

AHRC 'Contested Common Land' Project
Historical approaches to case study areas
March 2007

This document is a discussion/working paper created in the preliminary stages of the project in March 2007. It provides a framework for archival work and a scheme of historical research questions to be applied to each of the four case study areas. It is based on the Case for Support submitted to the AHRC. Please do not quote or reproduce sections of this paper without contacting the Contested Common Land team.

A. Overview

We will aim to use manorial court records and other local archive sources to address two key research questions, as stated in the Project Case for Support (p.1) -

Research Questions:

(2.2) How have common law and statute defined the management standards applied to common land since c.1600?

(2.3) What legal, economic and societal instruments have been applied to the management of common land since c.1600?

In so doing, we will meet the following objectives identified for the case study areas, as stated in the Case for Support (p.5) -

Case Study Objectives:

(1) Identify and examine the local governance mechanisms used at local level from the 17th to the 19th centuries under the jurisdiction of manorial courts, and explore how these reflected local communal conceptions of sustainability;

(2) Identify and examine local governance mechanisms used in each case study area following the demise of the manorial courts, up to the passing of the Commons Registration Act 1965, and assess their interplay with changing conceptions of sustainability.

We have not yet addressed whether/how historical approaches and archival work will contribute to Case Study Objectives 3 and 4 – which deal with the period after the Commons Registration Act 1965 – as we feel this needs further discussion.

B. Check-list of Archival sources (primary sources only)

For each case study area we will aim to look at:

(i). *Records in county record offices and regional archives, such as –*

- Manorial records
- Records of other management bodies (conservators, stint-holders' committees, commoners' associations, etc.)
- Also, where relevant –
 - tithe plans and tithe files
 - probate records
 - legal records and solicitors' papers (legal disputes, lawsuits)
 - estate and farm records of commoners and landowners
 - personal papers of commoners, lords of manors (correspondence, diaries etc.)
 - local literature including newspaper articles, antiquarian research papers etc.

(ii). *Records at The National Archives, such as –*

- MAF/Home Office regulation and commons files
- Papers relating to Royal Commission reports and studies
- Tithe files and maps
- Lloyd George's 'Domesday Books', 1910 (Land tax valuations)
- National Farm Survey, 1941-3

(iii). *Others (various archives), such as –*

- Records of stakeholders (e.g. Commons Preservation Society, National Trust, Friends of the Lake District, Utilities e.g. Birmingham Corporation Water, etc.)
- Observations & references in correspondence, travel diaries & literature etc.

C. Historical questions to be applied to case study areas:

We will approach the historical sources identified for each case study area with a standard set of questions. The questions have been separated into four main strands, as explained below -

- **Box 1** suggests a scheme of questions exploring common rights, land ownership and use rights (Relating to Research Q.2.2, and providing essential context for questions in Boxes 2-4).
- **Box 2** suggests a scheme of questions exploring local governance institutions, with questions applicable to any institution identified on the common – whether manorial or other – and questions designed to show the transition from manorial to post-manorial governance (Relating to Research Q.2.2 and 2.3, and Case Study Objectives 1 and 2).

- **Box 3** suggests a scheme of questions exploring local patterns of governance mechanisms and regimes, whether manorial or other (Relating to Research Q.2.2 and 2.3, and Case Study Objectives 1 and 2).
- **Box 4** suggests a scheme of questions exploring local concepts of sustainability (Relating to Case Study Objectives 1 and 2 – specifically ‘local communal conceptions of sustainability’ and ‘changing concepts of sustainability’. Note: this will also have some relevance to Research Qs.2.1 and 2.4, in respect of the wider bibliographical study of sustainability).

Box 1 Identifying local common rights, property rights and use rights

**Relating to Research Question 2.2.,
and Case Study Objectives 1 and 2.**

1. What are the boundaries of the common? Are they clearly defined?
2. Who owns the soil?
3. What land tenures are associated with the manor (e.g. property rights of individual farmers and/or commoners)?
4. Who is entitled to common rights?
5. Which common rights apply (e.g. pasture, turbary, estovers etc.)?
6. What is the legal basis for the common rights (e.g. appendant, appurtenant, levant and couchant, *sans nombre* etc.)?
7. Are any rights ‘in gross’ attached to the common?
8. Do forest rights apply?
9. Do foreshore rights apply?
10. What mineral and/or game rights might apply?
11. What rights of public access are there?
12. What statutory rights apply? Are there any -
 - (a) statutory designations?
 - (b) management agreements (or other managerial devices where appropriate)?

Box 2. Identifying local governance institutions

Relating to Research Questions 2.2. and 2.3, and Case Study Objectives 1 and 2.

A. For each governance institution identified on this common -

A1. Date range of institutional records - what are the earliest and latest relevant records for this institution? How comprehensive are the records? Are there significant gaps or 'silences'?

A2. Can we identify the duration of effective governance?

A3. What is the legal status of the institution (e.g. external validity, powers of enforcement)?

A4. Can we reconstruct the structure of the institution (e.g. the ways in which decisions were made, the locus of authority, key actors & officers etc.)?

A5. Who is involved in its design?

A6. How are decisions made?

A7. Who has ultimate authority – lord, commoners, state, other?

B. Transition from manorial to post-manorial institutions -

B1. When does manorial governance of common land begin to fail? At what point can we say that it has come to an end? Why at this time?

B2. What, if anything, follows manorial governance?

B3. Is there evidence of a new legal scheme (e.g. regulation under a Commons Act)?

B4. Is there a new management body (commoners' association, stint-holders' committee, conservators, parish council, other...?)

B5. If so, when does it appear or intervene, and why at this time?

B6. What is the nature and duration of a new management institution?

B7. In what ways does it or borrow from, or break with, traditional governance systems?

B8. Where there is no new identifiable management institution, or where there is a significant time-lapse between institutions, can any informal patterns of governance be deduced? If so, how did these operate?

B9. How might we explain a complete absence of identifiable governance - whether formal or informal?

B10. What other 'outside' institutions or agencies might be involved in management issues?

Box 3: Identifying local governance mechanisms and regimes

Relating to Research Questions 2.2 and 2.3 and Case Study Objectives 1 and 2.

1. Can we reconstruct schemes of rules and regulations (e.g. through paine lists, a survey of verdicts, a constitution)?
 - 1(a) How are stocking levels controlled - levancy and couchancy, stinting, heafing, other...?
 - 1(b) What management strategies or regulations are evident in relation to other common rights (e.g. turbary, estovers)?
2. Do these rules change over time – and if so, how?
3. What penalties are there for contravening rules and regulations?
4. How are rules enforced and by whom? What systems of monitoring are in place?
5. Can we determine if/when local systems of governance are affected by external concepts/systems and the wider cultural context (e.g. the circulation of manor court stewards' manuals, improvement literature, public policy, etc.)?
6. Where there is evidence of management crises or problems, how are these resolved?

Box 4. Identifying local concepts of sustainability

Relating to Case Study Objectives 1 and 2 - specifically, identifying 'local communal conceptions of sustainability' and 'changing conceptions of sustainability'. Note: this will also have some relevance to Research Qs.2.1 and 2.4, in respect of the wider bibliographical study of sustainability.

Building on the evidence and answers to questions in Boxes 2 and 3, we will employ the following questions, with the aim of identifying how the concept of sustainability has been articulated, interpreted and applied in the local context:-

1. Can we identify evidence of users, management institutions or owners of the soil consciously acting to protect or sustain the common land resource?
2. Is it possible to differentiate between instances of -
(a) 'ecological sustainability' (primarily protecting the carrying capacity of land, quality of grazing, re-growth of bracken etc.) and
(b) 'social sustainability' (primarily protecting social relations in respect of a shared resource – 'good neighbourhood')?
3. Can we determine whether local concepts of sustainability are changing over time – and if so, how?
4. Can we identify evidence of users or management institutions recognising an environmental problem or crisis on the common?
5. Is it possible to determine if/when local concepts of sustainability are affected by external concepts and the wider cultural context (e.g. public policy, external stakeholders, governance literature) – and if so, how?

AJLW & EAS
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