

ANALYSIS OF REGISTERS OF COMMON LAND

Ingleborough and Scales Moor, North Yorkshire – CL 134, 208, 272

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1 Introduction

The Ingleton case study comprises two blocks of common land:

- Ingleborough common. Although there is no formal division of the moor, the common is registered as two separate registered land units – CL 134 (Ingleton) and CL 208 (Clapham). This reflects the former manorial boundaries. And
- Scales Moor, CL 272, on the flanks of Whernside.

There are several characteristic features of the grazing regime in the upland commons in this case study, which distinguish them from the other upland case studies (Eskdale and the Elan Valley). Management of livestock grazing was historically accomplished by stinting, with each commoner allocated a fixed number (“stint”) of grazing beasts allowed on the common (commonly referred to as “sheep gaits”, or “cattle gaits”). Where the stinting system has historically been used, as here, to regulate the grazing of common land, there is a suggestion that commoners view their sheep gaits as property rights in their own right, separate from the land which they are intended to benefit. The qualitative research carried out in the case study supports this inference, and indicated that there is both a greater identification of sheep gaits with “property rights”, and also a stronger perception among commoners that they should be transferable separate from the holding they are intended to benefit¹. An analysis of the registers established under the Commons Registration Act 1965 throws interesting light on these issues.

2 Registered Rights and the Legacy of Stinting

2.1 Stints and Registration

The residual influence of the history of stinting on these commons can be seen in the nature of the rights registered in the commons registers, and the manner in which they are expressed. Many (but not all) rights are recorded as sheep gaits (the customary term for a stint). Moreover, many of the common rights entries on all 3 registers are very specific as to the numbers of sheep and followers permitted on the moor by registered sheep gaits. A good example is provided by entry 5 on the Scales Moor register (CL 272) which confers a right to graze $91 \frac{7}{8}$ black faced sheep or $73 \frac{1}{2}$ white faced sheep with or without lambs, expressed to represent 91 sheep gaits or $18 \frac{6}{18}$ cattle gaits (with 1 cattle gait being equal to 5 blackface

¹ See Pieracinni, Analysis of Qualitative Research, Working paper available at <http://commons.ncl.ac.uk/casestudies/Ingleton>

sheep and 4 white faced sheep). Another example is provided by entry 8 on the register for CL 272 which confers 104.375 sheep gaits.

The historical research undertaken by the Contested Commons research project demonstrates that the stinting of these commons did not take place in a systematic or uniform manner. Indeed, in the case of Ingleborough common a stinting regime was not formally adopted until after the registration of rights under the Commons Registration Act 1965². The minute book of the Ingleborough Fell Commoners covers the period 1927 to 2007 and shows that a numerical system has consistently been used to regulate sheep grazing on the common. Each member had to inform the meeting of the number of animals they intended to graze on the common that year, so that the shepherd's wages could be apportioned fairly between the graziers. The association's membership did not cover all commoners on the fell, and this may explain the discrepancies in the manner in which the rights were registered under the 1965 Act. At a meeting on 21 February 1967, the commoners minuted that 'There was quite a discussion regarding the coming commons registrations. It was agreed that the stocking rate for Ingleborough Fell should be 1½ acres per sheep,'³ implying that rights were calculated on the acreage of the common (rather than the carrying capacity of inbye land). The 'Ingleborough Fell Minute Book' shows, further that the commoners discussed proposals from English Nature and MAFF to address stocking levels on Ingleborough in 1994 and 1995.⁴ By 2004 there were approximately 4000 gaits registered to Ingleborough Common, showing its importance as a pastoral resource and the potential for grazing pressures (these numbers were set to be reduced by 882 under Sheep & Wildlife Enhancement agreements in 2004).⁵

It is unclear whether graziers regarded the grazing figures collectively agreed on an annual basis as a notional upper limit for flock sizes.⁶ The figures registered under the 1965 Act would, in this context, reflect the legally permissible maximum number of stock that each grazier could put to the common in any one year – indeed this interpretation of local practice on Ingleborough common would accord with the terminology of the 1965 Act itself, which refers to registered rights of pasturage giving a right to graze that is exercisable “in relation to animals not exceeding the number registered”⁷.

The registration of sheep gaits on Scales Moor reflects a different historical context. A formal stinting agreement for Scales Moor was drawn up in 1842 based in an attempt to measure the carrying capacity of the common. Scales Moor was calculated to extend to 1000 acres and to

² See A. Winchester and E. Straughton, “Stints and Sustainability: Managing Stock levels on Common Land in England c 1600-2006”, (2009) Agricultural History Review (forthcoming).

³ Ingleborough Estate Office, Clapham: Ingleborough Fell Minute Book 21 February 1967. Access granted with the kind permission of Dr. John Farrer. See Winchester and Straughton above note 2 for fuller discussion of these issues.

⁴ Ibid., 12 August 1994, 16 February 1995.

⁵ Natural England, 'Condition of SSSI Units: Ingleborough', tabular data from NE staff member Philip Eckersley (accessible via Natural England SSSI site: www.english-nature.org.uk/Special/sssii, compiled 1 August 2007).

⁶ These are recorded in the Ingleborough Estate Office, Clapham: 'Ingleborough Fell Minute Book [1927-2007]',

⁷ Section 15(3) Commons Registration Act 1965.

be capable of supporting a maximum of 800 sheep. The agreement stipulated that there would be 160 cattlegaits and that each would give a right to graze 5 black faced Scotch sheep or 4 white faced sheep⁸. The terms of the 1842 agreement clearly survived largely intact in local custom and usage, down to the registration of rights under the 1965 Act, and largely explains the nature of the registrations undertaken in the late 1960s. The need to register rights under the 1965 Commons Registration Act seems to have precipitated the brief revival of the formal stinholders' meeting in 1968. At this meeting graziers recorded an adjustment of the stint rate, which underlined their concentration on sheep: it was determined that one gait or stint would equal one black faced sheep, or 4/5ths 'Lowland' sheep, and that no cattle or horses would be grazed on the moor. In 1990, the meeting calculated that the stinholders had a total of 809 registered rights on the Moor (though with only two thirds of this stocking level permitted from December to early April), now judged to comprise 1022.33 acres – a figure comparable with the 800 maximum suggested in 1842.⁹

The conversion rates for black and white faced sheep in the 1842 agreement are reflected in several of the registered entries in the Commons Register, for example, as are the very precise calculations of conversion rates for cattle, black and white faced sheep. On the other hand, the number of rights does not tally exactly with the 1842 agreement (an examination of the register for CL 272 reveals that rights to graze 827 black faced sheep were registered on Scales Moor in total).

2.2 Nature of Common Rights

The overwhelming majority of the common rights entries record sheep pasturage rights. There are very few registered rights of turbary or estovers, or of pasturage rights for cattle, notwithstanding that all were exercised in the past.

- **Cattle.** Only six entries in the register for CL 134 record a right to graze cattle on Ingleborough common¹⁰. All registered rights are otherwise for sheep and followers, hoggs or wethers. Similarly, only 1 entry for CL208 mentions the conversion of sheep gaits to cattle (4 sheep gaits = 1 cattle gait, 6 sheep gaits = 1 horse gait¹¹). This could present major difficulties for the introduction of a mixed grazing regime with sheep and cattle, if sought under (for example) a potential Higher Level Stewardship Scheme agreement for the common. Three of the entries for CL 272 (Scales Moor) record cattle gaits in addition to sheep gaits, in one case with a very precise conversion rate (1 cattle gait to equal 5 blackface sheep or 4 white faced sheep)¹².
- **Turbary.** There are only 2 entries conferring rights of turbary on the Clapham side of Ingleborough common (CL 208) and none on the Ingleton side (CL 134). There are two registered rights of turabry on Scales Moor (CL 272).

⁸ See A. Winchester and E. Straughton, "Stints and Sustainability: Managing Stock levels on Common Land in England c 1600-2006", (2009) Agricultural History Review (forthcoming)

⁹ Ibid., minute book, 1901-1991.

¹⁰ Rights section, register of Common Land, CL 134, Entries 16, 18, 31, 32, 33 and 52

¹¹ Rights section, register of Common Land, CL 208, Entry 86.

¹² Rights section, register of Common Land, CL 272, Entry 5 (presumably because black faced Scottish sheep are generally smaller than English breeds).

- **Estovers.** There is one right of estovers registered on the Clapham side of Ingleborough common (CL208), expressed as a right to take rushes, bracken and heather¹³, and none on the Ingleton side (CL 134). Both entries giving rights of turbary on Scales Moor also give rights to estovers, expressed as the right to cut rushes¹⁴

The paucity of registered rights for cattle illustrates a wider problem generated by the registration process under the 1965 Act. The 1842 stinting agreement on Scales Moor calculated grazing densities primarily by reference to cattlegaits (fixed at 160), and gave precise conversion rates to give equivalent grazing figures for sheep. Clearly, the primary concern was the sustainable use of the grazing resource – the nature of the animals grazing the common was not in itself the primary issue. The registration of rights under the 1965 Act has effectively removed this flexibility and constrains potential management choices for the future grazing regime on the common. It is also another example of the registration process effectively suppressing and superseding historical practices on the commons.

3 Stints as Commodified Property Rights

The perception of stints as freely transferable property rights would suggest that they should be regarded as being held in gross cf. rights appurtenant which can only be transferred with the dominant land for the benefit of which they endure. Nevertheless, with some exceptions explained below, most of the sheep and cattle gaits on both Ingleborough common and Scales Moor were registered under the 1965 Act as appurtenant (and therefore attached to) to specified agricultural holdings or parcels of land, and not as rights held in gross.

3.1 Ingleborough Common

In the case of CL134 (Ingleton) there are currently 28 entries on the register of common rights expressed as appurtenant to specified holdings or parcels of land. All common rights were originally registered under the 1965 Act as rights appurtenant to specific holdings or land. However, between April 1982¹⁵ and May 2000¹⁶, there was a succession of applications to re-register as rights held in gross common rights that had formerly been rights appurtenant to land. There are now 19 entries of grazing rights expressed as held in gross, in addition to the 28 entries for appurtenant rights. With the exception of one entry (of rights acquired by the Nature Conservancy Council¹⁷) these all represent cases where the common rights were severed from the holding to which they were formerly attached (i.e. appurtenant) and converted into rights in gross.

CL 208 (Clapham) presents a similar picture. All rights were initially registered under the 1965 Act as appurtenant to specified holdings or parcels of land. Starting on 11th September

¹³ Rights section, register of Common Land, CL 208, Entry 87.

¹⁴ Rights section, register of Common Land, CL 272, entries 11 and 15.

¹⁵ With Entry 47 on the Register of Common Land, Register Unit North Yorks. CL 134

¹⁶ Ibid entry 93 was the last application (made on May 4 2000) to register former appurtenant rights as severed and held as rights in gross.

¹⁷ Ibid entry 65 (13 sheep gaits)

1989 a number of applications were made to re-register severed rights as rights in gross¹⁸. There are now six entries of rights held in gross – one of which is held by the Nature Conservancy Council¹⁹. All appear to be cases where the rights have been acquired with or without the land to which they were formerly attached, and on acquisition then converted into rights in gross personal to the holder of the rights.

3.2 Scales Moor

The evidence for the survival of the notion of stints as commodified property rights is also ambivalent in the case of Scales Moor (CL 272). One of the entries made under the Commons Registration Act 1965 was a registration of rights in gross. All others (originally nine in total) were expressed as being appurtenant to holdings or land. One of these²⁰ was severed and re-registered as a right in gross in 1985. There are two additional entries of rights in gross – both of grazing rights purchased by the Nature Conservancy Council²¹.

3.3 Impact of Commons Act 2006

Whether originally perceived as freely transferable property entitlements or not, all stints registered as appurtenant to land or holdings will in future be incapable of severance by virtue of section 9 Commons Act 2006. Those rights that were originally registered as rights in gross, or have become rights held in gross by severance prior to 28th June 2005, will continue to be held as rights in gross. However, their transfer will not be legally effective until registered in the commons register under Part 1 Commons Act 2006²². Whether or not stints have been historically viewed as a separate species of property by stint holders on the commons in the case study, this will not be reflected in the legal position of the rights under the Commons Act 2006. With the exception of those rights originally registered as rights in gross, and those severed before the Commons Act 2006 came into force, all rights will be attached to the holdings to which they were registered as appurtenant in the commons registers prior to the introduction of the 2006 Act.

4 “Closed” Grazing Periods

One of the characteristics of the organisation of grazing in the case study is the use of “closed periods” when grazing stock are not permitted on the common. This is reflected in the registers, but not uniformly recorded:

4.1 Ingleborough Common

¹⁸ Starting with entry 74 on the Register of Common Land, Register Unit North Yorks. CL 208

¹⁹ Ibid entry 84 (7 sheep gaits)

²⁰ Entry 10 Register of Common Land, Register Unit North Yorks. CL 272; replaced by entry 14 (16th May 1985).

²¹ Entries 21 and 23 *ibid*.

²² Section 13 Commons act 2006.

In the case of CL 134 the closure period is most commonly referred to as 5th November to 9th December annually. Most entries record a right to graze sheep and followers until 5th November, and sheep or hogs from 10th December. Some variation in the closure dates is reflected in the commons registers, however, with some entries giving a right to graze sheep and hogs from 6th December, and the majority from 10th December. Some entries permit grazing only to 28/29 February, not 6th April annually.

On CL 208, however, all entries on the common rights register present a uniform closed period. Curiously, it is not the same closed period as on the Ingleton section of the common (above). Sheep and lambs may graze between 1st April and 15th August; ewes or hogs from 16th August to 31st October. Ewes and hogs from 1st December 31st March. The closed period is the whole of November.

Clearly, customary practice has not been uniformly recorded in the entries made under the 1965 Act. Additionally, in the case of both CL 134 and CL 208 some entries do not record a closed period at all, and claim grazing rights throughout the year²³.

4.2 Scales Moor

The register for CL 272 presents a similar picture of slight variation in the nature of rights registered and of the practices they record. The closed period on Scales Moor runs from 10th November to 10th December each year, and is reflected in the majority of registrations under the 1965 Act. Some entries record the closed period as running from 16th November²⁴, and some have no registered restrictions on grazing reflecting the closed period²⁵. As with Ingleborough common, customary practice is not uniformly represented by the entries made under the 1965 Act.

²³ For example entry 6 in the rights section for CL 134 records a right “to graze 62 sheep with followers throughout the year over the whole of the land comprised in this register unit”

²⁴ Entries 6 and 7 Rights Register CL 272

²⁵ For example entry 8 in the rights section of the register for CL 272.