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PATTERNS OF PARLIAMENTARY LEGISLATION, 1660–1800*

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ABSTRACT. *Before 1689 parliament met relatively infrequently and unpredictably, passing limited amounts of legislation. After that date parliament met annually and enacted a significantly enhanced volume of legislation. By relating attempts to legislate to patterns of acts this transformation is explored at a very general level. Some explanations are advanced, largely by examining institutional arrangements and the subject matter of legislation. Finally, some general observations on the significance of this ‘revolution in parliament’ are advanced.*

In the 203 years between the accession of Henry VII in 1485 and the flight of James II in 1688 the Westminster parliament passed nearly 2,700 acts, excluding the constitutionally troubled years 1642 to 1660.¹ In the 112 years from the Glorious revolution to union with Ireland over 13,600 acts were passed. This dramatic rise in legislative output was a most remarkable development and one of significance for historians of all shades. Yet if it has not been ignored, it has been surprisingly little studied in a general way, for the parliamentary history of this era still often follows the agenda of ‘high politics’.² This paper explores aspects of a different agenda and sets out to provide a general view of the great growth of law making. When precisely did this growth occur? Was it due to a greater demand for legislation or to parliament’s enhanced capacity to make law? What sorts of acts were contemplated and being passed?

This article follows a structural and quantitative approach as the best way of being precise yet general. But there are obvious limitations involved, for ultimately legislation is the product of particular circumstances and to

* This article arises from a project directed by myself, Joanna Innes and John Styles and generously funded by the Leverhulme Trust, with the British Academy providing some supporting financing. The research assistance of Simon Renton, Nyani Samarsinghe and Edmund Green was invaluable. Many thanks to Henry Horwitz, Joanna Innes and Paul Langford for commenting on an earlier version of this article.

¹ All counts of acts in this article are taken from O. Ruffhead (ed.), *Statutes at large...*, 18 vols. (1769–1800). C. H. Firth & R. S. Rait (eds.), *Acts and ordinances of the interregnum, 1642–1660*, 3 vols. (1911) is a selection, numbering over 1,300.

² This is discussed in D. Lieberman, *The province of legislation determined: legal theory in eighteenth-century Britain* (Cambridge, 1989), Introduction. P. Langford’s excellent *Public life and the propertied Englishman, 1689–1798* (Oxford, 1991) is perhaps the best available discussion of parliament’s legislative activities. See also W. Holdsworth, *A history of English law*, 17 vols. (1922–72), esp. vol. xi.

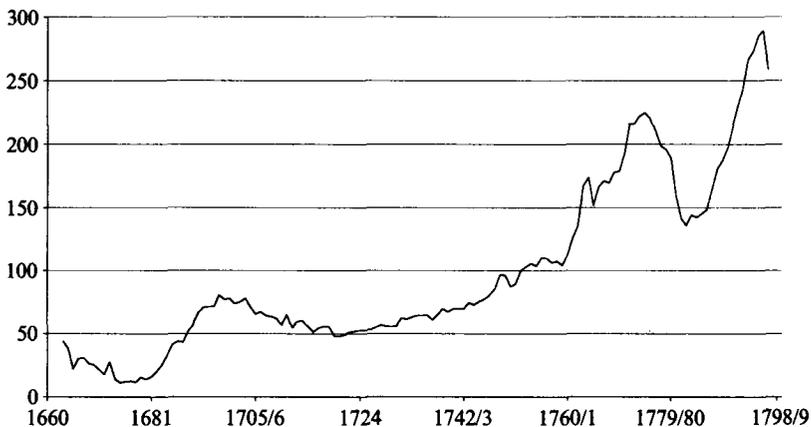


Fig. 1. Number of acts, 1660–1800 (7 session moving average).

concentrate upon aggregations and trends is to lose sight of this dimension. It is not suggested that the structural and quantitative approach is superior, simply that it provides the best means of detailing and initially exploring the general nature of what was, in effect, a revolution in parliament.

I

It is a relatively easy task to count acts, though care must be taken before c 1700 to ensure that they are accredited to the correct session.³ In Figure 1 sessional totals of acts have been charted as a moving average to show more clearly the general trend. This shows that the volume of acts was low and declining between 1660 and 1688, rose markedly between 1689 and 1702, stagnated between the accession of Anne and c 1750 before an era of remarkable growth from 1760, albeit one interrupted by a no less remarkable trough that reached its nadir in the early 1780s.

Was the rise in legislative activity in this period small or large? Here a yardstick is needed. First, enactments can be related to the frequency with which parliament met. Before 1688 the average number of acts passed each session was almost 26. After 1760 the figure was 194, nearly an eight-fold rise. But as sessions varied in length it is possible to express this more precisely as a ratio of acts passed to the number of days business was conducted in the Commons. For 1660–88 the ratio is 0.36 and for 1760–1800 1.95, a 5.4 fold rise. A second critical issue was that the legislative jurisdiction of Westminster

³ Done by checking the date acts received their royal assent. Session dates are in E. B. Fryde, D. E. Greenway, S. Porter & I. Roy (eds.), *Handbook of British chronology*, 3rd edn (1986), pp. 576–80, with two corrections: the session beginning on 19 May 1685 ended on 20 November 1685, not 2 July (when parliament was adjourned but not prorogued); the session of 14–24 April 1707 must be added. Because compilations of statutes and the *Journals* sometimes use different regnal years (and none follows precisely C. R. Cheney, *Handbook of dates for students of English history* (1970), pp. 26–8), I refer to sessions by their dates.

changed in this period. Most generally, apart from American independence the British empire expanded significantly. Legislators at Westminster were increasingly being called upon to contemplate issues in North America, the West Indies, Asia and elsewhere. More specifically, in 1707 the parliaments of Westminster and Edinburgh were united. Though this might be expected to have had an effect Figure 1 shows that there was no immediate impact. Even over the longer term after 1707 relatively few acts passed at Westminster exclusively or largely concerned Scotland. Furthermore, though changes occurred in the relationship between Westminster, the Dublin parliament and other representative assemblies within the wider empire it is difficult at this stage to see the impact of this upon legislative patterns.⁴ A third factor is of more significance in interpreting the general rise. By the end of the eighteenth century nearly a quarter of all acts explained, continued, expanded or amended existing legislation (in the Restoration era the figure had been only 7.4 per cent). This was particularly the case with turnpike trusts whose life was extended or terms altered. It could be argued that such acts were not new and creative, to the extent that the growth of legislative output shown in Figure 1 might be mentally scaled down. Even so, taking all three qualifications, it remains the case that between 1660 and 1800 there was a very considerable rise in the number of acts being passed.

Crudely, the volume of legislation is the outcome of the demand for acts and the capacity or willingness of parliament to meet that demand. To assess this relationship it is essential to compare the numbers of acts to totals of attempts to pass acts. This is not easy to do. There is a definitional problem of what constitutes an attempt as well as problems of evidence. In practice any systematic list of attempts must be compiled by a detailed trawl through the *Journals*.⁵ Those attempts that failed to leave an imprint there, whatever their significance, must be ignored. From the *Journals* it is possible to identify many failed bills and more expansively (if a little less certainly) all those additional efforts – petitions, resolutions, motions and the like – which appear to have had legislation as an aim.⁶ Some 7,025 failed legislative initiatives have been identified for this period, the general incidence of which is charted in Figure 2. Here the pattern is unlike that for acts, showing high levels not only in the Restoration era but also in the parliaments of William III. Levels then declined and were low from the Hanoverian accession to 1760 when they

⁴ For a discussion of which see J. P. Greene, *Peripheries and center: constitutional development in the extended politics of the British empire and the United States 1607-1788* (Athens, Georgia, 1986); idem, *The quest for power: the lower houses of assembly in the southern royal colonies 1689-1776* (Chapel Hill, North Carolina, 1963).

⁵ A major part of this work was undertaken by Sheila Lambert and she has kindly made her research notes available. For a fuller discussion and details see J. Hoppit (ed.), *Failed legislation, 1660-1800: extracted from the Commons and Lords journals* (forthcoming).

⁶ A bill is taken to have had a physical existence. It is obviously demonstrated by those failures which obtained at least a first reading (52.8 per cent for the period as a whole). Some failed bills, however, fell short of even that hurdle.

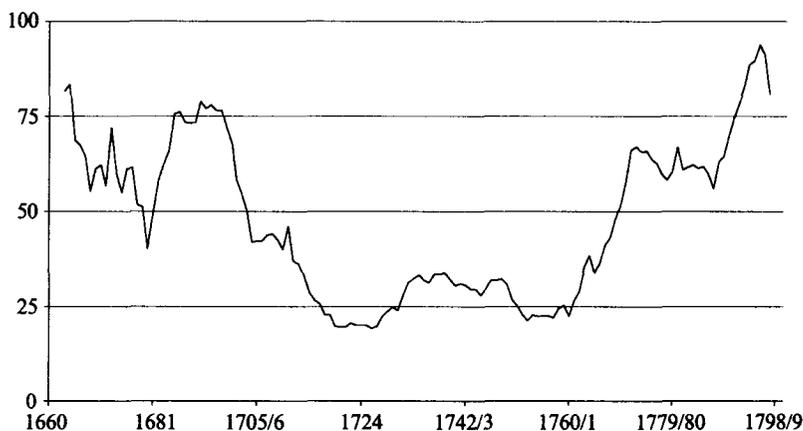


Fig. 2. Number of failed legislative initiatives, 1660–1800 (7 session moving average).

began to rise. Perhaps the most striking aspect of Figure 2 is that levels of failed legislative initiatives were so high from 1689 to c 1702, years when the volume of acts was rising.

With 14,216 acts passed between 1660 and 1800 and 7,025 failures, the success rate of all attempts was 66.9 per cent. However, there was a dramatic change in this proportion over time, as Figure 3 demonstrates. In the Restoration period that rate was low and declining, starting at about a third and finishing at less than a tenth. From 1689 the rate rose and reached what might be called the eighteenth-century norm by c 1714 (the rate averaged 75.3 per cent between 1714 and 1800). Although this graph shows some other fluctuations these are usually the product of a few highly idiosyncratic sessions influencing the moving average.⁷ It is the general trend that stands out: the decline of the Restoration period, the rise under William and Anne and the stability thereafter. This suggests that it was less the demand for acts than parliament's handling of legislation which must be focused on from 1660 to c 1714. Thereafter demand factors would appear to warrant closest attention. It is, of course, simplistic to assume that 'supply' and 'demand' factors were unrelated, but separating them helps identify a number of key factors at work.

Under Charles and James II only 28.2 per cent of attempts at legislation succeeded. The situation changed dramatically after 1688, with success rates rising to average 51.0 per cent for the years to 1714. The most potent explanation for this is that the amount of time available to pass legislation increased.⁸ To become an act bills have, as a minimum, within a single session

⁷ As in the short session of April 1707 when there were five failures and no acts, giving a success rate of zero.

⁸ Numerically the role of the royal veto was insignificant; only 12 bills were vetoed in this period, the last being by Anne. See also C. E. Fryer, 'The royal veto under Charles II', *English Historical Review*, xxxii (1917), 103–11. Through the eighteenth century direct royal influence could still occasionally halt bills in their tracks, witness Fox's India bill.

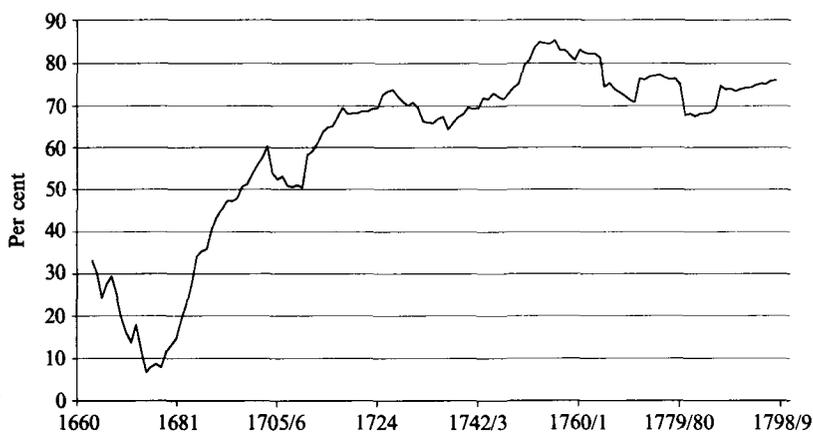


Fig. 3. Success rate of legislative initiatives, 1660-1800 (7 session moving average).

to be read three times and considered in committee in both Houses before gaining the royal assent.⁹ Necessarily, processing a large number of bills takes organization and time. The high failure rates before 1689 can probably be put down mainly to the unpredictability of the incidence and duration of sessions. Bills were often lost because of the sudden and unexpected end of a session rather than being positively rejected. Unexpected prorogations because of political tension between parliament and monarch killed bills which might otherwise have made it to the statute book.

Eleven of the 22 sessions between 1660 and 1688 lasted less than 50 days, whereas in the 121 sessions after 1688 there were only four which were so short (other than those caused randomly by the death of the monarch).¹⁰ Allied to this, in the Restoration era eight sessions came 300 days after the end of the previous session. After 1689 no gap reached that length. The Glorious revolution marked a sea change in the meetings of parliament and one which happened quickly. Indeed, sessions in the 1690s were generally the longest for the whole 140 year period. The reasons for this are well known. After 1688 parliament quickly asserted the power of the purse which, with the full consequences of William III's military operations, ensured that the timing of sessions soon became a matter of routine. A parliamentary calendar was forged that was, in certain respects, predictable. Sessions began either in the autumn

⁹ On procedure see S. Lambert, *Bills and acts: legislative practice in eighteenth century England* (Cambridge, 1971); P. D. G. Thomas, *The house of commons in the eighteenth century* (Oxford, 1971), ch. 3; A. J. Rees, 'The practice and procedure of the house of lords 1714-1784' (University of Wales Aberystwyth, Ph.D. thesis, 1987), ch. 3 and appendix 1.

¹⁰ Length of sessions is taken from the *Journals of the house of commons*, noting when the Commons actually met and conducted business (excluding days solely concerned with the consideration of election disputes). Because of holidays and adjournments the dates of sessions imprecisely indicate length. The average length of sessions in days was: 1660-1688, 70.5; 1689-1714, 108.7; 1714-1760, 99.1; 1760-1800, 97.4.

or January and lasted to late spring or early summer.¹¹ But three qualifications to this 1688 as turning point picture must be made. First, despite the high failure rate of the Restoration years, large numbers of attempts to obtain legislation continued to be made. If there was disillusionment with the parliamentary process this did not manifest itself in a clear avoidance of taking the legislative route. Second, the 1660s saw a number of long sessions. Five of the nine sessions in that decade lasted over 100 days and the first session of the Cavalier parliament was, at 179 days, the second longest session for the whole of the period under discussion. There was a good deal of parliamentary activity in the 1660s, much more so than between 1670 and 1688. Third, and of more general import, if the success or failure of legislative initiatives was simply a question of the predictability of length and periodicity of sessions then 1689 should immediately have seen success rates rise to the eighteenth-century norm. But from Figure 3 it is clear that this rise took the best part of a quarter of a century. Sessional length and periodicity provides an incomplete explanation of patterns of success and failure.

Two broad, not incompatible, explanations are possible as to why success rates improved gradually after 1689 rather than all at once.¹² First that the 'rage of party' of those years created an unstable parliamentary situation that was uncondusive to turning bills into acts. The sorts of influences here may have been: that the waging of war on an unprecedented scale left little time in parliament to consider less pressing legislation; that party bickering created too many distractions properly to timetable much legislative business; that frequent parliaments made it hard to evolve new procedures to cope with the flow of business and kept introducing new sets of MPs who were inexperienced and imperfectly connected to constituents and others interested in instigating bills. All of these are quite possible. The second, related, explanation is essentially administrative: that parliament only gradually came to terms with its new-found potential to conduct a heightened volume of legislation.¹³ Perhaps it took time to learn how to timetable bills, to order select committees or to ensure only high-quality proposals were considered. The means by which it realized its capacity for work and the forms that were needed to undertake it were bound to take time.

The best evidence of administrative developments is provided by the history of standing orders, that is those perpetual rules governing procedure. For the Commons, such orders were first made in 1678 and there were 37 made

¹¹ The institutionalization of this in the 1690s was partly related to the absence of William and other major figures during the campaigning season – he was out of Britain for 40 per cent of his reign – requiring organizational forethought from both king and parliament. Absences calculated from the dates given in C. Cook & J. Stevenson, *British historical facts, 1688–1760* (Basingstoke, 1988), p. 3.

¹² Many important points are made in H. Horwitz, *Parliament, policy and politics in the reign of William III* (Manchester, 1977).

¹³ Some points are made in K. M. Ellis, 'The practice and procedure of the house of commons 1660–1714' (University of Wales Aberystwyth, Ph.D. thesis, 1993).

between then and 1714.¹⁴ Looking at Commons standing orders relating to private bills the first one was made in 1685 when it was declared that 'no private bill be brought in except on a petition first made'. In 1697 another order insisted that after a bill's first reading it had to be given a date for its second reading. In 1699 a series of orders were made. The petition presenting the bill had to provide 'Suggestions and Reasons for the same'; committees considering bills had to give a week's public notice of sitting; committee chairmen were obliged to confirm that the bill had been examined and that the parties concerned had given their consent; and there had to be a space of at least three days between readings. In 1705 it was ordered that private bills be printed after presentation and before first reading and the procedure ensuring that persons interested in private bills had given their consent was tightened.¹⁵ Similar standing orders were introduced in the Lords between 1698 and 1706.¹⁶ The effect of all this was to introduce some uniformity of practice to both Houses, provide a skeleton timetable for many bills, ensure that they were dealt with consistently and above board and prevent them getting lost in the mêlée of other business. Bills had to be justified, publicized and examined, with opposition being met before not after they became acts. Other developments at much the same time, such as the growing use of sessional orders, the daily printing of a record of activity in the *Votes* and the expansion of clerical support in parliament also helped to introduce a sense of order and responsibility into the legislative process between 1689 and 1710.¹⁷

These procedures remained relatively unchanged through the rest of the eighteenth century. So, under William and Anne both Houses began to organize their legislative business much more carefully. It may well be that parliament was becoming aware of organizational problems before 1688, but was only able purposefully to resolve them in the 1690s and 1700s, more particularly perhaps with peace in 1697. That they were resolved by the accession of George I seems clear. Sessions between 1714 and 1760 were shorter on average than for any period since 1688 yet the number of failed initiatives was very low.¹⁸ Indeed, by the end of the 1720s the handling of business was well enough established to allow a five day week in parliament. This was no small change, for under the later Stuarts Saturday sitting had been the norm. All in all, by the second half of Walpole's hegemony many administrative and clerical developments within parliament had been significantly advanced.

Before 1714 the growth of law making was in good measure a function of

¹⁴ B. Kemp, *Votes and standing orders of the house of commons: the beginning* (1971), p. 6.

¹⁵ O. C. Williams, *The historical development of private bill procedure and standing orders in the house of commons*, 2 vols. (1948-9), II, 262.

¹⁶ *Remembrances: or, a compleat collection of the standing orders of the house of lords in England* (1744).

¹⁷ O. C. Williams, *The clerical organization of the house of commons 1661-1850* (Oxford, 1954), pp. 53-7. See also *The minute book of James Courthope*, ed. O. C. Williams, *Camden Miscellany*, xx (1953).

¹⁸ The average number of failed initiatives per session was: 1660-1688, 65.3; 1689-1714, 60.1; 1714-1760, 26.2; 1760-1800, 59.7.

parliament meeting more frequently, for longer and more predictable sessions and arranging its business more carefully. That is, what might be called supply side issues were crucial. But such factors can only have limited relevance in explaining changing levels of legislative activity thereafter. There were a number of new standing orders after 1770, especially relating to particular classes of legislation (such as enclosure, turnpikes and small debt courts) but these were not different in kind from earlier orders and probably had only a small impact upon procedural practice. How parliament handled the great growth of law making after 1760 is, as yet, obscure. Perhaps the organizational problems were inconsiderable and easily accommodated within existing practices. If there were problems and solutions devised they are largely lost from view. The *Journals* tell us little about the length and intensity of the parliamentary day or of how the vital business conducted by select committees was ordered. From c 1780 they do begin to note that sittings occasionally extended beyond midnight, suggesting that the pressure of business was mounting. What does seem clear is that any procedural changes that may have taken place were a response to a heightened demand for legislation after 1760.

II

Investigating the demand for legislation requires an analysis of the types of legislation being considered. At the time the only categorization routinely employed was to distinguish between public and private measures. But that distinction inconsistently reflected the purposes of legislation. So, for example, local turnpike acts were public bills (they affected the king's highway and levied a charge on the public), whereas the vast majority of enclosure acts, which were similarly local, were private. 'Public' and 'private' are by themselves largely unhelpful analytical categories.¹⁹ At the most general level one way forward is to distinguish those acts which were general and had a national provenance from those which were essentially local, highly particular or personal in their concerns. Such a distinction is not absolutely watertight, but it is relatively unproblematic. Remembering that four main periods in the development of legislative activity have been identified a count of local and general acts is presented in Table 1.

Most acts concerned issues that were specific and often highly local, arising from the ambitions of individuals or small groups. But that dominance was not unchanging over time. The growth of law making in the generation following

¹⁹ See Lambert, *Bills and acts*, pp. 172-80. The numbers of public and private acts were:

	Public	(%)	Private	(%)
1660-1688	253	44.9	311	55.1
1689-1714	681	38.9	1071	61.1
1714-1760	1924	54.2	1625	45.8
1760-1800	4827	57.8	3524	42.2
1660-1800	7685	54.1	6531	45.9

Table 1. *Specific and general acts, 1660-1800*

	Specific	General	All	% Local
1660-1688	359	205	564	63·7
1689-1714	1 173	579	1 752	67·0
1714-1760	2 635	914	3 549	74·2
1760-1800	6 206	2 145	8 351	74·3
1660-1800	10 373	3 843	14 216	73·0

Source: *Statutes at large*.

Table 2. *Success rates of specific and general legislative activity, 1660-1800*

	Specific			General		
	Acts	Failures	% Success	Acts	Failures	% Success
1660-1688	359	585	38·0	205	851	19·4
1689-1714	1 173	697	62·7	579	985	37·0
1714-1760	2 635	714	78·7	914	568	61·7
1760-1800	6 206	1 903	76·5	2 145	722	74·8
1660-1800	10 373	3 899	72·7	3 843	3 126	55·1

Source: *Statutes at large*; *Journals of the house of commons*; *Journals of the house of lords*.

the Glorious revolution was in small measure the result of more specific acts being passed than before. More striking, however, is that it is clear that the growth of law making after 1760 was a response to the demand for both specific and general measures (the proportions of each barely changing in the periods before and after that date), though obviously the prominence of specific legislation means that it deserves primary consideration.

As can be seen from Table 2 it was far from the case that specific and general legislative initiatives had the same pattern of success and failure. Whereas only just over a half of attempts at general legislation succeeded through the whole period, for specific initiatives it was nearly three quarters.²⁰ This difference was most marked before 1689 and gradually narrowed to insignificance by the close of the eighteenth century. The high success rates of specific legislative initiatives suggests that they were often seen as relatively unproblematic by parliamentarians. Any powers or rights granted were, by definition, limited

²⁰ It is not always easy to tell from the *Journals* whether a failed initiative had a local or a general significance. If there is a bias it is likely that too many have been counted as general. With acts, where both a full title and text survives, ascription should be more accurate.

and unlikely to cause broad problems. Just the opposite was the case with general legislation. Consequently, as Maitland put it, in the eighteenth century 'A vast majority of statutes he would class rather as *privilegia* than as *leges*; the statute lays down no general rule, but deals only with a particular case.'²¹ Two other interrelated factors may have been at work. First that for general legislation the era before c 1714 was essentially one of experimentation, of trial and literally error. The reasons for this relate not only to the exigencies of the time but also to the fact that attempts to create a new basis to government came from both within and outside of government. Hayton has suggested that in the 1690s and 1700s government struggled, sometimes unsuccessfully, to control legislative initiatives concerned with public business.²² By the 1730s the government appears to have exerted more influence over general legislation. It is worth underlining that in the 25 years from 1689 to 1714 there were 985 unsuccessful attempts at general legislation, whereas in the 46 years from 1714 to 1760 there were only 568. Yet in the same periods the number of general acts rose from 579 to 914. It is possible that the intense political pressures of the period from the Restoration to, roughly, the Septennial Act, may well have contributed to the high casualty rate of general legislative measures. Killing such bills was central to the political struggles of that era. If the distinction between governmental and non-governmental legislation was often blurred, and if by the middle of the eighteenth century many general measures continued to emerge from across the political nation, there is no doubt that by the second quarter of the eighteenth century the government exerted much more control over the general legislation considered by parliament. Indeed, it is possible that patterns of successful and unsuccessful general legislative activity provide a crude indicator of the much vaunted growth of political stability.

Distinguishing between specific and general legislation only scratches the surface of the nature of legislative activity in this period. Consideration of patterns of demand can be taken further by examining the subject matter of acts and failed initiatives. To do this a scheme has been devised employing ten major categories, resting upon 31 sub-categories which in turn derive from 177 particular ones.²³ Inventing and employing classificatory schemes involves taking liberties, for it is a deliberate simplification to allow generalizations to be made. Furthermore, acts and initiatives have, for the most part, been coded only on the basis of their titles which, occasionally, were opaque or actually misleading. Finally, any categorization will throw up problems of border cases. For example, is legislation that sought to lay duties upon imports to protect domestic industries to be classed under 'finance' or 'economy'? To circumvent this all legislative activity has been allowed two codes, though for

²¹ F. W. Maitland, *The constitutional history of England* (Cambridge, 1908), p. 382.

²² J. Hoppit, J. Innes & J. Styles, 'Towards a history of parliamentary legislation, 1660-1800', *Parliamentary History*, xx (1994), 318.

²³ I am grateful for the assistance given here by David Hayton and his team at the History of Parliament.

Table 3. *Subject distribution of acts, 1660-1800 (as percentage of all acts in periods)*

	1660-88	1688-1714	1714-60	1760-1800	1660-1800
Personal*	42.9	48.0	34.8	18.3	27.1
Government	3.4	6.2	3.6	2.7	3.4
Finance	12.4	13.9	11.1	11.1	11.5
Law and order	9.0	6.1	5.4	2.7	4.0
Religion	7.6	4.7	3.7	2.7	3.4
Armed services	3.4	4.6	3.3	3.8	3.8
Social issues	3.9	3.3	3.9	6.1	5.1
Economy	11.9	7.7	13.6	30.9	23.0
Communications	4.1	5.1	19.6	21.6	18.3
Miscellaneous	1.4	0.4	1.1	0.2	0.5
	100.0	100.0	100.0	100.0	100.0

Source: *Statutes at large*.

* Personal legislation was largely concerned with private matters, especially estates and inheritance. The other categories should be self-explanatory.

reasons of space only the primary codes will be considered here.²⁴ For acts the evidence is presented in Table 3.

Four types of acts were especially common: personal, economy, communications and finance, together accounting for nearly eight out of ten of the total. That other categories produced far fewer acts is not surprising and helps to demonstrate the one-dimensional nature of counting acts. Religion provides a case in point. Under the later Stuarts religious issues had been at the very heart of constitutional conflicts. But, on the one hand, if they were considerable they were also few and well defined. On the other hand, such was the intensity of religious controversy that before 1714 it proved hard to pass any legislation in that area (see Table 5 below). Attempts, for example, to enact against Sabbath breaking were seen as innocent and fundamental by some, but as doctrinaire by others. Consequently, religious issues did not produce a torrent of law making, but did produce legislation of the importance of the Test and Toleration acts. Later, Walpole managed largely to take religion off the parliamentary agenda. When it returned it did so infrequently, but often at great cost, as the Jew bill and Gordon riots attest. Consequently, through most of the period, religious legislation was usually local and specific, concerned with splitting or merging parishes, altering the rights of presentment and church income.

Of the four major categories of legislation finance accounted for the fewest acts. Its contribution remained remarkably steady over the period as a whole.

²⁴ Those acts and failed initiatives which addressed more than two subjects have been classed under 'Miscellaneous'.

Table 4. *Subject distribution of failed initiatives, 1660-1800 (as percentage of all failures in periods)*

	1660-88	1688-1714	1714-60	1760-1800	1660-1800
Personal	19.2	18.4	22.8	10.9	16.6
Government	6.2	10.5	7.1	8.2	8.2
Finance	8.6	13.5	8.0	6.4	8.8
Law and order	13.0	11.5	10.3	5.9	9.5
Religion	14.1	6.3	4.1	2.5	6.1
Armed services	2.4	5.0	3.6	1.4	2.9
Social issues	8.4	9.9	10.1	10.6	9.9
Economy	20.0	17.2	17.7	33.7	24.0
Communications	6.2	6.6	15.1	19.6	12.9
Miscellaneous	1.9	1.1	1.2	0.8	1.2
	100.0	100.0	100.0	100.0	100.0

Sources: *Journals of the house of commons*; *Journals of the house of lords*.

However, as Table 4 and more especially Table 5 show, this stability masks important changes that took place.

In all periods except the reigns of William and Anne the success rate of finance legislation was markedly higher than average. But between 1689 and 1714 there was a large number of failed initiatives relating to finance, though most concerned private not public finance. Indeed, the success rate for public finance legislation was 66.0 per cent but for private finance only 24.7 per cent. In fact, the expansion of the 'fiscal-military state' in the 1690s and 1700s was not, in legislative terms, especially experimental or risky.²⁵ But legislators were much more reluctant to throw the weight of statute law behind what might be called 'bubble economics'.²⁶ After the accession of George I the success rate of finance legislative initiatives was high, partly because in the realm of private finance developments requiring the force of new laws were few, partly because for public finance the government now had much clearer control over supply bills, even in the era of innovation under Pitt the younger.²⁷

The second major category of legislation was communications. Before 1714 legislation in this category was very infrequent. Thereafter it accounted for

²⁵ A number of the developments in the 1690s and 1700s had their origins earlier, in some cases in the Interregnum. See C. D. Chandaman, *The English public revenue 1660-1688* (Oxford, 1975); H. Roseveare, *The financial revolution 1660-1760* (1991).

²⁶ See J. K. Horsefield, *British monetary experiments, 1650-1710* (1965); W. R. Scott, *The constitution and finance of the English, Scottish and Irish joint-stock companies to 1720*, 3 vols. (Cambridge, 1910-12); K. G. Davies, 'Joint-stock investment in the later seventeenth century', *Economic History Review*, IV (1951-2), 283-301.

²⁷ J. E. D. Binney, *British public finance and administration, 1774-92* (Oxford, 1958); J. Ehrman, *The younger Pitt: the years of acclaim* (1969), ch. 10; P. K. O'Brien, 'The political economy of British taxation, 1660-1815', *Economic History Review*, 2nd ser. XLI (1988), 1-32.

Table 5. *Success rates of legislative initiatives by subject, 1660-1800*

	1660-88	1688-1714	1714-60	1760-1800	1660-1800
Personal	46.8	73.1	80.9	84.2	76.8
Government	17.6	37.9	58.1	51.0	45.5
Finance	36.3	51.8	79.4	84.7	72.5
Law and order	21.4	35.6	59.4	58.7	46.1
Religion	17.5	43.9	71.0	77.4	52.9
Armed services	35.2	48.8	72.0	89.3	72.5
Social issues	15.5	25.9	51.5	64.9	51.3
Economy	18.9	31.8	67.9	74.5	65.9
Communications	20.5	44.8	78.2	77.8	74.2
Miscellaneous	22.2	26.9	72.2	42.9	45.7
All	28.2	51.0	73.5	76.1	66.9

Sources: Statutes at large; Journals of the house of commons; Journals of the house of lords.

about a fifth of all acts. Nearly three-quarters of acts in this category were concerned with turnpikes, though a significant number dealt with bridge building, harbour developments, river improvements and canals. Most of these acts were obviously local in origin and concern and were related intimately to economic improvement. They are a vivid example of the ways commercial groups utilized political authority for essentially narrow financial ends. Frequently monopoly rights were granted and, additionally, businessmen and investors well knew that parliament could provide exemplary security for their speculations. But there is a caveat to this for many communications acts explicitly either continued, amended, explained or, rarely, repealed existing legislation. We get a sense here of the caution of legislators, even in granting highly local and specific rights. They were prepared to grant such rights only for limited terms to ensure that they remained restricted and liable to frequent reconsideration. In the late 1760s about 40 per cent of local communications acts rested directly upon prior legislation. A decade later this had risen to just short of 80 per cent and for the rest of the century it was about 60 per cent. Parliament may have been readily available to those businessmen carving out a new infrastructure but it was determined to keep a watching brief on what was taking place.²⁸

Over the whole period just under a quarter of all acts concerned the economy – about 70 per cent being enclosure acts. Next in numerical significance among the sub-groups came legislation dealing with: external trade (about 16 per cent of economy acts); the regulation of internal trade in general terms (as in controls on middlemen, weights and measures and the

²⁸ E. Pawson, *Transport and economy: the turnpike roads of eighteenth century Britain* (1977), esp. chs. 3-5 raises many important issues concerning turnpike legislation.

restriction or encouragement of consumption); agricultural production (as opposed to land distribution); and manufactures. For want of space only one dimension of enclosure legislation will be considered further here.

As is well known, in the eighteenth century enclosure acts were concentrated in two periods, separated by a marked trough. The first peak was in the 1776/7 session when there were 92. A collapse then followed, such that in the admittedly fairly short session of 1783/4 only three were passed. Yet by 1796/7 the next peak of 84 was reached. This was a startling rise, fall and rise, with profound implications for the way parliament needs to be considered. Many historians have explained this chronology largely in demand side terms, particularly the investment climate. For Turner the question was simply 'Were interest rates or prices the more potent factor?'²⁹ The importance of the answer to that question is not doubted, but another question might be posed. Did parliament vary in its receptiveness of attempts at enclosure legislation? Between the advent of the main enclosure movement in the 1750s and the 1780/1 session that marked the beginning of the trough, success rates of enclosure legislation were often in excess of 80 per cent, only once going beneath 70 per cent.³⁰ Yet in the four sessions leading to the nadir of 1783/4 the success rate averaged exactly 50 per cent. Whether this decline was due to parliament changing its procedures or to a deterioration in the quality of initiatives being presented is difficult to say, but there is some evidence that the former played a part. That there was some unease in parliament by the early 1780s is shown by the appointment of a committee to consider 'of proper Regulations, to be inserted in Bills... with respect to the making and keeping in Repair the Roads in such Inclosures'.³¹ In March 1781 two of the committee's resolutions were then adopted as standing orders: that public roads had to be kept clear and fenced off; and that enclosure commissioners should appoint salaried surveyors to make and keep public roads in repair, to be paid for by the sale of land or a rate on owners of the lands.³² These orders would have raised the costs of enclosure which would, in turn, have influenced the number of initiatives brought before parliament. Parliament was, of course, largely a body of landowners, employing all of the assumptions and aspirations of that group.³³ Yet it was not irresponsible within those terms and

²⁹ M. Turner, *Enclosures in Britain 1750-1830* (1984), p. 47.

³⁰ This is calculated from the slightly larger sub-category of 'The land', a category that was overwhelmingly dominated by enclosure legislation. In 1762/3 the rate was 57.6 per cent.

³¹ *Journals of the house of commons*, xxxviii (1780-2), 224.

³² *Journals of the house of commons*, xxxviii (1780-2), 232, 288.

³³ J. M. Neeson, *Commoners: common right, enclosure and social change in England, 1700-1820* (Cambridge, 1993), p. 274. For parliament's handling of enclosure legislation see: J. M. Martin, 'Members of parliament and enclosure: a reconsideration', *Agricultural History Review*, xv (1980), 101-9; W. E. Tate, 'The *Commons Journals* as sources of information concerning the eighteenth-century enclosure movement', *Economic Journal*, liv (1944), 75-95; idem., 'Opposition to parliamentary enclosure in eighteenth-century England', *Agricultural History Review*, xix (1945), 137-42; idem., 'Parliamentary counter-petitions during enclosures of the eighteenth and nineteenth centuries', *English Historical Review*, lix (1944), 393-403.

it is possible that procedural changes could influence the investment decisions of landowners looking to enclose via legislation.

Over a quarter of all acts between 1660 and 1800 were 'personal'.³⁴ Most striking, in the period 1689-1714 this category provided very nearly a half of all acts. If this dominance had waned by 1800 many personal acts were still being passed. An overwhelming majority concerned estates in one form or another, most usually regarding landownership and inheritance, as in the binds of wills, settlements and guardianships. These acts, therefore, dealt with individual families, exclusively elite families and properly looked at provide a colourful soap opera of the period. More to the point they show, when put alongside enclosure legislation, the extent to which legislative activity was being used by the upper echelons of society to further their particular interests. It may be true that, with regard to general principles, 'the eighteenth century was, so far as land law is concerned, a period of legislative quiescence', but with regard to particular circumstances it is quite untrue.³⁵

What explains this plethora of estate acts?³⁶ Partly it was simply the value of an act of parliament itself. As has been noted 'The private estate act was cheaper to obtain and a much faster process than a suit in chancery. Instead of being at the mercy of the lawyers, an estate bill went before two bodies of men who were almost exclusively landowners themselves.'³⁷ But the need for such acts reflects the growth of settlements as a device in estate management after the Restoration and that only the power of parliament could readily change such arrangements.³⁸ With more such settlements being created, more acts would be needed to change them when they foundered upon the rocks of altered circumstances or aspirations. Those circumstances were in general terms either demographic or financial. It may also be that the demographic failure of the elite fully to reproduce itself before *c.* 1740 left many settlements uncertain, requiring the clarification of legislation.³⁹ Habakkuk, however, has also stressed the need to view such legislation in terms of the need to sell, that is to the income and debt problems landowners could face.⁴⁰ Certainly Evelyn put these acts down to 'the wonderfull prodigality & decay of Families'.⁴¹ If

³⁴ Most of this legislation has been little studied by historians, though divorce and naturalization acts have been - neither were numerically significant. S. Wolfram, 'Divorce in England 1700-1857', *Oxford Journal of Legal Studies*, v (1985), 155-86; L. Stone, *Road to divorce: England 1530-1987* (Oxford, 1990), part x; D. A. Statt, 'The controversy over the naturalization of foreigners in England, 1660-1760' (University of Cambridge, Ph.D. thesis, 1987).

³⁵ A. W. B. Simpson, *A history of the land law*, 2nd edn (Oxford, 1986), p. 271. Holdsworth adopts a similar position in his *History*, xi, 586-94.

³⁶ Some points are in M. Bond, 'Estate acts of parliament', *History*, XLIX (1964), 325-8.

³⁷ B. English & J. Saville, *Strict settlement: a guide for historians* (Hull, 1983), p. 50.

³⁸ L. Bonfield, *Marriage settlements, 1601-1740: the adoption of strict settlement* (Cambridge, 1983), especially pp. 86-7.

³⁹ Summarized in J. V. Beckett, *The aristocracy in England, 1660-1914* (Oxford, 1986), pp. 58-65; L. Stone & J. C. Fawtier Stone, *An open elite? England 1540-1880* (Oxford, 1984), pp. 86-104.

⁴⁰ H. J. Habakkuk, 'The rise and fall of English landed families, 1600-1800: II', *Transactions of the Royal Historical Society*, 5th ser. xxx (1980), 202.

⁴¹ *The diary of John Evelyn*, ed. E. S. de Beer, 6 vols. (Oxford, 1955), v, 209, 21 May 1695.

that were the main factor at work we might initially assume that such prodigality was randomly distributed over time. Was it? Here the specific chronology of estate legislation must be considered, for which see Figure 4.

The Glorious Revolution was followed by an explosion in the number of personal acts, rising steeply to a peak of 59 in 1705/6 (63 per cent of all acts passed in that session). A sharp fall followed over the next decade until slow recovery set in. For the last 40 years of the eighteenth century we can see a rise, fall and rise that is very reminiscent of enclosure legislation. Discussion of this chronology will concentrate on the periods 1689–1710 and 1760–1800. For the first period one explanation of the great rise would resort again to issues of the length and predictability of parliamentary sessions after 1688. Before then the success rate of personal legislation was rather less than half, but between 1689 and 1714 it was nearly three-quarters. It is possible that the advent of predictability in the meeting of parliament after 1688 released much pent-up demand for estate acts. It is unlikely, however, that this would explain the great falling off of personal legislation after 1705/6. In fact, after the Glorious Revolution contemporaries very soon recognized that parliament was being swamped with applications for such acts. In February 1692 two MPs ‘spoke mightly against private bills, the number and multitude of them’. In December of the same year one of these, Sir Edward Seymour, ‘inveighed much against private bills and the many mischiefs arising therefrom, and said the business of the Lords was upon appeals and this House was taken up with private bills to destroy the settlement of estates in England.’⁴² Soon the Lords addressed the problem and, through a series of standing orders, sought to control the work the landed elite were putting their way. The great fall-off in the number of personal acts after 1705/6 may well bear witness to the effect these orders had.⁴³ There is then a clear supply side explanation for both the rise and fall of personal legislation between 1689 and 1710. Perhaps, though, demand side issues also had a part to play. Certainly contemporary country propagandists thought landowners were in dire straits in the 1690s and 1700s, declaiming against what is now called the ‘financial revolution’, especially the burden of the land tax.⁴⁴ No doubt at the very least such propaganda was an exaggeration, but perhaps landowners were being hit hard and estate acts are, so to speak, the pips squeaking? There were, of course, other ways landowners could run into financial difficulties, through over expenditure (especially connected to country house building and the London season) and the disruption of income flows, though it is improbable that these would have chronologically coincided with the pattern of estate acts.

⁴² *The parliamentary diary of Narcissus Luttrell 1691–1693*, ed. H. Horwitz (Oxford, 1972), pp. 189, 323.

⁴³ See especially those orders made in 1705 and 1706 in *Journals of the house of lords*, xviii (1705–9), 20, 70, 105–6, 183–4.

⁴⁴ See P. G. M. Dickson, *The financial revolution in England: a study in the development of public credit 1688–1756* (1967), ch. 2; C. Brooks, ‘Taxation, finance and public opinion, 1688–1714’ (University of Cambridge Ph.D. thesis, 1971); G. Holmes, *British politics in the age of Anne* (revised edn 1987), pp. 160–2.

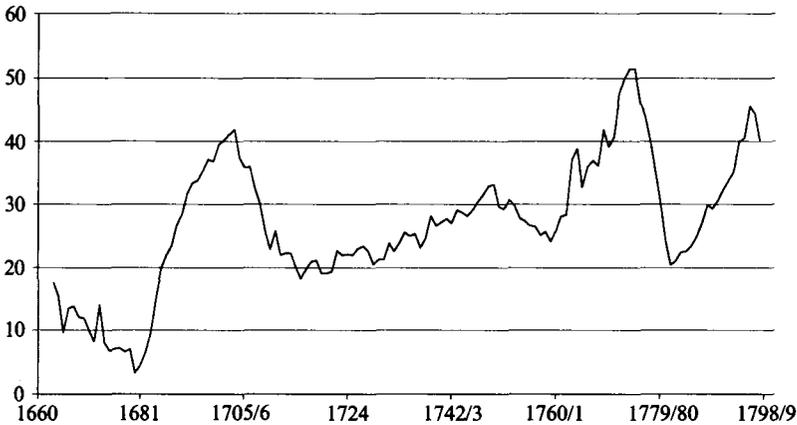


Fig. 4. Number of Personal acts, 1660-1800 (7 session moving average).

One of the most marked features of Figure 4 is that the pattern of personal legislation after 1760 shows many similarities to that of enclosure acts. The reasons for this can only be speculated upon here. One possibility is that in that period estate acts were often quasi-enclosures (in the sense of redistributions of landownership), susceptible to the same influences upon investment decisions as enclosure proper. That is to say, the graph of estate acts mimicked that of enclosure acts. This has much to recommend it. But perhaps it was sometimes the other way round? Perhaps enclosure acts were sometimes attempts to make ends meet. Estate acts are often seen as born of financial shortfalls requiring the reordering of a family's landholdings, that is they are viewed negatively, as desperate remedies. Enclosure acts by contrast are usually viewed more positively, as commercially orientated efforts to seize available opportunities. Yet if it is hard to distinguish the real motives for enclosure, whether they were positive or negative, there is no reason simply to assume the former always held sway.

III

Before the Glorious revolution the legislative output of parliament was infrequent, unpredictable and numerically inconsiderable. There was a transformation, a revolution, as a consequence of the events of 1688 and 1689. In legislative terms, by the early eighteenth century parliament had a new place in the social, economic and political life of the country. That place was especially dependent upon the needs of state (especially waging war, ordering colonial relations and maintaining economic and social stability) and the economic needs of individuals and small interest groups. Legislative expansion enhanced central, local and individual authority.

There was nothing more powerful than an act of parliament. Commentators before and after 1688 were happy to see parliament (as king, Lords and

Commons) not just as a supreme authority but as an absolute one. Locke wrote that 'This *Legislative* is not only *the supream power* of the Common-wealth, but sacred and unalterable in the hands where the Community have once placed it'. Addison made a very similar point in 1715 and it was developed famously by Blackstone: Parliament

hath sovereign and uncontrollable authority in making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denominations, ecclesiastical, or temporal, civil, military, maritime, or criminal: this being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the constitution of these kingdoms.⁴⁵

That particular despotic power was only available intermittently before 1688, but was always available thereafter. For the monarch, church and nation parliament focused power and responsibilities in remarkable and relatively public ways. It gave, or at least made available, authority to all parts of the constitution.⁴⁶

Legislative authority, however, if absolute was not unrestrained or unstructured. The relatively public nature of the legislative process altered accountability in small but significant ways. It also contributed to critical changes taking place in the ways policy was formed and politics was conceived. The structure of bill readings and the opportunities for debate had important consequences. First, though each bill was treated individually, each also had to leap through a series of well-established hoops. These hoops could never be done away with, though political manipulation might change their height or angle. So, secondly, bills did have to be justified and their worth proved publicly. Assumptions, prejudices and dogma could still carry the day, but increasing resort was made to arguments and information to prove the point. Outside parliament, significant changes occurred with the development of the press, broadly defined, interest groups and lobbying. Within parliament select committees often had to trawl through a morass of opinions and information. For much general legislation in 1696 there was a breakthrough, though one dependent upon developments dating back at least to the Interregnum. From that date, through the central bureaucracies for customs, shipping and the board of trade, parliament was able to call on a mass of information to help with its business. Because of seventeenth-century developments, eighteenth-century policy making was not as ill conceived or short sighted as is often made out, though it was generally speaking constructed from within the mental world of the elite.

Most legislation was local and much of it demand led. In a sense there was a consumer culture among the elite here, with emulation being a powerful

⁴⁵ J. Locke, *Two treatises of government*, ed. P. Laslett (Cambridge, 1991), p. 356; J. Addison, *The Freeholder*, ed. J. Leheny (Oxford, 1979), p. 107; W. Blackstone, *Commentaries on the laws of England*, 4 vols. (Oxford, 1765-9), I, 156.

⁴⁶ On the issues raised here see Langford, *Public life*, pp. 148-56.

factor encouraging key developments.⁴⁷ More significantly, Langford has noted that much local legislation had the effect of creating a wide range of new authorities within the nation, and with them new places of power and opportunity.⁴⁸ Many of these authorities were turnpike trusts; some were poor law authorities, improvement commissioners, charity trustees and the like. Such authorities were integral to the process of transformation of local economy, society and polity at the time. That the provenance of these authorities was local needs to be underlined, for localism remained a very powerful force. Within their own areas these authorities frequently held monopoly or quasi-monopoly rights. Here one can see the intimate exercise of power. But another crucial point was that parliament was, after 1688, available to these individuals and groups in ways it had not been previously, even in the days of the Long parliament and Interregnum. The institutionalization of parliament within the government of the nation now made available to the localities a powerful voice at the centre and the opportunity to underwrite particular, even personal, ambitions. Through the eighteenth century parliament was generally happy to do that. Consequently, many of the sources of tension that had existed between centre and locality in the seventeenth century were eased; now local elites had real and in some senses predictable access to power at the centre, even if that power was limited.⁴⁹

For many within the upper echelons of society, the expansion of legislation was central to their financial hopes and commercial aspirations. Without the changes that followed 1689 we might doubt whether estate settlements could so readily have been altered, turnpikes built and fields enclosed. Much other legislation was similarly concerned with wealth and income. Yet in two obvious ways this caused problems. Firstly, if many statutes made financial sense for their sponsors for others they could be costly and oppressive. The loss of common rights under enclosure, the proscriptions of the game laws and the privatization of infrastructural maintenance could all hit local poor people hard.⁵⁰ Second, making so many new laws created problems for those who were meant to know the law. This was an issue both of size and composition. Parliament shied away from general acts and passed instead thousands of

⁴⁷ This appears to have operated in a number of areas, especially estates, turnpikes and enclosure legislation. But it was not restricted there. See, for example, J. M. Shaw, 'The development of the poor law local acts 1696-1833 with particular reference to the incorporated hundreds of East Anglia' (University of East Anglia, Ph.D. thesis, 1989), p. 115; T. V. Hitchcock, 'The English workhouse: a study in institutional poor relief in selected counties, 1696-1750' (University of Oxford, D.Phil. thesis, 1985).

⁴⁸ *Public life* and discussed in J. Innes, 'Politics, property and the middle class', *Parliamentary History*, xi (1992), 286-92.

⁴⁹ 'Landowners ... cast their aspirations in local terms, thus significantly decentralizing policy making.' J. Thirsk, 'Agricultural policy: public debate and legislation', in J. Thirsk (ed.), *The agrarian history of England and Wales*, v, 1640-1750, part 2, Agrarian change (Cambridge, 1985), 387.

⁵⁰ J. L. & B. Hammond, *The village labourer* (1911); Neeson, *Commoners*; E. P. Thompson, *Customs in common* (1991), esp. ch. 3; P. B. Munsche, *Gentlemen and poachers: the English game laws 1671-1831* (Cambridge, 1981); M. Freeman, 'Popular attitudes to turnpikes in early-eighteenth-century England', *Journal of Historical Geography*, xix (1993), 33-47.

particular acts (though there were some consolidating acts). The 'extensive code of positive laws' was in a 'crude and indigested state' making it hard to see a pattern and a rationale to the law.⁵¹ As one contemporary put it 'the preserving such numbers of laws has been attended with this inconvenience, that by the multiplicity of them the knowledge of the law is rendered less clear and certain.'⁵² Such a concern had been vigorously expressed in the seventeenth century, but it became especially pressing in the eighteenth. It is not just the writings of Blackstone and Bentham which bear witness to this, but also those abridgements of statutes and handbooks for justices and other law officers published through the century.⁵³

Though in the eighteenth century the political nation generally welcomed its enhanced capacity to legislate it was soon aware that this was not politically neutral. First, remember that before 1688 bills were often lost because of the erratic nature of sessions. Consequently, when the finger of blame was pointed, promoters of bills and those interested in their success could rarely single out the efforts of particular local MPs, or the strength of alternative interests. After 1688, however, this changed. Now it was possible to praise or criticize MPs over the fate of bills.⁵⁴ Consequently, elections might have a local legislative dimension, with MPs judged on past performance and future promises.⁵⁵ And because bills had now to be actively opposed to try to ensure their demise, the morphology of political communities also began to change. A number of routes were possible, such as lobbying, treating and petitioning. The last of these offers vivid evidence of the types of organizations and senses of community which were being renegotiated, especially though not exclusively after 1688.⁵⁶ Petitioning campaigns soon became one way in which bills could be supported or opposed. Early in 1718, for example, 91 petitions poured into the Commons from the leather industry across England and Wales.⁵⁷ There is

⁵¹ T. N. Williams, *A compendious digest of the statute law, comprising the substance and effect of all the public acts of parliament in force, from Magna Charta... to the twenty-seventh year of... George III* (1787), p. vi.

⁵² J. Cay, *An abridgment of the publick statutes in force and use from Magna Charta... to the eleventh year of... George II*, 2 vols. (1739), I, Preface (no pagination).

⁵³ D. Veall, *The popular movement for law reform 1640-1660* (Oxford, 1970); Lieberman, *Province of legislation*; R. Burn, *The justice of the peace and parish officer*, 2 vols. (1755); R. Burn, *The history of the poor laws* (1764).

⁵⁴ This is related to MP's independence and instructions from constituents. B. Kemp, *King and commons 1660-1832* (1957), p. 43; L. Sutherland, 'Edmund Burke and relations between members of parliament and their constituents', in Sutherland, *Politics and finance in the eighteenth century* (1984), ch. 13; P. Kelly, 'Constituents' instructions to members of parliament in the eighteenth century', in C. Jones (ed.), *Party and management in parliament, 1660-1784* (Leicester, 1984), pp. 169-89.

⁵⁵ Important points are made in S. Handley, 'Local initiatives for economic and social development in Lancashire, 1689-1731', *Parliamentary History*, ix (1990), 14-37. For other examples see P. L. Gauci, 'The corporation and the country: Great Yarmouth 1660-1722' (University of Oxford, D.Phil. thesis, 1991).

⁵⁶ See A. G. Olson, *Making the empire work: London and American interest groups, 1690-1790* (Cambridge, Mass., 1992); V. E. Dietz, 'Before the age of capital: manufacturing interests and the British state, 1780-1800' (Princeton University, Ph.D. thesis, 1991).

⁵⁷ *Journals of the house of commons*, xviii (1714-18), 701-63.

little doubt that this was a concerted campaign to present a particular point of view. The organizational skills and sense of community needed to do this were considerable. Not that such groups were impotent, voiceless or altogether lacking in a collective self consciousness in the sixteenth and seventeenth centuries. There had been lobbying and petitioning then.⁵⁸ But the heightened role of parliament after 1688, along with other developments such as journalism, changed the parameters in vital ways. Legislative possibilities could impact significantly upon the structuring and consciousness of local political communities.

A question suggests itself from this. If parliament was particularly available to interested parties to solve problems and seize opportunities after 1688 how were those problems addressed before then (though this is not to suggest that parliament was the only available route)? It is clear that in part there were real attempts to use the parliamentary process in the Restoration era. But the high failure rate of initiatives in that period shows that parliament could only help to a limited extent. Many ambitions were frustrated. How else were these problems solved? Here it is only possible to speculate. Perhaps the role of the county elite was critical, helping to mediate, order, direct and control their domains. Innovations were made after the Restoration by local administrators to tackle the growing problems they faced. They could find ways to maintain the highways, repair bridges and care for the poor.⁵⁹ Another alternative to parliament was resort to the law courts. There is evidence that society was particularly litigious in the seventeenth century. Brooks has noted that 'In 1640 there was probably more litigation per head of population going through the central courts at Westminster than at any time before or since. But 100 years later in 1750, the common law hit what appears to have been a spectacular all-time low.'⁶⁰ It is known, for example, that piecemeal private enclosure, most of which took place before 1700, was often undertaken utilizing the authority of chancery.⁶¹ A third route would have been to call upon executive authority. In particular, resort was made to the privy council

⁵⁸ D. Dean, 'Pressure groups and lobbies in the Elizabethan and early Jacobean parliaments', *Parliaments, Estates and Representation*, xi (1991), 139-52.

⁵⁹ G. C. F. Forster, 'Government in provincial England under the later Stuarts', *Transactions of the Royal Historical Society*, 5th ser. xxxiii (1983), 29-48; A. Fletcher, *Reform in the provinces: the government of Stuart England* (New Haven, Connecticut, 1986); M. E. W. Maddison, 'The justices of the peace and the administration of local government in the East and West Ridings of Yorkshire between 1680 and 1750' (University of Leeds, Ph.D. thesis, 1986).

⁶⁰ C. W. Brooks, 'Interpersonal conflict and social tension: civil litigation in England, 1640-1830', in A. L. Beier, D. Cannadine & J. M. Rosenheim (eds.), *The first modern society: essays in English history in honour of Laurence Stone* (Cambridge, 1989), p. 360. Work in progress by H. Horwitz on chancery proceedings appears to bear this out. The nature of chancery cases heard between 1660 and 1685 can be glimpsed in *Cases argued and decreed in the High Court of Chancery*, 3rd edn (1730).

⁶¹ M. W. Beresford, 'The decree rolls of chancery as a source for economic history, 1547-c. 1700', *Economic History Review*, 2nd ser. xxxii (1979), 1-10; E. M. Leonard, 'The enclosure of common fields in the seventeenth century', *Transactions of the Royal Historical Society*, n.s. xix (1905), 101-46.

to seek solutions. We know very little about how the council worked after the Restoration and too easily leap from the fact that it was of dwindling significance to the belief that it was therefore of no significance. In fact it continued to undertake business on some scale in the Restoration era and beyond, but no systematic study is available of what that business was.⁶² A number of initiatives to overhaul the sub-committee structure of the privy council in the Restoration era, especially with regard to colonial and economic matters, were taken and had some real impact on policy and relations between London, the nation and empire.⁶³ And privy council patents, which had been of some importance to economic regulation before 1642, continued to be issued after the Restoration, though at reduced levels. Even in the eighteenth century there was some overlap between what parliament and the council did.⁶⁴ One means of exercising executive authority was via proclamations. Here there was something of a pattern for James II issued 1·7 per month in his reign, but Anne only half that rate.⁶⁵ But whether this is accounted for by the rise in statutes is a moot point, for the subject matter of legislation and proclamations, if overlapping, did not perfectly coincide, though it does appear that occasionally after 1688 the crown used parliament where once it had simply instructed.

What is clear is that the tables and graphs of legislation explored in this article relate to an unknowable number of 'problems' which might have been solved by parliament. Although it is likely that after 1688 a growing proportion of such problems were dealt with by parliament, this is a supposition, no more. It must be remembered that there were other avenues which might be taken and perhaps the growth of the number of such problems was even more rapid than the rise in the number of acts. A final qualification can be made. In his *Two treatises* Locke wrote that 'Laws, that are at once, and in a short time made, have a constant and lasting force'.⁶⁶ In 1704 Defoe put another case. He noted 'the Multitude of Statutes which are superseded by Custom, and now lie Dormant in England, as things grown Obsolete and unregarded, till the People begin to forget there are any such Laws in Being; such are the Laws against Relieving Beggars, the Weights, Measures, and

⁶² E. R. Adair, *The sources for the history of the council in the sixteenth and seventeenth centuries* (1924); E. R. Turner, *The privy council of England in the seventeenth and eighteenth centuries, 1603-1784*, 2 vols. (Baltimore, Maryland, 1927-8).

⁶³ C. M. Andrews, *British committees, commissions, and councils of trade and plantations, 1622-1675* (Baltimore, Maryland, 1908).

⁶⁴ See for example *Privy Council Office. List of unbound papers preserved in the Public Record Office* (List and Index Society, vols. xxiv & xxxv, 1967 & 1968). There is an attempt at a general statistical analysis for the period to 1700 in R. W. K. Hinton, 'The decline of parliamentary government under Elizabeth I and the early Stuarts', *Cambridge Historical Journal*, xiii (1957), 116-32. For another example of overlap in jurisdiction of the executive and legislature see W. T. Gibson, "'Withered branches and weighty symbols": surname substitution in England, 1660-1880', *British Journal of Eighteenth Century Studies*, xv (1992), 17-18.

⁶⁵ Calculated from *Biblioteca Lindesiana*, vol. v, *A bibliography of royal proclamations of the Tudor and Stuart sovereigns and of others published under authority 1485-1714* (Oxford, 1910), 2 vols. These statistics will not bear much weight, for the start of a reign routinely saw many proclamations issued. Consequently, the rate of issuing proclamations will tend to be high in a short reign.

⁶⁶ *Two treatises of government*, p. 364.

Quality of Provisions, and the like'.⁶⁷ Locke, of course, was advancing a more general, more theoretical position; Defoe the more limited, practical position. This article has stressed not just the rise in law making but also the potency offered by such laws. However, Defoe rightly drew attention to the fact that many statutes had in effect a short or limited life span. Though most remained on the statute books for decades or even centuries, many should be considered more as temporary expedients than as permanent imprints upon society. This was underlined of course by the discretion available to local authorities in enforcing the law.⁶⁸ Most acts, once again, were local not national in their concerns and less the product of some considered policy than the outcome of parliament responding in varied ways to different initiatives being devised by individuals or small groups – mistrust of the executive may have been central here. With some justice Maitland complained that the lawmakers in the eighteenth century seemed 'afraid to rise to the dignity of a general proposition'.⁶⁹ At times almost farcical situations could develop, with parliament unable or unwilling to legislate in an adequately positive or general fashion. It had, for example, to pass ten separate acts – not to mention the ten failed attempts – to allow the building and maintenance of Westminster bridge.

The transformation of the legislative output of parliament is one of the 'great facts' of this period. Its significance is, however, much broader than the immediate purposes aimed at by the acts passed or attempted. The historian of legislation must, of course, make the content of bills and acts their initial concern. But a full study of legislative activity can tell us much about the ways parliament became an institution, about relations between centre and locality, about the changing nature of political communities, about the strength of commercial ambitions across the political nation, and about the fundamental distribution of power within society. Too often the parliamentary history of the eighteenth century has been conceived largely in terms of parties, ministries, constitutional battles and 'great men'. Notoriously, Namier's vision of the structure of politics was rather narrowly conceived.⁷⁰ Only slowly, through a widening of horizons to include ideology, 'low politics' and the contribution of the middling sort has a sense of the possibilities and significance of a wider structural history of politics become possible. This article has tried to show that a history of legislation also deserves to be part of this broader view and that it is especially amenable to systematic analysis. It has attempted to provide only an introduction to what is possible. But hopefully it is clear that behind the graphs, tables and trends lie issues of fundamental importance for an understanding of late seventeenth and eighteenth-century society, economy and polity.

⁶⁷ D. Defoe, *Defoe's Review*, facsimile edn (New York, 1938), 1, 87, 6 May 1704.

⁶⁸ N. Landau, *The justices of the peace, 1679–1760* (Berkeley & Los Angeles, Ca., 1984), part 3.

⁶⁹ *Constitutional history of England*, p. 383.

⁷⁰ He was preoccupied with the quest for rather than the use of power. L. Colley, *Namier* (1989), pp. 78–81.