

= Hale Commission =

The Hale Commission was established by the Commonwealth of England on 30 January 1652 and led by Sir Matthew Hale to investigate law reform . Consisting of eight lawyers and thirteen laymen , the Commission met approximately three times a week and proposed changes as radical ( at the time ) as reducing the use of the death penalty , allowing witnesses , legal aid and lawyers for defendants in criminal cases and creating County Courts and a Court of Appeal for criminal cases . Though the Commission was unsuccessful at passing any of its measures under the Rump Parliament , two of its measures were put into law by the subsequent Barebone 's Parliament , and , by the middle of the 20th century , most of the others were as well . Debate has occurred over the effectiveness and strife within the Commission between its more moderate and radical members ; the general conclusion is that with the sheer volume of work produced and the vast proportion of moderate to radical members , it is unlikely such strife existed .

= = Background and establishment = =

The loss of Charles I of England in the English Civil War led to the establishment of the Commonwealth of England on 19 May 1649 . During the rule of both the Commonwealth and the succeeding Protectorate , there was considerable desire for law reform . Many judges and lawyers were corrupt , and criminal law followed no real reason or philosophy . Any felony was punishable by death , proceedings were in a form of Norman French , and judges regularly imprisoned jurors for reaching a verdict they disagreed with . Cromwell and the Rump Parliament aimed to establish a " new society " , which included reforming the law ; to that end , on 30 January 1652 Sir Matthew Hale was appointed chairman of a commission to investigate law reform , which soon became known as the Hale Commission . The Commission 's official remit was defined by the Commons ; " taking into consideration what inconveniences there are in the law ; and how the mischiefs which grow from delays , the chargeableness and irregularities in the proceedings in the law may be prevented , and the speediest way to reform the same , and to present their opinions to such committee as the Parliament shall appoint " .

The Commission consisted of eight lawyers and thirteen laymen , appointed by the Rump Parliament on 26 December 1651 , and sat from 23 January 1652 approximately three times a week in the chamber of the House of Lords . No Members of Parliament were allowed to sit . In addition to Hale , members included John Desborough , John Rushworth , Hugh Peters , Anthony Cooper , John Sadler , John Fountaine , William Steele , Henry Blount , William Roberts , Josiah Bemers , Samuel Moyer , Charles George Cock and Matthew Thomlinson .

= = Recommendations = =

The Commission recommended various changes . On the criminal law side , they supported reducing the use of the death penalty , although " wilful murderers " were still to be executed , and the abduction of a child under 16 was to be considered a capital crime . They also suggested allowing prisoners access to lawyers in any case where the prosecution was permitted representation and allowing witnesses for the defence to give evidence under oath . Legal aid was also considered , although the rejection of a case where legal aid was given would result in the defendant being sent to a workhouse for a month and whipped . The abolition of peine forte et dure as a way to avoid the forfeiture of land was also proposed .

For legal system reform , the Commission suggested the creation of county courts led by the Westminster judges with jurisdiction over civil actions , and small claims courts for amounts under £ 4 to be manned by commissioners , approved by Justices of the Peace . They also supported the creation of a Court of Appeal consisting of laymen chosen by Parliament , the formation of a land registry and a permanent law commission . Against Hale 's wishes , the Commission called for the abolition of benefit of clergy , and the acquittal of those charged with justified homicide . The Commission also suggested that debtors should no longer be imprisoned , and attorneys should be

educated at an Inn of Court and not allowed to practise until they were admitted as members .

= = Disestablishment = =

None of the Commission 's recommendations ever made it into law under the Rump Parliament , though the Commission did produce 16 bills . Several were read in the House of Commons , and the remainder given to the Parliamentary Law Committee in July 1652 following the Committee 's dissolution on 23 July . The Rump Parliament 's successor , the Barebone 's Parliament , brought two of the Commission 's suggestions ( to abolish fines for original writs and to develop procedures for civil marriages ) into force through statutes . Most of the Commission 's suggestions were , at some point , followed . In 1837 the use of the death penalty was curtailed , and it was finally abolished in 1969 . From 1702 onwards , witnesses were allowed for the defence , and the Prisoners ' Counsel Act 1836 allowed legal representation for the defendants . The use of *peine forte et dure* was abolished in 1741 , and the benefit of clergy in 1827 . A permanent Law Commission was finally established with the Law Commissions Act 1965 . County Courts were finally established in 1846 , and a Court of Criminal Appeal in 1907 .

Academic debate over the Commission 's value has been strong . On the one hand , William Holdsworth wrote that the Commission was riven by strife between its lawyerly members and those of a more radical nature , and that its proposals were sometimes extreme . Other academics argued that the reform scheme was of great merit , and Hostettler , writes that " there is no evidence to confirm the belief of Sir William Holdsworth that the lawyers had a difficult time with the laymen " . Mary Cotterell , writing in the *English Historical Review* , notes that 13 of the 21 members were certainly not radicals , although Moyer and Bemers , Blount and Peters certainly were . The lawyers , all moderates , nevertheless dominated the discussions . Debate was on a highly technical level which prevented many of the laymen contributing much , although six of them had been educated at the Inns of Court . The large number of meetings and sheer volume of work produced also suggests that there was little dissent and argument . John Hostettler , in his biography of Hale , has suggested that if the measures had been put into law immediately , " we would have been honouring such pioneers for their farsightedness in enhancing our legal system and the concept of justice " .