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THE PRECEDENCE OF THE EARLDOM OF DEVON 1335-1485

Michael Hicks

Titles of honour distinguish those who possess them from those who do not. Dukes outrank marquesses who outrank earls, viscounts, barons and so on.¹ Such titles enable the holders to be ordered in processions, seating plans, and much else. Where individuals are of the same rank, however, precedence has to be established in other ways. The ceremonial context, which covered peers' ladies and even younger sons, was charted by G. D. Squibb,² but it is the relative precedence of peers alone in such contexts as parliament and the royal council that is at issue here. Amongst late medieval English peers, this was determined by seniority or 'ancientry',³ the date of creation of the peerage or the date of the first writ of summons to parliament, as modified by the king, whose prerogative it was to determine precedence. Kings from Henry III onwards gave priority to their brothers, sons and half-brothers. They could also vary it more arbitrarily, as Henry VI in particular did. Precedence must always have mattered, but the evidence of it as a concern comes relatively late, under Richard II,⁴ and as an acute concern somewhat later. Precedence amongst earls back to 1300 and perhaps earlier can be calculated. The three precedence disputes of 1405 were the first to be recorded.⁵ This article focuses on the precedence dispute between the Earl of Devon and Earl of Arundel in 1445-9. It establishes the situation beforehand and seeks to explain why Devon thought his case worth prosecuting to what appears the offence of everybody. It ends with the new earldom that resulted from the Wars of the Roses.

*

Thomas Courtenay, Earl of Devon (d.1458) has been much criticized by historians. He certainly thought himself badly treated in his own day. He is famous principally for the Courtenay-Bonville dispute, in which he struggled for supremacy in the

¹ Unless otherwise stated, this paper is based on G. E. C[okayne], *Complete Peerage* (revised and enlarged edn. by Hon. Vicary Gibbs and others: 13 vols. in 14, London 1910-59); hereafter referred to in standard *Coat of Arms* fashion as GEC.

² G. D. Squibb, *Precedence in England and Wales* (Oxford 1981), ch.1.

³ A. R. Wagner and J. C. Sainty, 'The origin of the introduction of peers in the House of Lords', *Archaeologia* 101 (1967), pp. 119-50.

⁴ 'The Order of all Estates of Nobles and Gentry of England' is dated 8 Oct. 1399; Squibb, p. 14.

⁵ J. E. Powell and K. Wallis, *The House of Lords in the Middle Ages* (London 1968), pp. 437-8; *Proceedings and Ordinances of the Privy Council*, ed. N. H. Nicolas (6 vols., London 1834-7: henceforth *POPC*), vol. 2, pp. 104-5.

West Country with William Bonville of Shute, who was created Lord Bonville in 1449. Bonville had been given responsible offices in the West Country, especially the stewardship of the duchy of Cornwall that Courtenay felt should have come to him. Bonville also appears to have deliberately challenged the traditional supremacy of the Courtenays. There were three main phases to the conflict: around 1440; in 1451, when Devon besieged Bath and Taunton; and in 1455, when he defeated Bonville in pitched battle at Clyst, near Exeter. This was preceded by one of the worst abuses of power of the later middle ages, the abduction and murder of Nicholas Radford by Devon's namesake, son and successor.⁶ Clearly Devon won his struggle for regional hegemony, but, in between these episodes, Devon spent much of his time in prison, in 1452-4 and in 1455-6, and under sureties for his good behaviour.⁷ A proud man, proud especially of his lineage, he expected much more respect than he received. Was he not, after all, heir to one of the most ancient earldoms and of the blood royal? No doubt pique at his disappointment was a contributory factor in the later stages of his dispute with Bonville. Certainly it was by slurring Devon's honour in an insulting letter of challenge that he publicly circulated that Bonville provoked him into risking his life in private battle.⁸ Devon won.

As Devon's bill and replication do not survive, it is not known for certain on what grounds he challenged the Earl of Arundel. He might have stressed his royal descent as the Earl Marshal had done in his earlier suit against the Earl of Warwick in 1425.⁹ Devon's wife Margaret Beaufort was of the blood royal through two lines. She was daughter of John Beaufort, Earl of Somerset (d. 1410), son of John of Gaunt and grandson of Edward III, by Margaret daughter of Thomas Holland, Earl of Kent, great-grandson of Edward I.¹⁰ Royal blood, especially Beaufort blood, had become widely spread through the peerage by way of the prolific Joan Beaufort, Countess of Westmorland (d. 1440) and her Neville offspring: Devon's rival William Earl of Arundel (d. 1487) had also married into it.¹¹ Approximately 200 individuals were descended from English kings in 1400. What is known is that Devon argued that William held not the ancient earldom of Arundel, but a new creation.¹² Here he had sound grounds. When Thomas, Earl of Arundel and Surrey, died childless in 1415, his three sisters were heirs general to much of his estates and to the untailed earldoms

⁶ R. L. Storey, *The End of the House of Lancaster* (London 1966), chaps. 5, 13; Martin Cherry, 'The struggle for power in mid-fifteenth-century Devonshire', in *Patronage, the Crown and the Provinces in Later Medieval England*, ed. R. A. Griffiths (Gloucester 1981), p. 123.

⁷ M. Hicks, *The Wars of the Roses* (London 2010), pp. 90, 98-9, 116, 131.

⁸ See M. Hicks, 'Idealism in late medieval English politics', in *Richard III and his Rivals. Magnates and their Motives during the Wars of the Roses* (London 1991), pp. 48-9.

⁹ R. E. Archer, 'Parliamentary restoration: John Mowbray and the Dukedom of Norfolk in 1425', in *Rulers and Ruled in Late Medieval England*, edd. R. E. Archer and S. Walker (London 1995), pp. 99-116.

¹⁰ GEC vol. iv, pp. 326-7.

¹¹ M. Hicks, *Warwick the Kingmaker* (Oxford 1998), p. 24.

¹² *Parliament Rolls of Medieval England*, ed. C. Given-Wilson (Woodbridge, 2005: henceforth *PROME*), vol. 12, pp. 55-6, 67.

of Surrey (Warene) and Arundel, which have never really come out of abeyance. It was as a new creation that the senior coheirs, the Mowbray Dukes of Norfolk, secured the earldom of Surrey in 1451.¹³ The coheirs regarded themselves as coheirs to Arundel too and strongly opposed the accession to that earldom in 1417-33 by the heirs male.¹⁴ Much of the estate however, including Arundel Castle itself, had been resettled in tail male and had passed in 1415 to the cousins of Earl Thomas, as descendants of Earl Richard I (d. 1376). The male line claimed the earldom also and in 1433 John Arundel was allowed to have it by the Lords on the fabricated grounds that the earldom had always from time immemorial been attached to Arundel Castle itself.¹⁵ This was a newly invented doctrine that had been applied first to the barony of Berkeley, also disputed between the heir male and the daughter of the last lord.¹⁶

Such disputes arose because the emergence of the entail in tail male in the fourteenth century meant that inheritances were now often held by different titles and thus came to be divided between the male and female lines.¹⁷ The property of married women was wholly at the disposition of her husband. It had become recognized as a problem that an heiress carried her inheritance to her husband, who felt no moral obligation to support her relatives, such as uncles or cousins. Hence it became normal for fathers with only female issue to keep lands and titles within the family by resettling them on the heirs male only. However it was difficult to do this for the whole estate. Lords either entailed only part of their lands, for example as jointure on their marriages, or found that sections were temporarily occupied by dowagers. Often they inherited properties from other families that were held in fee simple or entailed in tail general, both of which permitted inheritance by females. Entails could not be broken until the invention of the common recovery, traditionally dated from Taltarum's case in 1473, but actually somewhat earlier.

In 1433, when Thomas Earl of Devon was still a minor, John Arundel had been allowed the earldom of Arundel with the same precedence as previous earls. John FitzAlan had succeeded to Arundel Castle itself in 1243 as one of the four coheirs of Hugh de Aubigny, whose ancestor had held the earldom from 1139: it was his grandson who was created Earl of Arundel, probably in 1289. In 1433 that precedence placed Earl John immediately after the royal earls of Huntingdon, Somerset, and Stafford, but apparently ahead of all the other senior earls. In parliament in 1446, Devon challenged Arundel's precedence. The case was referred to a committee of Lords who had, however, done nothing about it by spring 1449, when Devon insisted on its trial in parliament. What is recorded are the opinions of the Lords, all of whom, with the exception of Bishop Waynflete of Winchester, found that Arundel held the old earldom, not a new creation, and should have the old precedence, specifically ahead of

¹³ GEC vol. i, pp. 246-8; xii (1), p. 513.

¹⁴ GEC vol. i, p. 246 note (d); Powell and Wallis, *House of Lords*, pp. 463-5.

¹⁵ GEC vol. i, pp. 237-41.

¹⁶ GEC vol. ii, p. 131 note (c).

¹⁷ For example, the earldom of Warwick (1369), earldom of Suffolk and barony of Ufford (1382), and earldom of Arundel (1415): GEC vol. i, p. 246-8; xii (1), p. 513; xii (2), p. 375 note (g).

Devon. Earl Thomas had evidently annoyed his peers, since their judgement included the rider that he must not raise the issue again.¹⁸

* *

Why had Earl Thomas challenged Arundel?

In the first place there was certainly a sense of injustice. The Courtenays were actually the heirs of the Redvers family, earls of Devon since 1141, but Hugh Courtenay, who in 1293 should have succeeded Isabella de Forz (Fortibus), Countess of Devon and Aumale, had been denied the earldom by Edward I; the king had, furthermore, notoriously plundered many of the countess's most valuable possessions, particularly the honour of Christchurch in Hampshire (now Dorset) and the lordship of the Isle of Wight.¹⁹ Only in 1335 had Hugh secured the earldom. However this was apparently as a new creation. In 1406 Devon was listed lower in precedence than the earldoms of Arundel and Warwick, which probably dated from 1268.²⁰ Thomas Courtenay first attended parliament in 1433 when still under age. He found his ancient earldom ranked sixth out of ten earls. He came after the three royal earls of Somerset, Huntingdon, and Stafford and also after the two ancient earldoms of Arundel and Warwick. But Arundel was not really ancient at all.

Secondly, the situation had been radically altered by Henry VI's new creations and promotions. By 1445, the earls of Huntingdon, Somerset, Stafford, Warwick and Suffolk had all been promoted dukes or marquises, inadvertently raising Devon up the diminished list of earls. Henry Beauchamp, Earl of Warwick was created premier earl (above Arundel) in tail male in 1444, with the right to wear a coronet even in the king's presence, but on 5 April 1445 he had been further elevated Duke of Warwick. That left only Arundel ahead of Devon on the list of earls. If it dated from 1139, the Arundel title was senior to Devon whether that had been created in 1142 or 1335. If it dated from 1243 or 1289, however, Arundel antedated only the 1335 recognition. If a new earldom dating from 1417 or later, as Devon thought it should be, the earldom of Arundel was decidedly lower in precedence. Hence in 1446 Earl Thomas saw the prospect of becoming, at last, premier earl. Hence his claim. This may explain why he was further honoured by appointment as steward of England to preside over the coronation of Queen Margaret of Anjou on 25 May 1445.²¹

By 1449, the situation had changed again. Henry Duke of Warwick had died without male issue in 1446, at which point both the dukedom and the premier earldom became extinct. The last of the Beauchamps, Henry left behind as a great heiress his infant daughter Anne, who was recognized by courtesy as Countess of Warwick. Her earldom was arguably senior to that of Devon, but clearly it would be a long time before her husband, whoever he might be, could take precedence over Earl Thomas in the House of Lords. In the event Anne died before her fifth birthday on 3 January

¹⁸ *PROME* 12, pp. 55-6, 67.

¹⁹ K. B. McFarlane, 'Had Edward I a "policy" towards the Earls?', *History* 50 (1965), pp. 145-59 at 152-3.

²⁰ GEC vol. iv, p. 324; *PROME* 8, p. 361.

²¹ GEC vol. iv, p. 326.

1449. The great Warwick inheritance was then contested between the four sisters of Duke Henry. Had they been recognized as coheirresses, that surely would have been the end of the earldom of Warwick. It was at this point in 1449, when only Arundel stood between Devon and the premier earldom, that Devon pressed his suit against William Earl of Arundel.

Of course Devon was disappointed by the Lords, who seem consistently to have preserved the *status quo*, but more disappointment was to come. The Warwick inheritance was won by the youngest of Duke Henry's four sisters but his only sister of the whole blood, also called Anne Beauchamp. She carried the earldom to her husband Richard Neville, son of the Earl of Salisbury, who on 23 July 1449 was recognized as Earl of Warwick. This was the ancient earldom of 1268 and not, as stated in the *Complete Peerage*, the premier earldom.²² In precedence Warwick came after his brother-in-law Arundel and perhaps Devon too. We have no listings for this date. Next year (2 March 1450) Warwick the Kingmaker, as he was later to be better known, secured a regrant of Duke Henry's premier earldom,²³ which placed him ahead of Arundel and of course Devon. Worse was to come, since on 23 November 1452 Henry VI created his half-brothers Edmund Tudor Earl of Richmond and Jasper Tudor Earl of Pembroke with precedence over all other earls, the premier earl included.²⁴ At that point Devon should have been relegated to fifth out of twelve earls. Even worse, it was now customary for the eldest sons of dukes to bear the courtesy titles of earl and to take precedence over other earls. This was why Humphrey Earl of Stafford (a courtesy title), son of the Duke of Buckingham, took precedence over all earls except the king's brothers.²⁵ The premier duke, Richard Duke of York, had a son in Edward Earl of March; Edmund Duke of Somerset a son in Henry Earl of Dorset; and John Duke of Norfolk a son John, who was from 1451 Earl of Surrey; all these three sons could be expected, when of age, to take precedence above Devon as well.

Actually even worse was to happen. Devon had been indicted both for prosecuting civil war in Somerset in 1451 and for the rebellion of Richard Duke of York at Dartford in 1452 and was imprisoned. Reportedly Henry VI was enraged.²⁶ Although there is no direct evidence for it, it appears that he deprived Devon of his seniority and precedence. The next listings of peers in March and November 1453 placed Devon tenth out of twelve earls, after not only Richmond, Pembroke, Arundel (1139) and Warwick (1268), but also after Salisbury (1337), Northumberland (1377), Oxford (1392), Westmorland (1397), and Shrewsbury (1442) and ahead only of the two new

²² GEC vol. xii (2), p. 385; Hicks, *Warwick the Kingmaker*, p. 39.

²³ Even though he had as yet no issue; cf. *Fifth Report from the Lords Committee touching the Dignity of a Peer of the Realm* (London 1829), p. 244.

²⁴ *PROME* 12, pp. 279-82.

²⁵ R. A. Griffiths, 'The King's Council and the first Protectorate of Richard Duke of York', *English Historical Review* 99 (1984), pp. 67-82 at 78. Squibb (*Precedence*, p. 15) places this rule in or before 1399, but there seems no earlier evidence of it in operation.

²⁶ G. L. and M. A. Harriss (edd.), 'John Benet's Chronicle of the years 1400 to 1462', in *Camden Miscellany* 24 (Camden Society pubns. fourth ser., vol. 9: London 1972), pp. 153-233 at 205.

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earldoms of 1449, Wiltshire and Worcester.²⁷ By that time, however, Henry VI was mad and York himself was en route to become Lord Protector. He asserted his loyalty to the Lords, demanding that they accept him as the king's true liegeman and that the adverse interpretation of the Dartford episode be set aside. Devon was put on trial and duly acquitted. On 9 May 1454 he appears with his former precedence.²⁸ There are no listings to reveal whether he retained it when Henry VI recovered or following further indictments in 1456 for his role in the battle of Clyst. Devon died in 1458 leaving three sons. Thomas, the next earl, was killed at Towton in 1461 and attainted; Henry was executed in 1469; and John, who briefly revived the earldom in 1470, perished childless at Tewkesbury in 1471. We have no means of establishing their precedence. When the earldom of Devon was revived in 1485, it was not for either of the coheirs of these brothers, but for their distant cousin Edward Courtenay of Bocannoc, who was not heir to the old earldom. It was regarded as new and its seniority was always dated from 1485. All subsequent Courtenay earls of Devon derive from Edward's creation.²⁹

²⁷ Griffiths, 'The King's Council', p. 78; BL Ms Harley 158 fo. 113r-v; see also J. F. Baldwin, *The King's Council in England during the Middle Ages* (Oxford 1913), p. 197.

²⁸ *POPC* 6, pp. 185-6.

²⁹ Edward's earldom was restored after attainders in 1511 to his eldest son William and in 1553 to his great-grandson Edward 'and his heirs male', and again in 1831 to William Courtenay of Powderham, who was not descended from the Bocannoc line but shared a common ancestor; GEC vol. iv, pp. 326-38.