

LAW-MAKING AND
SOCIETY IN
LATE ELIZABETHAN
ENGLAND

The parliament of England, 1584–1601

DAVID DEAN
Carleton University, Ottawa



CAMBRIDGE
UNIVERSITY PRESS

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS

The Edinburgh Building, Cambridge CB2 2RU, UK
40 West 20th Street, New York NY 10011-4211, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain
Dock House, The Waterfront, Cape Town 8001, South Africa

<http://www.cambridge.org>

© Cambridge University Press 1996

This book is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without
the written permission of Cambridge University Press.

First published 1996

First paperback edition 2002

A catalogue record for this book is available from the British Library

Library of Congress Cataloguing in Publication data

Dean, D. M. (David M.) Law-making and society in late Elizabethan England: the
parliament of England, 1584-1601 / David Dean.

p. cm. – (Cambridge studies in early modern British history)

Includes bibliographical references and index.

ISBN 0 521 55108 0 (hc)

1. Legislation – England – History – Sources. 2. Law reform –
England – History – Sources. 3. England and Wales. Parliament –
History. 4. Parliamentary practice – England – History – Sources.

I. Title. II. Series.

KD4230.D43 1996

348.42'02–dc20

[344.2082] 95-47585 CIP

ISBN 0 521 55108 0 hardback

ISBN 0 521 52185 8 paperback

CONTENTS

<i>Acknowledgements</i>	<i>page</i> x
<i>Note to the reader</i>	xii
<i>List of abbreviations</i>	xiv
Introduction	1
1 Initiation and procedure	5
2 Supply and the general pardon	34
3 The crown and the state	63
4 Religion and the church	98
5 The commonweal	133
6 Law reform	188
7 Private legislation	217
8 Expiring laws continuance acts	259
Epilogue: the Parliament of 1604	277
Conclusion	282
<i>Index of acts</i>	291
<i>Index of bills</i>	295
<i>General index</i>	300

Introduction

The purpose of this book is not to revise the story told by Sir John Neale in the second volume of his epic *Elizabeth I and her Parliaments*, but to recover the history of the bills and acts which he ignored. Neale's history of the Queen and her parliaments necessarily focused on episodes of conflict, confrontation and opposition because he wanted to 'reveal the significance of the Elizabethan period in the constitutional evolution of England' and, specifically, 'to banish the old illusion that early-Stuart Parliaments had few roots in the sixteenth century'. His particular contribution was to identify an organised puritan opposition who wanted to 'frame the agenda of Parliament' and 'taught the House of Commons... the art of opposition'.¹

Although this concentration on conflict and opposition reclaimed much for the history of Elizabethan parliaments, it also led to a distortion. Neale was not interested in the daily parliamentary business of making laws unless a bill created a major problem in the tripartite relationship of Queen, Lords and Commons. What contemporaries would have regarded as both unusual and unfortunate, Neale saw as the hallmarks of a developing institution. And what they saw as the essential business of parliament, he largely ignored. Of some 600 measures initiated in the six parliaments held between 1584 and 1601, Neale discussed less than fifty.²

Nevertheless, the historian interested in legislation owes an enormous debt to Neale for he, and those working with him, discovered a large number of previously unknown sources for Elizabeth's parliaments. Transcribed by Helen Miller and now being edited, augmented and published

¹ J.E. Neale, *Elizabeth I and her Parliaments 1559–1581* (London, 1953, repr. 1971), p. 11, 28; Neale, *Parliaments*, p. 436.

² Two useful guides to the recent historiography of Elizabeth's parliaments are N.L. Jones, 'Parliament and the Governance of Elizabethan England', *Albion* 19 (1987), pp. 327–46, and D.M. Dean, 'Revising the History of Tudor Parliaments', *HJ* 32 (1989), pp. 401–11. A valuable reassessment of Neale's analysis in light of revisionism can be found in T.E. Hartley, *Elizabeth's Parliaments. Queen, Lords and Commons 1559–1601* (Manchester, 1992).

by Terry Hartley, these provide us with much information about bills and acts.³ For each of the last six parliaments at least one diary has survived. In 1584–5 Thomas Cromwell, MP for Preston, kept a diary which, although briefer than his earlier ones, still provides long descriptions of bills and some debates. In addition a ‘report of diverse speeches’ survives among Lord Treasurer Burghley’s papers and a journal was kept of many speeches by William Fitzwilliam, MP for Peterborough, who took special care to note down those made by his father-in-law, Sir Walter Mildmay, Chancellor of the Exchequer. William Fleetwood, Recorder and MP for London, sent Burghley a report on several speeches at the beginning of the session.⁴

An anonymous journal survives for 1586–7, which covers only a few weeks in February and March, and an even briefer one for 1589, which Neale attributed to Henry Jackman, MP for Calne.⁵ For 1593 a very detailed diary has survived in many copies; it is one of the best of the reign.⁶ Hayward Townshend, MP for Bishops Castle, kept diaries for both 1597–8 and 1601, which also survive in several copies. That for 1601 is much fuller, with many bills and debates recorded.⁷ Townshend’s diary was described by A.F. Pollard and M. Blatcher in the 1930s, and they published that for 1597–8. The fuller diary for 1601, along with a digest of proceedings in other parliaments, was published as Hayward Townshend’s *Historical Collections* in 1680.⁸ A less informative diary was kept by Sir William Twysden, MP for Helston in 1601, which was compiled by his son in 1645,

³ Hartley, *Proceedings*. Volume II (covering 1584–89) and volume III (1593–1601) appeared as this book was at proof stage.

⁴ Respectively, TCD MS 1045; BL, Lans. MS 43/72, ff. 164–75v; Northampton RO, Fitzwilliam of Milton MSS, Political Papers, 2; BL, Lans. MS 41/16, f. 45–45v. There is a more extended discussion of these and the sources noted below in Dean, ‘Bills and Acts’, pp. 20–7. This will be supplanted by Dr Hartley’s discussion in the later volumes of the *Proceedings*.

⁵ BL, Harl. MS 7188, ff. 89–103; BL, Lans. MS 55/63, ff. 184–5; Neale, *Parliaments*, pp. 206–7; *HPT*, II, 371.

⁶ The original does not seem to have survived and the remaining copies vary from those which cover most of the parliament in detail, such as BL, Cotton MS Titus Fii and Stowe MS 358, to shorter versions or summaries, such as BL, Harl. MS 1888; BL, Hargrave MS 324, Bodleian Library, Oxford, Tanner MS 264, Inner Temple, London, Petyt MS 538/20; and Northampton RO, Finch-Hatton MS 46.

⁷ BL, Stowe MS 362 seems to be the best text. Copies for both parliaments are in BL, Cotton MS Titus Fii and BL, Stowe MS 358; of 1597–8 in BL, Hargrave MS 278 and Northampton RO, Finch-Hatton MS 47; and, among at least ten copies of 1601, are BL, Egerton MS 2222, BL, Harl. MSS 2283, 7203 and Bodleian Library, Oxford, Rawlinson MS A 100.

⁸ A.J. Pollard and M. Blatcher, ‘Hayward Townshend’s Journals’, *BIHR* 12 (1934), pp. 1–31; *ibid.*, 13 (1935), pp. 9–34; *ibid.*, 14 (1936), pp. 149–65; *ibid.*, 15 (1938), pp. 1–18. Townshend, *Hist. Coll.*

and one written by Robert Bowyer also adds a little to our knowledge of this parliament.⁹

Some of these diaries, Townshend's, the anonymous diary of 1593 and those in the Library of Sir Robert Cotton among them, were used extensively by Sir Simonds D'Ewes when he compiled his journals of Elizabeth's parliaments sometime before 1630. It was published in 1682.¹⁰ Besides these, and other manuscript sources, D'Ewes had access to the journals kept by the clerks of both houses. This proved to be of the utmost importance because the journals of the Commons for 1584–1601 were lost probably sometime during the Interregnum. D'Ewes' comment that Clerk Fulke Onslow's journal from 1581 was 'exceeding difficult to be read' suggests that he was using Onslow's scribbled book and not the written-up journal, if such ever existed. The loss of several pages of the Lords' journal for 1597–8 is remedied by Bowyer's transcription.¹¹

Thus the greatest obstacle to the historian of legislation in this period is the loss of the Commons' journals. This is largely because D'Ewes was not content to transcribe the journals, but used them alongside other sources to compile his own history of these parliaments. When his journal was published by his nephew in 1682 further errors and omissions were introduced.¹² This means that statistics of bill numbers, readings, committees and so on must be viewed with caution and can never be regarded as completely accurate. Nevertheless, other sources enable us to recover most of the readings omitted by D'Ewes in his habit of identifying only some of several bills 'of no great moment' read on an occasion.¹³ Of course, D'Ewes must be used with caution not simply because he was aware of developments after 1601 and his compilation was made in light of that experience, but because his editorial practices may also impose an order on events that bears little relation to what really happened.

Although the loss of the Commons' journals are serious, the historian of the later Elizabethan parliaments benefits from a remarkable survival record of failed bills. Most are found in the House of Lords Record Office,

⁹ BL, Stowe MS 359; Inner Temple, London, Petyt MS 537/9, 16.

¹⁰ BL, Harl. MS 73, 74, 75. Although the manuscripts were used for this study, the footnotes will direct the reader to the printed edition of D'Ewes for convenience and the manuscript cited where necessary. Norah Fuidge has noted the most significant omissions in a copy of D'Ewes held in the Institute of Historical Research, London.

¹¹ Inner Temple, London, Petyt MS 537, vol. 6, and edited by Sainty.

¹² Besides leaving out the names of some committee members (particularly those towards the end of a long list), Bowes omitted a few proceedings, occasionally misnames MPs and on at least two occasions (23 and 24 November, 9 and 10 December 1597) runs events on different days together.

¹³ See D.M. Dean, 'Sir Simonds D'Ewes' Bills of "No Great Moment"', *Parliamentary History* 3 (1984), pp. 158–78.

where the Original Acts are also kept. The bills and acts, together with the journals and diaries, provide us with an enormous amount of information on the legislative intentions of MPs and peers. It is also hoped that readers of this book will be convinced that private and local archives, whether those of corporations, boroughs, companies or individuals, are also invaluable sources for the history of parliament. If the main purpose of this book is to indicate the variety of legislative activity in these parliaments, its second is to demonstrate that the history of parliament cannot be written from the central archives alone.

Lastly, it must be stated what this book is not. It is not intended to provide a critique of Neale's perspectives on the political aspects of parliamentary activity in this period, most notably the 'great cause' of Mary, Queen of Scots. Nor does it examine cases of privilege or disputed elections discussed by MPs and peers. These are important matters and took up a great deal of parliamentary time, but in most instances they affected legislation only indirectly, if at all. I hope to explore some of these issues elsewhere.

Another context which was beyond the scope of this study is enforcement. It seems clear to me that many of the bills and acts discussed here were affected by the experience of enforcement, not only by the victims and beneficiaries of laws, but by the men charged with effecting them. That experience was an essential ingredient in law-making and law-reforming, but to investigate comprehensively the enforcement of all the acts discussed here is probably beyond the efforts of any one historian. A few valuable case studies have appeared and work on others is under progress.¹⁴ However I might agree with Anthony Cope's view that the execution of laws 'is the leif therof', I had to rest content with discussing their parliamentary history.¹⁵

¹⁴ For example, M.G. Davies, *The Enforcement of English Apprenticeship, 1563-1642* (Cambridge, Mass., 1956); Leslie Ward, 'The Treason Act of 1563: A Study of the Enforcement of Anti-Catholic Legislation', *Parliamentary History* 8 (1989), pp. 289-308; D.R. Lidington, 'Parliament and the Enforcement of the Penal Statutes: The History of the Act "In Restraint of Common Promoters": 18 Eliz. I, c. 5', *ibid.*, pp. 309-28; Norman Jones, *God and the Moneylenders, Usury and Law in Early Modern England* (Oxford, 1989). I have recently begun a study of moral conduct legislation with Professor Jones.

¹⁵ BL, Lans. MS 83/68, f. 195.