Henry R. French

"… a great hurt to many, and of advantage to very few"

Urban Common Lands, Civic Government, and the Problem of Resource Management in English Towns, 1500–1840

Abstract: This article will consider the relationship between the agrarian use-rights and political governance of urban common lands in English towns, in the period c. 1500–1840, and assess how far these common rights correspond to Elinor Ostrom's model of "Common Pool Resource" (CPR) management. It will review the most frequent varieties of common land and common rights held by the residents of English towns and argue that systems of commons management in English towns were always connected closely to urban political structures. Freemen, who were commons users in one context, were urban electors, defenders of corporate monopolies, or rent-seekers in other contexts. The governance, and the very survival, of urban commons could be affected by these additional imperatives. The defence of common rights often involved the assertion of a minority privilege, even if this was usually expressed in terms of a collective, or universal, civic right. Ironically, this defence was undermined fatally by the expansion of parliamentary and corporate electorates in the 1830s. When civic politics began to take account of the interests of a wider middle-class majority, the access privileges of borough freemen were swiftly abolished. These features mean that the longevity and eventual abolition of English urban commons conforms more closely to research by Sheilagh Ogilvie and Maïka De Keyzer about the "distributional effects" of unequal power relationships and external influences on economic institutions than to Ostrom's assumption that the survival of CPR management structures was determined ultimately by their economic efficiency.

Key Words: economic institutions, Common Pool Resource entitlement, Elinor Ostrom, urban agriculture, common lands, urban government

In England, historians' discussions of urban agricultural production and organisation between 1500 and 1800 often emphasise its economic marginality or depict it as a "rural" exception within the urban environment. Some attention has been paid to distinctive features of urban food production or provisioning, particularly market gardening and the supply of raw milk to urban markets. In general, though, towns have received more attention as centres of demand for agrarian produce than as locations where agrarian production or

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organisation was also important.[1] However, many English towns retained agrarian resources through this period. The most significant of these were often extensive common pastures or meadows, and (in some cases) unenclosed arable fields. Approximately 170 towns possessed these, ranging from large centres, such as Newcastle-upon-Tyne, Nottingham, or Leicester (each with 10,000 to 20,000 residents by 1750), to decaying small towns which had urban government systems but fewer than 1,000 inhabitants.[2] The historical development of these common lands remains poorly understood, as does the identity of their users. The dominant frame of reference for explaining the creation and longevity of common lands remains Elinor Ostrom's "Common Pool Resource" (CPR) model. This article assesses the applicability of that model to the development and eventual disappearance of English urban commons, and suggests that alternative, "distributional" approaches provide a better explanation, because their fate was decided more by changes in urban government structures and rights than by shifts in agricultural management regimes.

Urban commons and Common Pool Resource theories

Important recent research on English common lands by De Moor, Winchester, and Straughton has tended to interpret these lands by reference to Elinor Ostrom's highly influential model of CPR.[3] Although historians of rural commons have interrogated and modified Ostrom's conclusions, her theory continues to provide the primary interpretative template against which rural commons' management has been assessed. By contrast, the governance

1 Michael J. Winstanley, Industrialization and the small farm: family and household economy in nineteenth-century Lancashire, in: Past & Present 152/1 (1996), 157–195; Malcolm J. Thick, Market gardening in England and Wales, in: Joan Thirsk (ed.), The agrarian history of England and Wales, vol. 5: 1640–1750, Pt. 2., Cambridge 1985, 503–532; David H. Haney, Three acres and a cow? Small-scale agriculture as solution to urban impoverishment in Britain and Germany, 1880–1933, in: Dorothée Imbert (ed.), Food and the city: histories of culture and cultivation, Washington, DC 2015, 17–53; Malcolm Thick, Intensive rabbit production in London and nearby counties in the sixteenth, seventeenth, and eighteenth centuries: an alternative to alternative agriculture?, in: Agricultural History Review 64/1 (2016), 1–16; Malcolm Thick, The sale of produce from non-commercial gardens in late medieval and early modern England, in: Agricultural History Review 66/1 (2018), 1–17.

2 Estimates of the numbers of English towns possessed of common lands vary. English Heritage's 2009 gazetteer identified 316 town commons, but some of these settlements lacked urban functions or significant populations in the period 1500–1800. Mark Bowden/Graham Brown/Nicky Smith (eds.), An archaeology of town commons in England. "A very fair field indeed", Swindon 2009, 83–90. My estimates are based on Parliamentary returns from 1835 and 1870, plus evidence of towns with commons enclosed prior to that date.

3 Elinor Ostrom, Governing the commons: the evolution of institutions for collective action, Cambridge 1990; Angus J. L. Winchester, Common land in upland Britain: tragic unsustainability or utopian community resource?, in: Franz Bosbach/Jens Ivo Engels/Fiona Watson (eds.), Umwelt und Geschichte in Deutschland und Großbritannien: Environment and history in Britain and Germany (Prinz-Albert-Studien, vol. 24), Munich 2006, 61–76; Angus J. L. Winchester/Eleanor A. Straughton, Stints and sustainability: managing stock levels on common land in England, c.1600–2006, in: Agricultural History Review 58/1 (2010), 30–48; Christopher P. Rodgers/Eleanor A. Straughton/Angus J. L. Winchester (eds.), Contested common land: environmental governance past and present, London 2010; Tine De Moor, The dilemma of the commoners. Understanding the use of common-pool resources in long-term perspective, Cambridge 2015; Tine De Moor et al., Ruling the commons. Introducing a new methodology for the analysis of historical commons, in: International Journal of the Commons 10/2 (2016), 529–588.

structures of English *urban* commons are much less well understood and have generally been interpreted without reference to Ostrom's ideas.[4]

Ostrom contradicted Garrett Hardin's theory of the "tragedy of the commons" (destruction caused by unregulated usage), by showing how the commoners' desires to maximise the individual benefit of a shared CPR could be reconciled with the creation of self-regulating governance structures that prevented collective over-exploitation.[5] She argued that effective communal regulation of a CPR usually involved a series of criteria designed to maximise the economic efficiency of these assets.[6] The users of the CPR needed to be defined clearly, as did the boundaries of the resource itself. The rules governing the use of this resource had to be adapted to its specific attributes or local conditions and to the defined body of users. To secure compliance, these users had to have a role in designing or approving these rules, and the rules had to be enforced by individuals who belonged, or were accountable, to the body of users. These rules had to be proportionate and needed to be enforced through a graduated series of punishments related to the severity of the infractions. If enforcement failed, users or rule-enforcers required effective, efficient, and low-cost means of resolving disputes, and the body of users needed sufficient autonomy from outside influence to revise their rules as and when necessary. In larger organisations, these functions needed to operate effectively by being conducted within the appropriate organisational layer or authority.

Ostrom's assumption is that acceptance of this self-regulation is driven by the efficiency of the economic "institution" created to manage the process. She suggests that users were likely to adhere to these practices only as long as the perceived benefits of collective self-regulation outweighed those available in a free-for-all. Effective self-regulation was necessary to prevent individual users breaking the rules with impunity, and to deter them from retaliating without being sanctioned by all users collectively. Ostrom explains that a number of elements affected the economic efficiency of such self-regulating bodies. These included the total number of decision makers, whose number or representativeness could affect the degree of consent accorded to their decisions. It was also influenced by what Ostrom called the "discount rate", that is, the perceived damage to users' interests that would follow from over-exploitation of the resource or from the failure of the current system of governance.[7] Another phrase for this might be the perceived "deterrent effect" created by the prospect of the loss of this resource. Finally, Ostrom's experience of such systems in practice led her to argue that at least some of the users needed to possess substantial leadership skills or organisational abilities.[8]

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4 Henry R. French, Urban agriculture, commons and commoners in the seventeenth and eighteenth centuries: the case of Sudbury, Suffolk, in: Agricultural History Review 48/2 (2000), 171–199; Henry R. French, Urban common rights, enclosure and the market: Clitheroe Town Moors, 1764–1802, in: Agricultural History Review 51/1 (2003), 40–68, 57–58; Bowden et. al., Archaeology; Henry R. French, The common fields of urban England: communal agriculture and the "politics of entitlement", 1500–1750, in: Richard W. Hoyle (ed.), Custom, improvement and the landscape in early modern Britain, Farnham 2011, 149–174.

5 Garrett Hardin, The tragedy of the commons, in: Science 162 (1968), 1243–1248.

6 Ostrom, Governing the commons, 185–207.

7 Ibid., 34–35.

8 Ibid., 195–204.

Some potential problems

Ostrom's hypothesis outlines why it would be in the collective self-interest of CPR users to limit their individual property entitlements and agree governing structures with sanctions that provided effective enforcement. From a historical perspective, however, Ostrom's theory has two potential problems. De Moor complains that Ostrom does not explain how such a governance system would be reproduced through time, and why a solution that proved efficient for one generation would continue to be so in subsequent ones.[9] De Moor's solution to this problem is essentially functional – she argues that particular governance structures were preserved as long as they were effective in apportioning and managing these resources.[10] Her subsequent research has focused on identifying and categorising the formal rules of governance of common lands, and has formulated a sophisticated methodology for the comparative analysis of these operational rules across Europe.[11] However, her focus is on commons as resources governed primarily by "bottom-up" regulations made by their users, and she suggests that the manorial systems used to manage most English commons were distorted by "top-down" seigneurial interference. Certainly, landlord influence was always a feature of English manorial government, and was also felt in many smaller English towns, where relatively weak governing bodies were no match for neighbouring landowners.

However, this observation raises a much deeper objection to the underlying assumptions of the CPR model, noted in passing by De Moor, but articulated with great clarity by Sheilagh Ogilvie.[12] For De Moor, the rules governing the management of commons remained "a set of institutions whose satisfactory (if not successful) performance" explained their survival.[13] By contrast, Ogilvie disputes the view that economic "institutions" (such as systems for managing commons) survived primarily because of their economic efficiency or utility. She argues that institutions may reflect and perpetuate very unequal distributions of economic, social, political, legal, and patriarchal power, in ways that were decidedly *inefficient* in economic terms. In this view institutions that perpetuated common lands might exist, "not because they maximised the economic pie, but because they distributed large shares of a limited pie to village elites (well-off peasants, male household heads), with fiscal, military, and regulatory side-benefits to rulers and overlords".[14] Such an interpretation also addresses a point about "institutional externalities" mentioned only in passing by Ostrom – that is, CPRs always exist within other systems of power and authority, and are subject to influence by the distributions of power found within them.[15]

The influence of differences in economic, social, and political bargaining power on CPRs has been explored most effectively by Maïka De Keyzer through detailed comparative research on access to light-soil common lands in the English county of Norfolk, the

9 Ibid., 202.
10 De Moor, Dilemma of the commoners, 46–49.
11 De Moor et al., Ruling the commons, 539–351.
12 Sheilagh Ogilvie, "Whatever is, is right"? Economic institutions in pre-industrial Europe, in: Economic History Review, New Series, 60/4 (2007), 649–684.
13 De Moor et al., Ruling the commons, 535.
14 Ogilvie, "Whatever is, is right"?, 663.
15 Ostrom, Governing the commons, 190.

Campine region of the Southern Netherlands, and the Geest area of Schleswig-Holstein.[16] De Keyzer demonstrates that the different distributions of power found in each area determined the long-term development of each system of commons management, and that these were not always embedded in formal "institutional" rules.[17] The Campine region had the most stable balance of interests between commons users and the most inclusive distribution of common resources. In Norfolk, the economic dominance of lords subverted the use of communal fold-courses after the Black Death, without requiring changes in their rules, while in Schleswig-Holstein, small groups of elite peasant *Hüfner* came to dominate the management system, rewriting the rules to restrict or exclude labourers and smallholders. De Keyzer concludes that: "Historical rural communities were thus fundamentally shaped by their specific distribution of power, and the stakeholders used both formal and informal institutions to determine and change the access rights to the commons and therewith safeguard their particular interests."[18]

Such "distributional effects" and "institutional externalities" appear better suited to explain the fate of urban commons in many of the larger English towns which were under the control of autonomous borough governments. In these towns the decisive factor was the generally strong links between the bodies that governed the town, particularly corporations of freemen or burgesses operating under royal charters, and those that regulated access to CPRs such as pasture commons or seasonal grazing rights. Such links bound these urban commons into structures of civic government that supported "external" political or partisan interests, particularly in relation to electoral politics at Westminster. The fact that commons in the larger English boroughs were swept away primarily by liberal campaigns of *political*, rather than agrarian, reform in the 1830s and 1840s, suggests that these "distributional considerations" are worth investigating in greater depth.

Outline

In order to understand these changes, this article will explore the important relationships between the agrarian and political governance of urban common lands in English towns, in the period c. 1500–1840. It will focus on three aspects of their governance from the sixteenth to the mid-nineteenth century. Firstly, the article will review the most frequent varieties of common land and common rights held by the residents of English towns. Secondly, it will discuss the most frequent forms of governance, and how regulations were sometimes subverted in practice. Thirdly, it will explain the main changes over time in these forms of governance, and the importance of interactions between agrarian and political rights in the processes by which urban common rights were restricted and eventually extinguished.

16 Maïka De Keyzer, The impact of different distributions of power on access rights to the common wastelands: the Campine, Brecklands and Geest compared, in: Journal of Institutional Economics 9/4 (2013), 517–542.

17 Ibid., 531.

18 Ibid., 538.

Varieties of urban commons and commons users

Types of urban commons

In the Early Modern period, English towns were either corporate or non-corporate in structure. Corporate towns possessed or claimed systems of government, collective rights, and ownership of resources based on legal charters issued originally by feudal lords, the church, or (most frequently) by the Crown. Their charters normally defined the geographical limits of the urban jurisdiction, and the ownership and management rights of this land were usually vested in the "corporation" (a fictive legal person comprised of the entire body of those accorded civic rights within the town, usually termed "burgesses" or "freemen"), but sometimes concentrated in the hands of the governing elite of senior "burgesses" or "aldermen". As the mayor of Leicester stated in 1822, the corporation possessed the same ownership rights as an individual person over its lands and estates, and "had by law as free and ample dominion as any individual over his own property".[19] Crucially, although corporations governed in the name of their constituent members, over time these comprised a smaller and smaller minority of all resident male householders. Non-corporate towns retained rural systems of government and land management in which land was held by an individual lord and managed through the institutions of the manor or the ecclesiastical parish.[20] Formally, these common resources (such as common pastures) belonged to the manorial lord, and use-rights were reserved only to the manorial tenants, under the medieval Statutes of Merton (1235) and Westminster (1285).[21] Winchester has pointed out that although, in legal theory, collective common rights *derived from* tenants' possession of individual properties within the manor, individuals could also possess rights of common separate from these (particularly rights of "vicinage" possessed by tenants of neighbouring manors). In practice, corporate and non-corporate towns evolved similar systems of commons entitlement and management: use-rights were concentrated in the hands of corporate burgesses and manorial tenants; management was conducted by an oligarchic town corporation, or its manorial or parochial governing equivalents.[22]

The nineteenth-century historian F. W. Maitland distinguished between two main types of common rights exercised by urban dwellers in England.[23] One the one hand, he identified "burgensic users in common", that is, access and use-rights held and exercised *through a corporate body* by all suitably qualified residents – the obvious example would be rights to pasture animals on a common held by a corporate body, such as a borough corporation, or the whole of the freemen together.[24] On the other hand, he distinguished these from the rights of

19 Derek Fraser (ed.), Municipal reform and the industrial city, Leicester 1982, 4.

20 Rosemary Sweet, The English town 1680–1840: government, society and culture, Harlow 1999, 28–37.

21 Angus J. L. Winchester, Property rights, "good neighbourhood" and sustainability: the management of common land in England and Wales, 1235–1965, in: Bas van Bavel/Erik Thoen (eds.), Rural societies and environments at risk. Ecology, property rights and social organisation in fragile areas (Middle Ages–Twentieth Century), Turnhout 2013, 309–329, 311.

22 Ibid., 311–314.

23 Frederic W. Maitland, Township and borough, Cambridge 1898, 198.

24 Maitland gave as examples the boroughs of Oxford, Worcester, Beverley, Northampton, Shrewsbury, Grimsby, Hartlepool, Lancaster, Morpeth, and Newcastle-upon-Tyne in England, and Haverfordwest and Pembroke in Wales. Maitland, Township, 198.

"burgensic users in severalty", where rights were held *individually* by burgesses (usually in the form of leases) in relation to "land of which the corporation was owner" – examples of this would be Malmesbury, Wiltshire, where in the early nineteenth century each freeman was granted a life-interest in a one-acre plot, out of 280 acres held by trustees; or sixteenth-century Tewkesbury, where strips in the open field of Oldbury, east of the town, were reserved for individual burgesses.[25] Few towns conferred such individual access or use-rights, and these lands did not really amount to a CPR because although the property was owned collectively it was divided into individual parcels and cultivated separately.

"Burgensic users in common" exercised at least three separate forms of common rights in corporate and non-corporate towns. The most obvious was access to pasture commons located entirely within the town boundaries, administered exclusively by corporations or other town authorities (courts leet and parochial vestries), and determined directly by the possession of rights of civic freedom, freehold property ownership, or rate-paying solely within that jurisdiction. Such qualifications could also govern "vicinage", access to use-rights on land not owned exclusively by the corporate body – that is, to "Lammas land", collective seasonal grazing rights exercised after harvest, on plots or farms often owned or let to individuals, and frequently straddling the borough boundaries. Finally, town-dwellers could also exercise seasonal grazing rights in neighbouring parishes and manors, by sharing access to the fallows or after-crop in the open fields or pastures, moors or heaths with tenants of these external manors. In this case, non-resident urban burgesses might exercise their collective rights alongside resident manorial tenants whose rights were held individually. Many towns possessed all three types of rights, as will be shown below in relation to the City of York.

In each case, the resources in question conform relatively closely to Ostrom's definition of a CPR. Rights were exercised either over a bounded, defined resource owned collectively by the corporation (or by manors within non-corporate towns), or consisted of identifiable grazing rights exercised over properties inside or outside urban legal boundaries. England's dense network of legal jurisdictions made it relatively easy for commoners to define rights, regulate access, and impose punishments both through the institutions of civic government (borough corporations, civic courts, and urban manorial courts leet) and by recourse to equity litigation in the royal courts of Common Pleas, Chancery, Exchequer, and Star Chamber. The main way in which urban commons deviated from Ostrom's model was in terms of the identity of their users: generally, because rights were restricted to free burgesses, manorial tenants, or ratepayers, only a small *minority* of the total number of urban dwellers were able to pasture cows or horses. In this respect, the "distributional considerations" mentioned above appear to have been built into the governance and power structures of most English commons, whether urban or rural, by the seventeenth century.[26] The situation was even more pronounced in English boroughs and towns where rights of freedom were governed by royal charters or by custom. At the turn of the nineteenth century, even in the largest boroughs

25 First report of the commissioners appointed to inquire into the municipal corporations in England and Wales, appendix, London 1835, part 1, 78–80; Victoria County History (VCH) of Gloucestershire, vol. 8, ed. Christopher R. Elrington, Oxford 1968, 137–139.

26 Angus J. L. Winchester, Upland commons in northern England, in: Martina De Moor et. al. (eds.), The management of common land in north-west Europe, c. 1500–1850, Turnhout 2002, 33–58, 53; Leigh Shaw-Taylor, The management of common land in the lowlands of southern England circa 1500 to circa 1850, in: De Moor et. al. (eds.), Management of common land, 59–86, 64–68.

with the most inclusive franchises (such as Nottingham, Preston, or York), qualified freemen comprised only 10 to 20 percent of the total urban population.[27] Consequently, this analysis must begin by recognising that for centuries English towns had avoided Hardin's "tragedy of the commons" simply by excluding the great majority of their residents from access to these resources in the first place. In this respect, urban commons appear to have conformed quite closely to Ogilvie's more nuanced view that "the pre-industrial economy […] was characterized by 'limited-access' institutions that coercively limited economic entry in order to create rents for the powerful, while excluding the mass of economic agents".[28]

The relationship between types of commons and practices of urban governance in English towns

The rights of commons users were a function of the forms of urban government in which they participated. Formal codified "custumals" (lists of regulations or bylaws) are very rare for English urban commons, because operational decisions about the use of commons and punishment of transgressions were recorded much more often within council minutes, manorial court judgements, or reports to Parliament (in the nineteenth century). Consequently, the management practices and governance structures have to be reconstructed from numerous fragmentary references.

By the end of the urban enclosure process in 1870, Parliament reported on surviving common lands in 56 English boroughs. Access to 42 of these urban commons was restricted to those who possessed formal rights of freedom (gained by inheritance and/or having served an apprenticeship, or "by co-option" after paying a fine to be admitted), with the remaining 14 being open to a wider body of ratepayers.[29] However, this was the situation after the reform of English borough government in 1835, when most existing town charters were revoked and many new grants were made to large cities such as Birmingham, Sheffield, and Manchester, that had not previously possessed urban corporate governments. One of the purposes of these reforms was to open up participation in civic government to a wider body of middle-class electors qualified through a defined property franchise, so as to end earlier restrictive, oligarchical, or corrupt rights of civic "freedom" based on apprenticeship, purchase, or patronage.[30]

Before 1835 there were four main regional variations in types of common resources and associated governing structures. In the northwest of England, there were a series of small market towns, some old-established, some new and expanding, which retained their

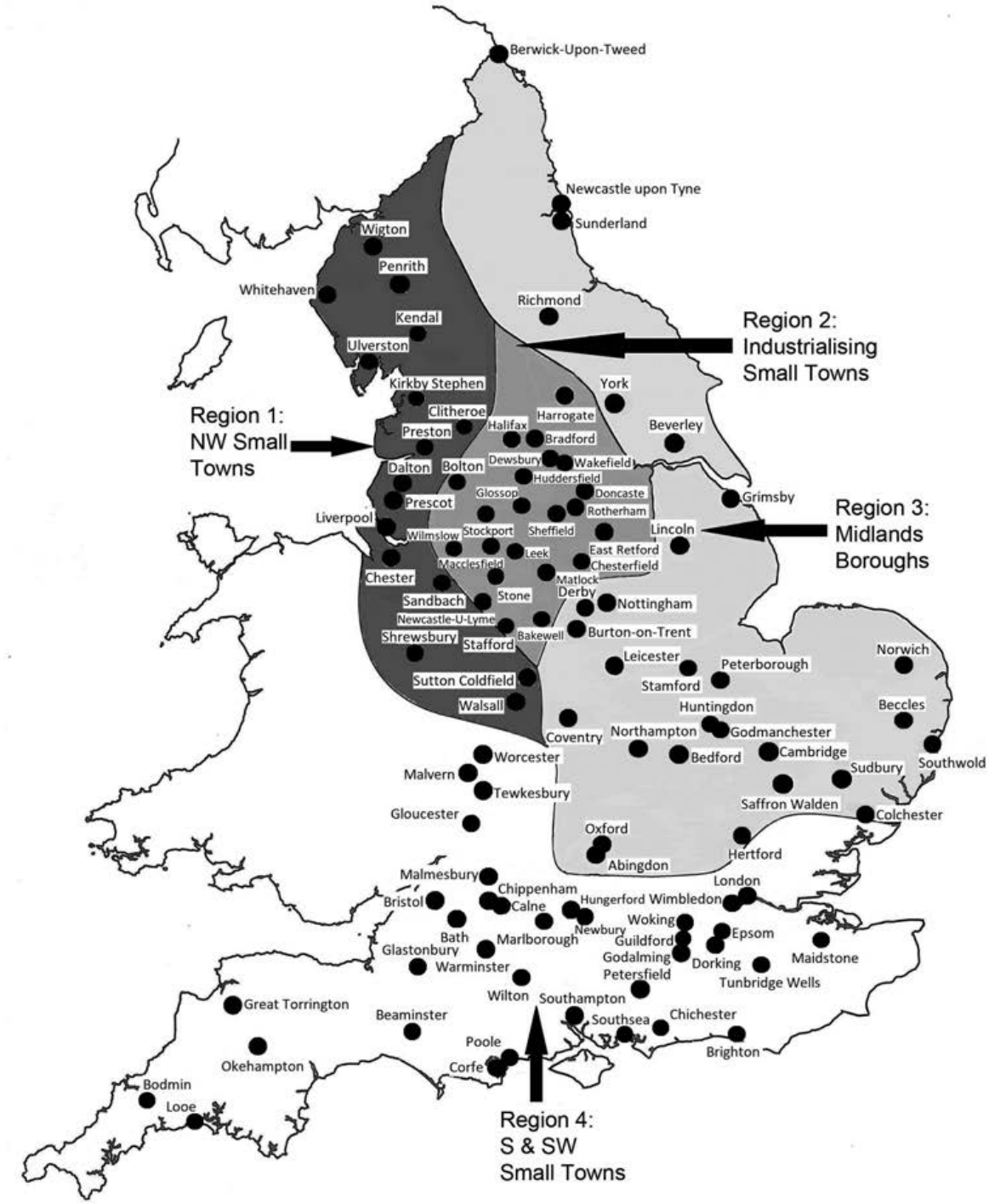
27 In 1801, Nottingham had 2–4,000 voters out of a population of 28,462; in 1796 Preston had 1,500 voters, and in 1801 its population was 11,887; and York had c. 2,500 voters out of a population of 16,846 in 1801. R. G. Thorne (ed.), The House of Commons 1790–1820, vol. 2: Constituencies, London 1986, 317, 235, 461.

28 Ogilvie, "Whatever is, is right"?, 671.

29 Derived from House of Commons Papers 448 (1870), "Return of all boroughs and cities in the United Kingdom possessing common or other lands…", 3–31.

30 For example, in Sunderland prior to 1835, access to 47 acres called "The Moor" had been controlled by a group called the Freemen and Stallingers (that is, people with a right to trade in the town's market). After the municipal reforms, the Freemen and Stallingers challenged the new corporation's right to control these lands, and a court case determined that they had never been a legal corporate body before 1835, so their assets could not be transferred to the new council! House of Commons Papers 465 (1840), "Report of the Select Committee on Freemen of Cities and Boroughs", xiii–xiv.

Figure 1: Map of English urban commons regions



Source: Adapted from Figure 1.2 in Mark Bowden/Graham Brown/Nicky Smith, An Archaeology of Town Commons in England. 'A Very Fair Field Indeed', Swindon 2009, 4.

common pasture and arable lands largely within their town boundaries.[31] In general, these towns had manorial forms of government, rather than corporate borough systems based on royal charters, because urban growth had remained slow here until the mid-eighteenth century. These towns included Penrith, Whitehaven, and Wigton in Cumberland; Kendal and Kirkby Stephen in Westmoreland; Dalton, Ulverston, Clitheroe, and Prescot in Lancashire; Stockport, Wilmslow, Macclesfield, and Sandbach in Cheshire.[32] The preservation of their commons and open arable fields reflected their continuing integration with the agrarian economy of the region until the end of the eighteenth century. Rights in these towns conformed more closely to the manorial rights defined in the Statute of Merton. Maitland observed that only in boroughs "of the lowest order" were pasture rights connected to particular properties, rights of common held from or shared with manorial lords, or exercised by "inhabitants" rather than burgesses, largely independent of the corporation's authority.[33] In some other towns, common rights were vested in the owners or tenants of "burgage" properties (real estate), rather than being held by individuals as ratepayers. This occurred in Hertford, Basingstoke, Godmanchester, Congleton, Richmond, and Clitheroe.[34] In the last two of these, the holders of the burgages also had the right to vote in Parliamentary elections.[35] Although such rights could sometimes be subdivided or sublet, the number of burgages was usually finite and established by local custom. Consequently, as a town grew there were normally many fewer qualified burgages than there were extant houses or households. In Clitheroe, for example, there were 127 burgage properties in the 1780s, but at least 250 households in the town.[36]

The second region of urban commons in the north was the largely upland, industrialising zone stretching from the West Riding of Yorkshire through the Derbyshire Peak into the Staffordshire moorlands and Shropshire. It included towns such as Rotherham, Doncaster, Halifax, Sheffield, Wakefield, Dewsbury, and Huddersfield in Yorkshire; Matlock, Bakewell, Glossop, and Chesterfield in Derbyshire; and Leek, Newcastle-under-Lyme, Burton-on-Trent, Stone, Stafford, and Walsall in Staffordshire.[37] Once again, these towns had manorial systems of government rather than corporate rights. These structures struggled to cope as their populations and industrial capacity expanded very rapidly after 1760, leading to the urbanisation of previously small, sparsely populated, largely rural townships. As a consequence, enclosure in this region involved disaggregating tracts of moorland, which formed manorial wastes shared with rural manors, and the clearer demarcation of boundaries between townships, as

31 G. Elliott, Field systems of north-west England, in: Alan R. H. Baker/Robin A. Butlin (eds.), Studies of field systems in the British Isles, Cambridge 1973, 41–92, 54.

32 House of Commons Papers 399 (1914), Return "in chronological order of all acts passed for the inclosure of commons or waste lands, separately, in England and Wales…", 12–14, 70–72, 28–30, 11–12.

33 Maitland, Township, 199.

34 Victoria County History of Hertfordshire, vol. 3, ed. William Page, London 1912, 498; First report municipal corporations, appendix 1, part 2, 1106 (Basingstoke); part 4, 2237 (Godmanchester); part 4, 2652 (Congleton); part 4, 1695 (Richmond); Eveline Cruikshanks et. al. (eds.), The House of Commons 1690–1715, vol. 2: Constituencies, Cambridge 2002, 743–745; Henry R. French, The creation of a pocket borough in Clitheroe, Lancashire, 1693–1780: "Honour and Odd Tricks", in: Northern History 41/2 (2004), 1–26.

35 See House of Commons Papers 82 (1867), "Alphabetical List of Boroughs in England and Wales previous to Reform Bill of 1832, stating nature of Suffrage".

36 French, Urban common rights, 57–58.

37 House of Commons Papers 399 (1914), 77–88, 14–16, 61–63.

well as restrictions on tenants' freedom to take game, wood, or turf. For example, the parish of Doncaster was 8,660 acres at enclosure in 1765; in Wakefield, 2,634 acres were enclosed between 1793 and 1805.[38] These enclosures were driven primarily by the interests of local landowners, and although they curtailed the access rights of manorial tenants, population growth driven by in-migration meant that most inhabitants did not possess these rights at the time of enclosure.

The third region comprised a series of old-established, relatively populous, corporate borough towns that existed within the Midland open-field region – towns such as Coventry, Warwick, Leicester, Nottingham, Northampton, Huntingdon, Hertford, Bedford, and Cambridge.[39] Most were centres of legal administration (assize towns), most had complex and long-established forms of borough government based on royal charters, and all were quite important reservoirs of distinctively "urban" functions: manufacturing, marketing, retail, education, service industries, leisure facilities, and so on. More importantly, it was in this group of large towns that the relationship between collective civic rights and common rights was strongest. These towns generally had inclusive and extensive forms of civic government, the largest numbers of freemen, and the largest numbers of commons users. Maitland noted their "political" significance, and observed that all were old "shire-boroughs" – that is (except for Coventry), they all gave their names to their "shires" (or counties), and all had extended histories as centres of county administration.[40] Using this definition, Maitland also included Oxford, Lincoln, Colchester (shire capital of Essex until 1250), Durham, Gloucester, and York.[41] We might also include the developing regional centres of Southampton, Newcastle-upon-Tyne, and Preston.[42] These Midland shire-boroughs often had some of the largest electorates and most widespread rights of common. For example, in Nottingham there were 50,220 inhabitants in 1831 and 2,295 resident freemen with common rights, with a further 590 living within seven miles of the town, while in the smaller chartered borough of Beverley, East Yorkshire, the population was 8,263 with 1,476 corporation members in 1831.

The fourth region consisted largely of a disparate series of small manorial boroughs and non-corporate towns in southern and south-west England, whose population levels, economic importance, and political significance had declined since the fourteenth century, and in which there were relatively weak forms of urban government, run by exclusive and small governing bodies. Their internal government structures were very similar to the north-west region, but unlike the politically disenfranchised north-west, most of these southern towns were also represented in Parliament. This distribution reflected the fossilised remains of late medieval patterns of population and economic power. In 1835, the Municipal Corporations Commissioners found that many tiny "corporations" were barely towns at all, in terms of their

38 House of Commons Papers 85 (1874), "Return of Acreage of Waste Lands subject to Rights of Common, Common Field Lands…", 257; John F. Broadbent, Dewsbury inclosure 1796–1806, in: Yorkshire Archaeological Journal 69 (1997), 209–266.

39 House of Commons Papers 85 (1874), 3–31.

40 Maitland, Township, 201.

41 Ibid.

42 Alfred Temple Patterson, A history of Southampton 1700–1914, 3 vols, Southampton 1966–75, I, 11; Anthony Hewitson, History of Preston, Preston 1883, 326–329; E. Halcrow, The town moor of Newcastle-upon-Tyne, in: Archaeologia Aeliana, 4th series, 31 (1953), 149–164.

population size, density of settlement, or governmental structures.[43] Some of these, such as Calne in Wiltshire (with 2,640 residents, 14 burgesses, and rights of common), were unable to produce a royal charter for the commissioners.[44] Many such towns possessed commons and common rights, including Chippenham, Marlborough, and Malmesbury in Wiltshire, Okehampton in Devon, Bodmin in Cornwall, Arundel in Sussex, Basingstoke and Christchurch in Hampshire, Godmanchester in Cambridgeshire, Beccles and Southwold in Suffolk.[45] In a number of these smaller towns all rate-paying householders were granted access to common lands, subject to paying a fee.[46] In 1835, ratepayers had access to commons in Chester, Lincoln, Cambridge, Beccles, Sutton Coldfield, Lancaster, Arundel, Okehampton, Bodmin, and Marlborough.[47] This was an important variation, because (in theory) it opened up access to the commons to more people than were likely to have possessed formal rights of civic freedom.

In Figure 2, these towns have been arranged on axes taken from De Keyzer's analysis of the relationship between the local balance of power and access to the CPR. As has been suggested above, almost all of these towns possessed unequal power structures in the bodies managing their commons, in which wealthier residents exercised disproportionate influence. However, the figure also indicates that access to commons varied, primarily according to the size of the resource. Thus, most southern English towns had very small areas of common lands and quite restrictive access rules, while upland, industrialising towns in West Yorkshire often had very expansive, unregulated common pastures, but these were restricted or abolished by enclosure. Towns in the north-west often had significant areas of common, but could control these quite restrictively, while the larger Midland boroughs had very hierarchical systems of government, but often had both extensive arable common fields and pastures, and significant numbers of commons users, although usage restrictions varied considerably.

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43 First report municipal corporations, appendix 1, part 1, vol. xxiii, 122 (Nottingham); 116 (Beverley). However, Langton noted that there were 956 towns in total in England in 1841. John Langton, Urban growth and economic change: from the late seventeenth century to 1841, in: Peter Clark (ed.), The Cambridge urban history of Britain, vol. 2: 1540–1840, Cambridge 2000, 451–490, 466.

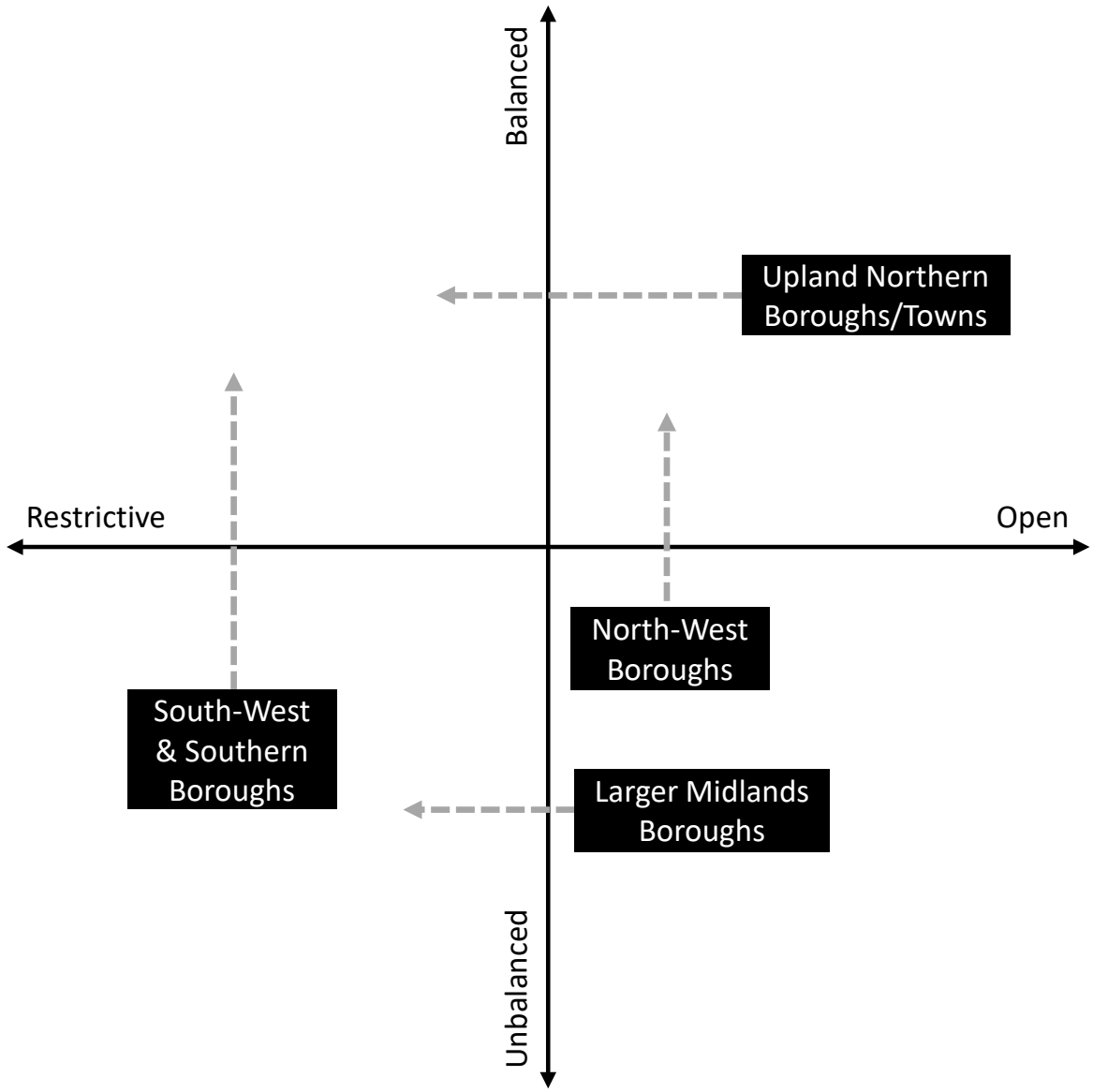
44 Ibid. (Calne), 114.

45 Derek Hirst, The representative of the people? Voters and voting in England under the early Stuarts, Cambridge 1975, 198; A. R. Steedman, Marlborough and the Upper Kennet Country, Marlborough 1960, 98–99, 122, 270; First report municipal corporations, appendix 1, part 1, 78–79 (Malmesbury); part 1, 447 (Bodmin); part 4, 2236–2237 (Godmanchester); part 4, 2193 (Beccles); part 4, 2517 (Southwold); W. G. Hoskins/H. P. R. Finberg, Devonshire Studies, London 1952, 284–285; Victoria County History of Sussex, vol. 5, part 1, ed. T. P. Hudson, Oxford 1997, 57–58; L. Ellis Tavener, The common lands of Hampshire, London/Southampton 1957, 52–53, 55–58; VCH Hertfordshire, vol. 3, 498.

46 This was despite the fact that after Gateward's Case (1607), the Common Law explicitly excluded non-property-owning ratepayers from use-rights to common land. Winchester, Property rights, 313.

47 First report municipal corporations, appendix 1, part 4, 2627 (Chester); part 4, 2357 (Lincoln); part 4, 2204 (Cambridge); part 4, 2193 (Beccles); part 3, 2034 (Sutton Coldfield); part 3, 1660 (Lancaster); part 2, 673 (Arundel); part 1, 559 (Okehampton); part 1, 447 (Bodmin); part 1, 83 (Marlborough).

Figure 2: Relationship between balance of power and access to commons in English boroughs, c. 1500–1800



Source: Own illustration.

How did rights of common operate in practice?

Unrestricted rights to pasture animals tended to survive only where commons were extremely extensive moorland wastes, so that the chances of over-exploitation were very small. Consequently, urban residents retained unrestricted pasture rights only in towns embedded within very extensive upland parishes, such as those in Sheffield, Doncaster, or Wakefield, noted above. In addition, at Doncaster, the freemen enjoyed unstinted access to a further 142 acres

within the town during the summer, and to the grass on 61 acres of meadow, which was said to last barely a week or ten days in 1835.[48]

The most frequent restriction on access was the imposition of seasonal closures, so-called "Lammas" grazing rights. In 15 out of a sample of 33 urban pasture commons, these rights of grazing were restricted to the period after Lammas Day (or "Loaf-Mass"), celebrated on 1 August – that is, after the cutting of the arable harvest or the taking-in of the first hay crop. In 19 of the 33, these rights extended to Candlemas Day (2 February). The main variations were for grazing rights to extend from St. Helen's Day (3 May/early May), in a further six instances, to as late as Ladyday (25 March), in a further seven cases, generally in places where an early hay crop was taken. Such seasonal restrictions reduced the effective acreage of these "commoned" lands to half or two-thirds their nominal area, limiting the numbers of animals that could be pastured on them annually. However, they enabled such rights to be extended temporarily beyond the boundaries of the permanent pasture commons. The price of such flexibility was that these Lammas rights often sparked vigorous and recurrent disputes between the owners of the land, freemen who wanted to exercise common rights, and sometimes residents outside the town who also had competing grazing rights in these fields. Lammas rights introduced a degree of uncertainty over entitlements and competition between rival jurisdictions and users that weakened the sufficiency of the management systems of these CPRs.

In addition to seasonal prohibitions, freemen's rights were normally also restricted to a certain number of animals per capita, and they were usually charged a fee to pasture them each year. "Stints" (number controls) and fees varied widely from year to year. In one sense, this was because most commons management systems were very responsive to short-term changes in demand for pasture, and reasonably effective in preventing large-scale over-stocking. However, monetary charges were usually not fixed by custom, unlike many other sources of corporate revenue. This meant that charges for common rights could be increased to try to meet the borough's immediate demands for money, or to provide income for particular charities, or for needy freemen or their widows. My previous research on Sudbury, Suffolk, showed how in the early eighteenth century the corporation used price mechanisms, rather than formal "stints", to change the use of the commons in quite subtle ways. Between 1710 and 1714 (a period of economic hardship), they increased the fines for pasturing two animals faster than the fines for pasturing one. This maximised the opportunities for owners of one animal, with between 125 and 135 people pasturing between 146 and 155 animals. Over the next decade, they decreased the fines, particularly on pasturing two animals. The numbers of commons users stayed about the same, but the numbers of animals increased by 30 to 40 per annum, favouring users with more than one animal.[49]

However, in practice stinting and fees might have little to do with the control of access rights to preserve pasture resources. In Southwold, Suffolk, townsmen paid 1 shilling 3 pence per head of cattle until 1813. Over the next fifteen years, the fee was changed repeatedly, to help offset the poor rates or repay borough debts. By 1828, the fee for cattle had been raised

48 First report municipal corporations, appendix 1, part 3, 1500.

49 French, Urban agriculture, 185–190.

to 12 shillings per head – an increase of almost 1,000 percent compared to 1813! Few of these moves reflected the desire to manage the commons more efficiently or equitably.[50]

Urban corporations were hierarchical bodies within a very unequal society, and we might therefore expect that rights of common would reflect these distributions of power and authority. However, it was very rare for senior members of urban corporations, such as aldermen or common councillors, to be given larger entitlements than ordinary freemen. This may indicate the working of Ostrom's principle that the rules had to be set by (or at least with the knowledge of) the users and enforced by individuals who belonged to, or were accountable to, this group. Consequently, even in hierarchical borough governments it may have been politically difficult for the aldermanic elite to justify taking a larger share of a resource supposedly open to all freemen. However, they may have secured a distributional advantage by stealth. Senior corporation members were often the wealthiest members of their communities, so the use of monetary fines to regulate access allowed them to consolidate their financial advantages without risking the unpopularity created by special formal privileges. In Sudbury, all ten aldermen used the commons between 1710 and 1728, and 34 out of 36 Chief Burgesses did so, compared to perhaps 25 percent of eligible free burgesses. Senior corporation members in Sudbury were much more likely than ordinary freemen to pasture horses or mares (for riding) than cows.[51]

The most overt, albeit atypical, example was in Berwick-upon-Tweed, where rights to the town's extensive lands were converted to monetary payments in the mid-eighteenth century. These were divided into three parts.[52] One-third was translated into shares reserved for senior burgesses or their widows; another third was granted to ordinary burgesses or their widows; the final third was reserved for corporation income. In the tiny borough of East Retford, Nottingham, it appears that the twelve aldermen and junior bailiff had appropriated a close of 20 acres in the eighteenth century, on which they no longer paid rent to the borough.[53] In sixteenth-century Oxford, the mayor was allowed eight animals on Port Meadow, aldermen six, and freemen two. However, soon after 1600 pressure of numbers caused every freeman to be limited to one animal.[54] Elsewhere, the main difference in rights was through rules that linked access to seniority. In Chippenham and Lancaster, the longest-serving freemen were given first access to the hay crop and the town marsh respectively.[55]

Subversions of governance

These neat definitions of entitlement often broke down in practice. Again, as Ogilvie has noted, we should expect such subversions in economic institutions where limits on access affected the distribution of resources and the efficiency of their use. Restrictions on access created "incentives for the excluded to violate institutional rules by moving to the informal

50 House of Commons Papers 465 (1840), ix–x.
51 French, Urban agriculture, 191.
52 House of Commons Papers 465 (1840), viii–ix.
53 First report municipal corporations, appendix 1, part 3, 1864.
54 Victoria County History of Oxfordshire, vol. IV: The City of Oxford, ed. Alan Crossley, Oxford 1979, 280.
55 First report municipal corporations, appendix 1, part 2, 1248; House of Commons Papers 465 (1840), 169.

sector".[56] Since a majority of freemen in most large towns were not engaged in agrarian activities, and some were too poor to own cattle or horses, many (perhaps a majority) did not exercise their rights. At the same time, there were many other people who wished to use the commons, but who lacked formal rights to do so. The most obvious group were non-resident dealers, butchers, and graziers, who wished to drive horses or cattle to market and might need to accommodate them nearby if they failed to sell. The solution was for entitled freemen to subcontract their rights to such unqualified potential users, even if this contravened the laws relating to manorial commons. Subcontracting of rights is mentioned in a number of towns in the sixteenth and seventeenth centuries, notably Worcester, Nottingham, Arundel, Tewkesbury, and Calne.[57] It was allowed in Doncaster and Chippenham, but forbidden in Coventry.[58] By the nineteenth century, Cambridge, Coventry, Leicester, and Gloucester allowed cattle-dealers and butchers to have special access to the commons, on payment of a fee.[59] Obviously, subcontracting weakened the connection between the formal stakeholders in the resource and the actual users, and altered patterns of use. Management remained in the hands of bodies that were, nominally at least, answerable to all freemen or ratepayers. However, given that a majority of freemen had no animals, and so no immediate interest in the quality of grazing or access to the commons, the lines of accountability and responsibility were obviously stretched severely by these changes.

The patterns of subcontracting could become very complex. In Clitheroe, Lancashire, very unusual patterns of subletting emerged by the mid-eighteenth century. Access to the commons was controlled by a complex mix of formal grazing rights, which were divided between fixed rights attached to 76 "ancient burgage" properties, and a further 49 holdings where rights were apportioned according to the land area connected to the house plot. On average, between 1764 and 1779, only 74 persons exercised these rights per year, out of a community of just over 1,000 inhabitants. Grazing a cow cost 12 shillings per annum, while grazing a horse cost 8 shillings, when a contemporary land surveyor estimated the market value of such grazing rights at three times these amounts.[60]

Clitheroe was a market town, situated in the pastoral economy on the edge of the Pennine hills. It specialised in the sale of horses, cattle, and sheep, often to dealers, graziers, and butchers. These people needed short-term access to the town's 335 acres of common land, but could not get it officially, because such rights were tied to property tenancies. They could have gained rights by renting house properties to which such entitlements were attached, but this would have been expensive if they only wanted the grazing rights.

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56 Ogilvie, "Whatever is, is right"?, 671.

57 Alan D. Dyer, The city of Worcester in the sixteenth century, Leicester 1973, 17; Jonathan D. Chambers, Population change in Nottingham 1700–1800, in: Leslie S. Pressnell (ed.), Studies in the Industrial Revolution, London 1960, 97–124, 101–102; VCH Sussex, vol. 5, part 1, 58; VCH Gloucestershire, vol. 8, 138; Victoria County History of Wiltshire, vol. 17, ed. D. A. Crowley, London 2002, 80.

58 First report municipal corporations, appendix 1, part 3, 1500 (Doncaster); part 2, 1248 (Chippenham); Victoria County History of Warwickshire, vol. 8, ed. W. B. Stephens, Oxford 1969, 199.

59 First report municipal corporations, appendix 1, part 4, 2190; VCH Warwickshire, vol. 8, 199; House of Commons Papers 583 (1844), "Select Committee on Commons Inclosure. Report. Minutes of Evidence", 296; House of Commons Papers 448 (1870), 13.

60 French, Urban common rights, 43–48.

The solution appears to have been an apparently counterintuitive unofficial system, in which most of the people who had rights transferred them to others, but then leased additional rights from other commoners to supply their own needs! So, the nail-maker Clement Proctor used the commons between 1764 and 1777 by exchanging the rights from the three properties to which he was tenant, for the rights of five other properties. He exchanged 14 full entitlements from the properties for which he was the tenant, for one full entitlement and nine half-entitlements from these five other properties.[61] Why did he do this, when he could have supplied all his own needs from the properties that he leased directly? Trading in this way created the necessary liquidity to operate a market in common rights which was much more flexible, and potentially more profitable, than the allocations fixed to properties. Presumably, these trades allowed tenants like Proctor to access not only the commons, but also some of that additional market value noted by contemporaries.

In some respects, the commons users of Clitheroe vindicated Ostrom's principles. They had formulated an effective self-sustaining management regime, in which rights were limited (there could not be more rights than there were half-shares in entitled properties), but could be reallocated effectively to meet users' actual needs as these varied from year to year. The problem was that this revised allocation system subverted the official management structure of the CPR, which was tied to the formal, legal system of property (burgage) entitlements. The council recorded these trades in resources in an additional column in the commons' management book, but it must have complicated the process by which any sanctions were applied. The disadvantage of this method was, as Ogilvie has suggested, that it imposed greater transactional costs on all concerned.[62] It also complicated mechanisms of accountability. Who was to be punished, the subcontractor of the right, or the tenant from whom he had leased these rights? How far were non-resident lessees likely to care about local accountability in the management of this resource? These concerns may explain why, a century before abolition of the town's commons, larger landowners complained that "those that have the greatest right get the least shares; and those that have the least right or none at all get the Most".[63]

Changes over time

The main changes over time in urban commons fell into two broad categories: the first can be termed "operational" – they affected the ways that commons were controlled or accessed, but they did not challenge their legal existence; the second can be described as "existential" changes, because they eventually undermined the legal form and operational functioning of urban commons.

61 Ibid., 57–58.

62 Ogilvie, "Whatever is, is right"?, 670.

63 Buckinghamshire Records Office Curzon Estate Archive Ax 94/80/1350, "Reasons why it is desired that the out-pastures belonging to Clitheroe should be inclosed" (n.d.).

Operational changes

The City of York illustrates a series of operational responses to developments in the patterns of use, and in the wider agrarian economy in which the common lands existed, some of which also occurred elsewhere. The large size of the city, and its relatively small commons of 559 acres (compared to rival centres such as Nottingham, Leicester, Coventry, or Lincoln), meant that even in the fifteenth century there were stints and charges to restrict the numbers of animals that each freeman could pasture.[64] The city possessed three types of common rights:

- Commons owned by the corporation and freemen at Knavesmire (the modern York racecourse) and Hob Moor nearby – both were low-value, poorly drained, rough grazing lands.
- Rights to better-quality pasture commons outside the borough boundaries, which York freemen shared with tenants of the neighbouring manors of Clifton, Huntington, Rawcliffe, Wigginton, Stockton Moors, and Tilmire.
- Seasonal grazing rights over fallows in arable fields owned by tenants in neighbouring manors.[65]

As in many other towns, the main causes of friction were the rights shared with others.[66] Before the Reformation, these disputes had included a long legal battle between the freemen and the Vicars Choral of the Cathedral, and with Sir James Danby, over pasture rights to land within the immediate vicinity of the city walls.[67] In both cases, the owners of these lands sought to exclude freemen from grazing their cattle on them, illustrating the jurisdictional contests that could occur when commons users did not have exclusive rights of access or a monopoly on the management of these resources.

Such Lammas grazing rights were a perennial source of dispute with neighbouring manors, and these happened frequently in other towns. Hertford had attempted to reserve grazing rights to freemen as early as the fourteenth century, while in the sixteenth and seventeenth centuries there were disputes or records of agreements over herbage rights in neighbouring parishes in Calne, Wilton, Oxford, Tewkesbury, Worcester, Coventry, Hertford, Leicester, Stafford, Burton-on-Trent, Leek, Chesterfield, and Gateshead.[68] In York, disputes over sea-

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64 The city possessed seasonal access to c. 2,000 acres; Nottingham's town lands amounted to 1,100 acres; Leicester's were 2,600 acres, Lincoln's 2,000 acres. House of Commons Papers 85 (1874), 6; Victoria County History of Yorkshire: The City of York, ed. P. M. Tillott, Oxford 1961, 498. Coventry's were 1,400 acres on enclosure in 1860. VCH Warwickshire, vol. 8, 199.

65 VCH Yorkshire: The City of York, 499.

66 See H. Stocks/W. H. Stevenson (eds.), Records of the Borough of Leicester, 1603–1688, Cambridge 1923, 275, "Petition of Poore Freemen" 1633 (?); Victoria County History of Staffordshire, vol. 9, ed. Nigel J. Tringham, London 2001, 55.

67 Angelo Raine (ed.), York Civic Records, vol. 1 (Yorkshire Archaeological Society Record Series, vol. 98/1938), York 1939, 109–111.

68 VCH Hertfordshire, vol. 3, 498; VCH Wiltshire, vol. 17, 80; Victoria County History of Wiltshire, vol. 6, ed. E. Crittall, Oxford 1962, 19; VCH Oxfordshire, vol. 4, 281; VCH Gloucestershire, vol. 8, 138; Dyer, Worcester, 135; Charles Phythian-Adams, Desolation of a city. Coventry and the urban crisis of the late Middle Ages, Cambridge 1979, 182–183; Victoria County History of Leicestershire, vol. 4, ed. R. A. McKinley, London 1958, 99–100; VCH Staffordshire, vol. 9, 55; Victoria County History of Staffordshire, vol. 7, ed. M. W. Greenslade, Oxford 1996, 100; Philip Riden, History of Chesterfield, vol. 2, part 1: Tudor and Stuart Chesterfield, Chesterfield 1984, 29–30; Robert Surtees, The history and antiquities of the County Palatine of Durham, vol. 2, London 1820, reprinted Wakefield 1972, 106.

sonal rights and boundaries recurred through the centuries, being recorded in the 1490s, 1530s, 1540s, 1650s, and around 1700.[69]

These contests were amplified by gradual changes in usage of the land held by individual owners, and by the corporation's pressing need to improve its income. The former reflected the long-term process of piecemeal enclosure of open-field lands that happened everywhere in England from the fourteenth century onwards. This made it more difficult for town-dwellers to exercise seasonal herbage rights over lands outside the urban jurisdiction. In York from at least the mid-1650s, Campleshon fields, which adjoined the common at Knavesmire, had been enclosed and farmed as separate, fenced fields by their individual owners.[70] However, these were opened at Michaelmas to accept the freemen's cattle, requiring gates to be taken down and gaps made in hedges to allow access across these enclosed holdings.[71] The same awkward juxtaposition of cultivation "in severalty" and "burgensic usage in common" (to paraphrase Maitland) also occurred in Coventry, Lichfield, Derby, Nottingham, and Leicester.[72] Once again, the separation of the use-right to common pasture from legal title to the property on which it was exercised weakened the control over the resource, its boundaries, and its management that Ostrom describes as an important aspect of the self-regulation of such CPRs. The seasonal conversion of individual enclosures into a shared common pasture was a nuisance to the landowners, which reduced their compliance, and became an organisational impediment to herdsmen and borough officers.

The York Corporation also attempted to remedy problems with civic finances by enclosing common land to gain a higher return by leasing it at market rents to individual cultivators. It provoked riots when it put forward such a plan to enclose Knavesmire in 1536.[73] Similar attempts generated more serious disturbances at Coventry in 1525 and in 1608–9.[74] Partial enclosures were contemplated or enacted by a number of other boroughs in this period, including Grimsby in the 1590s, Colchester in 1628, Chippenham in 1608, Warwick in 1615, Leicester in 1624, the full enclosure of Liverpool's commons in the 1650s, and piecemeal enclosure at Lichfield around 1700.[75] In York, enclosure of neighbouring parishes led to herbage rights being extinguished in Fulford in 1756 and Clifton (north of the city) in 1762, with remaining herbage rights in neighbouring parishes being extinguished in a series of Enclosure Acts between 1817 and 1824.[76] Enclosure efforts in the sixteenth and seventeenth

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69 Raine (ed.), York Civic Records, vol. 1, 110–111; Angelo Raine (ed.), York Civic Records, vol. 4 (Yorkshire Archaeological Society Record Series, vol. 108/1943), York 1945, 1–2; National Archives (NA) E.134/12 William III/East. 18, Mayor and Commonalty of York v. Robert Squire and the Archbishop of York, 29 Apr. 1700.

70 NA E. 134/12 William III/East. 18, Deposition of Jane Syers, Bishopthorpe, York.

71 Ibid., Deposition of Robert Jibb, York, Baker.

72 Phythian-Adams, Desolation, 179; VCH Staffordshire, vol. 14, 110; House of Commons Papers 465 (1840), 146; John Blackner, The History of Nottingham, embracing its antiquities, trade and manufactures, from the earliest authentic records, to the present period, Nottingham 1815, 29–30; Stocks/Stevenson, Borough of Leicester, 542.

73 Raine, York Civic Records, vol. 4, 1–2.

74 Phythian-Adams, Desolation, 254–255; Hirst, Representative of the people, 51–52.

75 NA E.134/43 & 44 Eliz. I/Mich. 12, William Barnard, Christopher Corker, Thomas Atkinson and Thomas Davis v. Bernard Cotton, Anthony Wilson and others, 19 Oct. 1601; Victoria County History of Essex, vol. 9, ed. J. Cooper, Oxford 1994, 258; Hirst, Representative of the people, 206–207, 211; Stocks/Stevenson, Borough of Leicester, 214; Michael Power (ed.), Liverpool Town Books 1649–1671 (The record society of Lancashire and Cheshire, vol. 136), Dorchester 1999, 499, 518, 603; VCH Staffordshire, vol. 14, 110.

76 VCH Yorkshire: The City of York, 503.

centuries often lacked the elaborate justifications found in eighteenth- and nineteenth-century Parliamentary enclosures. Sometimes, as in York, Coventry, Colchester, Nottingham, or Huntingdon, they were undisguised property grabs by the aldermanic elite, desperate to shore up civic finances at a time of trade decline.[77] In other cases, rights were only extinguished in some locations, sometimes to facilitate urban building or in-filling.[78] The former generated greater opposition and showed that in some larger boroughs, the freemen remained sufficiently interested in these rights to defend them vigorously by legal and extra-legal action.

Partial enclosures also produced another change that had a greater long-term effect on common rights. This was the trend to lease out common pastures to tenant farmers and convert the use-rights into cash payments that could be distributed among poorer freemen and their widows. While this preserved corporate ownership of the common land and continued to benefit freemen financially, it marked the effective end of direct use-rights by corporation members. For contemporaries, the logic was simple. As the eighteenth-century historian of Colchester, Philip Morant, observed in 1768:

> "This Privilege, as it hath been long managed, is a great hurt to many, and of advantage to very few. For it hinders the farmer from making such due improvements as he might. And it only authorizes some of the worst sort in general to keep beasts, for the sake of a few weeks feed; and to starve them, or to trespass upon their neighbours, the rest of the year […]. It is also of benefit to a very few, namely those who keep cattle; which is hardly one free-burgess in twenty […]."[79]

Consequently, he advocated that the commons be leased out, which would allow the free burgesses to retain ownership, but "which would raise a very considerable yearly sum, that might be distributed among the meaner sort of Free-Burgesses, or else be applied for the better maintenance of the Poor". Such conversions were often also the outcome of formal enclosures of these commons, in which areas of common lands were allotted to freemen, but then placed in the hands of trustees who would lease them out and use the money to provide pensions for poorer freemen. This occurred in Bath early in the eighteenth century, in Stafford in 1705, Rye in 1730, Berwick-upon-Tweed in 1761, in Newcastle-upon-Tyne under the controversial and partial enclosure of 1774, Launceston in 1784, Congleton in 1795, Lancaster in 1796, Tewkesbury in 1809, and Calne in 1813.[80] Such schemes were not always successful. In Hertford in 1757, 53 inhabitants took action against a trust that had been established to lease out the common lands to benefit the poor, because these resources were being managed so poorly.[81] At the same time, the corporate debt of many boroughs increased rapidly, driven

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77 David M. Palliser, Tudor York, Oxford 1979, 84; Phythian-Adams, Desolation, 254–255; VCH Essex, vol. 9, 258–259; Chambers, Population change, 99; NA HO44/18 ff. 599–606, The Mayor, Aldermen and Burgesses of Huntingdon v. Garner, 1829.

78 E.g. Newcastle 1769, Sweet, English town, 135–136.

79 Philip Morant, The history and antiquities of the county of Essex, London 1768, 94–95.

80 First report municipal corporations, appendix 1, part 3, 2028 (Stafford); part 2, 1036 (Rye); part 3, 1444 (Berwick-upon-Tweed); part 2, 1120 (Bath); Sweet, English town, 144; First report municipal corporations, appendix 1, part 1, 520 (Launceston); part 4, 2652, 2657 (Congleton); part 3, 1610 (Lancaster); House of Commons Papers 465 (1840), vii; VCH Wiltshire, vol. 17, 80.

81 VCH Hertfordshire, vol. 3, 498.

by the increasing costs of providing improved roads, pavements, wider bridges, and poor relief, and this drove many councils to consider enclosing and selling their commons. For example, by 1835 the funds paid to freemen and their widows out of the corporation lands in Berwick-upon-Tweed were £8,695 in arrears. Southwold Corporation was £8,000 to 9,000 in debt and planned to sell the commons.[82]

Such changes created a difficult political challenge to commons users. Morant's estimate that these comprised only about 5 percent of the freemen appears accurate in many such towns. Within the urban political arena it was difficult for such commons users to argue for the preservation of their rights, when the alternative was to lease the land and spend the money to benefit two much larger groups – the indigent poor, or poorer freemen who did not own cattle. The defence of direct commons usage appeared to advantage only a special interest group, which could provoke the opposition of a wider body of rate-paying householders. With the decline in urban guild membership and formal apprenticeship in English towns in the eighteenth century, such ratepayers were increasingly unlikely to be formally qualified freemen, and so had little direct interest in preserving rights of common.[83]

Existential changes

Such disputes anticipated or accompanied formal enclosures by Parliamentary legislation that predominated in rural England in the century after 1750. By 1914, 161 urban commons had been wholly or partially enclosed under Parliamentary legislation, distributed across every English county.[84] Much of this activity was generated by the same forces that drove enclosure in the countryside, particularly the expectation of increased rental profits. William Marshall observed in 1804 that:

> "If the common fields or meadows are what is termed Lammas land, and becomes common as soon as the crops are off, the depression of value may be set down at one half of what they would be worth, in well-fenced inclosures, and unencumbered with that ancient custom."[85]

Parliamentary enclosure required not only enabling legislation, but also the agreement of two-thirds of those whose rights were to be reconfigured. The process was relatively simple where these were a small number of private landowners, as in most rural enclosures. Similarly, in small boroughs enclosure was undertaken swiftly where a narrow oligarchy ran the corporation, or where the associated landlords were few and wealthy, as in Clitheroe.[86] In a

82 House of Commons Papers 465 (1840), ix.

83 On the complexities of this, see Giorgio Riello, The shaping of a family trade: the Cordwainers' Company in eighteenth-century London, in: Ian A. Gadd/Patrick Wallis (eds.), Guilds, society and economy in London, 1450–1800, London 2002, 141–159.

84 Derived from House of Commons Papers 399 (1914), Return "in chronological order of all acts passed for the inclosure of commons or waste lands, separately, in England and Wales…".

85 William Marshall, On the landed property of England, London 1804, 13–14.

86 French, Urban common rights, 59–62.

few places, such as Bodmin in Cornwall, the commons appear to have been enclosed by a single landowner, who was able to disregard opposition from the town and its inhabitants.[87]

Extensive common rights survived longest where the body of free burgesses with rights was largest. As we saw, this was in the largest shire-boroughs of the Midlands and the North – Newcastle-upon-Tyne, Preston, York, Beverley, Coventry, Nottingham, and Oxford. Each had 1,000 to 3,000 freemen by the 1830s, and it was very difficult to gain approval for enclosure among such large and diverse electorates – particularly as long as the rights to vote in civic and Parliamentary elections were tied to the same rights of freedom that allowed access to the common lands.[88] There were attempts to enclose in Newcastle and Oxford in the 1760s, Coventry in the 1780s, and various proposals in Nottingham after the enclosure of nearby Leicester in 1803.[89] All were resisted because the freemen could be mobilised to oppose them and were too large a group to be bribed or forced into change.

By 1835, Nottingham was the most notorious example of a large borough where change was needed but could not be obtained. The town was very overcrowded because it was unable to expand into the surrounding open fields and common lands, about which no agreement could be reached. In particular, East and West Crofts between the town and the River Trent were used as common meadows, and commoners were reluctant to give them up, despite witnesses to various Parliamentary enquiries stressing that only about a quarter of freemen used their rights, while many more paid for individual garden allotments on the other side of the river. As T. Hawksley reported to a Parliamentary enquiry in 1842:

> "[…] being a very numerous body, and many of that body being of a very low class of society, they are enabled to resort to acts of violence which could not be resorted to by an incorporated body […] they do levy, for what they please to call encroachments upon the commons […] a sort of blackmail […] if any refusal take place by the parties upon whom the claim is made, they make no hesitation of entering with an axe and chopping all down before them."[90]

The fate of the commons in these large boroughs reflects the fact that these were "political" as well as "economic" entities. Arguably, despite the fact that these lands were used by a minority of freemen and had only marginal economic impact, they could be enclosed only after the 1832 Reform Act had separated the Parliamentary franchise from rights of civic freedom, and thus from access to commons, and the 1835 Municipal Reform Act did the same thing in civic government. Once the wider body of ratepayers was given a vote in deciding the fate of common lands, in which they had no immediate interest as commoners, the chances of the survival of the commons as agrarian spaces were slim. Demographic expansion also marginalised the freemen. In Nottingham in the 1790s, freemen had amounted to 2,524 persons out of a total population of c. 14,000 (or 18 percent), which ensured that many households

87 First report municipal corporations, appendix 1, part 1, 447.

88 See note 15 above. House of Commons Papers 141 (1831–32), "Reports from Commissioners on proposed Division of Counties and Boundaries of Boroughs in England and Wales: Parts I–VIII". The highest number of voters polled in Beverley was 1,420 in 1830, in Coventry 2,763, in Oxford 1,779; ibid., 178, 84, 193.

89 Sweet, English town, 144; VCH Oxfordshire, vol. 4, 280; Chambers, Population change, 99; John Prest, Industrial Revolution in Coventry, Oxford 1960, 21, 28–29; House of Commons Papers 583 (1844), 296.

90 House of Commons Papers 583 (1844), 226.

still contained a freeman. By 1844, they comprised only 4.7 percent (2,500 out of an estimated total population of 53,000) and can only have represented a minority of the borough's households.[91] As the inquiry into municipal corporations observed in 1835:

> "The most common and striking defect in the constitution of the Municipal Corporations of England and Wales is, that the corporate bodies exist independently of the communities among which they are found. […] they have powers and privileges within the towns and cities from which they are named, but in most places all identity of interest between the Corporation and the inhabitants has disappeared."[92]

Rapid urbanisation in England after 1760 broke open a fault-line that had long existed in relation to town commons. In most small to medium-sized towns, commons users were a small minority of the total urban population whose common rights were simply another feature of the unequal, oligarchic distribution of power on which civic authority was based. Sometimes, as in Clitheroe, subletting arrangements may have opened the common lands to a proportion of those who were denied formal access rights. However, in the large Midland boroughs, although freemen were a numerical minority of urban dwellers for much of our period, they may well have represented a majority of resident households in the town. In these larger corporate boroughs, common rights survived as long as they were bound together with rights of civic freedom and the Parliamentary franchise. These governance systems could survive changes in agrarian land use and even rapid urban population expansion, but they could not endure the emergence of liberal political ideas. Faced with a political philosophy that regarded all "citizens" as equal under the law, it was difficult to justify or explain why some urban dwellers with rights of civic freedom should have use and access rights to common lands that were denied to their "unfree" neighbours.[93] Political liberals and Benthamite reformers sought to redirect these assets to achieve a wider public benefit, either by selling them and using the money for public purposes (including repaying civic debts), or by transforming these lands into areas of much-needed leisure and recreation, sometimes cut-down and reshaped (as in Newcastle, Preston, and York), and reserved for the use of "respectable" middle-class urban inhabitants.[94]

Conclusion

In some respects, English urban common lands conform strongly to Ostrom's model. They survived for centuries because they were generally well-defined in law, in terms of their spatial

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91 Prest, Coventry, 28; House of Commons Papers 583 (1844), 226.

92 First report municipal corporations, vol. 3, 32.

93 This did not always prevent political corruption linked to access to common lands, notably in Beverley in the late 1850s and early 1860s. House of Commons Papers 90 (1868–69), "Beverley election. Index to the minutes of the evidence taken at the trial of the Beverley election petition", iv–v.

94 See Douglas A. Reid, Playing and praying, in: Martin Daunton (ed.), Cambridge urban history of Britain, vol. 3: 1840–1950, Cambridge 2001, 745–808, 762–765; Bowden et. al., Archaeology, 56–60; Richard W. Hoyle, The enclosure of Preston Moor and the creation of Moor Park in Preston, in: Northern History 49/2 (2012), 281–302; VCH Yorkshire: The City of York, 505–506.

extent and their use or access rights. Their management was integrated within forms of civic governance that were based on written charters in most (but not all) boroughs. Operational management was devolved to elected or appointed civic officers ("pasture-masters"), and usually governed according to bylaws that were known to most commons users, if not always well-preserved in surviving sources. Consequently, commons' boundaries, rights, and access could be defended relatively easily in law, and usage could be apportioned and controlled by governing bodies that were fairly efficient, and drawn from a wider body of freemen or ratepayers.

However, in two other fundamental respects the history of urban common lands in the larger English boroughs complicates Ostrom's concept of a self-regulating mechanism for economically efficient CPRs. Firstly, to a greater extent even than De Keyzer's rural examples, systems of commons management were always entangled within other aspects of civic government and urban politics. Freemen, who were commons users in one context, were urban electors, defenders of corporate monopolies, or rent-seekers in other contexts. The governance and the very survival of urban commons could be influenced by each of these additional imperatives. As we have seen in Nottingham or York, common lands might persist when they no longer enjoyed the support of a majority of potential users, because access rights were tied to political factions and the governmental status quo. Similarly, in York the corporation continued to defend and project freemen's seasonal Lammas use-rights over land in neighbouring jurisdictions even when this had been enclosed by its owners, in order to assert its own corporate privileges. These practices helped perpetuate the existence of commons and commons users, but for reasons that were often related only indirectly to the immediate management of these CPRs. As Ogilvie has observed, "these ways may not necessarily be efficient, but they are often self-sustaining".[95]

Secondly, as has been emphasised, access to common lands was an integral part of the unequal and hierarchical distribution of power and resources within English towns. The "institutions" through which urban commons were managed support De Keyzer's conclusion that such bodies "were fundamentally shaped by the society in which they were created, instead of the other way around".[96] Commons access was limited by socially restrictive rights of freedom or by property qualifications, and so excluded significant numbers of residents who lacked real property from such resources. Certainly, a minority of "poor freemen" were able to pasture their animals, or (increasingly) derive a financial benefit from the rent-charges on others who did so. However, the institution of urban common lands did not redress this problem of resource entitlement any more effectively or completely than the institution of the urban alms-house addressed the problem of urban poverty. Instead, it highlighted three ironies. Firstly, the defence of common rights involved the assertion of a minority privilege, even if this was often expressed in terms of a collective, or universal, civic right. Secondly, these common resources were challenged by reforms designed to expand or, at least, to rationalise the Parliamentary and corporate electorates in the 1830s. When civic politics actually began to take account of the interests of a majority of middle-class ratepayers, the access privileges of borough freemen were swiftly abolished. Thirdly, Ostrom's self-sustaining collective CPR

95 Ogilvie, "Whatever is, is right"?, 674.

96 De Keyzer, Distributions of power, 537.

was thus abolished, in this instance, partly because of the application of new liberal ideological concepts that advocated the supremacy of the individual political and economic agent.

It is very important to understand why CPRs, such as land vested in collective ownership with shared-use rights, can be self-sustaining over the *longue durée*. Ostrom's model provides an explanatory framework for us to understand both contemporary and historic examples of the ways in which users can create "bottom-up" systems of management that resist over-exploitation and unrestrained individualism. As a model, it simplifies and abstracts, and separates out the CPR and its users from the other spheres in which it, and they, might also exist. As Ogilvie and De Keyzer have indicated, the difficulty with this in a historical context is that the existence of this resource might be perpetuated as much by the influence of these external factors as by the co-operation of the resource-users themselves. The survival of this resource clearly required the maintenance of an internal equilibrium of interests among its users. However, the example of England's urban commons indicates strongly that the maintenance or disruption of this equilibrium also depended on "distributional" political bargains with external institutions and agents, to secure their protection, deflect their challenges, or simply cause them to look the other way. The history of these common lands illustrates very clearly that the efficiency or effectiveness of the management of the common lands is not alone sufficient to explain their ultimate survival or extinction.