

A Welsh Lawyer In Six Reigns: Robert Price (1655–1733)

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Robert Price lived through six reigns and the most turbulent period in our history. When he was born, the country was still a republic following the Civil War; it witnessed a monarchical restoration in 1660, followed by a revolution in 1688, and a change of dynasty in 1714. Wales saw the abolition of the Court and Council in the Marches in 1689, thus drawing Wales ever closer to England, though its legal separateness was preserved in the form of the Court of Great Session down to 1830. It was consequently a period of constant change which required adjustment on the part of most people, none more so than lawyers, because of the close relationship between the law and government. For a lawyer to be able to practise his profession it became necessary to assume the mantle of the Vicar of Bray (who famously claimed he would retain his ecclesiastical office no matter which king was on the throne) or else face proscription.

In the seventeenth century, the Church and the Law were virtually the only professions open to an able and ambitious man, and the second was more difficult of entry than the first. From the number of Welshmen who entered the Law at this period, it appears that poverty was not in itself an obstacle, though most lawyers were drawn from what we would now call the middle class. Some attained great eminence in the service of the state in government, with north-east Wales providing several luminaries during the late Stuart period. One might note Lord Chancellor George Jeffreys, Sir John Trevor, Speaker and Master of the Rolls, and Sir William Williams, Speaker and Solicitor-General, and their careers are well-recorded. Of lesser eminence were a host of practitioners of the law about whose careers we know very little, their careers not having attracted Welsh legal historians despite Rees R. Lloyd's seminal work published in these *Transactions* in 1937 and 1938. This paper is an attempt to contribute some knowledge about one such lawyer, whose career is well-enough recorded to give us a fairly rounded account of him as a member of the profession.

1

It is pertinent to ask first of all why Robert Price chose the law as a career. W. R. Prest, in discussing career choices, notes that young men who were brought up by widowed mothers, as Robert Price was, were often left to choose their own.¹ Price's father had died in 1668 when he was thirteen years old. His mother, Margaret, was a formidable woman who was left to bring up a family of three boys and five girls, Robert being the first born. She managed the estate competently, paid for Robert's education, set the two younger boys to apprenticeships in London, married off

1 W. R. Prest, *The Rise of the Barristers, a Social History of the English Bar, 1590–1640* (Oxford, 1986), p. 131.

her five daughters to local gentry, and lived to the age of eighty-nine, dying in 1723. Robert Price, ever mindful of his family's welfare, showed his filial piety by erecting in the Giler chapel of their local church at Cerrigydrudion a monument to his mother's memory, which also recounts in marble the family's whole history. After 1668, Robert was, nominally at least, the head of the family.

Prest again regards family influence as the most important factor in the choice of career. In Robert Price's case, the family on his mother's side could name one eminent lawyer, Sir Richard Lloyd of Esclus, Denbighshire, who had held the office of Attorney-General of North Wales, and was during Robert's youth MP for Radnorshire and judge on the south-east circuit of the Court of Great Sessions. It was he who had opposed the abolition of the Court and Council in the Marches in 1641, had been instrumental in its revival at the Restoration in 1660, and was yet to come to its defence in 1689. It was naturally to him, therefore, that Robert's mother turned for advice. There is much talk nowadays of the value of role models, and no county in Wales was better-stocked with them than Denbighshire. Prest's survey of the geographical distribution of entrants to the Bar and the Bench of the Inns of Court for the period 1590–1640 finds that almost one-third of Welsh entrants came from the two north-east counties of Denbigh and Flint.² There is no evidence of any abatement in the post-Restoration period, which witnessed the rise of some legal luminaries from this area who came into prominence in law and government under the late Stuarts. George Jeffreys of Aston, Wrexham, became the youngest-ever Lord Chancellor. The Bryncunallt branch of the Trevor family produced in Sir John Trevor a Speaker of the House of Commons and Master of the Rolls, whilst the Trefalun branch produced an Attorney-General in Sir Thomas Trevor and a Secretary of State in Sir John Trevor. Sir William Williams, though he hailed from Anglesey, had set himself up as a Denbighshire landowner at Glascoed, becoming Speaker of the House of Commons and Solicitor-General under King James II. A quick scan of known Welsh members of the Inns of Court in the late Stuart period indicates at least fifteen gentry families from these two counties who entered the law, many of them Robert Price's contemporaries. If the survey was extended to include persons from yeomen stock or professional families, the number would be considerably enlarged. So, there was good reason why Robert Price should set his cap in that direction as well.

One then had to weigh up the prospects of being able to stay the course leading to a successful legal career. Here, character counted, and Robert Price had an indomitable will, fortified by his mother's confidence and encouragement. There was also family pride in its ancestry, since his family on his father's side was descended from the parental house of Plas Iolyn which, through Dr Ellis Price, had gained pre-eminence in north Wales during four Tudor reigns. In the seventeenth century, the Giler Prices had entered into the county's official class, Robert's great-grandfather, Thomas, nurturing political aspirations when he sought the sponsorship of the Wynns of Gwydir to challenge the hegemony of the Myddeltons of Chirk in the county representation in 1661, but it was an abortive effort. This aspiration vanished with Thomas's early death, and in the Denbighshire election of

2 Ibid., Appendix G, pp. 412–13.

1675 young Robert, then about twenty years of age, would have been flattered by Sir Thomas Myddelton's instructions to his agents to have regard for 'young Mr. Price of Giler'. Robert Price's biographer, Edmund Curll, felt justified in describing him as of 'an ancient family of good repute and substance'.³

Of substance there could not have been much since Giler was but a modest estate, the parent estate of Plas Iolyn having been morcellated between four offshoots in the neighbourhood. The death of his father and grandfather whilst he was still a minor projected Robert to the head of the family and a landed estate which entitled him to the title of 'esquire', so that at no time could he be reviled as a parvenu. Jane Austen aptly commented that 'with property [one would] not be a contemptible man – good freehold property'.⁴ What allowance his mother was able to give him is unknown but it was reckoned that, by 1700, £200 a year was necessary to cover all costs of a legal education, thus making a complete law course cost over £1,000, depending, of course, on the life-style of the student. Though he had social aspirations, Robert Price was always frugal, and never complained of his circumstances. The fact that students even from a yeoman farmer background like Sir Leoline Jenkins of Llantrisant could successfully complete a law course indicates that it was within the modest capacity of someone like Robert Price. George Jeffreys was said to have had an allowance of £40 a year as a student from a somewhat more affluent family, but such was Margaret Price's ambition for her son that she did not stint him, and placed most of the proceeds of the estate at his disposal. That the Price family had rightly calculated the outlay and their ability to meet it is proven by Robert Price's successful conclusion of his course.

2

It may safely be inferred that, as a boy, Robert Price was a monoglot Welsh speaker and so, to start his education, he needed to learn English and its grammar. Before he attended any school, he was probably taught locally by a clergyman or his curate before proceeding to a grammar school. The choice of Wrexham grammar school is problematical, since Ruthin was nearer to his home. Curll, Price's biographer, testifies that it was to Wrexham that he first went, and this is confirmed by two reliable local historians, A. N. Palmer and Charles Dodd.⁵ Wrexham possibly still basked in the afterglow of its golden period under some schoolmasters ejected from Shrewsbury grammar school during the Interregnum, but had since declined. Its curriculum certainly fell far short of the classical model offered by Ruthin on the model of Westminster school. Robert seems to have completed the three-year course at Shrewsbury which would give him a firm grasp of the classics. Shrewsbury boys often preferred Cambridge to Oxford, and two of his near-contemporaries there were the Powys boys, Thomas and Lyttelton, of Welsh descent, but from

3 Edmund Curll, *The Life of the Honourable Robert Price, One of the Justices of His Majesty's Court of Common Pleas* (London, 1734), p. 1.

4 Jane Austen, *Persuasion* (1818).

5 A. N. Palmer, *The History of the Town of Wrexham* (Wrexham, 1893); C. Dodd, *Wrexham Schools and Scholars* (Wrexham, 1924).

Shropshire, with whom he kept up a lifelong contact. The entry ‘bred at Ruthin’ in the registers of St John’s College, Cambridge, might indicate that Robert had attended there long enough to qualify for a scholarship which it offered, together with Friars School, Bangor, to boys from Denbighshire and Caernarfonshire to enter that college, but there is no confirmation of this.⁶

Robert Price entered St John’s College, the Cambridge college most favoured by Welsh boys, as a pensioner in March 1672, by which time he was eighteen years old, a riper age than that of many entrants then. His social aspirations soon became evident since, in the following September, he was advanced to the rank of ‘fellow Commoner’. He stayed only a year at Cambridge, and left for the Inns of Court without taking a degree. This was a common practice among lawyers since Common Law was not taught at Cambridge. This invites the question of what advantage there was in going there in the first place. He would have been able to perfect his knowledge of Latin there, which would be useful later in reading writs and statutes, and he could have acquired a knowledge of French, in which language pleadings in court were cast. For addressing a jury in court, a command of logic and rhetoric would not be misplaced either. The traditional connection between law and learning was still alive at this time, and there was a greater atmosphere of cultural pursuits at the universities than at the Inns of Court. The tutorial system at Cambridge also provided a valuable training when it came to private study, since the Inns of Court did not provide such teaching, and a student there was thrown upon his own efforts.

Robert Price entered Lincoln’s Inn in May 1673 when he was about twenty years old, the Inn being one of the two most favoured by Welshmen.⁷ By that time, the great increase in admission numbers which had followed the Restoration was beginning to decline. The Inns still endeavoured to keep up the fiction of being schools for the gentry, though many students were not destined for the law as a career and merely used the Inns as social clubs where they were able to make useful social connections.⁸ The fact that Price had a sufficient landed estate to be entitled ‘esquire’ was a great social advantage, as this class of students, though declining, was still the most numerous. As yet, there were no obvious signs of ‘a flight from the law’ among the upper classes.⁹ He was also an eldest son, and they still comprised some sixty-five per cent of the intake of Lincoln’s Inn down to the 1690s, outnumbering younger sons. Around fifty per cent of esquires had received some university education, though few had taken a degree, but this was already considered an asset for entry into government and the court. Thus Robert Price fitted into the elite of the Inn, and fully realized its advantages.¹⁰

6 T. G. Watkin, *The Legal History of Wales* (Cardiff, 2007), p. 138.

7 *Ibid.*, p. 139.

8 D. Lemmings, ‘The Student Body of the Inns of Court under the late Stuarts’, *Bulletin of the Institute of Historical Research* 58 (1985), p. 149ff; Prest, *Rise of the Barristers*, p. 131.

9 P. Lucas, ‘Blackstone and the Reform of the Legal Profession’, *English Historical Review* 77 (1962), p. 465; P. Lucas, ‘A Collective Biography of Students and Barristers of Lincoln’s Inn, 1680–1804’, *Journal of Modern History* 46 (1974); D. Duman, ‘The English Bar in the Georgian Era’, in W. R. Prest (ed.), *Lawyers in Early Modern Europe* (London, 1981), p. 86.

10 Lemmings, ‘Student Body of the Inns of Court’, p. 162; C. W. Brooke, ‘The Common Lawyers in England, 1588–1642’, in Prest (ed.), *Lawyers in Early Modern Europe*, p. 54.

Education at the Inns of Court was undergoing a period of transition when Robert Price entered, as formal teaching was already in decline. Readings (instruction delivered by experienced lawyers) were no longer held regularly and came to an end at Lincoln's Inn in 1677 due to opposition from senior members who resented the trouble and the loss of income they caused. The expense of the feasts which accompanied them was also resented and led to their abandonment. All attempts to revive the readings proved abortive, a number of barristers choosing to pay a fine of £100 rather than read.¹¹ Moots, in which inner and outer barristers disputed, were also abandoned, though informal discussion continued among students following the Earl of Nottingham's precept, 'Study all morning, talk all afternoon.'¹² A serious student would also spend much time attending courts at Westminster Hall, especially Common Pleas. Students were thus thrown upon their own resources, oral learning yielding place to books. Publication of law books in English was on the increase, and came nearer to the aim of 'common learning' than the moots and readings had ever achieved.¹³ Lincoln's Inn had also the best library of the four Inns where students could study.

The fortunate survival of Robert Price's commonplace book in the library of St John's College, Oxford, sheds a great deal of light upon his own, and possibly that of others, method of study.¹⁴ It is a rare document in the form of two old-fashioned ledgers, consisting of 525 and 518 pages respectively, though many pages are blank, waiting to be filled as Price's studies progressed. The two volumes were bought for £1.6s.0d we are told on page I. The first entry is a well-known aphorism about the regimen he should follow:

To sleep six hours, allot to the Law twice three,
Four to your prayers, two to your feasts may be,
And what remains to ye Muse Divine.

The compilation starts on 10 April 1676, which would be at the start of Price's fourth year, by which time he would have mastered the forms of writs and pleadings and was familiar with the terms and abbreviations. The pages in each volume are separately numbered. Price indicates his method in laying out the work as 'a Common Place Book of ye Law, alphabetically digested, where under Proper Titles are couched most of the useful and intricate cases of ye Bookes / Le Table / and thence directed to ye place'. The first page in the first volume is divided into two columns, the left-hand one headed 'Books cited for Antiquity and discovered of'. The works cited are mainly medieval texts like *Modus Tenenti Parliamenti*, an authority on parliamentary procedure, more of historical interest than of use to a modern lawyer. Glanvil's *Institutes* was a twelfth-century Latin work which had

- 11 *Records of the Honourable Society of Lincoln's Inn: The Black Books, vol 3: 1660-1775* (Lincoln's Inn, 1899), pp. xi-xiv, p. 59.
- 12 Roger North, *Lives of the Norths* (London, 1890), vol. 1, p. 21; L. G. Schwoerer, 'Roger North and his Notes on Legal Education', *Huntingdon Library Quarterly*, 22 (1959), p. 340.
- 13 H. Baker, 'The Inns of Court and Legal Doctrine', in T. M. Charles-Edwards et al. (eds), *Lawyers and Laymen* (Cardiff, 1986), p. 282.
- 14 St. John's College, Oxford, MSS 308, 309, cited by kind permission of the Librarian.

the reputation of being the first classical text book of English law, dealing mainly with land law and procedure. Two entries are headed ‘Black Book Exckeq[ner] s’, which relates to feudal tenures, and ‘Black Book of ye Admiralty’, relating to maritime law.¹⁵

The right-hand column is headed ‘The names of ye Bookes, there language and edition or Impression’, under which eight titles appear. These works were the tools of the trade of a contemporary lawyer, unlike the antiquarian works. First mentioned and of foremost importance was [Sir Anthony] Fitzherbert’s *Novell Natura Brevium* (French, 1567), a collection of, and commentary upon, writs.¹⁶ Coke described it as ‘the most necessary and of greatest authority and excellence’, and Mathew Hale recommended it as the starting point for any student. It was a companion to *Novae Narrationes*, a sixteenth-century French text which Price included among his works of antiquity and which deals with pleadings. The second entry, [*Vetus*] *Natura Brevium* (French, 1566), also deals with writs, but it is an obscure title. The third work is *Registrum Omnia Breviatum Orignialia* (Latin, 1553), a practical register of writs compiled by Glanvil.

Entries 5 to 8 inclusive relate to Sir Edward Coke’s *Institutes*, regarded as the first attempt to make a complete exposition of English law.¹⁷ The first Institute is Coke upon Littleton, which is almost a phrase-by-phrase commentary on Littleton’s *Tenures*, relating to the Common Law on land tenure, published in 1628 and running to seven editions by 1670. Described by Coke as ‘a work of absolute perfection in his kind’, references to it by Price abound. The second part of the *Institutes* is described as ‘An Exposition upon the Statutes, English, 1642’; the third, ‘being of ye pleas of the Crown, English, 1648’, relates to the criminal law. The fourth part concerns ‘the Jurisdiction of ye Courts, English, 1648’, whilst the last entry in this column is ‘Animadversions on ye Cooke’s 4th Institute with Prynne’, 1668, which is unidentified. Whether this constitutes the whole of Price’s library, or whether it was typical of that of a contemporary student, cannot be determined, since there are so few records to compare with. Any additional needs he might have had were probably supplied by the library of his Inn.

Price’s book also tells us something about his method of working. He describes it on the first page as ‘A Commonplace Book’; page two is headed ‘Le Table des General Titles Conteneu en c’est livre’ (‘Table of General Titles Contained in this Book’), comprising an index, alphabetically arranged with page references, which occupies up to page seven of the book. The entries are under legal titles, mainly in law-French, such as ‘Abatement del Terre’, ‘Actions sur Case’, and so on: they are further analysed under sub-titles and references, with four sub-headings, for instance, for ‘warrant’.

After page seven, Price starts a fresh pagination for the alphabetically ordered titles at the head of each page. The pages are divided into columns, a narrow one on the left containing sub-headings of the entry at the head of the page, and the broad right-hand column containing the relevant authorities to them. ‘Actions sur

15 Watkin, *Legal History of Wales*, p. 84; P. H. Winfield, *The Chief Sources of English Legal History* (Cambridge, 1925), p. 256.

16 W. H. Holdsworth, *History of English Law*, vol. 2 (London, 1921), p. 522.

17 J. H. Baker, *An Introduction to English Legal History* (London, 1990), p. 208.

Case' runs from page 21 to page 126, but only five pages have entries, the intention clearly being to add to them in cumulative fashion. A whole page of entries relates to 'Age / Consent marry / pleinage pour consent mariage pour homme est 14, pour Femme 12 Inst. 2.90 / Cooke Litt 103–4'. A whole page of entries relates to 'Attaint and Attainder', reflecting the contemporary interest in the law of treason.

The second volume begins 'Le 2d Pars de mon Common Book de la ley Continue ad letter F', with the pagination starting afresh. Some of the entries might be indicative of Price's particular interests, as in the law of property where 'Forest, Parke or Chase' are heavily annotated. There are fifteen pages of entries under 'Prerogative le Roy'. On page 480 appears an entry under 'Wales' which signifies an early interest in the government of the Principality, on which subject he acquired a great expertise. Subjects mentioned are 'gavelkind', 'Courts Marches', 'Clause 34 Henry VIII, c-26' [i.e. the second Act of Union], judges' patents, customs of Wales and records. Surprisingly, the works of John Doddridge, George Owen and, more recently, Rice Vaughan on the government of Wales are not mentioned. Price's expertise in this field was to be drawn upon extensively after 1689 when the Court and Council in the Marches were abolished.

Publishers became quick to realize that there was a growing market for legal works, especially Reports, which had superseded Year Books compiled by judges and were difficult to access in manuscript. Robert Price acquired a great knowledge of precedents, and his frequent use of them was later to characterize his judgements. Price concluded his studies in 1677 after a little less than five years, the number of years stipulated having been reduced in 1672 from seven to five.¹⁸ He was called to the Bar in 1679, having spent the previous two years on the Grand Tour since he could not practise in the Westminster courts until two years had passed since he had been barred.

3

Robert Price set out on the Grand Tour in 1677 in the company of some noblemen, as his biographer Curll emphasizes. This gave him an opportunity to make social connections as well as to acquire the social graces which would later be useful in public life. It is estimated that a tour could cost anything from £500 to £1,000 according to one's mode of life and, while Price was always frugal, he would have felt constrained to keep abreast of his aristocratic companions. He spent some time in France, where he took the opportunity, at Blois, of brushing up his French. He then went on to Italy where he had the misfortune of being arrested on suspicion of having a Protestant Bible in his possession, which turned out to be none other than a copy of Coke's *Commentary* on Littleton which he had taken with him to keep up his legal studies. When the mistake was discovered, he made a present of the offending article to the Vatican library.¹⁹

He returned to England in the spring of 1679 prepared to enter upon his legal

18 *Lincoln's Inn, The Black Books*, vol. 3, p. iii; Lemmings, 'Student Body of the Inns of Court', p. 152.

19 Curll, *Life of the Honourable Robert Price*, p. 59.

career, and his first steps turned towards Ludlow, the seat of the Court and Council in the Marches. There he met Lucy, the daughter of a local barrister, Robert Rodd of Foxley, near Hereford, a member of Gray's Inn, though it is not known whether he practised as a barrister. Judging by the pace of events, Price's marriage on 23 September 1679 was most likely a wedding of convenience, since Lucy gave birth to a son in January 1680.

Lucy, with her two sisters, were co-heiresses to the Rodd estate, and the marriage brought with it a dowry of £13,000, which enabled Price two years later to buy out the two sisters' shares on their father's death. The family was listed by Blome as 'of the nobility and gentry of the county', and this admitted him to the ranks of county society, and a role in the civic affairs of the city of Hereford in which the Rodds had often figured.²⁰ Family connections also brought in legal business, and Foxley's proximity to Wales enabled Price to extend his activities in that direction, and especially to Ludlow. There he had the good fortune to come to the notice of the Lord President, the marquis of Worcester, and entered his service in the administration of his vast fief which included not only the whole of Wales but also the four adjoining English counties of Shropshire, Herefordshire, Worcestershire and Gloucestershire. Price was later to avow that 'it has been one of the greatest blessings of my life to be known to you and your countenance', and his subsequent career bore witness to this.²¹ It was not mere obsequiousness that attached Price to Lord Worcester (the Duke of Beaufort after 1682), since both saw eye to eye on most things; they were both Tories, upholders of the royal prerogative and the hereditary succession to the Crown. On only one matter could there have been some doubt – on their attitude to Roman Catholicism. Robert Price was a devout high churchman who regarded the security of the Anglican Church as sacrosanct, whilst the marquis was often accused by his Monmouthshire enemies of harbouring Catholics. But even on this point Price compromised sufficiently to support the succession of the Catholic James, Duke of York, to the throne on the death of his brother Charles II in 1685.

The Court of the Council in the Marches was serviced by a small group of 'counsellors at the Bar' under the Lord President's scrutiny, into which Price might have gained access. It is certain, however, that he became a member of the Council in 1686, thus following in the footsteps of his ancestor, Dr Ellis Price of Plas Iolyn. The Duke of Beaufort carried on a more personalized form of government than previous practice.²² For this, he needed trusty henchmen to cover his extensive fiefdom, and it conferred on him a vast field of patronage to bestow. That Robert Price was included in it says a great deal about the character of the man, since it had always been very difficult for a Welshman to enter the ranks of the élite in the Council where Ellis Price had been spurned as a mere 'mountain doctor'. Though Robert Price enjoyed the duke's favour, it is very doubtful whether he was elevated to the role of King's Counsel at Ludlow as Curll, probably following Duncumb,

20 Richard Blome, *Britannia* (London, 1673), 'Herefordshire'.

21 B. D. Henning, *The House of Commons, 1660–90* (London, 1983), vol. 3, p. 286.

22 Holdsworth, *History of English Law*, vol. 1, p. 127; Prest, *Rise of the Barristers*, p. 264.

suggests, and for which W. R. Williams finds no corroboration.²³ This was the highest legal office at Ludlow, for which age and experience hardly qualified Price as yet. It is more likely that he was one of the four to six legal counsellors who served the Council at this time.

The Court of the Council in the Marches had a concurrent jurisdiction with the Court of Great Session in Wales, and since the latter's sessions were held outside the English law terms, it was possible for a barrister to supplement his income by riding its circuits. Price practised in the south-east Wales circuit, convenient to his Foxley home, where he built a lucrative practice over eleven years, as he testified to Robert Harley later.

Price carried on the Rodd participation in the civic affairs of the city of Hereford, and here again he was of service to Lord Worcester and the Crown. After 1680, King Charles II, with Tory support in Parliament, had embarked upon a policy of subjugating town corporations to royal control and Price was his willing agent in Hereford. Here, the corporation had been under Whig control since 1660, led by the redoubtable Colonel John Birch, Price's enemy at Weobley. Their removal was the first objective before putting leading Tories into their place. The Tory leaders, Herbert Aubrey and William Gregory, succeeded in browbeating the corporation into surrendering the city's charter for a new one which granted the Crown powers of direct nomination to the council, which permitted the city to be brought under Tory control.²⁴ Worcester was appointed High Steward, acting through his deputy, Robert Price, who was admitted to the council along with three other Tories as aldermen.²⁵ In 1682, Price succeeded Thomas Geers, a local Tory barrister, as Recorder. It was only a part-time office, seldom worth more than £10 a year, but very useful to aggrandise his and Worcester's power, even though it alienated a number of his Whig grandee neighbours in the county.²⁶

It is unlikely that it was Beaufort's influence that secured him his appointment as Recorder of New Radnor in 1683, as much as local factors. The borough's only claim to importance was that it was a parliamentary constituency, made up of five contributory boroughs which local families sought to manipulate. Robert Price claimed kinship with one of the parties, Richard Williams of Caebalfa and, though he was inimical to his ally, Sir Rowland Gwynne, a leading Whig, he was not as yet disposed to favour their rivals, the Harleys of Brampton Bryan. So, in the 1689 election in the Radnor boroughs, Price was on the horns of a dilemma when Robert Harley sought his support, which he resolved by offering Harley his neutrality. Relations with the Harley family were to become warmer, especially after 1689 and the fall of the Duke of Beaufort from power, causing Robert Price to seek a new

23 J. Duncumb, *Collections towards the History and Antiquities of Hereford*, vol. 4 (London, 1844), p. 190; W. R. Williams, *The History of the Great Sessions, together with the Lives of the Welsh Judges* (Brecknock, 1899), p. 143.

24 J. Miller, 'The Crown and Borough Charters in the Reign of Charles II', *English Historical Review*, 100 (1985), p. 70.

25 Duncumb, *Collections*, vol. 1 (London, 1804), p. 360; Henning, *House of Commons, 1660-90*, vol. 3, p. 264.

26 Williams, *History of the Great Sessions*, p. 142; *Calendar of State Papers Domestic (CSPD)* hereafter), January-June 1683, p. 346.

patron and, in this, the recordership of New Radnor was a useful tool.²⁷

Beaufort's hand is unmistakable in Price's appointment as Attorney-General in Glamorgan in February 1684, to which was added the same office in the five other south Wales counties on the deaths of their incumbents.²⁸ Thus Beaufort was able to centralize power in one pair of hands which facilitated the imposition of his policy. This is evident in the way that Brecon's charter of incorporation was remodelled to subjugate it to royal control, and Robert Price appears as a willing tool in effecting this policy. His conduct evoked a critical comment from a witness who described Price as 'a clever, rather unprincipled placeman in the tradition of his ancestor Dr Ellis Price, and very partial to James II'.

In 1685, James, Duke of York, succeeded his brother Charles II on the throne, and this was also a turning point in Price's career. He was appointed steward to the dowager Queen Catherine of Braganza, which introduced him to court life, and made him even more of a committed placeman. It was undoubtedly Beaufort who had urged his credentials 'on account his sentiments being regarded as loyal enough', as Foss testified.²⁹ The post was not onerous, since Catherine's estate was modest, but it meant having to adjust to a Roman Catholic household, which put a strain upon Price's Anglican principles. It might have given the king grounds to believe that Price would be compliant towards his policy of removing Catholic disabilities later.

The towns of Bristol and Gloucester came within Beaufort's lieutenancy, and the Monmouth Rebellion of 1685 had shown their strategic importance. Since 1680, it had been royal policy to intrude country gentry (predominantly Whigs) into town corporations of Tories, who were anxious to show their loyalty to James II on his coronation.³⁰ Neither in Parliament nor in the boroughs, however, did the Tories prove compliant enough towards the king's policy of emancipating Catholics, since it might be a forerunner to restoring Catholicism as the state religion and proscribing Anglicanism. So James turned towards intruding Roman Catholics and Dissenters into town corporations. It was to effect this policy that Robert Price was appointed town clerk of Gloucester on 28 September 1685 by royal nomination,³¹ thereby ousting John Powell, a local Tory loyalist.³² Catholics were installed as aldermen and even as mayor, absolving them from taking the religious tests laid down by the Test Act in 1673.³³ It has been reckoned that of 177 orders made by the town's Common Council after 1685, most of them were of a political nature and, as town clerk, Robert Price was responsible for executing

27 Historical Manuscripts Commission, *Report on the Manuscripts of the Duke of Portland at Welbeck Abbey*, vol. 3 (London, 1894), p. 444.

28 *CSPD*, 1683, vol. 2, p. 275; 1684–5, p. 232; Aberystwyth, National Library of Wales, Vestry House Bundle, 2055.

29 E. Foss, *The Judges of England* (London, 1848–64), vol. 8, p. 149.

30 R. J. G. Ripley, 'The City of Gloucester, 1660–1740', unpublished M.Litt thesis, University of Bristol, 1977, A 1233, p. 100ff; Gloucestershire Record Office, GBR, 3/6.

31 Miller, 'The Crown and Borough Charters', p. 69.

32 *CSPD*, James II, vol. 1, p. 338; Gloucestershire Record Office, GBR, B 3/3, 892.

33 *CSPD*, James II, January 1686–May 1687, p. 272; June 1687–February 1689, p. 23; Gloucestershire Record Office, GBR, 3/3, 924; 3/6, 153, 154.

them.³⁴ The Council itself showed more spirit than expected when it instituted an enquiry into the removal of one of its members, Sir John Guise, and John Powell instituted *quo warranto* proceedings against his own dismissal. Robert Price could probably see the writing on the wall, and, in July 1687, resigned his office. He was beginning to feel some apprehension about the king's religious policy and where it was leading, an apprehension possibly shared by Beaufort.

In March 1685, Price was appointed steward of Shrewsbury under its remodelled charter granted by James II. 'Our beloved Robert Price' was a royal nominee, serving as deputy to the Earl of Shrewsbury. It is plain that these legal offices were but a cover for other purposes. As the king's plans began to unravel in 1688, James was obliged to restore the town's old charter, and both the Earl of Shrewsbury and Robert Price were removed from office.³⁵ The Revolution of 1688 deprived the Duke of Beaufort of all his offices, and Robert Price suffered the same fate as his patron, retaining only his recordership of New Radnor. Deprived of all his other offices, Price had now only his practice as a barrister to fall back upon, and looked around for a new patron, finding one on his doorstep in Robert Harley of Brampton Bryan, his Herefordshire neighbour.

4

The demise of the Court and Council in the Marches, together with his election as MP for Weobley (see below) obliged Robert Price to follow his career henceforth in London. While holding a seat in the House of Commons he was able to practise as a barrister in the courts of Westminster Hall nearby. The Westminster courts were only in session for about a third of the year which enabled him to practise as a barrister at the Assizes in England and Court of Great Sessions in Wales at other times. He maintained his links with Herefordshire where, like many London lawyers, he had a country residence, lodging in London at Lincoln's Inn. Breaking in upon the London scene was not easy at a time when competition for work significantly increased post-1690, and it was well that he had some country business to fall back upon. Despite family upheavals he continued to act as the Rodd family lawyer, as well as acting for their relative, Thomas Neale, 'the great projector', and Master of the Mint.³⁶ A good deal of work hitherto transacted at Ludlow now had to be taken to London, and it is noticeable that much business which Price undertook, such as steering private Acts through Parliament or conducting appeals, emanated from Wales.

Barristers found practice in London more lucrative because fees were higher than in the provinces, but Price was already a high earner. He said to Robert Harley in 1691 that he had practised for eleven years on the south-east Wales circuit and

34 Ripley, 'The City of Gloucester, 1660–1740', pp. 100–101.

35 H. Owen and J. B. Blakeway, *A History of Shrewsbury* (London, 1825), vol. 1, p. 494; G. C. Baugh (ed.), *Victoria County History, A History of Shropshire, vol. III* (London, 1979), pp. 92, 264.

36 William A. Shaw (ed.), *Calendar of Treasury Books, vol. 25: 1711* (London, 1952), p. 352, refers to bonds for which Price stood surety for Thomas Neale, Master of the Mint.

could boast that he was ‘the greatest gainer on the circuit’.³⁷ For an assessment of his income, he might be compared with his friend, Sir Thomas Powys, who was reported to earn £4,000 a year; Price’s income would presumably be somewhat less. Powys was senior to Price, and when both appeared for Lord Mohun in 1692 in a murder case, Powys led. Price already showed one characteristic in this case, namely a fondness for quoting precedent, which was becoming a feature of evolving case law.³⁸

Between 1690 and 1702, Price participated in some fourteen cases where it was necessary to procure a private Act of Parliament or to make an appeal to the House of Lords. Eight of these cases emanated from Wales, four or five relating to the disposition of property. Others required powers to administer or change wills, to arrange marriage settlements or to dispose of estates to pay debts. Price always advised seeking accommodation between parties rather than expensive litigation. He confessed to his friend Miss Mary Myddelton of Chirk, about twenty years later, that to draw up law suits for his own profit ‘was never my way when I was a practising lawyer’.³⁹

5

A seat in Parliament was always reckoned to be a means of preferment in the Law. It would bring a member to public notice, especially if he was a good orator which was natural to a lawyer. Robert Price, recognizing the advantage, found a convenient constituency in the nearby borough of Weobley in Herefordshire. He first entered Parliament in 1685 at the outset of James II’s reign, and this gave him the opportunity to display his loyalty to the king, and to act as the eyes and ears of the Marquis of Worcester, his correspondence with the peer resembling a newsletter. Price soon acclimatized himself to the House, becoming an active committee man and serving on thirteen committees in the two sessions of this parliament, including the important Committee of Privileges and Elections.

Though the 1685 parliament was compliant to the king’s wishes in most things, it demurred at supporting his policy of emancipating Catholics. Robert Price certainly upheld the royal prerogative even to the point of acknowledging the king’s right to the dispensing power, but he balked at the king’s desire to admit Catholics into the House as this might be to the detriment of the Church of England. Thus, when King James ordered his Lords Lieutenant to sound out the opinions of their deputies and the Justices of the Peace about their compliance with his religious policy, Price was interviewed first by the Lord Jeffreys, the Lord Chancellor, and later by the king himself. According to his own testimony, he assured the king that

37 ‘Correspondence of Robert Harley, 1st Earl of Oxford, and other Members of the Harley Family’, London, British Library (BL hereafter), Portland Papers, vol. 275 (29/368), 13 May 1691.

38 T. B. Howell (ed.), *Cobbett’s Complete Collection of State Trials* (London, 1809–28), vol. 12, p. 949; Historical Manuscripts Commission, *The Manuscripts of the House of Lords, vol. 3: 1697–9* (London, 1905), p. 360.

39 NLW, Plas Power Papers, unscheduled, 20 June 1719.

'he would serve him with my life and fortune', provided it was not injurious to the Church of England. This led to his loss of favour at court, and he later told Robert Harley that there was an order already prepared to dismiss him as Attorney-General for South Wales.⁴⁰

King James proposed to call a new parliament in 1688, intending to pack it with members who would be amenable to his religious intentions. In preparation, he ordered his Lords Lieutenant to select persons as candidates who would be sympathetic to his measures, and the Earl of Sunderland drew up a list, known as 'the king's list'. On it were the names of Robert Price and his fellow-member for Weobley. The election was never held, since the landing of the Prince of Orange with a Dutch army put an end to James's schemes. To confirm Prince William as king, an election had to be held to a Convention Parliament. Robert Price stood as a candidate at Weobley but was defeated when his opponent spread it abroad that Price's name was on 'the king's list'. He was returned, however, at the subsequent election in 1690 but, before he could take his seat in Parliament, he had to take an oath of loyalty to the Crown. Price was not a Non-Juror, although his sympathies lay that way, but as a lawyer, he could not avoid being constantly required to take and administer oaths. He compromised by acknowledging King William and Queen Mary to be joint sovereigns *de facto* but not *de jure*.

Price joined the Country Whigs in the Commons as he became more and more drawn towards Robert Harley, their leader, and MP for Radnor boroughs. He became an ardent committee man, serving on some 128 committees in all between 1690 and 1695, forty-four of which dealt with Welsh matters, mostly private bills relating to property, wills, tithes and ecclesiastical matters. No doubt he collected fees from these, since he now had to live by his legal practice alone. High Church Tories, like Price, who had only recognized William's title *de facto*, were constantly plagued by Whig attempts to force them to abjure King James and his successors, even suggesting that it was treason not to acknowledge William and Mary's title as *de jure*.

Robert Price became one of the foremost debaters when the issue of treason trials came before the House, especially when unfounded accusations were flying about and informers were prepared to offer perjured evidence in return for money. In both the 1690 and 1691 sessions, the Opposition tried to bring in bills to regulate treason trials, but the House of Lords, anxious to enlarge its privileges, defeated them, though Price drummed up enough precedents to condemn their action. Price defended the principle of a balanced constitution between legislative, executive and judiciary, declaring, 'If there be an original contract between a King and his people, there is so between the people and their representatives and, therefore, ought not to have any law slip that may be for the public interest.'⁴¹ Asserting *de bono publico*, Price asserted the supremacy of the law as the surest guarantee of personal liberty, hence the need for the law of treason to be clarified. So, in 1692, another Treason bill sought to make it compulsory to have the testimony of two witnesses on oath before a person could be convicted of treason. The accused would also be allowed

40 BL, Portland Papers, 29/368, 13 May 1691.

41 Oxford, Bodleian Library, MS Carte 130, fols 355–56; H. Horwitz (ed.), *The Parliamentary Diary of Narcissus Luttrell, 1691–1693* (Oxford, 1972), pp. 126ff.

counsel and a copy of the indictment beforehand. Though the bill was enacted, it was not to take effect till the end of the war, which allowed several persons to be tried for treason meanwhile.

The matter was not laid to rest, however, since a bill introduced in December 1692 ‘for the better preservation of Their Majesties and Government’ was denounced by the Opposition for ‘making words treason’. Robert Price condemned it as ‘a wicked bill’, which would make a person who acknowledged the sovereigns’ title *de facto* a traitor. The bill would have enforced a new oath of allegiance on office holders which was tantamount to abjuration. Price rejoiced in the defeat of the bill, as he did an attempt to give six Privy Counsellors the power of arbitrary imprisonment which would render personal liberty precarious.

Price’s great moment of triumph in the House came before the session ended in 1695. It became known that King William had gifted two lordships in Denbighshire to William Bentinck, the Earl of Portland, his Dutch friend and favourite. Price marshalled the support of all the Welsh MPs and, after four of their number, including Price, made representations at the Treasury which failed to stop the grant, the matter was raised in the House of Commons.⁴² It became the occasion for the greatest speech delivered by a Welshman in the House, at least to the time of Lloyd George, and it was published and reprinted several times.⁴³ Any matter relating to the ownership of land naturally aroused the interest of a parliament of landed proprietors, and when Price moved that an address be presented to the king asking him to withdraw the grant, it was passed *nemine contradicente*. The king rather ungraciously withdrew the grant, and Price was popularly hailed as ‘the patriot of his native country’. With the demise of the Court of the Council in the Marches in 1689, Price also emerged as the champion of the independence of the Welsh judiciary against attacks by the Westminster courts, endorsing the opinion delivered by the eminent Sir John Vaughan of Trawscoed that the writ of the Westminster courts had no currency in Wales. A case arose in 1693 when writs sanctioned by the Court of Great Sessions were alleged to be an error on the part of Welsh judges, whereupon Sir Thomas Powys pointed out that procedures in Wales differed from those in England: while English judges could not amend original writs, Welsh judges could, and Price endorsed this opinion.

In 1693, Price was appointed to a committee to consider the better execution of justice in Wales as a prelude to presenting a bill for that purpose which rapidly passed through all its stages. The most serious obstacle to administering justice in Wales, it was revealed, was the small number of active Justices of the Peace who were limited by law, often ignored, to eight in each county. Price and his neighbour, Sir Robert Harley, had encountered this problem in Radnorshire and, in 1694, secured the removal of the limitation.

In 1695, when the matter of setting up a Council of Trade was before the House, the Whig ministers again reverted to a demand to abjure King James and his successors and to enforce a *de jure* oath. Robert Price asserted that oaths were no

42 E. D. Evans, ‘King William III’s Grant of the Lordships of Denbigh, Bromfield and Yale to the Earl of Portland’, *Transactions of the Denbighshire Historical Society*, 52 (2003), p. 31.

43 E. D. Evans, ‘The Patriot of his Native Country’, *National Library of Wales Journal*, 32 (2002), p. 293.

security to government without the affection of the people. He almost got himself committed to the Tower when in the heat of debate he quoted General Monck's axiom of 1659 'that they had more reason to repent of old oaths than contrive new ones'. He was accused by Wharton, the Junto minister, of implying that he repented of taking his *de facto* oath to King William; Price replied that he was merely quoting Monck, but went on to point out the difficulties attached to swearing oaths to 'moot points', whereupon Montague, another Junto minister, charged him with saying that King William's title was 'a moot point', to which Price responded by saying that points were only moot to those who did not understand the laws. He asserted that it was never known that an oath was taken to swear a right or title to the Crown.⁴⁴ It was only Price's standing in the House that saved him from the wrath of the Whig ministers and the Tower. The House's mood turned in the Administration's favour when news broke of a plot to assassinate King William in February 1696.

Sir Rowland Gwynne, a Welsh MP, proposed setting up an 'Association' to protect the person of the king on the model of the one in Queen Elizabeth's time. MPs were called upon to sign the proposal, voluntarily at first, but when it was demanded that it be accompanied by an oath recognizing King William as 'rightful and lawful' king, Price demurred, along with ninety-four other MPs, nearly all High Churchmen and, about a quarter, lawyers. He and they had to subscribe, however, when the Commons passed an Act requiring legal practitioners to take the oaths, which they did only under duress.

Sir John Fenwick was accused of high treason for being implicated in the plot to kill King William in June 1696. Robert Price took a great deal of interest in a case where treason was alleged. When one of the two witnesses in the case against Fenwick absconded, the case collapsed, and the Commons decided to proceed against him by an Act of attainder. Price spoke three times against the measure, asserting that its preamble pre-supposed Fenwick's guilt before he had been heard, and that hearsay evidence should not be admissible. In his third speech, Price accused the serjeants-at-law, who directed the prosecution, of offering evidence in violation of the law and that it would not stand up in a Westminster court. Tory peers in the Lords also responded that such bills were a threat to subjects' lives, and the bill passed by only nine votes. Price observed that 'mercy is at a low ebb, God defend all men from wanting it here'.⁴⁵ Sir William Williams endorsed his views, stating that no judge would pass sentence on the evidence offered, and would object on constitutional grounds against proceedings amounting to judicial murder.⁴⁶

Robert Price continued to be an active member of the House until he vacated his seat in favour of his son, Thomas, in 1702. His immense legal knowledge and experience had proved invaluable in legal matters such as the reform of procedures in Westminster courts, and on the administration of justice in Wales after the demise of the Council in the Marches.

44 Bodleian Library, MS Carte 130, fols. 357, 359.

45 Ibid., fols. 371, 373, 377.

46 NLW, MS Wynnstey L388, fol. 389.

When he heard in May 1691 that a Welsh judgeship was likely to become vacant, Price's aspiration inclined that way, although he was aware of the handicap he laboured under of having been a Stuart placeman. The fact that he had been offered the post of second Baron of the Exchequer in Ireland heartened him but, as he told Robert Harley, he had no wish to be banished there. Price reduced his chances of success further by joining the Opposition in Parliament, since judges were usually chosen for their political services, rarely from opponents of the administration. Price had to wait until Robert Harley rose to a position of influence before he was made a Welsh judge on 11 December 1700, and the following day, hastened to acknowledge his debt to Harley.⁴⁷

That might have been less than he supposed, since it was likely that it was another man who put forward his name. He was Price's old friend Francis Gwyn, a prominent ultra-Tory, who was Protonotary for South Wales, and who was thought to have the office at his disposal. Harley probably accomplished what Gwyn proposed, since, in a letter of 9 December 1700, Gwyn wrote to Harley: 'I thank you for the news of Robin Price which I am extremely well satisfied with.' The advantage of a Welsh judgeship was that Price could carry on as MP and could still work as a barrister on English circuits, since attendance on the Court of Great Sessions took up only about thirty-six days of the year.⁴⁸

Englishmen, particularly Gloucestershire men, were most in evidence in the Welsh judicature, but among Welshmen on the Bench, natives of Denbighshire, where Price hailed from, were most numerous. His appointment to the south-east Wales circuit may have been in response to local sentiment as expressed in a petition from the Glamorgan gentry to Lord Mansel which has all the appearances of having been a recommendation in favour of Robert Price. They asserted that their interests as men of property should be of as much account as those of Englishmen, and that they would be best served when men who were neither natives of the county nor, indeed, perfect strangers 'unexercised in the business of our courts' were appointed.⁴⁹ What weight local opinion carried in appointing judgeships can assumed to be very little, but the relationship between judges and those who administered local government required a harmonious understanding between the two parties. It did, indeed, give rise to allegations of partiality, but no accusations were ever made except in a general way.⁵⁰

Welsh judges were not appointed by the Lord Chancellor but came within the political patronage of the Crown, which was almost invariably disposed in favour of lawyers in the House of Commons who, thereby, became placemen. The political nature of the appointment was reflected in the fact that Welsh judges did

47 BL, Portland Papers, 29/368; BL Additional Manuscript 40621, fol. 26; *Report on the Manuscripts of the Duke of Portland*, vol. 3, p. 637.

48 *Report on the Manuscripts of the Duke of Portland*, vol. 3, p. 637; NLW, Kemeys-Tynte Correspondence, C. 350, 1699–1700 (14 February); Williams, *History of the Great Sessions*, pp. 19, 144.

49 NLW, MS Penrice and Margam L, 1500.

50 W. Ll. Williams, 'The King's Court of Great Sessions in Wales', *Y Cymmrodor*, 26 (1916), p. 35.

not enjoy the same immunity as English judges after the Revolution of 1688 and the Bill of Rights, 1689, and could be dismissed at will, and frequently were with a change of ministry. Judges were expected to extend the influence of the ministry in power into the provinces, and the Whigs made notable use of them to that end. Fortunately for Price, he found the change of ministers in Queen Anne's reign (1702–14) more amenable than those of King William's reign (1689–1702), so that he had no reservation in co-operating with them.⁵¹

It had never been necessary for Welsh judges to be of the status of a serjeant-at-law or have the qualification of the coif. For this reason, it was often alleged that they were of a inferior calibre and, though Francis Bacon lent some colour to that view, he modified his opinion by saying that 'the judges of the four circuits of Wales, though they are not of the first magnitude nor need be of the coif, yet they are considerable'.⁵² Many Welsh judges were promoted to the Westminster courts given the right circumstances, but for some it was a dead end. Robert Price was fortunate to escape that end. He was not much enriched by his Welsh judgeship since the fee was only £50 a year, with a further £30 for his riding and dietary charges. This was supplemented after the Revolution by a further £100. The fee was raised in May 1703 after representations from 'the gentlemen of Wales', and was payable out of the Crown land revenues.

Sessions on the south-east Wales circuit were held at the three county towns of Cardiff, Brecon and Presteigne twice a year and usually lasted six days at each place. Price first acted as a Welsh judge in April 1701 with Serjeant Powlett, and his last session was in April 1702. The first day of the Sessions was taken up in formalities. On the second day, the Grand Jury was impanelled, and their names appear in the record following the rubric, giving the date of the Sessions, and before which judges. A charge was delivered by the Chief Justice before they had to decide whether the cases laid before them constituted true bills which could proceed to trial, or otherwise. The two judges sat in separate courts for jury trials in both civil and criminal cases. For chamber and chancery work they sat *in banco*. In rural counties, the case load was light, about fifteen being average for the Brecon court, Glamorgan being somewhat heavier. Theft, assault, the occasional riot, and coroners' inquisitions were the subjects which appeared most often. The Court of Great Sessions had a Chancery division in which the second judge acted as Master in Chancery. These sessions were arranged as business permitted and did not make great demands, but were found to be more convenient and less expensive for litigants than taking cases to London. What the records do not reveal is how far the proceedings were conducted in Welsh, which must have been frequently the case, and where Robert Price stood to advantage over his colleagues.⁵³

King William's death in March 1702 cast some doubt on the validity of judges' commissions, but it did not deter the holding of an assize at Worcester, Price 'being unwilling to quit the profitable part'. Before holding the Great Sessions at Brecon

51 Ibid.

52 Ibid. See also D. Lemmings, *Gentlemen and Barristers: The Inns of Court and the English Bar, 1680–1730* (Oxford, 1990), p. 213.

53 NLW, Court of Great Sessions Records, IND 17551, 17559, 17607 in Black Book Brecon Circuit; G. Parry, *Guide to the Records of Great Sessions in Wales* (Aberystwyth, 1995).

in April, however, Price had written to the Lord Keeper to ascertain the validity of his and Powlett's Commissions. He expressed to Harley some apprehension about the renewal of his Commission in a new reign: 'As your friendship put me in the post of judicature I was in, I would not willingly be dropped.' He disclaimed any desire to supplant the now elderly Powlett, but at the same time confessed that he hoped 'I shall have no other over me'. His elevation to an English judgeship in June 1702 he again attributed to Harley's influence with Treasurer Godolphin, but it was more likely the work of Lord Nottingham and Archbishop Sharp who were seeking sound Tories to displace Whigs in offices. Robert Harley was not without some influence in his appointment, however, since he helped to resolve the Solicitor General Simon Harcourt's predicament about judicial appointments: 'I cannot doubt of Sergeant B and am in hopes for R. P[rice].'⁵⁴

The rumour that 'Mr. Price of Lincoln's Inn' was likely to succeed to a vacancy at the Exchequer Court was verified when a warrant was issued for his appointment as Baron of the Exchequer on 9 June 1702, followed by letters patent on 24 June.⁵⁵ The Exchequer Court dealt mainly with matters relating to the Crown revenues. It also had an equity side, of which Price already had some experience in the Great Sessions and Court of the Council in the Marches. When that Court was restored in 1660, much business relating to church revenues had passed to it consequent upon the decline of Church Courts and this was equally true of the Exchequer.⁵⁶ A sample of cases recorded by Bunbury between 1715 and 1723 includes numerous cases relating to tithes liability on various products, ancient rights and customs, and even the liability of a lighthouse for church rates. A case calling for determination as to whether lands which once belonged to great monasteries before the Dissolution were liable for tithes recalled a case in which Price's own family had been involved against Bishop William Lloyd in Merioneth.⁵⁷

In some judgements Price appears as a moralist, as when criticizing a widow accused of adultery of coming 'with a very ill grace into a court of conscience', the case of his estranged wife being probably on his mind. Price was forthright in his opinions; on one occasion he and another baron out-voted the Lord Chief Baron in finding against the Attorney-General in a claim against the trustees of a person convicted of treason, on which Price was very sensitive. He could also issue authoritative axioms, as on an issue whether witnesses could be examined twice, declaring the 'witnesses who have been examined on the first commission cannot be examined on a second without leave of the Court'. Price was not averse to stating an opinion on legal technicalities, and his extensive learning enabled him to draw upon precedents, which became characteristic of his style. A rare compliment

54 *Report on the Manuscripts of the Duke of Portland*, vol. 4 (London, 1897), pp. 35, 42; H. Horwitz, *Revolution Politics: The Career of Daniel Finch, Second Earl of Nottingham, 1647–1730* (Cambridge, 1968), p. 183.

55 N. Luttrell, *A Brief Historical Relation of State Affairs from September 1678 to April 1714* (Oxford, 1857), vol. 5, pp. 181, 182, 187.

56 B. P. Lejack, 'The English Civilians, 1500–1750', in Prest (ed.), *Lawyers in Early Modern Europe*, p. 108.

57 W. Bunbury, *Reports of Cases in the Court of Exchequer* (Dublin, 1793; reprinted 2010); E. D. Evans, 'A Llanuwchllyn Ecclesiastical Dispute', *Journal of the Merioneth Historical and Record Society*, 11.4 (1993), p. 414.

came to him when he was called upon to prepare a bill to substitute English for French terminology in legal procedure, which was a tribute to his facility in a foreign language considering that his first language was Welsh.

Robert Price was a signatory to sixteen 'Signed Reports' between 1706 and 1708, nine in 1708–10, seven in 1710–12, ten in 1712–14 and thirteen in 1714–18. These required the signature of two judges; until 1708, his was usually the second signature, thereafter often the first. They were called for by the House of Lords preparatory to the presentation of a bill, were usually very terse, relating the main facts of a case, and making recommendations which would be to the petitioner's advantage. The bills mainly related to property, often seeking remedies which the courts could not provide.⁵⁸ Price was as diligent in the courts as he had been in Parliament in seeking justice for petitioners involved with forfeited estates in Ireland, and showed great sympathy for Catholics in defending their rights to benefit from testamentary bequests. He also asserted that descendants should not be punished for the crimes of their ancestors involved in treason.

In 1705, the judges were called upon to state an opinion in the *Ashby v White* case which arose out of the Aylesbury election in 1701. A Tory mayor had denied the claim of some Whig townsmen to vote, and a plaintiff in the case sought a writ of error which was upheld by ten judges as a right of the subject, but which was contradicted by Price and Smith on the grounds that it was an act of grace within the royal prerogative.⁵⁹ The main issue was who had the right to determine on the qualification in a disputed election, and battle lines were drawn not only on Whig v Tory but also on Lords v Commons lines. The Lords maintained that the right to vote was a subject's right, whereas the Tory majority in the House of Commons asserted it was within the privilege of their House, a view that was upheld by Powys and Price.

Price had had a similar occasion to uphold the royal prerogative in 1704 when a bill 'for the better preservation of Her Majesty and government and the Protestant succession' was referred to the judges. They were asked whether the Lords Justices who acted when the sovereign was out of the kingdom could be restrained from giving their consent to the repeal of the Act of Uniformity. The judges were divided on the issue, but Baron Price opined that they could be restrained by this bill on the grounds that 'it is not the sovereignty but only the exercise of the sovereignty [that was involved] and so may be restrained'. A resolution to that effect was passed, and the judges were instructed to frame such a clause in a bill.⁶⁰

Hearing of the death of Justice Nevill made Price desire a change from the drudgery of the Exchequer Court, and he turned to his old patron Robert Harley, by now Secretary of State, for help. 'I have no friend but yourself,' he wrote, 'and if I may have a remove to Common Pleas, it would be to my advantage.' Having cited several examples of judges who had served their turn at the Exchequer being moved on, he disingenuously added: 'I have by your favour more than I merit, and

58 A. L. Erickson, 'Common Law versus Common Practice: The Use of Marriage Settlements in Early Modern England', *Economic History Review*, 43 (1990), p. 21.

59 Luttrell, *A Brief Historical Relation of State Affairs*, pp. 5, 524; HMC, *Manuscripts of the House of Lords*, vol. 5: 1702–04 (London, 1910), p. 260.

60 *Manuscripts of the House of Lords*, vol. 6: 1704–06 (London, 1912), p. 325.

am ashamed to make the application.’ Robert Harley was unable to oblige on this occasion however. Following the Tory success in the 1710 election which brought Harley in at the head of the Administration, there was some talk of Price being made Lord Chancellor in succession to Cowper. Harley hesitated, however, and considered putting the Great Seal into commission, one correspondent reporting, ‘It is said Sir Thomas Powys, Baron Price and Mr. Ettrick will be Commissioners of the Great Seal,’ but that did not materialize when Simon Harcourt was persuaded to become Lord Chancellor. Whether Price’s limited experience in the Common Law courts ruled him out is unknown, but one is tempted to conclude that he had enough confidence in his own ability to have accepted such a challenge. As it was, he had to soldier on at the Exchequer. Whether Harcourt nursed an animus against him is questionable, since he ignored Price’s recommendation of his cousin, Roderick Lloyd, to a Welsh judgeship, preferring a Herefordshire man for the post.⁶¹

Price encountered no difficulty in being reappointed on the accession of George I in 1714, rumour having spread earlier that he was to be elevated to Chief Baron.⁶² That did not transpire, and Price was to be passed over for promotion three times in the coming years. Why a man of long experience, of known integrity and efficacy as a judge, should have been so disregarded is difficult to explain. The most obvious explanation is that he no longer had a friend in government after the downfall of the Earl of Oxford (as Harley had become) in 1714. Although Price’s elder son, Thomas, had visited Hanover while on the Grand Tour, and had avoided the exiled Stuarts at St Germain, there are no indications that Price himself took any steps to ingratiate himself at the Hanoverian court. His sideways move to Common Pleas did not occur until 1726, after the accession of George II, when the Whig courtier, Sir John Trevor (another Denbighshire man), became Lord Privy Seal after a long tenure as Chief Justice at Common Pleas. Curll, Price’s biographer, refutes a rumour that Price was moved to Common Pleas ‘for private reasons of state’ and discounts any political reasons. Price certainly had no financial motive in desiring a move since the salary was comparable with what he earned at the Exchequer, and he was already a wealthy man. It was advancing years dogged by bouts of ill-health more than anything that caused him to seek a less demanding post. Foord has certainly over-rated Price’s importance in coupling him with Sir John Trevor and Thomas Pengelly, whose new appointments in 1726 he interprets as a political manoeuvre on the part of the prime minister, Walpole, to deprive the malcontents of their leading lawyers. Henning is much nearer the mark in interpreting Price’s move as a token of gratitude on the part King George II for championing his right, as Prince of Wales, to educate his own children.⁶³

In 1718, King George I had sought the judges’ opinion about his claim to the right to educate his grandchildren, which the Prince of Wales resisted. The majority of judges assented to the king taking the children into his care, but Price and Eyre dissented. Not only did they think precedent was against it, but also that every father had a natural right to educate his children. This, indeed, was a

61 *Report on the Manuscripts of the Duke of Portland*, vol. 2 (London, 1893), p. 694.

62 *Report on the Manuscripts of the Duke of Portland*, vol. 3, p. 474.

63 A. S. Foord, *His Majesty’s Opposition, 1714–1830* (Oxford, 1964); Henning, *House of Commons 1660–90*, vol. 3, s.n. Robert Price.

novel departure from legal argument, and heralded an attitude which was more in common with eighteenth-century enlightenment. Price and Eyre agreed with their colleagues, however, on the King's right to bestow his grandchildren in marriage provided their father was consulted, and all the judges upheld the right of the heir-apparent to the regency when the King was out of the country.⁶⁴ It was said that Prince George did not forget Robert Price's championship of his right, and showed his gratitude as soon as he was able in moving him to Common Pleas as he desired.

Price had continued to reside at Lincoln's Inn till he became a serjeant in 1702, since an entry in the Black Books records that he was in arrears for absent commons, but was excused half the debt 'in respect of his being a Member of Parliament and his attendance there'.⁶⁵ On 28 May 1701, Robert Price, by then a Welsh judge, was called to the Bench of his Inn, being described as 'an ancient barrister of this Society', being a rank between a barrister and a bencher. Price had been by then a member of the Inn for twenty-three years, which was not unusual for that time, before a call to the Bench. He would by then have performed the customary readings in his turn, and might well have been a double-reader, although readings were not as regular as they had once been. As a Bencher he became a senior member of the Inn, responsible for its government and admissions to the rank of barrister. On 23 June 1702, he was summoned to assume 'the estate and degree of Serjeant-at-law (*status et gradus servientes ad legem*), and was invested with a hood and coif, which were the badges of that rank. Sir Thomas Powys was appointed on the same day, both old Shrewsbury boys, and they gave a sumptuous feast for the judges and serjeants at Lincoln's Inn. It was customary also to distribute gold rings inscribed with a motto to the Lord Keeper and judges, Price choosing as his motto *Regina et lege gaudet Britannia* as a tribute to both the Queen and his Welsh ancestry. The Treasurer's accounts in Lincoln's Inn record against 3 December 1702 the payment of a sum of £10.16s.6d. to Serjeants Powys and Price, together with a purse.⁶⁶

Price's elevation to the Bench and to the rank of serjeant followed his appointment as a judge, and was more of a formality than anything material.⁶⁷ Serjeants left their Inns of Court for either of the Serjeants Inns in Chancery Lane or Fleet Street, but usually maintained links with their old Inns. Thus on 8 December 1704, the Treasurer of Lincoln's Inn informed the Masters of the Bench that 'Mr. Baron Price had declared himself under a great sense of obligation for the civilities of the Society, and more particularly of the Masters of the Bench, showed to him'. In return, he wished to express his gratitude by making a presentation of books to the library of the Inn to the value of £25, and the Treasurer was delegated to recommend their selection.⁶⁸

During vacations at Westminster Hall, the judges went on circuits to hold Assizes, usually in Lent and July–August. They met beforehand in Serjeants Inn to choose their circuit according to seniority. Judges had their preferences, but

64 Historical Manuscripts Commission, *Calendar of the Stuart Papers belonging to His Majesty the King*, vol. 3 (London, 1907), 19 March 1718, T. Bruce to Duke of Marlborough.

65 *Lincoln's Inn, Black Books*, vol. 3, p. 201, fol. 81.

66 *Ibid.*, pp. 212–13, fol. 122.

67 J. H. Baker, *English Legal History* (London, 1990), p. 180.

68 *Lincoln's Inn, Black Books*, vol. 3, pp. 221–2, fols. 137, 138.

after 1700 it was unusual for a judge to work the same circuit for more than two years. Before they departed, the Lord Keeper would apprise them of the current considerations of government which they wished to make known to those gathered at the Assize. Judges were still vehicles for government propaganda, though less so than in Stuart times. Robert Harley's letter-books contain many letters of instruction to judges, including one to Justice Powys and Baron Price concerning the Queen's interest in a case. In 1723, Price reported having received instructions to enforce laws against Papists more strictly, in order to raise revenue to lighten the burden on the land tax. Printed instructions were issued after 1715 which lost much of their political flavour.⁶⁹

The holding of the Assizes was a social occasion which brought the gentry to town, a number of them to act as a Grand Jury. The judges were usually lodged at a country house, and so needed to be socially amenable. To keep up appearances, they brought their own servants, Price being attended by a liveried footman and groom at Carlisle in 1718. Time given to entertainment was not wasted, since the judges were able to gather much intelligence about local matters, being often delegated to enquire into local grievances; sometimes they gathered politically significant information about dispositions within a shire and communicated such intelligence to appropriate ministers at Whitehall. They were often consulted about appointments to Commissions of the Peace, though their advice was often ignored if not biased in the appropriate political direction.⁷⁰

The Assizes opened with a sermon preached by the High Sheriff's chaplain and was attended by the judges and the whole concourse. Such sermons were replete with platitudes, and were of an admonitory and moralistic nature, urging deference to authority of Church and State, and often castigating schismatics. Sometimes the preacher aired prejudices which were usually, but not always, indulged by the judges, as in Price's case at Leicester in 1706 when Dr Sacheverell, a rabid High Church cleric, was the preacher. Price found his sermon to be 'ingenious', but he could not forbear 'giving the Dissenters and occasionalists [i.e. occasional conformists] a flurt as most of them do'. The sermons were published unless they were too offensive, nine of them bearing Price's name and that of another judge as being in attendance. They dwelt on such subjects as 'Love of Church and Nation'; 'Fear God, honour the King'; the duty of living peacefully; and against indifference in religion.⁷¹

At the Assizes, the judges made known the instructions issued to them from above in the form of a Charge to the Grand Jury and the assembled gentlemen of the county. They were expected to toe the official line, since theirs was a delegated authority. Matters which were highlighted were the excellence of the Constitution, the Church of England and the Protestant religion and, after the controversy raised by the Sacheverell trial in 1709, the blessings of the Revolution of 1688,

69 J. S. Cockburn, *A History of English Assizes, 1558–1714* (Cambridge, 1972), pp. 49, 54; BL Additional MS 70325 (unpaginated).

70 Cockburn, *A History of English Assizes*, pp. 7, 65; W. A. Shaw and F. H. Slingsby (eds), *Calendar of Treasury Books, vol. 31: 1717* (London, 1960), p. 203.

71 British Library Board, Database Copyright, 1992, L 4473, c 3 (37).

which Robert Price must have found hard to stomach.⁷² At the summer Assizes at Winchester in 1705, Price gave an ‘extraordinary charge’, in which he took note of the slanders and aspersions cast by ‘the fanatic party’ [i.e. the Dissenters] on the Church of England and, quite wrongly, reminded his hearers that the toleration which they enjoyed was by the graciousness of the Church, ignoring the fact that it had opposed the Toleration Act of 1689.

Robert Price reported disaffection arising from the shortage of active JPs on 2 August 1706 while riding the Midland circuit, and again in August 1711 from the Western circuit. Thirty-eight new JPs had been added to the Commission in Cornwall the previous February, but they refused to act because they were unwilling to pay for their *dedimus potestatem* demanded by the Crown Office, which Price deemed ‘a shameful thing, but that is their humour’. He had spoken to two Lord Keepers on the subject, recommending that the *dedimus* be sent free to them, since there were two hundreds within the county without any JPs. Price had not been slow in admonishing the Cornish defectors: ‘I have been very free, both in my charges and in private in telling gentlemen how ungrateful they were to their friends and insensible of the Queen’s favours that they would decline the Queen’s and country’s services for such a trifling pretence.’ The judges recommended the removal of inactive JPs as a way of initiating reforms.⁷³ To save the Crown money, he advised the jury at an Exeter Assize to find twelve soldiers accused of burglary guilty of simple felony rather than on a graver charge, because it would otherwise cost £40 to prosecute them. He added that he himself was inclined to mercy like the jurors.⁷⁴

Several cases which Price was called upon to try had distinct political undertones, and his conduct of them shows as much concern for the calming of political passions as for dispensing justice. Party zeal raged in many parts of the country, and Monod notes that Jacobitism was more in evidence during Queen Anne’s reign than in the previous one.⁷⁵ In 1706, Price held an Assize at Coventry, described as ‘a fanatic town’, where 150 persons were indicted for riot following an election and there was a threat of its repetition when the opposing parties came to the Assizes.⁷⁶ However, Price exercised great tact and diplomacy and declared to Robert Harley: ‘I have brought both sides to so much temper that there is a prospect of fair weather.’⁷⁷ Northamptonshire was another instance where the aftermath of the 1705 election threatened the peace, with Price again pouring oil on troubled waters.

72 G. Lamoine (ed.), *Charges to the Grand Jury, 1689–1803*, Camden Society, series 4, no. 43 (London, 1992).

73 *Report on the Manuscripts of the Duke of Portland*, vol. 5 (London, 1899), pp. 71–2; BL Portland Papers, 29/193, fol. 262; Historical Manuscripts Commission, *The Manuscripts of the Earl Cowper Preserved at Melbourne Hall, Derbyshire*, vol. 3 (London, 1889), p. 74; L. K. J. Glassey, *Politics and the Appointment of Justices of the Peace, 1675–1720* (Oxford, 1974), pp. 175, 230.

74 *Report on the Manuscripts of the Duke of Portland*, vol. 5, p. 71.

75 P. K. Monod, *Jacobitism and the English People 1688–1788* (Cambridge, 1989), chap. 10.

76 J. J. Harwich, ‘A Fanatick Town: The Political Influence of Dissenters in Coventry, 1660–1720’, *Midland History*, 4 (1977), p. 15.

77 *Report on the Manuscripts of the Duke of Portland*, vol. 5, p. 320.

At an Exeter Assize in 1711 a gentleman appeared before Price accused of uttering seditious words and was heavily fined, whilst an ordinary sailor was let free for ‘damning Sacheverell’ and his supporters, alleging that they intended to bring in Popery. Two women also appeared before him, one for protesting against the holding of 30 January as a day to commemorate the ‘martyrdom’ of Charles I, and the other for warning Queen Anne that the same fate might befall her. Price commented, with evident disapproval, upon the extraordinary zeal which the populace showed in favour of the offenders in the dock, prompting a reprimand from him that it was not consistent with professions of affection for the Queen to countenance such persons and words.⁷⁸

With Harley in office as Secretary of State, Price gave unstinting support to the ministry, particularly over the Act of Union of England and Scotland in 1707. When he was on circuit, he wrote to Harley: ‘I have laboured in it heartily, publicly and privately,’ and he thought that the Act would ‘take amongst the generality’. His one regret was that the Whig Junto laid claim for its passing, and used his old Inn, Lincoln’s Inn, to celebrate its success, Price lamenting Harley’s absence as a member of the Inn.

Price’s attitude to Jacobitism is an enigma. His sympathy naturally lay in that direction, but the call of duty as a judge, and his respect for the supremacy of the law, overrode his private opinions. The Kingswood miners celebrated George I’s accession with riots outside Bristol which were Jacobite-inspired. Price was one of three judges appointed to a commission of inquiry, which called for great tact to avoid a further outbreak. The inquiry was conducted ‘with so much tenderness and uprightness that the tongues of the greatest Jacobites are tied’.⁷⁹ Price showed great tact also in trying sixty-eight of the better sort of Scottish rebels who had been involved in ‘the Fifteen’ (i.e., the Jacobite rebellion of 1715). He informed Lord Chief Justice Parkes of the care they had taken to prevent the rigging of a jury by ‘petty foggers’ and ‘dissenting preachers’.⁸⁰ There is certainly no evidence to suggest that Price allowed whatever private political opinions he may have had to pervert his legal judgment. There is no evidence in his correspondence either of any dabbling with persons at the Stuart court at St Germain, nor, nearer home, of connivance with Tory friends in Welsh Jacobite circles, like the Cycle of the White Rose in north Wales and the Sea Sergeants in south Wales, both familiar territory to him.

Price resented any appearance of political interference with the law. In 1724, as a sequel to the trial of Bishop Atterbury, Walpole introduced a measure to regulate titles to land which required all persons over eighteen to take the oaths of allegiance, supremacy and abjuration. Price complained how oath-swearing was cluttering up the work of the courts, and that the consequence of the Act amounted

78 Ibid., vol. 5, p. 71.

79 Daniel Defoe, *A full and impartial account of the late disorders in Bristol. To which is added the complete trial of the rioters before Mr. Justice Powys, Mr. Justice Tracey, and Baron Price (1714)*.

80 *Report on the Manuscripts of the Duke of Portland*, vol. 5, p. 320; Historical Manuscripts Commission, *Report on the Manuscripts of Lord Polworth, preserved at Mertoun House, Berwickshire*, vol. 1 (London, 1911), p. 136; BL MS Stowe 750, fol. 217.

to 'a second Domesday'. In truth, it was a recall of his objections to oath-taking which the Whigs had so zealously used to discredit the Tories. Price did not conceal his antipathy towards Walpole from his friend, Miss Mary Myddelton of Chirk, alluding to him as 'the great Governor', and to his vendetta against the Jacobites as 'his fondness of having the Scotch in [his] power'.⁸¹

Riding a circuit called for a great deal of physical endurance, since long journeys had to be made on horseback, which also required keeping a good stable. Between travel and holding the assizes, Price's journey to Carlisle, for instance, in 1717 took up fifty-five days. The weariness of the journey and the discomfort he suffered from colic and gout meant that he was unfit to sit in court, and he confided to Lord Chief Justice Parkes that he would have been fully justified in absenting himself from court, but apparently he did not. He was rigorous in the demands upon himself, and only once did he mention a desire to indulge himself by being tempted to skip a circuit in 1728. Even in the last year of his life, he had chosen to accompany Mr Justice Probyn on the Midland circuit, but death intervened.⁸²

Of his activity as Justice in Common Pleas we have little knowledge, since Reports for the period 1650–1750 are of an inferior nature. The only ones that relate to Price's tenure at the court are the Cooke Reports, but they contain only two or three references to Price, one concerning his dissent from the Lord Chief Justice's opinion in a particular case. It appears that Price enjoyed greater respite than he had hitherto had, because the Court dealt with civil actions between private parties, especially in connection with property, a line of business Price had found very congenial. Francis North considered Common Pleas 'the most desirable [place] of any for a good lawyer to retire into, for the profits are great and the Court not harassed with causes criminal'.

Curll described Price's professional life as characterized by 'a calm, silent administration of justice', but it is evident that in his declining years he was under some strain. Complaints of being prostrate by gout and colic were frequent, 1728 being a particularly bad year when he feared for his life. Advancing deafness also interfered with his court work, which made him realize that he could not discharge his duties effectively. Frequent visits to Bath, where he enjoyed the solace of his daughter's companionship, usually brought temporary relief. In 1731, however, he told his friend, Miss Mary Myddelton, that he intended to make the Midland circuit his last, and of his intention to resign his judgeship the following winter and to retire to the life of a country gentleman. He reflected that a man should have some respite between the hurry of business in this world and the preparation for eternity. 1732 brought some improvement to his health, and being still in good spirits and 'trusting to the robustness of his British constitution' he did not act upon his resolution to resign, confessing to a mercenary motive of being loth to give up £2,000 a year: 'I doubt it is a spice of covetousness which I would avoid, but it steals in on the blind side.' In the event, Price continued in office until his death on 2 February 1733. His heirs did not gratify his wish, expressed when he

81 NLW, Plas Power Papers, unscheduled, 22 July 1723; 10 February, 29 February 1723/4.

82 Cockburn, *A History of English Assizes*, p. 53; W. A. Shaw and F. H. Slingsby (eds), *Calendar of Treasury Books*, vol. 32: 1718 (London, 1962), p. 502.

erected an ornate tablet to his mother in the church at Cerrigydrudion, that a similar monument be erected to him either at Cerrigydrudion or at Yazor, near his Foxley home. The tablet in Yazor church (now closed) is very modest.⁸³

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