enter such a protest by the end of the next sitting of the Lords, which might well be after Christmas. If this was the case the opposition lords were presented with two difficulties: 1) the drafting of the text of a protest over the recess, with some, if not all, contributors away from Westminster, would be difficult, particularly if wider consultations were also needed over the wording of the text in order to attract the maximum number of signatories; 2) if, as indeed proved the case, the division on the third reading were to take place on the last sitting day before Christmas, then by the standing orders all signatures to the protest must be entered by the end of the first sitting day in January, which in fact turned out to be the 7th, but there was no guarantee that all those who wanted to enter their protest would be back at Westminster in time. Each of the two problems had its own solution: 1) compose the protest before the vote so that it would be available to be signed on the 23rd, a solution which probably had been used before, as it certainly was used later, and the text would also be available to be sent out to likely protestors over the Christmas recess; and 2), a much more novel idea, ask the House to allow protestors to sign when they were next in the House, even if it was later than the first sitting day after the recess.

If it had been decided to write the protest before the division, the leading lords opposing the attainder might well have asked Harley, the leading opponent of the bill in the Commons, to help in the drafting. His possible involvement in the composition of the text would help to explain his interest in taking down the names of those who signed the protest. There is no way of being certain that Harley noted down his list on 23 December, though there is circumstantial evidence to show that this is what might have happened. However, his list as it now stands must have been completed before the beginning of the sitting on 7 January, for the four missing signatories to the protest from his list had returned to the House that day (though the only missing dissenter – Torrington – did not return to the House until 26 February). Indeed one reason why Harley noted down the names may have been to identify other possible signatories, to have them contacted over Christmas and to encourage them to sign upon their return to Westminster after the recess. It seems most likely that Harley noted his list on the 23rd, or at least (though this seems less likely) over the recess if he himself remained in London and if he would have had access to the documentation via the clerks over Christmas.

The circumstantial evidence which points towards Harley noting down his list on or extremely close to the 23rd is five manuscript copies of extracts from the manuscript journal of the House of Lords which bring together the proceedings of the House on the Fenwick Attainder Bill. Each of these copies has the lists of the dissenters and the protestors: three

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29 The earl of Rochester was probably one of these (he had a reputation in Anne’s reign of being very knowledgeable on the procedure of the house of lords). The other leading tories must be amongst those who protested on the 15 and 18 December, see below Appendix 2.

30 L.J., xvi, 105.
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agree in listing 11 dissenters (the same as Harley’s list, and one short of the full total) and also in listing 39 protestors (two more than Harley but still two short of the full total of 41). The fourth copy lists 11 dissenters but has 40 protestors (the missing one being Fitzwalter), while the fifth copy lists the full complement of 12 dissenters and 41 protestors. This last copy is complete because it was possibly copied from the manuscript Lords’ journals as late as December 1709 or early 1710 as it is amongst the 3rd earl of Sunderland’s papers concerning the impeachment of Dr Henry Sacheverell which took place in March 1710. Whatever the precise date of its copying, it clearly was copied after all the dissenters and protestors had signed their dissent into the Lords’ manuscript journal.

The other four copies were clearly copied before all the dissenters and protestors had signed. The only two copies about which we know any details concerning their origins are the ones found in the earl of Huntingdon’s papers, which was sent to him by John Relfe, one of the clerks, and the one found in the papers of Sir William Trumbull, secretary of state at the time of Fenwick’s attainder. Trumbull was obsessive in his pursuit of the jacobite conspirators in 1696 and ‘immersed himself fully in the task of investigation’, and undoubtedly obtained a copy of the Lords’ proceeding for his file on Fenwick.

Trumbull’s copy of the list of dissenters and protestors is short of the full totals for both, and thus must have been copied before Torrington signed his dissent (26 February 1697) and before Fitzwalter and Normanby signed the protest (possibly on 7 January 1697 when they were next in the House after the sitting on 23 December 1696). The same is true for the other two copies which agree in their number of dissenters and protestors with Trumbull’s copy. However Harley’s copy has only 37 protestors – besides Fitzwalter and Normanby, his list is also missing Abingdon and Bath, who, until the evidence of both Huntingdon’s and Trumbull’s copies of the proceedings on Fenwick, were also assumed to have signed on 7 January 1697. Does this mean that Abingdon and Bath signed earlier than Fitzwalter and Normanby (perhaps sometime in the Christmas recess having staid in London) for both Abingdon and Bath are on the other four copies of the list? The answer is probably yes. (The earl of Huntingdon’s copy also indicates that, because it has Normanby as a signatory, only lacking Fitzwalter, Normanby also signed during the Christmas recess, though later than Abingdon and Bath. Also it further suggests that only Fitzwalter signed on 7 January 1697.) Thus the lack of Abingdon and Bath as well as Fitzwalter and Normanby on Harley’s list strongly indicates that Harley’s list was copied earlier still. This evidence together with the other discussed above seems to point to Harley making his list on 23 December 1696, either as the protest was being signed or shortly thereafter on the same day from the written protest itself in the possession of a clerk.

Thus we may be able to infer that all the names on Harley’s list dissented or protested on 23 December, having remained in the House until the end of business that day, which was an interrogation of the duchess of Norfolk, while the missing ones did so either in the

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31 These are B.L., Add. MS 4374, ff. 21-2; Add. MS 33251, ff. 44-6; Add. MS 72606, ff. 29-30.
32 The Huntington Library, San Marino, CA, Huntingdon papers, HA Parliamentary Box 4(36): copy of the Lords’ journal sent to the earl of Huntingdon (who protested) by John Relfe. I would like to thank Charles Littleton for this reference.
33 B.L., Add. MS 61610, ff. 157-8.
34 B.L., Add. MS 72606, ff. 29-30.
36 The evidence of the signatures to the protest in the manuscript journal of the Lords (to be found in the House of Lords R. O.) is inconclusive. Abingdon and Bath are next to each other towards the centre of the group of signatures; Fitzwalter is in the bottom right-hand corner where one would expect to find a late signature, but Normanby is crammed in the top left-hand corner forming the hub to a circle of four other signatures. Normanby, conscious perhaps of his rank, may have wanted his signature near the beginning of the list as he was the only marquess to sign the protest; the only dukes to sign (Northumberland and Leeds) are the top two signatures on the right-hand side.
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Christmas recess or upon their return to the House in January and February 1697, presumably having left the chamber immediately after the division, or soon after before the protest was entered at the end of the day. 37 Those who left early may have done so partly because they were tired after long sittings during the Fenwick proceedings in the Lords, particularly on the 23rd. The earl of Burlington complained on 17 December that the House was sitting nine or ten hours at a time (indeed on the 15th after the division, five lords, including Burlington, were allowed to withdraw being indisposed) 38 and by the 23rd Fenwick’s trial was keeping Burlington occupied sometimes between ten and twelve hours a day. 39 The early leavers may also have departed because the 23rd was the first day since 15 December that just before the rising of the House at the end of the day’s sitting a roll call was not taken and any missing lord ordered to be taken into custody. 40 This latter happened to the lord steward, the duke of Devonshire on the 15th, when he ‘happened to go away after they had resolved to adjourn, and before his name was called, was ordered to be taken into custody, my Lord Rochester joining with my Lord Normanby in support of their discipline,’ and leave was asked for him next day to come into the House’. 41 This incident clearly disciplined the members of the Lords, a discipline that appears to have broken down after the division on the 23rd. 42

37 On 8 December five lords were also excused for being ill, possibly from the excessive heat in the chamber generated by the overcrowding as well as the long hours (L.J., xvi, 33), one of whom was Burlington’s son, Lord Clifford of Lanesborough (cf. Letters … of the Reign of William III, ed. James, i, 109, where Vernon mistakenly states that one of only the three lords he lists is Burlington).

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39 Burlington seems to have recovered his health by 26 December: the duke of Devonshire, Chatsworth House, Derbyshire: Cork MSS 34/127-8: Burlington to Col. Congreve, his agent in Ireland, 17, 26 Dec. 1696 (summaries by Charles Littleton for the Lords section of the History of Parliament); L.J., xvi, 40. James Vernon, who attended the Lords on many of the days Fenwick’s attainder was dealt with, recorded late sittings finishing between 8.00 p.m. and 12.00 p.m. (the latter on 18 and 22 December): Letters … of the Reign of William III, ed. James, i, 126, 131-3; Northamptonshire R.O., Buccleuch papers, Vernon correspondence, letter no. 40. [Vernon to Shrewsbury], 22 Dec. 1696.

40 The call of the House both at the beginning and end of each day’s proceedings on the Fenwick attainder bill, may well be unique and was presumably designed to ensure that member staid the full course each day and maintained their presence on the following days. It would not have prevented members leaving the chamber during a day’s proceeding and returning later that same day. A similar system was in operation during the trial before the Lords of Lord Mohun for murder in 1693 (but not for a second trial for murder of Lords Mohun and Warwick in 1699), when the House was called over each day at the start of proceeding, but at the end the lords present were simply ordered to attend next day (L.J., xx, 207-24 passim; xvi, 421-5 passim). Interestingly in 1699 when the lords were hearing evidence in Westminster Hall (as opposed to debating guilt in the House) it was ordered by the House ‘that no Lord go out of his Place in Westm’r Hall; and if any Lord do, that Proceedings be stayed’ (L.J., xvi, 422).

41 The House had resolved on 8 December to call the House at the beginning of business on the 15th and to also call the House at it rising on that day and thereafter (L.J., xvi, 34). Devonshire may have forgotten this resolution on the first day of its implementation.


43 The Manuscript Minutes for 23 Dec. 1696 show that the calling over of the House was still rigorously enforced at the opening of the sitting on that day (House of Lords R.O., HL/PO/JO/5/1/32): seven lords were unmarked at the end of the exercise showing they were absent, but all had been excused (including Chesterfield and the bishops of Gloucester and Bangor, see below Appendix 3). However, one of these excused lords, the earl of Derby, was, nevertheless, 'sent for to attend' and is listed in the presence list. The House further ‘ordered that if the Lords now abs[en]t be not here pr[e]sent by 2 O Clock [presumably the time the Fenwick business was expected to commence] they be taken into Custody’. Interestingly eight lords previously excused turned up on the 23rd.
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In Fenwick’s biography in the *Oxford Dictionary of National Biography*, the makeup of the lords in favour of the bill of attainder is described as follows: ‘[t]he peers and bishops [whom] William’s government had made were the bulk of its majority’. On examination this proves to be exaggerated. It is true, however, that most of the peers and bishops created or promoted by William III were on the majority side of the vote. Thirty-one such lords voted Content out of a total of 68, thus forming 45.6 per cent of the majority, while only ten such lords voted Not Content out of 61, forming 16.4 per cent of the minority. The figures are more dramatic for the bishops: all twelve of those voting for the bill owed either their elevation to the episcopate or their promotion to a richer and more prestigious see to William III, while only four out of the nine opposing the bill were so obligated to the king. Clearly the new creations and promotions, though not the ‘bulk of the majority’, did swing the vote against Fenwick.

While it is undoubtedly possible that gratitude may have played part in the votes of some of those who voted on Fenwick’s attainder, to imply that this was the main, never mind the only, factor in their votes would be naïve. On such topics as treason, conspiracy, political assassination, and the judicial taking of a man’s life, conscience may well have played a major part in some lords votes. Others may have put national security above all considerations, for if William III had been killed it would not only have removed the head of state of the two main allies in the anti-French coalition – Great Britain and the Netherlands – but, being an active general in the allied army, William’s removal may have contributed to a French victory and French hegemony in western Europe.

Nonetheless, it is likely that party played an important role in deciding on which side a lord voted (though party, of course, was closely associated with how the War of the League of Augsburg, in which Britain was engaged, was viewed). If we look at the party affiliations of the peers and bishops involved in the division on 23 December 1696 (Appendix 3 below), we find, as far as it is possible to tell, that the Contents were overwhelmingly whig, with only two discernable tories, the earl of Marlborough (who had played a significant role in

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44 By Paul Hopkins, an historian of jacobitism.
45 *O.D.N.B.*, xix, 331.
46 Nineteen peers (33.9 per cent of the total vote of the majority) owed their current titles to William III: ten promotions and nine creations.
47 Six peers (11.5 per cent of the total vote of the minority) owed their titles to William III: four promotions and two creations.
48 Nine elevated and three promoted.
49 Three elevated and one promoted.
50 The only published party classification of the members of the house of lords for William III’s reign is by Henry Horwitz in his *Parliament, Policy and Politics*, pp. 335-7. But this is not as helpful as one might have hoped: (1) Horwitz, based his classification on only three divisions between 1689 and 1702 (the only ones then available to him), and then only listed those peers and bishops who voted on at least two of the three occasions, thus his list does not include every lord listed in the Fenwick attainder division – seventeen are so missing from the Contents, and twenty from the Not Contents; (2) those lords who did not vote consistently either whig or tory in the two or three lists analyzed are described as ‘mixed’ rather than as whig or tory, and the statistical base of only three lists is too small to be sure if a lord is really ‘mixed’ in his political views or whether one of the two or three votes given by Horwitz was just an aberration and does not properly represent the politics of the lord concerned (there are seven ‘mixed’ lords in the Content list, and thirteen in the Not Content). It is true, however, that there were a significant number of ‘court’ lords who did not consistently follow a party line and were thus truly ‘mixed’.

---
bringing King William to the throne, and who persuaded Prince George of Denmark, duke of Cumberland, the husband of Princess Anne, the heir to the throne, to join him), and John Hall, bishop of Bristol, voting for the bill,\(^{51}\) while the Not Contents were mainly tories, but with several whigs\(^ {52}\) voting with them.

However, the historian Henry Horwitz also noted that ‘no fewer than four of the seven Lords Justices of 1696 – Godolphin (First Lord of the Treasury), Devonshire [Lord Steward], Dorset [Lord Chamberlain], and Pembroke [Lord Privy Seal’’, voted with the minority.\(^ {53}\) The lord justices were the committee which ruled the kingdom in the absence of the king while he was on campaign in continental Europe, and who must, therefore, have been regarded as a ‘safe set of hands’ who would have been expected to have supported the court on the Fenwick vote. Indeed all four, except Godolphin, who voted against the bill on 18 December, had voted for the second reading on the 18th.\(^ {54}\)

The party affiliation of the dissenters and protestors who signed their dissent to the vote on the 23rd (see Appendix 2) is, as one would expect, largely tory. Of the eleven dissenters on Harley’s list Horwitz classified six as tories, three as mixed and he fails to include a further two in his classification.\(^ {55}\) While on the list of thirty-seven protestors, eighteen are tory, seven are mixed, and twelve are unclassified.\(^ {56}\) However, further work shows that three were very likely to be whigs with a further three possibly whigs, together with one tory bishop who showed whig leanings shortly afterwards.\(^ {57}\) We can only speculate at the motives for those whigs who voted for Fenwick – most likely it is that they, like Harley, disliked the pressing on with an attainder after the trial had collapsed through a lack of sufficient witnesses. In other words they voted with their consciences.

---

\(^{51}\) Horwitz, *Parliament, Policy and Politics*, p. 186. Marlborough and Cumberland naturally would have taken a strong line on regicide. The former may also have so voted because as a soldier he was appalled by the possible loss to the allied cause of the king, or because, as a sometime correspondent with the jacobite court, he wished to remove Fenwick as a possible source of dangerous revelations. The plot surrounding Fenwick did generate attacks on the reputation of the duke of Shrewsbury.

\(^{52}\) Byron, Carlisle, Devonshire, Dorset, Fitzwalter, Kingston, Osborne (using his courtesy title of marquess of Carmarthen), Torrington, and possible whigs Bath, Bristol, Halifax and Lindsey (see below n. 56).

\(^{53}\) Horwitz, *Parliament, Policy and Politics*, p. 186. James Vernon stated his surprise that the bill ‘passed at all, when one considers who they were that voted against it, particularly all the Lords Justices, who had voices, except the Archbishop of Canterbury, who spoke to the bill to admiration’: *Letters … of the Reign of William III*, ed. James, i, 140: 24 Dec. 1696.

\(^{54}\) See *Letters… of the Reign of William III*, ed. James, i, 140 : 24 Dec. 1696. This is the only known listing of some of the voters on 18 December. Others also changed sides on 23 December: ‘the Duke of Ormond, Duke of Somerset, Lord Willoughby of Evesby, Lord Fitzwalter, and some others’ (ibid.).

\(^{55}\) Tories: Guilford, Godolphin, Feversham, archbishop Sharp of York, Jermyn and Berkeley; mixed: Longueville, Burlington and Byron; unclassified: Clifford and Kingston.


\(^{57}\) The whigs were Byron, Carlisle and Kingston; the possible whigs were Bristol, Halifax and Lindsey. The tory bishop with later whig leanings was Richard Kidder of Bath and Wells. To be added to these are the whig Torrington, who only dissented, the whig Fitzwalter and the possible whig Bath who both protested, all of whom are not on Harley’s list (see Appendix 2 below). These further party classifications, which take us beyond Horwitz’s more limited classifications, are based on work in progress for the Lords’ section of the History of Parliament; the later party stance of the peers as given in Geoffrey Holmes, *British Politics in the Age of Anne*, rev. edn (London, 1987), pp. 425-35; and their record of voting over the offer of the crown to William III and Mary II in 1689, for which see Eveline Cruickshanks, David Hayton and Clyve Jones, ‘Divisions in the House of Lords on the Transfer of the Crown and Other Issues, 1689-94: Ten New Lists’, *Bulletin of the Institute of Historical Research*, liii (1980), 81-7.
Besides the light that Harley’s list throws on the mechanism of protesting in the house of lords, this list is probably the earliest ‘hard’ evidence we have of Harley’s interest in and experience of the workings of the upper House. When he was himself, as head of the new, largely tory ministry, elevated to a peerage on 25 May 1711 as earl of Oxford, he had little chance of observing the procedures of the Lords before the parliament was prorogued on 12 June 1711. In the first two days of the sitting of the new session on 7 and 8 December 1711 the Lords were plunged into a procedural debacle over an ill-advised attempt on the 8th to reverse the two votes on the motion of ‘No Peace without Spain’ which the ministry had lost on the 7th by majorities of one and eight. The attempt at a reversal on the 8th was about to be defeated by an opposition majority of between eleven and twenty-two, when the division was abandoned. The blame for this humiliation for the ministry has been placed on a group of hot-headed tories who hoped to flout the accepted conventions of the Lords that a vote could not be overturned in the same session, a group apparently unrestrained by the high tory leadership in the House (who may, in fact, have colluded in the move). Harley as the ‘prime minister’, even if he did not approve of the attempt, was at least possibly culpable through his negligence of procedural matters, which has been put down to lack of experience. This new list shows that though he was not entirely ignorant of how the house of lords was run, and while his vast experience in parliament was almost wholly confined to the Commons (he had been Speaker from February 1701 to April 1705), he must still bear some blame for the debacle on 8 December 1711.

---

58 The Lords sat for 11 days between 25 May and 12 June 1711, and Oxford attended on seven of those days. The House also sat for five days during the summer and autumn, only to be prorogued, until the 1711-12 session finally started on 7 Dec. 1711, and Oxford attended on four of these days (L.J., XIX, 309-35 passim).

59 For the problem over the likely figures for the majority before the vote was abandoned, see Clyve Jones, ‘The Division that Never Was: New Evidence on the Aborted Vote in the Lords on 8 December 1711 on “No Peace without Spain”’, Parliamentary History, ii (1983), 191-202.

60 The two acknowledged tory experts on Lords’ procedure were the earl of Rochester and Earl Ferrers: see ‘Letters of Lord Balmerino to Harry Maul, 1710-1713, 1721-1722’, ed. Clyve Jones, in Scottish History Society Miscellany XII (Edinburgh, 1994), pp. 121, 125. Both were present on 8 Dec. 1711, and must, therefore, bear a good deal of the responsibility for the debacle.

APPENDIX I: Robert Harley’s Partial List of Dissenters and Protestors on the Division on the Fenwick Attainder on 23 December 1696: B.L., Add. MS 70251 (unfoliated): John Pack to [Harley], n.d. [on back of the letter in Harley’s hand].

<table>
<thead>
<tr>
<th>Dissent by</th>
<th>D[ie][?]mercur[i]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Longvel [Longueville]</td>
<td>Hunghtn [Huntingdon]</td>
</tr>
<tr>
<td>Gdlphin [Godolphin]</td>
<td>Nrthubrlnd [Northumberland]</td>
</tr>
<tr>
<td>Brlnngton [Burlington]</td>
<td>Nrtshptn [Northampton]</td>
</tr>
<tr>
<td>F[e]versh[a]m</td>
<td>Leeds</td>
</tr>
<tr>
<td>Clifford</td>
<td>thanet</td>
</tr>
<tr>
<td>T.[.] Jrmn [?] [Jermyn]</td>
<td>Lndsy [Lindsey]</td>
</tr>
<tr>
<td>K[i]ngst[o]n</td>
<td>Crnvn [Carnarvon]</td>
</tr>
<tr>
<td>Byron</td>
<td>Rchsrt [Rochester]</td>
</tr>
<tr>
<td></td>
<td>Hnsdn [Hunsdon]</td>
</tr>
<tr>
<td></td>
<td>Wllghby de Brook [Willoughby de Broke]</td>
</tr>
<tr>
<td></td>
<td>Drtmth [Dartmouth]</td>
</tr>
<tr>
<td></td>
<td>Hereford</td>
</tr>
<tr>
<td></td>
<td>Suss[e]x</td>
</tr>
<tr>
<td></td>
<td>Jeffr[e]ys</td>
</tr>
<tr>
<td></td>
<td>Wllghby [Willoughby of Eresby]</td>
</tr>
<tr>
<td></td>
<td>N Dunclm</td>
</tr>
<tr>
<td></td>
<td>Tho meneu</td>
</tr>
<tr>
<td></td>
<td>H. London</td>
</tr>
<tr>
<td></td>
<td>Tho Roffen</td>
</tr>
</tbody>
</table>
APPENDIX 2: Dissenters and Protestors on the 15, 18 and 23 December 1696.

<table>
<thead>
<tr>
<th>Name</th>
<th>15</th>
<th>18</th>
<th>23</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arundel of Trerice</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Berkeley</td>
<td>x</td>
<td>p</td>
<td>d</td>
<td>T</td>
</tr>
<tr>
<td>Bristol</td>
<td>x</td>
<td>p</td>
<td>p</td>
<td>W?</td>
</tr>
<tr>
<td>Burlington</td>
<td>p</td>
<td>p</td>
<td>d</td>
<td>T</td>
</tr>
<tr>
<td>Byron</td>
<td>x</td>
<td>p</td>
<td>d</td>
<td>W</td>
</tr>
<tr>
<td>Carlisle</td>
<td>ex</td>
<td>p</td>
<td>p</td>
<td>W</td>
</tr>
<tr>
<td>Carnarvon</td>
<td>x</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Chandos</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Clifford of Lanesborough</td>
<td>x</td>
<td>x</td>
<td>d</td>
<td>T</td>
</tr>
<tr>
<td>Craven</td>
<td>x</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Dartmouth</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Ferrers</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Feversham</td>
<td>p</td>
<td>p</td>
<td>d</td>
<td>T</td>
</tr>
<tr>
<td>Godolphin</td>
<td>x</td>
<td>x</td>
<td>d</td>
<td>T</td>
</tr>
<tr>
<td>Granville</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>?</td>
</tr>
<tr>
<td>Guilford</td>
<td>p</td>
<td>p</td>
<td>d</td>
<td>T</td>
</tr>
<tr>
<td>Halifax</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>W?</td>
</tr>
<tr>
<td>Hereford</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Hunsdon</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Huntingdon</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>?</td>
</tr>
<tr>
<td>Jeffreys</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Jermyn</td>
<td>p</td>
<td>p</td>
<td>d</td>
<td>T</td>
</tr>
<tr>
<td>Kent</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Kingston</td>
<td>x</td>
<td>p</td>
<td>d</td>
<td>W</td>
</tr>
<tr>
<td>Leeds</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Leigh</td>
<td>x</td>
<td>x</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Leominster</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Lindsey</td>
<td>x</td>
<td>p</td>
<td>p</td>
<td>W?</td>
</tr>
<tr>
<td>Longueville</td>
<td>p</td>
<td>p</td>
<td>d</td>
<td>T</td>
</tr>
<tr>
<td>Northampton</td>
<td>x</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Northumberland</td>
<td>x</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Nottingham</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Rochester</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Scarsdale</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Sussex</td>
<td>x</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Thanet</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Weymouth</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Willoughby de Broke</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Willoughby of Eresby</td>
<td>x</td>
<td>x</td>
<td>p</td>
<td>T</td>
</tr>
</tbody>
</table>

Bishops

<table>
<thead>
<tr>
<th>Name</th>
<th>15</th>
<th>18</th>
<th>23</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Henry Compton (London)</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Nathaniel Crew (Durham)</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Gilbert Ironside (Hereford)</td>
<td>x</td>
<td>p(1)</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Richard Kidder (Bath &amp; Wells)</td>
<td>x</td>
<td>p(1)</td>
<td>p</td>
<td>T/W</td>
</tr>
<tr>
<td>Peter Mews (Winchester)</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>John Sharp (York)</td>
<td>x</td>
<td>x(1)</td>
<td>d</td>
<td>T</td>
</tr>
<tr>
<td>Thomas Sprat (Rochester)</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Jonathan Trelawny (Exeter)</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
<tr>
<td>Thomas Watson (St David’s)</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
</tr>
</tbody>
</table>
Those peers who dissented or protested on 23 December 1696, but who are not on Harley’s list.

<table>
<thead>
<tr>
<th>Name</th>
<th>d</th>
<th>p</th>
<th>p</th>
<th>p</th>
<th>T</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abingdon</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>T</td>
</tr>
<tr>
<td>Bath</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>W</td>
</tr>
<tr>
<td>Fitzwalter</td>
<td>x</td>
<td>x</td>
<td>p</td>
<td>W</td>
<td></td>
</tr>
<tr>
<td>Normanby</td>
<td>p</td>
<td>p</td>
<td>p</td>
<td>T</td>
<td></td>
</tr>
<tr>
<td>Torrington</td>
<td>x</td>
<td>p</td>
<td>d</td>
<td>W</td>
<td></td>
</tr>
</tbody>
</table>

Those peers who protested on 15 and 18 December, but not on 23 December 1696

<table>
<thead>
<tr>
<th>Name</th>
<th>d</th>
<th>p</th>
<th>a</th>
<th>T</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chesterfield</td>
<td>p</td>
<td>p</td>
<td>a</td>
<td>T</td>
</tr>
<tr>
<td>Fauconberg</td>
<td>p</td>
<td>x</td>
<td>x</td>
<td>W</td>
</tr>
<tr>
<td>Winchilsea</td>
<td>p</td>
<td>p</td>
<td>x</td>
<td>W</td>
</tr>
</tbody>
</table>

d = dissenter
p = protestor
a = absent
ex = excused being present (see L.J., xvi, 39)
x = present, but not dissenting or protesting

(1) = the three bishops so marked had changed sides unexpectedly voting against the bill; Bath and Wells had been excused attendance but chose to turn up (Letters … of the Reign of William III, ed. James, i, 134: 19 Dec. 1696; House of Lords R.O., HL/PO/JO/5/1/32: manuscript minutes, 23 Dec. 1696).

T = tory
W = whig

APPENDIX 3: Those Voting Content and those Voting Not Content on the Bill of Attainder against Sir John Fenwick, 23 December 1696: A Compilation from B.L., Add. MSS 17677RR f.17; 28252, f. 58; 47608, f. 139; 48196C, f. 45; and Northamptonshire Record Office, Montagu (Boughton) Papers, Vernon Letters, I, f. 41. Those marked with an* are on Harley’s list of the dissenters and protestors.

Content

Dukes
Cumberland
Norfolk
Richmond
Southampton
St Albans
Bolton
Schomberg
Newcastle
Robert Harley, Christmas and the House of Lords’ Protest on the Attainder of Sir John Fenwick, 23 December 1696: The Mechanism of a Procedure Partly Exposed

**Earls**
- Oxford
- Warwick
- Derby
- Suffolk
- Bridgewater
- Warrington
- Bolingbroke
- Manchester
- Rivers
- Stamford
- Sunderland
- Sandwich
- Essex
- Macclesfield
- Radnor
- Portland
- Montagu
- Monmouth
- Marlborough
- Scarbrough
- Bradford
- Romney
- Rochford
- Tankerville

**Barons**
- Abergavenny
- Delaware
- Berkeley\(^{74}\)
- Morley
- Eure
- Wharton
- Sidney of Penshurst\(^{75}\)
- Lovlace
- Howard of Escrick
- Raby
- Vaughan
- Ward
- Colepeper\(^{76}\)

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\(^{74}\) ‘Barkly, Dursley’ in Add. MS 28252, f. 58. ‘This is the 2nd earl of Berkeley’s eldest son who had been called up to the Lords in his father’s barony of Berkeley in 1689, and succeeded as the 3rd earl in 1698. His courtesy title was Viscount Dursley

\(^{75}\) Robert Sydney (1649-1702), called to the house of lords in his father’s barony in 1689, he succeeded as 4th earl of Leicester in 1698.

\(^{76}\) Missing from Add. MS 47608, f. 139.
Robert Harley, Christmas and the House of Lords' Protest on the Attainder of Sir John Fenwick, 23 December 1696: The Mechanism of a Procedure Partly Exposed

Lucas
Rockingham
Berkeley of Stratton
Cornwallis
Osborne
Ossulston
Cholmondeley
Ashburnham
Weston
Herbert of Chirbury
Haversham

Bishops
Canterbury [Thomas Tenison]
Lichfield [William Lloyd]
Salisbury [Gilbert Burnet]
Ely [Simon Patrick]
Chester [Nicholas Stratford]
Oxford [John Hough]
Peterborough [Richard Cumberland]
Gloucester [Edward Fowler]
Bristol [John Hall]
Norwich [John Moore]
Lincoln [James Gardiner]
Chichester [John Williams]

Not Content

Dukes
Leeds [Lord President]*
Pembroke [Lord Privy Seal]*
Devonshire [Lord Steward]
Somerset
Ormond
Northumberland*

Marquesses
Halifax*
Normanby

Earls
Lindsey*
Dorset [Lord Chamberlain]
Kent*

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77 Missing from Add. MS 47608, f. 139.
78 Missing from Add. MS 47608, f. 139.
79 Missing from Add. MS 47608, f. 139.
80 Not a duke, but listed here as a great officer of state.
Robert Harley, Christmas and the House of Lords’ Protest on the Attainder of Sir John Fenwick, 23 December 1696: The Mechanism of a Procedure Partly Exposed

Huntingdon*
Northampton*
Bristol*
Winchilsea
Kingston*
Carnarvon*
Thanet*
Scarsdale*
Bath
Carlisle*
Craven*
Burlington*
Sussex*
Feversham*
Berkeley*
Nottingham*
Rochester*
Abingdon
Torrington*  

Viscounts
Hereford*
Weymouth*
Longueville*

Barons
Willoughby of Eresby*
Ferrers*
Fitzwalter
Willoughby de Broke*
Chandos*  
Hunsdon*
Brooke*
Poulett
Leigh*
Jermyn*
Byron*
Clifford*
Granville*
Arundell of Trerice*
Dartmouth*
Guilford*
Godolphin [Lord Treasurer]*
Jeffreys*
Leominster*

81 ‘Winchester’ in Add. MSS 47608, f. 139, and 17677RR, f. 173.
82 Given in Content column in Add. MS 47608, f. 139.
84 Missing from Northamptonshire R.O., Vernon Letters, I, f. 41.
85 Missing from Northamptonshire R.O., Vernon Letters, I, f. 41.
Robert Harley, Christmas and the House of Lords’ Protest on the Attainder of Sir John Fenwick,
23 December 1696: The Mechanism of a Procedure Partly Exposed

Bishops
York* [John Sharp]
London* [Henry Compton]
Durham* [Nathaniel Crew]
Winchester* [Peter Mews]
Rochester* [Thomas Sprat]
Exeter* [Sir Jonathan Trelawny]
St Davids* [Thomas Watson]
Hereford* [Gilbert Ironside]
Bath and Wells* [Richard Kidder]

Absent 87

Yarmouth 88
Denbigh
Fauconberg
Chesterfield 89
Bishop of Bangor [Humphrey Humphreys] -- sick
Bishop of St Asaph 90 [Edward Jones] -- lately come to town and not at any of the debates

86 Followed by Gloucester in Add. MS 47608, f. 139.
87 This section only appears in B.L., Add. MS 17677RR, f. 173, and Northamptonshire R.O., Vernon Letters, I, f. 41. The comments on Yarmouth (n. 87), Chesterfield (n. 88) and the bishops of Bangor and St Asaph (below) indicate that this is a list of lords present in London but who did not attend or vote.
88 Staffordshire R.O., Persehowse papers, D260/M/F/1/6, ff. 97v, 98 notes that ‘The Presence [list] consisted of 130 lords’, but only 129 voted, and states that ‘E Yarmouth was absent when the question was putt’.
89 In Add. MS 17677RR, f. 172, this name is followed by Crew (i.e., the bishop of Durham), who is listed in the Not Contents under the bishops. James Vernon wrote that ‘Lord Chesterfield, who would have been against it [the bill], was absent’: Letters … of the Reign of William III, ed. James, i, 140: 24 Dec. 1696. Chesterfield was present in the House on 15 and 18 December (L.J., xvi, 39, 43-4).
90 Not in Add. MS 17677RR, f. 173.