

University of California, Berkeley

From the SelectedWorks of Robert Tennyson

January 2009

Introduction

Contact
Author

Start Your Own
SelectedWorks

Notify Me
of New Work



Available at: http://works.bepress.com/robert_tennyson/1

INTRODUCTION

This is a study of the private legislative business of parliament between 1688 and 1774, the preconditions of its growth and the manner of its legitimization. Through the eighteenth century, the products of parliament's private business increasingly impacted the lives of Englishmen, at every rung on the social ladder. Many thousands of private enactments lay behind the enclosure movement, under which in excess of 6,800,000 acres of land — over 10,600 square miles — were reclaimed from waste grounds or separated out of open fields into several tracts between 1700 and 1820.¹ Nearly 540 turnpike trusts were individually legislated into existence between 1688 and 1774, giving rise to a network of turnpike roads that generally improved the durability of the national highways and eventually reduced the time of travel about the country.² Parliament passed estate acts that empowered landowners to consolidate their holdings and to resettle lands in the face

¹ M. J. Daunton, *Progress and Poverty: An Economic and Social History of Britain 1700-1850* (Oxford Univ. Press 1995) 106-113. Through enclosure, vast amounts of wealth changed hands from tenant farmers to landlords and a not-insignificant number of village laborers were forced to migrate to the cities. See, Robert C. Allen, "Agriculture During the Industrial Revolution," in Roderick Floud and Paul Johnson, ed. *The Cambridge Economic History of Modern Britain, Volume 1: Industrialization, 1700-1860* (Cambridge Univ. Press 2004) 96, for a description of the rent-reallocation thesis. For recent accounts of the effect of enclosure on the laboring classes, see J. M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (Cambridge U.P. 1993); E. P. Thompson, *Customs in Common* (The New Press 1993) 97-184; and E. P. Thompson, *The Making of the English Working Class* (Vintage Books 1963) 213-233. For an argument somewhat at variance with the picture presented by these authors, see, Leigh Shaw-Taylor, "Parliamentary Enclosure and the Emergence of an English Agricultural Proletariat," *The Journal of Economic History* 61 (Vol. 3, Sept. 2001) 640-662 (contending that while enclosure did have severe effects on some laborers, they were less widespread than earlier work suggests).

² William Albert, *The Turnpike Road System in England, 1663-1840* (Cambridge Univ. Press 1972), appendix B, 201-15. By 1839, this number had increased to almost 900 turnpike trusts, supervising the repair and construction of approximately 20,000 miles of highway throughout the nation. These trusts generally improved the poor state of English roads — this despite that advances in technologies of road construction did not occur until the end of the eighteenth century. *Id.* at 139-142. There is, however, some dispute among historians over whether improvement by turnpike trust was superior to improvement through existing legal methods of statute labor and presentment. On this, see John Ginarlis and Sidney Pollard, "Roads and Waterways: 1750-1850," in *Studies in Capital Formation in the United Kingdom*, ed. Charles Feinstein and Sidney Pollard (Oxford Univ. Press 1988) 182 (arguing that the turnpike trust was no better at improving highways than existing methods), *contra* Dan Bogart, "Did Turnpike Trusts Increase Transportation Investment in Eighteenth Century England?" *The Journal of Economic History* 65, No. 2 (2005) 439 (utilizing failed turnpike initiatives to show that trusts were superior mechanisms for improvement).

of mounting debts. The trusts that financed and directed the steady improvement and expansion of Liverpool's notorious dockworks — as well as most other harbor and wharf projects in the century — were created through numerous private enactments. Private legislation gave birth to the legal agencies that extended river navigations and canals, increasing the accessibility of goods and markets into the interior of the nation.³ Between passage of the Bubble Act of 1720 and its repeal in 1825, hundreds of private bills were prosecuted to permit promoters to establish public corporations;⁴ numerous new markets were established in centers of commerce by specific acts; and trade and business groups regularly sought special privileges or powers of trade regulation through private bills prosecuted in parliament, often with singular effects on later law. The Copyright Act of 1709, a legal cornerstone of authorial property rights, originated with a petition for a private bill introduced in the Commons on 12 December 1709.⁵

Nor was it merely the physical and economic landscape that was transformed through parliament's private legislative agency. So too were many mechanisms of local government. In the initial decades of the eighteenth century, a number of regions followed Bristol's example in 1696 to consolidate their parishes through private bill for the purpose of constructing workhouses for the poor; later in the century, localities again

³ See, T. S. Willan, *River Navigation in England, 1600-1750* (Frank Cass & Co. 1964) 28-51.

⁴ 6 Geo. 1, c.18 (1720); 6 Geo. 4, c. 91 (1825); see, Ron Harris, *Industrializing English Law: Entrepreneurship and Business Organization, 1720-1844* (Cambridge Univ. Press 2000). Under the Bubble Act, joint-stock companies could only be established through a crown charter or an act of parliament.

⁵ 8 Anne c.19 (1709); *The Journals of the House of Commons* (hereinafter *CJ*), vol. 16 (12 Dec. 1709) 240. See also, Mark Rose, *Authors and Owners: The Invention of Copyright* (Harvard Univ. Press 1993) 42-48 (accounting for the progress of legislation on the copyright act). It is worth pursuing the question of how accounts of the history of the law would differ with the understanding that its prosecution was being underwritten by those who were promoting the bill. Within reason, the copyright act must have been what its proponents wanted, or the legislation would have been dropped before it passed out of parliament.

turned to private legislation to permit the creation of the “hundred houses” or “houses of industry” for their regulation.⁶ Towns obtained acts giving them the authority to rate residents and to exercise compulsory powers that most chartered boroughs lacked.⁷ Numerous courts of requests — which arguably bolstered extensions of credit — were sanctioned by private enactments.⁸ And this hardly touches on the wide variety of other acts that may not have been transformative in any substantial fashion, but which permitted their beneficiaries to unburden themselves of various impositions of English law, such as those for divorce, naturalization, change of name and the like.⁹

Yet, despite the number, variety and extent of these proposals passing through parliament and sanctioned by its private legislation, our understanding of this critical aspect of parliament’s agency in the eighteenth century is remarkably underdeveloped. This study endeavors to extend our understanding of this business through a detailed examination of the rules, procedures and practices that affected the functioning of private legislation. Further, it aims to establish two interrelated claims: First, parliament’s rules, procedures and practices for administrating its private business generally operated to

⁶ Dorothy Marshall, *The English Poor in the Eighteenth Century* (Routledge & Sons: London 1926) 127-60; Anne Digby, *Pauper Palaces* (Routledge: London 1978); Paul Slack, *The English Poor Law, 1531-1782* (Cambridge Univ. Press 1990) 37-40. In addition, unremarked by scholars, parliament did a healthy business in enactments for poor regulation throughout the eighteenth century.

⁷ Paul Langford, *Public Life and the Propertied Englishman, 1689—1798* (Oxford Univ. Press 1991) 207-43. Also, Sidney & Beatrice Webb, *Statutory Authorities for Special Purposes, English Local Government* vol. 4 (Frank Cass & Co. 1963) 347 (“It is ... the Improvement Commissioners, rather than the ancient chartered corporations, that we must regard as the immediate predecessors and lineal ancestors, not of the titles and dignities, but of most of the activities and statutory functions of the modern English municipality.”)

⁸ William Blackstone, *Commentaries on the Laws of England*, facsimile of 1st ed. of 1768, vol. 3 (Univ. of Chicago Press 1979) 81-83; Langford, *Public Life* at 243-48.

⁹ Peter Jupp, *The Governing of Britain 1688-1848: The Executive, Parliament and the People* (Routledge 2006) 81-82.

expand the opportunities for its use. Second, these same rules, procedures and practices effectively addressed the difficulties that were created by this expansion of business.

Private legislation considered

What was parliament's private legislative business? The short, "anatomical" answer is that it was parliament's work in petitions and bills sponsored by private persons or local bodies, pertaining to personal or local matters, and on which officers of the two houses were able to charge fees. This distinguished it from both classes of public business pertaining to government bills and private members' bills. Unlike private bills, government bills were sponsored by ministers as part of an official program, had general applicability and were not susceptible to fees. These were usually bills for supply, taxation or overseas trade. The other class of general legislation, private members' bills, shared the generality of government bills and, like them, were not susceptible to fees, but were often sponsored or encouraged by local, regional or national pressure group lobbies. This class of public legislation formed a smaller proportion of the public business of parliament during the eighteenth century. But, unlike government business, it was regularly focused on domestic issues, resulting in some of the key domestic social legislation of the period. The various statutes making up the "Bloody Code" that extended capital punishment to a broad range of relatively minor property offenses; the Workhouse Test Act of 1723 that made it easier for localities to build workhouses for the poor; and Gilbert's Act of 1782 that empowered the creation of poor law unions and provided for out-relief for the able-bodied poor are all examples of general domestic legislation promoted by private

members.¹⁰ Parliament's private business shared the domestic focus of private members' business. Likewise, it had its origins not in government ministries, but in the efforts of private individuals or local authorities. However, private business was perceived as benefiting purely personal or local interests, who were obliged to pay the officers of both houses for their attention.

As important as the question of what private legislative business *was* is the question of the *functions it served*. First and foremost, private legislation was a way for suitors to surmount particular personal or local difficulties. Second, private legislative business furthered the interests of the institution of parliament in establishing its supremacy and in preserving stability. Third, it furthered the political careers of members who used private bills to serve their constituencies. Finally, private legislative business served as a burgeoning source of income to parliamentary officers. The latter two aims are largely self-explanatory, but it is worthwhile for purposes of the instant study to understand the enabling and institutional functions served by private business.

Private bills were brought by suitors for whom recourse to parliament was the best or only means of surmounting actual or perceived hurdles to the implementation of their personal or local plans. These hurdles ranged from the legal to the practical. It is not surprising that English common law was a regular obstacle private action; that was (and

¹⁰ See, e.g., Joanna Innes, "Parliament and the Shaping of Eighteenth Century English Social Policy," *Transactions of the Royal Historical Society*, 5th Series, 40 (1990) 63-92.

remains) one of its functions, after all.¹¹ But there were a number of cases in which legal bars were felt to be too steep and in need of amelioration, but outside of the power or willingness of equitable jurisdictions to repair. To take but one example, the lands of substantial holders in the eighteenth century were typically controlled by sprawling settlement agreements. These settlements aimed at giving the current landowner some flexibility in management of the estate; providing for the spouse of the landowner as well as other members of the close and extended family; protecting heirs from a dissolute current possessor; and insuring that the estate remained in the hands of male heirs.¹² From the perspective of the life tenant or his creditors, however, the strict settlement used by most aristocratic landowners was often *too strict*. What Sir John Habakkuk saw as an effective device for protection of landed estates down through the eighteenth century, the

¹¹ For example, one end of contract law is to permit persons to pre-commit to future performance by imposing sanctions on those who later default.

¹² See Lloyd Bonfield, *Marriage Settlements 1601-1740* (Cambridge Univ. Press 1983) 7 (“The early modern marriage settlement accomplished two goals: immutably fixing the bridges jointure and transmitting the patrimony between the generations in the manner desired by the landowner.”); A. W. B. Simpson, *A History of the Land Law*, 2d ed. (Oxford Univ. Press 1986) 229-31; and Eileen Spring, *Law, Land & Family: Aristocratic Inheritance in England, 1300 to 1800* (Univ. of North Carolina Press: Chapel Hill 1993) 144-47 (Strict settlement “established a family constitution, the character of which is summed up in three words: patrilineal, primogenitive, and patriarchal.”).

The usual form of the settlement by the early eighteenth century was that popularized, though not entirely invented, by Orlando Bridgeman. While other forms of settlement at law existed, none was as popular as the strict settlement — particularly after it received the full sanction of the House of Lords in 1740 — for a couple of reasons. *Dormer v. Parkhurst*, 6 Bro. P. C. 351 (Lords 1740). First, and this it shared with most forms of settlement, it provided for the entire family: upon a marriage, the settlor would be made a life tenant; the groom would receive a life estate upon the settlor’s death and an income in the meanwhile; and the spouse of the groom would receive a fixed jointure in lieu of dower prescribed by law. Brian W Harvey, *Settlements of Land* (Sweet & Maxwell: London 1973) 20-25. Second, it overcame a vexing problem extant in earlier settlement devices that allowed the settlement to disintegrate (or at least be broken) upon the forfeiture or other premature determination of a tenant in possession’s life estate. An unborn “heir” would lose his patrimony in favor of the common law heir of the tenant, against the settlor’s best wishes. By vesting in trustees to preserve the future interests of the life tenant’s progeny during the remainder of his life in the unfortunate circumstance that the tenant’s estate was determined, if the life tenant bore an heir tail as specified in the settlement, that heir would take on the life tenant’s demise or (preferably) upon the marriage of the heir tail. Bonfield, *Marriage Settlements*, at 55-82. Simpson, *Land Law*, at 235-41. Finally, the strict settlement made the exclusion of daughters (and younger progeny) in the settlement bearable by creating trusts to pay portions to the excluded children. Spring, *Law, Land & Family*, at 142-44.

current possessors often perceived to be an economic straightjacket.¹³ Even a well-crafted settlement could prevent good management practices — an exchange of estates, a resettlement under revised circumstances or the transfer of a secured debt from one estate to another. When the law handicapped effective management, aristocratic landowners considered the best relief to be an act of parliament. As the anonymous author of *The Compleat Conveyancer* stated, “a private Act of Parliament is necessary, to enable [the tenants in possession] . . . to do any Thing for the Good of themselves; either to make Settlements in a Marriage, in Consideration of a Marriage Fortune, and for Preferment therein; or to make any Sale of any Part of the Estate descended, tho’ never so considerable, for Payment of any just Debts or Incumbrances. . . .”¹⁴ Private legislation functioned to amend these legal bars in special cases when parliament deemed it appropriate.

Other limitations on private action to be remedied by private legislation were purely practical. Take enclosure. In a mere handful of instances, a landowner could unilaterally act to extinguish common rights over open fields or waste grounds and enclose them. He could “approve” a portion of the waste, but only so long as the common rights

¹³ H. J. Habakkuk, “Marriage Settlements in the Eighteenth Century,” *Transactions of the Royal Historical Society*, 4th Series, 32 (1950) 15-30. Recent work by Dan Bogart and Gary Richardson has shown that the flexibility inherent in estate acts assisted the reallocation of land toward higher-value uses. See, Dan Bogart and Gary Richardson, “Making property productive: reorganizing rights to real and equitable estates in Britain, 1660–1830,” *European Review of Economic History* 13 (2009) 3-30.

¹⁴ *The Complete Conveyancer* (London 1723) 395. Worse still, though, was the conveyance gone awry: “For it may sometimes happen, that, by the ingenuity of some, and the blunders of other practitioners, an estate is most grievously entangled by a multitude of contingent remainders, resulting trusts, springing uses, executor devices, and the like artificial contrivances . . . so that it is out of the power of either the courts of law or equity to relieve the owner.” To sever the “Gordian knot” of the inexpert conveyance, Blackstone recognized, an act of parliament was needed. William Blackstone, *Commentaries on the Laws of England, A Facsimile of the First Edition of 1765-1769*, vol. 2 (Univ. Chicago Press 1979) 344. Probably most entertaining, though not for its suitors, was the private bill for confirming the settlement on the marriage of Charles and Dorothy Owen, which sought to repair an estate where the indenture of feoffment made had “been so tore and eaten by Vermin or otherwise prejudiced, that the whole is not legible, and the sense is only collected from the precedent and subsequent words.” 4&5 Anne, private act, c.7 (1705).

of others were not impeded.¹⁵ If local custom permitted it, he could enclose land in open fields.¹⁶ And, if the current owner of the soil was fortunate, the common rights of the other owners might fall into obsolescence.¹⁷ And, landowners had free reign to enclose with the agreement of all of the landowners with common rights or rights in the soil. Indeed, Chancery became a popular destination during the seventeenth century for lords and landowners seeking to affirm, carry out or enforce agreements for affecting enclosure.¹⁸ But the law lacked the means to enable these lords and landowners to enclose lands in larger villages or where the number of stakeholders was high, as well as in those locales where recalcitrant landowners opposed any enclosure or resisted its costs. Parliament enabled the lords of manors, impropiators of tithes and landowners to obtain enclosures that the practical hurdles to agreement made impossible by allowing suitors to isolate and discount the interests of poor holders or isolated holdouts. It accomplished this over the first half of the eighteenth century by permitting enclosure when the owners of at least 80 percent of the freehold and copyhold property with common rights assented.¹⁹

¹⁵ See, Edward Coke, *The Second Part of the Institutes of the Laws of England: Containing the Exposition of Many Ancient and Other Statutes (Second Part of the Institutes)* (Brooks: London 1797) 87.

¹⁶ See, e.g., *Hickman v. Thorne*, 86 Eng. Rep. 967, 968, 2 Modern 104, 105 (C.B. 1677).

¹⁷ In such a circumstance, an owner who maintained an enclosure for 20 years would be able to maintain it.

¹⁸ Chancery gave those interested owners the means of carrying out enclosures where negotiation would have been difficult to accomplish. M. W. Beresford, "The Decree Rolls of Chancery as a Source for Economic History, 1547-c.1700," *The Economic History Review*, 2d Series, 32, No. 1 (1979) 1-10 and E. M. Leonard, "The Inclosure of Common Fields in the Seventeenth Century," *Transactions of the Royal Historical Society, New Series*, 19 (1905) 101.

¹⁹ Small owners could be largely cast aside (at least as far as parliament was concerned) if the substantial holders agreed to enclosure. Likewise, one or two truculent proprietors could be sidelined if their demands were perceived as too unreasonable for the others to bear. See chapter 4.

Suitors sought not only to lower bars to private action. Local authorities or proprietors sought to gain or extend the authority to collect tolls, regulate navigations or clean streets by obtaining public powers. Individuals and organizations had the option of securing certain public powers through crown grants, but these grants had increasingly come to be seen as ineffectual. Although extensive in the Tudor era, through the seventeenth century, the prerogative was trimmed back through both successful claims of privilege by parliament and restrictive rulings in the common law courts. And although at the seventeenth century's end, the crown retained a core of powerful and remunerative prerogatives, there was a palpable sense (1) that the authority of the king to make grants was in steep decline and (2) that the legislature defined the contours of the prerogative, not the king. Moreover, not only was the prerogative perceived to be constitutionally limited, but many of the public powers granted by the crown were being seen as inadequate due to restrictions imposed by law. Private legislation promised the authority of the crown charter or letters patent unburdened of its controversial character and its onerous restrictions. For suitors, then, private legislation served an important enabling function, providing them legal sanction to remedy to personal or local problems.

Private legislation functioned as well to extend parliament's supremacy and to enhance its institutional stability. Legislatively, the supremacy of parliament was largely unquestioned. The power of statute to change any prior law or expectation was nearly given. But, even so, until the eighteenth century, statute law played an exceptional role in the operation of government. Being the uncommon law, or perhaps in spite of it, statute was practically limited by the prerogatives of the crown and theoretically limited by natural

law. As just noted, at the center, the prerogative authority of the crown was on the wane; parliament was active in poaching many of these competencies for itself in the decades immediately following the Revolution. Often, parliament's efforts to wrest control from the crown were audacious — as proof, one need only remember the impeachments for trivial causes, the brazen attempts to bridle crown finances and frivolous battles over privilege that took place in the infancy of post-Revolution order. But parliament also extended its supremacy incrementally through the enactment of numerous private and local acts on matters formerly considered solely or predominantly in the king's portfolio. These included acts to establish or relocate markets and fairs, for the creation of corporations and to give trustees the power to charge tolls on the king's highways.

Parliament's stretching of its constitutional supremacy at the center was matched by a creeping practical supremacy over local affairs. The constitutional conventions of the seventeenth and eighteenth centuries left local government largely to its own devices, with occasional intrusions through crown exercise of the prerogative to establish franchises, create ports and grant corporate charters or use of its authority to pick local sheriffs, justices of the peace and lords lieutenants. In the eighteenth century, parliament increasingly put its imprint on local affairs, not by interceding in any top-down fashion, but by enabling personal and local concerns to overcome legal and practical hurdles and refashion public authority by private enactment. These bills and acts meanwhile bore the stamp of the parliamentary process. Their contents were to some extent dictated by

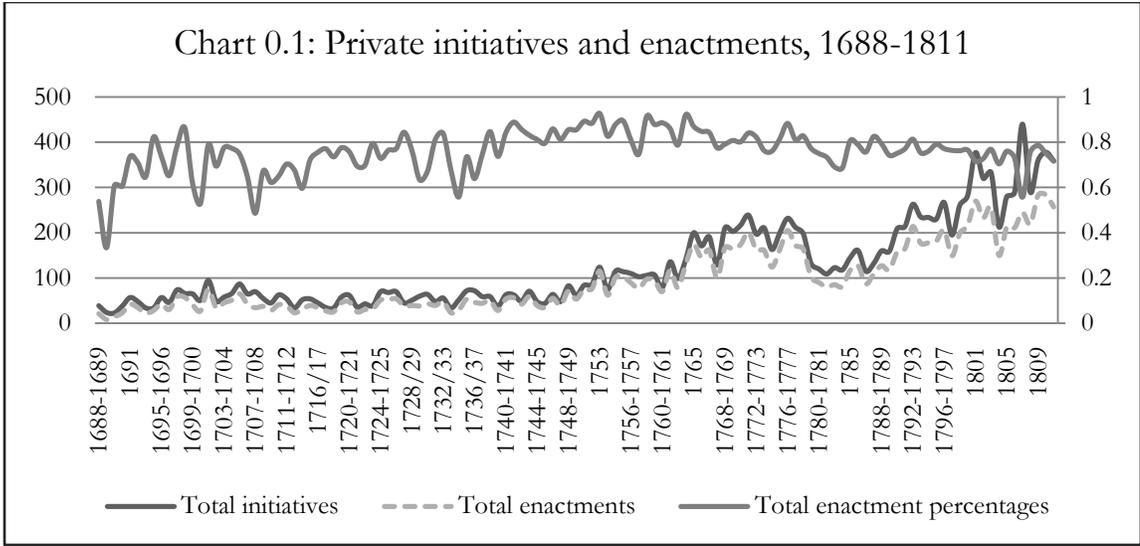
norms requiring specific clauses and limitations.²⁰ And, the process itself required conciliation among a variety of interests represented in parliament. Through a quiet, steady accrual of these enactments and legislative precedents, the regulations of parliament spread patchwork over England. Parliament, then, cemented its supremacy through a kind of traditionalist innovation, acting as both a facilitator of and check upon the projects and schemes of promoters.²¹

Private legislation also provided necessary stability to parliament. Political institutions can come apart at the seams for a variety of unfortunate reasons, as both history and recent events have shown. Arguably, the ignominious history of parliament in Stuart England is that of an institution being serially unraveled by abysmal relations with the crown and by a shocking inability to keep internal dissent from festering into explosive confrontation. At the Revolution and thereafter, there was an especial need for institutional stability. In part, this was provided by parliamentary mechanisms to keep the crown in check and (after 1715) by exhaustion with drama of high-octane partisanship. But another key component of parliamentary stability was the need for members and lords to work together in spite of the division and scandal that drove the coffeehouse gossip engines. Here, private legislation was an instrumental stabilizing influence. It not only forced partisans who represented the same localities or interests to work in concert to

²⁰ Though not pursued in this project, it is worth noting here that many provisions were the result of artificial selection — the replication of clauses in prior acts either through their express adoption by promoters or the idle emulation of solicitors with mutations introduced by intention or error. Here too, to the extent that parliament enabled this activity, it put its mark on local projects and personal matters.

²¹ From this perspective, the comprehensive domestic enactments of the nineteenth century were not unprecedented expansions of central authority into the localities, but were rather mopping-up operations to unify an existing scheme of piecemeal regulation.

satisfy local or interest-group demands, it also required those partisans to maintain some base level of overall stability in parliament, without which no legislation could be enacted.



Growth and historiography

The better private legislation functioned on behalf of suitors, members, professionals and parliament and the better it served their diverse but harmonious ends than other institutional alternatives, the more recourse there was to it. That it came to function well during the eighteenth century is therefore reflected in its sustained increase over that century, as depicted in chart 0.1.²² During the Restoration era, initiatives for local and private enactments per session numbered about 28 per session, of which fewer than

²² For purposes of analyzing trends between 1688 and 1811, I have chosen to look at the most prominent kinds of business throughout the period: estate bills; bills for change of surname; naturalization bills; bills for restoration of status or lands; divorce bills; patent or reward for invention bills; turnpike trust or administration bills; river navigation and canal bills; harbor cleansing and dock construction bills; church or churchyard rating and parish division bills; drainage bills; bridge construction bills; water supply incorporation and powers bills; bills to establish courts of conscience; municipal improvement bills; bills for regulation of the poor and for construction of workhouses; and bills to impose a two pennies rate on the sale of beer in Scotland. This analysis unfortunately leaves aside a significant body of private legislative activity, including trade regulation bills; bills to establish, move or expand markets; and bills to naturalize ships, to name a few, principally because of the difficulty of identifying private legislation outside of the above band of categories. Nonetheless, with the obvious caveats, this analysis of parliament’s core private business can provide useful insights into how this business developed through the century.

40 percent ever passed, although these figures varied tremendously by session. After the Revolution, initiatives nearly doubled to a sustained average of 50 per session and 60 percent of these became enactments. Through the century, the numbers of initiatives and enactments continued to climb, as parliament improved its capacity to meet suitors', members' and professionals' aims through private legislation. How the functioning of parliament's private business was permitted, changed or improved to enable the proliferation of bills and acts, and how parliament responded to this proliferation when it threatened the institutional functions of this business are at the heart of this study.

Neither the expansion of private business nor parliament's efforts to address its impacts have found much play in the "internalist" historiography of parliament and "externalist" historiography of the products of legislation. Internal accounts of parliamentary activity have for the most part had little to say about the repercussions of that activity on business or *vice versa*. Early institutional histories of parliament's private business were engaged in the main with recounting the internal development of various classes of private legislation and the standing orders expressly made by parliament in conducting its business. First among these was Frederick Clifford's two-volume *Private Legislation*, which attempted to describe the origins of the major classes of private and local legislation as well as provide accounts of the major legislative "cases" for each class.²³ The

²³ Frederick Clifford, *Private Legislation*, vol. 2 (1886) 752-87. Clifford was a parliamentary agent and co-author of a series of reports on the standing of parties to challenge private bills. His work reads like a lawyer's history of a favored subject, an attempt to establish its pedigree and import. As O.C. Williams described it, "[t]he Great Virtue of his Book lies in the copious illustration which it provides of the growth, on the parliamentary side, of our civil administration and public services, beginning many centuries ago and, after the third quarter of the eighteenth century, accelerating rapidly to a climax in the middle of the nineteenth century and then gradually losing speed." O.C. Williams, *The Historical Development of Private Bill Procedure and Standing Orders in the House of Commons*, vol. 1 (Oxford Univ. Press 1948).

result was a work that was a highly anecdotal, but that occasionally revealed an institution grappling with the effects of its wide-ranging business. Indeed, the one functional aspect of Clifford's *Private Legislation* was its willingness to situate procedural changes in parliament in the context of concerns over an ever-increasing influx of bills. While most of his attention in this respect was on orders made after 1800 and while he almost entirely missed those procedural developments that were not spelled out in orders, he rightly saw that parliament's efforts to craft procedure were driven by the need to ensure its functioning in the face of increasing business.²⁴

Unlike Clifford, Orlo Williams, a former clerk of the House of Commons and participant in the 1945 revisions to its standing orders on private bills, was more concerned to provide a procedural history of private legislative development in his treatment of the subject. The first volume of his *Historical Development of Private Bill Procedure* is just that, an examination of the growing complexity of procedures through the

²⁴ For the most part, no work in the century following Clifford endeavored to further explore the private legislative procedure of the eighteenth century or to situate it within its institutional context. Rather, historical discussion of this business was incident to explications of parliamentary procedure by authors of later treatises or to specialized studies of enclosure, transportation or local government. In both, accounts of eighteenth century procedure were in the main utilitarian efforts, meant to bolster explanations of later procedure or the particular category of legislation. Thus, despite that an entire third of the first edition of his monumental treatise on parliamentary procedure was devoted to private legislation, Erskine May only referenced the subject's history in a cursory introduction. Thomas Erskine May, *A Treatise Upon the Law, Privileges, Proceedings and Usage of Parliament: Privileges, Proceedings and Usage of Parliament*, 1st ed. (Knight & Co.: London 1848) 383-460. May's constitutional history of the late eighteenth and nineteenth centuries avoids issues of internal institutional growth generally, instead focusing on the positioning of parliament among other agencies of government and as nested within growing democratic trends. (In this, it is of a piece with Bloom's *Constitutional Law*.) See, generally, Thomas Erskine May, *The Constitutional History of England Since the Accession of George the Third, 1760-1860*, 2 vol., 2d ed. (Crosby and Nichols: Boston 1863, 1865). And, despite characterizing the long eighteenth century as "the true golden age of the English parliamentary system," Joseph Redlich, author not only of a history of Commons procedure but also of an influential examination of local government, gave only bare notice of the private legislative system that authorized the major experiments in local government in that era. Josef Redlich, *The Procedure of the House of Commons: A Study of its History and Present Form*, vol. 1, trans. A. Ernest Steinthal (Constable & Co.: London 1903) 68.

late eighteenth and nineteenth centuries.²⁵ For Williams, there was not much to say about private bill procedure prior to 1810, since before then there were few settled, explicit rules for its administration. Rather, procedure was a function of haphazard and muddled precedent. It was only during the nineteenth century that the perfection of a “modern code” began to emerge. The pressures that made such a code necessary, argued Williams, only began to make themselves felt with the uptick in business after 1790 (and most severely after the railway boom of the 1820s) and the appearance of a firms of parliamentary agents in the early nineteenth century. Previous to this, the pressure to refine procedure had been slight and accordingly, few standing orders for its administration had been promulgated.

Sheila Lambert’s *Bill and Acts*, authored almost half a century after Williams’ *Historical Development*, took issue with his assertion that private legislative procedure before the nineteenth century was chaotic and incomplete.²⁶ Utilizing the papers in the British

²⁵ Williams, *The Historical Development of Private Bill Procedure*, *supra*, note 23.

²⁶ Sheila Lambert, *Bills and Acts: Legislative Procedure in Eighteenth-Century England* (Cambridge Univ. Press 1971). Lambert’s work was also a response to the Namierite approach that had dominated parliamentary study for the previous half century and was interested principally in whether the political activity of parliament operated along the lines of influence or party. In these studies, there was little room for consideration of general legislative business, much less the mundane prosecution of private and local bills. Lambert was primarily concerned with offering a depiction of the internal, businesslike operation of this legislative activity against the political and interest-based depictions of parliament’s activity offered by Namier and his followers. With Lambert’s work began a shift in the emphasis of parliamentary study back to its legislative work. See, Joanna Innes, “Parliament and the *Shaping* of Eighteenth-Century English Social Policy,” *Transactions of the Royal Historical Society*, Fifth Series, 40 (1990) 63, 66 (“Until quite recently, studies of eighteenth-century parliaments commonly focused on the making and breaking of ministries, nature of party conflict, construction of systems of political influence and the like. Little attention was paid to what we might term the ‘business side’ of Parliament: to its role in vetting government financial programmes, or to almost any part of its legislative activities, bar a few constitutional and other such controversial measures”).

Philip North, Baron North of Louth provides a secondary insight in why the institutions of parliament received little examination until late in the century, noting that parliament’s decline in the twentieth century to an agency with the principal aim of ministerial accountability left it aside as an object of sustained study:

Library of Robert Harper, one of the earliest — if not the earliest — parliamentary agent, Lambert revealed the existence of an orderly procedure for the management of private legislation early in the eighteenth century, particularly when it came to estate and enclosure bills. This contrasted with Williams's dismissal of this procedure as an unreconstructed jumble of informal precedent. Moreover, by highlighting the work of Robert Harper, Lambert demonstrated an outside professional concern with the prosecution of private legislation as early as the 1730s, if not before.²⁷ Implied by the use of regular procedures and the employ of professionals was an uptick in private business before or during the early eighteenth century.

In all of these studies, the functional arrow ran in only one direction, from the increase in business to efforts of parliamentarians to cope with the demands on time put in place by it. The proliferation of bills was taken as a given, to be explained by external events. Moreover, these historians perceived the procedures authored by parliamentarians were tailored to improve the functioning of private business on behalf of members and professionals in response to these exogenously generate pressures on time. There was

For those engaged in policy analysis, it was what happened prior to parliamentary deliberations that was important. For constitutional lawyers, it was the outputs of Parliament that were relevant. The courts enforce Acts of Parliament. It was those Acts that, under Dicey's enunciation of parliamentary sovereignty, could be set aside by no body other than Parliament itself.

Philip Norton, "Parliamentary Procedure: The Hidden Power?" in *The Law, Politics and the Constitution: Essays in Honour of Geoffrey Marshall*, ed. David Butler, Vernon Bogdanor and Robert Summers (Oxford Univ. Press 1999) 153, 155. One problem with this insight is that it fails to explain why the business of parliament and the institutions through which it was conducted have caught the interest of political scientists and historians in recent decades.

²⁷ Sheila Lambert, *Bills and Acts: Legislative Procedure in Eighteenth-Century England* (Cambridge Univ. Press 1971). The parliament-centered nature of her study also permitted her to recognize that there was a commonality at the parliamentary level among a diverse body of bills. The uniformities in the treatment of bills were highly relevant to how and whether the projects sanctioned by those bills would go forward.

little inquiry into how innovations in procedure and practice may have refined the functioning of private legislation in other ways.

While the effects of parliamentary procedure and practice on the expansion of private business went unnoticed by institutional historians of parliament, parliament has gone largely unnoticed by those externalist social and economic historians who have examined the eighteenth-century growth in private legislative products — e.g., turnpikes, canals or enclosures. Historians working in the long traditions of Beatrice and Sidney Webb or of Barbara and John Hammond have been principally concerned with the consequences of the expansion of statutory authorities on local administration or on the laboring classes.²⁸ Economic historians, from classical economists to more skeptical ones, have typically looked after the efficient causes of the growth in legislative products. That is, they have been interested in those changes in perceived or real benefits that encouraged persons and groups to obtain estate, enclosure, canal, railway, or other classes of legislation. While the different approaches have often led the two groups of historians to clash in their conclusions — on whether, for example, the consolidation of estates was a net social gain or loss — both have shared a pair of methodological assumptions that have lead them away from sustained interest in parliamentary activity. First is the assumption that by and large, the institutions of eighteenth-century government did not matter. Rather, institutions bent to the will of an innovative (or scheming) propertied elite. From this perspective, for instance, Lambert's work on private bill procedure is beside the point;

²⁸ The social and economic historiography briefly recounted here is spelled out more extensively in chapters 3 and 4.

parliamentary procedure was transparently instrumental to the innovative (or redistributive) aims of entrepreneurs or the elite.²⁹ By so assuming, these historians have prejudicially sidestepped the issue of whether institutions might have contributed to growth or decline in legislative products. A second assumption, related to the first, is that each class of legislative product is a distinct object of study. An increase in enclosures, for example, has little to do with a contemporaneous increase in the number of municipal corporations. This is probably a useful assumption, for most purposes. Yet it means that the conditions of expansion or decline in legislative products are seen within a class-centered context; any concurrent trends among classes of products are a fortuitous synchronicity.³⁰

²⁹ For many a social historian of enclosure or of the poor law, the procedures to be followed in obtaining legislation were simply the epiphenomena of collusion among the propertied elite for the regressive redistribution of the nation's wealth. See, e.g., Douglas Hay, "Property, Authority and the Criminal Law," in Douglas Hay, et al., ed., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (Pantheon Books 1975) 17-63 (arguing that the criminal law not only operated to effect the upward redistribution of property, but to legitimate the same through "lessons of Justice, Terror and Mercy"). Likewise, these procedures were inconsequential for many economic historians. They were merely the particular mechanisms that serviced innovative entrepreneurs and landowners who sought to increase private utility through innovation. For many economic historians, in fact, the story of the eighteenth century was one where institutions fostering rent-seeking were being steadily disassembled. The genius of the eighteenth and early nineteenth century was that government got out of the way. This is a peculiar tale, particularly since many of the bold projects that expanded the economy of eighteenth century Britain were authorized through legislation. Government did not get out of the way; it got better at how it got in the way.

³⁰ This default position is not the consequence of historians expressly rejecting a legislative or institutional explanation for the eighteenth century increase, but of economic, political and social historians remaining fixed within the particular bounds of their subject. Moreover, bills in each major category of private legislative business — even the odd private bill which fell into no classification but its own — were promoted by suitors for reasons beyond simply getting a law, whatever law, enacted. These were not people without expectations of gain, in some form or other. Hence, trends of increase or decrease in particular legislative categories owed considerably to the shared reasons among those suitors who were promoting bills of a given sort. At the same time, however, these reasons, in whatever way aggregated, cannot form the totality of an explanation for the overall increase in parliament's private business. The general character of this increase — its early expansion after 1690, its slow, steady rise through mid-century and its upward spike thereafter — calls out for a legislative and institutional account of those trends focused on the "supply" of legislation and the mediation between locality and center required to promote and justify it.

This project can be distinguished from both internalist and externalist histories of private legislation and its products in that, at its core, it takes a functionalist approach to procedure, viewing it in terms of how it enabled and disabled the various functions served by parliament's private business.³¹ The path to this functionalist approach has been pioneered by a handful of recent efforts suggesting a closer tie between the internal workings of parliament and its external products. Paul Langford, for example, has investigated the operation of normative legislative practice in responding to the ideological concerns raised by parliament's private business. In his *Public Life and the Propertied Englishman*, the written version of his Ford Lectures, he addresses the question of why the propertied elite were not up at arms against parliament's private legislative activity and the threat it posed to stable property rights. Langford's attempt to answer this question was wide-ranging, drawing in a number of sources to illustrate local concerns as well as describing efforts by legislators to meliorate conflicting concerns. What he ultimately demonstrated was that, in part, the propertied elite were held at bay because of a normative culture of consensus in and surrounding parliament. Those who served in parliament were part of a self-preserving propertied class who endeavored to negotiate acceptable legislative solutions to local problems.³² Another example is the recent work

³¹ This functionalism is not to be confused with instrumentalist approaches to law, rules and norms. For one thing, the instrumentalist maintains that law operates in the service of a dominant class or culture. The functionalism of this project does not suppose that the content of law is determined by particular interests; the relationship between the internal logic of the law and the varied beliefs and aims of the persons who engage it are too complex to take such a stance. Rather, the functionalism of this project addresses only the question of how and how well parliamentary procedure enabled private business to serve a variety of functions on behalf of suitors, members, professionals, and parliament itself.

³² See Langford, *Public Life*, *supra* note 7. For Langford, the procedures identified by Lambert were best seen as legislative hurdles, meant to slow down the process and force reconciliation among interested property. Langford, *Public Life* at 166-75. There is a power to this external, holistic understanding of the procedural and substantive norms of parliament, but lost is some of what Lambert identified in the interstices of the rules: the capacity for individual rules and norms to affect the decisions of participants in

on legislation by Julian Hoppit and Joanna Innes. In their introduction to a recent compilation of failed initiatives in parliament between the Restoration and 1800, they advanced some tentative arguments regarding exogenous influences on the increases and declines in private business during the century, among them the relative political stability of particular governments and the domestic repercussions of military engagement abroad.³³ They further saw a steady competition between the private business of parliament and its public business, with the later posing an ongoing threat to the former.³⁴ Finally, recent work by Dan Bogart has, from the side of economic history, investigated the developments in estate management, turnpike growth and transport expansion as partly

the process in varying ways. While this study does address some of the contemporary normative concerns behind Langford's work, it takes the procedures and substantive norms of parliament seriously as particular determinants of how people thought about private legislation, both comprehensively and in relation to their own prosecutions. The political class of the eighteenth century took the notion of a law of parliament as seriously as it did the common law; understanding what that law entailed is an essential component of explaining why this extensive private business could be seen as legitimate. See also, chapter 3, *infra*.

³³ Julian Hoppit and Joanna Innes, "Introduction," in *Failed Legislation, 1660-1800: Extracted from the Commons and Lords Journals*, ed. Julian Hoppit (Hambledon Press: London 1997) 3-13. Discussion of these influences is taken up in subsequent chapters.

³⁴ *Id.* and Julian Hoppit, "Patterns of Parliamentary Legislation, 1660-1800," *The Historical Journal* 39, No. 1 (1996) 109-31. And Innes has delved into the implications of parliament's private (and public) legislative business for contemporary understandings of the relationship between central and local policymaking in English government. See Joanna Innes, "Central Government 'Interference': Changing Conceptions, Practices and Concerns, c.1700-1850," in *Civil Society in British History: Ideas, Identities, Institutions*, ed. Jose Harris (Oxford Univ. Press 2005) 39-60; Joanna Innes, "The Local Acts of a National Parliament: Parliament's Role in Sanctioning Local Action in Eighteenth-Century Britain," *Parliamentary History* 17, No. 1 (Feb. 1998) 23-47; Joanna Innes, "The Domestic Face of the Fiscal-Military State: State and Society in Eighteenth-Century Britain," in *An Imperial State at War: Britain 1688-1815*, ed. Laurence Stone (Routledge: London 1994) 96-127; and Innes, "Parliament and the Shaping of Eighteenth-Century English Social Policy," *supra* note 16. For Innes, there were certainly few ministerial attempts at domestic legislative policy outside of fiscal arena; generally, those initiatives were left for back-benchers to pursue. (At the same time, though, it would be a mistake to divide these initiatives between public legislation and private-members' bills. Back-bencher legislation was, in practice, often tied to ministerial efforts and aims. Innes tends to underplay the importance of private legislation in the development of the national government through parliament, because those bills were sponsored by local or private parties. David Eastwood has suggested rather that eighteenth century experience in debating local schemes transferred over to nineteenth century debates on national domestic projects. David Eastwood, *Governing Rural England: Tradition and Transformation in Local Government 1780-1840* (Oxford Univ. Press 1994) (noting that "[c]hanges in poor law policy in the early nineteenth century should be explained not so much in terms of the increasing efficiency of parliament but more broadly in terms of the fundamental changes in the assumptions which governed the relationship between central and local government which, in turn, transformed patterns of policymaking"). Eastwood's position is the position of this study. The nineteenth century move toward national legislation was not a spontaneous finding of domestic policy, but more a transfer of focus from locality to center.

problems of legislative proliferation. For Bogart, private legislation provided a first-best solution to problems of adapting property rights to economic growth. Moreover, he has argued that as private legislation superseded prerogative as a mechanism for obtaining rating or compulsory powers, investment in transport increased because private enactments functioned better to protect existing property interests than existing institutions.³⁵

Langford, Hoppit, Innes, and Bogart have all demonstrated, in one respect or other, that parliament's internal operations at times drove external events (by, e.g., spurring transportation investment) and that those events could impact the management of parliament in non-obvious ways (by, e.g., reducing private initiatives or causing parliament to adopt a culture of consensus). The instant study aims to better illustrate this interaction. It connects the internal workings of parliament to the external issue of changes in demand for legislative products through a focus on the rules, procedures and practices that permitted or better allowed private business to function on behalf of suitors, members, professionals and parliament itself. These rules, procedures and practices helped remove exogenous barriers of access to parliament and shaped the strategies through which various interested actors accomplished their aims, often in the direction of inviting more and more varied business. They allocated time and the distribution of information to

³⁵ Dan Bogart "Turnpike Trusts and Property Income: New Evidence on the effects of Transport Improvements and Legislation in Eighteenth Century England," *The Economic History Review* 62 (2009), 128-152; Dan Bogart and Gary Richardson, "Making Property Productive: Reorganizing Rights to Real and Equitable Estates in Britain, 1660 to 1830." *European Review of Economic History* 13 (April 2009), 3-30; Dan Bogart, "Did the Glorious Revolution Contribute to the Transport Revolution?: Evidence from Investment in Roads and Rivers," working paper, <http://www.socsci.uci.edu/~dbogart/gloriousrevolution.pdf>.

better permit members to reap local benefits for legislative promotion. The growing complexity of these rules fostered burgeoning classes of professionals — clerks, surveyors, expert witnesses, solicitors, the parliamentary bar, and parliamentary agents — able and willing to profit from their knowledge. And, these rules, procedures and practices, by encouraging a steady flow of initiatives from private persons and localities, permitted parliament to gradually take on a larger role in the constitutional framework, both at the national and local level, while decreasing pressures toward instability at the opening and close of the century.

Often, these rules, procedures and practices worked too well in the service of one function of private business, to the detriment of others. Procedures that encouraged more business meant less time for members to promote bills for their constituencies. The expansion of sovereignty by procedures that encouraged business simultaneously threatened the ideological precedents of stability — the security of property, the localist tilt of government or the concept of law as custom. The response of parliament to these functional difficulties and conflicts was often the promulgation or artificial selection of more complex or revised rules, procedures and practices, these too often having effects far beyond the specific problems they addressed. By looking at the interplay between parliamentary procedure and the prosecutorial conduct of suitors and members, this study shows that by parts intention and accident, parliament maintained the effective multi-functionality of its private business through a continually evolving set of rules, procedures and practices. These rules, procedures and practices permitted the general increase in

business through the eighteenth century and shaped parliament's responses to problems of time management, credibility and legitimacy that regularly threatened to emerge.

Sources

In examining the role of parliamentary rules, procedures and practices, this study utilizes three types of sources. Principal among them are the official records of daily parliamentary activity, the *Journals of the House of Commons* and the *Journals of the House of Lords* for the century and a quarter between 1688 and 1810. Out of these, the prosecutions of nearly 15,000 distinct applications for private legislation have been examined. In addition to the success of each application, a number of other details about the majority of prosecutions have been noted. These include: the location of origin; the time between introduction and passage (as well as intervening stages); the numbers and types of subsidiary petitions offered; and whether an application was for renewal of a previous act or had failed in a prior session. In a number of sessions, notes were taken regarding those who promoted and those who managed legislation. Much of this essentially quantitative information has gone unused for this study. Its utilization would have made for a considerably longer and much different work, one substantially devoted to the interplay between procedure and opposition lobbying into the nineteenth century. The *Journals* were not simply used for quantitative analysis, however. Close reading can reveal developments in the practice of prosecuting private bills — e.g., the sorts of petitions for bills that were rejected, the elements of an acceptable report on legislation and parliament's responses to late petitions for legislation. They reveal also the regularities in the way suitors drafted petitions, revealing those elements contemporaries deemed important or inessential to the

application to parliament. The *Journals* have their limits, plainly, as a guide to the prosecution of private legislation. They do not record motions made or questions posed in many important instances. There are few recorded votes. Most importantly, the mediation of interests that often went into the prosecution of initiatives is nowhere to be found in their pages.

To make up for the limitations of the *Journals*, a second group of sources consisting of contemporary records of parliamentary activity have been consulted to fill in gaps. These include contemporary treatises on parliamentary procedure and practice, such as the officially printed *Methods of Proceeding* and the private manuscript *Liverpoole Tractate*; parliamentary papers in the sessional series; available copies of the *Votes and Proceedings of the House of Commons*; committee minute books and ephemera related to bill prosecution contained in the parliamentary archives; enrolled and printed private, local and public acts (also from the parliamentary archives); the papers of Robert Harper; and collected printed pamphlets, case sheets and blanked bills collected online in Goldsmiths'—Kress Library of Economic Literature. These materials, however, provide incomplete information for current purposes, in that while they clarify the picture of activity in and around parliament, they reveal only obliquely the actions being taken by local and private suitors. To better understand this interplay, finally, I have looked at local and manorial records in the Stowe manuscripts contained at the Huntington Library and at borough and trade records for the city of Chester in the Cheshire Archives. Together, these materials have made it possible to piece together a cohesive, though admittedly incomplete, picture of the interplay of

parliamentary rules, procedures and practices and the prosecution of private legislation in the eighteenth century.

Outline of the argument

This study is comprised of four chapters. The first deals with the changes in the operation of parliament that made it possible to function as a regular forum for the prosecution of private business at the eighteenth century's opening. Prior to then, it is argued, the circumstances of parliament exogenous to the legislative process often impinged on parliament's ability to function as a legislative forum. In the late seventeenth and early eighteenth centuries, however, rules, procedures and practices were put in place that reduced the impact of those exogenous circumstances on prosecutions for private legislation, encouraging business. These rules, procedures and practices were maintained, moreover, because members had both a personal and institutional interest in parliament effectively conducting private business. Members gained personally because private business functioned as an effective means of serving constituents. And, for parliament, the increase in private business functioned to prevent instability in its operations.

The second chapter moves from those rules, procedures and practices that buffered parliament's private business from exogenous determinants to those that shaped the strategies of suitors, members and professionals prosecuting business in the early eighteenth century. One goal of this chapter is to investigate an aspect of private business left unexplored by Sheila Lambert — the prosecution of business, both private and local, before there was a need for parliamentary agents. Following Lambert, the aim of this

chapter is to show the development of a relatively routine set of rules, procedures and practices, particularly those having to do with notice, participation and consent. But this chapter also endeavors to explore how those rules, procedures and practices would have affected the strategic choices suitors and members made in prosecuting business. A better understanding of the strategic implications of these rules, procedures and practices permits us to understand whether those functions important to suitors and members were well served by parliament's procedures and how some of those procedures developed — for instance, the expectation that private and local bills be preceded by a petition — to better serve those functions.

Chapter three explores the changes in rules, procedures and practices that occurred through the eighteenth century prior to 1774. These changes, it is argued, ensured adequate time for business and situated parliament's private business within the prevailing legitimating ideology of property. In the early part of the century, there were explicit attempts to bring private business in line with time constraints and ideology of property. In practice, they not only served the interests of members and parliament in controlling business, but also served those of suitors by encouraging them to attempt novel bills that proposed new legislative remedies or that sidestepped existing substantive hurdles to legislation. By the middle of the century, beneficial procedural arrangements as well as new gains to be realized from legislation sparked a fourfold increase in business. Parliament's responses to this rise in business were incremental, nestled in the norms and operation of practice. They operated, with apparent success, to enable suitors' legislative projects, to allow members ample time to serve their legislative and remunerative aims by

carrying out the business of constituents or clients, and to further the supremacy of parliament by comporting the increased business with ideology of property. By the 1770s, however, it appears that the incremental approach to resolving these competing aims was perceived as ineffective and parliament again made express orders to insure that the institution's private business functioned to the its benefit.

The final chapter is a case study of enclosure legislation. Principally, it is meant to flesh out a claim made in previous chapter with regard to procedure and novel legislation. Here it will be shown in some detail how parliament's procedures after 1700 encouraged suitors to attempt enclosure legislation on grounds that would have been roundly disallowed in the central courts. The result of these efforts was ultimately a rise in parliamentary enclosures, as the costs of obtaining them decreased. To demonstrate this, we will make use of a model drawn from law and economics for determining the circumstances under which a litigant will file a claim. This model reveals that for much of the period under consideration, procedure in the Commons was tolerant of uncertainty in applications for enclosure bills. This toleration encouraged suitors to present, and eventually, to successfully prosecute enclosure bills that lacked the consent of all persons whose property rights would be affected. These changes to assent requirements encouraged enclosure business. They also ostensibly conflicted with prevailing notions of parliament as the guardian of property, undermining the stabilizing institutional function of private business. The chapter, therefore, briefly addresses those rules, procedures and practices that preserved parliament's ideological role and that did not bend to the will of the elite. These included a refusal to depart substantially from existing legal limitations on

obtaining enclosure, bolstering of notice obligations on proprietors and the imposition of substantive restrictions in enclosure legislation to favor dissenting parties.