



УДК 942.055; 316.485.2

ENGLISH PEASANTS AND AGRARIAN POLICY OF THE TUDORS AND THE FIRST STUARTS: OUTLINES OF ENCLOSURE LEGISLATION**АНГЛИЙСКИЕ КРЕСТЬЯНЕ И АГРАРНАЯ ПОЛИТИКА ТЮДОРОВ И ПЕРВЫХ СТЮАРТОВ: ОСНОВЫ ЗАКОНОДАТЕЛЬСТВА ОБ ОГОРАЖИВАНИЯХ****В.П. Митрофанов, Е.Ю. Алешина**
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40 Krasnaya St, 440026, Penza, Russia*E-mail: alcatherine@yandex.ru, vm@england.ru**Аннотация**

В представленной статье рассматривается законодательство Тюдоров и первых Стюартов в отношении происходившего процесса огораживания пахотных земель в Английском королевстве во второй половине XVI – первой половине XVII вв. Обращается внимание на прохождение ряда аграрных статутов в Парламенте. Авторы предпринимают попытку выяснения отношения крестьянства к этому законодательству и в целом к аграрной политике английской монархии в эпоху позднего феодализма и абсолютизма накануне Английской буржуазной революции. Также рассматривается отношение к анализируемым процессам с точки зрения менталитета и проблем социальных конфликтов.

Abstract

In the article considers the legislation of the Tudors and the first Stuarts related to the existent process of ploughland enclosure in the kingdom of England in the second half of the 16th – first half of the 17th century. The article researches into the origins of a number of agrarian statutes in Parliament and provides analysis of the contents of their separate articles referring to the peasants and the new gentry.

Ключевые слова: Статуты, огораживания, крестьяне, Парламент, пахотные земли, менталитет, социальный конфликт.

Key words: statutes, enclosures, peasants, Parliament, ploughland, mentality, social conflict.

During the reign of the Tudor and the first Stuart monarchs, Parliament passed a series of important laws on containment of enclosures. These laws, namely the agrarian statutes of 1552, 1555, 1563, 1571, 1589, 1593, and 1597-1598¹, had a major impact on the agrarian development of England and, consequently, on the conditions of peasants. A closer look at the statutes reveals which articles affected peasants both directly and indirectly.

Thus, the early law of 1552 «On support and expansion of the plough-land» concerns the twelve members of the jury who, together with the King's committees, were to henceforth investigate the cases of enclosures². The old custom demanded that the jury should include several community members, which meant that peasants had a legal opportunity to influence the investigation of enclosure cases. Participating in this investigation was naturally in their best interest. The statutes, however, contained some statements that ran counter to the peasants' interests. For instance, the law banned enclosures of ploughlands, though it did not ban enclosures on community lands that had not been ploughed for the last 40 years. In theory, this meant that a peasant community could provide certain peasants with plots of plough-land for a period time at the expense of the community lands. The landlords could then take these plots and enclose them, turning them into pastures. According to this law, landlords were under no obligation to restore the peasant farms that they had destroyed. Apart from that, some articles of the law indirectly discouraged the preservation of peasant farms. For instance, the law of 1552 stated that if a landlord enclosed the peasant lands for purposes such as creating a deer park, rabbit-warrens, or for technical cropping with a license obtained from the royal power within the last four years, he was not obliged to restore those lands for ploughing.

Nevertheless, the law of 1552 was of great importance for the land-poor peasants, as it formally required not only the reconversion of full-plot (20-acre) peasant farms, in accordance with the previous

¹ The Statutes of the Realm of England / Ed. A. Luders and T.E. Tomplins. Vol. IV. 1819. 5 & 6 Edw.VI, Cap.5, 2 & 3 Phil & Mary Cap.2, 5 Eliz. Cap. 2, 13 Eliz. Cap. 13, 31 Eliz. Cap. 7, 35 Eliz. Cap. 7, 39 Eliz. Cap. 1,2 (hereafter : SR).

² SR Vol. IV. 5 & 6 Edw.VI. Cap. 5.



laws of Henry VII and Henry VIII, but all other peasant farms, regardless of their size. The inclusion of this point was most likely a consequence of Kett's Rebellion of 1549. Nonetheless, the peasants considered it unacceptable that the law banned only enclosures of plough-lands and was otherwise ineffective in relation to all other peasant community lands. That meant that neither the state nor the peasants had legal grounds to demand the return and reconversion of previously enclosed plough-lands from the landlords. Therefore, peasant community lands were not legally protected, with the state referring this issue to the sphere of the manor custom.

This law, however, ultimately was not passed, since Lord Warwik was not going to support the nobility and, evidently, political motives also prevented him from passing it. Ironically, the peasants in the provinces who had learned about this law and were likely to welcome it, viewed Lord Warwik as a statesman taking care of their interests.

During Mary Tudor's reign, another law was passed regarding the restoration of destroyed peasant farms and the expansion of plough-lands¹. A number of its articles also had direction repercussions for peasants. According to one of these articles, only the land plots above 20 acres could be restored for ploughing. That meant that land-poor peasants did not enjoy the legal protection of the state. Additionally, the law offered the articles obligating those who enclosed peasant farms to restore them, even when they had sold those former peasant plots to third parties. The law also called for the restoration of the peasant farms in the parishes where they had previously been located. A negative condition was also contained in this statute, however, according to which the landlord who had enclosed peasants' lands could require compensation upon the return of these lands for the money and effort he had invested in improving them. In practice, this would substantially slow down the process of the reconversion of peasant farms, or simply turn the peasants into the landlords' debtors.

The peasants also depended on the officials who were supposed to deal with the issues of restoring farms that had been destroyed. One of the articles in the law enabled them i.e. the officials to make their own decisions in disputes and arrange the peasant farms².

Therefore, it is evident that the new law (of 1552), contrary to previous legislation, did not protect small peasant farms, leaving the vast community lands the landlords had taken from peasants unaffected. The law said nothing of their restoration and return to the peasant community, thus silently recognizing the landlords' rights to enclose them. The law recommended the general restoration of the demolished peasant farms without providing any specific guidelines for this complicated process. In due course, R. Tawney remarked that the most important point in this law, as well as in the previous law was the introduction of the king's commissioners, whose duty was to investigate enclosures and restore peasant farms³.

A new agrarian law was passed in 1563 during the reign of Elizabeth Tudor named «*The Act on support and extension of plough-lands*»⁴. It is worth noting that this law protected peasant farms that contained plough-lands of at least 20 acres. The term of limitation was quite long, dating back to 1509. Restoration affected only those peasant farms that were agricultural, leaving the rest of the farms untouched. The law did not recognize enclosures created with consent of both parties, meaning either agreement between a peasant and landlord or between two peasants. The new law did not require the land-poor cotter-peasants' plots located within a mile of their landlord's estate to be turned back into plough-lands. The landlords were allowed to leave for pasture the peasant farms they had taken. In addition, it was stipulated that the landlord should improve the farm and subject it to ploughing over the course of four years.

In this way, the new law, though providing protection for peasant plough-lands, did not legally guarantee owners' rights for all peasants. Thus, retaining the old feudal principle of non-interference with landlords' immunity, territories could actually deprive the peasants who possessed plough-lands there of the legal protection of their owners rights. The law did not affect peasant community lands that had been somehow taken and enclosed by landlords.

In 1571, one more Elizabethan law was passed: «*On improvement of ploughing and development of fleet*»⁵. The law did not deal directly with peasants, though it was intended to encourage the development of ploughing by introducing moderate duties on imported grain.

In 1585, Parliament amended the law of 1563 to include an article stating that only two-year-old enclosures could be prosecuted by law⁶. This meant that the peasants whose lands had been taken and enclosed prior to this term were not guaranteed legal support or restoration of their lands.

Two years after the deadly famine of 1586-1587, Parliament passed the bill «*On support of peasant farms and plough-lands*» but the Queen did not sign it. The reasons for this are quite obscure but the contents of the bill corresponded to the peasants' interests. Still, Parliament passed a law on cottages according to which it was prohibited to let cottages to landless peasants (farm servants) that stood on less

¹ SR Vol. IV. 2 & 3 Phil. & Mary. Cap.2.

² SR Vol.IV. 2 & 3 Phil.& Mary. Cap. 2.

³ Tawney R.H. 1912. The Agrarian Problem in the Sixteenth Century. London, New York: Longmans, Green and Co, P.353.

⁴ SR Vol.IV. 13 Eliz. Cap. 2.

⁵ SR Vol. IV. 13 Eliz. Cap. 3.

⁶ SR Vol. IV. P. 718.



than four acres of land. Each cottage was to be lived in by one family only¹. Thus, the monarch tried to limit the number of landless peasants who were useless for the state in terms of collecting subsidies and drafting for military service.

Finally, during the parliamentary session of 1592-1593 in the House of Commons, when discussing the bill to extend the 1563 law «*On support and development of plough-land*», the gentry deputies insisted on cancelling the articles dealing with plough-lands and punishment for their violations. The law was extended again. Still, without these articles, the law was devoid of its essence. The peasants faced an ambiguous legal situation: formally, the law continued to be in action, but in reality the landlords could enclose the peasant plough-lands without fearing any sanctions for breaking the law². Probably, one of the reasons for its cancellation was a dispute on subsidies³. Besides, in this year, London and its boroughs were devastated by the plague of which 10675 people died. In the previous year of 1592, 11503 people died. This aggravated the situation in the kingdom. There were also tensions in foreign policy caused by the war with Spain at sea⁴. Nonetheless, the situation was beneficial for those peasants who wished to arrange enclosures by agreement and transition from the system of open fields to strictly individual farming without getting the community's approval.

As a result of a change in the general course of agrarian legislation, the mid 1590s saw a rise in enclosures and eviction of peasants. This coincided with lean years and eventually led to local peasant revolts. All of these factors caused the government of Elizabeth Tudor to put forth two bills on enclosures and support of peasant plough farms for consideration in Parliament in 1597. The bills were named accordingly «*Act on support of farming and ploughing*» and «*Act against decline of villages and ploughing*»⁵. The first bill demanded that all previously enclosed plough fields, which had been turned into pastures after Elizabeth I's ascension to the throne on November 17, 1558, be restored to plough lands. It was stipulated that the restoration affected only the plough-lands that had been ploughed for twelve years prior to November 17, 1558. Consequently, the peasants who wished to restore their farms were to prove that their former lands had been farmed as early as 1546 by their grandfathers! Clearly, in manorial courts it was quite difficult to do this almost half a century later, especially since the peasants were required to furnish written evidence and living eyewitness. This law was limited to the territory of 25 counties. For peasants, it was of great importance that this law demanded those responsible for the enclosures to pay the peasants money when restoring their farms. The law preserved the previously established rule about legal guarantees for peasant farms greater than twenty acres, which meant that all small peasant farms were left beyond the sphere of the law and the landlords could freely take and enclose them. Moreover, though the law obligated the landlords to restore the demolished peasant farms, the rate of restoration was quite slow. It was enough for the landlords to restore at least two peasant farms a year. Apart from this, the landlords were allowed to restore them in a different place, deemed more «*convenient*». The statute did not specify for whom it was «*convenient*»: for the peasants or the landlord. With this legal ambiguity in practice, result varied from eviction of peasants to bad soil or distant and inconvenient plots. The landlords were allowed to exchange lands with peasants when restoring peasant farms.

The law did not distinctly specify the landlords' reconversion of peasant plough-lands sold, presented, etc. to third parties by them before the law came into action. One of its articles stated that the parties buying those lands were to restore a quarter of them, but it was not specified who was responsible for restoring the remaining lands. It should be noted that the Privy Council immediately sent the sheriffs and Justices of Peace instructions for the immediate execution of these agrarian laws in their counties. This was supposed to be connected with struggling pauperism⁶. Both of these statutes had legal force until 1604, but in 1607, under the influence of peasant uprisings in the Midlands, they were extended by parliamentary session and remained until the end of James I's reign and then were still in action in reign of Charles I⁷. At the beginning of James I's reign, enclosure supporters tried to get laws passed that were directly beneficial for them by accepting regional statutes. In 1606 Parliament passed «*An Act fore the better provision of meadowe and pasture for necessarie maintenance of husbandry and tillage in the manors lordships and parishes of Marden alias Mawarden, Bodenham, Wellington, Sutton St. Michael, Sutton St. Nickolas, Murton-upon – Lug, and parishes of Pipe, and everie of them, in the county of Hereford*»⁸. According to that, each landowner could enclose only one third of his lands retaining the pass-ways on them. The law recommended reducing the size of enclosed lands in the parishes and restricting the peasants' communal rights for land. For breaking the rules of cattle grazing on communal lands there

¹ SR Vol. IV. 31 Eliz. Cap. 7.

² SR Vol.IV. 35 Eliz. Cap.7.

³ A Compleat Journals of The Notes, Speeches and Debates, Borth of The House of Lords and House of Commons Throughtout The Whole Reign Of Queen Elizabeth. By D'Ewes. L., 1693. P. 484–488, 491–492 (Hereafter: D'Ewes. Journals).

⁴ A Second Jacobean Journal. Being a Record Of Those Things Most Talked of During the Years 1607-1610 / Ed by George Bagshawe Harrison: L.: University of Michigan Press, 1958. P. 254.

⁵ SR Vol. IV. 39 Eliz. Cap. 1, 2.

⁶ Great Britain. Privy Council. Acts of the Privy Council of England. Vols. 32/ Ed. by John Roche Dasent. L.: Stat. office, 1890–1950. Vol. 28. L., 1904. P.388–389 (Hereafter: APC).

⁷ Ibidem.

⁸ SR Vol.IV. 4 Jac.I. Cap.11.



was a fine of 12 shillings for each week of illegal grazing. This was the only new law on enclosures passed in the reign of the first Stuarts and presents a rare case of common law interfering with manor law.

On the whole, this law may be considered a compromise between the landlords and peasants of Herefordshire County. It demonstrates how the gentry letting their cattle graze on common lands, did not give peasants an opportunity to fully use their own rights for those lands. In practice, this could become a legal way of evicting peasants from their lands. In certain counties, the gentry's final unsuccessful attempts to obtain privileges when turning plough-lands into pastures occurred during the last Elizabethan parliamentary sessions¹.

Thus, all agrarian statutes in the period under discussion contained a number of articles that directly impacted the lives of peasants, testifying to the fact that the government and Parliament considered their interests to a certain extent. Ultimately, it is apparent that the state wished to keep full-plot peasant farms.

In the process of consistently putting the laws into effect, most peasants, both freeholders and copyholders, could survive and not be evicted by those who had enclosed their lands. Symptomatically, the laws did not differentiate between the categories of peasants according to their holder's rights (copyholders, freeholders, etc.). Formally they affected all peasants. In its legislation, the state considered the size of peasant plots and the nature of their farming rather than the status of their holders. This created new opportunities for the peasants who could now legally defend their interests in courts of common law by filing a petition to the government and to the monarch.

Despite the fact that the parliamentary sessions of James I did not create any new laws about enclosures, his government generally continued the Tudor peasant policy. In 1607 this specifically resulted in the renewal of the Elizabethan laws of 1563 and 1598 on containment of enclosures as a result of the peasant revolt of 1607 in Central England². The revolt made the new king introduce into Parliament the bill on renewal of anti-enclosure statutes which were not extended and, consequently, had not possessed legal force since 1604. After brief debate, Parliament passed an act on the extension of three Elizabethan enclosure laws³. It is worth noting that none of the Parliamentary members openly objected to their extension during the discussion. There was some debate on whether the extension should be implemented immediately or whether it should be postponed as a result of the peasant revolt (the same was done by the government of Edward VI after the suppression of Kett's Rebellion of 1549). Still, in James I's Parliament there were supporters of enclosures whose major argument was the necessity of avoiding the state's prosecution of the gentry for enclosures. The general tone of the debate did not deal with prohibition of enclosures, but rather with prevention of peasants' eviction. For this purpose, a territorial inspection of the kingdom was suggested, similar to the one conducted in 1274 by Edward I, as well as the creation of an inventory similar to «*Hundred Rolls*»⁴. Finally, there was a clearly articulated idea of evicting part of the peasants to the New World colonies, which occurred later⁵.

Since 1607, the laws on containment of enclosures had been in effect in the country. At the end of the first parliamentary sessions, James I's government demonstrated its intention to continue fighting illegal enclosures. The violators of agrarian statutes were not included in the traditional act on amnesty passed by Parliament. However, the economic situation in the villages was different from that of the mid 16th century. Enclosures had become part of peasant reality; the gentry were involved in them despite the containment attempts on the part of the state. Therefore, during the reign of James I, they (gentry) were actively fighting to nullify these laws. This was quite visible from 1618 onwards⁶. These ideas may have been reflected in the government, as there was a decision to send committees of judges and officials to local points to provide privileges for certain persons to enclose plough-lands as «*plough-lands were more numerous*», «*the bread was sold at reasonable prices*» and «*the rigidity of the statutes could be moderated according to the time and circumstance*». The king's higher officials came to the conclusion that it was necessary to turn the soil unfit for cereals into plough lands via legislation⁷.

During the parliamentary session of 1621, the gentry deputies openly demanded that the king moderate the prosecution for enclosures. In that session, the agrarian issue was one of the major discussion points. An interesting document survived that was prepared for a member of the parliamentary subcommittee on enclosures' abuse. It states the necessity of fine exemption for those responsible for enclosures who converted plough-lands into pastures with the view of improving the soils, otherwise their manors could decay at the high fine of two pounds per acre a year and restoring the previously enclosed lands into plough-lands was too hard for them. The document also provided information on two thousand informers who reported enclosures to the authorities. It mentioned some people responsible for enclosures who

¹ D'Ewes. Journals. P. 212, 536, 543, 546, 551-552, 562, 674, etc.

² Martin John. Feudalism to Capitalism: Peasants and Landlords in English Agrarian Development. L.: Basingstoke: Macmillan, 1983. P. 144-215.

³ Seventeenth Century Economic Documents / Ed by Joan Thirsk and John Phillips Cooper. London-Oxford: United Press, 1972. P.108 (далее: Seventeenth Century Economic Documents).

⁴ Ibidem.

⁵ The Agrarian History of England and Wales. Vol. IV. 1500-1640 / Ed. by Joan Thirsk. Cambridge: University Press, 1967. P. 236 (Hereafter: The Agrarian History).

⁶ Seventeenth Century Economic Documents. P.108.

⁷ The Agrarian History. P. 121-122.

avoided penalty thanks to informers not reporting them while other innocent people were punished¹. Evidently, those who engaged in enclosing could always “reach an agreement” with the informers. The document proved that it was necessary to extend fields for cereals at the expense of reconversion of pastures into plough-lands as a number of forest lands and heaths had become fertile soils that could be used for ploughing. However, pastures for cattle-breeding were in high demand. It was also remarked that former enclosurers that had broken the law could receive amnesty without lawsuits. Therefore, the claims of the king’s committees investigating enclosures were out of the question. The author of the document referred to the precedent of Elizabeth I doing the same to some enclosurers. The author of the document also noted the fact that the last Lord Chancellor issued a provision allowing ploughing of the leased pasture land despite the conditions of the lease².

During the aforementioned parliamentary session, the gentry were ready to demand changes to the enclosure policy from the crown. Again, like in the last parliamentary sessions of Elizabeth I, they called for the cancellation of limitations on conversion of plough-lands into pastures. The House of Commons deputy G. Powell proposed the cancellation of the Elizabethan laws of 1563 and 1598. No objections were made to this proposal. Much debate was aroused by the issue of import and export of grain as affecting the country’s agriculture³. Still, during the session in question the gentry did not manage to nullify the Elizabethan statutes, though this did not stop them from fighting for the cancellation of enclosures. The government stuck to its course and during the next parliamentary session intended to extend the Elizabethan laws of 1563 and 1598. With that purpose in mind, in 1623 the Chief Justice of the King’s Bench, E. Coke, was commissioned to introduce into Parliament a suggestion of extending the terms of these laws⁴. E. Coke, however, held a contrary position. He and John Shatbolt spoke in the parliamentary sessions in favor of legalizing enclosures «on agreement». J. Shatbolt argued that it was «a good deal... for the benefit of all estates»⁵. E. Coke claimed that performing the laws of 1598 was extremely difficult as «they have such labyrinths, with such tricky corridors and turnings that it made the investigation with them hard and ineffective»⁶. Generally, parliamentary deputies came to the conclusion that national provisions with bread had long been stable, while the statute of 1563 on ploughing was nullified. The statutes of 1598 on containment of enclosures and support of ploughing formally remained in effect. They were included in “*The Book of Statutes*” and were kept up until the passage of the Act of reconsidering the laws in 1863⁷. That was thus the end to the long story of passing the enclosure containment laws that started in the 15th century with Henry VII. Now enclosures became difficult to prosecute due to the controversies of the 1598 statutes.

However, apart from the above agrarian statutes, the monarchs themselves passed a number of proclamations related to the agrarian sphere which carried a statutory force. For the purposes of implementing legislation, the authorities organized committees to investigate illegal enclosures (1549, 1565, 1607, 1636) whose materials were later reviewed in common law courts and equity courts. Thanks to these committees, it is possible to discuss the English monarchy’s agrarian policy which has been the object of study of many English, American, and Russian historians⁸. These historians, however, have not yet wondered about the peasants’ attitude to the state’s policy in the agrarian sphere, how they received the acts regarding the restriction of enclosures, or the government measures for their implementation in the context of social conflicts of the epoch. Russian authors, as a rule, considered only negative reactions by the peasants as expressed in social conflicts. Still, the open actions of peasant protest (1546-49, 1569, 1596, 1607, to name a few) were not a reaction to the state policy, but rather a reaction to the activities of the gentry who conducted enclosures and their supporters in the local administration. As a matter of fact, these conflicts in the English countryside were partly the consequence of the agrarian legislation proper that created conditions for development of a conflict situation during its implementation.

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¹ Great Britain. Parliament. House of Commons. Journals of the House of Commons. Vol. I. L., 1852. P. 628–630 (Hereafter: JHC).

² Seventeenth Century Economic Documents. P. 122.

³ JHC Vol. I. P. 544.

⁴ Ibid. P. 748.

⁵ The Agrarian History. Vol. IV. P.236.

⁶ Ibidem.

⁷ Tawney R.H. The Agrarian Problem in the Sixteenth Century. P. 354.

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