# CHANCERY REFORM DURING THE INTERREGNUM: THE CROMWELLIAN ORDINANCE OF 1654

*John J. Weltman**

The 1654 Ordinance for the Better Regulating and Limiting the Jurisdiction of the High Court of Chancery is of considerable historical significance. Despite its similarity to earlier Chancery orders, its condemnation by contemporary Chancery officials and its abolition at the Restoration, the 1654 Ordinance is worth studying in depth because it indicates a great deal about the problems in Chancery procedure, administration, and jurisdiction in the mid-seventeenth century. It also demonstrates the legal attitudes of its creators, Cromwell's associates, and suggests why Cromwell's associates did not desire to abolish Chancery during this revolutionary period. Furthermore, it provides us with an historical precedent for some of the procedural reforms of Chancery in the early nineteenth century.

This study approaches the 1654 Ordinance from three different angles. First, it puts the document in historical perspective by elucidating the different approaches to Chancery reform, and explaining why the ordinance was the only Chancery reform actually promulgated during the Interregnum. Second, it compares the ordinance to the other major attempt to reform Chancery during this period: the Hale Commission reform of 1652. This comparison determines what goals the executive (1654 Ordinance) and legislative (Hale Commission bill) approaches had in common, and what solutions they suggested for reforming Chancery. Finally, this study compares the ordinance to later seventeenth and early nineteenth-century reforms to evaluate the usefulness of its solutions for later legal generations.

* * *

**John J. Weltman received his B.A. (*Cum Laude*) from Yale University in 1979. He is presently working towards three concurrent degrees: A J.D. in Law and an M.A. in Legal History from the University of Virginia, and an M.Litt. from Oxford University.*

Before looking at the 1654 Ordinance in depth, one must consider its historical context. The ordinance came at a revolutionary time in the development of English political and legal thought. The execution of Charles I in 1649 brought about drastic changes in the administration of the courts. During all recent kings' reigns, one Chancellor had ruled in Chancery. The Chancellor usually had been the King's right-hand man, speaking for the King in the equity courts of the land. Particlarly during Charles I's reign, litigants viewed the Chancellor's decisions as arbitrary and inequitable. The Long Parliament appointed three Lord Commissioners to make Chancery more efficient and Chancery decisions less arbitrary. No longer would a single King's favorite speak the King's mind. Now, three men would make equitable decisions more efficiently.[1]

On 8 February 1649, ten days after the execution of Charles I, three Lord Commissioners of the Great Seal were sworn in to head Chancery: Sir Bulstrode Whitelocke, Major General Lisle and Lord Keeble.[2] The most important of these, Sir Bulstrode Whitelocke, was probably the most eminent lawyer, politician, diplomat, and historian of his day. A public-spirited barrister, Whitelocke was appointed three times to the position of Lord Commissioner of the Great Seal. He was a member of both the Long and Rump Parliaments, and he served in the two Protectorate Parliaments as well. In 1653, Cromwell sent him to Sweden as his ambassador to Queen Christina. As an historian, Whitelocke wrote the *Memorials of the English Affairs . . .*, one of the primary sources for political historians of the Interregnum.[3]

In 1652, during his first appointment as Lord Commissioner of the Great Seal, Whitelocke published a collection of orders regulating Chancery proceedings. Although Whitelocke occasionally favored reforms, he drew the 1652 orders almost wholly from Lord Bacon's and Lord Coventry's codes. The few additions he made included a clause specifying that demurrers and pleas should be submitted by defendant's counsel (to save the defendant the expense of a

1. Stuart E. Prall, "Chancery Reform and the Puritan Revolution," *The American Journal of Legal History,* 1962, vol. VI, p. 28. For others on law reform during the Cromwellian Protectorate *see* G.B. Nourse, "Law Reform under the Commonwealth and Protectorate," *Law Quarterly Review,* vol. 75, 1959, pp. 512-529; R. Robinson, "Anticipations under the Commonwealth of Changes in the Law," in *Select Essays in Anglo-American History,* edited by E. Freund et al., 1907; Barbara Shapiro, "Law Reform in Seventeenth Century England," *American Journal of Legal History,* vol. 19, 1975 pp. 280-312; Golwin Smith, "The Reform of the Laws of England," University of Toronto Quarterly, vol. X, 1941; Donald Veall, *the Popular Movement for law reform, 1640-1660,* (Oxford: Clarendon Press, 1980).

2. John, Lord Campbell, *The Lives of the Lord Chancellors and Keepers of the Great Seal of England,* (Philadelphia: Lea and Blanchard, 1847), vol. III, p. 62.

3. Sir Sidney Lee, editor, *Dictionary of National Biography,* (London: Oxford University Press, 1920), vol. XXI, pp. 110-116.

commission and answer), a direction that causes be heard in the order of their publication, and an instruction that fees be fixed.[4]

On 26 December 1651 Parliament appointed a law reform committee to consider the inconveniences, delays, and irregularities in legal procedures, and to determine the best way to reform them. Army officers, including Cromwell and Major General Harrison, top law officials, including Whitelocke, Lisle, and leader of the Commission, Matthew Hale, sat on the committee. Politically, the majority of the Commission members were moderates, but there were numerous radicals amongst them (including Hugh Peters, the radical spokesman). Whitelocke, a political conservative, was not pleased with the Commission's proposals. He believed that Peters initiated outlandish proposals and wild schemes that the Commission adopted.

The Commission met between January and June 1653 and produced a series of drafts of acts to reform the Common Law and Chancery Procedure. Although Parliament did not enact any of these reforms before it was dissolved, the Commission's acts presaged many of the executive reforms in the Cromwellian Ordinance of 1654.

Historians generally have based their judgment of the Hale Commission on Whitelocke's opinion in his *Memorials* that its proposals were outlandishly radical. But Mary Cotterel, author of "Interregnum Law Reform: the Hale Commission of 1652," has argued that the Commission was a moderate body led by productive lawyers to create progressive reforms. She wrote: "[the Hale Commission's] report was the most complete expression of the modern reform programme, whose characteristics were an acceptance of radical proposals in modified form, a concentration on reform of procedure and organization of the central courts and a desire to make common law impregnable by eliminating causes of criticism and limiting the scope of its rivals."[5] Considering Whitelocke's conservatism, and Cotterel's detailed research of the minutes of all Commission meetings, Cotterel probably appraised their report more accurately.

The next attempt to deal with Chancery problems came during the Barebones Parliament (July-December, 1653). Shortly after the opening of Parliament, two pamphlets were distributed anonymously to the members. The first, "Observations Concerning the High Court of Chancery," dealt largely with the history of Chancery, focusing on its administrative and procedural development over the past two centuries. In the past, procedure had been simple. The

4. Keeble and William Lenthall (Master of the Rolls) assisted Whitelocke in devising these orders. D.M. Kerly, *An Historical Sketch of the Equitable Jurisdiction of the Court of Chancery*, (Cambridge: Cambridge University Press, 1880), pp. 156-7; John Beames, *Reports of Cases Argued and determined in the High Court of Chancery in the Time of Lord Chancellor Eldon*, (Philadelphia: H.C. Carey & I. Lea, 1822).

5. Mary Cotterel, "Interregnum Law Reform: The Hale Commission of 1652," *English Historical Review* (1968). vol. 83, no. 329, pp. 689-704.

pamphlet's author complained of increasing bureaucracy and of the decreasing interest in the actual workings of the court. According to the pamphlet, these two developments brought about greater expense and more delays for clients.

The pamphlet's author also complained of corruption in the Master of the Rolls' and six clerks' offices. The Master of the Rolls often sold the six clerk positions to the highest bidder. By refusing to increase the number of offices even when business increased, the Master of the Rolls kept the offices desirable and lucrative, slowing Chancery proceedings in the process. The six clerks' underclerks often concealed their business and fees from their superiors, delaying and damaging the clients' causes they managed. All of this secrecy and corruption impaired the Chancery system's effectiveness.

"Observations . . . " also pointed out several notable sources of delay in Chancery. It considered the subpoena and affidavit offices parasitical, created for no "other End but to put the Clients to unnecessary Expenses and Delays, and the practicing Clerks to needless Trouble."[6] It also criticized the ploy which allowed a defendant to delay his case by standing in contempt of court. During the year it took to prosecute contempt, the original suit could not be litigated. Should the plaintiff desire to continue his suit after the contempt had been prosecuted, the defendant could repeat the trick. Eventually, in many cases, the plaintiff would give up his suit. Cases suffered further delays because Chancery could not compel a defendant to make a sufficient answer nor keep a plaintiff from wilfully delaying vexatious suits. Repeated hearings and needless references to a master kept suits in court for longer than necessary; furthermore, a plaintiff often could not collect on the order once it was issued.

The Barebones Parliament received a second pamphlet, entitled "Proposals for the regulation or taking away of the Court of Chancery." This pamphlet contained specific proposals for reforming Chancery. The paper suggested a simpler procedure and administration for handling equity cases.

Like the "Observations," the "Proposals" saw Chancery's officials as one of its major problems. These men paid for their positions or took them to acquire status. They did not necessarily possess legal ability. The "Proposals" suggested firing most of the present officials and hiring legally able officials and efficient underclerks. The pamphlet held that this purge, when combined with an annual wage or lower fees for new officials, would end corruption in Chancery. The pamphlet also suggested procedural reforms to limit the time required to process suits to one year and to keep clients' costs below fifty shillings. Thereby the "Proposals" additionally sought to overcome expenses and delays in Chancery.[7]

Despite these well-placed, well-written pamphlets calling for Chancery reform, on 5 August 1653, Parliament voted to abolish the High Court. The

6. *Ibid.*, p. 703.

7. *The Parliamentary or Constitutional History of England*, London: 1751-62, vol. XX, pp. 200-206.

charge against the Court read as follows:

> It was confidently affirmed, by knowing gentlemen of worth, that there were depending in the court twenty-three thousand causes: that some of them had been there depending five, some ten, some twenty, some thirty years or more: That there had been spent in causes, many hundred nay thousands of pounds, to the ruin, nay utter undoing of many families: that no ship almost (to wit, cause) that sailed in the sea of the law, but first or last putting into that port; and if they made any considerable stay there, they suffered so much loss, as the remedy was as bad as the disease. That what was ordered one day was contradicted the next; so as in some causes there had been five hundred orders, and far more, as some affirmed; that when the purses of the clients began to be empty and their spirits a little cooled, then by a reference to some gentlemen in the country, the cause so long depending, at so great charge, came to be ended, so as some did look on it as it now is, as a mystery of wickedness and a standing cheat.[8]

Parliament sent the resolution abolishing the court to the Committee for the Regulation of the Law. The Committee brought in a bill to remove Chancery, but as it did not provide for future equity cases, it was voted down. Thereupon committee members recommended a new bill that would abolish Chancery, but provide for future equity cases. The second bill seemed to many parliamentary members "to be the setting up of two courts rather than the casting down one, and an establishing of Chancery rather than a casting it away." After a long debate the members voted down the bill.[9] Meanwhile they voted to suspend Chancery for a month, but to allow the Chancellor to issue original writs, writs of covenant, and writs of entry. The Speaker broke the tie vote (39-39) on this proposal by casting his vote against it.

Since many people had to be absent from Parliament during the late summer to "set up their families" before winter came, the members did nothing about the bill until autumn. On 17 October 1653 another bill was proposed to abolish Chancery, but Parliament voted it down at the reporting stage.[10]

The Parliament, disappointed with the proposals of the Committee for Regulating the Law, dismissed the Committee. After appointing a new committee, Parliamentary members specifically requested that Major General Harrison, a leader of the abolitionists, be added. This addition ensured that the committee would call for abolition.

The new committee brought in a proposal to take away Chancery and to appoint Commissioners to hear and determine causes now and later pending. They drew the proposal so "any ordinary cause might be determined and ended

8. "The Exact Relation . . . ," (London, 1653), *Somers Tracts,* (London: T. Cadell and W. Davies, 1811), vol. VI, p. 275.

9. *Ibid.*, p. 276; Campbell, *Lives,* p. 70.

10. Campbell, *Lives,* p. 71; Cobbett, *Parliamentary History of England,* (London: T. Curson Harvard, 1808), vol. III, pp. 1381-1414.

for 20 or 40 shillings in a very short time, and much strife and going to law prevented." Parliament never voted on the bill before Cromwell dissolved the session on 12 December 1653.[11]

* * *

The "Ordinance for the Better Regulating and Limiting the Jurisdiction of the High Court of Chancery" was issued on 21 August 1654. Its author is still unknown. John, Lord Campbell, in his *Lives of the Lord Chancellors,* attributes it to Major General Harrison. Campbell wrote "[the Ordinance] displayed such ignorance that it might have been the production of General Harrison."[12] But Harrison did not possess the legal knowledge to frame the 1654 Ordinance; it contains some significant procedural and administrative additions to the prior ordinances that Harrison was probably not educated enough to devise.[13]

The 1654 Ordinance was certainly not the work of Whitelocke or the Commissioners of the Great Seal. Stuart Prall, in his book *The Agitation for Law Reform During the Puritan Revolution,* undoubtedly errs when he states that "The authorship of this ordinance was perhaps the work of the Lord Commissioners of the Great Seal. Bulstrode Whitelocke in particular was cognizant of the sad state of Chancery proceedings."[14] Whitelocke was in Sweden when the ordinance was written, so he could not have composed it. Furthermore, Whitelocke noted in his *Memorials* that no one consulted him or the Commissioners about it.[15] Finally, Whitelocke's point-by-point criticism of the ordinance in his *Memorials,* and his refusal to abide by it, demonstrate his intense disapproval of the instrument.[16]

No final evidence indicates who wrote the 1654 Ordinance. Its author probably sat on the Hale Commission or at least had access to its proposals, for the proposals of this ordinance closely resemble those of the Commission. As Whitelocke recognized in his criticism, the author was probably not a Chancery lawyer or official, for he was ignorant of equity complexities and Chancery proceedings. The mysterious circumstances surrounding the ordinance's

11. *Somers Tracts,* VI, p. 276; Cobbett, *Parliamentary History,* III, pp. 1381-1414.

12. Campbell, *Lives,* p. 73; Joseph Parker, *A History of The Court of Chancery,* 1828.

13. *Dictionary of National Biography,* vol. IX, pp. 41-44.

14. Stuart Prall, *The Agitation for Law Reform During the Puritan Revolution, 1640-1660,* (Hague: Martinus Nijhoff, 1966), p. 106.

15. Bulstrode Whitelocke, *Memorials of the English Affairs From the Beginning of the Reign of Charles The First to the Happy Restoration of King Charles The Second,* (Oxford: University Press, 1853), vol. IV, p. 188.

16. *Ibid.,* pp. 191-207.

appearance indicate that its author was a crony of Cromwell's. Cromwell often asked associates to compose documents without getting prior approval from the Council of State. Furthermore, Cromwell enforced the ordinance, indicating his approval of his associate's work. Despite these biographical clues, the author's actual identity will probably be forever unknown.

* * *

The 1654 Ordinance is the only piece of Chancery reform actually enacted during the Commonwealth and Protectorate. As a successful and innovative piece of legislation, it deserves to be analyzed in-depth by comparing its proposals to those of the Hale Commission and the Whitelocke critique. The Hale Commission's legislative approach to Chancery reform is similar to the Ordinance's executive avenue. Whitelocke's critique in his *Memorials* further indicates the legal problems with the ordinance.

The 1654 Ordinance was designed "for the better regulating and limiting the Jurisdiction of the High Court of Chancery, and to the end that all proceeding[s] touching relief in Equity . . . may be with less trouble, expense and delay than heretofore."[17] The ordinance thus proposed to limit Chancery's jurisdiction and to reduce present expenses and delays. The Hale Commission bill did not declare its purpose, but the similarities between the two acts indicate that their purposes agreed.

This objective was unprecedented. Lord Bacon had written his ordinance in 1618 to harmonize the two opposing legal factions under Coke and Ellesmere, and to cement Chancery practice and procedure.[18] Never had the problems of delay and expense been so directly addressed as in the Interregnum ordinances. While Bacon and the Lord Commissioners had attempted to reform Chancery procedure conservatively, no one had tried to limit its jurisdiction, or reorganize its administration, as the Hale Commission and 1654 Ordinance did.

Each document began by reforming the service of subpoenas. Subpoenas were Chancery's original process, the means whereby it summoned defendants to answer plaintiffs' bills of complaint. Critics attacked the existing subpoena procedure for the expense and difficulty officials encountered in serving them and in forcing defendants to respond.[19]

17. C.H. Firth, and R.S. Rait, *Acts and Ordinances of the Interregnum,* (London: His Majesty's Stationery Office, 1911), vol. II, p. 949.

18. Francis Bacon, *The Works of Francis Bacon, Lord Chancellor of England,* (Philadelphia: Carey and Hart, 1848), vol. II, p. 479; Kerly, *Historical Sketch,* pp. 107-117.

19. W.J. Jones, *The Elizabethan Court of Chancery,* (Oxford: Clarendon Press, 1967), pp. 177-182.

The Hale and 1654 Ordinances reduced the cost of subpoenas and allowed each subpoena to contain as many defendant names as the plaintiff desired. Both ordinances also required that subpoenas be sealed open. Whitelocke wrote that openness would lead to "forgery of names, persons and dates."[20] If a name were forged on an open subpoena, he argued, innocent persons would have to travel to Chancery only to discover that no complaint had been lodged against them. If a date were changed, an accurately-named defendant could abide by the bill and still be late with his answer. Whitelocke believed that present corruption would prohibit the honesty intended by the ordinance's demand for openness.

To solve the problem of a defendant's failure to respond, the 1654 Ordinance provided a drastic measure. Should a defendant fail to appear, the sheriff could send bailiffs to the defendant's house to break down his door. The Hale Commission provided a less drastic means: should a defendant fail to appear, his person, property, and goods would be attached, he would have to pay a fine, and he would be prevented from prosecuting any later suit. In some cases, a defendant's refusal to appear would lead the court to consider the bill confessed.

While Whitelocke might have approved the Hale Commission proposal, he certainly opposed the Cromwellian one. He commented that the 1654 Ordinance granted Chancery the jurisdiction to commit illegal acts – breaking down doors of any person's home without notice or request, thus encouraging robbery. Whitelocke preferred the present procedure: retrieval of the defendant by a responsible sergeant at arms whenever possible.[21] Whitelocke's suggested methods of summoning defendants may not have succeeded on all occasions, but he preferred tested, legal alternatives to Cromwell's use of force.

While both ordinances protected the plaintiff from a defendant who failed to appear, only the 1654 Ordinance protected a defendant from a plaintiff's frivolous suits. A plaintiff had to put up a security deposit for a defendant's costs. Should the court deem a plaintiff's suit improper for relief, the defendant would receive the security deposit. Whitelocke complained that deposits would be an encumbrance on the plaintiff, causing unnecessary delay and expense.[22] Whitelocke probably did not oppose a plaintiff's obligation to pay should his suit be deemed frivolous. He simply opposed the demand that a plaintiff pay a security deposit beforehand, as it would tie up his money unnecessarily. Whitelocke seems not to have considered that a plaintiff might refuse to pay costs after Chancery deemed a suit frivolous.

In allotting time for answering a suit, the Hale Commission provided equal

20. *Somers Tracts,* VI, pp. 203, 210; Firth and Rait, *Acts and Ordinances,* II, p. 951; Whitelocke, *Memorials,* IV, p. 193.

21. Firth and Rait, *Acts and Ordinances,* II, p. 951; Whitelocke, *Memorials,* IV, p. 193.

22. *Ibid.*

time to plaintiffs and defendants, while the 1654 Ordinance did not. Hale's Commission gave defendants eight days to answer and plaintiffs eight days to reply. The 1654 Ordinance did not specify the number of days defendants had to answer, but it did limit the time for plaintiffs' replies to eight days. Whitelocke realized that an eight-day limit would elicit many motions for extensions.[23] Defendants frequently requested extensions to locate documents or examine evidence in the country. The court even allotted extensions before the defendants applied for them, to avoid unnecessary attachments of their persons or property.[24]

To save defendants from unnecessary expense, both the 1654 and the Hale Commission Ordinances allowed a rural defendant to answer before a local Justice of the Peace. This provision probably responded to the Leveller demand for county courts. The Levellers wanted to return power to the localities, while lawyers, like Whitelocke, wanted to maintain the central government's control over parties. Although the ordinance recognized local authorities, it carefully avoided giving the localities too much power. The central courts already had appointed Justices of the Peace to be local examiners.[25]

Both ordinances provided parties in Chancery with commissions to allow them to examine witnesses. After a defendant had rejoined, and either party made application for a commission, a group of between two and twenty country gentlemen would travel to the parties' home district to examine their witnesses. The 1654 Ordinance insisted that the commission be open, revealing that Cromwell knew the charges of secrecy and sharp practice that many pamphleteers attributed to Chancery. Whitelocke objected to the open commission on the grounds that openness would encourage forged commissions as it encouraged forged subpoenas.[26] Whitelocke did not realize that open sessions were less likely to create forgeries and dishonesty than they were to breed honesty in government.

To further ensure honesty, the Hale and 1654 Ordinances required commissioners to take an oath to execute their office faithfully. The ordinances also asked that clerks be sworn to transcribe witnesses' testimony accurately. Whitelocke attacked the requirement on a technicality. He said that because the ordinances did not specify the oath, none could be recorded in the register. The commission would be invalid if no oath were recorded.[27] Whitelocke correctly

23. *Somers Tracts,* p. 205; Firth and Rait, *Acts and Ordinances,* II, p. 953; Whitelocke, *Memorials,* IV, pp. 194-195.

24. Jones, *Chancery,* p. 214.

25. Firth and Rait, *Acts and Ordinances,* II, p. 952; *Somers Tracts,* VI, p. 205; Cotterel, "Hale Commission," p. 697; Whitelocke, *Memorials,* IV, p. 194.

26. Jones, *Chancery,* pp. 239-240; Firth and Rait, *Acts and Ordinances,* II, p. 954; Prall, "Chancery Reform," p. 40; Whitelocke, *Memorials,* IV, p. 195.

27. *Somers Tracts,* VI, p. 207; Firth and Rait, *Acts and Ordinances,* II, p. 954; Whitelocke, *Memorials,* IV, p. 196.

feared that plaintiffs would lose their cases without a commission. This technicality may not have invalidated the ordinances' attempt to ensure honesty in government, but it did indicate that the Cromwellians needed a legal adviser, aware of Chancery procedure, to help them rewrite their ordinance.

Publication of commissions ended discovery procedure, witness testimony, and commission examination, so litigants frequently made motions to suspend publication to search for new or untapped evidence. Neither ordinance made major changes in the publication procedure. Cromwell noted that some time should pass between the return of a commission and publication to allow for either party's objections. Whitelocke inquired whether the plaintiff's or defendant's commission need return before the waiting period began. He feared that if the waiting period began after the first (plaintiff's) commission's return, publication passage could surprise the parties before they could move for a suspension.[28] Once again, Whitelocke was concerned with practicalities and with protecting parties' rights rather than with expediting Chancery proceedings.

Litigants used special injuctions to secure land, prohibit encroachments, restrain waste, cut down trees, and plough meadows. Many criticized the injunctions because they tied up the possessions of parties and caused delays. Consequently, the 1654 Ordinance limited the granting of injunctions to only those parties who made a motion in open court. No longer could a plaintiff request an injunction in his bill of complaint, or demand one after a defendant's default; nor could he file for one. Whitelocke challenged this provision because it impeded injunctions, resulting in houses being pulled down, trees being cut down, and meadows being ploughed before an injunction could be obtained to halt the destruction.[29]

Litigants used ordinary injunctions to stay proceedings at law. The Hale Commission allowed ordinary injunctions only before legal judgments in which the opposing party confessed that equity existed. The 1654 Ordinance allowed injunctions only before defendants filed legal pleadings. The 1654 Ordinance prevented a defendant from ending all proceedings at law by confessing his suit in Chancery.

Whitelocke could not bear this constraint. Under the 1654 Ordinance, he noted, the defendant would have to endure additional legal proceedings after confessing an equity, because an ordinary injunction could no longer stop the case.[30] He saw this provision as an egregious limitation on Chancery jurisdiction, which would waste more time than it would save. Whitelocke believed that the

28. Jones, *Chancery*, p. 248; *Somers Tracts*, VI, p. 206; Firth and Rait, *Acts and Ordinances*, II, p. 955; Whitelocke, *Memorials*, IV, p. 198.

29. Jones, *Chancery*, pp. 183-184; Prall, "Chancery Reform;" Firth and Rait, *Acts and Ordinances*, II, p. 955; Whitelocke, *Memorials*, IV, p. 198.

30. *Somers Tracts*, VI, p. 207; Firth and Rait, *Acts and Ordinances*, II, p. 956; Whitelocke, *Memorials*, IV, p. 198.

1654 Ordinance, in attempting to limit Chancery jurisdiction, may have gone too far.

But the ordinance went even farther in curbing Chancery's authority. It proposed substantial limits upon Chancery's jurisdiction over bonds, land trusts, deed averments, legacies, mortgages and lands extended upon statute. It even prohibited Chancery from giving relief where relief could be had at law. These provisions significantly decreased Chancery's legal caseload, permitting Chancery officials to concentrate on the equity cases for which they were uniquely qualified.

The 1654 Ordinance not only separated law from equity; it put Parliament above equity. One article prohibited Chancery from issuing decrees against Parliamentary acts, in seeming contradiction to the Protector's earlier dismissal of Parliament. Cromwell's dissolution of the first Protectorate Parliament did not mean that he considered the legislature an inessential part of government. The Protector expected to recall Parliament shortly, and he wanted Parliament and Chancery to function well together.[31]

The affidavit, an oath in writing to certify service of process, reported acts of contempt or substantiated objections. It was the Register's duty to keep affidavits on file and to make copies of them. Critics attacked registers for embezzlement, extortion, and corruption in raising the cost of copying affidavits without the Lord Commissioner's permission. The 1654 Ordinance attempted to rectify this problem by allowing a party's attorney to keep all affidavits, provided he show them to his opponents. The senior register would handle only those affidavits that went through court. Whitelocke feared that if the court allowed an attorney to keep an affidavit, his client could bolster his case by altering or retracting the affidavit after it had been sworn. Once again Whitelocke foresaw corruption occurring if a Cromwellian reform, meant to diminish corruption, were implemented.[32]

The Register's office appears to have been very corrupt, for litigants voiced numerous complaints. Apart from issuing orders and decrees, the Register made entries dealing with the daily business of the court, entries which easily could be altered. The Hale Commission and the 1654 Ordinance declared that the Register must accurately and concisely express the court's opinion in his orders, and enter the exact words of any decree in his book of decrees.

Litigants complained that the increasing technicality of process and proceeding in Chancery led to increased fees at a time when the court's operations were slowing down. The 1654 Ordinance required the Register to see that no fees be taken above those printed in an attached table of fees. If the Register collected excessive fees, the court would require him to repay the party

31. Firth and Rait, *Acts and Ordinances,* II, pp. 958-959.

32. Jones, *Chancery,* pp. 313, 143-147; Firth and Rait, *Acts and Ordinances,* II, pp. 957-958; Whitelocke, *Memorials,* IV, p. 200.

wronged and face dismissal. Apparently, the reform of the Register's office attempted by the Hale Commission and the 1654 Ordinance did not suffice. After the Restoration, the Register's office became no more than a figurehead post.[33]

The 1654 Ordinance dealt with excessive fee-taking by masters in the same way it dealt with excessive fee-taking by registers. The Master of the Rolls, and the Masters of Chancery were not to take more fees than those set out in the attached table of fees. The court punished overcharging masters in the same manner they punished extortionists.[34]

To ensure honesty in Chancery, and to put an end to corruption, bribery, and position-mongering, the 1654 Ordinance declared that "no gratuity or reward shall be taken by an officer of Chancery for the nomination or admission of persons to offices."[35] This article ensured that the underclerks and officers in Chancery would be appointed on the basis of merit rather than on the basis of wealth or influence. The article also provided that the Commissioners of the Great Seal should "take care . . . that all officers, Ministers, Clerks and Servants . . . do honestly and faithfully perform the duty of their . . . places; and if they be found faulty, that they be publiquely rebuked, displaced or otherwise punished . . . , that for the future there be no more cause of just Complaints from the people."[36] By settling the Commissioners up as watchguards, the author of the ordinance intended to ensure increased honesty and efficiency in Chancery. He also intended to satisfy the people that corruption in Chancery was at an end.

The 1654 Ordinance and the Hale Commission bill changed Chancery administration significantly. The 1654 Ordinance first reduced the six clerks to three, in an attempt to eliminate many incompetent bureaucrats. The three clerks were to perform all the clerks' duties, with the exception of trying cases; the Master of the Rolls was to nominate up to sixty attorneys to try cases in their place. These attorneys were to be paid a termly fee of three shillings four pence, plus a surcharge, for each task performed as mentioned in the table. To make certain that the attorneys committed no abuse or misdemeanor, the Master of the Rolls was to appoint a chief clerk to oversee them. Any infraction would mean dismissal. The Hale Commission concentrated on the same offices but made fewer changes. The chief clerk was to oversee the attorneys, but the judges, rather than the Master of the Rolls, appointed them. The six clerks remained the same in number, and they were allowed to try cases until the judges appointed new attorneys. Whitelocke did not criticize these provisions. Since they brought

33. Charles II gave the post to his mistress, Nell Gwynne. Jones, *Chancery*, pp. 147-149; *Somers Tracts*, p. 208; Firth and Rait, *Acts and Ordinances*, II, pp. 960-961.

34. Firth and Rait, *Acts and Ordinances*, II, p. 963.

35. *Ibid.*

36. *Ibid.*, pp. 963-964.

order to Chancery administration, he likely supported them.[37]

Both the 1654 Ordinance and the Hale Commission report provided an order and schedule for hearing cases. The 1654 Ordinance held that the court should hear causes in the order in which they were published, and that it should take no fees for hearing one cause before another. This provision attempted to improve the treatment of litigants and to diminish corruption in Chancery. Whitelocke objected on the basis of a technicality, considering this article to be very prejudicial to causes involving life or property. He gave a supporting example: when one party obtained the estate of another and was headed abroad with that estate, the plaintiff should be entitled to an immediate hearing. He should not have to wait until his cause was published and then await his turn. The Hale Commission may have understood this objection, for it did not specify that Chancery hear cases in a particular order. They even allowed parties to postpone their hearing until the last available date in the Register's book.[38]

Despite the flexibility in scheduling that the Hale Commission allowed litigants, both Hale and Cromwell insisted that judges sit constantly morning and afternoon in term to hear causes. The Hale Committee members insisted that judges determine causes without delay or second hearing. They wrote that the judges must sit in vacation as well as in term until all causes in the Register's books were heard. They also insisted that judges make their decisions immediately, or within ten days if the decision was difficult. The 1654 Ordinance did not demand that judges sit outside term time to hear causes, but it required them to hear causes on the day appointed. The Lord Commissioners also had to sit all afternoon, as well as forenoon if necessary. Whitelocke dismissed this order, stating that it was often impossible to hear a cause in less than three or four days. Whitelocke's concern was well-founded in this case. It was absurd to assume that a judge could hear every cause on the day appointed. While some causes took only a term to complete, others took as many as thirty years. Usually a suit passed through all its stages in two to five years.[39]

The average cost for completing a suit in Chancery was 50 to 400 pounds. Each official had a different set of fees, and charged a different rate. Many officials expected gratuities for any special service rendered. The Hale Commission and the 1654 Ordinance set up a table of fair payments to prevent further distortion of fees. The 1654 Ordinance's table classified fees by office, incorporating everything from the cost of sealing wax to the general charge for attorney fees. The Hale table was less complete, and was not classified by office. Even so, when both ordinances specified a particlular service, they almost always

37. *Ibid.*, p. 950; *Somers Tracts*, VI, pp. 202-203; Whitelocke, *Memorials*, IV, pp. 191-192; Prall, "Chancery Reform," pp. 38-39.

38. Firth and Rait, *Acts and Ordinances*, II, p. 958; Whitelocke, *Memorials*, IV, p. 200; *Somers Tracts*, VI, p. 207.

39. *Somers Tracts*, VI, pp. 207-208; Firth and Rait, *Acts and Ordinances*, II, p. 958; Whitelocke, *Memorials*, p. 200; Jones, *Chancery*, p. 306.

set the same fee. The 1654 Ordinance generally established higher fees in the few places where discrepancies existed.[40]

Finally, the two ordinances resembled one another in setting up a Court of Appeals. Prior to the Interregnum, Englishmen saw the King as the source of justice, and believed that equity emanated from the King through his spokesman, the Lord Chancellor. The decree of the Chancellor was therefore final, eliminating any need for a Court of Appeals. Following the execution of the King, an absolute source of justice no longer existed. Neither the Commonwealth nor Cromwell established themselves as the source of justice, nor did the three Commissioners act as their spokesmen. Thus the Lord Commissioners' decrees were not seen as final; and the need for a Court of Appeals arose.

Appeal from Chancery was a revolutionary concept in its day. The 1654 Ordinance and Hale Commission bill set up two very different procedures for appeal. The 1654 Ordinance's procedure required a party to wait three months after the charge before appealing. It insisted that a party perform all parts of the decree and deposit fifty pounds with the senior register as security for the appeal. The Lord Keepers would then consider the evidence (for litigants could not submit new evidence) and determine whether they could hear an appeal. If so, they, together with six judges from the Courts of Upper Bench, Common Pleas, and Exchequer would rehear the case. Their finding would be final.

The Hale Commission required no waiting period before appeal, and proposed only a ten-pound deposit to reconsider a case. It demanded that the appealing party select by lot seven of the twenty judges chosen by Parliament as judges of appeal. These judges would sit with one judge each from Chancery, Upper Bench, and Common Pleas to rule on his case. The judge from Chancery could not vote, but any five of the remaining nine judges could finally dispose of the case. Whitelocke did not comment on this drastic change. In fact, Whitelocke did not comment on any of the last twenty-six (out of sixty-seven) articles. He simply wrote that he opposed them all.[41]

If one compares the two major attempts to reform Chancery during the Interregnum, a high degree of similarity appears. The two reforms mirrored one another, in their dealing with subpoenas, commissions, Commissioner's oaths, publications, registers, fees, the time required for answers and replications, and the time frame for hearing causes. One may attribute the similarity of the 1654 Ordinance to the earlier Hale Commission bill either to direct imitation or to a strong correspondence of objectives. The similarity probably arises from a combination of these two possibilities. Undoubtedly the 1654 Ordinance imitated the Hale Commission bill. The two contain too many identical

40. *Somer Tracts,* VI, pp. 210-211; Firth and Rait, *Acts and Ordinances,* II, pp. 964-967.

41. Firth and Rait, *Acts and Ordinances,* II, pp. 962-963; *Somers Tracts,* VI, pp. 240-246; Whitelocke, *Memorials,* IV, 191-201.

quotations for the case to be otherwise. In goals and provisions, the two ordinances also resemble one another. Both attempted to diminish delay, improve efficiency, reduce excessive costs, limit Chancery's jurisdiction over law, eliminate corruption, and increase honesty and openness in government. To these ends, the proposals similarly demanded speedy hearings, reorganized the Chancery administration, established tables of fees, restructed injunctions, set up hierarchies, and required oaths of office.

But there were substantial differences in the two ordinances' treatment of defendants' answers, ordinary injunctions, and appeals. These differences elucidate the extremes to which the Cromwellians would go to ensure their reforms were carried out. The 1654 Ordinance would break down doors to ensure that defendants answered the complaint. It also would eliminate many ordinary injunctions that would take a case away from the common-law courts. Finally, it would require a fifty-pound security deposit for appeals to ensure that appellants were not unnecessarily delaying payment of the decree.

Because the 1654 Ordinance was longer and more complex than the Hale Commission bill, it included some procedural matters that the Hale Commission did not cover. These included security deposits, open commissions, special injunctions, affidavits, and the order for hearing causes. These additional reforms significantly demonstrated the 1654 Ordinance's intention to expand the Hale Commission proposal. One proposal promulgated only by the 1654 Ordinance should get special attention: that no relief should be had at equity where it could be had at law. This most radical provision in the entire ordinance severely limited Chancery's jurisdiction, and abolished Chancery's control over a number of cases.

If Mary Cotterel, in "The Hale Commission of 1652" accurately concludes that the Hale Commission's bill represents the work of moderates, then the Cromwellian ordinance also must issue from them. However, if Whitelocke is right, they are both the work of radicals. He criticized the 1654 Ordinance for being radical and impossible to perform, just as he criticized the Hale Commission for being led by radicals.[42]

Whitelocke's goals were different from the Parliament's or executive's goals. He was more concerned with protecting litigant's rights than with reducing delay. He did not want house doors to be broken down to procure defendants, nor did he want houses to be torn down in order to limit special injunctions. Because he was extremely conscious of Chancery proceedings and legal technicalities, Whitelocke often found the ordinances' provisions impractical. He knew that an eight-day limit on plaintiff's replication would elicit extensions, and that a judge could not always hear a case on the day appointed. He realized that if a commissioner's oath were required but no oath was specified, the commission

42. Cotterel, "Hale Commission," p. 703; Whitelocke, *Memorials,* IV, p. 200.

could be invalidated. He also foresaw the loss of property if certain cases were not rushed to the front of the Chancery calendar. Whitelocke was not as ready as the Hale Commission or the Cromwellians to limit Chancery's jurisdiction. He wanted ordinary injunctions to be able to halt the common-law court's case. He also wanted confessions in equity to end trials at law.

Despite his hatred of present corruption in Chancery, Whitelocke believed that openness would lead to further abuse. Open subpoenas and open commissions would lead to forgery, he thought, and affidavits given to clients would encourage falsification. As one of the most prominent lawyers in England at the time, and certainly the most knowledgeable Chancery official, Whitelocke's judgment was sound, though conservative. Although he advocated Chancery reform, he shyed from major changes. His own 1652 Ordinance made few changes from Bacon's 1618 Ordinance. Thus his vision of the Hale Commission and 1654 Ordinance was necessarily conservative, so he may not have judged them sympathetically.

Mary Cotterel accurately calls the ordinances the work of moderates. While the ordinances seemed radical to a conservative like Whitelocke, they would have appeared conservative to an abolitionist like Harrison. Perhaps revolutionary by early seventeenth-century standards, they were merely moderate reforms to men of the Interregnum.

* * *

The Ordinance for the Better Regulating of Chancery was issued on 21 August 1654, just over a month after Cromwell swore in Whitelocke, Lisle, and Widdrington as the new Lord Commissioners.[43] For the first few months after it was issued, the Commissioners completely ignored the ordinance. The Protector's first Parliament suspended the ordinance on 25 November 1654 until a committee could review it. Parliament never appointed a committee, so the ordinance remained suspended until Cromwell dissolved the body in April 1655. At that time he reissued the ordinance.[44]

On 23 April 1655, Cromwell and the Council of State ordered the Lord Commissioners to abide by the ordinance. Speaking before a Council committee, Whitelocke asked for time to peruse the ordinance, which neither he nor his co-commissioners had helped to frame. After several more meetings about the

43. Campbell, *Lives*, III, pp. 78-82; Lord Commissioner Keeble died on 4 April 1654 and Sir Thomas Widdrington was appointed in his place. Widdrington acted as sole Commissioner between Keeble's death in April and Whitelocke's return from Sweden (where he was ambassador to Queen Christina) in July, because Commissioner Lisle was ill.

44. Thomas Burton, *Dairy of Thomas Burton*, vol. I, p. xcvi.

ordinance, Lisle came out in favor of it: Whitelocke, Widdrington, and Lenthall (the Master of the Rolls) opposed it. In a letter to the Council President, dated 1 May 1655, these three men wrote that they could not execute the ordinance.

Cromwell did not respond to their letter immediately. Once informed of the Commissioner's response, he did not disturb them until the term was over. Instead, he sent a list of the new Masters of Chancery for the Commissioners to approve. They approved the list, and business in Chancery proceeded as usual.[45]

On 6 June 1655, Cromwell called Whitelocke, Widdrington, and Lenthall to his office and explained his position. He said that while he understood their need to stick by their consciences, he must have conformity amongst his government officers. Both Widdrington and Whitelocke spoke out against the ordinance, explaining why they considered it to be to the people's prejudice. Then Cromwell asked all three to lay down the Great Seal and to leave his office. They did, signifying resignation of their positions. Shortly thereafter, however, Lenthall recanted. He agreed to abide by the ordinance, and Cromwell reappointed him Master of the Rolls.[46]

Cromwell kept the seal for several days and then handed it to Colonel Fiennes and Major Lisle. Thus two army officers, neither of whom were well-versed in Chancery procedure, replaced the three Commissioners. Campbell, in his *Lives of the Lord Chancellors,* presumed that Lenthall must have run the court of Equity during this period. Campbell is probably right, for Lenthall was the only one with sufficient legal knowledge to do so. There were loud complaints of the Lord Commissioners' incompetence, and calls for the reappointment of Whitelocke. Notwithstanding these complaints, on 10 October 1656, Cromwell's second Parliament approved the new Commissioners' appointment.[47]

From the middle of 1655 until the beginning of 1658, the Cromwellian ordinance remained in effect. No evidence indicates the effect it had on Chancery practice, though it could not have been popular. Cromwell's second Parliament confirmed the 1654 Ordinance on 26 June 1657, but they limited its validity to "the end of the present parliament and no longer." In fact, in early 1658 a new bill was introduced for the "better regulating and limiting the Jurisdiction of the court of Chancery," but Parliament took no action upon it before its hasty dissolution.[48]

The Protectorate of Richard Cromwell brought Whitelocke back to his commission on 30 October 1658 because so many complained of the two present Commissioners' incompetence. Whitelocke's reappointment lasted only a few months, however; the Rump asked him to resign when they regained power

45. Whitelocke, *Memorials,* IV, pp. 201-207.
46. *Ibid.*
47. Campbell, *Lives,* III, pp. 78-82.
48. Firth and Rait, *Acts and Ordinances,* II, p. 1140.

in April 1659. During the post-Cromwellian period, the Great Seal moved between Whitelocke, Fiennes, Lisle, Bradshaw, Terryll, Fountain, Widdrington, and the Earl of Manchester before coming to Sir Edward Hyde, Lord Clarendon, at the Restoration.[49]

Clarendon quickly threw off all vestiges of the Chancery reforms of the 1650s. Charles II installed him as the sole Lord Chancellor in 1660; in 1661 he issued an ordinance of his own, similar to Bacon's and the Lord Commissions'. His ordinance returned Chancery procedure to its pre-Interregnum state.[50]

The 1654 Ordinance probably failed because it lacked the support of the legal community, radical groups, Chancery officials, and the litigants themselves. Most lawyers, like Whitelocke, were quite conservative and considered the reforms too radical. Most radical groups wanted Chancery abolished; they would accept nothing less. Chancery officials must have considered the reforms impracticable, because they did not adequately compensate for Chancery proceedings or legal technicalities that might arise. Finally, since Cromwell implemented the 1654 Ordinance only when the incompetent Lisle and Fiennes were Lord Commissioners, litigants associated its changes with the ineffective leadership of Chancery, and found both to be detrimental. The combined opposition from these four groups must have rendered the ordinance an unacceptable document in its time.

* * *

The Restoration government did not follow the 1654 Ordinance. The return of the King and a Lord Chancellor heralded the return to ancient Chancery practice. Neither Lord Chancellor Clarendon's orders nor Lord Nottingham's "Manual of Chancery Practice" quoted the Interregnum ordinance. Clarendon took his orders from those of Lord Bacon and the Lord Commissioners; Nottingham expanded on these and Clarendon's orders.

Clarendon's orders and Nottingham's Manual are broader and more detailed than the Cromwellian Ordinance. Because all three ordinances dealt with Chancery procedure, they covered similar topics, but the Lord Chancellors' ordinances incorporated more legal technicalities and Chancery proceedings than the 1654 Ordinance. Consequently, these ordinances were longer. On injunctions alone, Lord Nottingham wrote twenty articles, compared to three articles in the 1654 Ordinance.

49. Campbell, *Lives,* III, pp. 82-94.

50. Campbell, *Lives,* III, pp. 99ff; Yale, D.E.C.. *Lord Nottingham's Manual of Chancery Practice' and 'Prolegomena of Chancery and Equity'*, (Cambridge: University Press, 1965), pp. 83ff.

Nevertheless, Nottingham's "Manual of Chancery Practice" occasionally included reforms that resembled Cromwellian reforms. While Whitelocke had criticized the open service of process in the 1654 Ordinance as leading to forgeries, Nottingham supported the change. He wrote:

> Th[e old] way of serving process [leaving it closed at the recipient's house] doth occasion frequent perjuries, for many who serve the process can hardly read, much less understand the character or language of it. I think it were convenient to alter the course and to cause all process to be open and served by a person who understands it . . . or the service be void.[51]

Nottingham was aware of the Cromwellian Ordinance. He probably knew of Whitelocke's objections as well. His support of the Cromwellian reform indicates that later legal authors found the ordinance worthy of imitation even after considering criticisms of it.

The 1654 Ordinance was a precursor of the nineteenth-century Chancery reforms. During the nineteenth century, Chancery had its most drastic and effective alterations. Delay and corruption, which troubled Interregnum reformers, similarly concerned nineteenth-century parliamentarians. Just as the Long Parliament changed the Single Chancellorship into a three-tiered Commission, so did the 1813 and 1833 Parliaments appoint additional judges in Chancery. On 11 March 1813, Parliament appointed a vice-Chancellor to hear motions and cases that the Lord Chancellor had no time to hear, thus avoiding arbitrary decisions. The Act of 1833 empowered the Master of the Rolls to hear motions and to conduct all court work. This change allowed three fully practicing judges to preside over Chancery, as in the Interregnum period.[52] These nineteenth-century alterations in Chancery administration indicate that the parliamentarians saw Interregnum reforms as viable methods of dealing with delay and corruption nearly two centuries later.

Nineteenth-century reformers took some of their procedural reforms directly from the 1654 Ordinance. Parliament's 1826 Report noted that "no alteration had been made in the general system of the practice of the Court since Whitelocke's orders of 1656."[53] Certainly the Report must have been referring to the 1654 Ordinance. Whitelocke's orders had been written in 1652, and they made no major alterations in Chancery practice. The 1654 Ordinance was still in effect in 1656; it did make major alterations in Chancery practice. The Commissioners who wrote the 1826 Report may have assumed that

51. Yale, *Nottingham*, p. 85.

52. Firth and Rait, *Acts and Ordinances*, II, p. 969; Sir Samuel Romilly, *Memoirs of the Life of Sir Samuel Romilly*, London: John Murray, 1840, vol. II, p. 397, 187; Kerly, *Historical Sketch*, p. 275.

53. *Report of 1826*, quoted in Kerly, *Historical Sketch*, p. 275.

Whitelocke wrote the ordinance, as this was a common, though faulty assumption. Their awareness of a "1656 ordinance" indicates that they probably used the Cromwellian Ordinance to reform Chancery procedure.

The 1833 Chancery Regulation Act, based largely on the 1826 Report, was the first important reform of Chancery procedure in the nineteenth century. It took a number of its reforms directly from the 1654 Ordinance. The Cromwellian Ordinance and the Nottingham Manual had called for an open subpoena. The 1833 act also called for an open writ of summons to commence a suit at equity. The Hale Commission bill and 1654 Ordinance required registers to accurately and concisely record orders and affidavits to diminish expenses and ensure honesty. The Chancery Regulation Act correspondingly required registers to limit the length of their decrees to reduce expenses. If officials took gratuities for winning a case or for appointing an underclerk, the nineteenth-century act, like its seventeenth-century counterpart, punished them. The 1654 Ordinance reduced the six clerks to three. The 1833 act similarly abolished unnecessary offices, reducing the six clerks to two.[54] Other nineteenth-century reforms diminished delay and expense in Chancery, but none resembled the 1654 Ordinance as much as the 1833 Chancery Regulation Act.[55]

This comparison between the 1654 Ordinance and the later seventeenth and early nineteenth-century reforms establishes the ordinance as their precursor. By attempting to solve the problems of its own day, it found a solution suited to the future. The Interregnam and nineteenth-centrury reforms were similar because both came at a time when Chancery received the brunt of public outcries, and because both attempted to diminish delays and expenses by improving Chancery administration and procedures. These reforms succeeded in the nineteenth century, but not in the seventeenth, because legally-educated men wrote the later reforms with Parliamentary support. Still the nineteenth-century imitation of seventeenth-century reforms indicates that better-educated lawyers two centuries later considered some of the Interregnum reforms as viable methods of dealing with expense and delay in Chancery.

* * *

54. *The Chancery Regulation Act of 1833,* 3 and 4 Will. LV, c. 94, discussed in Kerly, *Historical Sketch,* pp. 275-276.

55. Kerly, *Historical Sketch,* pp. 274-288. *See, e.g.,* Sir George Turner's Act of 1850, quoted in Kerly, p. 277. For more on nineteenth-century Chancery and law reform *see* John Norton Pomeroy, *A Treatise on Equity Jurisprudence* (Student's Edition), (San Francisco: Bancroft, Whitney Co., 1907); Harold Potter, *Introduction to English Legal History,* (London: Sweet & Maxwell, Ltd. 1926); George Spence, *The Equitable Jurisdiction of the Court of Chancery,* (Philadelphia: Lea and Blanchard, 1846); Joseph Story, *Commentaries on Equity Jurisprudence as Administered in England and America,* (Boston: C.C. Little & J. Brown, 1846).

Chancery reforms prior to the 1654 Ordinace, like Lord Bacon's, tried to cement Chancery practice and procedure. The 1654 Ordinance sought to change that practice and procedure, and to reorganize the administration and jurisdiction of Chancery. Previously no one had dealt with the problems of expense, delay and overextended jurisdiction in Chancery, because the King's Chancellor held the sole authority. He would not have been willing to diminish delay, decrease expenses and limit the jurisdiction of Chancery, since he profited from the increase of all three. Once outsiders could scrutinize Chancery procedure, their alterations of it would drastically change the traditional proceedings, administration and jurisdiction of the court.

The 1654 Ordinance compromised between radicals and conservatives to achieve reforms that the Cromwellians believed would satisfy the general public. Litigants who had undergone or were still engaged in battles in Chancery complained of the delay, inefficiency, expense, conflict with the common law, corruption, dishonesty, and secrecy in Chancery. All law reformers agreed that they must deal with these public complaints, but few agreed upon a solution to these problems. Radicals wanted Chancery abolished because it reeked of the King and of royal corruption. Conservatives wanted to make few changes – Chancery was necessary to deal with the hardship and equity cases that the law could not and should not handle. The Cromwellians wanted to achieve a compromise between these two disparate views. Therefore, Chancery's jurisdiction was limited but not abolished; most of its substantive law was left alone, but moderate reforms were made of its procedure and administration.

Because the ordinance was limited in length and drawn up by men not educated in law, its solutions were not always effective. In attempting to please everyone, the Cromwellians ended up pleasing no one but themselves. No single set of reforms could satisfy the many factions in Parliament and in Chancery. Therefore, the Cromwellian government decided to enact its own ordinance in order to get some Chancery reform effectuated. But because it was promulgated in a dictatorial fashion, it lost much of its support. Moreover, its reforms were not the most practical methods of altering Chancery lawyers to reconcile the Cromwellian goals with the complexities of Chancery practice and procedure.

The Ordinance for the Better Regulating and Limiting the Jurisdiction of the High Court of Chancery appears to be a series of historical paradoxes. It was intended to dispel public complaints, but it gained little public support. It was the only Chancery reform actually promulgated during the Interregnum, but it was seldom if ever implemented. Later generations saw it as a revolutionary change, but contemporaries viewed it as a moderate compromise.

But such was the history of the Interregnum period. The ruling dictatorial forces promulgated numerous ordinances and policies, but they effectively implemented few of them. The government had little popular support and therefore could not gain backing for its enactments. Nevertheless, historians have looked at the period as one which promulgated revolutionary reforms which

became precursors of others. This *sui-generis* period, in which numerous experiments were tried to develop a socially-acceptable government and a legal system without a King, explored solutions employed much later.

In the development of Chancery reform, the 1654 Ordinance was a milestone. Unprecedented in scope and purpose, its specific reforms established a standard. Though rejected by contemporaries, men of later centuries imitated it. The ordinance stands out as an early attempt to deal with the problems of delay and expense in Chancery, which were not effectively controlled until the nineteenth century.