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The Exclusion Crisis and the Earl of Shaftesbury, 1679-1681

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THE EXCLUSION CRISIS AND THE
EARL OF SHAFTESBURY
1679-1681

by
P. Edward Higgins

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CHAPTER I

PRELUDE TO DISASTER, 1674-1678

The great tide which had brought the House of Stuart back to the English throne in 1660, had by 1674 begun to run its course. The great admiration which the people of England showed for Charles upon his return in 1660 was beginning to tarnish. For reasons unknown to the general public Charles tended to lead a rather lazy and indolent life, letting his boldest supporters like the Earl of Clarendon fall before the fury of Parliament. The intrigues of court life seemed to distract him little from his merry way, and in fact he seemed to enjoy helping to create some of these intrigues. While indeed this may be a good description of Charles' outward

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1David Ogg, England in the Reign of Charles II (Oxford: Clarendon Press, 1934), pp. 148-49. [The work here mentioned together with those listed in the bibliography form the framework for understanding Charles' plans, policies, actions and character. These same sources have also been used for research on the Earl of Danby.]
appearance it contains nothing that would give us a complete picture of the true king. Charles II could match any politician of the seventeenth century. While it is true that Louis XIV of France has been given the title of the greatest king of the century, this title was gained by him through his work in the field of foreign affairs. Charles could devote little of his political talents on foreign affairs, for the political conditions of his own country demanded all that he could give. Indeed his body may have been lazy, but the workings of his mind were quick and sharp. All things considered these elements were of far greater importance than an alert body.

Each time a trap was laid to catch Charles he carefully stepped aside, and let the trappers be caught. While there is no denying that he did have some loyalty for his supporters he never allowed it to endanger his own cause. Unlike his brother the Duke of York, Charles could read character. This feat enabled him to avoid the disasters that James met, and thus to die wearing the crown of England. He readily knew that
Anthony Ashley-Cooper, the Earl of Shaftesbury, was searching for political power; and he realized, too, that once he obtained it he would destroy himself. The Earl of Sunderland could never be trusted since he was far too interested in his own ends, and as for Lord Halifax, he could not be trusted because of his perpetual fence-sitting. Clarendon was an old time courtier and he would never admit that the 1660's were any different from the 1640's. Thus, as far as Charles was concerned his downfall was inevitable because he lacked political insight. As to the Earl of Danby, Charles realized that he enjoyed burning the candle at both ends, and thus it would be only a matter of time before the flame reached the center. When this event occurred the Earl of Danby would fall before the fury of Parliament like the others before and after him. Thus it was that Charles knew both his ministers and opponents. All of them would fall, and each time he would lend them his aid in meeting the oncoming disaster.
During the year 1673 the famed Cabal broke up, and Charles was faced with the problem of choosing a new ministry. Carefully he surveyed the field, for the next first minister would have to please the remnant of the Cavalier Parliament. The new minister must be a backer of the Anglican establishment; he must be a backer of the Court Party; and he must be pliable enough that Charles could use him to gain his own ends. Looking over the persons available Charles's attention was drawn to the name of Sir Thomas Osborne, later created Earl of Danby. It appears that Charles felt that Osborne was the best he could get under the circumstances; thus he became the new Lord Treasurer with a new title to match the position.

The Earl of Danby came into his new office with a policy which he would go down trying to put into effect. This policy aimed at promoting the Protestant Religion by backing the Anglican Church, and at making an alliance with the Dutch against the French.² In the field of foreign affairs, he would run into trouble with Charles time and again. Indeed in the

end it would be his foreign policy which would bring about his downfall. In handling Parliament Danby never quite reached the point where he could depend upon it to carry out his orders. Though he was the first minister ever to make use of bribery on a large scale he had little to show for his efforts. He never seemed able to get enough backers of his legislation in the right place at the right time. Piece after piece of his proposed program of government went on the rocks due to parliamentary opposition. Trying to get enough funds to keep the navy going, Danby induced Lord Lindsey to introduce into the House of Lords a bill which provided for the taking of the Oath of Non-Resistance by all members of Parliament, office holders and justices of the peace. In essence the proposed oath was exactly like the one administered to those members of the army and clergy. Charles strongly favored this bill, and thus did everything possible to make sure that it would pass.

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3 Ibid.

After much lengthy discussion the bill was modified to suit some of the objections raised by the Earl of Shaftesbury, and it finally passed the House of Lords in this form. However, it was too late, for the argument between the two Houses concerning the sanction of privilege brought about a prorogation of the Parliament on June 9, 1675. Thus the bill never had a chance to come to the floor of the House of Commons where it stood a good chance of being passed by the Anglican majority. In August, 1675 Charles entered into an agreement with Louis XIV providing that should the reassembled Parliament make a grant of money to the king on condition that he go to war with France, he would again prorogue the Parliament. For doing this deed it was understood that Louis would pay him £100,000 per annum.5

Upon the commencement of the new session Charles found that many members of Parliament were no longer concerned with the mere prorogation of the body, but favored a complete dissolution of it. The Earl of Shaftesbury in a speech given in the House of Lords on November 20, 1675 warned the nation to beware of

standing parliaments and standing armies. For both he said could do the nation no good. The present Parliament had in fact been in existence since 1661, and many of its original members were no longer available due to death in office. Following the lead of Shaftesbury and his supporters the House of Lords addressed a petition to Charles asking that he dissolve the present Parliament, and call for elections to a new one. The motion of petition, however, failed to pass the Lords by a mere handful of votes on November 20, 1675.  

In order to gain control over the nation's foreign affairs the Earl of Danby continued to endeavor to make the king realize that he would get absolutely nowhere by making secret treaties with the King of France. Indeed the Lord Treasurer tried to make his master see that only by winning the confidence of the Parliament could he hope to obtain the necessary funds to keep the government above water. To Charles

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8 Ibid., p. 163.
this advice was worthless, for he realized that any understanding with Parliament would mean a loss of prestige and royal prerogative on his part. As king he could never allow Parliament to encroach upon his royal prerogatives in the field of foreign affairs. Thus it was that in February, 1676 Charles signed a second secret agreement with Louis, which stated that neither monarch would give aid to the enemies of the other nor would they make any treaties without the others' consent. The Lord Treasurer refused to sign this treaty as he had the others before it.

With the prorogation of Parliament in November, 1675 the Earl of Danby's program of legislation came to an end for the next fifteen months. During the year 1676 Danby continued his campaign against the French alliance. He found that as yet the king was not ready or willing to accept his ideas on an Anglo-Dutch Alliance.

In February, 1677 Parliament had reassembled,
and one of the first motions to appear in the House of Lords was a protest by the Earl of Shaftesbury against the constitutionality of the present Parliament. He held that the long prorogation had in reality dissolved the Parliament, and therefore this meeting was illegal. The Duke of Buckingham joined him in his protest stating that as far as he was able to discern according to the Acts of Edward III and the late Triennial Act the present Parliament had been dissolved. Thus they should require the king to call a new one.

As a result of this protest Shaftesbury and his supporters were confined in the Tower by the House of Lords on a charge of contempt. Meanwhile the Earl of Danby found things looking a bit brighter during this period. True enough Charles had signed another secret treaty, but he still had to cope with Parliament's demand for an Anglo-Dutch Alliance. In order to bring about the alliance he so much desired Danby decided to take a desperate step. Taking into

consideration the fact that William of Orange was Charles' nephew, Danby decided to arrange a marriage between William and the Duke of York's daughter, Mary. Since Mary Stuart was a Protestant (she was the daughter of James and Anne Hyde), and since she was at this time heiress-presumptive to the throne Danby felt that the proposed marriage would bring great popularity to him, and in time to the king. The minister realized that this popularity could be put to a good use in persuading Parliament to pass some of the necessary legislation. He was cognizant of the fact that this union would be but a prelude to an Anglo-Dutch Alliance.

While perhaps Charles was not overjoyed at having the Prince of Orange as a close member of the family, he no doubt saw that the marriage could be used to force Louis into more advantageous terms. Thus he permitted the marriage to take place. The father of the bride-to-be, however, did not take kindly to this proposal, but he, like the bride, could do very little about it.\textsuperscript{10} Charles also was

\textsuperscript{10}Carola Oman, \textit{Mary of Modena} (London: Hodder and Stoughton, 1962), pp. 52-53.
aware of the fact that this union could lead to the dissolution of the friendship between William and the Earl of Shaftesbury.\textsuperscript{11}

The marriage took place on the evening of November 4, 1677 in Mary's private apartment in St. James' Palace. In December, 1677 Danby saw his lifelong dream come true with the signing of an Anglo-Dutch Treaty of alliance and friendship. Upon hearing of the treaty and the marriage of William and Mary, Louis XIV was furious. He knew only too well that Charles tended to back family compacts, and thus his only hope lay in turning Parliament against the alliance. Working on this hope Louis instructed his ambassador in London to seek out members of the opposition, and upon making contact with them he was to place certain funds at their disposal provided that they would promise to block any move Charles made to honor the treaty.\textsuperscript{12} In time, Louis felt that he would


be able to repay Danby for his treachery.

In direct violation of his treaty with Louis XIV, Charles recalled Parliament in January, 1678. When it met the Earl of Danby called upon the members to make available revenues sufficient to raise and equip an army for the war against France. Not too long afterwards the French ambassador made his first contacts with members of the opposition. Distributing liberal amounts of French gold among them he was able to get their approval of a legislative plan calling for certain obstructions to be placed in the king's path. While the opposition could hardly come out against the French war, since they were the ones who had been calling for it all along, they could place certain conditions on the money bill which they felt the court and king would never agree to. When Charles surprised them by accepting these conditions they began to bring into the discussions every item that would be vexatious to the court. In truth Parliament was never so close to getting what it wanted, and yet

13 Ibid.
so far from knowing just what it wanted. By April 15, 1678 Parliament was no closer to granting the needed supplies than it had been in the first weeks of January. The situation was left to hang in mid-air while Parliament adjourned for a fortnight. When it reconvened on April 29, 1678 the Lord Keeper emphasized the fact that the Dutch could wait no longer for English help, and thus they were proceeding to make a separate peace with the French. At this point Parliament demanded to see the treaties, and warned that for the moment they would put no further charge upon the people regardless of the danger. Explaining away these statements they said that before they could commit the nation to war, they would first have to secure the nation against any popish threat. Following this line, the House of Commons requested the king to disband the army that had been raised the previous September.

Unfortunately while calling upon Charles to carry

14 Grey, Debates of the House of Commons, 1667-1694, V, 7-17.

out this request they refused to give him the necessary funds to do so. Further complicating things they cried for war against France. It is no wonder that the Earl of Danby told the Prince of Orange that the very Parliament which had called for an alliance with his country was now in the midst of breaking up that very alliance. 16

In December, 1677 the Earl of Danby reached the pinnacle of his career as minister to Charles II; from that point on he would begin to lose control over his destiny.

To top matters off it was during this year that Oates chose to disclose the supposed Popish Plot. That this supposed plot was perhaps one of the greatest and most tragic hoaxes ever perpetrated upon the English nation cannot be denied. What could ever have brought the people of England to believe the fanciful tales that Oates spun? For one thing his tales held something for

everyone. Then as now the ignorant and superstitious were to be found among every class. These people tend to believe anything so long as it is bad. Many of the courtiers and educated members of the clergy felt that this supposed plot was the work of a fanatic.17

Charles heard Oates' story in Council and was able to trip him up several times. The situation, however, had gone too far for it to be stopped now, and thus he decided to await the outcome. This decision was prompted by the feeling that this was the less dangerous path to follow. Shaftesbury and the Country Party felt both that the court would brush the whole matter off, and that they would be unable to make anything of the incidents related. However, as events did turn out, the Country Party could never have been more wrong in their thinking, for in time they would be able to play this tale to its fullest extent.18


18 Grey, Debates of the House of Commons, 1667-1694, VI, 266.
The Earl of Shaftesbury did gain from these incidents, but the gains were no more than steps on the stairway to the political power he desired. The events of the plot gave him the chance he needed to consolidate his power over the Country Party, but in no way can this consolidation be compared with that of a political leader of the twentieth century. Indeed he would always have to contend with the moderate wing on the one side and the extremists on the other.

During the course of the Popish Plot the Lord Treasurer decided to put off his oncoming disaster by joining in on the attack against the Catholics.\(^{19}\) This move did not save him, but it does tend to point out just how blind Danby was to public thought. He seems to have been completely oblivious to the fact that the Country Party had already decided upon his fate.

In the field of international affairs Louis XIV concluded the Treaty of Nymwegen with William of Orange. Now that peace had come Louis would

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have time to deal with Charles and Danby. It was at this moment, that Charles chose to make another treaty with Louis in the hope of getting more ready cash. He prevailed upon his minister to write to Louis seeking another treaty, and a pension for Charles. Up till now Danby had always refused to be a part of these secret treaties, but at this precise moment he gave way and wrote the desired letter. The communiqué was sent to the English ambassador in Paris, Ralph Montagu, to deliver to the French king. After writing it in his own hand Danby made the further mistake of having a serious disagreement with the English ambassador. As a result of this disagreement Danby had Montagu removed from his post, and he returned to England. When he was back in the realm he obligingly went over to the opposition, taking his personal file of letters with him. Among the many documents that he had collected during his ambassadorship was the letter written to Louis XIV by Danby. There were also some treaties in his hand, but they were
of little value. The letter was by far the most important item in the file. As if to help the Parliament decide the fate of the first minister Louis XIV chose this moment to make public Charles' recent communiqué. Almost immediately a cry went up in the House of Commons for the Earl of Danby's impeachment. Before long the opposition members were joined in their cry for impeachment by the many Court enemies that Danby had made. Therefore the articles of impeachment were drawn up and presented in the House of Commons where they were passed by a margin of twenty-four votes. The actual voting ran 143 for to 119 against. The Earl of Danby endeavored to answer the charges brought against him in a speech in the House of Lords. At the same time he had a friend in the House of Commons introduce some very incriminating evidence against the leaders of the opposition. This evidence was obtained from letters which


21 Thomas Osborne, "Earl of Danby's speech to the Lords in his own defence, 1678," English Historical Documents, ed. Andrew Browning, VIII, 199-203.
belonged to Lord Halifax, and they clearly showed that members of the opposition were in the pay of the French Court. However, neither the speech in the Lords nor the evidence in the Commons was able to save Danby from his fate. The evidence was not even allowed to be entered into the Commons' Journal. The Lords were not so quick to judge their fellow member, for on December 23, 1678 they rejected a motion that he should withdraw because of the prospect of impeachment. 22 On December 27, 1678 the Lords again showed the Commons that it would not be dictated to by refusing to take Danby into custody. 23

The Earl of Carnarvon rose in the House of Lords when Danby's impeachment was being discussed, and delivered a speech in which he predicted the fate of those who would tear the first minister down from his high position. 24 His prediction

22 *Lords' Journal*, XIII, 349 (Refer to n.15).


was based firmly upon the history of the past conspiracies and conspirators against the first ministers of the realm.25 Those whose future he boldly foretold sat before him, but they heeded not his warning.

Charles tried to save his first minister by granting a royal pardon, but the House of Commons declared that such a declaration was invalid in the case of an impeachment. Thus in order to save Danby's head Charles was forced to prorogue the Parliament on December 30, 1678. This was the last time that the famed Cavalier Parliament ever met, for on January 24, 1679 it was officially dissolved by the king. At long last the Earl of Shaftesbury would have a chance to sit in the office he had so long desired. He could look forward to the complete cooperation which the Country Party would give him in Parliament. However, Lord Shaftesbury forgot to listen to the Earl of

25Ibid.
Carnarvon's speech on English history. Had he listened carefully, and thought the matter over perhaps things might have turned out differently.
CHAPTER II

THE MAN AND THE PARTY, 1674-1679

Anthony Ashley Cooper, Earl of Shaftesbury, is truly a historical character to be reckoned with, and before we can proceed further we must obtain an adequate picture of him through the reports of his contemporaries and others.

Cooper was possessed with an active and cunning mind, but his physical wellbeing was rather poor. Politically it can be said that he fell within the loose limits of that party of men known as parliamentary Presbyterians. Since his entrance into the political arena in the early 1640's he had managed often to change his political coat. During the period of the Commonwealth he won the esteem of Cromwell, and served him well. As the political tide changed he could be found in the vanguard of that group which brought Charles
Stuart back to the English throne in 1660. Because of this move, and also due to his knowledge of financial affairs he was appointed to the then subordinate post of Chancellor of the Exchequer. Along with this new position he was given a rank in the peerage, and thus became known as the Baron Ashley. During the period which he occupied this position he often found himself at odds with the policies of the Earl of Clarendon. Despite this fact, however, he managed to be quite accommodating as long as it suited his best interests. His oratorical ability and popularity made him a valuable asset to those who opposed the rule of Clarendon.

During the period of the second Dutch War he was able to further his position in the good graces of the king by handling the office of Treasurer of Prizes. For rendering this service to the nation he was rewarded with an advancement in the peerage to earl.

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With the fall of Chancellor Hyde from office the famed members of the Cabal took over the control of the government. It was during the period of the Cabal that the famous secret treaty of Dover was signed between Charles II and Louis XIV. Cooper because of his Dissenter backing was kept in the dark as to those aspects of the treaty which provided for the restoration of England to the Catholic Church, and the use of French troops to accomplish this end. Upon discovering the true terms of the treaty he left the Court Party and joined the opposition. The following November, 1673 Charles removed him from the post of Chancellor of the Exchequer. Hearing of this removal Cooper remarked that he was but laying aside the robe of office to put on his sword. 27 From 1673 till 1681 Cooper worked to build up the opposition to a point where it could be used as an effective weapon against royal despotism. The ingredients of organization

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27 Grey, Debates of the House of Commons, 1667-1694, II, 222.
and tactics were his greatest contribution to the party.

When Sir Thomas Osborne assumed the position of Chancellor the Earl of Shaftesbury was given little comfort, for he realized that the new Chancellor would be but a repeat of the Earl of Clarendon. Thus it was that he became bent upon the destruction of the new ministry. In November, 1675 Shaftesbury together with Halifax, Buckingham and Warton protested against the continuance of the Cavalier Parliament, but their protestation got them nowhere for the Parliament continued to sit until November, 1678. From 1675 to 1678 he used his position as head of the Country Party to embarrass and irritate the court administration and the king. When Parliament assembled again in 1678 Shaftesbury once more tried to have the body dissolved and a new one elected. Again, however, he was unsuccessful in his attempt.
The parliamentary session in the autumn of 1678 provided Shaftesbury and his Country Party with enough political ammunition to keep the English government in an uproar for the next three years. The first event to present itself for opposition use was the Popish Plot. Both Shaftesbury in the Lords and his lieutenants in the Commons proved more than willing to seize upon this plot in order to discredit the government of the Earl of Danby and the king. It was during the months of 1678 that Cooper first drew up his plan for excluding the king's Catholic brother from the throne, and thus the plot lent itself very well to the fulfillment of this plan.

The correct use of the plot and the propaganda that went with it enabled the Country Party leaders to get rid of the Earl of Danby. Once Danby was out of the way they felt that it would only be a matter of time before the king called upon them to save the government. With the impeachment of the
incumbent quasi-prime minister it appears the opposition did not expect Charles to dissolve the Parliament. The dissolution came as a surprise to Shaftesbury, but he was not unhappy about its event.

With the election and first meeting of the new Parliament Charles let it be known that he intended to remodel his Privy Council. Therefore following this line he issued a declaration remodeling the Council on April 29, 1679. In this document Charles thanked those that had served him in his late Council, and went on to describe how the new one would be composed of thirty members. He stated that he felt that this number would be more representative of the kingdom. The list of new members in the Council was quite imposing, and when read carefully one detects immediately that a majority of the members were drawn from the Country Party. Before the Earl of

28 Charles Stuart, "His Majesty's Declaration for the Dissolution of His Late Privy Council and for Constituting a New One," English Historical Documents, ed. Andrew Browning, VIII, 100-02.

29 Ibid.
Shaftesbury would accept the position offered him on the new Privy Council he wanted to make sure that he had the backing of his party, and of the nation. It would have been wise if all of the Country Party members had followed the same cautious procedure before accepting their seats on the new Council, for before long they discovered that their new positions had cost them the party leadership.

Shaftesbury's stay at the Privy Council table lasted exactly five-and-one-half months. With the introduction of the Exclusion Bill into the Parliament in May, 1679, it became quite clear to Charles that he could no longer afford to have him around. On October 14, 1679, Charles directed the Earl of Sunderland to address the following note to him:

I received just now a command from the King which you will easily believe I was not ambitious of, which was to let you know that he intends no more to make use of your service at the Council table and therefore discharges you of any attendance there. I am extremely sorry to be obliged to write this, having ever desired to let you know the mark of his favor and never contrary.30

From what has been said it can easily be seen that Anthony, Earl of Shaftesbury was not too successful in holding public office, but this fact did not detract from his ability to give the needed leadership to the Country Party.

Of the few biographies that have been written about the life of the first Earl of Shaftesbury, only the one by William D. Christie comes near to telling the whole tale. Thus while biographies are very good for general information they often give an unobjective view of the life and works of the subject. Therefore we shall turn at this point to the writings of one of Cooper's contemporaries in order to obtain a fuller view of his character.

In a *History of My Own Time* the writer, Bishop Gilbert Burnet, spends a great deal of time discussing the personal merits and demerits of Cooper's character. According to the account he had a way of speaking to a popular assembly which, to say the least, was winning.  

31 Furthermore he

could be both serious and amusing when carrying on an argument. In the field of religion he was a deist. In fact he was rather taken up with the field of astrology, and put much faith in the predictions obtained from it. Shaftesbury told Burnet that a Dutch doctor had told him that the stars predicted that he would yet be a greater man than he was. However, as the bishop says, the stars could not have been very smart ones, for what they said never came to pass. Perhaps like most men Shaftesbury had one fault which very few people could find it in their hearts to forgive; this was his vanity. His continual boasting of his own greatness, and of the places and positions that various persons of authority had offered him often offended his friends.

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32 Ibid.
33 Ibid.
34 Ibid.
35 Ibid.
In describing his character Burnet uses some rather harsh language, but this can be accounted for by the realization that a churchman is rarely easy on a non-believer. According to him Shaftesbury had little if any virtue, and hardly knew the difference between truth and falsehood. In evaluating the political movements of the earl he says that these can be accounted for by the fact that he was deceitful and unsteady.

Evaluating Bishop Burnet's judgement of his character we must admit that in reality it was a biased one, for the author was a member of the Court Party. In truth Shaftesbury's character pretty well followed the patterns of the period. Far too often his unscrupulousness has been mistaken for that which in reality was political know-how. No true politician would ever allow any event, however small, to escape him if it held any possibility for him to enlarge his control and power. Politicians generally give little thought to the question of whether they are hurting a particular person or group.

\[36\text{Ibid.}\]

\[37\text{Ibid.}\]
by their actions: rather they are more concerned with the fact of whether they can further the interest of their own group. Shaftesbury, indeed, was not simply the unscrupulous politician on the move like Ralph Montagu or the irresponsible Duke of Buckingham. Neither was he thirsting for power merely for power's sake. Rather, he knew definitely what he would do with the power once he obtained it. Knowing his goal he proceeded to exploit the beliefs, prejudices and fears of all classes, and especially those of the humble and ignorant. It goes without saying that while propagating these beliefs he often did not share them. Because of his extensive Dorset estates, wide commercial interest and knowledge, legal connections, and intellectual interests he was able to reach every section of the upper classes. His religious liberality or lack of religion, whichever you may wish to term it, gave him a chance to place himself on the side of the Dissenters. 38

38 Ibid.
One is led to wonder what he might have done if the Papist had held the Dissenters' place in English society. Would he perhaps have formed an alliance with them? Taking into consideration his chief characteristics as a politician, it is more than likely that he would have done so.

In the field of political beliefs he approached the radical elements realizing that he needed their influence as much as that of anyone else. The commercial interests favored him because of his wide knowledge of trade policies. Thus it was that he strove to gain the backing of the varied interests of the city because he realized that the city alone could give him the power that he desired. The city with its mobs and ignorant dwellers could provide the physical forces that he might need from time to time. More than any other person he used the atmosphere of the Civil War in his politics. The years under the Commonwealth and Protectorate were not lost upon
him, for he had learned many valuable political skills. He could change his position quickly, adapting as it were each day to the changing tides and conditions. He was a keen judge of men in most cases, and could lead them easily in any direction he chose. This fact is shown by the way he attracted and led so many of the prominent and independent men of the day. They were ready and willing to serve as his lieutenants and subordinates. Lord Russell, Sacheverel, Swifen, Cavendish, Essex and the Hampdens were all men of power and influence, yet they chose to follow him rather than to lead themselves. Indeed before long the radicals on the one side and the peers on the other looked to the Earl of Shaftesbury as their leader. 39

What then were the ideas which this man held? In truth, what was his reason for wanting power if not for the sake of power alone? In order to answer these questions we must by now understand

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39 Jones, The First Whigs, p. 16.
that he was a politician, and that as such he was forever on the lookout for royal and court policies which would lead the nation down the path of absolutism. He realized further that the English Constitution, as he understood it in the light of the Civil War, could never be sustained without some action to stop the influence of Crown and Court. Unless Charles Stuart could be forced to place the administration of affairs of state into the hands of men who were trusted by the Parliament, the nation would surely meet a worse fate than had befallen it in the 1640's. The bases for this belief can be found in his principle that government power should be vested alone in the hands of those who possess the greatest weight in the nation and in society. 40

In order to safeguard the nation and its policies he concocted his plan of exclusion. By this plan alone he believed the nation could be

40Great Britain, Public Record Office, Shaftesbury MSS, IV, 330.
spared much pain and sorrow. It should be stated that while he judged the best policy for the nation to take would be to get rid of the Stuarts entirely, he believed that Charles would in time be easy to handle. Besides Charles could not last too much longer. Concerning James Stuart, he realized that the character of this vexatious duke could only bring disaster upon the nation, and therefore the best policy would be to drive him out of the kingdom now before he came to the throne. Once he put on the crown only revolution and bloodshed would save the nation.

\[41\] Ibid., p. 300.
CHAPTER III

THE FIRST EXCLUSION PARLIAMENT, 1679

The Earl of Shaftesbury and his associates, having called for the dissolution of the Parliament first in 1675 and then again in 1678, were somewhat taken aback by the dissolution of Parliament in January, 1679. This shock however did not last for long as the two parties soon began their electioneering on a wide scale.

Charles seems to have believed that a new Parliament would bring back members who would support the royal policies. Regarding Shaftesbury, it appears that the king felt that his power lay mainly in his ability to compose factions within the city of London. As far as the country members were concerned Charles believed that since they were a distance from the capital they would not have been excited by such things as the Popish Plot.
and the Earl of Danby's impeachment. In holding to these ideas Charles refused to recognize the connection between the city and the country. As a result of these misconceptions on the part of the king, it was only reasonable that the Country Party should take the new Parliament by storm. 42

The Earl together with his Green Ribbon clubs was soon able to organize a most effective campaign against those members who stood for the Court. He was further aided in his efforts to gain victory by the Parliamentary Committee on Elections. It was through the efforts of this committee that many of the Court candidates were successfully unseated. This was one of the first examples of the opposition's attempt to pack the parliamentary benches. In the elections that followed for the Parliaments of 1680 and 1681 this method of unseating Court candidates would be used over and over again with great success. Shaftesbury from the start realized that his party would come out on top in these elections, for he was well aware of the anti-popish feelings that abounded in the country areas. The recent excitement

42 Tanner, English Constitutional Conflicts of the Seventeenth Century, pp. 240-43.
of the Popish Plot would go far in helping the Country Party to win a large majority in the Commons. 43

Looking back on the changing conditions of this period it is understandable that the Court Party should have lost so many of their seats in the election of 1679. Many party members had lost standing in their local communities either because they had quarreled with some of their more influential neighbors or because they had become involved in the Earl of Danby's massive policy of bribery. Many had also neglected local interest, and their constituents as a result refused to back them in the new election. Not a few of the old members found that their financial conditions would not permit their candidacy. 44 The voters were called upon to select good Protestant men


44 Great Britain, Public Record Office, Calendar of State Papers, Domestic, 1679-1680, p. 78.
who believed in the improvement of industry, and who had outstanding principles and would defend civil rights.\textsuperscript{45}

By tradition the Court Party could always count on a great many so-called safe boroughs to return candidates who would support the royal policy. This time, however, even the safe ones fell into the hands of the opposition. The king even found the opposition entrenched in his own borough of Windsor. Many of the country nobles combined their influence in order to get candidates of their own choice into Parliament. Members of the Court Party were so hardpressed by the opposition that they found it almost impossible to return their own sons to the forthcoming Parliament.\textsuperscript{46}

When the new Parliament met, King Charles was faced with a wide country majority which was one hundred percent Protestant in outlook and feeling. To be sure we cannot say how many


\textsuperscript{46} Jones, \textit{The First Whigs}, pp. 37-40.
members were returned for each party, but we do know that Shaftesbury kept a list of the members and that he placed a check beside each name that he felt could be counted upon to vote for exclusion when it came up.

On Thursday morning March 6, 1679 the new Parliament assembled at Westminster. The oath of office was administered to the members in the Inner Court of Wards. After the swearing in ceremony they proceeded to the Painted Chamber of the Lords where the king and Lord Chancellor Finch addressed them on the importance of their duties. When the addresses had been finished the members of the Commons returned to their own chamber where they proceeded to elect their speaker. Colonel Birch, anticipating that Sir John Ernly would propose Sir Thomas Meres for the speakership, rose and nominated Edward Seymour. Seymour, who had been the speaker during the late Parliament, objected

48 Ibid., p. 2.
49 Ibid., pp. 5-10.
to the nomination on the very courtly grounds of ill health and unfitness for the position.\textsuperscript{50}

Having elected their speaker the Commons adjourned till two in the afternoon on the following Friday.

On Friday afternoon the Usher of the Black Rod, Sir Edward Carteret, brought the speaker elect and a committee of the Commons before the king.\textsuperscript{51} Just before entering the king's chamber Seymour informed his associates that he had called upon the king the evening before in order to acquaint him with all that had passed that day in the Commons.\textsuperscript{52} At this time he had informed him of his election to the speakership, and Charles seems to have shown his approval of the Commons' choice. Thus it was then that all approached the king with the idea that he had accepted the election results. Approaching the king, Seymour informed the monarch that in pursuance of his orders the Commons had met and chosen their speaker. He went on to point out that he was

\textsuperscript{50}\textit{Ibid.}
\textsuperscript{51}\textit{Ibid.}, pp. 10-13.
\textsuperscript{52}\textit{Ibid.}
the result of their meeting, and that if it pleased his Majesty to approve the choice he would serve both the Commons and him as well as he could.\(^5\)

The committee members present at this meeting were somewhat shocked by the wording that Seymour used, for he completely neglected to follow the established ritual whereby he begged the king to be let off because of his unworthiness for the position.\(^6\) His wording in fact was if anything rather strong and commanding. It goes without saying that what followed came as a complete shock not only to the committee, but to Seymour as well.

Prior to the meeting of the new Parliament the Earl of Danby resigned his position in the king's Council. He still managed, however, to give the king advice, which for some reason he chose to accept. During the last Parliament Danby and Seymour had had a falling out, and thus

\(^5\)Great Britain, Public Record Office, Ormonde MSS, N.S., IV, 345.

\(^6\)Ibid.
from Danby's point of view he could not risk the chance of having Seymour as the speaker of the Commons. Since the speaker was in a position to influence the legislation that came before the House, it would be only reasonable to believe, the author feels, that he would be of little help in putting down the impending impeachment proceedings. Therefore it was the Earl of Danby who advised the king to reject the election of Edward Seymour to the speakership. In the author's opinion while certainly this was a good move from Danby's standpoint, it was not one from the king's. Edward Seymour was generally a loyal backer of royal policy, and he opposed exclusion. From what has been said the author believes that had Charles foregone the advice of Danby and accepted the election of Seymour the Parliament of 1679 might very well have had a different ending.

During the meeting with the king they were addressed by Lord Chancellor Finch. Finch informed
the group that the king had found better use for the speaker-elect.\(^5\) Seymour was thereupon excused from the speakership, and the committee was ordered to inform the Commons that a new speaker should be elected. Thus they returned to the Commons, and there gave all details of their meeting with the king. The members of the House were, to say the least, quite shocked by what had taken place. As the shock began to wear off debates became hot and heavy.\(^6\) In order to check and see if a precedent for the king's action could be found, it was decided that the Commons should adjourn until the following morning.\(^7\)

The next morning, which was Saturday, they gathered together and began to search for another candidate. They soon realized, however, that they could not settle on any one person for the job, and therefore decided to press their first choice on the king.\(^8\)

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\(^5\)Ibid., p. 346.


\(^7\)Public Record Office, Ormonde MSS, N.S., IV, 346.

\(^8\)Ibid.
It was true that some wanted to hand over the chair to Meres, but they were in the minority and therefore were forced to go along with the wishes of the majority.\textsuperscript{59} Lords Russell and Cavendish together with Sir Robert Carr and Henry Capel were sent to wait upon the king at Whitehall.\textsuperscript{60} It was to be their job to ask the king to reconsider the nomination of Edward Seymour to the speakership. Charles received the representatives of the Commons very graciously, and he listened to their complaint most earnestly.\textsuperscript{61} When they had finished he informed them that he had made up his mind, and that he could not possibly reconsider at this time.\textsuperscript{62} However he did suggest that they extend their time in selecting another speaker until the following Tuesday.\textsuperscript{63} He also suggested that they

\textsuperscript{59} Ibid., p. 347.
\textsuperscript{60} Ibid.
\textsuperscript{61} Ibid.
\textsuperscript{62} Ibid., p. 348.
\textsuperscript{63} Ibid.
choose a third party or one to whom both sides could give their assent. 64 The members again returned to the Commons, where they retold what the king had said. Following the report the House adjourned until the following Tuesday.

On the following Tuesday Commons again met and debated the subject of the speakership. After carrying on the debates for several hours they finally decided that they alone, and not the king, had the right to choose the speaker. 65 Any action taken by the king in this matter was, according to them, a mere formality. 66 Following this lead then they prepared a document representing their rights in this matter. They then proceeded to choose a committee to deliver this document to the king. The committee was composed of Lords Russell and Cavendish, Sir Robert Carr, Henry Capel, John Ernly, Henry Powle and several other unnamed

64 Ibid.


66 Ibid.
gentlemen. 67 This committee, like the last, proceeded to Whitehall to wait upon the king, where it was hoped that they could make Charles aware of the feelings of the Commons in this matter. 68 Powle was chosen to read the document to the king, but before he could get little more than a sentence out Charles interrupted him. 69 The king bade them to return to their House for they were losing time. "Return to the House and do as I have directed," Charles ordered as he closed the interview. 70

On Wednesday Charles summoned the House of Commons to meet with him in the Painted Chamber of the Lords. There he advised the House to lose no more time in selecting their speaker, and ordered them to present their new speaker to him on Monday, March 17, 1679. 71 Returning to their

67 Ibid.
68 Ibid., p. 11.
69 Ibid.
70 Ibid.
71 Public Record Office, Ormonde MSS, N.S., IV, 349.
own chamber the Commons were addressed by Lord Russell who proposed the name of one, Serjeant Gregory, for the post of speaker. Lord Cavendish rose and hastily seconded the nomination. Sacheverell however chose this moment to express his dissatisfaction with the events as they had thus far gone. He maintained that they should still put forward the nomination of Seymour. When he found that he could not get anyone to agree with his stand, he requested permission to leave the chamber so that his dissatisfaction might be noted. It was at this point in the proceedings that shouts broke forth telling him to leave immediately so that the House could get on with its voting. He left and Serjeant Gregory was seized and forced into the speaker's chair. Having accomplished the election of a

72 Ibid.
73 Ibid.
74 Ibid.
75 Ibid., p. 350.
speaker for the second time, the Commons adjourned till the following day. 76 On March 18, 1679 the Commons again presented their nominee for the speakership to the king. 77 After hearing the speaker-elect plead his unworthiness for the position the king approved the election. The Chancellor concluded the meeting with the following words; "As for yourself, Mr. Speaker, you may be sure that he whom the king hath created by his power he will preserve by his goodness." 78 In general these words were of the courtly type used in that day, and for the most part were quite harmless, but Shaftesbury took great offense at them for he felt that the king had already shown that he would do anything possible to impose his will upon the Commons. 79

76 Ibid.
77 Ibid.
78 Ibid.
79 Ibid.
Having at last settled the matter of the speakership in the Commons, the Parliament could safely proceed to the business of the realm. The first break with the past that occurred in the new Parliament was the introduction of unfinished business from the last sitting. When Charles dissolved the Cavalier Parliament he did so with the idea of saving the Earl of Danby from impeachment. The new Parliament, however, continued its movement against him. Neither did the dissolution put a stop to the investigation and persecution of the Popish Plot. Both of these movements would continue unabated through the Oxford Parliament of 1681. One of the first moves made by this body called for the setting up of a new committee to investigate further the testimony of Oates and Bedloe. This new committee was composed almost wholly of long standing members of the Country Party. Because of his recent clash with

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the king Seymour had gained some fame among the Country members, and as a result he was given a seat on this prize committee. It was the investigations of this committee which first brought the name of James, Duke of York, into the Commons proceedings. After making a careful study of the documents available for this period, it is the author's opinion that Shaftesbury was ever present behind the work of this committee, supplying it with information which would enable him eventually to introduce his first exclusion bill.

On April 27, 1679 the debaters in the House of Commons managed to bring the discussions around to the subject of how best the Commons could protect the king against the Papist plots that were now considered to be in abundance throughout the land. Before the discussions could proceed very far the name of the Duke of York was introduced. Soon what had started out to be a rather common and calm debate turned into

81 Ibid., p. 18.
82 Ibid., p. 70.
a wholesale attack on the Duke of York. From the sidelines, as the debate grew more intense and heated, it appeared only too likely that the Commons would accept nothing less than the Duke's complete exclusion from the throne and the country. As this debate drew to a close a fatal vote was taken, the outcome of which provided for the establishment of a secret committee to prepare and draw up, "an abstract of such matter as concerns the Duke of York, contained in such papers and writings as they have in their custody." 83

On April 20, 1679 Charles issued his declaration remodeling the privy council. This move at this time was well planned, for he made it his business to include in the new Council nearly all of the leaders of the opposition. Obviously Charles had hopes that this move on his part would bring about a split within the ranks of the Country Party. After all it was only

83 Ibid., p. 78.
logical to believe that those who were members of the king's government would have to defend the policies of that government. Charles knew that by defending the royal policies these leaders would lose the backing of their party, and perhaps cause it to collapse before the proposed exclusion bill could be brought into the open.

In order to forestall the inevitability of an exclusion bill Charles introduced by way of his Chancellor a motion consenting to laws guaranteeing religion and property in the reign of his successor. He made a point that this motion was only to be carried forward if the succession itself was left intact. The limitations he proposed were fourfold: 1) all ecclesiastical benefices and promotions were to be confirmed without the control or interference of a Catholic successor; 2) no Catholic was to be permitted to sit in either House of Parliament; the Parliament sitting at the time of the king's death

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84 Commons' Journal, IX, 606 (Refer to n. 20).
85 Ibid.
was to remain sitting for a certain period afterwards or if no Parliament was sitting at the time of the king's death then the last Parliament was to reassemble without a fresh summons being given out; 3) all Catholics were to be barred from holding office or places of national trust; this was to include all government posts without exception; posts in the Privy Council, chancery and the Common Law Courts were to be filled only with the consent of Parliament; 4) Lords Lieutenants of counties, their deputies and the officers of the navy, were either to be nominated by Parliament, or selected by a commission appointed by Parliament. 86 The members of the new Privy Council came out in favor of the king's concessions. However they met strong resistance from their colleagues in the House of Commons. The debates continued on this subject until they reached a high point on May 11 and 21 respectively. On May 7, 1679 the Lords sent down a bill to the Commons which provided for

86 Ibid.
the expulsion of all Papist from the city of London and those parts which were adjacent to it. 87 The bill was presented to the House and passed on the second reading. 88 About this time certain members of the opposition party began to warn their fellow members of the folly involved in passing an exclusion act. Powle advised caution and delay in this recourse. Defending his advice, he expressed the fact that he would be satisfied if only a bill securing Parliament, providing for the continuance in office of place holders, judges and even bishops after the death of the present king, were passed. 89 Sir Henry Capel argued that really the only thing that was necessary to protect the realm was a new Triennial Act. He further went on to warn the Commons of the dangers involved in outright exclusion of the Duke of York. 90

88 Ibid., p. 214.
89 Grey, Debates of the House of Commons, 1667-1694, VII, 237-60.
90 Ibid.
Many other members of the opposition who favored going along with the king on this matter rose from their seats to address the House in the king's favor. Many feared that an act of exclusion would wreck the English nation because it was held that Ireland and Scotland would not have to go along with this move. By May 11, 1679 the Commons committee presented its report on the proposed bill of exclusion to an already divided House. It should be noted that by this time those members of the Country Party who had accepted positions in the new Privy Council, excluding Shaftesbury, had lost much control over their fellow members. The young members of the opposition had been able to seize control of the party strings by their outward antagonism to the royal policies. In all of the debates concerning exclusion their voices were the loudest in calling for the passage of such an act. The violence expressed in their speeches threatened to bring the whole fabric of British government
down upon the heads of all involved. 91 It appears to the author that the Country Party proceeded to take the stand, which the Tory Party in the next century would take, that all offerings of peace by the king should be looked upon with suspicion and mistrust. Further they believed that any member who showed the slightest willingness to go along with Charles' wishes should be cast off as a traitor to the cause of English liberties. 92 Shaftesbury, Russell and Essex alone were able to hold the confidence of their party during this period. The remaining Country Party leaders were forced, because of their dislike of the exclusion policy, to drift into the ranks of the Court Party. 93

On May 21, 1679 the Bill for Disabling the Duke of York from Inheriting the Imperial Crown was presented for its second reading in the House. 94

91Jones, The First Whigs, p. 65.
92Ibid., pp. 62-65.
93Ibid.
The bill passed on this reading by a vote of 207 for exclusion as to 128 against it. To Charles the inevitable had become a reality, and thus there was nothing left to do but prorogue the Parliament. Therefore Charles dispatched the Usher of the Black Rod, Sir Edward Carteret, to summon the House of Commons to meet with him and the Lords in the Painted Chamber. There, assembled they watched Charles II sign the only piece of legislation passed during the session, the Habeas Corpus Act of 1679. This act was due mainly to the work of the Earl of Shaftesbury. It provided that sheriffs, gaolers, ministers and other officials of the crown should deliver up within three days, after the presentation of a writ of Habeas Corpus, the person so named by the writ to the issuing judge. He was then to set bail, and if the

95 Ibid.
96 Burnet, History of My Own Time, pp. 351-52.
97 "An Act for the better securing the Liberty of the Subject and for Prevention of Imprisonments Beyond the Seas," English Historical Documents, ed. Andrew Browning, VIII, 92.
person involved could pay the bail he was to be set free until his case came up for trial.\(^9^8\) The act further provided that cases should be heard at the earliest possible time by the court or within the next sitting of the court.\(^9^9\) The act was so worded to apply to everyone except those charged with treason or a felony.\(^1^0^0\) The basic purpose of the act was to put a stop to the custom of transferring a prisoner from one prison to another in order to avoid the issuance of a writ.\(^1^0^1\) Bishop Burnet in his writings states an account of the passage of this bill. The account shows that not even this piece of legislation was gotten through the Lords in an honest and upright way.\(^1^0^2\) When the king had signed the bill, the Chancellor informed the combined Houses that

\(^9^8\) Ibid., p. 93.
\(^9^9\) Ibid.
\(^1^0^0\) Ibid., p. 95.
\(^1^0^1\) Ibid., pp. 94–95.
\(^1^0^2\) Burnet, History of My Own Time, pp. 351–52.
the Parliament was officially prorogued until the following August 14, 1679. Thus the Parliament of 1679 was officially prorogued on May 27, 1679 and dissolved on July 12, 1679.

The Parliament had accomplished nothing save the passage of one act which time would prove most beneficial to those very Court members who had opposed it. Charles had managed during the late Parliament to drive a wedge into the ranks of the Country Party leadership, but before long it would become evident that other men wait in the background to take the places of those that have fallen. Indeed the Country Party had won this round, but the Court Party had gained enough new members from the opposition benches to make a rather weak comeback. The new Parliament would provide the first real battle ground for the two new political parties. In fact the next session would prove whether each party could weather the storms that lay ahead.
CHAPTER IV

THE PARLIAMENT OF 1680

Soon after Charles dissolved the first Exclusion Parliament in July, 1679 he issued writs summoning a new Parliament to meet on October 7, 1679. Between the months of July and October a new plot appeared on the scene. This time the plot was the work of a Catholic group who wished to avenge the recent events of the Protestant Popish Plot. It was their intent to incriminate the leaders of the Country Party in such a way as to insure the destruction of the party. The processes by which this new plot came to light were the same as those used to uncover the Popish Plot. 103

A Papist midwife by the name of Mrs. Cellier was the chief agent in uncovering this new plot. Her practice enabled her to enter many of the leading homes of the day. Here she was able to gain much information, and in some cases the help she needed to uncover a plot of this magnitude. She set up a spy system in the city of London that could easily have rivaled that of the Country Party. It should be noted at this time that her followers numbered a great many Protestants, who like the Catholics involved desired to see the Country Party done away with once and for all. In looking for a likely candidate to play the part of Oates in this plot, Mrs. Cellier settled upon one Thomas Dangerfield, a resident of Newgate Prison. Dangerfield was a rather handsome and personable fellow with one slight defect—he was a complete rogue. One is quickly led to think that perhaps if Mrs. Cellier had not been so quick to judge character by appearances the plot
could have been successfully carried through. However, she obtained his release from prison and began to introduce him to the various personages of importance to the plot. One person she made sure that he met was the Countess of Powis, who was the wife of one of the Papist Lords imprisoned in the Tower. Unfortunately the Countess, while well meaning and most anxious for her husband's release, was not the most discreet person in the world. After her interview with Dangerfield, the Countess instructed Mrs. Cellier to hire him for the job. Again looks played a better part than background. It can readily be seen that unlike the Earl of Shaftesbury these ladies had little if any appreciation for character reading, which in the end would be their undoing. During the weeks that followed Dangerfield made his way from Newgate to Whitehall in a short space of time. During this period of English

history such quick movements in the social sphere were not so very startling. Unlike Oates, who had a prodigious memory, Dangerfield had to rely on written material. This brought about his downfall and the complete exposure of the plot. After proving rather incompetent Dangerfield realized that he could get no further aid from the Court, and therefore he decided to sell his services to the opposition. It was not merely the fact that he could get no further aid that made him go over to the opposition, but rather a fear that the Court, finding his services no longer worthwhile, would try to dispose of him in a most unfriendly way. Going over to the opposition he felt would be one way of saving his life, and of course he believed that he might be able to make a little profit out of the deal also.

It was not long before the opposition discovered that they had a new weapon with which
they could further increase the embarrassment of the king's government. In a short time they managed to expose the part played in the plot by many of the leading court nobles. With these new developments on hand the opposition anxiously awaited the opening of the new Parliament in October. They were quick to realize that when Parliament met they would have the advantage in the field of political propaganda. Exclusion this time, they were certain, would be an easy bill to pass.

On October 7, 1679 the new Parliament assembled at Westminster where they took the oath of office in the Inner Court of Wards. After the oath-taking ceremony the members gathered together in the Painted Chamber of the Lords, where they expected to be addressed by the king and Chancellor. Instead, however, the Usher of the Black Rod appeared and the Parliament was prorogued until January, 1680. Quite under-

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105 Ibid., p. 42.
106 Commons' Journal, IX, 630 (Refer to n. 20).
107 Ibid.
standably the members were shaken by this action on the part of the king.

By November, 1679 the reorganized Privy Council was again reduced to Court members only. Halifax and Essex withdrew in disgust when Charles refused to summon the prorogued Parliament. Charles felt little pain at seeing the Privy Council break up, for he believed that he had achieved his purpose in making a large crack in the leadership of the opposition party. With the fading of the autumn light a new star began to rise above Whitehall in the person of Robert Spencer, Earl of Sunderland. Sunderland was no newcomer to the Court, for he had just recently returned from the embassy in Paris. The position of ambassador had done little to enhance his financial condition, and when he returned to London, he stationed himself at Whitehall in the hope of obtaining more profitable employment. ¹⁰⁸ Signs began to

appear showing that his wait had not been in vain, for he was soon appointed to the post of Secretary of State. He was joined in his new post by Lawrence Hyde, Earl of Rochester and Sidney Godolphin, Earl of Godolphin. Hyde assumed the post of First Lord of the Treasury in the new cabinet. The members of the new cabinet had several things in common among which were opposition to exclusion and strict adherence to Court policies. During the next few months these men would endeavor to carry out the policies of the king and enhance the position of the Court Party. 109

In a pamphlet issued by the Country Party called Vox Populi, the king was roundly condemned for refusing to allow the newly elected Parliament to assemble at Westminster. 110 They asserted that this stand of the Court was dangerous to the constitutional position of Parliament in the British scheme of government. 111 The writers of this

110 Vox Populi (London: By the author, 1680-81).
111 Ibid.
pamphlet went on to stress that in time of crisis the Parliament should convene as often as possible, and that any failure to call it into being would be an infringement of the fundamental rights and liberties of the nation.\textsuperscript{112} Following this argument then the Country Party decided to take steps which they hoped would force Charles to call Parliament before the scheduled time of January, 1680. Their first move was to organize a petition which called on the king to summon Parliament immediately.\textsuperscript{113} Following the opposition standby of evil ministers the petition called upon the king to disregard the advice of his ministers who were responsible for the return of the Duke of York, the prorogation and the Duke of Monmouth's exile and disgrace. The leaders of the Country Party called for the summoning of Parliament so that it could present the national grievances, and carry into effect those policies which it judged necessary for the security of the nation.

\textsuperscript{112}\textit{Ibid.}

\textsuperscript{113}\textit{Great Britain, Public Record Office, Domestic Intelligence, 1679-1683, p. 45.}
The Earl of Shaftesbury, on the bases of his constitutional theories, together with the other Country leaders used the petition to stir up popular support for the policies of the party. 114 The opposition embarked upon a nationwide campaign which would, before it was through, reach every citizen in every class and section of English society. The petition was brought to the attention of the people in a massive house-to-house canvass. 115 The Country Party canvassers interviewed the householders, gave the reasons and arguments for presenting the petition and obtained the necessary signatures. In order that no one might be overlooked, the party members placed pen, ink, forms and tables in taverns and at the Royal Exchange. 116 This petition campaign had all of the earmarks of a modern day propaganda move. The Country Party in adopting this new method of public appeal believed it could force

114 Public Record Office, Shaftesbury MSS, IV, 330.
116 Ibid., p. 213.
Charles and the Court to come to terms. Charles, however, had other ideas about this situation, for he issued a proclamation prohibiting petitioning. Members of the Court Party in order to counteract the effect of the petition issued abhorrences which condemned the petition and the petitioners for their actions.

Charles, seeing that his proclamation had done little good, decided to take steps against the Country Party which would be more effective. He dismissed Country Party members from offices under the crown, the lieutenancy, militia and from the commissions of the peace. This purge, while it gave him some satisfaction, did little to put the political divisions of the nation together again.

In the early part of 1680 Shaftesbury made public some of his views on the holding of elections.

118 Ibid.
He said that the Parliament of England is the supreme and absolute power which gives life and motion to the English government.\textsuperscript{119} Furthermore the Parliament was grounded in the principles of Edward III, and it should also be noted that this legislature had since come of its own through various decrees and acts which had been established as the law of the land.\textsuperscript{120} He called for a reorganization of the electorate so that the nation might be better represented in Parliament.\textsuperscript{121} Property qualifications should be raised, and certain practices done away with.\textsuperscript{122} In order to produce fair and honest elections he would introduce a system of secret or semi-secret balloting.\textsuperscript{123} It should be pointed out that when he calls for the raising of property qualifications


\textsuperscript{120}\textit{Ibid.}

\textsuperscript{121}\textit{Ibid.}, p. 213.

\textsuperscript{122}\textit{Ibid.}

\textsuperscript{123}\textit{Ibid.}, p. 215.
this refers not to those qualifications which concern the voter, but rather to those which concern the office-holder. Shaftesbury would increase the franchise to cover almost every group of people, but he would narrow the choice of office-holder down to those mentioned above. 124 In doing this he believed that those chosen would come from the older and better educated classes, and would in turn lend greater stability to the government. 125 As in many of his other writings, we find the strong thread of parliamentarianism running through this one. It is easy to see who was responsible for the petitioning movement, for of all the leaders which the opposition claimed only Shaftesbury consistently held the principle that in order to govern one must have the backing of the people. 126

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125 Ibid.
126 Public Record Office, Shaftesbury MSS, VI, 351.
When January, 1680 finally arrived Charles again prorogued Parliament, this time till April 15, 1680, and later first to May 17, then July 1, July 22, August 23 and finally to October 21, 1680. On the last mentioned date Parliament assembled at Westminster, and started on the road to the second exclusion movement. Shaftesbury, realizing that the petition had made no impression on Charles, decided to call upon the remaining members of the Privy Council to resign. He hoped that the resignation of the Council as a group would force Charles to call the desired Parliament into session. However, he was disappointed for the independent members refused to give up their new positions. After all, most of them felt that this was their chance to make something of their lives, and they were not willing to lose an opportunity which might never again present itself. Having been disappointed in this move he was determined still to bring pressure to

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bear upon the king for the calling of Parliament. In his next move he attempted to have the Duke of York indicted as a Papist recusant, and the Duchess of Portsmouth as a common nuisance. 128 Lord Chief Justice Scroggs, at the risk of condemnation by the opposition, came to the aid of both parties when he suppressed the indictments. This suppression provided the Country Party with the political propaganda they were looking for. Regarding the Duchess of Portsmouth, the opposition was able through the indictment to force her to come to terms with them. They threatened to expose certain information which would bring about her public ruin. Just to insure she understood their position fully, they hinted that should Charles die she might very well be blamed for poisoning him. Needless to say the lady was somewhat terrified by the prospect of the king dying; therefore, she was willing to come to terms with the Country Party in order to save her own life.

128 Ibid., pp. 402-22.
The leaders of the opposition were well aware that the Duchess was on the most intimate terms with the Earl of Sunderland, and thus when she joined their faction it was considered only a matter of time before he would follow her lead. 129

When Parliament met in October, 1680 Charles addressed the first sitting in the Painted Chamber of the Lords. His address consisted of a general plea for action in the fields of finance, foreign affairs and domestic tranquility. In the matter of finances he asked that they give attention to the needs of the navy and of their monarch. On the subject of foreign affairs he begged them to do something for the colony of Tangier as it was presently endangered by the advancing Moorish armies. Charles went on to caution them on the dangers presented by Exclusion.

The Commons were unwilling to accept caution as the byword in this matter, for immediately upon

129Jones, The First Whigs, p. 128.
assembling in their own chamber they began debating an exclusion bill. One of the first moves which the opposition majority made was to bring before the House the matter of petitioning. The recent proclamation against this method of public appeal was hotly attacked from the opposition benches, and the abhorrers were soundly denounced as messengers of subversion. After much debate on this subject it was finally decided that according to tradition the king's subjects had a right to petition the monarch for a redress of grievances, and for the calling together of a Parliament to settle all outstanding issues. 130

With the settlement of this issue the House turned to the matter of exclusion. Henry Capel, a former member of the Privy Council who had voted against the Duke of York in many things, but had opposed exclusion in the last Parliament now led the attack against him. He, like many others, had been fooled by Charles' late actions, but now he was in the vanguard of those who were willing

to repent their recent political heresy. During the course of his long address in the House he blamed Popery for all of the present ills that beset the nation, and called upon that body to produce such legislation as was necessary to deliver the kingdom from the Papist for all times to come. 131 After this came a recounting of all the recent developments by Sir Francis Winnington. He cited the dissolution of the last Parliament, the exposure of the fake Meal Tub Plot, Charles' proclamation against petitioning and backing of the abhorrers, the suppression of the indictment against the Duke of York, the king's judicial action against the Country pamphleteers, and the developments concerning the treatment of the Duke of Monmouth. This former opponent of exclusion ended his oration with a plea for a new and more strenuous bill of exclusion. 132 The sudden switch

131 Commons' Journal, IX, 640. (Refer to n.20)
132 Ibid.
from opposing exclusion to the favoring of it was caused in a great part by Charles' repeated proroguing of the Parliament. Those who had once been willing to put their faith in the promises made by the king now felt that they could no longer place any trust in his word.

Once the subject of exclusion had been introduced into the House of Commons, the Country Party wasted little time in bringing the actual bill before the members of the House. A member by the name of Treby made a report on Coleman's letters, and the part that the Duke of York had played in the recent plot. Lord Russell followed this report with a request that the motion citing James' Catholicity as being responsible for the recent plot should be reintroduced. With Russell's resolution the Country Party members proceeded to introduce the second Exclusion Bill.

The bill stated that the Duke of York by his popish perversion had brought great danger upon the

\[133\text{Ibid.}\]
nation and the person of the king.\textsuperscript{134} James was first excluded from the throne, and then threatened with high treason should he even try to assume control of the kingdom.\textsuperscript{135} The bill went on further to exclude him not only from the kingship but also from the kingdom.\textsuperscript{136} Regarding the right of succession the bill made some rather equivocal references to those who would succeed if James were dead, but it still did not make explicit the fact that the Duke's daughters would come to the throne in the event of his exclusion.\textsuperscript{137}

After the reading of the bill, the first speaker against it was the loyal Court member from Oxford, Sir Leoline Jenkins. He listed four reasons why the bill should be voted down; 1) because it was contrary to natural justice to condemn a person

\textsuperscript{134}"An Act for the Securing of the Protestant Religion by Disabling James, Duke of York, to Inherit the Imperial Crown of England and Ireland and the Dominions and Territories thereunto Belonging," English Historical Documents, ed. Andrew Browning, VIII, 113.

\textsuperscript{135}\textit{Ibid.}

\textsuperscript{136}\textit{Ibid.}, p. 114.

\textsuperscript{137}\textit{Ibid.}
before he was heard, 2) it was against the principle of religion to dispossess a man because of his religious faith, as this was the way of the Papist and Fifth Monarchy men, 3) the Kings of England have the right to rule from God and no man can remove this right unless they would make the crown an elective one, and 4) it was contrary to the Oath of Allegiance taken to the king and constitution. 138 Following this argument he went on to state that Henry IV of France was a Protestant when he came to the throne, and that the people of France believed that it was better to accept a Protestant king than face a civil war. 139 To the modern historian Jenkins' arguments would appear very weak, but this last one would seem to border on the ridiculous, for all who know French history are aware that when Henry came to the throne France was engaged in one of the most terrifying civil wars that has ever taken place. He also seems to


139Ibid.
have overlooked the fact that Henry died a Catholic, and that the only reason he was able to obtain the throne finally was because he renounced his Protestantism. But Jenkins was not to be argued with, and he concluded his oration by calling on the members to vote against the proposed bill. 140

Needless to say his arguments and eloquence did little to change the feelings of those members of the opposition who were bent upon exclusion, nor did they inspire the Court members who sat in the House. The second Exclusion Bill passed on the first reading, and was recommended to be read the necessary second time.

With the reading of the bill the second time the Court Party shook off some of its lethargy and found grounds upon which they could wage a fight. The section of the bill which provided these grounds was the one dealing with the succession. Sir William Hickman questioned whether the crown

140 Ibid.
was to go to the next right heir, and if not, why?\textsuperscript{141}

The spark had been struck but no fire could be elicited from the Country benches. Sir Christopher Musgrave insisted that the committee which had prepared the bill should name the successor in plain words.\textsuperscript{142} Other members arose in turn and proposed that the committee should state that the Duke's children were not barred from the throne by this act, and that no Protestant successor should be barred.\textsuperscript{143} Sir Robert Howard thought that a saving clause in favor of Protestant successors would be sufficient.\textsuperscript{144} During all of this debating the Country Party was concerned with only one thing, the passage of the bill. In their opinion the Court Party was not serious about the succession clause; they believed that the Court was now trying to stall for time. Because of this the Country Party refused to take up the bait which the Court members held out to them.\textsuperscript{145}

\begin{thebibliography}{99}
\bibitem{142} Ibid.
\bibitem{143} Ibid.
\bibitem{144} Ibid., pp. 427-28.
\bibitem{145} Ibid., pp. 429-30
\end{thebibliography}
On November 8, 1680 Lord Russell in order further to stem debate on this subject of the succession gave into the desires of the Court members and proposed a proviso. This proviso actually said nothing about the right of the Duke's heirs to the succession, but merely stated that nothing in the bill should be so construed as to disable any person other than the Duke of York himself from succeeding to the throne. After a little more debating another statement was added that the crown should descend to such persons during the life of the Duke as should inherit the same were he dead. With the adoption of this proviso one of the most important delaying tactics of the Court Party collapsed.

On November 9, 1680 Charles sent a message to the House stating that he was willing to accept limitations on the powers of his successor, but he reiterated that the succession must be left intact.

\[146\] Ibid., pp. 431-32.
\[147\] Ibid.
For Charles this was a last ditch stand, and he realized that if it failed future Parliaments would be none too willing to accept the leadership of the king. The question has been raised as to whether Charles would have accepted limitations upon the crown that his successor would wear or whether he was merely playing for time and concessions. While many historians have taken it upon themselves to answer this question, it is really one which never can be answered except through theory. Shaftesbury from his post in the Lords, and his close connections with the leaders of the opposition in the Commons looked with joy upon the recent events in the House. He felt confident that proper handling of the bill in the Lords would bring about its passage.

The Exclusion Bill received its third reading in the House and passed it with an overwhelming majority. After the passage the House of Commons allowed four days to elapse before they sent it up
to the Lords. The members of the Commons delegated Lord Russell along with several other members to deliver the bill to the Lords. For good measure this delegation decided to take along with them the Lord Mayor and Aldermen of the city of London. We can only suppose that the idea of taking the Mayor and Aldermen of London along was the work of Shaftesbury, for it was he who controlled the famed London mobs. However, the committee from the city of London did not have the desired effect, for many of the Lords looked upon this move as an outright threat to the privilege of the House of Lords.

November 13, 1680 was a day to be remembered for the Painted Chamber of the Lords was packed with spectators awaiting the coming debates on the second Exclusion Bill. Even Charles with the members of his court had shown up for this occasion. Upon the presentation of the bill the Earl of

Shaftesbury rose to address the assembled gathering. His speech lasted about forty-five minutes and was most eloquent. The Earl of Essex followed him, and he too addressed the House in favor of the bill. Going into great detail Essex gave his reasons for favoring the bill. When he had finished the Earl of Halifax rose and began his oration in opposition to the bill before the House. Section by section he tore the arguments of the Country Party apart. When he finally finished his long expose of the true facts concerning the matter, he had presented the Court arguments magnificently. Both Shaftesbury and Essex tried to debate with him, but each time he drove them into a verbal corner from which there was no exit. The arguments that Halifax expounded before the Lords were well thought out, and none was present who could tear them apart. Because of his verbal battle with the leaders of the opposition, and even more so because he demolished their arguments the exclusion movement was doomed
to oblivion during the remainder of this Parliament. The voting on the exclusion movement in the House of Lords ran thirty-three for the bill to sixty-one against it. 149

While Charles could be credited with a victory at this point it could not be termed a complete one. The House of Commons was still determined to be rid of the Duke of York one way or another. Their anger at being so close to success and yet so far caused them to look upon anyone who dared protect the rights of the Duke as an enemy. This was the reasoning which prompted them to call upon Charles to dismiss the Earl of Halifax from his cabinet. 150 Charles replied that he could find no substantial charge against Halifax, but should the Commons in regular course find either Halifax or others guilty of any crime he would be willing to leave him or them to their own legal defense without interfering to protect them. 151 When the

149 Ibid.
150 Commons' Journal, IX, 660-63. (Refer to n.20)
151 Ibid., pp. 662-63
Commons had called for the dismissal of Halifax they accused him of having papist sympathies.  
One of the last acts that the Parliament of 1680 did was to bring about the impeachment and execution of the Papist peer, Earl of Stafford. Stafford had been imprisoned in 1679 with the other Papist Lords accused of backing the Popish Plot. With the defeat of the exclusion movement for the second time, the Commons decided to vent their anger on those Lords imprisoned in the Tower. Of all the material presented against the Earl the prosecution could find only one witness to support its charges. His condemnation was the result of a general desire to commit judicial murder.

The king once again submitted to the Commons a plea for supply, and once again they turned it down. Seeing that he could get nothing further from this Parliament Charles dissolved it on

152 Ibid.
January 18, 1681. Thus the fourth Parliament of the reign of Charles II came to a close. Neither Country nor Court were close to the ends which they had envisioned.
CHAPTER V

THE OXFORD PARLIAMENT, 1681

While the dissolution of the Parliament of 1680 did not really come as a surprise to the Country Party—for after the defeat of the Exclusion Bill in the House of Lords it was evident that nothing further could be gained by the continuance of the sitting—the author feels that it did cause them to have great anger against the king and his ministers. Again the author believes that the defeat of the bill excluding the Duke of York from inheriting the crown did not dampen the spirits of the opposition members, but rather acted like a tonic bringing the party new vigor and life. With the dissolution announced to them they began preparing the way for the meeting of the next Parliament. Weighing the great amount of materials from this period the writer feels that the opposition
believed that they would not fail in the coming Parliament; the Exclusion Bill would be passed by both Houses this time. Thus it was that they threw themselves whole-heartedly into the election campaign.

After the dissolution of the late Parliament the Earl of Shaftesbury called upon Charles II to cast off all those ministers and courtiers whom he favored, and with them the principles of government and religion with which they were associated. 154 Henceforth the Country Party threw off the fictional covering that the king's ministers were the evil doers and that Charles was merely an innocent dupe of their policies. It is the author's opinion that they had come to the realization with the dissolution of the late Parliament that it was his opposition which had thus far forestalled their policies and ambitions. Taking this fact into consideration they then must have set their plans accordingly.

154 Anthony Ashley Cooper, A Speech Made by a Peer of the Realm (London: By the Author, 1681).
While persons like the Earl of Sunderland and the Duchess of Portsmouth continued to hold to the idea that Charles could be brought around to accept the idea of exclusion, the great majority of the opposition members realized the fact that Charles would never accept such a policy unless it was presented to him as a fait accompli.

During the meetings of the Parliament of 1680 many members of the Court Party had crossed over to the opposition benches to support the Exclusion Bill. Indeed it looked for a time as though the Court might be left without some of its heretofore staunch backers. One reason for this changing of sides was the fear on the part of the Court members that they might find themselves on the losing side like their fathers before them. While the Court members of 1680 were indeed the sons of the Court members of 1640, they still recalled the effects of being on the wrong side, and were

155 Grey, Debates of the House of Commons, 1667-1694, VIII, 375.
not willing to experience that sad state again. They also believed that if exclusion were defeated in this Parliament they would have plenty of time in the next one to return to their own side of the fence. In contrast to the Court the Country members were slow to cross over to the king's side. Since everything seemed to point to a forthcoming victory for the Country Party those members who did cross over did so because they honestly felt that exclusion would bring ruin and civil strife upon the nation. The dissolution, however, caused many of the leading opposition members to trim their political views not out of honesty, but rather to avoid political death in the coming future. The leader among these Country trimmers was Sacheverel. He who was the most violent proponent of exclusion in 1679 and again in 1680 suddenly became mute in 1681. Early he realized that the future of the exclusion movement in 1680 might very well lead to
a persecution of the Country Party after the meeting of the next Parliament. Thus it came to pass that he was able to save himself from the persecution in 1681 by pointing to the fact that he had seen the error of his ways, and had not fought for exclusion in the Oxford Parliament. 156

With the coming of the elections for the Oxford Parliament the Country Party under the leadership of the Earl of Shaftesbury introduced a new weapon into political campaigning—a weapon centered in an appeal to the people. Direct appeal to the public for support had first been tried in the petitioning movement that the Country Party had precipitated before the meeting of Parliament in 1680, and it had proved very successful. 157 It was therefore decided that this method should be employed in the forthcoming elections in order to insure a Country majority in the House of Commons. No method used to influence

156 Ibid.
the public mind was left untried in the ensuing political campaign. Writers were put to work by the opposition in order that the reading public might be informed about the issues of the day as they saw them, and how the party intended to resolve them. One writer dedicated his work to the people of London, whom he called upon to make a good choice of candidates like they had in the previous parliamentary elections. The city of London was used as a shining example over and over again by the various opposition writers. Each time they pointed out how the good citizens of London were ever on guard against the encroaching power of the king. How were the citizens best able to guard themselves from this danger? According to the writers the people had only to elect good honest Country Party members to the various offices of importance in their area.

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158 *An Address to the Honorable City of London* (London: By the author, 1681).

159 *The Certain Way to Save England not only now but in Future Ages by a Prudent Choice of Members* (London: By the author, 1681).

160 Ibid.

161 Ibid.
The real strength of the Country Party lay with the small merchants, tradesmen, and with the allegedly mean classes. They could depend upon votes of the latter even though they were not entitled to vote, for the party sheriffs had a habit of not inquiring into the qualifications of those persons who backed the Country candidates. In the city of London the opposition was well organized and well led, and it was only too evident to the Court Party that any victory here was well nigh impossible. Trying to break this control of the city Charles issued an order calling for the full execution of the Corporation Acts. Since the opposition controlled the majority of seats on the Common Council, they refused to allow the king's order to be read before the Council. On election day all London opposition members were returned to office by a unanimous vote. Worcestershire the Court faction lost while at Yorkshire they also were unable to prevail against Fairfax and Clifford.
In Norfolk the opposition carried the entire County, and in Kent they found no opposition whatsoever. At Oxford those who depended upon the University for their living were warned not to vote for the Country Party candidates, but in the city Whorwood won the election due to his opponent's help. The Court candidate went so far as to create several hundred new freemen in order to insure his own election, but the newly created freemen voted for the Country Party candidate instead.162

The Court did manage to capture the former Country Party seats at Westminster and Norwich. As the day of the meeting of the new Parliament neared it was only too evident that the opposition had again secured a clear cut majority of the seats in the House of Commons. While Shaftesbury often intervened in the elections in favor of certain candidates, his interventions were not always successful. In Shaftesbury Borough, Downton,

Christchurch and Oxfordshire the backing of the earl did little to help his party's position since his candidates lost the election. 163

With the elections all but over the members of the opposition party began to think about how they would act during the coming parliamentary sessions. In answer to these thoughts Shaftesbury drew up a set of instructions for the new members of Parliament. He called upon them to do the following things: 1) insist on the complete exclusion of the Duke of York by name, and all other popish successors to the throne; 2) obtain an agreement about the powers of the king to call, prorogue and dissolve Parliament, and the right of the nation to have an annual Parliament; 3) obtain the restoration of the liberty that citizens had till 1641 of being free from guards and mercenary soldiers; and 4) remain in session until the members had completely provided against the incursion of popery on the nation's liberties. 164


appearance of this set of instructions a new idea in popular control of those elected to office arose. Many other sets of instructions were issued by the various leaders of the Country Party, but of all of them Shaftesbury's were by far the best. Even the Court issued sets of instructions to their members in imitation of those issued by the earl. The great importance of his work is to be found not so much in those items already stated, but rather in the last line where he warned the members not to issue any funds to the king or government until the aforesaid items were an accomplished fact. As was mentioned above other instructions were issued, usually on the county or local level. These instructions very often called upon the local member to obtain certain items which were of importance to the particular locality. Some of these instructions called for the formation of Protestant associations, like those of Elizabeth's

\[165\textit{Ibid.}, p. 258.\]
time, to protect the nation against the threat of Catholicism. Others demanded that the famous 35 Eliz. and Corporation Acts should be repealed. Those opposition members who lived in the vicinity of the Marches called for the abolishment of the court of the Marches at Ludlow. As one studies these instructions over and over again the general cry to take care of the navy, the main defense of the nation, becomes more and more evident. Though the Court readily copied this method of popular demand they lost no time in condemning it as traitorous to the best interest of the nation. Perhaps it is only right that the Court should have taken this stand, for before long the Country Party began to use the instructions to justify their call for exclusion. 166

A new and unexpected event presented itself for the Country Party's use during the interval between the two Parliaments. This event was

166Grey, Debates of the House of Commons, 1667-1694, VIII, 309.
centered in the activities of one Edward Fitzharris. From all appearances the Fitzharris case seemed to present the opposition with enough new material to keep the forthcoming Parliament alive even though the king might wish otherwise.

Edward Fitzharris was a member of an Irish Catholic family of some standing in the past. Of late the family had come upon bad times, and in order to recover the lost fortune he turned to the profession of political intrigue. At this time in history this was one of the leading professions among the poorer members of the aristocracy, for it held out the greatest advantages for political advancement and personal enrichment. However, in order to be successful in this profession one had to be very adept in the field of political maneuvering, and unfortunately Fitzharris was not. His many blunders finally resulted in his being brought before the leading opposition magistrate, Sir William Waller, where it was discovered that he had in his possession a clearly libelous writing
called the True Englishman. The contents of this work was a libel on the members and position of the Country Party. Its discovery on the person of Fitzharris led to mass indignation among the opposition party members. They looked upon the affair as another attempt at a new Meal Tub Plot. Only this time it would be tried at Oxford, where the king's guards could be used by the ministers to arrest the leaders of the opposition on the grounds of treason and inciting the population. The position of Fitzharris in this case was quite clear to them; he had been employed by the Court to plant this document on the person of the leading members of the opposition. Now as far as they could see there remained only one thing to do, and that was to obtain the services of Fitzharris through promises of protection. Since he had failed in his job it was more than evident that he had outlived his usefulness to the Court, and an offer of protection would be well received by him at this time. The opposition found that he
was only too willing to cooperate with them in return for the prize the offered. In order to show his good faith to them he even went so far as to accuse the Earl of Danby of the murder of Sir Edmund Berry Godfrey. Taking all things into consideration the opposition looked for a chance to bring this case before the Parliament. If they could do this, then with one stroke they would ruin both the standing of the Court and enhance their own public standing. In order to bring the case before the public eye it would be necessary to secure the impeachment of Fitzharris in Parliament. Learning of the plans of the Country Party concerning the use of Fitzharris, the Court became determined to forestall another Dangerfield affair. To do this there was only one way left open; Edward Fitzharris must not be allowed to live. The members of the opposition chose to use parliamentary impeachment in order to keep the case out of the King's Court, where they would be unable
to control it. At this point of the game Charles moved quickly, for he had Fitzharris moved from Newgate prison to the Tower where he could be guarded more closely, and where the opposition would have little chance to question him without his approval. 167

The plea for impeachment was sent to the House of Lords by the Commons, but the Court majority refused even to hear the plea. The Lords replied that they could impeach no one who was not a member of their own chamber. 168 While Shaftesbury and some of his colleagues in the upper chamber held that the House of Lords should hear the impeachment proceedings against Fitzharris, they were unable to convince the majority. 169 With this last act the intriguer lost all of his importance to the Country Party's cause. His barrister, who was a member of the Country Party, was arrested, and the judge who started the whole affair, Sir William Waller, was forced to testify

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167 Jones, The First Whigs, pp. 174-76.
168 Lords' Journal, XIII, 754. (Refer to n.15)
169 Ibid., p. 755.
in the court action against him. The Attorney-General took the case directly to the Court of the King's Bench, thereby passing over the Westminster grand jury, which was packed with members of the Country Party. The judges expressed their opinion that the voting of an impeachment was no bar to bringing the case to trial in the courts of law. Therefore Edward Fitzharris was brought to trial and found guilty as charged. Soon after, the sentence of death was carried out.

The Oxford Parliament began its sessions on March 21, 1681 at the city of Oxford, within the confines of the University of Oxford. The House of Commons met in the School of Examinations while the Lords sat in Convocation House. Charles addressed the two houses assembled in Convocation House on the first day of the assembly. He pointed out to them that his policy had been conciliatory while that of the Country Party had been more than questionable. It was further pointed out by the
king that he had great respect for the laws of the land. With the uttering of the hope that the assembled members would have a like respect for the law and for order Charles retired from the House. The Commons retired to its meeting place, and there set about its business. The first order of the day called for the complete publication of the votes and debates of the Oxford Parliament. Though we are indebted to them for this move we should not think that they did it for the benefit of future generations. Their sole purpose in printing the debates and votes was one of political propaganda. Indeed Secretary Jenkins described this move as an appeal to the general public, and one that should not be approved of.

As the members again began to bring up the question of exclusion, members of the Court faction introduced the idea of a regency as a stopgap measure. This idea of banishing the Duke of

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170 Grey, Debates of the House of Commons, 1667-1694, VIII, 291.
171 Ibid., p. 310.
172 Ibid., pp. 317-20.
York and setting up a regency in his stead was not new. While the idea of a regency was discussed in the Commons it never received the support of the majority. The members of Parliament realized from the past history of England the dangers that such a system held. All too often in the past regencies had brought civil strife to the nation, instead of keeping peace. Despite the fact that the Commons showed no favor for the regency idea Charles had his ministers introduce a proposal which included this unpopular alternative. The king's plan called for five things: 1) the banishment of James for life; 2) the Princess of Orange was to become the regent at the death of Charles, and failing her or her issue the Princess Anne; 3) the princesses should only hold the regency as long as his son, provided that he had one, was in his minority, and was being educated a Protestant; 4) the regent should nominate members of the Privy Council with parliamentary approval; and 5) the

173 *Commons' Journal*, IX, 711. (Refer to n.20)
regent would govern in the name of James, but it would be a capital offense for any to take up arms on his behalf. Needless to say this plan met with immediate objections from the opposition. Many members contended, and rightly so, that if James were to be left with the title of king, he would then in theory still have the power that went with the title. It would be treason not to follow his orders. It was further pointed out that under the present system of monarchy in England, once James received the title he would have the power to undo all that was now done. From all appearances Charles had no intention of allowing this plan to go into effect, for he had by-passed many more agreeable limitations: Rather, his intention was to forestall exclusion by putting forth alternatives which would show the people that he was really trying to cooperate with the Parliament. Shaftesbury looked upon the proposed plan as not only unworkable, but also as

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one that laid false hopes at the door of the Commons. The opposition leader pointed out that only the appointment of the Duke of Monmouth as Charles' successor could put an end to the present impasse. The author wonders if the regency plan might well have been accepted if the Duke of Monmouth had been appointed the regent instead of James' daughters. However, the question still remains would the Earl of Shaftesbury have accepted such an alternative? Despite the fact that this question really seems quite inconsequential it should be remembered that Shaftesbury as the head of the Country Party still was the deciding voice in party affairs. From all of the evidence thus far gathered it is inconceivable that the earl would have settled for anything less then the crown for the Duke of Monmouth.

Charles, while attending one of the meetings of the House of Lords, was confronted by the Earl of Shaftesbury. The opposition leaders were in the middle of a debate when he pointed out to the
king that all he need do was to recognize the legitimate claims of his natural son, and all would be made right again.\textsuperscript{176} When Charles protested that his stand was based upon the law, the earl retorted that if the king's conscience was tender he need only tell the Lords and Commons, and they would make the law fit the case.\textsuperscript{177} At this point in their conversation Charles turned upon Shaftesbury and pointed out that he would not be bullied in this matter, for he had law, reason and church on his side.\textsuperscript{178} From this point on further hope in the Oxford Parliament's ability to settle outstanding problems of the day was lost.

The third exclusion movement was finally introduced into the House of Commons, and Charles decided to put an end to this affair once and for all. He directed that his robes of state be placed in a sedan chair, and thence transported to the Convocation House. The Usher of the Black Rod was

\begin{footnotes}
\item[177] Ibid.
\item[178] Ibid.
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sent to summon the Commons to meet with the Lords. The knock of the Black Rod shook the Commons, for they had not thought that Charles would dare to prorogue or dissolve the Parliament. Arriving at Convocation House the Commons found the king sitting on the throne in his robes of state. He at once directed the Chancellor to read the notification of dissolution, and with the reading the Oxford Parliament came to an end. Thus ended the fourth and last Parliament of the reign of Charles II. Shaftesbury's constitutionalism would have to wait for another nine years before it would begin to blossom forth, and almost two full centuries would pass before the tree of constitutionalism would bear true fruit.
CHAPTER VI

A STATEMENT AT THE END OF AN ERA

With the dissolution of the Oxford Parliament in March, 1681 the period of constitutional debate concerning the powers of the House of Commons versus those of the king came to a standstill. Shortly a royalist reaction took hold of the English nation. For the first time since 1678 the Court Party found itself in control of the government and the nation. In April, 1681 Charles began the reaction with the issuance of a document explaining the reasons for the dissolution of the late Parliaments. In itself this document was a rather unassuming piece of political propaganda, but the magnitude of its effect upon the ears of the public was tremendous. In it Charles pointed out how the Parliament had neglected the state of the nation while in the act of trying to seize
royal powers. He further charged the members of the Commons with bad faith in their dealings with the king on the issues of the day. In a rather calm type of anger Charles expressed his displeasure at the threats made against those persons who dared to lend their royal sovereign money with which to meet the needs of government. The events of the Fitzharris case were recited at length, and Charles accused the Commons of interfering in this case with the purpose of thwarting justice.

A short time after the appearance of this document the Earl of Shaftesbury was arrested on a warrant of treason and confined in the Tower. The indictment was brought before a London jury, where it was quickly thrown out by the Country Party sheriff and jury members. In order to forestall further efforts to put him out of the way Shaftesbury fled with his secretary to the

179 Charles Stuart, "His Majesty's Declaration to all His Loving Subjects, Touching the Causes and Reasons that Moved Him to Dissolve the Last Two Parliaments," English Historical Documents, ed. Andrew Browning, VIII, 185.
180 Ibid.
181 Ibid., p. 186
182 Ibid., p. 188.
Netherlands. There under the protection of William of Orange he remained till his death three years later in 1683. The Earl of Essex, Lord Russell and the aristocratic republican, Algernon Sidney, were also seized at the time Shaftesbury was arrested. Essex in a fit of despair committed suicide before his case came to trial. Both Russell and Sidney were tried on the charge of treason, and found guilty. As a result they forfeited their lives to the cause of constitutional control.

The city of London paid a high price for letting the Earl of Shaftesbury escape the king's justice. Charles demanded it along with other major Country Party urban centers to surrender their charters for revision according to the codes set up by Clarendon. No longer would the "merry monarch" tolerate the dissenters' control of urban political affairs. The wholesale revision of urban charters resulted in an electorate controlled by the Court faction. The author feels that most likely the king looked forward to the day when he would have to call another Parliament to settle
the issues of the nation, but this day never came for him because he died in 1685 without ever having issued the call. From research made it is the writer's belief that the duties of governing England during the period from 1681 to 1685 were no less difficult than the preceding years. When the Oxford Parliament was dissolved Charles turned again to Louis XIV for the funds he needed to run the government and the Court. To James fell the duty of calling the reformed Parliament, which had been purified of its Country Party elements by the reforms issued by Charles. It is the author's further judgement that it soon became evident that Charles had not done such a bad job of rooting out the Country Party, for the new Parliament was made up of a majority of Court and Anglican Church backers.

The author feels that the period of the exclusion crisis brought into the field of English politics several new and somewhat revolutionary ideas. First and foremost the idea that the powers of the monarch should be limited in line with the
wants and desires of the voting public was certainly a daring innovation in the field of political theory, and secondly the idea that the Parliament should have the right to name the royal successor if it deemed the heir apparent either unworthy or unfit to inherit the crown had no parallel in English political history. To the student of history it is rather satisfactory to note that both of these political theories bore fruit before long. Indeed the second idea became a reality in 1689 when the Parliament placed the crown upon the head of William of Orange, and when it appointed the House of Hanover as the rightful successor to Queen Anne. The first theory took longer to develop fully, but nevertheless it did develop. Thus it is only fair to say that from these ideas of the exclusion crisis developed the significant constitutional changes of the seventeenth and eighteenth centuries.

Taking then a retrospective view of the Exclusion Period in English constitutional history it must be remembered that this movement was transcended by the broader idea of constitutional
reform. The beginnings of this particular constitutional period are to be seen in the formation of two political parties of diverse interest in the sphere of political thinking. The Country Party under the guidance of the Earl of Shaftesbury centered its political stand around the ideas of royal limitations and the exclusion of the Duke of York from the English throne. On the other hand the Court Party led by Charles II strove for a closer union of church and state and broader political powers for the throne. When we view these two parties it must be remembered that they cannot be compared to the modern political party, for they lacked that perfect cohesion which is necessary for working unity. The methods employed by Shaftesbury to sell the general public on the goodness of his party's political views were both novel and successful. As was pointed out in the preceding pages this was the first time that the public was consulted on matters politic by the national leaders.
In the long run the battle between two political ideas developed into a battle between two political leaders. Shaftesbury felt that he knew the character of the king so well that it would be unnecessary to take his power into consideration. For according to the earl he was controlled by his ministers, and thus he who controlled the king controlled the government. Not until the Oxford Parliament did he realize that his political antagonist was and had been all along Charles II. By this time it was too late to reverse his carefully laid strategy, and thus he was forced to contribute still further to his own downfall. Unlike William Christie in his Life of Shaftesbury we cannot hold with the idea that the earl was either right in everything he did or perfect. Indeed he was no different than any other man, for he had his weaknesses and his failings. Perhaps his greatest failing was his over-confident manner in the field of political affairs. Far too
often he underestimated his opponents and their ability to work political wonders.

The historian must give credit to Shaftesbury in the field of constitutional development in English history. Perhaps it was his close association with the republican philosopher, John Locke, that inspired him with many of his constitutional ideas. Regardless of what it was that inspired him they are there in his writings and in his speeches, and they cannot be denied. Good and evil often dwells within a man at the same time, and thus it is that the good cannot be undone by the evil. In using the Popish Plot he was merely establishing a policy that nearly every politician since his day has followed. How many times in our own history have politicians backed political, religious, or racial persecutions in order to further supposed or real constitutional developments? Indeed our history will show that it has been done more often than we are willing to admit.
In his fight for the exclusion of James, Duke of York, Shaftesbury was fighting not so much against the man as he was against a whole political royal house. Certainly it was not James who was feared, for he was both honest and likable. Rather it was the political doctrines that James and his family held, for they brought nearly a century of confusion and political upheaval to the English nation. Thus Shaftesbury and the Country Party leaders considered it necessary to rid the nation of a man who would if at all possible carry out the terrible plots of his ancestors to overthrow the rights of Englishmen. Therefore it seemed only right and natural that the political leaders of the English people should try to keep off the throne a person whom they considered to be dangerous to the freedom of the nation.

After sifting through the hundreds of documents and literary pieces of the period, the writer has drawn the following conclusions on his own. They are: 1) the Earl of Shaftesbury made
his political power felt throughout the length and breadth of the English kingdom; 2) he introduced some revolutionary means of propaganda into English political life; 3) the events of this confused period tended to open the eyes of most of the educated classes to a new political enlightenment; and 4) it planted within the minds of the politically educated the idea that the power of the mind and argumentation could be more useful and successful than bloodshed and revolution in obtaining national ends.
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The thesis submitted by F. Edward Higgins has been read and approved by three members of the Department of History.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the Degree of Master of Arts.

March 3, 1964
Date

Signature of Adviser