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Co-operation and conflict

Politics, institutions and the management of the English commons, 1500–1700

Introduction

In early modern England most people lived near some form of common agricultural land. It is one of the starkest contrasts with the modern, largely privatised farming landscape. Access to common rights varied from place to place, and the really lucrative grazing rights may well have been quite restricted (and increasingly so).[1] But it is probably fair to say that in those areas which still had commons at least *some* form of access was a majority experience, if not necessarily a universal right.

The main types of common which could be found in the early-modern landscape are well-known, though the concept of 'common land' itself is a slightly misleading one. In reality, there were a variety of kinds of land on which some people – in addition to the technical owner – enjoyed some use-rights, which were in some senses shared between neighbours and thus considered 'common'.[2] The most widespread types of common land were arable open-fields, common meadows and common pastures. In addition many – perhaps most – manors had parcels of woodland in which the tenants enjoyed some common use-rights. The open arable fields were collections of individual strips, often grouped into 'furlongs', and were carefully managed in two, three or four-course rotations. One field was usually left fallow each year, and the whole system was regularly thrown open to common grazing. Common meadows, which could be very valuable, were also carefully managed by the village community, in this case for the production of hay, and as pasture once the hay harvest was in. In the case of the common pastures, the major variations were in terms of size, with a huge spectrum existing from the tightly managed pasture of a few acres found in many lowland parishes, to the vast moors and fells in the hills. There was also a formal distinction between common pastures proper and manorial waste. The latter was emphatically *not* land that was unused, it was merely subject to a particular kind of ownership and management regime, which varied from manor to manor, but which tended to enforce light use for extensive pasture. Indeed, despite their often barren appearance, wastes could be of considerable importance to local inhabitants as sources of fuel and other materials for hearth and home.[3] In the northern hills, for example, it was common for manors to allow tenants to gather peat and turves for their hearths; in many forest or wooded manors tenants were allowed such rights as 'firebote', 'hedgebote', 'housebote' or 'ploughbote' or similar; in other words the right to gather wood in the lord's woods and wastes for burning at home or the repairs of (for example) hedges, houses and ploughs. So, for instance, tenants of the Hampshire manor of Merdon in 1603 claimed a custom whereby they could dig 'earth, sand, clay, chalk & other mould' in 'any place in the commons'.[4] In many eastern manors, meanwhile, as well as others

in low-lying areas such as the Somerset Levels or parts of Kent and the North West, there were large fens – marshy grounds on which there existed an extensive variety of common rights including grazing, fishing and the gathering of reeds.[5]

There was, then, a maze of common rights that entangled the English landscape. The amount of local variety was astonishing. To write a national history of common rights is, in many ways, impossible. In reality, there are multiple local histories of commons and commoning. Indeed, the exact geographic spread of common lands remains difficult to gauge in any precise manner. The best estimates would suggest that in 1500 around half of England's land was common in some sense, but that between 1600 and 1760 'a good 28 per cent of England was enclosed'.[6] This pattern, though, varied hugely by region. Broadly speaking, classic open-fields were found most extensively in a band of fertile land running from Dorset, Hampshire, Wiltshire and Berkshire in the south, through the Midlands, up to the Yorkshire coast around the River Humber. In the south east and the south west common lands were rarer, but there were extensive common wastes in the uplands, such as the Pennines and the Cumbrian mountains, often – as on Dartmoor and much of the Pennines and Lake District – constituting the remnants of medieval hunting forests or chases. There were also vast wastes on the low-lying fens, such as at Sedgemoor in Somerset and – especially – along England's eastern seaboard, where fen drainage emerged as one of the major areas for conflict over common rights across the early-modern period.[7]

The study of these commons has been, and remains, a major area of concern for economic, agrarian and agricultural historians. Generally speaking, work has focused on the economics of communal farming and the impact of the long process of privatisation of the rural landscape, or it has looked specifically at enclosure, i. e. the process of privatisation itself.[8] There is, indeed, an extensive literature – much of it admirably localised in scope – on enclosure disputes, enclosure riots and on the relationship between enclosure and popular rebellion.[9] On the other hand, there are not that many straightforward studies of the *regulation* of common lands in the sixteenth and seventeenth centuries and of the micro-political conflicts this regulation brought. The purpose of this chapter is, then, to consider the administration of common land and the various forms of conflict it gave rise to. It is a study of the politics of the commons *before* enclosure.

Managing the commons: the key issues

Common land brought together a large number of people and made them share a resource, the rules for which sharing were often vague and complex, comprising a knot of custom, local bylaws, the English common law and the orders of the various equity courts. They might be remembered rather than documented and often existed in practice and speech rather than paper and parchment. 'Custom' was of especial importance, but it was a nebulous concept. There was a technical legal definition, but it also existed as a 'discursive field', as one recent historian has put it.[10] Within these complicated, localised systems, however, there were certain salient issues, which were central to conflicts over resources. Two of the key ones related to the definition of rights, in two broad senses. Firstly, these rights needed to be defined against outsiders of various kinds. But, secondly, commoners themselves needed policing to ensure they did not overuse resources and thus bring about their long-term destruction. Thus the

management of the commons was seen to depend on the exclusion of outsiders, but also by carefully controlling the behaviour of commoners themselves.

Taking the first of these, the exclusion of outsiders had always been a crucial concern of the politics of the commons. This, of course, belies any notion that common resources constituted some sort of agrarian free-for-all.[11] The most obvious outsiders were those from neighbouring villages. Most actual boundaries between commons were largely fixed by 1500, but there were still plenty of boundary disputes between intercommoning communities in the sixteenth century, particularly in the uplands and the fens.[12] Indeed, these became increasingly critical as population growth and the growing commercialisation of agriculture put ever more pressure on resources. But even when boundaries were fixed, outsiders had to be prevented from making use of village resources, as it remained pretty easy to shin over a fence and gather bits of your neighbours' wood. In Elizabethan Dilston (Northumberland), for example, one of the major concerns of the manorial court was the protection of the woods from depredations by neighbours from Corbridge and Hexham.[13]

In addition, there were also what we might call 'resident outsiders', people who lived within the manor but who did not have rights of common, usually because they did not hold customary tenancies. In Bausley, for example, on the Shropshire-Montgomeryshire border, the View of Frankpledge agreed in 1670, 'in the behalfe of all the inhabytance' that 'noe inhabytant of the same not haveing right of common shall turne any beast horse or sheepe upon the commons'.[14] Sometimes the main offenders were wealthy farmers who had bought cottages or common rights within the manor in the hope of exploiting their commons. As part of the same order, Bausley's court also banned animals grazed by those 'haveing commons beeing not really his or their owne or haveing not wintered the same within the Lordship the winter last past'. In Kett's rebel manifesto, compiled during the uprisings in East Anglia in 1549, two clauses attempted to prevent lords of the manor from exploiting common rights, demanding that 'no lord of no mannor shall comon uppon the Comons', and that 'all freholders and copyholders may take the profightes of all comons, and ther to comon, and the lords not to comon nor take profightes of the same'.[15]

In other cases it was the local poor who were targeted with exclusion, presumably exacerbating further the increasingly pronounced social inequality of early-modern rural England. Again, this was an age-old issue, but over the sixteenth century and into the seventeenth the apparent threat from these 'outsiders' grew, as a rising population led to increased demand for subtenancies and cottages, thus putting pressure on resources. In some cases this encouraged attempts to extinguish or at least restrict the common rights of those who held 'cottages' rather than full tenements. The Buckinghamshire manor of Great Horwood, for example, ordered in 1542 that cottagers were not to keep more than two cattle, one mare and one calf.[16] The same decade, Millom in Cumberland prohibited lodgers and squatters from grazing any beasts on the common.[17] In fact, there may have been a long-running process in which cottagers were 'stinted out' of their common rights, though such exclusion may in many manors have already existed for some time.[18]

There were also increasingly stringent rules aimed at preventing the *arrival* of poor outsiders in the first place or ensuring their eviction once they had already settled in a manor. Those who sublet rooms or tenancies were singled out for especial concern. The manor of Holnest, in Dorset's Blackmore Vale, seems to have had a serious problem with such undesirables in 1590, when no fewer than eleven individuals were fined for not 'avoyding' their

subtenants.[19] In 1630s Hattersley (Cheshire), the manorial court regularly fined tenants for keeping inmates, usually one or two were amerced each year, though sometimes more; on occasions they also fined tenants for 'entertaining' pregnant women.[20] Not dissimilarly, James Broughton of Grafton Regis (Northants) was fined two shillings in 1628 'for oppressing the towne by taking in bastards & taking Frances Lucke an inmate into his howse & marrying her with one of those bastards'.[21] Such cases, of course, were as much about preventing a charge on the poor rates as protecting the commons, but such 'exclusionary' policies were almost certainly also attempts to control the local ecology too.

The second key issue – the prevention of overexploitation by those who actually *did* have rights of common – was similarly tricky. As is well-known to theorists, common resources suffer a basic 'free-rider' problem, whereby the rational course for individual commoners is to over-use and under-invest, yet over time this tends to the destruction of the resource. This is the so-called 'tragedy of the commons', for which one rational solution is privatisation.[22] Another, though, was careful management, and despite widespread enclosure in this period many commons survived thanks to the ability of local communities to regulate themselves, ensuring that land was not overstocked and that the necessary inputs of capital and labour were maintained. Indeed, studies of modern commons have shown that – with the right governmental regime – they can be maintained successfully, and 'tragedies' prevented.[23] In early-modern England, as elsewhere, the main concern was with overgrazing. This was controlled either through a policy of 'stinting', in which tenants were restricted to grazing a specified number of animals on the commons, or through rules of 'levancy and couchancy', whereby they could only common as many animals as they could keep on their own land in the winter. This prevented the depredation of commons by large-scale graziers who owned animals across a number of manors, particularly when such rules were combined with an effective ban on the import of hay.[24] Sometimes, customs might specifically state that commoners could graze animals 'sans nombre' or explicitly without any stint, though in reality this was probably a shorthand for some form of levancy and couchancy. In the Hampshire manor of Romsey Extra, for example, a list of customs compiled in the court book for 1671 states that the tenants 'have right of common in all the lords woods & wastes for all mannor of commonable cattle without stent', but comparison with similar lists around the same time makes it clear that this really meant common levant and couchant.[25]

If levancy and couchancy might seem quite open to interpretation, numerical stinting was much more precise. Indeed, in the more intensely farmed commons of southern England, levancy and couchancy was gradually being replaced by stints.[26] In 1591, a survey of southern manors of the Duchy of Lancaster gave information about grazing customs in 29 manors. Of these, some 21 reported stinting as their only system of commons management. Of the remaining eight, three manors stinted sheep but not cattle: In Upavon (Wilts) and Kingston Lacy (Dorset) cattle and horses were restricted levant and couchant, while in Daventry cattle and horses were specifically unstinted. Finally, in five manors tenants were recorded as having completely unstinted (i. e. 'sans nombre', a phrase used by two manors) grazing rights. These five – Rodley, Tibberton and Rye in Gloucestershire, Oaksey in Wiltshire and Ascott D'Oyley in Oxfordshire – were all, importantly, forest manors: Those in Gloucestershire were in the Forest of Dean, Ascott D'Oyley in the Oxfordshire forest of Wychwood and Oaksey in Wiltshire's Forest of Braydon. In such landscapes, commons tended to be larger, and thus there was less impetus for tight numerical regulation.

Some lists of stints were extremely detailed. In Lyeheath in Southwick manor (Hampshire), a list compiled in the early nineteenth century but preserving stints agreed in 1667, recorded allowances for each of eight commoning farms, such as Belney Farm – allowed 'a mare & colt and two rother beasts' – and Colyears, a copyhold that was allocated '8 beast 1 horse & 7 swine all the year'.[27] At the same time, there were usually limits on *when* animals might be let loose on the common, especially in the case of open fields, where grazing had to be fitted around the demands of arable farming. In Romsey Extra, for example, tenants in the late seventeenth century had to wait until 15 days after the harvest before letting their sheep onto the common field, and until 1 November before grazing them in the common meadow.[28]

Other forms of regulation depended on the precise local ecology, notably the existence of resources such as woodland, marshes and ponds. In such cases, the rights of the owner – for example to timber – were often carefully protected, but the prevention of despoliation in the interests of commoners was critical too. Sometimes, specific rights were reserved for the poor. This was particularly the case with gleaning: the right to collect discarded grain after the harvest. Gleaning could make an important contribution to the 'economy of makeshifts' of a poor household, but it could also draw controversy. Obviously limits had to be set to the amount an individual could glean, but communities also tried to prevent outsiders from taking advantage and sometimes also restricted the access of those who were not felt sufficiently poor. By the eighteenth century, however, a different set of controversies had arisen, and attempts began to be made to stamp out the practice altogether, to the great detriment of many poor families who lost a useful source of food.[29] Finally, communities also enforced certain communal obligations, such as weeding, manuring and the maintenance of infrastructure such as hedges and byways, recognising the fact that the maintenance of common resources is threatened as much by underinvestment as it is by overconsumption.

Regulating the commons: institutional arrangements

We cannot be certain how well this regulation worked. It is possible that the failure to manage commons effectively, partly in the face of growing population and the commercialisation of farming, helped prepare the ground for enclosure.[30] Nonetheless, the longevity of many commons does suggest at least that regulation *could* be successful. Part of that success, indeed, probably came down to a profound cultural attachment to collaborative farming, something that was in no small part encapsulated in the concept of 'neighbourhood'. This was a nebulous concept, but one which broadly seems to have encompassed fair dealing and at least some willingness to sacrifice personal material gain for the good of the village or at least of the community of commoning farmers.[31] We see hints in this in some of the orders made by local courts. The court rolls of the Devon manor of Ditton Priors frequently describe offences as being 'to the nuisance of the neighbours' (*nocumento vicinorum*).[32] An order of the Oxfordshire manor of Ascott D'Oyley in 1602 stipulated 'that the Jurye shall goe two days in the fields to see wronges wrighted betweene neighbour & neighbour'.[33] In Iwerne Minster (Dorset) in 1619 John Shipley was presented 'for layeinge of his haye where hee doth make fyer in his howse vearye daungerous to his neighbours'.[34] In 1640 the Westmorland manor of Great Langdale fined one John Jackson 6s (shillings) 8d (pence) 'for being a badd suspitious & scandallus fellow amongst his nebours'.[35] Indeed, in the Northumberland manor of Dilston,

it was the tenants' obligation to 'come together abowt neghborhead uppon warnynge geve by the constables', while if anyone wanted to sue their neighbour, then they were 'to come to the constables and cause them geve warnynge to the neighbors to come togeather and se the same reformed'.[36]

The constant evocation of neighbourhood suggests it existed as a 'field of force' aiding in the regulation of commoners' behaviour, perhaps even as a cultural 'system' which helped resolve conflicts and balance the interests of stakeholders. But, as much as it might carry a powerful cultural current, it was an ideal that required constant official vigilance to maintain. And so it fell to the various institutions of local government to manage common lands by what was, in essence, force.

The most important of these institutions, for the purposes of managing common lands and the relationships that came with them, were the courts that sat under the aegis of the territorial and proprietorial unit known as the manor. There were, in essence, two types of court that operated at the level of the manor.[37] The 'court leet' was a royal court, dealing with minor civil suits and criminal infractions, which had – in some cases – been franchised to a manorial lord. It was not in a technical sense a manorial court, though in many cases – especially by the seventeenth century and especially in the north of England – it operated in tandem or even indistinguishably from the manor court.[38] Leets did sometimes exercise some jurisdiction over commons, particularly when it came to the policing of nuisances, but generally speaking common resources came under the purview of the manor court proper – the 'court baron'. Sitting as frequently as once every three weeks (though, it seems, usually less often), the court baron was the main location for the managing of the agrarian life of the manor. This meant that it registered transfers of land, dealt with disputes over copyhold title and – most importantly from our point of view – regulated the commons. This it did by both enforcing existing laws (which in turn arose out of 'custom', the common law and local bylaws) and by setting new ones.

Manorial courts were technically supposed to be attended by the whole of the tenantry, and in many cases tenants were still fined for their absence. It may well be the case that, as the seventeenth century wore on, absenteeism became more of a problem. Certainly it seems that many courts were moribund by then or were at least focusing on increasingly mundane local business.[39] The key decision-makers, though, were the manorial officers and the jury. Officers were appointed, usually on an annual basis, and were charged with the supervision of common resources as well as the presentation of offenders against customs and bylaws. The precise forms of manorial office varied from place to place and depended partly on the exact delineation between manorial and leet jurisdiction, but they included bailiffs (usually the most important office), others charged with inspecting hedges, walls and garths, and others with enforcing grazing regulations and checking weights and measures. The court of Castlerigg and Derwentwater in Cumberland, which was a particularly sophisticated institution, merging leet and baron jurisdictions and overseeing a market, engaged some 22 individual officeholders a year in the later sixteenth century. The roll for 1590, which gives what appears to be a full register, lists four constables (two of whom, those for Keswick, were also 'searchers of leather'), two 'markett lokers [lookers]', two praisors, four 'moss lokers', two 'swyne lokers' and eight 'gard [garth] lokers', four of whom were described as 'garth lokers for Bayne Rotte and for the mylle and complaint of neighbourhead'. This was in addition to 14 jurors.[40] Smaller manors, naturally, tended to have fewer officers. In the seventeenth century,

Troutbeck (Westmorland) had 'fieldkeepers', 'grasstellers' and 'garthlookers'.[41] In the 1620s, the court baron of Broughton Gifford in Wiltshire appointed a heyward and two overseers of the fields (or 'drivers'); the combined baron and leet of Nettleton, in the same county, appointed a constable, a tithingman, two 'frithseers' and two 'sheeptellers'.[42]

On occasions, manorial officers could provoke neighbourly ire, and sometimes this brought physical danger. Moments where, in the line of duty, officers were called upon to impound such beasts as were grazing illegally could escalate quite easily. When, in 1576, Matthew Todd attempted to drive Richard Sheppard's sheep off a disputed hillside in Longsleddale (Westmorland), the latter man 'dyd assalte and beit' him with a long piked stave.[43] In 1621, the overseers of the fields of Broughton Gifford (Wiltshire) presented William Harding 'for that he refused to give us an account of his sheepe and of the common that should feed them and with violence withstood us'; they had to use force to drive Harding's sheep to the pound.[44]

Once offenders were presented, their case was heard by the manorial jury. This ideally comprised between 12 and 16 tenants, though where the homage (the full body of the tenants) was small, namely in such manors where landholding was concentrated, juries could be surprisingly small. Their composition remains to be fully investigated, though it would appear that jurors were generally drawn from the established customary tenants. In the vast majority of cases they were male, and there might well have been some bias towards those with larger landholdings. There is no reason to suppose that the manorial jury was any less representative of the rural 'middling sort' than the parish vestry.[45] The juries empanelled by the Duchy of Lancaster to survey parts of its southern estates in 1553 and 1591 were generally comprised of the copyholders, with some bias towards those with larger tenements.[46] Officers, meanwhile, may have been drawn from the wealthier jurymen, but this remains speculative in the absence of detailed research. For what it is worth, one Hampshire manor, Dibden, agreed in 1664 that its haywards would be chosen by rotation around the houses worth 40s per annum and above, an intriguing allusion – perhaps – to the 40s freehold franchise (though in this case the tenants were mostly copyholders).[47]

If the jury agreed with the presentment then the offender was usually fined or 'amerced'. The value of amercements ranged from the small and – perhaps – token, right up to some quite swingeing fines, and it is to be presumed that their level is telling us at least something about the perceived threat of certain forms of behaviour. In 1565 the Dorset manor of Iwerne Minster, for example, levied a fine of 3s 4d for putting pigs in the common before the harvest, but twice that (6s 8d) for householders who allowed members of their family 'to pyk any woull abrode in the filde or in any mans folde' between All Saints' Day and the Feast of St John the Baptist.[48] When it came to apportioning meadow in 1549, the Oxfordshire manor of Hampton Poyle ordered that those who refused to attend the allotting of strips in one field would forfeit 4d, while he that missed the allotting of Revel Mead would 'forfayte a gallone of ale'.[49]

Such courts also clearly took their own authority very seriously. People could be, and were, fined for non-appearance and contempt. Edward Mosse of Hattersley (Cheshire), for example, was fined a shilling in 1627 because he 'hath railed on the jury in foule speeches'.[50] Similarly, Richard Wallis and John Ploughman of Ryme Intrinseca (Dorset) were fined 12d and 6d respectively for 'uncivell behaviour in the Court' in 1624.[51] William Jenkinson of the Cumberland manor of Ennerdale, meanwhile, was fined the considerable sum of 10s 'for his contempt in the court & keeping his hatt on in the courte'.[52] While in 1618, the Northumberland court of Elrington ordered 'that non nethere men nor women younge or ould shall skould upon the

baliff sworne men juriers or pounder' upon pain of a 6s 8d fine.[53] Few, however, drew the ire of their local court so comprehensively as John Langfier of Upavon (Wiltshire), who provoked a stinging rebuke on the grounds that he 'did in open Court demeane & carry himselfe in very ill language very saucily & peremptorily to the great disturbance of the Court wherefore the fyne of xxs is imposed upon him as justly he deserveth.'[54]

Politics of the commons

Customs, courts and litigation

Village courts had always existed as part of a hierarchy and were always impacted by England's complicated constitutional and legal structures. Those aggrieved by local decisions could sometimes appeal up the chain. Originally the major way of taking a dispute above and beyond the manor was probably to appeal to the lord himself or his steward, particularly where the manor was part of a larger feudal estate. This still happened in the early-modern period: A dispute between the rival intercommoning hamlets of Sadgill and Stockdale in Westmorland, for example, was taken in the middle of the sixteenth century before the Lord Marques of Northampton (who held the manor) in London, though this did not end the disagreement.[55] Especially from the fifteenth century onwards, however, the central law courts seem to have played an increasing role in manorial life, and much of this related to the governing of common lands.[56]

This was part of a longer process of governmental centralisation, but it may well also have reflected the impact of the processes of commercialisation and social differentiation that were transforming English rural society in this period.[57] The period from the fifteenth to the seventeenth centuries saw both a proliferation of new central law courts and a general increase in the volume of litigation.[58] Because common lands were often governed by custom, which could be difficult to subject to the strictures of the common law, much conflict around them took place in the equity and prerogative courts. Indeed, the archives of these courts often provide us with some of our richest seams of evidence about communal farming. Chancery, the main court of equity, was hearing commoning disputes from at least the fifteenth century, but by the second half of the sixteenth century it had been joined by the prerogative Courts of Star Chamber and Requests, plus two equity courts designed to hear disputes relating to royal estates: the Court of Exchequer for the Crown lands and the Court of Duchy Chamber for the Duchy of Lancaster. But the common law courts could also be crucial locations for commoning disputes, most famously in 'Gateward's Case' of 1607, which set a precedent undermining rights of common by mere residency.[59] Indeed, within the numerous actions of trespass and detinue, for which we have just laconic archival references, are probably concealed any number of disputed rights of common. In general, however, their procedures mean that records of the common law courts are rather more intractable and less rich than those of the prerogative and equity courts.

But to draw too rigorous a distinction between litigation in the various courts is actually rather misleading. Disputes tended to spill from one court to another, and though historians tend to view conflicts through the records of a particular court, those involved looked towards multiple institutions. To take an example, a dispute between two manors in the Cotswolds in

the 1560s, one – Southam – a parcel of the Duchy of Lancaster, the other – Bishop's Cleeve – held by the Crown, saw cross-suits in the Courts of Exchequer and Duchy Chamber.[60] Indeed, once the Exchequer heard it the case was referred to the county Assizes. The bigger picture here, however, is that the institutions of the central government were increasingly involved in settling disputes relating to common land, particularly – as in this case – where two communities were at loggerheads and where, in consequence, neither was likely to put much store in the jurisdiction of each other's manorial courts.

Another development that tended towards the regularisation of common rights was the growing tendency to compile lists of customs and rights of access.[61] Partly the increasing volume of surviving records in the sixteenth and seventeenth centuries is a trick of the light: Earlier material has suffered more extensively from the ravages of time. But there does seem to have been a greater profusion of manorial papers and – perhaps most interestingly – compilations of customs. Sometimes the impetus for this came from above, such as with the large-scale survey of the southern lands of the Duchy of Lancaster, compiled in 1591, which contains much valuable information about commoning practices, or the surveys taken of the lands of the Earls of Pembroke in Wiltshire in 1568, which again are a rich source.[62] On other occasions the driving force was almost certainly more local, and many single-manor compilations of customs survive in family papers across England. Usually these were part of a wider collation of manorial customs, incorporating the transmission of customary tenancies, the regulation of common resources as well as – sometimes – the policing of minor local nuisances. In the Wiltshire manor of Upavon, for example, the court baron meticulously copied out a list of customs relating to tenure and the management of the commons into its court book every year throughout much of the seventeenth century.[63] The 'payne rolle' of Alston Moor (Cumberland) is another example. It was agreed upon by the lord of the manor, the steward, and 'withe the consente & agremente of the whole lordship' in 1597, but was said to be based upon a 'an olde payne roll' dating back to the reign of Henry VII (1485–1509). It contained the usual stipulations about the management of common lands and restrictions of overgrazing by animals, the collection of peat and turf, the felling of woods and the ringing of swine. But it also made extensive orders about petty local forms of disorder, from assault, drawing blood 'one upon another', rescues made against serving officers and even the unlawful playing of cards or tables for money (outside the twelve days of Christmas).[64] The wide range of regulation reflects the court's role as both a manorial court and a court leet, something which – again – emphasises the degree to which commoning could exist as part of a wider nexus of neighbourhood.

Such documents were clearly political. Although they carry an air of consensus, they were in many cases almost certainly aimed at settling issues of custom that had been long in dispute. And although it is rarely quite clear in whose interests the lists were compiled, they likely favoured the literate and the politically-savvy tenantry: the rural middling sorts, in other words.

Indeed, the written word might have been used to exclude the poor and outsiders from a share in common resources, well before any enclosure. Nonetheless, there was also a wider and perhaps more inclusive politics of the commons which existed 'out of doors'. It involved the use of underhand tactics such as gossip, rumour, as well as petty and even organised violence. Common rights were not just things that people litigated about or wrote down in lists of customs; they existed as part of a vibrant and complex local economic and political

culture, much of which is now lost to us forever, and which we often only glimpse when it came to be reported in lawsuits.

Politics out of doors

It has sometimes been suggested that villages were effectively 'self-governing', only occasionally using manorial courts to settle disputes, and indeed there are some examples of commoners settling bylaws out of court.[65] Whether this was widely the case, and whether this was indeed sustainable in a time of growing commercialisation in agriculture and availability of litigation remains to be answered. Either way, there was clearly a complex political culture that surrounded commoning, much of which existed outside the manorial courts. Historians such as Adam Fox and Andy Wood have done much, for example, to recover the way that local memory and oral culture could be instrumental in the preservation of common rights over time.[66] People talked about common rights, and as they did their words, over generations, became 'common fame' or (as a witness from Highley in the Forest of Dean put it in 1574) 'the voyce of the contrye thereaboutes'.[67] Indeed, a complex oral culture may well have existed in relation to common lands. The names given to landscape features, for example, could be imbued with meaning. In a particularly difficult lawsuit from 1556, two sides claiming pasture rights in a grange in the Lincolnshire fens clashed over the name by which the disputed land went. To the tenants and farmers of Long Benington, the land in question was called 'Benington Grange', the name establishing the association with their settlement. To Richard Markham, Esq., the defendant, it went by the more neutral name of 'Hardwick Grange'.[68] Similarly, in 1591, survey jurors for the manor of Oaksey in Wiltshire reported that

> 'they have had tyme out of minde & ought to have free comon in and uppon certen grounde called Hauckes Brooke, being now devided into diverse parcells by inclosure of the Inhabitaunts of the mannor of Mintchaie, now altered in name viz Stearte, Stearte woode, Stearte leases, & drie hurste under colour of the said inclosures & new names, being before all knowen by the name of Hauckes Brooke, the tennantes of this mannor are disturbed of their said right of comon there […]'.[69]

A 1773 map shows no trace of a Hawk's Brook, but there is a Stert Farm.

Another way that oral culture impacted on the politics of common land was when gossip was apparently used as a political weapon. In the 1650s, one Abingdon gentleman, embroiled in a Chancery suit with his neighbours over a common, became known locally as 'Mad William Bostock' as he was so litigious – the gossip later being used to undermine his legal case. Indeed, incidental information recounted to the central law courts about those locked in disputes over commons provides an insight into the moral judgements made about neighbours. In another case from 1595, witnesses in a Norfolk boundary dispute told the Court of Exchequer that one opponent was a 'very lewd and bad man'. Meanwhile in a suit in the same court the following year relating to cottages in Staffordshire, a stream of accusations was directed at the plaintiffs, from charges they had been harbouring thieves and rogues to the general statement that they were 'known to be lewde & badd persons suche as ys muche evell reported of them for their conversacion and no good knowen by them'.[70] Of course,

such information was being deployed as a legal tactic, partly aimed to reducing the value of opposing testimony by association. But the fact that communities could call upon it, that they 'heard' about it, as they often stated, shows that commoners, perhaps like all members of the 'neighbourhood', were held up to moral scrutiny. It is the reflection of the simple fact that communal farming brought people together more closely than a privatised landscape of fixed hedges, rigid fences and scattered private homesteads.

Knowledge about common rights could also be passed down through actions and rituals as well as words. Most obviously, the annual perambulations of the manor, usually at Rogationtide, were particularly instrumental in passing knowledge about the extent of commons and the various rights on them from old to young. Occasional perambulations of disputed commons could also be used to settle and to memorialise boundaries: One such occasion, in the 1570s between the Westmorland hamlets of Sadgill and Stockdale, and covering some of the most difficult terrain in the country, was still remembered by inhabitants some 50 years later.[71] Indeed, such was the importance of boundary perambulations that they sometimes descended into violence as communities sought to push their claims to a little bit more ground with fists and pitchforks. In 1591, the tenants of Ewen in Wiltshire complained bitterly that when they came to perambulate their manor on Tuesday in Rogation Week, their neighbours from Poole did 'violentlie resiste' them, thrusting their minister out of the way.[72]

Violence, in fact, whilst perhaps not endemic, was certainly a well-established political tactic in commoning disputes. We have already seen one case of violent resistance to the impounding of animals and unsurprisingly such moments were particular flashpoints. When the officers of a moor in the Somerset Levels came to drive away the sheep of John Kelson in June 1618, he was reported to have rode up to them shouting 'what nowe, what nowe, what is the matter', threatening them 'lett alone the sheepe or els I will unhorse thee'.[73] Early in the reign of Elizabeth I a dispute over common of pasture in the Forest of Dean (Gloucestershire) gave rise to a number of violent stand-offs. One October day in 1559, William White was out on disputed land tending his cattle with his wife and a 24-year-old spinster called Agnes Crompe (perhaps a farm-servant). According to Agnes's later recollection, they were then 'assaulted and shott at' with arrows, and – when they sheltered behind a great tree – two assailants came up to them and one of them, Hugh Griffen, then struck her 'three strokes with a staff'. Then, at night time, the three were tending their cattle again, this time with William's son and sitting out by a fire. Again they were shot at, and now the assailants struck White 'and threw hym into the fyre like to have burnyd hym if this deponent and his wiffe had not holpen hym out'. On another occasion, one Richard Wintley – whose cattle had been impounded from the disputed ground – having gone to the neighbouring village of Coleford to get them back, found himself resisted by a gentleman and several others. As a local smithman deposed, 'undecent wordes' passed 'aboute the marke of a hogg pigg', and despite the men being kept apart by others in their company one William Smyth, with a piked staff of some six foot in length, struck Wintley on the head so 'that he fell to the ground'.[74]

It is probably the case that the violence that commoners sometimes resorted to was usually of this kind: episodic, small in scale, if often pretty nasty and perhaps deeply personal. Endemic violence, which probably included the maiming of animals – though admittedly the evidence for this at present is very thin – may well have been more characteristic of the politics of the commons than the more dramatic enclosure riots that historians usually write about. Indeed, persistent disorder might encourage commoners to see good hedges as the

key to good neighbourhood and to push for enclosure. This seems to have been the case in Walton-on-Thames (Surrey), where Joan Seman, a former servant, recounted in 1611 how a common pasture called Lakefield had been the scene of 'quarrelles & bralles' between those who kept cattle there, and that this was part of the reasoning behind later enclosure.[75]

Sometimes, however, violence did take a more organised form, and on such occasions the central government was much more likely to take an interest. It seems, for example, that organised violence was a particular tactic of the pre-reformation townsmen of Gloucester in their dispute with the Abbey of St Peter over rights of common (amongst other things).[76] However, although violent outbursts have an obvious attraction to social historians as dramatic expressions of popular protest and anger, they remained rare. Indeed, the nature of the surviving source material may have exaggerated the importance of collective violence, for alleging riot was one way of getting a suit heard at Star Chamber – thus many of the 'riots' that crop up in the records of that court, still our best source, were probably mere legal fictions. Nonetheless, as one historian has recently pointed out, the descriptions of some – if by no means all – riots in Star Chamber (and other law courts) are so detailed and vivid that they carry the air of real events.[77] Nor, indeed, should we be dismissive of the *threat* of violence as a political force. Intimidation could be a terrifying tactic in commoning disputes, such as the case from 1490s Somerset, where tenants and servants of the Dean of Wells were alleged to have risen up the inhabitants of Wedmore by ringing the church bells, to have set up fences to enclose a disputed common, and to have openly proclaimed that the tenants of Glastonbury Abbey were 'chorles', and if they were to break down the fences any more 'they sholde be betyn & slayne & fryed in theire own grese in theire owne houses'.[78]

Occasionally, of course, localised collective action developed into something even more dangerous: popular revolt. From the reigns of Henry VII to the early years of Elizabeth I, England was convulsed by an unusual and ominous series of popular uprisings. Religious and dynastic issues were major forces behind these, and it has sometimes been suspected that the aristocratic tail was often wagging the popular dog, but social and economic problems were clearly major forces for dissatisfaction and rebellion, and concerns over access to common lands were a part of this.[79] Quantitative historians downplay the importance of the early-Tudor enclosures, but the writings of commentators such as Thomas More attest to the powerful hold they – and the related conversion of arable fields to pasture – had on the English imagination.[80] Indeed, depopulating enclosure did not have to be widespread to spark violent opposition, it merely had to bite hard in a particular place at the wrong time – such as a time of inflation or rising taxation, as in the 1530s and '40s. Thus enclosure emerged as a significant grievance of rebels in both the 1536 and 1549 uprisings. In the former, the rebels' 'Pontefract Articles' demanded the enforcement of the laws against enclosure, and that all intakes and enclosures made since 1489 were to be pulled down, 'except montans, forest and parkes'.[81] In the 'Commotion Time' of 1549, meanwhile, enclosure was a major – though complex – grievance, resulting in the plucking down of many hedges, sometimes accompanied with quite serious violence.[82]

It would be unwise to consider this more intangible and sometimes disorderly politics 'out of doors' as the preserve of the poor in opposition to the rich. There were plenty of examples of gentlemen and wealthier tenants involving themselves in gossip, threats and disorder. A mayor of Woodstock, in a row over the boundary of a common (amongst many other things) in the 1580s was alleged to have spat in a former mayor and rival's face, clenching his fist and

calling him all kinds of names – 'vile skurvie knave, a stinckinge knave, a spyinge knave'.[83] When the inhabitants of Poole challenged those of Ewen on Rogation Tuesday, they were led by William Wye, a gentleman.[84] A Staffordshire gentleman, John Lane, menaced commoners of Bentley Hay in the 1590s by posting a notice in the parish church telling those who would forgo their rights to subscribe their names. Thus he might 'knowe who were his frendes and wellwillers', while those who refused to sign, 'he would esteme of them accordinglie, and that then if they caughte any hurte they might thancke themselves [...]'.[85]

In reality, such politics 'out of doors' was something that every commoner engaged in – it was just that as the period went on, landlords and the wealthier tenants increasingly gained additional outlets for wielding power in the form of their engagement with the state. For although there were ways in which the poor could engage with the central law courts, generally speaking litigants tended to be drawn from the relatively wealthy, while most witnesses were drawn from the rural middling sorts. A sample of nearly 2,200 deponents in commoning disputes before the Court of Exchequer from 1550 to 1650 found that testimony was overwhelmingly drawn from the middling sorts, mostly gentry, yeomen and husbandmen. Not more than nine per cent of witnesses could legitimately be called poor in any sense (the vast majority of these were described as labourers).[86] A similar picture emerged from a study of depositions in Norfolk compiled by Andy Wood. Of 917 deponents before the Exchequer and the Duchy Court of Lancaster, he found that 79 (8.6 per cent) were gentry, 181 (19.7 per cent) were yeomen, and 194 (21.2 per cent) were described as husbandmen. They tended to be middle-aged or older, and in both samples deponents were overwhelmingly male. Summarising, Wood classifies the evidence as privileging the 'voices of older or middle-aged, plebeian men'.[87] This is fair if perhaps a little optimistic, not just because the courts were likely to listen most carefully to the testimony of the elite, but also because the deposition evidence seems grossly skewed against the truly poor. 'Plebeian' is probably the wrong word – 'members of the middling sort' would be more accurate. Thus litigation tended to be an activity of the relative elite, while bearing witness put power in the hands of the middling sorts; the poor generally still found it hard to make their legal voices heard.

Indeed, the development of legitimate forms of action through the law may well have helped to draw the rural middling sorts away from the more extreme kinds of direct action. This probably contributed to the kind of political and economic fissures within rural society, between an increasingly wealthy middling sort and a proletarianised poor, that historians such as John Walter, Keith Wrightson and Andy Wood have highlighted.[88] By the 1590s, despite great economic hardship in the Cherwell Valley north of Oxford, a frightening conspiracy (to the local elite and government at least) amongst the suffering poor received no support from the local yeomanry.[89] This is usually taken to show that, by this point, the wealthier manorial tenants were seeing their economic interests aligned with enclosing landlords rather than poor cottagers and smallholders, ensuring that rebellions in defence of common lands could never get off the ground – although it must be said there is still relatively little known about the uprisings in the Midlands in 1607, so perhaps final judgement should be reserved for the time being.[90] One thing is clear, however, and that is that even if large-scale agrarian uprisings were a thing of the past by the time of the Civil War, smaller, more disorganised, enclosure rioting was emphatically not. In the 1620s and '30s there was an epidemic of disorder in the West Country as smallholders attempted to preserve their rights in the royal forests, and riot was a constant hassle for those attempting to drain the great fens of the east.[91] Indeed,

as Jeanette Neeson has shown, disorder remained an important – if desperate – weapon for opponents of enclosure well into the late eighteenth century.[92]

Conclusion

As the discussion of rebellion and enclosure rioting suggests, the dissolution of common rights was a crucial and often bitterly contested political issue. As it happens, however, the current orthodoxy rather downplays opposition to most enclosure. Some time ago, an important article by Ross Wordie pointed out that a very large proportion of English enclosure seems to have taken place in the seventeenth century, and that this was carried out 'by agreement', indeed without major opposition.[93] This may be partly illusory: The opposition of the poor is often harder to see in the historical record than the opposition of the yeomanry. There has been relatively little work on opposition to enclosure 'by agreement' in the seventeenth century, but Neeson's study of the eighteenth century shows that the veneer of harmony often suggested by the records of Parliament might mask significant and bitter opposition by the poor.[94] Whatever the case, and even if there was much more opposition to enclosure than we can see or ever hope to recover, there were plenty of other issues which could draw commoners into political action. Beset by a perennial free-rider problem and dependent on co-operation and the negotiation of custom, the government of common lands was always highly political, even without enclosure. That so much common land survived, despite two centuries of political upheaval and economic development, is testament, ultimately, to the surprising success of many local communities in governing themselves.

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