Common Land in Upland Britain: tragic unsustainability or utopian community resource?

Angus J L Winchester
Lancaster University

This paper was first published in *Umwelt und Geschichte in Deutschland und Grossbritannien: Environment and History in Britain and Germany*, edited by Franz Bosbach, Jens Ivo Engels and Fiona Watson (Prince Albert Studies Volume 24. Munich: K G Sauer, 2006) and is reproduced here by kind permission of the Prince Albert Society.

Common Land in Upland Britain:
tragic unsustainability or utopian community resource?

Angus J L Winchester
Lancaster University

How past societies have managed their resources is one of the central concerns of environmental history. At one level this is the subject matter of traditional geography, the study of the interface between society and the natural environment. But from the historian's perspective a "resource" is essentially a human construct and understanding that interface requires us to explore cultural change and the structures of society. Patterns of resource use ultimately reflect patterns of power and perceptions: resource exploitation is a product of perceptions of environmental potential by those with the power to access the resource in question, and perceptions themselves change. The comparatively steady state of the inherent quality of the land itself (its geology, soils, flora and fauna) is viewed through cultural lenses shaped by economic imperatives, the technology of the time and the institutions of society. To the historian, therefore, cultural shifts and changing patterns of power and authority lie at the heart of the history of resource management.

The environment in which I wish to explore these questions is the rough hill land of upland Britain, which survives today in a semi-natural, unimproved state. The most extensive and wildest of such terrain is in the Highlands of Scotland but my focus is on the large areas of northern England which fall into this category in the English Lake District and the Pennine hills. Extensive areas of northern English "fell" and moorland still have the status of common land, that is land which is privately owned but over which third parties have use rights, enabling them to use and take products from the land. A recent calculation suggests that 8,765 individual commons survive in England and Wales, accounting for 1.37 million acres (over 554,000 ha), of which over 700,000 acres (280,000 ha) is in northern

England, but these are only a fragment of the much more extensive tracts which were common before the 19th century[1]. **[Figure 1]**

Common land exerts a particular fascination for those who are interested in the management of resources. In a world dominated by concepts of private property, resources held in common are often seen as an anachronism, left-overs from an earlier age. Yet common land of various types survives extensively in many parts of Europe and by its very nature, as land over which no single individual can exercise absolute control, it generates records which enable us to explore the cultural context of the decision-making processes governing resource use and sustainability. Common resources have had a mixed press. Perhaps the most influential view, repeated since Aristotle, has been the assumption that, since individuals will generally put their own personal interest first, common property is unsustainable, as individual greed will destroy or over-exploit it. The "tragedy of the commons", as expressed in Garret Hardin's famous paper, is that "*Freedom in a commons brings ruin to all*."[2] However, Hardin's assumption has been questioned, notably in the work of Elinor Ostrom on contemporary common resources, who has shown that communal decision-making by those using a common resource can achieve sustainability and that the "tragedy of the commons" need not be inevitable where strong, self-governing local institutions exist[3].

My aim in this paper is to explore these alternative views of common resources by focusing on common land in the hills of northern England and taking a long view, charting the changing patterns of resource use and management from the 12th century to the 20th. The focus is on the management of grazing rights – the principal economic value of the hill commons to agrarian communities – and the central theme running through this paper is the mechanisms through which livestock numbers were controlled and limited. My particular concern is with patterns of power and authority and their encapsulation in the legal and institutional framework of rights in land, which controlled access to and use of resources. My thesis is that cultural perceptions of the northern English uplands

have undergone two major transitions in the past eight hundred years, from seigniorial hunting ground to community grazing land in the late-medieval period, and from local resource to national treasured landscape in the 19th century. These changing perceptions were accompanied by changing patterns of power and were reflected in shifts in the legal and institutional framework to resource use.

It is important to note at the outset that Hardin's conclusion that "*freedom in a commons brings ruin to all*" was based on a false premise, namely that individuals would have unfettered access to a common pasture and could put to graze there as many animals as they wished. Taking the long view of the management of common wastes in upland Britain, it becomes clear that use rights were rarely, if ever, unlimited, even in the medieval period. However, the principles and practices of managing access to the common grazings changed as cultural conceptions of the hill wastes evolved.

1. The Medieval Uplands: hunting forest and private pastures.

It is striking that most of the mountain and moorland areas of Britain are described as "forest" or "chase" when they first emerge into the written record during the medieval centuries. In England, much of the Pennine chain, from the forest of Cheviot in the north to the great royal forest of the High Peak in the south, large parts of the Cumbrian fells in the English Lake District and of the North York Moors, the hills of southern Shropshire and the Welsh marches, and the moorlands of Exmoor and Dartmoor in south-west England were all forests or chases[4]. Extensive upland forests are recorded in medieval Wales and Scotland as well[5]. It is important to stress that both "forest" and "chase" were legal, rather than ecological, terms, referring to the status of the land in question as a hunting ground belonging either to the king or, more usually in these upland areas, to a lay feudal overlord. In the royal forests (such as Dartmoor and the High Peak) the full apparatus of forest law, foresters and forest courts could be brought to bear to preserve game species for the hunt, but private forests or chases also possessed foresters to uphold the overlord's hunting rights. That, at least, was the legal

theory: in practice there is little indication that private forests were actively managed for the chase by the 13th century and, even in the royal forests, hunting formed only one aspect of the forest economy.

Indeed, by the 13th century, most of these private forests and chases were treated as an upland frontier containing vast expanses of grazing land with the potential to yield a substantial income for the lord's coffers. Two strategies were employed: in some forests, which may be termed "closed" forests, the lords retained the hill country in their own hands, establishing demesne stock farms, notably "vaccaries" (*vaccariae*), the cattle ranches which were numerous in the Pennines, or granting upland pastures to monastic houses, which established similar, large-scale stock farms on them. In other upland forests ("open" forests) the lords allowed colonisation by peasant communities in the rapid population expansion of the 12th and 13th centuries. New farms and hamlets were established in the valleys. By the 15th century the distinction between "closed" and "open" forests had faded, as demesne vaccaries were leased to tenants and subdivided into smaller farms. The result was a landscape of hill farming communities, dwelling in small hamlets or scattered farms and rearing livestock which they grazed on the unenclosed hill commons[6].

The driving force in the medieval exploitation of the uplands was thus the lords" desire to maximise their income from their forest pastures, whether directly through the profits of their vaccaries, or indirectly through the rents of their tenants. Hunting appears to have played a minor role but the desire to conserve deer for the chase (pursued only fitfully and only in some forests) prompted a concern on the lords' part to conserve woodland as cover and sustenance for the game. Despite this, the indications are that the extent of woodland in the uplands declined significantly across the middle ages, probably more as a result of increasing numbers of cattle and sheep trampling seedlings and ringing bark in the winter, thus killing trees and preventing regeneration, than through active felling. Areas of woodland mentioned in 12th and 13th-century sources or implied by place-names are found to have disappeared by the 15th century; income from

pannage (payment for the right to put pigs to grub in woodland in the autumn) dwindled from the 13th century, and there is evidence that surviving woodland was coming to be jealously guarded and protected from grazing animals by c. 1450. The deer (and consequently hunting) came to be restricted to enclosed parks, often very extensive, such as the bishop of Durham's vast park in his forest of Weardale or the parks at Leagram and Radholme in Bowland forest and Musbury in Rossendale forest, but even these had often been leased for pasture by the 15th century[7].

The power of the lords of the forests and the strategies they adopted to raise income from grazing left a legacy that continued to frame patterns of enclosure and pastoral land use in the post-medieval uplands. The extent of enclosure of hillside pastures, in particular, reflected the contrasting origins of settlement in the medieval centuries. In the "closed" forests, dominated by vaccaries and other seigniorial stock farms, large hillside pastures, often covering several hundred acres on the lower slopes of the hills, were enclosed as cow pastures. This process, which continued into the 17th century, resulted in a landscape of large, shared pastures, held in common between the members of each hamlet community. In the "open" forests, by contrast, peasant colonisation often resulted in narrow fingers of enclosure, restricted to arable land and hay meadows on the valley floors. The hillsides remained open and these rough grazings (like the high moorlands beyond the vaccary cow pastures in the former "closed" forests) provided the summer pasture for the livestock of the hill farming communities[8].

By the 16th century most upland communities enjoyed rights of pasture tantamount to the normal common rights found on common wastes outside the upland forests. Yet, in origin, these rights again reflected the distinctive status of the uplands as private forest. Some – perhaps most - pasture rights in the uplands originated in the "agistment" of livestock in the lord's forest. Agistment, a license to graze for which a payment was made, enabled lords to receive income from livestock brought into their forest from outside. The practice almost certainly predated the permanent settlement of the uplands: place-names and the

fragmentary documentary record suggest that the hill grazings were used as summer pasture by communities in the surrounding lowlands in the early-medieval period. Where seasonal settlement associated with transhumance and summer shielings survived into the late-medieval centuries, payments akin to those for (and sometimes referred to as) agistment are recorded. In some places individuals in lowland communities retained ancient grazing rights in the upland forests for which separate payments were made, as in the "grasslands" or "grasshouses" of Copeland forest in the Lake District[9]. Even rights which later appear as normal common rights sometimes originated in agistment. In the Northumberland manor of Allendale, for example, sums paid by tenants in 1608 for common of pasture were described in 1547 as payments for the "*agistment of cattle*" and are probably to be traced back to income from "*agistment in the forest*" recorded in 1422. Similar payments for agistment from tenants in the upland valleys are found in the forests of the Lake District[10]. Such payments ultimately reflect the private status of the forest wastes of the medieval uplands, to which access could only be gained by licence from the lord.

As peasant communities grew in the valleys the distinctive origin of their pasture rights was forgotten and the hills came to be treated as conventional common land, as will be discussed below. By the 16th century agistment proper was restricted to private agistment grounds, often remote pastures, far from habitation, where lords continued to take income from stock brought in from outside the manor. These last vestiges of the private forests were effectively beyond the control of local communities, access to their resources being controlled directly by the lord or his officers.

The dominant theme in the management of resources in the medieval uplands is thus the power of the individual overlord, whether driven by the desire to conserve game for the chase or, much more usually from the 13th century, by the desire to raise income by exploiting his hill pastures and forest wastes for grazing.

2. The Age of the Manor Courts, c. 1400-1750

The settlement of the valleys penetrating the upland forests resulted in a transition in the structures of resource use and management. By the 16th century, most of the uplands were no longer actively managed as hunting reserves but had become the grazing grounds of settled communities of pastoral farmers. In consequence, the balance of power shifted from lord to tenants and local communities evolved management strategies driven by the needs of livestock farming. The 16th and 17th centuries were the heyday of local communal control of common land.

By the 16th century forest status had been all but forgotten in most upland areas. There were some exceptions, notably the royal forests, where game preservation remained a live issue: the conflicting demands of the preservation of deer and the needs of the farming community dominate the records of the royal forest of Bowland in the 1570s, for example[11]. But in most of the northern English uplands the hill grazings had acquired the legal status of "manorial waste", that is land within the boundaries of a manor which remained in a semi-natural state and had not been appropriated to a single individual. Since the statute of Merton in 1236 rights in the soil of such land were vested in the lord of the manor but his ability to enclose and take profit from manorial waste was severely constrained by the use rights of the tenants of the manor. These use rights, which generally included common of pasture (the right to graze animals on the waste), common of turbary (the right to cut turf and peat) and common of estovers (an assemblage of rights to cut vegetation), effectively ensured that common waste remained unenclosed, held in balance between lord and tenants. The commons formed an integral part of the rural economy, providing the bulk of summer pasture for livestock, the principal source of domestic fuel in the form of peat, and essential materials such as sods and heather or bracken thatch for roofing, and bracken as litter for bedding livestock. A key feature of the law underpinning common use rights was that they were attached to a holding of a house or land in the manor and could only be exercised to uphold this "dominant tenement". Common of pasture was thus restricted to providing grazing for livestock from the farms within the manor; common of turbary to providing peat for domestic use and not for sale.

Managing the day-to-day exercise of common rights fell to the manor court, an assembly of the tenants summoned by the lord, at which decisions were taken by a jury drawn from the tenants. The courts were formally seigniorial courts, held to uphold the lord's rights and to punish infringements of his prerogatives, but they probably had a hybrid origin, subsuming early village meetings about which we know hardly anything. A memory of early folk assemblies survived in the terminology of some manor court institutions, such as the terms "byrlaw court" and "burlawman", from the Scandinavian word *byjar-log*, a "law community" or "law district". Few records of manor courts in the uplands survive from before 1450 but it clear that strong bodies of local custom, including byelaws governing the use of common land, existed in many manors by then[12].

The records of the manor courts in their heyday in the 16th and 17th centuries enable us to explore the thinking which underpinned the juries' deliberations[13]. The twin aims were to uphold the lord's privileges and to maintain "good neighbourhood", that is friendly relations within the local community. This the courts did by rehearsing local customary law, supplementing it with new byelaws and orders, and imposing financial penalties against those who breached them. Common land brought "good neighbourhood" into sharp focus, as the place where the tensions between individual self-interest and the common good were played out. Sophisticated suites of byelaws were devised to govern the exercise of common rights and to ensure equitable access to resources. In the case of pasture rights, byelaws governing day-to-day practice included restrictions on the types of livestock which might be grazed (diseased animals, goats and geese being particularly closely controlled); seasonal restrictions, notably on rams in the autumn, in order to control the timing of lambing in spring; requirements on the marking of livestock to show ownership; and the allocation of particular parts of the common to livestock of different types or to the stock of particular commoners (as in the designated "outrakes" (routes up which livestock were driven to pasture) and sheep "heafs" of the Lake District). In this way the manor courts exercised a

communal control, limiting individual freedom in order to achieve the aim of fair and sustainable access to resources.

However, the repeated infringements of these rules governing common rights, so numerous in the pages of the manor court books and verdict sheets of the 16th and 17th centuries, are manifestations of tensions over access to resources and also of increasing pressure on resources in a period of rising population and expansion of livestock numbers. The bonds of "good neighbourhood" could be severely strained in the face of, for example, the growth of commercial livestock farming, with its increasing demand for grazing, or a growing landless population, where every new house required access to fuel resources. In seeking to maintain "good neighbourhood" the courts tended to be inherently conservative, frequently citing "ancient custom" when resolving disputes, seeking a return to the way things had been done in the past, but they also attempted to manage change by issuing new or amended byelaws. Nowhere was the challenge greater than in the management of pasture rights.

On the common pastures two principles were used to control livestock numbers and hence to provide a framework for sustainable grazing regimes. One was the rule of levancy and couchancy, which stated that a tenant of the manor could graze on the manorial waste in summer no more stock than he could keep across the winter on the produce of his holding of land in the manor. This sought to restrict grazing numbers to the carrying capacity of the farmland on the valley floor and to ensure equitable access to the summer grazings by relating the size of pasture right to the size (or, more strictly, productivity) of a holding. It was a pasture right "without number" but nevertheless limited.

The alternative means of controlling livestock numbers was by "stint", that is by articulating the right in numerical terms. Stints were usually expressed as a right to graze so many horned beasts (the right to graze one beast being termed a "beastgate" or "cattlegate"), and agreed multipliers were used to calculate the right for other types of livestock: typically, five to ten sheep could be grazed for

one beastgate, while one horse would be rated at two beastgates, for example. Stinting had long been the norm where the available pasture was too small to accommodate all the stock which might be entitled to graze under the rules of levancy and couchancy. In particular, common rights on the stubble of open arable fields and the aftermath of hay meadows were almost always limited by stint, as were rights in the enclosed cow pastures shared by members of a hamlet community.

What was the significance of these alternative ways of defining pasture rights? And what were their implications for sustainability? First, the two forms of pasture right exhibit a striking geographical distribution, the rule of levancy and couchancy being more common in the "open" forests of the Lake District and north Pennines, where peasant settlement had been the norm, whereas stinting was more common in the vaccary country of the central Pennines, the "closed" forests where the lords had retained closer control during the 12th and 13th centuries. There seems thus to have been an association between stinting and the private pastures of forest areas in which lordly control remained dominant. We have already seen the hints that some pasture rights in the uplands originated in agistment on private forest pastures. Levancy and couchancy was incompatible with agistment (since it limited the grazing right to livestock kept over winter on farms in the manor), while stinting placed a numerical cap on livestock numbers without specifying from whence they should come. Where early references to stinting come from areas of strong forest rights, – such as a description of holdings in Weardale forest in 1438, in which each is assigned a pasture right for a specified number of cattle and sheep – they presumably reflect a lordly desire to limit the size of the tenants' flocks and herds in order to preserve grazing either for beasts of the chase or for demesne livestock. In such cases, stinting may thus be an expression of seigniorial control and a legacy of forest status[14].

Such an interpretation of early stinting differs from the usual explanation for the appearance of stints, which see them as an effective way of controlling livestock numbers in response to pressure on grazing reserves. Certainly there is evidence

that it was perceived in this way in the 16th and 17th centuries. A long-running dispute centring on claims of overcharging the common in Longsleddale, Westmorland, was settled temporarily when the Court of Exchequer imposed stinting in 1584 and when it flared up again in the 1630s one of the parties again suggested stinting as a way of resolving the conflict[15].

At first sight stinting would appear to have had numerous advantages over pasture "without number". It allowed livestock numbers to be related directly to the carrying capacity of a particular common; a fixed, numerical limit was presumably easier to police than were grazing rights "without number" and, perhaps most importantly, stinting provided a framework capable of accommodating the realities of stock farming. The rule of levancy and couchancy assumed a simple, static system in which each farm was a self-contained unit, yet it is clear that by 1600, and probably earlier, hill farming practice did not accord with this imagined simplicity. A farmer's land could straddle manorial boundaries; hay was bought in to supplement winter fodder grown on the farm; young livestock were sent out of upland manors in the winter to graze on lowland grass several miles away. None of these practices sat easily with a system which defined the size of pasture right in terms of the number of animals which could be wintered at home on the produce of land in the manor. Stinting, by contrast, avoided these difficulties[16].

So, why did stinting not become more widespread across the centuries when manor court juries devoted so much care and attention to the management of common rights? The courts" tendency to fall back on ancient custom would have acted as a brake on innovation in this as in other spheres and, moreover, reaching agreement over the carrying capacity of a common and the size of individual commoners' stints would almost certainly have placed even greater strains on "good neighbourhood". That may have been the case where attempts to introduce stinting appear to have failed,[17] but there may also have been factors positively favouring pasture rights "without number". Communal self-interest may have promoted flexibility in the interpretation of the rule of levancy and couchancy.

Some manors accepted that a limited amount of hay could be bought in; although there were some attempts to legislate against away-wintering of young sheep from Lake District valleys in the later 17th century, we know that the practice was already well established and that some courts explicitly allowed a limited number to be wintered away from home[18]. By allowing hill farmers to break out of the straitjacket of complete dependence on the produce of marginal land in the cold, wet upland valleys, such practices enabled them to increase their livestock numbers. But this, in turn, brought the danger of over-grazing: flexibility for short-term gain might be unsustainable in the longer term.

One of the puzzles surrounding the history of common land in upland England is why the sophisticated systems of control developed by the manor courts collapsed so suddenly in the 18th century. The system had an inherent weakness, namely that, since the manor court was not a self-governing folk meeting but a court summoned by the lord, the holding of courts depended on the lord and an effective manorial administration. Widespread enfranchisement (the conversion of customary tenures into freeholds) reduced the direct influence of the lord in local affairs and marginalised the role of manor courts in estate administration. Once the courts were no longer central to the relationship between lord and tenants, lords were tempted to save expenditure by letting the courts fall into abeyance. Studies of manor courts in Cumbria have demonstrated that the system collapsed quickly from *c*. 1720: irregular or infrequent court meetings on many manors went hand-in-hand with a decline in the numbers of byelaws, orders and presentments in the court records[19]. By 1800 few manor courts were effective regulators of common resources and this collapse of traditional management systems coincided with a marked shift in the cultural context of common land.

3. Upland Commons since the Agricultural Revolution.

A second transition in the context of resource management on the upland wastes took place across the 19th century as common land came to be viewed as a national resource and the uplands to be seen as treasured landscapes to be

preserved for the common good. This shift in perceptions was intimately connected with "improvement", that sea change in the conception of landed resources which surged from the 17th century, reaching a crescendo in the century of Agricultural Revolution between c. 1760 and c. 1860. The semi-natural state of land was no longer accepted as a given and reclamation and intensification of use became economic and cultural imperatives. Custom and common property were seen as obstacles and were disdained[20]. Central to "improvement" was enclosure, a term which encompassed both a legal and a physical transformation. At its heart lay the extinguishment of common rights and their replacement by the exclusive rights of individuals over defined areas; the consequence was generally the physical division of former unenclosed common land by walls or hedges. An act of Parliament was normally required to effect enclosure, disentangling the rights of lord and tenants in order to enable exclusive ownership over sections of the waste to be allotted to each. **[Figure 2]** Thousands of hectares of the uplands were enclosed by Act of Parliament in the 19th century, substantially reducing the acreage of common land in the uplands, but it by no means extinguished it entirely. Common land still accounted for over 25 per cent of the historic county of Westmorland and over 11 per cent each of Cumberland and the North Riding of Yorkshire in the 1960s[21].

The yearning for wild places, which grew in response to urban growth and industrialisation, coincided with the taming of those same wild hillsides through Parliamentary enclosure. By the 1860s the dominant ethos concerning the value of common land had moved from improvement for agriculture to preservation for amenity and recreation. The Commons, Open Spaces and Footpaths Preservation Society was founded in 1865. Statutes, from the Metropolitan Commons Act of 1866 to the commons acts of 1876 and 1899,[22] increasingly conceived of common land as public space to be preserved as the lungs of the nation, rather than as a farming resource in need of management. When legislators thought of common land they saw the villages greens and amenity heathlands of southern England, not the vast common grazings of the northern fells. But the focus on public access and recreation both intensified and spread to include the upland commons of

northern England across the 20th century, notably in the national park movement, which saw large areas of the northern English uplands designated as National Parks in the 1950s. This coincided with a growing awareness of the fragile ecosystems of the uplands and their susceptibility to damage through over-grazing, and ecological conservation became another strand in the modern culture of the commons[23].

In the context of these shifting perceptions of common land, how were the resources of the surviving unenclosed commons managed from the early 19th century? This is a comparatively little-studied subject but a recent study of Cumbrian commons by Eleanor Straughton has demonstrated the confusion that has reigned since effective management of the commons by manor courts collapsed[24]. Occasionally the commoners put pressure on the lord to call meetings of the court when problems arose; sometimes other self-help measures were taken: meetings of commoners or stintholders might be held; parish councils might be used as a local forum to discuss issues affecting common land; or more formal commoners' associations or committees might be established[25]. The problem was that such local, indigenous alternatives to the manor court operated in a legal limbo: stintholders' meetings and commoners' associations lacked the legal authority of manor court juries to enforce binding byelaws[26]. Informal solutions seem to have characterised the management of upland commons through much of the 19th and early 20th centuries, made easier, perhaps, by the decrease in the numbers of commoners on many commons as a result of the gathering pace of farm amalgamations. However, local solutions were devised in the context of increasing central government concern over common land, culminating in the Commons Registration Act of 1965[27]. Since then, local management (or lack of it) has taken place in the context of the 1965 Act, which required commoners to register their rights but did not impose management solutions.

The absence of clear management systems since 1800 coincided with – and probably contributed to – growing pressure of livestock numbers on the common grazings. As we have seen, accusations of over-charging the common stretch

back to the heyday of manor court control in the 16th century. Complaints of persistent overstocking of common pastures were frequent in Cumbria as the manor courts collapsed across the 18th century and overstocking was of widespread concern by the 19th century[28]. To cite just one example, the tithe commissioner surveying Eskdale and Wasdale, two valleys deep in the Lake District with extensive mountain commons, in 1839 thought that the commons were insufficient to carry the present stock of sheep ("*probably 20 thousand of them*") and feared that the "*cupidity of each occupier to get as much benefit as he can off the common*" would inevitably lead to increased numbers and a deterioration in the quality of the flocks[29]. Although stock numbers were subject to significant short-term fluctuations and, indeed, fell in the 1920s and 1930s, considerable pressure on surviving common grazings built up after the Second World War. The cumulative result was that the number of sheep in upland counties of England and Wales increased by nearly 62 per cent between 1889 and 1973[30]. Such statistics suggest that the collapse of the manor courts led to a Hardinesque free-for-all, encouraged latterly by hill farming subsidies and headage payments for livestock under the Common Agricultural Policy.

The collapse of traditional management systems, accompanied as it seems to have been by persistent problems of overstocking, thus paved the way for a drift towards anarchy on those commons which survived the wave of Parliamentary enclosure. One strategy for recovering control was a greater use of stinting and there was a considerable increase in the number of stinted commons and pastures in upland northern England in the 19th century. Some were a product of Parliamentary enclosure itself, when awards created "regulated" stinted pastures on sections of the waste deemed too poor to be divided into individual allotments. The process was encouraged by the General Inclosure Act of 1845 and resulted in the conversion of manorial waste into jointly owned pastures regulated by stint[31]. Further opportunities to convert to stinting followed the Commons Act of 1876, which enabled whole commons to be regulated, but only seven upland commons took advantage of the act. The Act's insistence that public access and recreation

should accompany regulation of a common and the Home Office's reluctance to approve byelaws controlling grazing limited its usefulness to commoners[32].

The move towards stinting was therefore far from complete. In 1963 it was estimated that more common land (46 per cent of the total) in England and Wales was used as unstinted grazing than was used as stinted grazing land (33 per cent of the total)[33]. But the language of stinting – the assumption that a common right could always be expressed in numerical terms – had gained an ascendancy by the middle of the 20th century. Indeed, the Commons Registration Act of 1965 required pasture rights to be registered numerically, even on commons which had continued to be governed by the rule of levancy and couchancy. The result was not true stinting: there was no attempt to relate the numbers claimed to the carrying capacity of the common. Moreover, by articulating pasture rights in numerical terms, the Act led to an intensification of a problem to which numerical stints were often subject, namely the severance of the right from the land to which it had been attached. Unlike a common right governed by the rule of levancy and couchancy, a stint could be viewed as a freestanding piece of property which could be traded. The commons of Buttermere in the heart of the Lake District illustrate the confusion and unforeseen consequences caused by the 1965 Act. First, rights appear to have been registered more than once, or numbers to have been grossly inflated in the process of expressing a right "without number" in numerical terms. On Buttermere's mountainous common grazings, pasture rights were registered for 21,000 sheep, yet the carrying capacity of the common has been estimated at fewer than 9,000. Then, since registration, a "*significant proportion*" of these registered rights have been sold or leased, sometimes to people living far from the common[34]. **[Figure 3]** So great is the concern over the sale of stints that the Commons **Bill 2006** forbids the severance of common rights from the property to which they are attached[35].

The history of the hill commons of northern England since the collapse of manor court control has been characterised by opportunism, conflicting interests and sticking plaster solutions.

4. Reflections on the environmental history of common land.

Most of this paper has been concerned with the comparatively straightforward task of tracing the changing framework of resource management on the upland commons across the centuries. Much more challenging is the second theme of this session of the conference, that much-used term "sustainability". The concept of sustainability – or, rather, of unsustainability – is central to much of the discussion of common resources and was, of course, the central theme of Hardin's "*Tragedy of the Commons*". Taking the long view, we must ask, first, whether sustainability would have been recognised as an aim by those managing common land in the past and, if so, what was being sustained and for whom? In each of the three phases of history discussed above we find an awareness of tension between the conflicting demands of different resource uses: game preservation *versus* raising income from pasture in the medieval centuries; individual self-interest *versus* "good neighbourhood" since the 16th century; amenity value *versus* agricultural value of common lands since the 19th. Sustainability may be rarely stated explicitly, but an awareness of the potential loss of a resource and a desire to take action to preserve it run through the records.

Conceptions of what ought to be preserved have changed as power structures and perceptions of the uplands as a resource have changed. In the medieval period the dominant aim appears to have been to maximise the lord's income through establishing stock farms and selling grazing through agistment. Though there is little documentary evidence for local conditions before the 15th century, it seems likely that population levels and livestock numbers would have been low in comparison with modern times and that pressure on grazing resources may not have been great. But the centuries of colonisation put pressure on the older conception of the uplands as hunting forest, as livestock competed with game.

In the early-modern period the driving force underlying the byelaws promulgated by the manor courts was "good neighbourhood" – the maintenance of friendly

relations within the community here and now – rather than a desire to conserve resources for future generations. However, a forward-looking concern to conserve is visible in some manor court rulings, such as the byelaws aimed at limiting the environmental damage caused by peat digging and turf stripping, which required commoners to drain the water and replace the sod after digging peat, so that surface vegetation could grow again, and to refrain from cutting turf where livestock would gather or be fed in order to prevent erosion[36]. Sustainability was implicit in the management of common grazings. It was obvious to any stock farmer that livestock did not thrive if pastures were over-grazed and the notion that a common could only bear a finite number of animals was explicit in stinting and implicit in the rule of levancy and couchancy. A desire to sustain the quality of the flocks and herds grazing on the commons can be traced back to the 16th century, even if persistent and recurring complaints of overstocking suggest that success in achieving this was often limited.

In drawing together this attempt to survey the long-term history of resource management in Britain, the rather gloomy conclusion that sustainability was rarely achieved should be tempered by recognising the positive aspects of manor court control. It can be argued that the regulation of common rights by manor court byelaws constituted a rounded and sustained attempt at resource management, contrasting starkly with both the "asset stripping" approach of medieval lords and the confusion and near anarchy of the 19th and 20th centuries. The manor court system, self-determining and locally based, with effective mechanisms for monitoring compliance with byelaws, imposing sanctions and resolving disputes, fulfilled many of the requirements identified by Elinor Ostrom as necessary for enduring and sustainable management of common resources[37]. Moreover, the manor court juries were guided by a principle beyond economic imperatives and the maximising of individual profit, namely "good neighbourhood". Just as the "good neighbourhood" imposed restrictions on the individual freedom of members of the manorial community, so the constraints of sustainability need to be accepted, now as in the past, if *that* ideal is to be realised.

Notes

1. *Christopher P. Rodgers*, Environmental Management of Common Land: towards a new legal framework?: Journal of Environmental Law, 11 (2) (1999), 231-255 at p. 231.
2. *Garret Hardin*, The Tragedy of the Commons: Science, 162 (13 Dec. 1968), 1243-8 (reprinted: Managing the Commons, ed. G. Hardin and J. Baden, San Francisco 1977, 16-30).
3. *Elinor Ostrom*, Governing the Commons: the evolution of institutions for collective action, Cambridge 1990.
4. *Angus J. L. Winchester*, Moorland Forests of Medieval England: Society, Landscape and Environment in Upland Britain, ed. I. D. Whyte and A. J. L. Winchester (eds) (Society for Landscape Studies Supplementary Series 2) Birmingham 2005, 21-34.
5. For Scotland see *John M. Gilbert*, Hunting and Hunting Reserves in Medieval Scotland, Edinburgh1979, 360-363; for a provisional map of forests in Wales see *John Langton* and *Graham Jones* (eds), Forests and Chases of England and Wales c.1500-c.1850, Oxford 2005, p. viii.
6. *Angus J. L. Winchester*, Hill Farming Landscapes of Medieval Northern England: Landscape - the Richest Historical Record, ed. D. Hooke (Society for Landscape Studies Supplementary Series 1), Birmingham 2000, 75-84.
7. *Angus J. L. Winchester*, Landscape and Society in Medieval Cumbria, Edinburgh 1987, 100-107; *Winchester* (note 6), 82-83; *Winchester* (note 4), 24-25; *G. H. Tupling*, The Economic History of Rossendale (Chetham Society, new series vol. 86), Manchester 1927, 33.
8. *Angus J. L. Winchester*, The Harvest of the Hills: rural life in northern England the Scottish Borders 1400-1700, Edinburgh 2000, 52-73.
9. *Winchester* (note 7), 91; similar “grasslands” in Ennerdale are recorded in Cumbria Record Office (Carlisle), D/Lons/W8/7/1, survey of 1747.
10. *Winchester* (note 7), 84; *Winchester* (note 8), 94.
11. Lancashire Record Office (Preston), DDHCl, box 86. See also *Winchester* (note 6), 83.

12. For manor courts see *Paul D. A. Harvey*, Manorial Records, London 1999, 41-68; *Christopher Harrison*, Manor Courts and the Governance of Tudor England: " Communities and Courts in Britain 1150-1900, ed. C. Brooks and M. Lobban, London1997, 43-59; *Winchester* (note 8), 33-48, which also discusses the term "byrlaw".

13. The role of the manor courts in the management of common land is discussed at length in *Winchester* (note 8). See also *Robert S. Dilley*, The Cumberland Court Leet and the Use of Common Lands: Transactions of Cumberland & Westmorland Antiquarian & Archaeological Society, new series 67 (1967), 125-151.

14. *Winchester* (note 8), 83-84

15. *Winchester* (note 8), 83 and sources there cited.

16. Some manor courts explicitly allowed stock to be brought in where an individual did not possess enough animals to make up his full stint: *Robert S. Dilley*, Agricultural Change and Common Land in Cumberland 1700-1850, unpublished PhD thesis, McMaster University 1991, 303; *David Michelmore* (ed.) Fountains Abbey Lease Book (Yorkshire Archaeological Society Record Series 140), Leeds 1981, 309 [Kilnsey, 1534]; Yorkshire Archaeological Society Library (Leeds), DD 121/1/4 (17) [Langstrothdale c. 1589].

17. For example at Longsleddale (cited above, note 15) and by the manor court at Coniston, Lancashire, in 1796: *Eleanor A. Straughton*, Common Grazing in the Northern Uplands: land, society, governance, since circa 1800, unpublished PhD thesis, University of Lancaster 2005, 150-153.

18. *Winchester* (note 8), 81, 96-97. In 1717 Ennerdale court allowed each tenant to winter up to 40 sheep out of the manor: Cumbria Record Office (Carlisle), D/Lons/W8/7/1, p. 285.

19. *Charles E. Searle*, Customary Tenants and the Enclosure of the Cumbrian Commons: Northern History, 29 (1993), 126-153 at 138-139; *Dilley* (note 16), 547; *Straughton* (note 17), 129a.

20. *Edward P. Thompson*, Customs in Common, London 1993, 126-143.

21. *William G. Hoskins* and *L. Dudley Stamp*, The Common Lands of England and Wales, London 1963, 110.

22. Metropolitan Commons Act 1866: 29 & 30 Vict. c. 122; Commons Act 1876: 39 & 40 Vict. c.56; Commons Act 1899: 62 & 63 Vict. c. 30.

23. These shifting cultural fashions are explored in *Straughton* (note 17), 33-97.

24. *Straughton* (note 17); *Eleanor A. Straughton*, Beyond Enclosure: upland common land in England and Wales since 1800: Society, Landscape and Environment in Upland Britain, ed. I. D. Whyte and A. J. L. Winchester (Society for Landscape Studies Supplementary Series 2), Birmingham 2005, 89-98.

25. *Straughton* (note 17), 153-8, 167-92.

26. *Rodgers* (note 1), 239.

27. Commons Registration Act 1965, c. 64.

28. *Searle* (note 19), 135-7; *Straughton* (note 17), 148, 227.

29. The National Archives, Public Record Office (Kew), IR 18/716, report by J. J. Rawlinson, question 11.

30. *David Grigg*, English Agriculture: an historical perspective, Oxford 1989, Table 18.1.

31. As, for example, at Castlerigg (1849) and Bootle (1857) fells in the Lake District and Kirkland fell (1866) in the north Pennines: *Straughton* (note 17), 195a.

32. The upland commons regulated under the 1876 Act were: Matterdale in the Lake District; East Stainmore, Crosby Garrett and Winton & Kaber in eastern Westmorland; and Abbotside, Beamsley and Langbar in the Yorkshire Pennines: *Straughton* (note 17), 208-21.

33. *Hoskins* and *Stamp* (note 21), 109.

34. *Straughton* (note 17), 104.

35. Commons **Bill 2006**, section 9, subsections 5, 14.

36. *Winchester* (note 8), 132.

37. *Ostrom* (note 3), 88-102, 178-81. The editors of the CORN volume on the management of common land in north-west Europe concluded that "*It is difficult ... to find many regions in Europe that did not fulfill most of the criteria laid down by Ostrom for long-enduring, self-managed commons*": *Martina De Moor, Leigh Shaw-Taylor* and *Paul Warde*, (eds), The Management of Common Land in

North-west Europe, c. 1500-1850 (CORN Publication Series 8), Turnhout, 2002, 251.