
2.2 Commons and faux-commons

Room 104

Chair: Henry French

2.21 Eleanor A. Straughton and Angus J. L. Winchester – Defining the Commons: shifting legal conceptions of common land in England and Wales since c.1600

Common land in England and Wales – most of it marginal land beyond the limits of cultivation, whether mountain or moorland, wetland or heath – is privately owned land over which others possess use rights, giving them legal access to particular resources. The Commons Registration Act 1965 had the effect of fixing the definition of common land: only land registered under the provisions of the Act could thenceforth be considered true common. Yet the formal legal definition masks a more complex history of evolving conceptions of common land, with the result that some land which was identical to common land in agrarian and ecological terms was deemed not to be true common; while other land which did not have a legal history as common land was nevertheless registered. This paper seeks to explore the boundaries between true commons and quasi-commons in an historical context.

Property rights over commons and quasi-commons were not static but evolved over time, through custom and agrarian practice. The formal conception of common land envisaged a balance between the rights of the owner of the soil and those who exercised use rights: if the rights of either side dominated, the land might cease to be a true common. In practice, land tantamount to common exhibited a spectrum of property rights. At one end lay waste land that was deemed to be the lord of the manor's private freehold in the medieval period; at the other lay shared pastures where ownership was claimed by those exercising use rights. Some land at either end of the spectrum came to registered under the Commons Registration Act; other land with almost identical patterns of property rights did not. Using case studies from different environments, the paper will explore these divergent histories.

Dr Eleanor Straughton is an honorary research fellow in the History Department at Lancaster University. Her research interests include common resources and environmental governance in the modern historical period; in 2008 she published *Common grazing in the northern English uplands, 1800–1965: a history of national policy and local practice with special attention to the case of Cumbria* (2008). She was research associate on the project entitled 'Contested Common Land: Environmental Governance, Law and Sustainable Land Management, c.1600–2006', funded by the Arts and Humanities Research Council as part of its Landscape and Environment programme.

Dr Angus Winchester is senior lecturer in History at Lancaster University. His research focus lies in the agrarian and environmental history of upland regions of Britain; his publications include *The harvest of the hills: rural life in northern England and the Scottish Borders 1400–1700* (2000) and (with Alan Crosby) *England's Landscape 8: the North West* (2006). He is currently co-investigator on a three-year project entitled 'Contested Common Land: Environmental Governance, Law and Sustainable Land Management, c.1600–2006', funded by the Arts and Humanities Research Council as part of its Landscape and Environment programme.

2.22 Bill Shannon – '*Sometymes on one mosse and sometimes on another*' – True intercommoning in early-modern Lancashire

The existence of wastes which were not neatly divided between manors had been recognised by the second Statute of Westminster (1285), and was still an issue in early-modern Lancashire, where in places all neighbouring lords claimed full rights in the *whole of* a waste, and where all parts of that waste were equally open to all the freeholders of all the surrounding manors. This true intercommoning was not unlike the Scottish *commonty*, but contrasted with the system of *vicinage* or tolerated trespass, more normal elsewhere in England, whereby those parts of a waste adjoining a manor were regarded as belonging to that manor, even though the whole waste might be shared with others.

True intercommoning cannot have sat easily with developing early-modern ideas of private property, and cases before the Chancery Court of the Duchy of Lancaster will be used to show how these anomalous arrangements were seen as barriers to improvement. Partitioning into clear several manorial ownership was the logical response, and hence there arose in the region a different model of enclosure, based upon partitioning and approving the waste, a model possibly equally relevant to other districts in England where substantial wastes had survived into the early-modern period.

Dr Bill Shannon is an Honorary Research Fellow at the University of Lancaster, having completed his PhD there in 2009, on the subject of early-modern wasteland enclosure in Lancashire. His MA, also at Lancaster, was in Local and Regional History, and involved a dissertation which introduced the subject subsequently further explored in his doctoral thesis. His first degree at Liverpool University, back in 1965, was in Geography, and his main research interests today, apart from agricultural history, include landscape history and the history of cartography, on aspects of which he has had articles published. He is currently studying large-scale manuscript maps of the sixteenth century, particularly the corpus of ‘dispute maps’ produced for the court of the Duchy of Lancaster.

2.23 Richard Hoyle – Stinted pastures in Craven: neither common nor enclosed

A recent paper by Angus Winchester and Eleanor Straughton has drawn attention to stinted pastures in the Lake District and offered some speculations about their origins.¹¹ Such pastures stand in contrast to those pastures governed by the rule of levancy and couchancy. In this paper we offer a discussion of the stinted pastures in the adjacent highland area of Craven. Here stinted pastures took the form of enclosed pastures in which the owners of the common rights had shares allocated to them in the form of stints – the right to graze so many animals of one sort or another. In some cases stints were interchangeable, so a single ox might equate to a number of cows or horses, or young beasts. In a few cases stinted pastures were dedicated to cattle, and others to sheep. The key feature of the stints is that they could be sold as a form of property. It was perfectly possible for a single proprietor to come to own all the stints in a pasture. The intention to enclose could also produce a concentration of ownership as smaller proprietors sold out.

The area of pasture held in this form can be determined from the awards made at enclosure in the later eighteenth century, many of which have maps attached. It will be shown that stinted pastures were one of the chief ways in which the lower hill sides of fells were held. Particular emphasis will be paid to their origins. Most were formed in a relatively short period at the end of the sixteenth century. It will be suggested that stinted pastures are usually – not invariably – a particularly peasant-driven phenomenon, connected to the peasant ownership of land and sometimes manorial rights, or were characteristic of low-pressure seigneurial regimes. They served a defensive purpose – against the cattle of neighbouring communities – but quite possibly also against the subtenants and poor of their communities. As such they mark an intermediate form of enclosure which lasted from the end of the sixteenth century to the classic period of parliamentary enclosure, in which closely defined rights within bounded areas are held in common. But, of course, they arguably were not commons.

Richard Hoyle is Professor of Rural History at the University of Reading, and editor of *Agricultural History Review*. His books include (with Henry French) *The Character of English Rural Society: Earls Colne, 1550-1750* (2007).

¹¹ Angus J. L. Winchester and Eleanor A. Straughton, ‘Stints and sustainability: managing stock levels on common land in England’, *AgHR* 58 (2010), pp. 30-48.