

PART I



Preliminaries



The sources

The limits of this study were set by several circumstances. In the first place, if a really thorough analysis of Parliament at work was to be attempted without making the book gigantic, it became necessary to restrict the chronological sector to some half dozen sessions or so. The Parliaments of Edward VI and Mary I had already been studied by Dr Carl Ericson and Dr Jennifer Loach; for those of the second half of Elizabeth's reign Dr David Dean had started work since finished.¹ But the most important criterion lay in the sources available. In the whole Tudor period, only the seven sessions from 1559 to 1581 are covered by adequate Journals for both Houses. The Lords Journals are indeed continuous and unchanging from 1536 onwards, but things stand differently for the Commons. Before Elizabeth's accession their surviving Journals are exceedingly concise and not very informative; from 1584 to the end of the reign they are altogether missing and have been so since the 1630s at the latest.² Though much of what is lost can be recovered from the collections made by Sir Simonds D'Ewes,³ who used a Journal Book we no longer possess, his copies and extracts are not the same thing as the originals. Thus, since I wished to observe both Houses at work I thought it best to confine myself to that part of the institution's history for which I could follow the labours of both clerks in their original form. That left me with the years 1559–81, seven sessions of four Parliaments. Some years after I had started work on those years my choice of them was rewarded by the publication for the same period of the 'unofficial' parliamentary materials collected by the late Sir John Neale, a publication which saved me from having to repeat his laborious searches.⁴ This

¹ Three unpublished dissertations; C. G. Ericson, 'Parliament as a legislative institution in the reigns of Edward VI and Mary' (London, 1974); S. J. Loach, 'Opposition to the crown in parliament, 1553–8' (Oxford, 1974); D. M. Dean, 'Bills and Acts, 1584–1601' (Cambridge, 1984).

² Below, n. 17.

³ Below, n. 23.

⁴ Below, n. 24.

restriction to the first half of the reign has its drawbacks. It means, of course, that the analysis stops at a point of no significance though this fact can be useful if it helps to avoid the imposition of supposed patterns of development. All through the Tudor and Stuart periods the quantity of surviving material tends to increase as time progresses; by stopping at 1581 I missed out on some valuable sources that become available thereafter. However, the period chosen is well covered by the systematic production of the parliamentary machinery, and any investigation of that institution as a working body rather than an arena for possible politics must in the first place start from them. We need to understand this Parliament before we use it to interpret the general history of the nation.

After the medieval Statute Roll was abandoned in the reign of Edward IV there remained only one record belonging to the whole institution, the Roll of Parliament. One such was produced for each Parliament and, after some earlier gropings, from 1529 onwards for every session. However, from that opening session of the Reformation Parliament, the Roll in effect became a statute roll: thereafter it contained no more than a recital of all acts passed and assented to. From 1536, the vestigial remnants of what had once been a kind of narrative record vanished as the old formulae concerning the opening of the Parliament – including the appointment of receivers and triers of petitions as well as the election of the Speaker of the Commons – were transferred to the Lords Journal.⁵ The outward appearance of the Roll was effectively settled in the reign of Mary by the clerk of the Upper House, Francis Spelman (or, as he usually spelled it, Spilman) who died in office in 1576 and was succeeded by Anthony Mason, from the previous October his partner in the patent.⁶ It is therefore no wonder that the Roll retained a virtually standard form throughout the period under review. All seven Rolls survive for the seven sessions in question, and the variations among them are minimal – though not so minimal as to tell us nothing at all.⁷ The Roll should have opened with a table (list) of the acts to be enrolled, but that is missing from those for 1566 and 1571. The remaining Rolls carry it, without any distinction being made (as it was made in the sessional printing of the acts) between public and private acts. The numbering of individual chapters of the statute (that is, of the acts of Parliament), which ran continuously, was usually added after the Roll was written up; formulae of assent to bills were sometimes entered by the scribe and sometimes added later by another hand. The clerk was supposed to sign the Roll as examined and collated ‘cum recordis’ (with the Original Acts), but Spelman did this

⁵ For all this cf. *Studies* III, 110–42.

⁶ M. Bond, ‘Clerks of the Parliaments, 1509–1953,’ *EHR* 73 (1958), 78–85.

⁷ C65/166–72.

only in 1563. He never transferred the Rolls into the Chancery, as he was supposed to do, but kept them in his office, thereby reserving to himself and his clerks the profitable means of providing copies of private (unprinted) acts if any were required in the course of litigation.

Three acts received uncertain treatment on the Roll – those for the lay and clerical subsidies and for the general pardon always passed from 1563 except in 1572 when no money was asked for and no gracious thanks were therefore required. In the Accession Parliament the laity granted a subsidy but the clergy were spared, probably because Elizabeth resumed the first fruits and tenths which her sister had restored to the Church; the coronation pardon of 15 January 1559 rendered a statutory one superfluous.⁸ Those three acts, though public, were always printed separately and did not form a part of the sessional statute, but the Roll indicates a change in the official understanding of the classification of acts. In 1563, 1566 and 1571 the three acts were enrolled right at the end; in 1576 and 1581 they were placed between the public and private acts. Thus an important distinction, long since well established in the sessional print, finally became operative on the Roll in 1576. Details of this kind, as well as the problems attending upon the entering of the royal assent,⁹ make it plain that the Roll was put together well after the end of the session, though it may be presumed to have been written out before another meeting of the Parliament; the intervals between sessions should have offered to a clerk otherwise unoccupied plenty of time to get up to date with his duties. There are some erasures and changes of hand on the Roll for 1571 which may have resulted from pressure of time: this was the only session in the period followed by a brief interval before the next Parliament was called.

As a source for the history of Parliament the Roll is thus of limited value. In all seven Rolls there occurs only one entry that does not simply record acts passed. In 1572 the clerk added the order of the Lords in the case of Henry, Lord Cromwell who, arrested for debt at a private suit, was released by privilege; strangely enough, if the Lords Journal can be trusted, he got the date wrong.¹⁰ And even less explicably he added a further note to the effect that on the first day of the Parliament three new peers had presented their writs of summons and been admitted to their places in the House. Nothing else interrupts the formalized recital of acts passed. However, this does not make the Roll and its study totally pointless; as we shall see, it can contribute to our understanding of various aspects of parliamentary procedure.¹¹

⁸ *TRP* II, 104–8.

⁹ Below, pp. 127–8.

¹⁰ *LJ* I, 727 dates the order to 30 June 1572; C65/170, m. 15 has it on the 27th.

¹¹ Below, pp. 50, 53–4, 127–8.

The Roll, though true to medieval practice treated as authoritative by the courts and the antiquarians alike, was not, in fact, an original document in the strictest sense; behind it stood the sources from which it was copied. However, in the legal sense it was the Roll that made Parliament a 'court of record' and therefore a member of the curial system in the common-law structure. The public acts it took from the sessional print, and the private ones from the parchment bills in the Parliament Office; the print too, of course, ultimately derived from those Original Acts – the bills that had obtained passage in both Houses and the royal assent, as the notations on them indicate. Both sessional print¹² and Original Acts survive in full, the latter, now in the Record Office of the House of Lords, being in fact the ultimate source on the chief activity of these Parliaments, the making of laws. Both provide evidence for the working of the parliamentary machinery. Thus the two subsidies and the pardon, as the printer's signatures upon them show, were usually printed separately, though they quite commonly got bound up by the purchaser with the sessional print of the public acts; they were printed separately in large quantities because they had to be available to subsidy commissioners and collectors, or alternatively to intending buyers of the pardon, and in all probability were printed first.¹³ There is no evidence that at this time any part of the sessional statute was printed before the end of the session, as seems to have happened in 1534.¹⁴ Unlike the Roll and the sessional print, valuable but not very informative, the Original Acts are indispensable to any study of Tudor and Stuart Parliaments. Most obviously, they provide the texts of private acts, not printed at the time and from 1547 left out of the *Statutes of the Realm*. In addition, however, they often contain evidence touching the fortunes of bills during passage, in the form of amendments on the face of the bill, provisos attached to it on parchment schedules, and on occasion paper sheets of amendments proposed by the second House to see the bill which got filed with the act.

Rolls, print and Original Acts constitute the archival production of the whole Parliament; it is worth notice that they all still treat the Upper House as the real centre of Parliament. Its clerk wrote the Roll, prepared the copy for the printer, and filed the assented-to bills. On the other hand, the most familiar source material in the history of the Elizabethan

¹² I have used the conveniently complete collection of what is by no means universally available material in the Pepys Library of Magdalene College, Cambridge, vols. 1994 and 1995.

¹³ In 1566 and 1576 the clerical subsidy looks to have been printed with and at the end of the sessional statute; in 1581 this was done for both that subsidy and the pardon. The lay subsidy always got printed separately.

¹⁴ *Studies* III, 101.

Parliaments did not belong to the institution as a whole. The Journals were the product and property of each House separately, or in a sense of the clerks of each House separately.

As a historical source, the Journal of the House of Lords poses hardly any problems. Its form settled in 1536 and never changed thereafter for the rest of the sixteenth century. Prefaced by a list of proxies entered by peers prevented from attending,¹⁵ it records the formalities of the opening and then each sitting day of the session. That daily entry includes a presence list (the list of members in hierarchical order with those present marked with a 'p') and the bill proceedings for the day, with very occasionally a case of privilege. Adjournments and prorogations are noted, and the entry at the end of the Parliament records the dissolution. The Journal is very 'clean', and the eighteenth-century printing of it is entirely satisfactory for the historian's purposes. At times the clerks manifestly failed to enter some stage of a bill and may conceivably have made mistakes in marking up the presence list, though we have no means now to check this. In the Journal for 1559 several pages are missing, having probably dropped out on the occasion of rebinding, but what is absent has been supplied from an early Stuart copy preserved at the Inner Temple.¹⁶ The businesslike conciseness of the Journal testifies to the highly developed clerical organization of the Upper House but severely limits the information supplied; we can track bills and when a vote is recorded usually get the names of those dissenting from the majority verdict; but about actual goings-on in the House we learn virtually nothing.

The Commons Journal presents much more complex problems. For one thing, though a Journal exists for all the sessions in question, we know that some material is lost which was still available for listing in 1633.¹⁷ What we do have are the two journal books called, after the clerks that kept them, 'Seymour' and 'Onslow'. 'Seymour', as Neale showed,¹⁸ consists of two disparate parts – brief notes copied fair for the years 1547–1552, bound in the front of a more proper paper book covering the meetings from the last session of Edward VI to 1566. It is what later came

¹⁵ The problem of proxies awaits further investigation; it cannot be dealt with in the present work. The most serious question arises from the fact that givers of proxies are sometimes found attending the Parliament. See in general M. A. R. Graves, *The House of Lords in the Parliaments of Edward VI and Mary I* (Cambridge, 1981), index entry under 'proctorial representation'.

¹⁶ E. Jeffries Davis, 'Journal of the House of Lords for April and May 1559,' *EHR* 28 (1913), 531–42.

¹⁷ Sheila Lambert, 'The clerks and records of the House of Commons, 1600–1640,' *BIHR* 43 (1970), 215–31.

¹⁸ J. E. Neale, 'The Commons' Journals of the Tudor Period,' *TRHS* 4th ser. 3 (1920), 136–70.

to be known as a scribbled book, that is to say a register written up in the House during sittings, with the compressions and corrections likely to be called for in such circumstances. It is, however, as complete a record as John Seymour ever kept, and from the beginning of Elizabeth's reign his entries, unhelpfully brief to that point, grow rather fuller. Fulk Onslow's book (for 1571 to 1581), on the other hand, is a 'perfected' journal, a fair copy of his scribbled book which itself is lost; it looks as though he discarded his original notes as he had the copy made.¹⁹ Neither book is without faults and inaccuracies – with stages of a bill inadvertently omitted and such like minor slips – but the damage done by such clerical slips would appear to be very slight. The matter recorded in both these journal books is, despite their differing appearance, the same: bill proceedings, some orders of the House, licences for absence, and matters of privilege (usually arising from members' endeavour to avoid arrest by creditors), with a very occasional mention of a protest or a debate, though these last topics get very compressed treatment. Onslow's perfected book finds room for rather more formal accounts of such things as cases of privilege. He entered committees in full where Seymour had noted only chairmen (as the persons responsible for returning the bill to the clerk); on the other hand, when Seymour mentions a division he gives figures, whereas Onslow is content to speak of a majority. In all essential points the two books are alike in purpose and in the information given. They are the clerks' private record of business in the House, intended to aid them in keeping abreast of that business, and the outward differences between terse scribbled notes and the more rounded perfection of the same should not disguise that fact: there are no grounds for speaking, as Neale did, of an evolution from a primitive to a mature state.²⁰ One particular development, however, still lay in the future: there is no evidence that the House itself took the kind of interest in the Journal and its contents which it began to evince in the first Parliament of James I.

The printed version of the Commons Journal leaves a good deal to be desired. It altogether fails to show the appearance of the record or indicate its component parts; it omits odd notes and scribbles; by introducing capitals and italics, it creates an air of a systematic order of importance absent from the original; and it does not indicate corrections or deletions. The volume now called 'Onslow' actually consists of two separate books now (and certainly since the early seventeenth century) bound together, the paper-size differing between the two; the second,

¹⁹ As Neale and Lambert show, the scribbled book for the rest of Elizabeth's reign was still available to Simonds D'Ewes but has not been seen since. It was never perfected.

²⁰ Cf. *Studies* III, 165–8.

for the session of 1581, starts on a new set of quires even though seven blank folios were left at the end of the first. Apparently Onslow really wished to produce perfected Journals for each of his Parliaments separately, after running the one-session Parliament of 1571 on into the three-sessions Parliament of 1572–81. In general, ‘Onslow’, being clean and straightforward, suffers less from bad editing than does ‘Seymour’, but there are some misreadings and omissions in both books. Most serious are the systematic omissions from ‘Seymour’ of marginal notes made by the clerk in his manuscript at a later stage. Thus the originals show, as the print does not, that Seymour went over his sessional record at the end of the session, adding where appropriate a note of the assent having been given to his early entry in the margin recording passage of a bill in the House (*judicium*). Since all the business of the assent was handled in the Lords, this was his only means of keeping track of bills that had found approval in the Commons but had either failed in the Lords or been vetoed; the practice indicates that he had no plans to replace his scribbled book by a more elegant copy, as his successor was to do, but on the other hand, unlike his predecessors, meant that record to be kept for the future. Here we see signs of the transition from notes scribbled during sittings for guidance during a session to a permanent register or journal. It was, however, not until after 1660 that the Commons Journal assumed a standardized form, having until then reflected the variable habits and preferences of every clerk.²¹

That exhausts the systematic and, as it were, official sources – those produced by the working life of the institution itself. It is noticeable that they overwhelmingly testify to a concept of Parliament as a laws-producing machinery. Any proper study must obviously begin with this self-generated evidence, but it must not stop there. One kind of record, halfway between the official and the unofficial sort, unfortunately survived very poorly. For this period we possess hardly any of the paper bills introduced into the House and either superseded by the parchment engrossment or dropped before that stage. Whether the very few now found in the collection called Main Papers at the House of Lords represent a once sizable archive, possibly lost in the fire which destroyed the Houses of Parliament in 1834, must be doubted: more survive after 1584, which suggests a similar disproportion before the fire. It is at least likely that record-keeping improved in the Lower House in the course of the reign, as it certainly did in the Upper House or the custody of State papers. In 1633 the Commons clerk still possessed ‘11 bags of papers

²¹ I have corrected my copy of the printed *Cy* from the manuscript and, since it is very inconvenient for the reader to be referred to that manuscript, shall cite from the print, but with emendations silently made where they apply.

of Queen Elizabeth',²² and in the early nineteenth century the clerks several times complained of ancient papers going back to that reign which crowded the presses in the corridors. Of all this little or nothing now seems to survive, but of what remains almost everything belongs to the 1580s and 1590s. My own guess is that down to the middle of the reign paper bills were not preserved when no longer necessary to the business of the House. A few draft bills – an earlier stage yet – are to be found in private or municipal archives; those now in the State Papers probably came from Burghley's office. Generally speaking, however, the texts of bills that did not pass, or the earlier versions of those that did, can hardly ever be traced. Too often we have to guess at contents from the brief titles invented for the Journals.

However, materials bearing on the history of the Elizabethan Parliaments exist outside the official and semi-official records, and Sir John Neale spent a life-time searching for them. Some had been collected by the antiquarians of the seventeenth century, and Simonds D'Ewes had incorporated a selection in his edition of the Elizabethan Journals.²³ As was said above, Neale's collection is being made available in print, and a first volume, which covers the period of this study, has appeared.²⁴ The materials there included fall into two kinds. In the first place, there are speeches and memoranda relating to particular occasions; in the second there are diaries of parliamentary proceedings through all or part of a session, kept by members of the Lower House. Hardly any of these materials are originals; we now have only copies made by or for seventeenth-century collectors, quite often several such copies in different collections, nearly all of which have ended up in the British Library. Copies disguise things about the originals, above all authenticity and provenance; as for accuracy, one must obviously be careful about basing any argument on the precise phrasing of copies, though general experience of the practice of the time indicates that copyists were usually very accurate.

The minor difficulties attending the first sort of document have been sufficiently noted by the editor of *Proceedings*. Speeches are a notorious problem for that time and later centuries. If they were recorded by a listener, accuracy is out of the question; if they were produced by the

²² Lambert, *BIHR* 43 (1970), 231.

²³ Simonds D'Ewes, *The Journals of all the Parliaments during the reign of Queen Elizabeth*, published by P. Bowes (1682). That edition is notoriously mangled, but a copy corrected from the manuscript is found at the Institute of Historical Research in London. In any case, for the years 1559–81 D'Ewes has been rendered superfluous by the edition mentioned in the next note.

²⁴ *Proceedings in the Parliaments of Elizabeth I, volume I: 1558–1581*, ed. T. E. Hartley (Leicester, 1981).

The sources

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ostensible speaker we do not know that the script represents what was delivered – or indeed whether the speech was ever delivered at all. The most important speeches, from the point of view of the present study, were the addresses delivered at the opening of Parliaments, by the lord keeper, Sir Nicholas Bacon; these were manifestly taken down eagerly and often copied, and I think we can rely on the transmission. However, the doubts raised by this kind of material are negligible by comparison with the questions that hang about the diaries. Not enough has been done to assess them as historical evidence, which necessitates a word here. Neale used them in his usual selective manner to give colour and detail to a narrative which, had it had to rely solely on the official Journals, would have been bare indeed; but he never wrote a word bearing on the fundamental criticism to which such tricky material must be subjected. Dr Hartley, in his introduction, says some things of value, especially drawing attention to contents (markedly the larger part of the total) that Neale ignored, but he does not seriously address himself to the basic question for what reason and purpose such diaries were ever kept at all.

Considerable labour went into those private records of the business of Parliament. Notes had to be taken in an often crowded and usually noisy House;²⁵ they had then to be put together in proper shape; no doubt other members and the officers of the House had frequently to be consulted to correct mishearings and omissions.²⁶ Possessed as we are of copies only, we lack information about the diarist's *modus operandi* which the originals may have provided. The present location of these copies says nothing about the very important issue of provenance and the location of the originals: where did the copyists find them? We are thus deprived of guidance on the central issue: for whose eyes were those diaries meant? The motive behind the keeping of diaries must be conjectured from internal evidence and certain external circumstances, and absolute certainty cannot be obtained. However, one can arrive at reasonably convincing conclusions, and those conclusions differ entirely from Neale's sentimental view that private diaries reflect simply an increasing interest in Parliament and a growing respect for it.

We have no private diaries for the first three sessions of the reign, after which, it would appear, diary-keeping began. Of course, some such documents could possibly be lost altogether, but this is not very likely when we allow for the eagerness with which Stuart parliamentarians searched for information about Elizabeth's Parliaments. The probability

²⁵ It did not take many members present to crowd the Elizabethan House of Commons which was comfortably filled if only 200 out of its membership of well over 400 attended; the membership grew larger through the reign as more constituencies were enfranchised.

²⁶ *Proc.* p. xiv.