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*Additional information, particularly on the recent history of common land management in the case study area, would be welcomed by the team. Contact: e.straighton@lancaster.ac.uk*

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## **ELAN AND CLAERWEN VALLEYS, POWYS: HISTORICAL BRIEFING PAPER<sup>1</sup>**

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(Revised version, May 2009)

The case study centres on upland pastures in the Elan and Claerwen valleys, in the parish of Llansantfraid Cwmdeuddwr,<sup>2</sup> Radnorshire (now in the modern county of Powys). The outer boundaries of the area under study coincide with those of the parish and embraced a territory of considerable antiquity, the commote of Cwmdeuddwr (literally ‘the commote between the two waters’, i.e. the rivers Elan and Wye). In the medieval period, most of the land within these bounds formed an upland grange of Strata Florida Abbey, ‘a large area of common pasture with isolated holdings.’<sup>3</sup> The case study comprises two contiguous land units: the registered common land of Cwmdeuddwr Common (RCL 36), which lies along the north-east edge of the parish and is managed by the Cwmdeuddwr Commoners and Graziers Association; and the large area of de-registered hill grazing (RCL 66), within the catchment of the Claerwen and Elan rivers, which forms part of the Elan Valley Estate of Dŵr Cymru/Welsh Water. Settlements and inbye land are concentrated in the east of the study area, along the valleys of the Wye and Elan; the western and northern parts contain only a few scattered farmsteads.

The particular historical interest of the case study lies in distinctive traditional systems of upland grazing found in Wales and in the impact of the acquisition of most of the area in the late nineteenth century to supply water to the city of Birmingham. The

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<sup>2</sup> Cwmdeuddwr has a large number of variant spellings, including ‘Cwmteuddwr’, ‘Cwmduddwr’, ‘Cwmtoyder’. We have adhered to the form ‘Cwmdeuddwr’ throughout, with the exception of transcriptions made from original documents.

<sup>3</sup> Williams 1990, p. 57.

construction of the Caban-coch, Garreg-ddu, Penygarreg and Craig Goch reservoirs between 1893 and 1906 (and, later, the Claerwen Reservoir, opened in 1952) led to the flooding of in-bye land and extinguishment of common rights over much – but not all – of the surrounding area, transforming both the landscape itself and traditional patterns of upland land use. Studying the contrasting histories of the two contiguous areas of Cwmdeuddwr Common and the Elan Valley Estate thus allows us to explore issues of property rights, boundaries, use and management, across two different areas of hill grazings, one of which is no longer legally defined as ‘common land’.<sup>4</sup>

## **1. Property rights**

### **1.1 Boundaries and Ownership (see Map 1)**

The case study area forms a rectangle aligned north-west/south-east, coterminous with the historic commote of Cwmdeuddwr and the parish of Llansantffraid Cwmdeuddwr. It is bounded by major watercourses on most sides, the rivers Claerwen and Elan on the south, and the river Wye and the Nant y Dernol on the east. The north-western boundary, again following watercourses in part, coincides with the Radnorshire county boundary. Most of the land within these boundaries remains as open, unenclosed hill grazings: the nineteenth-century tithe file for the parish of Llansantffraid Cwmdeuddwr estimated the area of common as being some 28,819 acres.<sup>5</sup>

The area within these boundaries comprised the two manors or lordships of Grange of Cwmdeuddwr and Cwmdeuddwr, which came into single ownership in 1825 but retained distinct identities thereafter. The Elan Valley Estate, created under the Birmingham Corporation Water Act of 1892 (55 & 56 Vict., c. clxxiii), ignored the manorial boundaries, creating a new ownership unit and adding a layer of complexity to the pattern of property boundaries across the common land. The history of these three estates is briefly examined, before discussing the ownership of the common land within the case study area:

#### *1. Cwmdeuddwr Grange*

The lands of Cwmdeuddwr, containing approximately 21,000 acres of commons or wastes, are generally stated to have been given to Strata Florida Abbey in 1184 by Rhys ap Gruffudd. The original charter is lost, details surviving only in later-medieval confirmations. One charter specifically included the grant of the ‘pasture’ of Cwmdeuddwr (‘Cumhut deudouyr’); another listed ‘Diffryn Elan’ (the valley of the Elan) and ‘Dyffryn Ederawl’ (probably the Dernol valley) among the names of several identifiable places, which included Nannerth (‘Nannerch Goy’), Nanthirin (‘Nant Eyrin’), Aber Coel (‘Aber coill’) and Llanfadog (‘Llanvaduac’), probably

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<sup>4</sup> Wales is a famously difficult area for accurately measuring and identifying common land (as noted by the Royal Commission on Common Land, Hoskins and Stamp, Aitchison and Hughes). According to Hoskins and Stamp (1963, p. 227), Welsh tradition makes a potentially confusing distinction between *tir comin*, which is true common land, and *tir cyd* which is land grazed in common by farmers of adjoining. In his study of *hafods* (summer grazings or dwellings), Davies (1980, p. 20) similarly refers to *cytir* and *rhyddid* as being alternative terms for ‘land held in common’.

<sup>5</sup> The National Archives [hereafter TNA], IR 18/14799.

representing early cores of settlement in the Wye and Elan valleys.<sup>6</sup> In 1540, in the aftermath of the Dissolution, the farm of the ‘grange’ of Cwmdeuddwr was valued at £6 per annum; in 1534, when not explicitly described as a grange, it had been valued at £4.<sup>7</sup> Exactly what the monastic grange constituted is unclear. By the Dissolution, it contained several distinct holdings (nine are listed in the account roll for 1539),<sup>8</sup> but whether any of these had previously been demesne stock farms (the implication of ‘grange’ in an upland context) is not known. By the 1690s, the earliest date from which a full list of holdings survives, the settlement pattern recorded on nineteenth-century maps was largely in place – indeed, as in other upland areas, the number of holdings was apparently higher in the seventeenth century than in the nineteenth. There were 20 holdings in the township of Duffryn Gwy (the Wye valley farms from Nannerth up to Glan Helfin in the Dernol valley, and including Glanhirin and Aber Glanhirin at the head of the Elan valley); eight in Duffryn Claerwen (upstream from Nant Gwilt); and 69 in Duffryn Elan (the Elan valley from Aberceithon upstream to Hirnant).<sup>9</sup>

After the Dissolution, the former monastic lands came to be known as the manor of Grange or Grange of Cwmdeuddwr. They passed through several hands, fee simple eventually being granted to Sir James Croft of Croft Castle and his step-son Thomas Wigmore of Shobdon, Herefordshire, in 1577. Between 1578 and 1585, Croft and Wigmore sold a number of the farms, reserving an annual rent, and establishing rights, dues and services (including suit of court) tantamount to manorial lordship.<sup>10</sup> As a consequence of the sales, a number of new landed estates sprang up in the area, one of the most substantial being that established by the Howell (or Powell) family of Nantgwyllt and Cwmdeuddwr. By the time of his death, in 1597, the head of the Howell family owned twenty properties in Cwmdeuddwr.<sup>11</sup>

The manorial lordship passed in 1693 to Jeremiah Powell of Nannerth and remained with his descendants until 1792, when Thomas Grove of Donhead St. Andrew, Wiltshire, bought the manor of Grange and what was known as the Cwm Elan estate (totalling some 10,000 acres) and carried out improvement works on the land and property. Grove was uncle to the poet Shelley, who visited Cwm Elan in 1811 and 1812, by which time the estate had passed to Grove’s son Thomas.<sup>12</sup> In 1815, the

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<sup>6</sup>The surviving charters of Strata Florida are printed in *Monasticon Anglicanum*, v. 632-4; *Calendar of Charter Rolls*, iv, 382-6; *Calendar of Patent Rolls Henry VI (1422-9)*, 294-8. See also Banks 1880, p. 32.

<sup>7</sup> *Monasticon Anglicanum*, v. 633-4.

<sup>8</sup> Banks 1880, pp. 38-9.

<sup>9</sup> Powys County Archives Office [hereafter PCA], R/D/LEW/5/135. The list of farms is undated but names Elizabeth Powell as lady of the manor, who inherited the estate from her father Jeremy Powell of Nannerth in 1696.

<sup>10</sup> Banks 1880, pp. 35-6.

<sup>11</sup> <http://www.cpat.org.uk/projects/longer/histland/elan/evintr.htm>; Banks, 1880.

<sup>12</sup> Shelley described Cwm Elan in several of his letters, saying on one occasion that ‘This country of Wales is excessively grand; rocks piled on each other to tremendous heights, rivers formed into cataracts by their projections, & valleys clothed with woods, present an appearance of enchantment – but *why* do they enchant, *why* is it more affecting than a plain, it cannot be innate, is it acquired?’, F. L. Jones (ed.), *The Letters of Percy Bysshe Shelley Volume 1: Shelley in England* (Oxford, 1964), Letter 93, p. 119. In 1812 Shelley stayed at the nearby house of Nantgwyllt, and made an unsuccessful attempt to buy it. Cwm Elan had also caught the eye of poet William Lisle Bowles, when he stayed there as a guest of the Groves in 1798: in his poem ‘Coombe-Ellen’, he described the ‘mountains, glens, And solitary cataracts that dash Through dark ravines’, George Gilfillan, *William Lisle Bowles:*

manor was bought by Robert Peel of Churchbank, Lancashire (kinsman of the politician of the same name), who also purchased the smaller manor of Cwmdeuddwr in 1825 (see below), adding it to the estate. Peel sold the estate in 1835, and after a succession of owners, it came into the hands of Robert Lewis Lloyd of Nantgwyllt, in 1875.<sup>13</sup> As a result of the Birmingham Corporation Water Act, 1892, the bulk of the manor of Grange became the property of Birmingham Corporation; the remainder, including parts of the wastes, continued in the hands of the Lewis Lloyd estate.<sup>14</sup>

## 2. *Cwmdeuddwr.*

The second manor, known simply as Cwmdeuddwr, was a smaller estate, focused on the castle of Rhayader and the parochial centre of Llansantffraed Cwmdeuddwr, on the west bank of the Wye opposite Rhayader. It consisted of the eastern corner of the case study area, between two minor valleys, Nant y Caethon (on the south) and Nant Sarn (on the north). Between these two valleys, the boundary ran across the open hill wastes, using the cairn of Crugyn y Gwyddel and a striking white quartzite boulder, Maengwyngwedd (literally ‘the widow’s white stone’), as boundary markers.<sup>15</sup> Cwmdeuddwr manor came into the hands of the Crown in 1462 and remained a Crown manor until 1825, when it was bought by Robert Peel, owner of the manor of Cwmdeuddwr Grange; both manors subsequently descended together. In 1822, whilst wrangling over the price, Peel claimed that the manor was ‘a sort of Property yielding no annual profit nor ever likely so to do, as no part of it is capable of being enclosed, being so very mountainous and rocky; and the Quit Rents are little more than equal to the expense of collecting’.<sup>16</sup>

## 3. *Elan Estate*

The estate purchased under the terms of the Birmingham Corporation Water Act of 1892 (55 & 56 Vict., Ch. clxxiii) ignored the older manorial boundaries to create a unit of property which has dominated the history of the case study area across the twentieth century. Birmingham’s purchase created a large new estate covering not only most of the manor of Cwmdeuddwr Grange, belonging to the Lewis Lloyd Estate (within this case study area) but also portions of the manor of Builth (to the south and west of the rivers Claerwen and Elan), belonging to the Glanusk Estate,<sup>17</sup> and parts of

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*The Poetical Works of William Lisle Bowles* (London, 1837), pp. 115-25, p. 115. The sites of the Cwm Elan and Nantgwyllt residences are now below the Carreg-ddu and Caban-coch reservoirs. See also CPAT, *The Elan Valley: Literary and Antiquarian Associations of the Elan Valley*, at [www.cpat.org.uk/projects/longer/histland/elan/evlite.htm](http://www.cpat.org.uk/projects/longer/histland/elan/evlite.htm).

<sup>13</sup> Robert Lewis Lloyd of Nantgwyllt appears on Brian L. James’s list of ‘The Great Landowners of Wales in 1873’ (*National Library of Wales Journal*, 1966, Summer XIV/3), which is based on the Return of Owners of Land of 1873, and identifies owners who had more than 3000 acres and received at least £3000 in rent per annum. RLL is listed as having an estimated 7,896 acres across four counties (Cardiganshire, Breconshire, Radnorshire and Pembrokeshire), and receiving an estimated £3,045 in rent.

<sup>14</sup> <http://www.cpat.org.uk/projects/longer/histland/elan/evintr.htm>; Banks, 1880.

<sup>15</sup> PCA, R/D/LEW/3/96, boundaries of manor of Grange of Cwmdeuddwr, 1797; PCA, R/D/LEW/2/694 ‘Draft Maps for Vesting Assent’, OS 6”, n.d. [mid 20th century]. The boundaries of the manor of Grange are described in Banks 1880, p. 32.

<sup>16</sup> TNA CRES 49/5001, copy letters written during April and May 1822.

<sup>17</sup> The lord of Builth, Sir Joseph Russell Bailey (1840-1906), sold the Llanwrthwl commons (some 10,858 acres) to Birmingham Corporation in 1894. In 1892, as M. P. for Hereford, he had raised

the manors of Arwystly, Mevenith, Ysbyty Ystwyth and Penarth (in Ceredigion).<sup>18</sup> The land area purchased by Birmingham Corporation was determined by considerations of water abstraction, rather than pre-existing historic boundaries, with the result that the eastern perimeter of the estate ignored the manorial boundary between the manors of Cwmdeuddwr and Cwmdeuddwr Grange, cutting through a series of sheepwalks which straddled the watershed. All the boundaries in the area (manorial, water board estate, sheepwalks) are unfenced,<sup>19</sup> though a series of concrete marker posts, apparently erected in 1913, mark the outer limit of the Elan Estate.<sup>20</sup> The interplay of old and new boundaries evidently caused problems when landowners and commoners attempted to register land under the 1965 Commons Registration Act, since it proved difficult to reconcile the limits of manorial wastes, sheepwalks, commons and estates.

#### *4. Common Land*

As a result, the process of registration appears to have been especially complex in this case study. Large areas of land within the Elan Estate were initially registered as common, but whilst some common lands were confirmed within the wider boundaries of the Estate, substantial areas were *de*-registered or never confirmed. These failed registrations included not only the bulk of our case study area (RCL 66), which formed the north side of the water catchment territory, but also areas on the south (Brecknockshire) side of the catchment: BCL 143 (Part of the Claerwen Catchment and its Tributaries), BCL 142 ('Manorial Waste of the Ancient Manor of Builth – Llanwrthyll'), and BCL 77 ('Waste of the Manor of Builth – Llanwrthyll').<sup>21</sup> In our case study area, only the common outside the Elan Estate, on the eastern side of the case study area (RCL 36: Cwmdeuddwr Common) remains registered common land. The registration history of the two areas of historic common land within the case study is as follows:

*RCL 66 (de-registered land within Elan Catchment).* The 16,478 acres of unenclosed hill within the Elan watershed were registered by Llansantffraed Cwmdeuddwr Parish Council in 1969 as 'manorial waste of the ancient manor of Grange of Cwmteuddwr, no longer subject to rights of common.' Objections were registered in 1972 by Birmingham Corporation (on the grounds that the land was not common land) and by H.H and J.B. Morgan of Tynewydd, Cwmystwyth (on the grounds that a section in the western extremity of RCL 66 was 'private agricultural mountain land' belonging to them). RCL 66 was de-

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concerns about the terms of the Birmingham Corporation Water Bill (HC Deb 8 March 1892 vol 2 cc278-81). See section 2.2, below. See also *Royal Commission on Land in Wales*, p. 452.

<sup>18</sup> Elan Estate Office, 'Plan of Manorial Boundaries and Manorial Rights acquired by the Corporation of Birmingham' [c. 1900].

<sup>19</sup> An attempt by the commoners to have a boundary fence installed between RCL 36 and the Elan Estate in the early 1980s failed: commoners argued that the two neighbouring systems of grazing management were incompatible and needed separation, but fencing proved legally or practically impossible – see the 'Statement of Intention of the Cwmdeuddwr Commoners' & Graziers' Association', 1984, Powys County Council: Common Land Registration File.

<sup>20</sup> PCA, R/D/LEW/3/107 'Notes by R.S. Lewis prepared for evidence in *Lewis v. Pugh* relating to Trefelgwyn sheepwalk', n.d. [post 1967].

<sup>21</sup> See list of Commons Commissioners' decisions for Powys, at <http://www.acraew.org.uk/index.php?page=powys>. Thanks to Jenny Griffiths at Powys CC for information regarding registration and de-registration of commons in the area.

registered in 1981.<sup>22</sup> The clinching argument appears to have been that Birmingham Corporation had purchased all rights of common, in order to control the numbers and types of livestock grazing within the water catchment area.<sup>23</sup>

*RCL 36: Cwmdeuddwr Common.* The residual land area retained by the Lewis Lloyd Estate (east of the Birmingham Corporation boundary) was treated as a single common land unit at registration – RCL 36 Cwmdeuddwr Common – though in reality it comprised remnants of the wastes of both the historic manors of Cwmdeuddwr and Cwmdeuddwr Grange. This distinction between the two manors is acknowledged in the Land Section of the register and on the registration maps, which show the wastes of the manor of Grange Cwmdeuddwr colourwashed yellow and marked ‘A’, and the waste of the manor of Cwmdeuddwr colourwashed green and marked ‘B’.<sup>24</sup> Despite this, it appears that the common possesses a unity, expressed in its alternative name of Penrhiw-wen (referring to the hill at its core at SN 92 70), suggesting a discrete identity regardless of the manorial boundaries.<sup>25</sup> The Lewis Lloyd Estate was confirmed as the owner of the bulk of RCL 36 but the Commons Commissioner determined in 1985 that the Elan Estate owned two small tracts of land lying on the shared boundary between the two estates.<sup>26</sup> Indeed, the boundary, as shown on today’s registration map, is complicated by these two tracts of land (colourwashed blue and marked ‘D’), and by several pockets of land (colourwashed pink and marked ‘C’) identified as being areas where the Birmingham Corporation had purchased rights ‘to the exclusion of all others’.<sup>27</sup> Thus the boundary of ‘Cwmdeuddwr Common’ today is in some respects a modern creation, the result of the union of the two Cwmdeuddwr manors after 1825, the severances and reorganisation caused by the Birmingham Corporation Act of 1892, and the effects of registration under the 1965 Act. The common is divided into some thirteen distinct, though unfenced, sheepwalks (see Section 2 below).<sup>28</sup>

## **1.2. Common rights**

Today, sheep dominate the hill grazings of the study area and appear to have done so for some time: c. 1840 the total numbers of livestock in the parish of Llansantffraed Cwmdeuddwr was estimated at 334 cows, 652 bullocks, 223 horses, and 17,000 sheep.<sup>29</sup> A holding’s own flocks were often expanded in the summer months when animals from lowland farms were brought to the hill grazings ‘on tack’ (i.e. by way of

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<sup>22</sup> Powys County Council Common Land Register, RCL66, entry no. 1; objections nos. 947, 967.

<sup>23</sup> As expressed in a letter from Radnorshire County Land Agent to the Divisional Executive Officer of MAFF, 28 August 1968 (Powys County Council Common Land Registry, file of papers re RCL66).

<sup>24</sup> Powys County Council Commons Register, RCL 36 Cwmdeuddwr Common, Land Section: Sheet 1, and accompanying registration maps: sheet nos. 36, 38, 40, 41.

<sup>25</sup> Information from Erwyd Howells, Capel Madog, and Robert Hughes, Aber Glanhirin. See also Howells 2005, p. 15.

<sup>26</sup> As recorded in the Ownership Section of the commons register: Powys County Council Commons Register, RCL 36 Cwmdeuddwr Common, Ownership Section: Sheet 1. See also registration map: sheet no. 41.

<sup>27</sup> *Ibid.*, Land Section: Sheet 1. See also registration maps: sheet nos. 36, 38, 40, 41.

<sup>28</sup> Dderw Estate papers: Map of sheepwalks, Cwmdeuddwr Common (undated [late 20th cent.]).

<sup>29</sup> TNA IR 18/14799.

agistment: see section 1.2.3). Historically, rights of turbary and estovers also played an important role in the domestic economy, with peat being an essential source of fuel into the twentieth century (see section 1.2.4).

### **1.2.1 Early evidence of common rights**

Evidence for the nature of common rights and grazing regimes before the eighteenth century is sparse and fragmentary. When John Leland toured the Cwmdeuddwr district between 1536 and 1539, the exercise of grazing appeared to him unlimited:

Al the mountaine ground bytwixt Alen [Elan] and Strateflure [Strata Florida] longgeth to Stratefleere, and is almoste for wilde pastures and breeding grounde, in so much that everi man there about puttith on bestes as many as they wylle without paiyng of mony ... the pastures of thes hilles be fre to the inhabitantes, as well as al other montaine pasture longing to Strateflere.<sup>30</sup>

Some of the livestock on these wastes appear to have been scarcely domesticated, if we take at face value one of the earliest post-Dissolution documents, a bond concerning the sale of ‘wild beastes’ (eight wild kine and four yearlings) ‘upon the muntayne of comtyddwr’ in 1552.<sup>31</sup>

When holdings within the former grange were sold between 1578 and 1585, each deed included a grant of ‘common sufficient in their waste of Cwmtoyddwr’.<sup>32</sup> In one instance, the sale of Cwm Coel in 1579, the common right was specifically limited to 40 beasts and 100 sheep,<sup>33</sup> effectively a stint, though the absence of similar limitations from other deeds suggests that most common rights were ‘without number’, perhaps implying that they were limited by the rule of levancy and couchancy. The only explicit statement of the nature of grazing rights in the early-modern period is in a brief survey of tenements and timber in Cwmdeuddwr c. 1725, which describes a holding as ‘a Dayrie house & Common of pasture for Cattle & Sheep without number’.<sup>34</sup>

### **1.2.2 Llestau and Sheepwalks (Map 2)**

The Welsh uplands have long been known for a tradition of sheepwalks, whereby the pasture rights of an individual holding were restricted to a defined section of the common. In 1744 a survey of the manor of Perfedd, Cardiganshire, stated that:

There hath been time out of mind, a division of the common into particular districts or liberties next adjoining to the freeholds and cottages which all the shepherds through boldness or ignorance claime as their own right and sometimes chase other people’s cattle away.<sup>35</sup>

and it was reported to the Board of Agriculture in 1815 that in southern Wales a ‘sheep-walk upon the mountains, attached to a farm’ was often of greater value to the farmer ‘than the farm itself.’<sup>36</sup> Certainly, by the nineteenth century, it clear that there

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<sup>30</sup> J. Leland, *The Itinerary of John Leland in or about the years 1536-1539 Part VI*, Vol. 3, ed. L. Toulmin Smith (London, Centaur Press, 1964), pp. 122-3.

<sup>31</sup> PCA, R/D/LEW/2/107.

<sup>32</sup> Banks 1880, p. 32.

<sup>33</sup> PCA, R/D/LEW/02/215.

<sup>34</sup> NLW, BRA 259/74.

<sup>35</sup> Cited in Davies 1980, p. 11.

<sup>36</sup> Walter Davies (als Gwallter. Mechain), *General View of the Agriculture and Domestic Economy of South Wales Volume I* (London, 1815), p.164.

was a well-established conception that the commons in Cwmdeuddwr were divided into distinct sheepwalks: ‘the practice has been for each tenant to secure a distinct sheep walk, and maintain his rights on it by keeping a strong flock’.<sup>37</sup> A farm’s sheepwalk usually took the form of an area of rough grazing with clear, recognised boundaries, on the common immediately above the holding and its inbye land.

Associated with sheepwalks was the practice of building *lluestau* (shepherds’ huts), seasonal dwellings on the summer pastures, reinforcing the link between particular sections of the wastes and individual holdings. The use of such huts as upland stations of parent farms in a neighbouring valley is widely attested throughout Wales, paralleling the summer shielings of northern England and Scotland.<sup>38</sup>

Within the case study area *lluestau* are recorded from the late sixteenth century. Nineteenth-century maps record nine *lluest* names, mostly represented by cottages beside an upland stream, often attached to an enclosure of a few acres of ground. The earliest references to these sites are in two deeds of 1585, each granting a holding and its associated ‘summer house’. A holding at Brithgwm (y Brythgome ygha’) in the upper Elan valley was sold with its summer house called ‘y Clettur mawre’ (now Llest-aber-caethon), in the side valley of Nant Cletwr, 3 km. to the north-west.<sup>39</sup> In the same year, one of the holdings at Nannerth in the Wye valley was sold with the cottage or summer house called ‘Llyest Pen y Rhiw’ on the hill grazings above the precipitous valley side behind the farm.<sup>40</sup> There was already an established link between Nannerth and summer pastures at a distance: around 1520 the holdings there had been leased along with ‘a summer house called Maes-yr-hafod’ and its pastures’, the location of which cannot be traced with certainty but may conceivably be represented by Hafod-fawr, deep in the upper Elan valley.<sup>41</sup> The deed of 1585 also appears to chart the transition from a seasonal hut to a permanent farm surrounded by its own enclosed inbye land: the grant of Aber Glanhirin, described as a ‘message or summer house’, included a bounded block of 80 acres of the common waste with licence to enclose it and annex it to the summer house. The island of enclosure at Aber Glanhirin may be the result of that grant in 1585.<sup>42</sup> The link between Aber Glanhirin and Nannerth, shown in the grant of 1585, echoes the inclusion of the northern reaches of the Elan catchment in the township of Duffryn Gwy, suggesting that the hill wastes north of (approximately) Pont ar Elan were used by farms in the Wye valley from an early date.

It is likely that shepherds’ huts were continually re-built, some comparatively modern structures obscuring older origins. The hut at Pen-y-rhiw, for example, shows several phases of building and its surrounding enclosures at least two phases of enclosure.<sup>43</sup> In some cases a *lluest* became a holding in its own right, with its own attached

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<sup>37</sup> Banks 1880, p. 38.

<sup>38</sup> Davies 1980; Ward 1997.

<sup>39</sup> PCA, R/D/LEW/02/228. Llest-aber-caethon (at SN 875 687) is recorded as ‘Clettur Mawr’ on the Tithe Plan of 1838.; TNA IR 30/55/34.

<sup>40</sup> Davies 1980, p. 9.

<sup>41</sup> Suggett 2005, p. 185, citing Banks 1884, pp. 38, 40.

<sup>42</sup> Ibid. Aber Glanhirin is at SN 887 723.

<sup>43</sup> See Suggett 2005, pp. 249-53 for a discussion of *lluestai*, including plans showing the sequence of building at Llest Pen-rhiw and Clettur (Llest Abercaethon)

sheepwalk. By c. 1900 Lluest Calettwr and Lluest Abercaethon, in the remote Nant Cletwr valley had defined sheepwalks assigned to them.<sup>44</sup>

Where it is possible to link a *lluest* to a parent farm, as in the evidence of title deeds, as above, or the place-name itself (e.g. Lluest Trehesgog, presumably belonging to Treheslog/Trehesgog Farm), these shepherds' huts generally lie on the common comparatively close to the farm, suggesting that farms traditionally exercised grazing rights on an adjacent section of the common. The legal status of such huts is uncertain, however, since in other contexts they might have been seen as encroachments on common land. Moreover, their construction could sometimes be interpreted in an aggressive light: a means not just of caring for flocks, but also of protecting and hardening property rights in the unfenced communal pastures. When a new shepherd's house was built at Pant-y-beddau on the Esgair Garthen sheepwalk, just outside the case study area on the south side of the Claerwen valley, in 1867, it was partially burned and knocked down the following year by graziers from Llanwrthwl, who objected to its presence.<sup>45</sup>

The presence of *lluestau* thus hint at the existence of exclusive use rights on sections of the waste comparatively close to the farmsteads by the late sixteenth century. It should be noted, however, that explicit evidence for the division of the common into sheepwalks has not been found before the later eighteenth century, nor is there early evidence to show the pattern of grazing rights on the remote wastes in the far west of the study area.

Individual sheepwalks can be traced back to c.1800: that belonging to Treheslog farm is shown on an estate plan of that period, its extent coinciding almost exactly with that of the farm's modern sheepwalk.<sup>46</sup> Giving evidence in 1844, a 60-year-old witness described the separate sheepwalks of the farms of Rhiwafon, Pen-yr-ochr and Tynant in the Wye valley on the adjacent common between Gwar y Ty and Moel Geufron, stating that they had 'been enjoyed with the said farms so long as I have known them'.<sup>47</sup> Comparable evidence comes in references to 'Glanhirin sheep walk' in a manor court presentment of 1807, and to the 'hills sheepwalks or premises belonging to the ... tenement called Llanerchy' in a tenancy agreement of 1796.<sup>48</sup> Statements taken in evidence concerning Llanfadog's 'rights of sheepwalk' in Clettwr, in the 1820s, apparently recalling grazing practices in the 1780s (or even before: one witness's memory stretched back 70 years), confirm that the allocation (or perhaps appropriation) of distinct areas of grazing belonging to each holding was an established feature by the later eighteenth century.<sup>49</sup>

The 1820s evidence concerning Llanfadog's sheepwalk in Clettwr shows that farms in the lower Elan valley were exercising grazing rights on distant pastures around the Nant Cletwr in the western side of the study area. This represents a marked contrast to the other, earlier evidence that links farms to sections of the common adjacent to their inbye land. In the case of the Clettwr grazings, the evidence hints at a radical re-

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<sup>44</sup> Elan Estate Office: Estate Plan J and terrier.

<sup>45</sup> Howells 2005, pp. 208-9. Pant-y-beddau is at SN 837 649.

<sup>46</sup> Suggett 2005, p. 255.

<sup>47</sup> PCA, R/D/LEW/5/147.

<sup>48</sup> PCA, R/D/LEW/3/96 presentments book 1722-1817, [no day/month given] 1807; R/D/LEW/2/171.

<sup>49</sup> PCA R/D/LEW/1/41. The document is undated, but the paper is watermarked '1821'.

organisation of rights: Clettwr Mawr, the summer house belonging to the nearby holding of Brithgwm in 1585, had become Lluest Abercaethon by 1886,<sup>50</sup> linking it to the farm of Aberceithon more than 8 km. distant, in the lower Elan valley. When this changing pattern of use took place is far from clear: one potential moment might have been when the manors of Cwmdeuddwr and Grange of Cwmdeuddwr came into the same hands in 1825, but the witnesses' statements from the 1820s suggest that this is unlikely: they look back to the late eighteenth century, long before the two manors were united.

The 1820s evidence also poses a conundrum: the dispute then appears to have centred on the respective grazing rights of Llanfadog (in Grange of Cwmdeuddwr manor) and Ddol (near Rhayader, in Cwmdeuddwr manor). Assuming that Ddol has been identified correctly, it is puzzling why a holding outside the manor of Grange should have had grazing rights on that manor's wastes.

The importance of the sheepwalks and shepherds' huts to the hill farming system of the Elan and Claerwen valleys became increasingly apparent in the late nineteenth century, when Birmingham Corporation's land purchases impacted on the interrelationship between farms, huts and grazing grounds. The Corporation documented their purchases in an estate terrier, listing individual vendors, holdings and lands. A series of accompanying maps show that acreages and boundaries of sheepwalks were closely defined, although there is some evidence of disagreements (certain strips of land were marked as being in dispute, or shared between holdings). Manorial rights to the soil of the sheepwalks were transferred via the purchase of the Cwmdeuddwr and Builth lordships and estates, also recorded in the terrier.<sup>51</sup> The purchases also disrupted the *lluest* system, both through the construction of the reservoirs and by the severance of some huts from the relevant sheepwalks and holdings. The loss of shepherds' huts threatened to cause management problems and affected the value of grazing rights. In 1897 it was claimed that two sheepwalks, 'namely Nant Llymysten and Lluest Aberceithon would be depreciated because the Corporation had taken the Freeholds on which stood the Shepherd's huts used in working these Sheep walks'.<sup>52</sup>

The existence of such clearly identifiable sheepwalks invites comparison with patterns of use rights on upland commons elsewhere. The Welsh sheepwalk is at one level comparable to the *heaf* of the Cumbrian fells, in that it is an area of common associated with the flock of a specific holding, and usually reliant on the territorial nature of the breed for the maintenance of its boundaries. The tradition of a landlord's flock, let with the holding, is common to both regions: indeed, it would

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<sup>50</sup> Ordnance Survey 1:10,560 map, Radnorshire Sheet XIV SW. Clwyd-Powys Archaeological Trust report that the chimney stack in the house at Lluest-aber-caethon (now derelict) includes a stone with the inscription: 'D.E. 1814 CLETTWR', preserving its older name. See CPAT, *The Elan Valley: Landed Estates and Agricultural Improvements of the 18th and 19th Centuries*, at [www.cpat.org.uk/projects/longer/histland/elan/evesta.htm](http://www.cpat.org.uk/projects/longer/histland/elan/evesta.htm).

<sup>51</sup> Elan Estate Office: Estate plans and terrier, covering dates c. 1892-1913 (with additions to 1932). A comparable pattern of sheepwalks is recorded on a series of annotated 1st edition 1:10,560 Ordnance Survey maps in the Lewis Lloyd archive at Powys (PCA, R/D/LEW/2/291), described as 'Copies from Plans deposited by Brecon C.C with Radnorshire C.C. showing land and rights to be purchased by B.C.C. under the Birmingham Corporation Water Act 1893 made by R.S. Lewis 1967'. The First Edition 1:10,560 maps were published 1889-91.

<sup>52</sup> Dderw Estate Papers: letter, Mr Clarke to Rev. W.E.Prickard, 20 July 1897.

have been a necessity to maintain the territorial integrity of heaf or sheepwalk when tenants changed. The concept of a ‘standing flock’ attached to each holding and belonging to the landlord was prevalent in the Cwmdeuddwr area by the nineteenth century, if not before, and was described in 1880 thus:

The flock belongs to the landlord, who on letting his farm arranges that the tenant shall pay him yearly for the use and hire of his flock a sum equal to £5 per cent. on their value. The tenant in return is entitled to the wool and the produce of the sales of sheep drafted from the flock with the landlord’s assent ... The tenant agrees during the tenancy to increase rather than diminish the flock, so as to insure the occupation by the flock of the [sheep]walk. On the expiration of the tenancy the flock is counted ... and yielded up by the tenant to the landlord, who pays or receives a sum fixed by the agreement for each sheep above or below the original number of the flock.<sup>53</sup>

But as can be seen in the transferral of sheepwalks to Birmingham Corporation, with every sheepwalk mapped and measured with a definite acreage, the sheepwalks of Wales were also considered to be property belonging to one holding or shared by a small number of specific holdings. The legal status of Welsh sheepwalks was tested at Cardiganshire Assizes in 1875, in *Ecclesiastical Commissioners v. Griffiths and Others*, in which case Griffiths and fellow graziers argued that sheepwalks in the manor of Llandewi brefi (Cardiganshire) were the graziers’ own freehold mountain land; the court found in favour of the lords of the manor (the Ecclesiastical Commissioners), pointing to evidence of manor court presentments regulating common grazing. Nevertheless, the sense that sheepwalks were tantamount to private or exclusive property was evidently deep-rooted within hill farming communities, perhaps attesting to a system of land organisation which predated the ‘manorialisation’ of land tenures.<sup>54</sup> In their petition against the Birmingham conveyances in the Elan and Claerwen Valleys, the counsel for Edward Thomas (Llanfadog-issa Farm) and his brother, David Thomas (Treheslog Farm) argued, ‘These sheepwalks are for all practical purposes treated as the private property of the Petitioners no one else exercising any right over the land and this has been the custom from time immemorial’<sup>55</sup>

The concept of the sheepwalk as private or semi-private property belonging to a particular holding is paralleled to some degree in northern England (in the carving out of private and shared stinted pastures from the common wastes of the Ingleton area, for example). In Wales, the strength of ‘ownership’ claimed over some sheepwalks, and the precision with which it was possible to draw their boundaries, led to the registration of some sheepwalks under the Commons Registration Act of 1965 as separate units of ownership, resulting in the creation of ‘a series of sub-commons within what was previously one common, each with one rights holder’ in some

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<sup>53</sup> Banks 1880, p. 37. Similar principles appear to have dictated the arrangements put in place during an exchange of farms, involving ‘the standing flock on Aberelan’, in 1874: PCA, R/D/LEW/2/181.

<sup>54</sup> Summing-up of the Lord Chief Justice, *Ecclesiastical Commissioners v. Griffiths and Others*, Cardiganshire Assizes, 1875 (Westminster, Nichols and Sons, 1875) [printed transcript]. We are grateful to Gwyn Jones (Scottish Agricultural College) for drawing our attention to this case. See also Gadsden 1988, pp. 94-6.

<sup>55</sup> NLW Mayberry (3) 7201: brief for petitioners, 1902, p. 1.

areas.<sup>56</sup> This is illustrated in the case study area in the objection to the registration of RCL66 by Messrs Morgan of Tynewydd, Cwmystwyth, who claimed a section of the waste within the manorial boundary of Grange of Cwmdeuddwr to be their sheepwalk and ‘private agricultural mountain land’.<sup>57</sup>

The question of exclusivity and freehold property rights is of some importance, as the transfers between Elan landowners and Birmingham Corporation rested on the assumption that common rights could be limited to discrete land areas (negating the commoners’ rights over the rest of the common), and that rights to sheepwalks could be sold independently of the holding to which they were appurtenant (the dominant tenement). In strict modern law, common rights are presumed to pertain to the whole common and not merely a designated heaf or walk (the heaf or walk is considered a practical means of managing pasture rights rather than a legal fixture in the landscape).<sup>58</sup> Moreover, it might be assumed that in the days before the *Bettison v. Langton* ruling (2001), only ‘rights in gross’ or stints could be severed from a dominant tenement in this manner. It is unclear whether rights to sheepwalks would be defined in law as ‘rights in gross’, even if to all intents and purposes they were treated as such by graziers. But it seems that local tradition and legal opinion saw these questions differently in 1892.

It is perhaps an irony that a long-standing and sometimes contentious belief in the exclusivity of sheepwalks probably facilitated the expropriation of commoners’ rights in this case. Yet it is a tradition that has allowed for continuities in land use and culture, despite dramatic changes in the property rights regime. The sheepwalk is still the key unit of administration and land management in the area today.

### **1.2.3 Agistment (‘Tack’)**

Agistment was an important part of the economy in the mid Wales uplands, allowing graziers to maximise use of lands which were poor in winter and rich in summer. From the sixteenth century, there is substantial evidence for a system of ‘share cropping’, whereby hill farmers hired livestock from lowland farmers, taking a share in the offspring. Surviving agreements, which include some from Cwmdeuddwr, show that both cattle and sheep were involved, confirming that the early-modern hill-farming economy was based less exclusively on sheep than it became by the nineteenth century.<sup>59</sup> In the modern period, the term ‘tack’ referred both to summer agistment and wintering-away, upland farmers receiving income for taking in lowland stock in the summer and, in turn, paying fees when their own animals were sent to lowland farms in winter.<sup>60</sup> In strict terms such exchanges broke traditional manorial rules, and yet was probably the reality of farming in the area from an early date, echoing the older practice of transhumance (known as ‘*hafod y hendre*’).<sup>61</sup> In the ‘tack’ arrangements which survived until the mid twentieth century, patterns of

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<sup>56</sup> Gadsden 1988, p. 96.

<sup>57</sup> Powys County Council Common Land Register, RCL66, objection no. 967. The land in question formed a strip parallel to the artificially straight Radnorshire/Ceredigion county boundary between Llyn y Figyn (SN 81 70) and Llyn Gwngu (SN 83 72).

<sup>58</sup> Gadsden 1988, pp. 93-6.

<sup>59</sup> Suggett 2005, pp. 182-3.

<sup>60</sup> Howells 2005, pp. 116-7.

<sup>61</sup> This would suggest lax enforcement of the rule of levancy and couchancy, although the manor court of Grange Cwmdeuddwr did attempt to fine graziers for depasturing ‘foreign’ animals (see section 3.1).

livestock movement were so long established in some cases that areas of hill grazing might bear the name of the lowland farmer whose animals were sent there, and lowland flocks might be walked to the customary meeting point on the same date each year, without the need for prior arrangement.<sup>62</sup>

The tack tradition adds an extra dimension to land use and stocking numbers on common land in the Elan area, and suggests that remote sheepwalks need to be seen in a wider economic and social context.

Howells notes that the practice of bringing in numerous additional flocks in the summer required a great deal of careful shepherding, particularly on arrival, when the new flocks were not yet familiar with the terrain.<sup>63</sup> We might speculate that the need to manage numerous ‘unsettled’ flocks was a significant reason why shepherding played such a central role in the mid Wales hill grazings, and why access to shepherds’ huts became a critical issue during Birmingham Corporation’s land purchases (see 2.2). Birmingham Corporation did not approve of tack on its own lands: Corporation leases prohibited tenants from taking in tack animals in summer, though acknowledging that the tenants’ own animals could be sent away on tack over winter.<sup>64</sup>

#### **1.2.4 Turbary and Estovers**

Peat was a vital resource in the Elan and Claerwen Valleys since it was the only fuel available for many of the more remote farms and shepherds’ huts. In 1902, when faced with the threat of extinguishments of turbary rights, Edward Thomas of Llanfadog argued that: ‘This is a valuable right to me, and my tenants at Nantmadoc and Gledryd and also the Shepherd who has a house on the Llyest, where he would be entirely dependent on turf for fuel. A considerable amount of turf is now used by myself and my tenants at the 4 Farmhouses.’<sup>65</sup> Over time, commoners created a network of peat tracks and peat cuttings, which might bear the name of the user or holding.<sup>66</sup> Turbary rights are no longer exercised.<sup>67</sup> Small gorse bushes were cut for cleaning chimneys and also boots.<sup>68</sup> As in other upland areas, bracken would have been cut for animal litter, thatch and potash. In addition, some farmers cut molinia hay on the hills, known locally as ‘*gwair cwta*’, or ‘*rhos hay*’, as a source of fodder. This was probably not strictly a right of estovers but simply another facet of pasture rights. Howells records that molinia hay was still being cut at Hirnant into the 1970s.<sup>69</sup>

#### **1.2.5 Contemporary common rights**

*RCL 36: Cwmdeuddwr Common*

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<sup>62</sup> Howells 2005, pp. 116-7.

<sup>63</sup> Howells 2005, p. 116.

<sup>64</sup> R/D/WWA/1A/A7/47/1. Parc tenancy agreement, 1902, clause 27.

<sup>65</sup> NLW Mayberry (3) 7201: brief for petitioners, 1902, p. 7.

<sup>66</sup> Howells 2005, pp. 26-7.

<sup>67</sup> Information from Mr Pugh, Parc Farm, 2008.

<sup>68</sup> Howells 2005, p. 30.

<sup>69</sup> Howells 2005, pp. 64-5.

Today commoners of RCL 36 have rights to graze sheep (no rights to cattle, horses or other stock are registered), and to take turbary and estovers (including a right to cut bracken). As noted above, RCL 36 Cwmdeuddwr Common comprises remnants of both historic manors, and when registering their rights, commoners specified to which of the manorial wastes their rights pertained. Holdings with pasture rights on RCL 36 include:

| <b>Holdings with pasture rights registered to RCL 36<sup>70</sup></b> |   |
|---|---|
| <b>Rights to waste of Cwmdeuddwr Grange</b>                           | <b>Rights to waste of Cwmdeuddwr</b>    |
| Troed-y-Rhiwnfelin  | Tynypistell                             |
| Llanfadog Uchaf   | Cwmcoch                                 |
| Nannerthffrwd, Nannerth Ganol & Luest Penrhiw                         | Lower Ochr Cefn                         |
| Gwarcae   | Y Dderw                                 |
| Coed-y-Mynach   | Glanllynn with Upper Mill               |
| Nantllemystem   | Cwmbach                                 |
| Nannerth Fawr   | Penceau                                 |
| Y Dderw   | Treheslog                               |
| Treheslog   | Gwardolau                               |
| Tynant  | Fron                                    |
| Penrochr & Rhiwafon   | Fergwm                                  |
| Rhydoldog   | Upper Ochr Cefn (incl Middle Ochr Cefn) |
| Nantyrhaidd   | Tynycoed                                |
| Tymawr & Dollyleche   |   |
| Cwmbyr  |   |
| Safn-y-coed   |   |
| Trafelgwyn  |   |
| Part Tymawr   |   |
| Lower Ochr Cefn   |   |
|   |   |
| Tyn-Wain, Y Slan & Sychnant ( <i>manor not specified</i> )            |   |

While the majority of the rights registered are associated with specific holdings and lands, listed above, two additional sets of register entries are for ‘rights in gross’ belonging to the Welsh Water Authority. Rights to graze 500 and 40 sheep respectively are registered as being exercisable over specific areas of the common, marked on the registration map. This stems from the history of land purchases and reorganisation following the Birmingham Corporation Water Act of 1892.

The register for RCL 36 expresses grazing rights numerically (as required by the 1965 Act), making no mention of the topographical arrangement of pasture rights in the accepted division of the area into ‘sheepwalks’, as noted above. In reality, however, the common is divided into some thirteen (unfenced) sheepwalks, which form the main units of entitlement and administration.<sup>71</sup>

#### *RCL 66: Elan Estate*

<sup>70</sup> Powys County Common Land Register, RCL 36, Sec. 3.

<sup>71</sup> Dderw Estate papers: Map of sheepwalks, Cwmdeuddwr Common (no date: early twenty-first century).

The legal context of RCL 66, west of RCL 36, within the watershed boundary of the Elan Estate, is quite different. Initially provisionally registered as common land, it was de-registered in 1981 on the grounds that all common rights had been extinguished by having been purchased by the owner of the soil, Birmingham Corporation, and that, consequently, the land was no longer common. As a result, there are, strictly-speaking, no common pasture rights within the Elan Estate today; rather, access to grazing is determined by tenancy agreements and the management of in-hand farms. Prior to the Birmingham Corporation Water Act 1892 (55 & 56 Vict., Ch. clxxiii), however, these lands were integral to the network of common rights and sheepwalks which still survive on RCL 36, as discussed above.

While it resulted in the extinguishment of common pasture rights, the 1892 Act ostensibly reserved certain rights of fishing, turbary and estovers to the inhabitants of Rhayader:

All rights of fishing in the Rivers Elan and Clarwen and their tributaries flowing through the manor of Grange and the manor of Builth above the upper end of the upper reservoirs and in the lakes adjacent thereto hitherto enjoyed by the inhabitants of the district and the town of Rhayader and all rights of turbary and of cutting fern and rushes over such commonable land shall be preserved to the said inhabitants as heretofore and without interruption by the Corporation subject nevertheless to the byelaws authorised by this Act.<sup>72</sup>

The status and protection of fishing rights had been contentious during the Bill's passage through Parliament, with Members debating the distinction between 'rights', 'privileges', and 'immemorial customs'.<sup>73</sup> In the wake of the 1965 Act, Rhayader Parish Council attempted to register these rights, and the rivers themselves, but these rights must have been deemed to have been extinguished, or to no longer be categorised as 'common' rights, since the land units concerned were de-registered.<sup>74</sup>

In keeping with the ethos of the late nineteenth century, the 1892 Act also reserved rights of access to the public for exercise and recreation on the water gathering grounds, regardless of whether or not the land remained common. Again, the subject of public access had proved somewhat controversial during the Bill's development. Joseph Chamberlain, supporting the Bill in his capacity as MP for West Birmingham, claimed that the area had few if any tourists: 'Our representatives have been there for many months past, and I believe such a thing as a tourist has never been seen...[T]ourists do not go there, though doubtless when we have constructed our beautiful lakes visitors will go to see the works.'<sup>75</sup> Thomas Ellis (representing Merionethshire) retorted, 'As to the right of access, it is a comedy to say that this district has no tourists; and I should say that there should be in the Bill a distinct and definite provision securing to the public the right of access to the district.'<sup>76</sup> In the event, the Act did indeed recognise the public interest, stating that 'The public shall be entitled to a privilege at all times of enjoying air exercise and recreation on such

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<sup>72</sup> 55 & 56 Vict., Ch. clxxiii, clause 54.

<sup>73</sup> For example, see the Second and Third Readings (HC Deb 8 March 1892, vol 2 cc266-307; HC Deb 26 May 1892 vol 4 cc1857-83; HC Deb 31 May 1892 vol 5 cc338-48).

<sup>74</sup> Powys County Council Common Land Register, RCL 66, entry 1.

<sup>75</sup> HC Deb 8 March 1892, vol 2 c271.

<sup>76</sup> HC Deb 8 March 1892, vol 2 cc274-5.

parts of any common or unenclosed land acquired by the Corporation... (and whether any common or commonable rights in or over such lands shall have been acquired or extinguished under the provisions of this Act or not)...<sup>77</sup>

## 2. Local governance institutions

### 2.1 Manorial Courts

Though often described as a manor and listed as such on the Manorial Documents Register for Wales, the exact legal status of Cwmdeuddwr Grange is somewhat obscure. It is by no means certain that Strata Florida's grange of Cwmdeuddwr was a manor in the medieval period, though the post-Dissolution owners treated their ownership as equivalent to manorial lordship. A search for the Land Revenue Record Office, carried out as part of the Birmingham Corporation exchanges of 1892, placed a question mark over whether Cwmdeuddwr Grange could be considered a true manor.<sup>78</sup> Only limited numbers of manor court records survive for either manor.

#### *Cwmdeuddwr Grange*

No records appear to have survived to show the governance of the grange and rights of pasture under Strata Florida Abbey. Cwmdeuddwr was run by a 'monk-bailiff' who remained in post after dissolution in 1539 but hardly anything can be known for certain about the organization of the grange's upland pastures.<sup>79</sup> Though the early history and manorial status are therefore obscure, successive post-Dissolution landowners were styled 'lord of the manor' of Cwmdeuddwr Grange and seem to have introduced a recognisable manor court system. A limited number of manor court records survive and— with the exception of a late seventeenth-century list of farms — all fall within the period 1722-1879.<sup>80</sup> Court rolls and a presentment book suggest that the court sometimes met twice a year in the eighteenth century, usually in May and October, though for some periods (in the 1730s) only an annual meeting in October is recorded.<sup>81</sup> By the nineteenth century court sittings appear to have been highly infrequent, with the last surviving verdict sheet produced in 1878.

#### *Cwmdeuddwr*

Records for the smaller manor of Cwmdeuddwr range from 1371 to 1891, though they include only a small number of court rolls and presentments.<sup>82</sup> It seems that the union

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<sup>77</sup> 55 & 56 Vict., Ch.clxxxiii, clause 53.

<sup>78</sup> PCA, R/D/LEW/3/106, searches, 27 July 1892.

<sup>79</sup> Williams 2001, pp. 217, 280.

<sup>80</sup> Records survive in the National Library of Wales (e.g. presentment, 1757: Dolaucothi MSS & Papers schedule II p.16, MS vol. 12 (57), and Powys County Archive Office (e.g. list of farms, 1600-1700: R/D/LEW/5/135; list of lords and stewards, 1722-1889: R/D/LEW/5/133-4; presentment book, 1722-1817: R/D/Lew/3/96-97; courts rolls, extracts rel to boundaries, 1809-1839: R/D/LEW/5/136; precepts to summon court (3) 1837-1844: R/D/LEW/5/138-40; court roll, 1873: R/D/LEW/5/141; court roll, 1878: R/D/LEW/5/142).

<sup>81</sup> PCA, R/D/LEW/5/141 court roll 1873; R/D/LEW/5/142 court roll 1878.

<sup>82</sup> Records survive in the National Library of Wales (e.g. letters patent, 1633: Harpton Court vol 1, p.31, 1715-16; court rolls, 1688: Powis Manorial records group II, p.179, various manors; legal papers, 1800-1899: NLW MS 12878D MSS vol. IV; recognition of western boundary, 1842 (copy): Crosswood Group 1, p. 406, II.1207-8); Powys County Archive Office (e.g. misc. notes, extracted from court rolls, 1780-1878: R/D/Lew/5/145; correspondence rel to properties, 1844-1880: R/D/LEW/5/146-

of the two manors after 1825 eventually resulted in the merging of jury and court officers, though they were still nominally held as separate courts. Thus the court date, venue and list of jury members for Cwmdeuddwr and Cwmdeuddwr Grange in 1878 were identical (apart from the addition of three extra jurors for Cwmdeuddwr): jurors were being summoned from across the two manors, with no obvious territorial divide. But the slightly earlier records suggest greater discrimination between the two manors. At the 1873 court for Cwmdeuddwr there was little overlap in jury membership: only four of the fourteen jurors were the same as those for the court held at Cwmdeuddwr Grange in the same year.<sup>83</sup>

## **2.2 Transition from manorial to post-manorial institutions**

Whilst manor court sittings became less frequent in the nineteenth century – in common with the general trend seen elsewhere – a more obvious and sudden break in management systems occurred here than in our other case study areas, as a result of the major dislocation caused by the Birmingham Corporation Water Act of 1892 (55 & 56 Vict., Ch. clxxiii). To understand the process of transition it is necessary to examine the terms of the 1892 Act and its aftermath.

As intimated above, the Birmingham Corporation Water Bill had a rocky passage through Parliament in 1892, touching on some of the most highly contentious issues of the day, including questions of enclosure and common rights, land tenure, public access to the landscape, Welsh nationalism, public health, and competition for natural resources, with cities and towns struggling for access to clean water. In an acerbic comment, the MP for Swansea District suggested that ‘the Members for Birmingham and London regard Wales as a carcass which is to be divided between them according to their own wants and wishes.’<sup>84</sup> In the context of common land, there was disquiet among those who perceived the Water Bill as ‘a gigantic Enclosure Bill’,<sup>85</sup> contravening recent trends towards preservation of common land. The member for Mid Glamorgan compared the Water Bill unfavourably with the tenets of the 1876 Commons Act:

It has been pointed out that this House has been very careful in regard to the rights of common land. I cannot for the life of me see why this House, by a Private Bill, should practically repeal the Act of 1876...Do you wish to repeal the provisions of that Act?...Birmingham is going to inclose 30,000 acres of common. There have been a great many inclosures since the Act of 1876 was passed; but the House should know, if the Bill is passed, that this will be a greater inclosure of common than all the others put together.<sup>86</sup>

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81; court roll, 1873: R/D/LEW/5/143; court roll, 1878: R/D/LEW/5/144; statement of boundaries, 1891: R/D/LEW/5/182-83), and The National Archives (e.g. estreat roll, 1530-1532: SC 2/227/50; estreat rolls, 1581-1602: LR 11/55/795-56/809; estreat rolls, 1614-1616: LR 11/57/812-813; survey, 1650: E 317/Radnorshire/1; papers rel to value, extent and ownership, 1672-1796: C 107/35; estreat roll, 1674-1676: SC 2/227/67; estreat rolls, 1680-1692: LR 11/57/820-822; estreat roll, 1686-1688: SC 2/227/71; presentments, 1780-1786: CRES 5/192; also various ministers’, reeves’ and foresters’ accounts in classes SC 6 and LR 8).

<sup>83</sup> PCA, R/D/LEW/5/141-144 court rolls 1873 & 1878.

<sup>84</sup> HC Deb 8 March 1892 vol 2 c288.

<sup>85</sup> Thomas Ellis (Merionethshire), HC Deb 8 March 1892 vol 2 c274.

<sup>86</sup> S. T. Evans, HC Deb 8 March 1892 vol 2 cc298-9.

Sir Joseph Bailey, M.P. for Hereford, also pointed to the unprecedented scale of the purchase. Bailey was a major landowner in the Llanwrthwl and Claerwen area, and therefore not disinterested in the case: as lord of the manor of Builth, he would shortly sell large areas of land to the Corporation (see 1.1). He stated, 'It is proposed that of a tract of 70 square miles Birmingham shall become the owner. This demand embodied in this Bill is larger far than any that has ever been advanced in the history of the world.'<sup>87</sup> Bailey also raised concerns about graziers, claiming that 'the sheep farmers are looking with the greatest anxiety upon this Bill. They graze their sheep on the mountains, and, if these mountains are denuded of sheep, great distress will certainly be occasioned.'<sup>88</sup> In a similar vein, commons preservation campaigner George Shaw Lefevre claimed that 'there are no fewer than 400 farmers who have rights of common and rights of cutting turf over the 32,000 acres of land which this Bill proposes to take, and I am told that these rights are essential to the very existence of these small farmers.'<sup>89</sup>

The resulting 1892 Act allowed Birmingham Corporation compulsorily to purchase the soil of the upland watershed and areas designated for flooding, including farms and other properties which fell within the designated area. Thus some farms having rights on the upland pastures would in fact be lost to flooding; those which were above the waterline would be run as in-hand or tenanted farms by Birmingham Corporation. But the upland watershed was also subject to common rights or sheepwalks belonging to farms lying *outside* the purchase area and therefore not within the Corporation's immediate control. In this instance, Parliament refrained from giving Birmingham Corporation powers to extinguish common rights compulsorily, except where they had purchased the dominant tenements themselves, or where commoners consented to having their rights bought out.<sup>90</sup> Indeed, in its final incarnation, the Act made provision for the possibility that the lands would remain common, giving the Corporation powers to make byelaws under the 1876 Commons Act. But what the Act also did was to give Birmingham Corporation power to acquire commoners' rights *with* their consent, and power to purchase what were described as the 'settled' – presumably heafed – flocks on common land in the watershed:

In any case where sheep are settled and depastured on any lands acquired by the Corporation under the provisions of this Act ... or in respect of which the owner of such sheep exercises commonable rights ... the Corporation shall if the owners of such sheep so require purchase the same at a price to be settled on the basis of the value of a settled flock according to the custom of the

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<sup>87</sup> HC Deb 8 March 1892 vol 2 cc278-9.

<sup>88</sup> HC Deb 8 March 1892 vol 2 c279.

<sup>89</sup> HC Deb 8 March 1892 vol 2 cc281-2. Lefevre contended that the views and interests of many tenant farmers had not been taken into account, since it was their landlords who were legally the 'commoners' in the case (they owned the rights), and it would be landlords who negotiated terms and received compensation for any rights lost.

<sup>90</sup> According to the Act: 'The Corporation shall not except by agreement acquire or extinguish any common or commonable rights in or over the lands delineated on the deposited plans and situate within the parish of Yspytty-Ystwyth in the county of Cardigan the parish of Llanwrthwl in the county of Brecknock and the parish of Llansantffraid-cwmdeuddwr in the county of Radnor and the parish of Llangurig in the county of Montgomery except in or over such lands as are within the limits of deviation shown upon the deposited plans in respect of the reservoirs and works by this Act authorised and all such common or commonable rights (except as aforesaid) may be exercised and enjoyed as if this Act had not been passed subject nevertheless to the provisions of and the byelaws authorised by this Act', 55 & 56 Vict., Ch.clxxiii., clause 47.

country and as between incoming and outgoing tenant... The expression 'settled and depastured' in the section shall apply only to sheep settled and depastured for not less than one year on any commonable land acquired by the Corporation or on any land to which such commonable land is appurtenant.

Thus there was provision within the Act for Birmingham Corporation either to continue to manage the land as common and permit commoners to exercise their rights within the framework of byelaws; or to acquire rights and flocks by agreement and thereby develop complete authority over all land within the watershed, extinguishing common rights over it. The Corporation opted for the latter course, engaging in a complex process of purchasing manorial rights, common rights, lands and tenements, as detailed in the estate terrier and plans, mentioned above.<sup>91</sup> In addition, a second Water Act was passed in 1902 (2 Edw. 7, c. xviii) to deal with issues not considered in the 1892 Act, and to increase the extent and time-scale of the Corporation's powers of compulsory purchase.<sup>92</sup>

Once the Corporation had bought and extinguished common rights to the individual sheepwalks, they then allocated some to their in-hand farm tenants, and leased others back to graziers from outside the watershed. Thus, for example, in 1902, John Jones of Parc Farm signed a tenancy agreement in order to rent both the Parc sheepwalk of 183.2 acres and also the hefted flock of 270 sheep upon it, previously being the property of his landlord, the Rev. William Edward Prickard (owner of the Dderw estate), and now in the possession of Birmingham Corporation. The annual rental for the sheepwalk was £9, and for the flock, £9.9.0. In this example, Birmingham Corporation was continuing the tradition of the 'landlord's flock'.<sup>93</sup> That this process could sometimes prove contentious is shown by correspondence relating to the sale and rental of Pen-yr-ochr sheepwalk. A memorandum of February 1902 shows that the owner of Pen-yr-ochr and Rhiwafon farms agreed to sell 'All the sheepwalk or right of pasture Commonable and other rights whether sole several and exclusive or otherwise in respect of the said farms of Penrochr and Rhiwafon' for the sum of £2300. But having agreed to sell the sheepwalk vacant of sheep, the vendor subsequently requested payment for some 1400 animals. The Town Clerk of Birmingham Corporation advised that if he dropped his additional demand the transfer of the sheepwalk could proceed immediately and he could 'have the sheepwalk back at a Rental of £40 per annum'; otherwise, the matter might end in a 'costly law suit'.<sup>94</sup>

In practice, there does appear to have been an attempt to keep some sheepwalks linked with their previous in-bye farms: the tenancy agreement for a sheepwalk might stipulate that if a tenant farmer quitted or lost his tenancy of the relevant farm (not necessarily owned by Birmingham Corporation) he must inform the Corporation and presumably surrender his tenancy of the corresponding sheepwalk.<sup>95</sup> But to those

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<sup>91</sup> Elan Estate Office: Estate plans and terrier.

<sup>92</sup> In total four acts were passed in connection with the Corporation land purchases and other aspects of construction and supply: in 1892 (55 & 56 Vict., c. clxxiii), 1896 (59 & 60 Vict., c. xxxii), 1902 (2 Edw. 7, c. xviii) and 1905 (5 Edw. 7, c. lviii).

<sup>93</sup> R/D/WWA/1A/A7/47/1. Parc tenancy agreement, 1902. The sheepwalk was sold to Birmingham Corporation in 1902. The tenant of a 'standing' flock was entitled to the produce of wool and sales of surplus animals.

<sup>94</sup> R/D/WWA/1A/A7/67/3. Correspondence re Pen-yr-ochr farm, 1902.

<sup>95</sup> See, for example, Clause 38 in the Parc tenancy agreement of 1902, R/D/WWA/1A/A7/47/1.

farmers intimately involved, the separation of sheepwalk from holding could seem both illogical (the holding made little financial sense without access to sheepwalks) and traumatic. In 1902, Edward Thomas of Llanfadog-issa ran a flock of 400 sheep on the sheepwalk known as 'Wendrid', covering some 188 acres, and on 'Esgair Rhiwlan Hill', comprising 640 acres, he ran 1200 sheep, and also some cattle and horses. The Corporation intended to purchase approximately 100 acres of Wendrid, and the entirety of Esgair Rhiwlan Hill. Thomas petitioned against the proposals, stating in his evidence that,

I have lived at Llanfadog for the last 35 years, and my parents & grandparents, lived there before me, and I do not wish that I or my children should be deprived of the value of the sheepwalk attached to the Farm, which would leave the Farm a very indifferent one, and would be a great loss to me as the houses, and buildings would be of no value if the sheepwalk is taken from me. If the Corporation acquire the whole of the 'Wendrid' and 'Eskir Rhiwlan' Hills I should only have left about 88 acres of sheepwalk above Llanfadog Farm and should have to sell my flock of 1,600 sheep, except about 150 which I could keep on the remaining 88 acres of 'Wendrid' sheepwalk. I should also have to sell a considerable portion of my Cattle.<sup>96</sup>

The proposed powers of compulsory purchase were seen by the Thomas brothers (who had already sold the farms and sheepwalks of Hirnant and Aber Calettwr to the Corporation) as a step too far, extending the Corporation's control over lands which were not, they argued, needed for the construction of reservoirs or for other works: 'there is absolutely no necessity for the Corporation to acquire the said commonable lands'.<sup>97</sup> They did not wish to lose their grazing rights on the sheepwalks, nor see their rights to turbary, rushes and ferns extinguished – rights which they claimed were 'of considerable value and convenience'.<sup>98</sup>

As noted above, changes in landownership also impacted on an established network of shepherds' huts and, as a consequence, on management of the sheepwalks. Correspondence between W. E. Prickard of Dderw, owner of a number of farms having rights of sheepwalk on the common, and his solicitor, Clarke, shows that they were concerned that sheepwalks might be leased back without the shepherds' huts from which to work them: Clarke noted that, 'unless bits of freehold were also leased in order to erect huts [for shepherds] it might be difficult or impossible to work the sheepwalks and if you take bits of each freehold what is the Corporation to do with the residue and if you take the whole of them what use could you make of them being as I understand forbidden to use them for agricultural purposes'.<sup>99</sup>

The process of transition from 'true' common lands to water catchment area was evidently contentious in its time, and involved a level of landscape intervention not seen in our other case study areas; yet the remodelled landscape still retains a distinctive communal farming culture, and the reservoirs and dams have become an important tourist destination in their own right, as Joseph Chamberlain predicted. Though the process by which the transfer and reassignment of farms, sheepwalks and

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<sup>96</sup> NLW Mayberry (3) 7201: brief for petitioners, 1902, p. 6.

<sup>97</sup> NLW Mayberry (3) 7200: petition, 1902, ss.12, 15.

<sup>98</sup> NLW Mayberry (3) 7201: brief for petitioners, 1902, p. 3.

<sup>99</sup> Dderw Estate Papers [Private Collection]: letter, Mr Clarke to Rev. W.E.Prickard, 21 July 1897.

shepherds' huts occurred requires further study, it is evident that through a combination of compulsory and agreed purchases, common grazing rights were deemed to have been extinguished on the Elan Estate, and this was a reason for Commons Commissioners to de-register RCL 66 in 1981.

### **3. Local governance mechanisms and regimes**

#### **3.1 Manorial Byelaws**

Surviving records provide some information about manorial governance of common land. A presentment book, covering the period 1722-1817, and two court rolls (dated 1873 and 1878), for Cwmdeuddwr Grange, are particularly rich in detail.<sup>100</sup> It must be borne in mind that the presentment book is not a direct record of court sittings, but a volume into which extracts from earlier records have been copied, at different times and by different writers. It is thus not a reliable record of the regularity or continuity of the court in this period (runs of records might have already been lost or destroyed by the time the presentment book was being compiled). The most frequently-mentioned offences are trespasses by those engaged in unlawful cutting of turf or grazing of cattle. A presentment at the court in 1737 is representative: 'We the Jurors doe present all that doe cut turfs out of the Lordship and doe turn Cattle in the Lordship.'<sup>101</sup> On the whole, the focus appears to be on the exclusion of trespassers rather than on close management of those *with* legitimate rights.

#### ***Pasture***

Control of 'foreign' livestock seems to have been a recurring concern for the court, and one of the most frequent subjects of presentments: 'turning and feeding' cattle on the common, or in the lordship, is a regular offence. The presentment book routinely records an order against those not resident in the manor (often referred to as 'foreigners', and on one occasion labelled as 'aggressors'<sup>102</sup>) turning animals on the commons. For example, in 1811 it was stated that:

We also present all Persons who are not Inhabitants or holders of a Message for depasturing or turning any Sheep Cattle or Horses from out of the Manor upon the Common or Waste Lands within the Manor and amerce each offender in the sum of 39s 11d.<sup>103</sup>

The majority of presentments appear to concern breaches of this rule. In 1741 ten men were named and fined for turning 'Strange catels in Grains Cwmytydwr', seemingly a reference to trespass by outsiders, though it might alternatively refer to landholders from within the manor caught depasturing an outsider's cattle (on 'tack').<sup>104</sup> More explicitly, seven men (including some of those fined in 1741) were presented in 1745 for 'turning and depasturing of forren Cattles within the afores[ai]d Lordship having no right Title thereto.' The regular occurrence of certain names suggests that persistent offenders were ignoring the presentments of the court, or found the fines insufficiently punitive to dissuade them – but the frequency of

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<sup>100</sup> PCA, R/D/LEW/3/96 presentments book 1722-1817; R/D/LEW/5/141 court roll 1873; R/D/LEW/5/142 court roll 1878.

<sup>101</sup> PCA, R/D/LEW/3/96 presentments book 1722-1817, 19 October 1737.

<sup>102</sup> *Ibid.*, 24 May 1722.

<sup>103</sup> *Ibid.*, 3 May 1811.

<sup>104</sup> *Ibid.*, 28 October 1741.

common surnames makes such assertions difficult. In addition, the relationship between the two manors of Cwmdeuddwr Grange and Cwmdeuddwr requires clarification: it is not clear whether there were rights of vicinage, for example, or whether graziers from the smaller manor of Cwmdeuddwr might be among those ‘foreigners’ routinely fined. On balance, it seems probable that some, at least, of these presentments relate to ‘tack’, the agistment of animals from lowland farms on hill grazings over the summer months.<sup>105</sup> Moreover, the occurrence of persistent offenders may suggest that the ameracements were in reality a licensing system for livestock from outside the manor. It is possible that, far from attempting to enforce exclusion, regular presentments against named individuals obscure a tacit acceptance of unlawful ‘tack’, provided that those involved paid for the privilege.

Despite the evidence that sheepwalks were an important feature of the common grazings, and that sheepwalk boundaries were sometimes subject to dispute, they are only rarely mentioned in orders and presentments. Occasionally there is explicit reference to trespass involving a sheepwalk, as in 1807, when two men from Cardiganshire (and therefore outsiders) were amerced for ‘turning sheep upon Glanhirin sheep walk having no right so to do’.<sup>106</sup> A long section of Glanhirin’s sheepwalk boundary marched with Cardiganshire and the presentment presumably reflects the difficulty of policing manorial boundaries in the remote wastes along the upland watershed. But this reference to a sheepwalk is a relatively isolated case. It is possible that holdings were thought to effectively ‘own’ their sheepwalks on the common, and that the court had little authority over them: thus whilst the jury might generally refrain from intervening in their fellow landholders’ sheepwalks and internal grazing problems, they were keen to name and fine outsiders who tried to trespass on sheepwalks within the manor.

### ***Turbary***

Turbary appears to have been an important resource in the area, and closely guarded from intruders from outside the manor, with orders against illegal turf-cutting being a regular element of court business. Turf-digging had a long history: there were ‘old turf pits’ near Aber Glanhirin in 1585 and at least two turbaries on the boundary between the manors of Grange and Cwmdeuddwr in 1797.<sup>107</sup> A number of presentments refer to illegal turf-cutting, with a high levels of amercement. In 1734 some 23 people from outside the lordship were named and fined for cutting turf,<sup>108</sup> and in 1811 the court ordered:

We present all Foreigners and Persons not resident within this Manor for cutting Turf within the Manor and amerce each offender in the sum of 39s/11d.<sup>109</sup>

Whilst the court was obviously making an effort to control access to turbary, the repeated references to intrusions perhaps suggest that its attempts were failing. The proximity of the town of Rhayader and its non-agricultural population with limited access to fuel rights may explain the persistence of illegal peat-cutting. Twentieth-

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<sup>105</sup> On tack, see Howells 2005, pp. 116-7.

<sup>106</sup> *Ibid.*, [no date given] 1807.

<sup>107</sup> Banks 1880, p. 9; PCA, R/D/LEW/3/96.

<sup>108</sup> *Ibid.*, 28 October 1734.

<sup>109</sup> PCA, R/D/LEW/3/96 presentments book 1722-1817, 3 May 1811.

century evidence reveals the continuing importance of turbary rights, particularly for shepherds living in huts far distant from any other source of fuel.<sup>110</sup>

### ***Estovers***

Reference to estovers such as heather or bracken are few compared to the regularity of fines for unlawful grazing and cutting of turf, though occasional orders were made. Again, the focus was on excluding outsiders without rights of estovers, as in 1878, when the court presented ‘all foreigners...from cutting Turf Fern and Rushes’.<sup>111</sup> One eighteenth-century presentment for taking heather from the common seems to suggest that heath-burning was being practised on the sheepwalks: Benjamin Lewis of the town of Rhayader was presented ‘for drawing or pulling of Brand or the unburnt part of heath within the s[ai]d Lordship having no right title thereto.’<sup>112</sup> The cutting of bracken for litter continued until well within living memory.<sup>113</sup>

### ***Stone***

Unlawful getting of stone receives infrequent mention in these records, though when it does, the level of amercement was, again, high (39s 11d). For example, in 1811, the court ordered that,

all persons except the Lord of the Manor who trespass upon the Waste Lands within the said Manor for raising and digging for Stone or Tile thereon and we amerce each offender in the Sum of 39s 11d.<sup>114</sup>

Similar presentments were made in 1813, 1815, 1816, 1817, perhaps suggesting that the lords operating in this period were more concerned than their predecessors to assert their mineral rights, perhaps in the context of the exploitation of lead deposits.<sup>115</sup>

### ***Encroachment***

The building of shepherds’ huts (*lluestau*) on the common and the enclosure of small acreages adjacent to them have been noted above. Although an integral part of the hill farming system, they represented encroachments on the lord’s soil. This may be the context of the references to encroachments and the erection of cottages on the waste, which are a feature of the court records from the study area, most of which appear to concern small intakes from the common.<sup>116</sup> In 1804 the court issued a general order which would seem to suggest that encroachments were plentiful: ‘all Incroachments and common nuisances and erected upon the said common and waste and order the same to be taken out and removed.’<sup>117</sup> That such encroachments might have been long established, and their occupants or users resistant to court authority, is suggested by a later record of 1878, in which the jury ordered that they ‘Continue the presentments made and Continued at former Courts of the Several Encroachments made from the wastes of this Manor’. The same court presented an encroachment

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<sup>110</sup> NLW Mayberry (3) 7201: brief for petitioners, 1902, p. 7.

<sup>111</sup> PCA, R/D/LEW/5/142 court roll, 18 July 1878.

<sup>112</sup> PCA, R/D/LEW/3/96 presentments book 1722-1817, 24 October 1745.

<sup>113</sup> Information from Mr Pugh, Parc Farm and Mr G Evans (Pant-y-dwr), 2008.

<sup>114</sup> PCA, R/D/LEW/3/96 presentments book 1722-1817, 3 May 1811.

<sup>115</sup> For more information, see <http://www.cpat.org.uk/projects/longer/histland/elan/evmeta.htm>.

<sup>116</sup> *Ibid.*, 14 October 1791, 17 May 1725,

<sup>116</sup> 3 May 1729,

<sup>116</sup> 28 April 1741,

<sup>116</sup> 26 October 1742.

<sup>117</sup> *Ibid.*, 20 October 1804.

from the waste at Lluest Cwmbach, which seems to have been long established.<sup>118</sup> It is possible that these offenders had encroached during a period of lapsed court sittings or that the manorial administration was simply too weak or remote to intervene.

The evidence suggests that new cottages continued to appear on the common until the nineteenth century, the court generally requiring them to be taken down. Some were in extremely remote locations, such as those built at ‘Abernantgarrow’ (cf. Nant Garw) in 1797 and ‘Brynyair’ (cf. Nant Bryn-y-ieier) in 1811, both on the extreme north-west limits of the manor, near the headwaters of Afon Gwngu.<sup>119</sup> It has not been ascertained whether all these cottages were indeed pulled down – nor whether they fall into the category of *lluestau* or, rather, were squatters’ cottages, hastily erected overnight (*ty-un-nos*).<sup>120</sup> In a legal dispute of c.1837-8, it was said of the Radnorshire manors: ‘Within the Boundaries of these Manors, there are numerous Encroachments on the Waste – some made by Owners or Occupiers of adjoining Property or farms, but most of them by poor labouring People, many of whom had erected and occupied cottages.’<sup>121</sup> If some cottages were ‘one-night houses’ and hence, according to custom, acquiring legitimacy, could it be that some of those presented for unlawful grazing were encroaching smallholders and cottagers, living on tiny holdings carved out of common land? A tangible legacy of eighteenth- or nineteenth-century cottage building on the wastes may survive in the presence of ‘pillow mounds’ (usually interpreted as rabbit warrens) in Cwm Nant-y-ffald (SN 89 72): elsewhere in Radnorshire pillow mounds are associated with ‘one-night houses’, suggesting that cottagers attempted to scrape a living by answering the growing demand for rabbit skins and meat.<sup>122</sup>

### **3.2 Enforcement**

Though not always recorded on a regular basis, the court could be found appointing a range of officers, variously a bailiff, reeve, hayward, petty constables, and affearors. Petty constables were appointed for the two divisions of Diffryn Elan and Diffryn Gwy. This implies that a network of policing was in operation between court sittings, generating the fairly frequent presentments discussed above. However, whether the penalties imposed by the courts were enforced is less certain. Amercements were often high (often the customary maximum of 39s 11d), but many presentments were recorded without mention of a penalty: it is not clear whether penalties were not set in these cases, or whether it was not thought necessary to copy them into the presentment book. Similarly, it is not possible to tell from these records whether amercements were actually paid by the offenders – the repetition of some names (particularly cattle graziers) would seem to imply that either they went unpaid, or that the penalties were too low to be a deterrent.

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<sup>118</sup> PCA, R/D/LEW/5/142 court roll, 18 July 1878. A building and an adjacent small enclosure at Lluest Cwm Bach are marked on the tithe plan of 1841.

<sup>119</sup> PCA, R/D/LEW/3/96 presentments book 1722-1817, 9 October 1797, 3 May 1811.

<sup>120</sup> For encroachments and cottages on wastes in Wales, see Silvester 2007.

<sup>121</sup> NLW MS 12878 D: legal papers re encroachments, undated [c.1837-8]. The Commissioners of Woods and Forests were accused of being inconsistent in their dealing with encroachments on commons and wastes belonging to Crown manors in Radnorshire. Landowners who had purchased manors from the Crown in the 1820s complained that they were unable to benefit from the full extent of the property they had bought, since inhabitants of encroachments were refusing to either pay rent or throw down their cottages.

<sup>122</sup> Silvester 2004, p. 64.

### 3.3 Post manorial governance mechanisms

#### *RCL 36 Cwmdeuddwr Common*

The registered common land outside the Elan Estate is managed by the Cwmdeuddwr Commoners and Graziers Association., which was established in **[date to be confirmed]**. Some degree of communal management is visible in the landscape, notably in the twentieth-century washfold, in use until the 1970s, and sorting fold in the Nant Gwynllyn valley, which were used by different commoners, rather than being private folds.<sup>123</sup>

#### *Elan Estate (RCL 66)*

The Birmingham Water Act 1892 presents an interesting contrast to examples of post-manorial governance in our other case study areas. The overriding goal was clean water, but graziers' legal interests were to be accommodated where possible. For example, the Act empowered the Corporation to prohibit washing of sheep (which sometimes involved the use of arsenic), and prohibit use of watering places for sheep, cattle, and horses, in any place where these might cause pollution, but the Corporation was required to provide alternative places where graziers *could* wash and water their animals; similarly, the Corporation was obliged to compensate any commoners who suffered as result of the new regulations and restrictions. The Birmingham Water Act 1892 made provision for management should the lands remain common, giving the Corporation powers to make byelaws under the 1876 Commons Act, regulating the cutting of turf, heather, bracken and gorse; fishing and recreation; and prevention of nuisances and any act which might cause pollution to the water catchment. The relevant county councils had power to object to a scheme of byelaws and request an inquiry. However, it seems unlikely that any such byelaws were introduced, since common rights were extinguished.<sup>124</sup>

Rules contained in early tenancy agreements provide evidence of how the watershed was regulated and protected, upholding many of the terms and conditions contained in the Birmingham Corporation Water Acts of 1892, 1896 and 1902. Thus, for example, the early agreements of 1902 contain standard clauses designed to prevent pollution, damage or alteration to the land surface of the watershed. Tenants were prevented from washing sheep at locations other than those stipulated by the Corporation (the Corporation built new wash folds in safe locations), and were not permitted to 'pare bett or burn' any land, gorse, heather or coarse grasses, cut any peat or turves, or alter the levels of land or contours of the land, without consent.<sup>125</sup>

Certain of the regulations were aimed at preserving the integrity of the sheepwalk (the tenancy agreement included an outline map) and also the size and quality of the landlord's 'standing' flock upon it, where this was in the ownership of the Corporation. Tenants were instructed to 'carefully maintain and use his best

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<sup>123</sup> Information from Mr Pugh, Parc Farm, 2008. The washfold is at SN 933 697; the sorting fold at SN 927 699.

<sup>124</sup> Birmingham Water Act 1892, clauses 48-51. The Elan Estate is unaware of such byelaws ever being introduced; we are grateful to Michael Rolt for this information.

<sup>125</sup> R/D/WWA/1A/A7/47/1. Parc tenancy agreement, 1902, clauses 6, 10, 31.

endeavours in keeping and maintaining the present boundaries of the unenclosed sheepwalks so as to prevent encroachments', and to 'exercise due care and diligence in the management and improvement' of the flock. They had to return no fewer animals at the end of the tenancy than they had originally rented (or pay the difference), and all sheep which were the property of the Corporation were to be marked 'CB'. Tenants were also prohibited from taking in 'tack' summering or wintering of sheep, cattle or ponies, or subletting their own flocks or cattle. However, it was evidently expected that some of the hogs or yearling sheep from the Elan flocks would be sent away elsewhere for winter tack, 'as is customary in the district', returning in April.<sup>126</sup>

Annual sheep stock counts of all tenant farms and sheepwalks were made at the shearing, providing an important documentary record of stocking numbers on the estate, down to the level of numbers of lambs, wethers and stores (see Appendices).<sup>127</sup> In return for maintaining the Corporation's standing flock, the tenant was entitled to the produce of wool and sales of surplus animals, adhering to the 'custom of good shepherding' in the parish: that is, no wethers under four years old were to be sold, and ewes which were no longer fit for breeding were to be sold and removed from the sheepwalk.<sup>128</sup> When the lessee of the Cwmybyr sheepwalk and flock attempted to sell animals aged 2-3 years, both he and the auctioneer were warned not to permit the sale: it was claimed that the animals belonged to Birmingham Corporation as part of their standing flock.<sup>129</sup>

## **4. Historical concepts of sustainability**

### **4.1 Ecological sustainability**

Though unlawful cattle grazing and unlawful getting of turf were frequently recorded, these subjects are generally mentioned in the court records without the 'ecological' references that we have sometimes seen elsewhere. There are no references to the commons being 'overcharged', or of 'hurt' or 'damage' done to the surface of the common by the getting of stone, turf, estovers or lime. Perhaps it was not in the nature of this court to state the effects or qualify the nature of unlawful activities on the common; or perhaps the persons copying original records into the presentment book took down only the bare facts.

It is of course possible that unlawful grazing and turf-cutting, though a source of annoyance, did not make a serious physical impact on this vast area of waste at this time; and that the court was addressing a purely social-legal question of exclusion rather than consciously protecting a natural resource. Certain commentators of the time suggest that the upland pastures in Mid Wales were in fact understocked. Taking a negative view, reporter John Clark informed the Board of Agriculture in 1794 that the commons of Brecknock were understocked because the commoners were neglecting to improve their closes and thus failing to increase winter fodder: 'In many

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<sup>126</sup> R/D/WWA/1A/A7/47/1. Parc tenancy agreement, 1902, clauses 19, 23, 24, 26, 27, 28.

<sup>127</sup> R/D/WWA/1A/A7/47/1. Parc tenancy agreement, 1902, clause 21. See also...

<sup>128</sup> R/D/WWA/1A/A7/47/1. Parc tenancy agreement, 1902, clauses 18, 20, 21.

<sup>129</sup> R/D/WWA/1A/A7/66/1-3, correspondence regarding Cwmybyr, 1915.

places, therefore, the commons are sufficient to keep in summer three times more stock than the parishioners can send there.<sup>130</sup> Such a view is compatible with the evidence for a ‘share-cropping’ system in the early modern period, whereby lowland farmers gained access to what was presumably surplus upland grazing by hiring stocks of cattle and sheep to hill farmers (see above, 1.2.3). More positively, Youatt (a veterinary surgeon and writer on stock breeding in the nineteenth century) observed that the upland farmers of Brecon and Radnor ‘rarely overstock their ground and the cattle have plenty of food both in Winter and Summer...however coarse it may be.’<sup>131</sup> Though this requires further investigation, the possibility that resources were exploited at a relatively low density or even under-utilised in the eighteenth and nineteenth centuries must be considered.

After 1892 a new dimension was added to the concept of ecological sustainability on the Elan Estate. The Birmingham Water Act 1892 framed the way in which stocking would thereafter be governed, but it had as its overall object not conservation of an agrarian resource *per se*, but rather conservation of a clean and unpolluted water source – perhaps an equivalent to our contemporary notions of an ‘environmental benefit’ or ‘public good’. Controls on where graziers could wash and water their animals, the type of agro-chemicals that could be applied, and so on, have been designed to protect the watershed, and the role of grazing has no doubt been complex and at times contested. Like sustainable management of common land, cultural and scientific understandings of what constitutes the sustainable management of water gathering grounds will have undergone significant changes in the period since 1892.

#### **4.2 Equitable access to resources**

The manor court evidently attempted to maintain rules of exclusion regarding turf and cattle grazing. Indeed, with no obvious mention of controlling overstocking by legitimate rights holders and few recorded disputes over the boundaries of sheepwalks, the central focus seems to be on excluding and/or accruing fines from non-rightsholders rather than maintaining equity between genuine commoners. Perhaps the integrity of sheepwalks and grazing numbers were not as troublesome here as might be the case elsewhere in this period: it seems likely that the tradition of each holding having an allotted sheepwalk provided stability of access and allowed graziers to regulate their own affairs without recourse to the manor court. However, this balance may have suffered strain when new cottagers and intakes were created by encroachments on the commons. It might be the case that the relatively weak manorial status, the notion of pastures ‘free to the inhabitants’, and a tradition of semi-private sheepwalks, had engendered an independence from authority; and thus whilst the lords could accrue fines from interlopers and trespassers, they had little leverage over legitimate graziers occupying sheepwalks in the manor.

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<sup>130</sup> J. Clark, *General view of the Agriculture of the county of Brecknock, with observations on the means of its improvement* (1794), p. 39. Clark’s perception of understocking was perhaps as much determined by moral and political factors as by agrarian or environmental ones: his negative view of the commons was typical of the general discourse of the time, as can be seen in his claims that commoners were prone to idleness, vice, immorality and sheep-stealing. Walter Davies (als G. Mechain) took issue with Clark’s assessment that commoners were too idle to improve their farms. Davies argued that ‘To load such a poor farmer with opprobrious epithets, for not manuring and improving his almost Siberian desert, is the next thing to madness’, *General View of the Agriculture and Domestic Economy of South Wales Volume I* (London, 1815), p.164.

<sup>131</sup> Cited in Colyer 1974, p. 9.

### **4.3 Conflicting demands**

The principal conflict in use of the Elan and Claerwen valley uplands has been between public utility – the production of clean drinking water – and pastoral agriculture. Since 1892, protection of the watershed has determined questions of land ownership and management, and graziers have been required to observe strict regulations.

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### **Appendix: Sheep Stock Accounts**

The following table presents information extracted from Birmingham Corporation's sheep stock accounts, taken annually at the shearings in June and July. They comprise a random sample of two years from those accounts now held by Powys Record Office: 1917 and 1961. The original documents also include the names of tenants; the size of the landlords' flock; prices and rents paid; and the numbers of lambs, wethers and stores in each individual flock (information not given here).

The table below shows each tenement and associated flocks/sheepwalks, with some variation between the two periods. By 1961, more flocks had been added to the Corporation's properties (see last ten rows of data). It is noticeable that whereas numbers of lambs and stores increased between 1917 and 1961, the number of 4-year old wethers fell, reflecting a general move away from wether flocks. The 1917 account also mentions a total of 203 cattle (not shown in this table); whereas the 1961 account does not record any cattle. Note: certain flock names are difficult to decipher from accounts and need to be confirmed.

#### **1. Birmingham Corporation, Elan Valley Estate Sheep Stock Accounts, Half-Year Ending 29 September 1917 (PCA R/D/WWA/1A/A8/8) and Year 1961(PCA R/D/WWA/1A/A8/Temp. Nos. 1-7):**

| <b>Tenement</b>       | <b>Name(s) of Flock(s) in 1917</b>                           | <b>Total Sheep Stock 1917</b> | <b>Name(s) of Flock(s) in 1961</b>                   | <b>Total Sheep Stock 1961</b> |
|-----------------------|--|-------------------------------|--|-------------------------------|
| <b>Claerwen</b>       | Groes, Gwarfford, Bryn Hir                                   | 1590                          | Groes, Gwarfford, Brynhir                            | 1337                          |
| <b>Nantybeddau</b>    | Nantybeddau, Llethr Hir                                      | 1757                          | Nantybeddau, Llethr Hir                              | 1977                          |
| <b>Henfron</b>        | Llanchertynewydd, Dwfnant, Blaenymethan, Alltdu              | 1185                          | Llanchertynewydd, Dwfnant, Blaenmethan, Alltdu       | 1642                          |
| <b>Glanhirin</b>      | Cormwg, Pantllwyd, Esgairllwyd, Chwardgoch, Gwarty Glanhirin | 2463                          | Cormwg, Pantllwyd, Esgairllwyd, Chwarel Coch, Gwarty | 2351                          |
| <b>Llanerchlleyn</b>  | Llanerchlllyn, Brithcwm<br><i>(see next also)</i>            | 988                           | Llanerchlleyn  | 188                           |
| <b>Brithcwm</b>       | <i>(see previous also)</i>                                   |                               | Brithcwm   | 576                           |
| <b>Troedrhiwdrain</b> | Upper & Lower Lots, Gwaelodyrhos*                            | 562                           | Upper & Lower Lots                                   | 381                           |
| <b>Penygareg</b>      | Penygareg,   | 686                           | Waun,  | 724                           |

|                                  |   |      |   |      |
|----------------------------------|---|------|---|------|
|                                  | Waun,<br>Cwm  |      | Cwm   |      |
| <b>Rhiwnant<br/>and Nantycar</b> | Careg-yr-Allt,<br>Esgair Ganol,<br>Craig Rhiwnant,<br>Wern,<br>Esgair Garthen,<br>Nant-yr-San | 3039 | Gareg-yr-Ast,<br>Esgair Ganol,<br>Craig Rhiwnant,<br>Wern,<br>Nant-yr-San | 3046 |
| <b>Dolfaenog</b>                 | Dolfaenog   | 402  | Dolfaenog   | 284  |
| <b>Ciloerwynt</b>                | Garn-ddu,<br>Craig fawr   | 832  | Garaddu,<br>Craig fawr  | 963  |
| <b>Tymawr</b>                    | Gwngu,<br>Llechwedd   | 560  | Gwngu,<br>Llechwedd   | 1198 |
| <b>Cerrigcwplau</b>              | Wern-neuadd   | 190  | Wernewydd,<br>Dolfallen,<br>Dyffryn &<br>Bwlchgoch                        | 550  |
|                                  | Dolfallen,<br>Bwlchcoch   | 243  | Dolifor   | 300  |
| <b>Gro Farm</b>                  | Gro Issa,<br>Gro Uchaf  | 681  | Gro Isaf,<br>Gro Uchaf  | 780  |
| <b>Alltgoch</b>                  | Alltgoch  | 414  | Alltgoch  | 401  |
| <b>Ddole</b>                     | Cae Philip Sais<br>Upper<br>and Lower Lots  | 653  | Cae Philip Sais<br>Upper  | 196  |
|                                  |   |      | Cae Philip Sais<br>Lower  | 356  |
| <b>Tyncoed</b>                   | Panrhydnyog   | 218  | Panrhydnyog   | 313  |
| <b>Lluest<br/>Abercaethon</b>    | Upper Flock,<br>Lower Flock   | 914  | Upper Lot,<br>Lower Lot   | 618  |
| <b>Penlon</b>                    | Penlon  | 272  | Penlon  | 239  |
| <b>Nantllemysten</b>             | Esgair Rhydd,<br>Gororion,<br>Nanteyrydd?   | 1133 | Esgair Rhydd,<br>Gororion,<br>Nantcymydd                                  | 1264 |
| <b>Park</b>                      | Park  | 414  | Park  | 729  |
| <b>Llanfadog</b>                 | Dolfolau  | 192  | Dolfolau  | 265  |
| <b>Abergwngu</b>                 | Esgair Rhiwelan,<br>Cornel<br>Bwlchydenlwyn<br>Ifoesmarch                                     | 865  | <i>(see next also)</i>  |      |
| <b>Esgair Rhiwelan</b>           | <i>(see previous also)</i>  |      | Cornel<br>&<br>Bwlchyddenllwyn<br>Iforcymydd?                             | 682  |
| <b>Hirnant</b>                   | Esgair Cwrion?,<br>Cwm,<br>Cefngwair  | 705  | Esgair Criron?,<br>Cwm,<br>Cefngwair                                      | 1022 |
| <b>Esgair Gadair</b>             |   |      | Esgair Gadair   | 526  |

|  |  |               |   |               |
|--|--|---------------|---|---------------|
| <b>(also listed as<br/>'Birmingham<br/>Corporation')</b> |  |               |   |               |
| <b>Tynllidiart</b>                                       |  |               | Tynllidiart                               | 189           |
| <b>Moel Prisdau</b>                                      |  |               | Esgair Garthen,<br>Esgair Bwdran          | 638           |
| <b>Bryngarw<br/>and Esgair Gncog</b>                     |  |               | Bryngarw<br>and Esgair Gncog              | 744           |
| <b>Cwmelyd</b>   |  |               | Cwmelyd                                   | 496           |
| <b>Dyffryn</b>   |  |               | <i>(see<br/>Cerrigwplau)**</i>            |               |
| <b>Blaencoel</b>   |  |               | Blaencoel                                 | 608           |
| <b>Marchnant</b>   |  |               | Gorllwyn,<br>Wern Llywd,<br>Esgair Ceilog | 1949***       |
| <b>Llanerchcawr</b>                                      |  |               | Dalrhiw,<br>Penrhiwelan,<br>Esgair Ceilog | 1705          |
| <b>Llest Callettwr</b>                                   |  |               | Llest Callettwr                           | 337           |
| <b>TOTAL</b>   |  | <b>20,958</b> |   | <b>29,574</b> |

\* The account notes that Gwaelodyrhos sheepwalk was 'done away with in September 1916 as the land was to be taken for planting purposes.'

\*\* The account notes that flocks listed under Cerrigwplau and Dyffryn had been combined.

\*\*\* The figure given for Marchnant on the summary page of the account is 1949, consistent with the given total of 29,574. In the detailed list, however, the total given for Marchnant has been crossed out and replaced with 2049. There are a number of other discrepancies within the documents, which require further investigation.

## **2. Particular of Flocks, Estate Totals, 1917, 1961:**

|                           | <i>1917</i>   | <i>1961</i>   |
|---------------------------|---------------|---------------|
| Total Lambs               | 4,265         | 7,410         |
| Total 4 years old wethers | 1,779         | 1,711         |
| Total Stores              | 14,923        | 20,453        |
| <b>TOTAL</b>              | <b>20,958</b> | <b>29,574</b> |