

Stints and sustainability: managing stock levels on common land in England, c.1600–2006*

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Abstract

Stinting – the numerical limitation of grazing rights – was one of the primary methods of governing livestock numbers on common land in England. This paper charts the growth of stinting, explores the reasons behind its introduction, and considers the role of stinting in the sustainable management of grazing reserves and in the evolution of concepts of property rights on common land since the medieval period. It is argued that growing pressure on grazing was only one driver behind the introduction of stinting and that some stinted rights in upland northern England originated in agistment on private forest pastures. The paper also considers the consequences of stinting, one of which was to convert a common right of pasture into a more adaptable, transferable and potentially profitable commodity, which could be severed from the holding to which it originally belonged, breaking a link which lay at the heart of the law on commons.

Garrett Hardin's influential paper on 'The tragedy of the commons' illustrated the negative 'inherent logic of the commons' by imagining a common pasture, in which the temptation to put private gain before the common good inexorably led to the destruction of the common and consequent 'ruin to all'.¹ Absolute freedom to exploit the resources of common land was, of course, a myth in English law, yet concern about overgrazing is a perennial feature of records concerning common land from at least the sixteenth century to the twentieth.² In this paper,

* This paper is an outcome of a project at the Universities of Newcastle-upon-Tyne and Lancaster entitled 'Contested common land: environmental governance, law and sustainable land management, c.1600–2006', funded by the Arts and Humanities Research Council as part of its Landscape and Environment programme. Further details of the project can be found at <http://commons.ncl.ac.uk/> An earlier version of the paper was delivered at a symposium held at Lancaster University in September 2008 as part of the project. The authors should like to thank participants at the symposium for their constructive comments.

¹ G. Hardin, 'The tragedy of the commons', *Science* 162 (1968), pp. 1243–8, at p. 1244. Hardin's thesis has been challenged by work on the study of common property: for an alternative to the 'tragedy' thesis, see E. Ostrom, *Governing the commons: the evolution of institutions for collective action* (1990).

² For the legal basis of common land in England and Wales see G. D. Gadsden, *The law of commons* (1988); B. Harris and G. Ryan, *An outline of the law relating to common land and public access to the countryside*

(1967); W. G. Hoskins and L. Dudley Stamp, *The common lands of England and Wales* (1963). Historical studies of common land include M. De Moor, L. Shaw-Taylor and P. Warde (eds), *The management of common land in north-west Europe, c.1500–1850* (2002) and J. M. Neeson, *Commoners: common right, enclosure and social change in England, 1700–1820* (1993). The problem of overgrazing is highlighted in C. E. Searle, 'Customary tenants and the enclosure of the Cumbrian commons', *Northern Hist.* 29 (1993), pp. 126–53.

which concentrates on upland commons in northern England, we seek to chart the mechanisms through which attempts were made to control the numbers grazing common land between the sixteenth and the twenty-first centuries. The focus is on numerical limits ('stints') and the paper explores the reasons behind the growth of stinting, the role of stinting in the sustainable management of grazing reserves, and in the evolution of concepts of property rights on common land since the medieval period.

As the early agricultural writer John Fitzherbert explained in 1523, common pasture rights fell into three categories: rights in the common fields and meadows, both on the field lying fallow and on arable land and meadows after the crop had been cut; rights in common cow pastures or ox pastures, which were shared enclosures of grazing land; and rights on the 'commen mores or hethes', the unenclosed and unimproved manorial waste.³ The focus of this paper is on the last of these, but the history of common rights on the waste cannot be understood without reference to the management of grazing rights in enclosed pastures or open fields.

I

Grazing rights on most commons in England and Wales were traditionally governed by one of two principles, both of which sought to control and limit the numbers of livestock allowed to graze. First was a common right 'without number', where the numbers which could be grazed were nevertheless limited by the rule of levancy and couchancy, which allowed a commoner to put onto the common as many animals as he could keep over winter on the produce of his holding; second was a stinted right, the right to graze a defined number of livestock on the common. The two systems were underpinned by very different concepts and assumptions.

The first aim of the rule of levancy and couchancy was to ensure equitable access, rather than to match the numbers grazing to the capacity of the common, since the size of the pasture right (both individually and collectively) was determined by the capacity of the 'inbye' land (the term used in hill-farming areas for improved farmland), rather than that of the common. The implicit assumption, therefore, was that the carrying capacity of the common was not in danger of being exceeded; indeed the rule of levancy and couchancy could only achieve a sustainable grazing regime if the maximum wintering capacity of the inbye land was less than the carrying capacity of the common. The system also assumed that each holding had a flock or herd attached to it, which was supported in winter solely by the 'vestures' of the inbye land. The rule of levancy and couchancy had difficulty in accommodating many features which were already part of the reality of livestock farming in the sixteenth century: the livestock trade (including droving and short-term purchases for fattening), away-wintering, and purchase of hay for winter fodder, to name but a few.⁴

In contrast, stinting implies that the carrying capacity of the common was known or, at least, that there was some notion of the total number of animals that should be allowed to graze there. Successful stinting required that the total number of stints should be determined first, in

³ John Fitzherbert, *The boke of surveying and improvements* (1523), fos iii–iv.

life in northern England and the Scottish borders (2000), pp. 81–2.

⁴ See A. J. L. Winchester, *The harvest of the hills: rural*

order to match the size of the collective pasture right to carrying capacity; once calculated, the total number of animals which could be supported would be apportioned between those having a right to graze. A stinting system could help to maintain the match between stocking levels and carrying capacity, since the value of the currency of stinting (usually expressed in terms of 'gates', each 'cattlegate' or 'beastgate' carrying the right to graze one horned beast)⁵ could be adjusted in the light of changing circumstances, either by varying the relationship between cattlegates and rent, for example, or by varying the 'conversion formula' governing the number of different species and type of livestock which could be grazed for each cattlegate. Stinting also sat more comfortably with the realities of farming practice. It did not assume that all livestock would be over-wintered on the stinthead's inbye land: a commoner could buy in animals to put on the common, as long as he kept within his numerical limit. Creating a numerical right could thus have the profound consequence (discussed further below) of breaking the intimate connection between a grazing right and the land to which it was attached, which lay at the heart of the law on commons.

Equitable access was also a key consideration of stinting systems. Early stinting arrangements often calculated the size of an individual grazing right by reference to some other measure, usually the fiscal rating of the holding in bovates or virgates or the amount of rent or tax it paid. In this, stinting arrangements reflected the linkage between grazing rights and the size of the land holding, which was inherent in the rule of levancy and couchancy, but expressed it in numerical terms. Both systems were thus underpinned by the notion of shareholding, paralleling the Scottish system of 'souming', where the fiscal measure of a holding was expressed in terms of the size of its grazing right.⁶ Conceiving a common right as a share in the community's landed resource was expressed in the imposition of penalties for overcharging the common, which are ubiquitous in manor court records, whether a common was stinted or governed by the principle of levancy and couchancy. Both policing the exercise of grazing rights and devising a graded scale of sanctions against offenders would presumably have been simpler where rights were expressed in numerical terms: a fixed limit allowed schedules of penalties to be drawn up, imposing a specific forfeit per head of stock over stint.⁷

There can be little doubt that stinting became increasingly common across England and Wales in the post-medieval centuries. On the face of it, it carried so many advantages over the rule of levancy and couchancy that one may wonder why common 'without number' survived at all. Yet survive it did: the Royal Commission on Common Land estimated that around 46 per cent of common land in England and Wales remained unstinted in 1958.⁸ In explaining the spread of stinting, it is often assumed that the transition from unstinted to stinted regimes was a stage in an inexorable journey from a Hardinesque free-for-all towards the ever-closer definition of rights associated with the dominance of private property. The received interpretation is that

⁵ In describing stinted rights, the generic term '[pasture] gate' or 'gait' was defined by a range of specifics: 'cowgates', 'horsegates', 'ewesgates' and 'sheepgates' are encountered, as well as cattlegates and beastgates. Regional variants include such terms as 'cowlease', 'cowstand' and 'cowsgrass': see I. H. Adams, *Agrarian landscape terms* (1976), p. 43.

⁶ A. Ross, 'Scottish environmental history and the (mis)use of soums', *AgHR* 54 (2006), pp. 213–28.

⁷ Winchester, *Harvest of the hills*, p. 79 cites examples.

⁸ *Report of the Royal Commission on Common Land, 1955–1958* (Cmnd. 462, 1958), p. 22, para. 73.

stinting was a response to grazing pressures with which the less transparent rule of levancy and couchancy had failed to cope. It follows that the relationship between the two systems might be expected to reflect environmental and economic conditions. The extent of a community's common land in relation to the number of livestock belonging to members of the community is the key here: an unstinted system presupposes a sufficiency of common land; whereas, if livestock numbers exceeded the carrying capacity of the commons, some form of numerical limitation would be required. When the balance between stock numbers and carrying capacity shifted, whether as a result of shrinkage in the extent of common land (in the face of enclosure, for example) or of increase in livestock numbers, we might expect to find a change to stinting. As Joan Thirsk recognized many years ago, unstinted systems survived longer in upland areas where the acreage of common land was so much greater than in the lowlands.⁹

We might also expect there to be a relationship between the system governing common rights and the farming systems of different regions. In the mosaic of farming regions in early-modern England, where the character of different *pays* reflected social and tenurial differences as well as environmental factors, neighbouring regions could exhibit different practices. Writing of the east Midlands, Joan Thirsk noted that 'hill and vale villages stinted their pastures; forest and fen communities did not'.¹⁰ In north-west England, where most commons appear to have been unstinted, evidence of stinting is repeatedly found in particular environments, notably coastal salt marshes and the highest fells.¹¹ Do such differences imply variations in stocking pressure or did they arise from differing tenurial systems? Within pastoral uplands, we might also postulate that the rule of levancy and couchancy would apply more readily to traditional sheep-farming areas, where heafed flocks were attached to each holding and comparatively few animals were bought and sold, than to cattle-rearing areas, where there was an active livestock trade from the middle ages. Further work is required to test this hypothesis, but it is possible that there was an association between cattle and stinting and between sheep and the rule of levancy and couchancy.

II

Stinting involved expressing a pasture right in numerical terms and assigning a quota to those entitled to graze their livestock. Numerical limits were a feature of many grants of 'common pasture in the vill' to monastic houses, particularly in the early thirteenth century, but such grants can probably be thought of as external privileges, separate from the rights of the local farming community, and do not necessarily imply the existence of stinting among others with

⁹ J. Thirsk, 'Farming techniques', in J. Thirsk (ed.), *The agrarian history of England and Wales*, IV, 1500–1640 (1967), pp. 182–4.

¹⁰ J. Thirsk, 'Field systems of the East Midlands', in A. R. H. Baker and R. A. Butlin (eds), *Studies of field systems in the British Isles* (1973), p. 262.

¹¹ Stinted salt marshes are recorded at Newton-with-Scales in the Fylde in 1651 (Lancashire Record Office [hereafter LRO], QSP 62/19), Overton and Middleton

(north Lancs.) in 1612 (TNA, DL 44/880) and nearby Oxcliffe in 1632 (TNA, DL 4/81/38). We should like to thank William Shannon for the latter reference. The coastal wastes at Holm Cultram (Cumb.) were stinted before 1573 (F. Grainger and W. G. Collingwood (eds), *Register and records of Holm Cultram* (Kendal, 1929), p. 168); Burgh-by-Sands Marsh (Cumb.) was stinted by 1700 (Cumbria RO, Carlisle [hereafter CRO (C)], DSO 198/1). For stinting in the Lake District fells, see below.

rights in the township.¹² The earliest references to true stinting are in the context of grazing rights in open fields and meadows after the crop had been taken, or in enclosed, shared pastures. In both cases, the grazing ground was both limited in extent and confined within physical boundaries and it can probably be assumed that the grazing available was less than would feed all the livestock held by those eligible to exercise a pasture right. Stinting therefore answered the need to regulate grazing by imposing a numerical limit and apportioning this between the holders of the rights.

The use of stints to determine the size of common rights on the open fields had deep roots. Stinting was an established feature of some open-field villages before the end of the thirteenth century, the number of animals which could be put to graze being determined by the size of holding, a specified number of cattle and sheep being allowed per bovate (in northern England) or yardland or virgate (in the Midlands).¹³ Early evidence for ‘measuring’ the pasture to determine its carrying capacity comes from Wawne (Yorks., East Riding) in 1235, and from Beckermet (Cumb.) in 1250, where the jury laid down a stint of one beast for every eight acres, a horse for every 40 acres, a sheep for two acres, a pig for 40 acres, a goat for 20 acres and a goose for eight acres.¹⁴ By the fourteenth century, similar evidence is found from pastoral communities with comparatively small open fields on the fringes of the uplands, as at Edmundbyers (Co. Durham), where it was ordered in 1373 that the stocking capacity of the township’s open fields should be determined and each tenant assigned a stint, and Mickleton in Teesdale, where the number of cattle grazing the open field was said in 1433 to be ‘fixed of old’, suggesting a similar antiquity of stinting there.¹⁵ Fixed numbers, particularly of sheep, limited the grazing rights in open fields in Midland England in the fifteenth century, and stinted rights on open fields appear to have been widespread by the mid-sixteenth.¹⁶ Piecemeal enclosure of open fields, gathering pace in the century 1550–1650, reduced the available grazing and could lead to the imposition of stinting, as appears to have occurred in parts of Shropshire.¹⁷ Similar pressures may have lain behind the reductions in the stints in open fields recorded in several settlements in Gloucestershire during the seventeenth century.¹⁸ An important feature of these

¹² As in the grant to St Bees priory c.1240 of an acre of land and pasture in the common pasture of the vill of Bolton (in Gosforth, Cumb.) for 8 *animalia*, 8 sheep, 3 horses, 8 goats and 3 sows and followers: J. Wilson (ed.), *The Register of the Priory of St Bees* (Surtees Society 126, 1915), no. 271. Numerous other grants of numerically-defined pasture rights to monastic houses in Cumbria are recorded: e.g. *ibid.*, nos 109–111, 265, 288–9, 294, 299, 310–11, 336, 341, 431–3, 466, 470, 472; J. M. Todd (ed.), *The Lanercost Cartulary* (Surtees Society 203, 1997), nos 25, 28, 36, 41, 54.

¹³ For example Madingley and Oakington (Cambs.) in 1270 and 1286: *VCH Cambs.*, IX, pp. 172, 200; Eske (Yorks., East Riding) in 1278: *VCH Yorks., East Riding*, VI, p. 281; Dearham (Cumb.) and Edlingham (Northumb.) in 1293: C. M. Fraser (ed.), *Northumberland Eyre Roll for 1293* (Surtees Society 211, 2007), nos. 400, 545; Chiltern area: D. Roden, ‘Field systems of the Chiltern Hills and

their environs’, in Baker and Butlin (eds), *Studies of field systems*, p. 349.

¹⁴ Wawne: *Chronica Monasterii de Melsa*, I (Rolls Series 43A, 1866), p. 414; Beckermet: Cumbria RO (Kendal) [hereafter CRO (K)], WD/Ry/box 92, Beckermet deeds, 94.

¹⁵ Winchester, *Harvest of hills*, p. 67.

¹⁶ Early references come from Farmington (Glos.), 1432: *VCH Glos.*, IX, p. 76; Dorrington (Salop.), 1449: *VCH Salop*, IV, pp. 117–18; Graveley (Cambs.), 1490: *VCH Cambs.*, IX, p. 325. Ault’s collection of by-laws from open-field England shows an increasing frequency of orders imposing stinting from c.1500: W. O. Ault, *Open-field husbandry and the village community: a study of agrarian by-laws in medieval England* (Trans. American Philosophical Soc., new ser. 55 (7), 1965), pp. 26–7.

¹⁷ *VCH Salop*, IV, p. 121.

¹⁸ *VCH Glos.*, VI, p. 131; XI, pp. 180, 241, 289.

stinted pasture rights over the open fields was that they were appurtenant to the holding of land in the fields; hence the linkage exhibited in determining the size of the grazing right by reference to the size of the holding.

Communal enclosed pastures were numerous by the sixteenth century. Writing in 1523, Fitzherbert noted that many settlements had 'a commyn close taken in out of the comen or feldes ... for their oxen or kyen or other catell'.¹⁹ These were often sections of rough pasture, separated from the common waste but managed as a shared resource by some or all members of a community, often to provide grazing close to the farm for the milk cows and oxen which required intensive tending. By c.1600 they are recorded widely across the Midlands and northern England.²⁰ Although some had their roots in the medieval centuries, many more seem to have been separated from the waste and stinted in the period c.1450 to c.1650.²¹ On the sides of many Pennine valleys, they remained as shared, communal pastures until divided under enclosure awards in the later eighteenth or nineteenth centuries. They were actively managed pastures, in which restricted numbers and types of livestock were allowed to graze for limited periods. The size of a stint was usually expressed in terms of 'cattlegates' or 'beastgates', and a distinction was often drawn between summer and winter use (cows in the summer; young sheep in the winter, for example); a closed period (usually a month or so in springtime) was often instituted.²² Stinting was required to ensure a 'fit' between the carrying capacity of the area of enclosed pasture and the numbers grazing it. Beastgates could be used as a currency to institute quite subtle management regimes, such as varying stocking levels across the year: at Downholme (Yorks. North Riding), the stint was halved for the winter season, for example.²³ In some places, perhaps particularly in lowland open field communities, cow pastures were 'commonable closes', the number of cattlegates belonging to an individual being determined by reference to the size of their holding of inbye land.²⁴ In the uplands, however, rights in stinted pastures had sometimes become separate units of property, divorced from holdings of land, at an early date. By c.1600 cattlegates in stinted pastures in the Yorkshire Dales were being bought and sold or leased for a number of years.²⁵

¹⁹ Fitzherbert, *Boke of surveying*, fo. iii.

²⁰ R. A. Butlin, 'Field systems of Northumberland and Durham', in Baker and Butlin (eds), *Studies of field systems*, p. 135; B. K. Roberts, 'Field systems of the West Midlands', *ibid.*, p. 203; J. Thirsk, 'Field systems of the East Midlands', pp. 248–9. Stinted pastures in the northern uplands are discussed in Winchester, *Harvest of hills*, pp. 68–73; R. T. Fieldhouse, 'Agriculture in Wensleydale from 1600 to the present day', *Northern Hist.* 16 (1980), pp. 172–3.

²¹ A rare early reference is to the stinted pasture called 'le Frithes' at Marton, East Riding, in 1322: *VCH Yorks., East Riding*, VII, p. 154. Active separation of stinted pastures from the wastes continued into the seventeenth century in parts of the Pennines: Winchester, *Harvest of hills*, pp. 69–70.

²² *Ibid.*, pp. 72–3.

²³ R. Fieldhouse and B. Jennings, *A history of Richmond*

and Swaledale (1978), p. 147.

²⁴ As in Worcestershire: B. K. Roberts, 'Field systems of the West Midlands', in Baker and Butlin (eds.), *Studies of field systems*, p. 203.

²⁵ For example, sales of stints are recorded at Malham in sixteenth century (A. Raistrick, *Malham and Malham Moor* (1971), pp. 44–5) and in the Ingleton area in 1609 (West Yorkshire Record Office, Leeds [hereafter WYRO (L)], WYL 524/142, 10 Jul. 1609). Leasing of cattlegates is recorded in Wensleydale in 1605: H. Thwaite, *Abstracts of Abbotside wills, 1552–1688* (Yorkshire Archaeological Society Record Ser. 130, 1967), p. 32, and beastgates were let and sub-let in Swaledale in the seventeenth century: Fieldhouse and Jennings, *Richmond and Swaledale*, p. 147. At Hartsop, Westmorland, stints were being sold by the mid-seventeenth century: CRO (K), WD/TE, Bound MSS, II, p. 246; XIV, p. 275.

A language of stinting was thus widespread by 1600, governing grazing rights over open fields and regulating the use of enclosed shared pastures. It is often assumed that the introduction of stinting on common wastes was a response to pressure on the carrying capacity of a common, in effect transferring a concept derived from the exercise of common rights on the stubble of open fields and the aftermath of hay meadows to the wastes. In parts of lowland England, the expansion of arable cultivation in the sixteenth and seventeenth centuries could reduce the surviving common wastes to the point where there was insufficient pasture for all the community's livestock. In response, the common would be stinted to control overgrazing.²⁶ Although a clear view of the chronology and geography of the spread of stinting on common wastes in lowland England has yet to be established, considerable regional variation can probably be assumed. Most commons in Northamptonshire were stinted by the eighteenth century, for example, whereas few wastes in lowland Lancashire appear to have been stinted in the early modern period.²⁷

By the mid-seventeenth century the benefits of stinting were beginning to surface in literature on improvement. Walter Blyth listed 'commoning without stint' as one of the impediments to agricultural advancement. On unstinted commons, he wrote, 'every man laies on at random, and as many as they can get, and so overstock the same', to the detriment of poorer neighbours; livestock 'pine and starve' and are subject to periodic epidemic diseases. If commons were to be stinted and all graziers limited 'according to their proportion of land or dwellings to which the common is due', the poor who did not have the livestock to exercise their right could let their stint and thus obtain some benefit: stinted commons 'might be as good as their own severals to every man that hath an interest'.²⁸ In identifying the twin advantages of stinting as preventing overstocking and converting a pasture right into a marketable asset, Blyth was anticipating the arguments of later writers.

But alternative conceptions about the nature of grazing rights appear, in some cases, to lie behind the appearance of stinting on the extensive wastes (as opposed to cow pastures) of upland northern England by the early modern centuries. Though many upland commons continued to be governed until modern times by the rule of levancy and couchancy, some stinted wastes were found on northern fells and moors by the seventeenth century; yet pressure on grazing capacity does not appear to provide a sufficient explanation. Despite the ubiquity of presentments for overcharging the common in manor court records from the sixteenth century onwards, the evidence that stinting was seen as a solution is remarkably limited. A rare explicit example comes from the Lake District valley of Longsleddale, where stinting was imposed by the Court of Exchequer in 1584 to resolve a dispute involving claims of grazing pressure and over-charging the common. The ruling does not appear to have been effective, since stinting was again proposed when the dispute re-ignited in the 1630s.²⁹

²⁶ J. Thirsk, 'Farming techniques' and 'Enclosing and engrossing', in Thirsk (ed.), *Agrarian history*, IV, pp. 182–4, 205. Occasionally, there is evidence for early stinting of common waste: Deep Carr common at Burton Pidsea was stinted by 1381: *VCH Yorks., East Riding*, VII, p. 33.

²⁷ Neeson, *Commoners*, p. 113. For Lancs. we are indebted to William Shannon, on whose extensive research

into early-modern enclosure of lowland wastes in the county this statement is based.

²⁸ Walter Blyth, *The English improver improved* (London, 1653 edn), unpaginated section [dedicatory epistle, 4th prejudice].

²⁹ Winchester, *Harvest of hills*, p. 83.

How often grazing pressure was the driver which led to stinting on common wastes in upland northern England by the early modern period must remain an open question. There are suggestions that an alternative explanation can be called on to account for the appearance of stinting on some upland commons. The key lies in the location and distribution of those commons which are known to have been stinted by c.1600. Although it is sometimes difficult to be certain whether an individual common was stinted or not (it is not always clear whether 'stints on the common pasture' refers to enclosed pastures or to the waste, for example), unambiguous cases of stinted wastes often exhibit a number of shared characteristics.³⁰ First, they tend to be found in areas which had the status of forest in the medieval period, and particularly with forests over which lords appear to have maintained strong seigneurial control (through establishing demesne stock farms ('vaccaries'), for example). In the Pennines, clear evidence for stinted commons comes from the forests of Arkengarthdale and New Forest, Bowland and Pendle, all areas with concentrations of vaccaries.³¹ In each, there are suggestions of a second distinctive feature, that the wastes in question were deemed to be an integral part of the tenants' holdings and were divided in the minds of the community into separate sections, each belonging to a hamlet within the manor. In New Forest and Arkengarthdale, the tenants claimed 'to hold the same [the commons and wastes] as parcell of their ancient tenementes, affirminge that every man doth know his certen numbers of gates jeist or stint, and do paie rent for the same as for their other landes.'³² In Bowland and Pendle forests, the 'out pastures' appear to have belonged to individual hamlets within the forest,³³ suggesting similarities to the arrangements in Over Wyresdale (Lancs.), where the territory of each vaccary included a section of moorland grazing running up to the watershed, on which the tenants held beastgates.³⁴ The evidence suggests a model in which each medieval vaccary appropriated exclusive use rights on the adjacent wastes, which came to be considered as belonging to the hamlet communities into which the vaccaries had evolved by the sixteenth century.³⁵ Although the forest wastes in these examples were not physically divided, they came to be thought of as a series of separate sections. Elsewhere in the vaccary country of the Pennines, the conception that sections of pasture were separate from the common waste and 'belonged' to sub-manorial groups of tenants seems to have become a deeply-embedded tradition and a powerful driver towards the creation of enclosed stinted pastures.³⁶

³⁰ An attempt to map the distribution of stinted as against unstinted commons was made in Winchester, *Harvest of hills*, p. 80 (Fig. 4.1). It should be noted that the map has been superseded by subsequent research and that some of the 'stinted commons' mapped there may be enclosed pastures, rather than common waste.

³¹ Arkengarthdale and New Forest, recorded in 1612: TNA, E 178/4831, m. 6; Bowland: reference to stints on the 'out pasture', 1605: LRO, DDHCl, box 86, no. 27; Pendle: stints in the 'owte pastur' recorded 1540s: W. Farrer (ed.), *The court rolls of Honour of Clitheroe* (3 vols, 1897–1912), II, pp. 186, 213. For the distribution of vaccaries, see A. J. L. Winchester, 'Vaccaries and agistment: upland medieval forests as grazing grounds', in J. Langton and

G. Jones (eds), *Forests and chases of England and Wales to c.1500* (in press).

³² TNA, E 178/4831, m. 6.

³³ LRO, DDHCl, box 86, no. 27; Farrer (ed.), *Clitheroe court rolls*, II, pp. 186, 213.

³⁴ LRO, AT/2 (Over Wyresdale corn rent map, 1833); DDX 1935/1 (plan of Abbeystead vaccary 1653 [copy of 1670]); DDX 610/34 (plan of Swainshead vaccary, 1652); DDX 610/35 (plan of Hayshaw Fell, c.1652).

³⁵ For the evolution of vaccaries into hamlets, see J. McDonnell, 'Upland Pennine hamlets', *Northern Hist.* 26 (1990), pp. 20–39.

³⁶ Winchester, *Harvest of hills*, pp. 69–71.

If the interpretation offered above is correct, then it suggests an alternative explanation for the origins of stinting. The key may lie in agistment, where a rent separate from that for the holding was originally paid for a numerically limited grazing right on the lord's private pastures on his forest waste, effectively assigning a stint to each holding in the manor.³⁷ The key phrase in the evidence cited above is the statement that each tenant in New Forest and Arkengarthdale knew his entitlement to 'gates, jeist or stint, and do paie rent for the same'. The terms 'stint' and '[cattle]gate' are used synonymously with 'jeist', the Yorkshire vernacular term for 'agistment'.

The Pennine evidence may be compared with that from the Lake District, where stinted commons were in the minority. One of the most telling examples is that of the manor of Eskdale, Miterdale and Wasdalehead, where there was an internal division between stinted and unstinted commons. The wastes belonging to Wasdalehead were stinted by the late sixteenth century, while those belonging to Eskdale and Miterdale remained governed by the rule of levancy and couchancy. The whole manor was part of the private forest of Copeland but, whereas Eskdale and Miterdale had been settled by peasant communities by c.1300, Wasdalehead was retained under seigneurial control as the site of four demesne vaccaries. Although these were already leased by 1334 and, through subdivision, had evolved into a settlement of eighteen holdings by 1547, the legacy of forest status survived. Rather than having a normal common right of pasture on the wastes, the tenants of Wasdalehead paid a separate annual rent of 17s. called 'forest male' (i.e. 'forest money') for their pasture rights on the fells, strongly suggesting that their common rights originated as agistment rights on the lord's private pastures. The stinted status of the wastes belonging to Wasdalehead is recorded from 1587 and, unlike those of neighbouring Eskdale and Miterdale, the Wasdalehead fells were divided into seven separate sections for stock management purposes.³⁸

Where early stinted commons are recorded elsewhere in the Lake District, they exhibit characteristics similar to those of Wasdalehead: the stinted commons at Wythburn; Stonethwaite (in Borrowdale); Troutbeck; Kentmere; and Grisedale (in Patterdale) were all in areas which had the status of forest in the medieval period and Stonethwaite, like Wasdalehead, was the site of a vaccary. As at Wasdalehead, the commons at Wythburn, Troutbeck and Kentmere were divided (conceptually but not necessarily physically) into sections, each carrying its own stint: the fells around Wythburn were divided into ten 'steads'; Troutbeck into three 'cubles' or hundreds, each containing a long hundred (120) of cattlegates; Kentmere into four quarters, each containing fifteen tenements, which each had ten cattlegates on the quarter's fell.³⁹ Again, as at Wasdalehead, sums were paid specifically for pasture on the fells: separate rent was paid for each of the 'steads' in Wythburn; in 1372 the tenants of Kentmere jointly paid a lump sum

³⁷ Ibid., p. 94.

³⁸ Ibid., pp. 83-4, 94, 167-71.

³⁹ Wythburn: stinting arrangements recorded in 1606 and 1677: CRO (C), D/Van, Wythburn box, court verdicts; Stonethwaite Fell was said in the 1760s to have been stinted time out of mind: CRO (C), D/Law/1/163; Troutbeck: B. L. Thompson, *The Troutbeck Hundreds and the common land of Troutbeck, Westmorland* (1968); M. A. Parsons, 'Pasture farming in Troutbeck,

Westmorland, 1550-1750', *Trans. Cumberland and Westmorland Antiquarian and Archaeological Soc.* (hereafter *Trans. CWAAS*), new ser., 93 (1993), pp. 118, 120; Kentmere Head, described as a stinted pasture 1633: TNA, E 134/9 Chas. I/East.21; traditional stinting arrangements recorded 1760: W Farrer and J. F. Curwen (eds), *Records relating to the Barony of Kendale* (3 vols, 1923-26), III, pp. 153-4; Grisedale: numerical limit on grazing rights in forest recorded 1589: TNA, LR 2/212, fo. 31.

of 40 marks for 'the herbage and several pastures of the dale'; each of those at Grisedale paid 10s. 8d. for 'common pasture for 32 beasts (*averiiis*) within the forest of Grisedale'.⁴⁰

Taken together with the instances of stinted commons in the central Pennines, the evidence from the stinted minority of Lake District commons suggests a quite different system of organization from that found on unstinted commons in the upland north. Rather than forming a single common belonging to the whole manor, the stinted commons were divided into separately managed blocks of hillside; rather than being responses to pressure on grazing, these stinting arrangements probably had their roots in conceptions of grazing rights as agistment on forest wastes in the later medieval centuries. When stinting was introduced is not recorded but the leasing and subsequent subdivision of vaccaries from c.1300 would provide a context for the assignment of specified grazing rights to individual tenants.

In summary, the evidence for stinting of common wastes before c.1800 suggests that pressure on grazing resources provides only a partial explanation. In those areas of lowland England where little waste remained, stinting may indeed be thought of as part of a wider response to grazing pressure, in which the tradition of limiting grazing rights in the open fields was extended to the wastes. At the other end of the spectrum, in the upland forests of northern England, where vast expanses of rough grazing land survived, a distinctive property rights regime in the private forests, which required grazing rights to be articulated in terms of agistment, evolved into a system of stinting on some commons.⁴¹

III

Stinting was thus a deep-seated tradition before 1800. Nevertheless, the modern period saw the introduction of stinting on many previously unstinted commons, through local agreements or by private or general acts of parliament, as stinting became the preferred model for regulating stocking numbers in both national and local perceptions.

Stinting in the modern period needs to be seen in the context of a wider culture of agricultural improvement and enclosure. In agrarian literature, stinted commons were almost invariably preferred over common 'without number', the latter being presented as synonymous with overstocking. For example, in *A synopsis of husbandry* (1799), John Banister contrasted 'unlimited' commons, where the largest farmer would monopolize the pasture, leaving the majority of the inhabitants at a disadvantage, with stinted commons, 'where the time of turning on the common, as well as the kind and number of the stock are regulated by custom'.⁴² One of the perceived advantages of stinting was that it enabled successful farmers to increase their stock by leasing or buying stints from inactive or poorer graziers, a redistribution of economic benefit which could not have been achieved through levancy and couchancy. In an argument strikingly similar to that put forward by Walter Blyth a century and a half before, an anonymous 'Yorkshire Farmer', quoted in the county report for the West Riding, stated that 'unstinted commons are

⁴⁰ Farrer and Curwen (eds), *Records ... of Kendale*, I, p. 309; TNA, LR 2/212, fo. 31.

⁴¹ Between the two extremes lay a range of other types of common, notably marshes and fens, which have not been considered here.

⁴² J. Banister, *A synopsis of husbandry. Being cursory observations in the several branches of rural oeconomy. Adduced from a long and practical experience in a farm of considerable extent* (1799), p. 274.

eat up by mercenary and opulent individuals, ... whereas if commons were stinted, the poor cottager who could not stock his part, might receive a valuable compensation for his right. Thus a proportional flock would be put upon them, and everyone receive advantage.⁴³

The simple opposition of stinted *versus* unstinted commons presented by the literature masks considerable variation in the way in which stinting was implemented. Many stinted commons may have been stinted by informal mutual agreement, leaving little documentary evidence. Occasionally written evidence survives, as in the case of Burgh Marsh (Cumb.). An agreement of 1700 determined that this coastal marsh would be stinted annually between 1 March and 18 October, and that stints would be proportional to rent (at the rate of up to three cows, heifers or steers and up to twenty-four sheep for every 12*d.* of rent paid to the lord of the manor); follow-up agreements made in 1765 and 1838 sought to adapt the management regime to the changing condition of the marsh, which frequently suffered flood damage. It is possible that Burgh Marsh may have been stinted prior to 1700, but the agreement of that date evidently heralded a new beginning, ascertaining what was a 'just and equall' number of stints.⁴⁴ A later example comes from Scales Moor, Ingleton (Yorks., West Riding), where two written stinting agreements were made, in 1810 and 1842. In the first agreement, the graziers of Scales Moor agreed on 'reducing' the common to a stint, allocating one beastgate for every shilling of Land Tax paid by each commoner. The 1810 agreement thus sought equity of access, based on a measure of the value of holdings of inbye land, with a view to 'affording to all interested therein the exercise of a just and equitable right'.⁴⁵ It proved to be a false start, since the reason given for the second, more formal agreement in 1842 was that 'disputes and differences' had arisen over the number of livestock which each owner or occupier was entitled to put on the common. The emphasis was again on equitable access, but the agreement also demonstrates an understanding that this depended on a sustainable level of grazing. It was based on a calculation of the carrying capacity of the 1000-acre common, which was estimated to amount to 800 sheep. That figure was converted into 160 stints, adjusted for cattle, sheep and horses, and distributed among the commoners. The stinting agreement even went so far as to determine the value of the stints according to the breed of sheep, reflecting the different grazing impact of the animals: thus one cattlegate was equal to five black-faced 'Scotch' sheep or four white-faced (or 'Lowland') sheep. The 1842 agreement heralded a period of stability on the common, the minute books of the stint-holders' meetings showing active management into the late twentieth century.⁴⁶

In contrast to grass-roots agreements such as this, other commons were stinted through the more formal route of enclosure acts and awards. In these cases, the stinting of a specific area of common might form only one part of a larger transformation of land use and ownership. The stinting of Thornham common on the north Norfolk coast, under a private act of 1794 (award of 1797), is a case in point. The Thornham award had as its object the enclosure of large areas of open fields and wastes in the parish, but also included a scheme to stint an area of unenclosed

⁴³ R. Brown, *General view of the agriculture of the West Riding of Yorkshire* (1799), p. 145.

⁴⁴ CRO (C), DSO 198/1-3. A covenant of 1838 (DSO 198/3) also established a management committee. This long process of agreement and adaptation culminated in the conversion of Burgh Marsh into a regulated (stinted)

pasture under an enclosure award of 1848: DSO 198/4.

⁴⁵ WYRO (L), WYL 524/209: agreement to stint Scales Moor, 16 Jan. 1810.

⁴⁶ Scales Moor papers (*penes* Mr J. Metcalfe, Ingleton); stinting agreement, 1842 (typescript copy); minute books, 1884-98, 1901-91.

salt marsh. The act directed that the unenclosed residue of the marshes was to remain 'common of pasture, to be used and enjoyed as a stinted common by the several proprietors thereof, or other persons interested therein'.⁴⁷ In a much simpler formulation than at Scales Moor, the award stipulated that there would be 49 stints on the commonable marsh, in respect of the 49 common-right houses in Thornham, and that each common-right householder was entitled to graze 'two cows or heifers or one cow or one heifer and one gelding, colt, Mare, filly or female ass with or without a foal under six months old by the side of such mare or ass'. The award also set up a system of management, with an annual stint-holders' meeting and the appointment of three common reeves from out of their number. Reeves were expected to enforce the meeting's rules, keep the common free of trespassing animals, collect annual rates, buy and turn a bull onto the common (if required by stint-holders), and effect drainage and other improvements. As with Scales Moor, the stinting formula was understood to be a flexible tool rather than a fixed number: under the terms of their award, a majority of the stint-holders could agree to alter the number and kind of animals that could be grazed in respect of each stint, and could also agree to alter the rules governing the common if they saw fit.⁴⁸

The subsequent history of Thornham Marsh demonstrates an increasingly significant consequence of stinting, the commodification and severance of rights. The award facilitated a free market in stints, and the result was a monopoly, as stints were purchased piecemeal by the lords of Thornham manor. By the time of registration under the Commons Registration Act of 1965, the lord had acquired almost all of the 49 stints.⁴⁹ It is probable that those drafting the award had neither intended nor predicted such a concentration of ownership: as noted above, the management system laid out by the award, involving an annual stint-owners' meeting and election of reeves, assumed the existence of multiple stint-holders.

Private agreements and enclosure acts were forerunners of the more standardized stinting schemes made available by statute in the middle and later decades of the nineteenth century. Stinting became the method of choice for statutory regulation of common land, the two most important pieces of legislation being the General Inclosure Act of 1845 (which permitted the creation of stinted pastures as part of the enclosure process), and the 1876 Commons Act (which allowed for stinting while preserving a common's unenclosed status).⁵⁰ The perceived advantages of stinting became a key theme for the Select Committee on Commons Inclosure in 1844, when taking evidence in preparation for the 1845 Act. When he appeared as an expert witness before the Committee, the Cumberland-born farmer and politician, William Blamire

⁴⁷ Norfolk Record Office (hereafter NRO), PC 9/1-2, Thornham enclosure award and map, 1797.

⁴⁸ *Ibid.*

⁴⁹ NRO, H. Bett 14/6/79 (4), Thornham manor court book 1894-1925: entries dated 22 May 1918 record the lady of the manor's recent purchase of seven stints in five separate lots. Decision of the Commons Commissioner, Thornham Common (Norfolk CL 41), 18 Dec. 1975, ref. 25/D/79-95 (available at www.acraew.org.uk).

⁵⁰ Inclosure Act 1845 (8 & 9 Vict., c. 118), Commons Act 1876 (39 & 40 c. 56). Though not providing new stinting schemes *per se*, the earlier Inclosure Act 1773

(13 Geo. 3, c. 81) included provision for management and improvements on existing stinted commons or pastures (together with other common lands and open fields), and enabled commoners to turn stinted horse and cattle pastures over to sheep. We are grateful to Prof. Michael Turner for drawing our attention to this act. The Inclosure Acts of 1801 (41 Geo. 3, c. 109, s. XIII) and 1836 (6 & 7 Will. 4, c. 115, s. XXVII) included provision for laying together of allotments to form shared pastures, 'stocked and depastured in common' by the proprietors (c. 109, s. XIII), though with no explicit reference to stinting.

(1790–1862) – an authority on land tenure and farming, an influential tithe commissioner and, subsequently, enclosure commissioner – was asked to explain how stinting should be effected:

You would find the value of the ancient lands entitled to the right of common, and what proportion of stock that common was at that time capable of carrying, and then apportion the rights of pasturage amongst the parties, according to the value of their ancient lands, to which the common right is attached; if any measure of that sort were passed, there should be the power of increasing or diminishing the proportion of the stints, as the land increased, or from accidental causes decreased, in fertility.⁵¹

Blamire thus understood that both the carrying capacity of the common and the flexibility of the stinting formula were factors critical to its operation. He also concurred with the general disapproval of rights ‘without number’, suggesting that levancy and couchancy ‘would appear to be impracticable’ and that undefined rights could result in ‘occasional violence’ and litigation. Significantly, Blamire promoted the idea that stints were saleable property, stating that, once an individual’s pasture right had been ‘ascertained, defined and settled, the stint would become as much a lettable and marketable article as a field or any thing else.’⁵²

The resulting General Inclosure Act of 1845 contained clauses enabling graziers to convert a common into an enclosed stinted, or ‘regulated’, pasture, ‘to be stocked and depastured in common by the persons interested therein, in proportion to their respective rights and interests’, as these were determined by the commissioner. In practice, this provision tended to be used on land which was incapable of improvement: while improvable parts of a common were enclosed, higher moorland, rough fell or lowland marsh might be converted into a stinted pasture. Rather than physically divide the land, enclosure commissioners translated each grazier’s interest into a proportional share of a total number of stints, sometimes calculated to an absurd level of precision (at Tatham, Lancashire, for example, where stints were measured according to the proprietors’ acreage of inbye, each grazier’s allotted number of stints was calculated to three decimal places). The act also made provision for annual stint-owners’ meetings, election of field reeves and levying of rates, and also gave stint-owners power to increase or reduce stocking rates to suit the condition of the pasture.⁵³ Here, too, the stinting formula was seen as a flexible tool, a means of responding to market demands or ecological change. Once regulated, these pastures lost their legal status as common land but, like older stinted pastures, they retained many of the characteristics of a common, to the extent that a number were registered as commons under the 1965 Commons Registration Act.⁵⁴

It is striking that the 1845 Act also drew a distinction between classes of land eligible for enclosure on the basis of property rights. ‘Gated and stinted pastures’, whether or not ownership of the soil was vested in the stint-owners, could be enclosed with the authority of enclosure commissioners alone, whereas enclosure of manorial wastes or lands subject to ‘indefinite Common Rights’, not limited ‘by number or stints’, required additional authorization

⁵¹ *Report of the select committee on commons inclosure, minutes of evidence, plans, Index* (HC Paper (1844) no. 583), p. 26 (para. 284).

⁵² *Ibid.*, pp. 25–6 (paras. 277, 283, 291). For Blamire, see Eric J. Evans, ‘Blamire, William’, *ODNB*.

⁵³ Inclosure Act 1845 (8 & 9 Vict., c. 118), sections CXIII–CXXI; LRO, AE/5/12: Tatham Enclosure Award, 1858.

⁵⁴ Gadsden, *Law of commons*, paras 3.24, 4.84, 4.96.

from Parliament.⁵⁵ This distinction, removed by the Inclosure Act of 1852, which required Parliamentary authorization for all enclosures, illustrates an awareness of the different property rights regimes on common pastures, and an assumption that, where stints occurred, enclosure could be effected with less scrutiny.⁵⁶

The Commons Act of 1876 marked a shift away from enclosure towards ideals of common land preservation and public access, but stinting was again seen as the cornerstone of modern management. Regulation under the 1876 act involved the introduction of a stinting schedule, a stint-rate to pay for works and a board of conservators to manage the common. Thirty-six commons were regulated in England and Wales, the last in 1919.⁵⁷ Writing in support of the regulation of Crosby Garrett common (Westmorland) under the 1876 Act, one of the commoners anticipated the effects of stinting, stating that stock would ‘thrive’ on a stinted common, that each grazier would be restricted to a ‘fair’ number of animals, and that stinting would prevent disputes between graziers.⁵⁸ It is significant that he also expressed the hope that it would be possible to include a clause ‘giving the owner the right to sell his stints if he likes.’ The response of the Inclosure Commission was to confirm that stints were inherently ‘saleable property.’⁵⁹

In 1958 the Royal Commission on Common Land estimated that around 33 per cent of common land in England and Wales was stinted.⁶⁰ In their rather dismal assessment of the state of the nation’s common lands, the commissioners saw unstinted commons as particularly problematic, finding that it was often difficult to define a commoner’s right of pasture, and that the rule of levancy and couchancy could not accommodate modern farming practices, such as the purchase of winter feedstuffs. Echoing Blamire’s evidence to the Inclosure Select Committee in 1844, commissioners in 1958 claimed that the rule of levancy and couchancy ‘has in fact lost much of its pertinence’, and that ‘the old customs and practices, if not totally forgotten, often prove an indifferent guide in modern circumstances’. In contrast, stinted commons seemed to promise a greater degree of certainty in the definition of grazing rights and identification of their owners. In concluding their report, commissioners proposed the establishment of a nationwide register of common lands and rights, to resolve ambiguities and inconsistencies in definition and ownership, and to provide a sound legal framework for new schemes of management and improvement.⁶¹ The ensuing Commons Registration Act 1965 would require *all* grazing rights to be expressed as a ‘definite number.’⁶²

In practice, converting a grazing right into a number posed a real challenge, particularly on commons governed by the rule of levancy and couchancy, where rights were ‘without number’. Even on stinted commons, the requirement of the 1965 Act sat uncomfortably beside stinting

⁵⁵ Inclosure Act 1845 (8 & 9 Vict., c. 118), ss. XI–XII.

⁵⁶ Inclosure Act 1852 (15 & 16 Vict., c. 79), s. I.

⁵⁷ For the impact of statutory regulation of common land after 1800, see E. A. Straughton, *Common grazing in the northern English uplands, 1800–1965: a history of national policy and local practice, with special attention to the case of Cumbria* (2008), pp. 191–241.

⁵⁸ The commoner in question, Edward Johnson, wrote, ‘It has always been the wish of the landowners to bring the common into a stinted pasture so that each owner of land could put on a fair amount of stock for his inland

... I have looked after sheep on the common and am sure the sheep would thrive better, and there would be no hounding’, CRO (K), WD/HH/103, Johnson to Heelis, 10 Mar. 1882.

⁵⁹ CRO (K), WD/HH/103, Johnson to Heelis, 26 Dec. 1881; Moore to Heelis, 2 Jan. 1882.

⁶⁰ *Report of the royal commission on common land* (1958), p. 22.

⁶¹ *Ibid.*, pp. 10 (para. 30), 46 (paras 129–30), 90–1 (paras 274–5), 129–37.

⁶² Commons Registration Act 1965 (c. 64, s. 15).

traditions. A key difference between stints and simple numbers lay in the fact that a stint did not represent an absolute number, but a formula which could, in theory, be adjusted to alter the grazing density and balance of animals. Some graziers' groups tried to take communal action. In an attempt to update their formula in order to calculate a realistic 'definite number', the stintheolders of Scales Moor simplified and updated their stint rate in 1968 (on the threshold of registration under the 1965 Act) in order to recognize their concentration on sheep, modifying the scheme laid down in the 1842 agreement. Henceforth, one 'gait' or stint would equal one black-faced sheep, or four-fifths of a 'Lowland' sheep, and no cattle or horses would be grazed on the moor. However, the resulting registration entries show that this was not adhered to by all graziers: the stinting formulae, types of animals to be grazed, and references to stocking dates vary between individual entries.⁶³

Across England and Wales, the requirement to register pasture rights numerically led to confusion and inconsistencies, particularly where they had been governed by the rule of levancy and couchancy. On Ingleborough common (Yorks., West Riding), for which no formal stinting scheme seems to have existed, individuals expressed their rights in a variety of forms, some using simple numbers to register a single type of animal (e.g. a right to graze 50 sheep with followers), others expressing their rights in terms of alternatives (e.g. a right to graze ten sheep or two cows); others choosing to define the 'gait' (e.g. six sheep gaits, with four sheep gaits equalling one cattle gait); and others specifying the type and age of sheep (e.g. 150 sheep with lambs, 60 hogget sheep and 100 wether hogs). Some included time limits and grazing seasons (e.g. 10 sheep with followers from 6 April to 20 September); others did not.⁶⁴ Elsewhere, it is widely agreed that the numbers registered on unstinted commons were in many cases grossly inflated.⁶⁵ In a perverse twist, it is even possible today to find 'stints' which have been redefined by the process of registration itself: in a scheme of byelaws confirmed in 1999, Malvern Hills Conservators defined a commoner's 'stint' as meaning 'the number of animals allowed to be turned out on the Hills by that person in accordance with the Commons Registration Act, 1965'.⁶⁶ The 1965 Act unintentionally led to a redefinition of common land and rights, effectively breaking with both the traditional systems of stinting and levancy and couchancy.

The Commons Registration Act also brought into sharp relief the question of definitions: which categories of stinted pastures were, strictly-speaking, common land and eligible to be registered? Local and historical perceptions of what constituted common land were often at variance with late twentieth-century legal classifications, leading to inconsistencies in the registration of stinted commons and private enclosed pastures. For example, in the Ingleton area, where stinting was prevalent, some stinted pastures were registered and others of a similar nature were not.⁶⁷ In addition, the legal culture of the late twentieth century demanded

⁶³ Scales Moor papers: minute book, 1901–91, 8 Mar. 1968; North Yorkshire County Council, Common Land Register, CL 272.

⁶⁴ North Yorkshire County Council, Common Land Register, CL 134.

⁶⁵ C. P. Rodgers, 'A new deal for commons? Common resource management and the Commons Act, 2006', *Environmental Law Rev.*, 9 (2007), pp. 25–40, at p. 30;

DETR, *Good Practice Guide on Managing the Use of Common Land* (1998), p. 16.

⁶⁶ Malvern Hills Byelaws 1999: Duties of the Conservators (at <http://www.malvern hills.org.uk/manage/byelaws.aspx>, accessed 9 Jan. 2009).

⁶⁷ For example, Gayle Moor is not registered, while the adjacent stinted pastures of Blea Moor (CL 194) and Cam End (CL 103) are.

evidence of defining characteristics which might simply be lacking or of lesser significance in the historic context. For example, when the Thornham award was drafted in 1797, it was not thought necessary to state whether ownership of the soil had been retained by the lord of the manor, or whether stint-owners had become the joint owners of the land, ending its 'common' status.⁶⁸ In the context of day-to-day agrarian use, this legal technicality was perhaps irrelevant, but in the context of registration, questions of landownership and legal status became critical. Thornham stinted common was successfully registered under the 1965 Act, though its eligibility has been questioned by one historian of common land in Norfolk.⁶⁹ Similar ambiguities are recorded in Cumbria. On the Solway estuary, Burgh marsh, converted into a regulated pasture under an enclosure award of 1848, was registered. Watermillock pasture, in the very different environment of the Lake District fells, stinted under the terms of an enclosure award of 1835 and hence no longer strictly a common, was nevertheless successfully registered as well, despite the award specifically stating that it consisted of the laying together of enclosure allotments.⁷⁰ Stint-owners on Tatham stinted pasture (Lancs.), enclosed under the 1845 Act, objected to their own registration application after deciding that the pasture was not in fact eligible.⁷¹ This rather chaotic picture reveals the problems inherent in fitting a legacy of idiosyncratic 'communal' landscapes into a standard legal framework.

The historical processes encouraging the growth in stinting in the modern period were multi-faceted. At local level, grazing pressure does, indeed, appear to have been a key driver towards the introduction of stinting, as can be seen in the reasons given for the new stinting schemes proposed for Scales Moor and Crosby Garrett, for example. But it is also apparent that the desire to conserve the ecology of a common or to ensure an equitable access to grazing cannot easily be separated from economic interests. Indeed, an added attraction of stinting a common in the modern period was the resulting change to property rights, converting common rights of pasture into a more adaptable, transferable and potentially profitable commodity.

It is therefore necessary to see stinting as not merely a form of traditional common land management and a response to grazing pressures, but as a response to a changing socio-economic and cultural environment. For those seeking to protect or improve the economic usefulness of their rights, stinting offered numerous advantages over levancy and couchancy. It firmed up property rights, allowing both ambitious and inactive graziers to benefit from the lease or sale of stints, and also provided additional powers of exclusion and enforcement, with an upper numerical limit. The flexibility and adaptability associated with stinting schemes might enable long-term economic use of a common, securing its viability as an agrarian resource, perhaps, in a modern agricultural context. But for all its benefits, stinting under

⁶⁸ 'The 1797 award contains no clear indication as to how the ownership of the unit land was to become vested, probably because nobody at that time thought that the ownership was of any practical consequence': decision of the Commons Commissioner, Thornham Common (Norfolk, CL 41), 18 Dec. 1975, ref. 25/D/79-95 (available at www.acraew.org.uk).

⁶⁹ S. Birtles, 'The impact of commons registration: a Norfolk study', *Landscape Hist.*, 20 (1998), pp. 83-97 at

pp. 88, 92.

⁷⁰ CRO (C), DSO 198/4: Burgh Marsh enclosure award, 1848; Q/RE/1/17: Watermillock award 1835; DSO 146/1-2: Watermillock herdsman's book and cash account book (1835-1951).

⁷¹ Decision of the Commons Commissioner, Lythe Fell (Lancashire, CL 88), 1 Dec. 1980, ref. 220/D/168-173 (available at www.acraew.org.uk).

statute also had the potential to weaken the historic social fabric of the common, breaking the links between community, land and resource. Once stints were sold, they might become detached from the local community, as was the case on the urban common belonging to the town of Clitheroe, Lancashire, where a flourishing trade in beastgates had developed by the later eighteenth century, to the extent that few of those exercising grazing rights also possessed property to which a right was attached.⁷² Alternatively, the trade in stints might lead to local monopolies and eventually to significant land use change, as occurred where a common came to be seen primarily as grouse moor, rather than grazing for livestock. The tension was highlighted in Swaledale (Yorks., North Riding) in 1918, in the politicized context of wartime food supplies, when it was alleged that the owner of game rights on Whitaside Moor had deliberately priced farmers out of the market for stints, reducing stocking levels from 1500 sheep to 850, presumably to benefit the grouse, thereby working against ‘the interests of the public’ in the matter.⁷³ Where stints became concentrated in few hands, the grazings might remain physically open and technically a common, but the social and agricultural dynamic might be almost unrecognizable from that traditionally or popularly associated with common land.

IV

The relationship between stinted grazing rights and sustainable use of a shared resource is not straightforward. Sustainable use of common land involved an interplay between two requirements: first, matching stocking levels to carrying capacity in order to preserve the pasture; and, second, ensuring equitable access to grazing in order to preserve ‘good neighbourhood’. Stinting had the potential to perform both these functions. But to discuss stinting solely in terms of mechanisms for managing land use is inadequate as an historical explanation; stinting has also to be seen in the context of the evolution of property rights on common land. The origins of some stinted commons appear to lie in the legal concepts not of common rights but of agistment, while one of the consequences of stinting was to alter profoundly the conception of grazing rights through the severance of rights from holdings of land. In drawing conclusions from the chronological survey presented above, the implications of stinting both on the use of common land and on the evolution of property rights need to be addressed.

On the face of it, stinting ought to be more able to achieve sustainable use of common land than the rule of levancy and couchancy, since it presupposes that the carrying capacity of the common is known and that the stint is related to that capacity: without the numerical limit imposed by stinting, the capacity would be in danger of being exceeded. Since a stint can be thought of as a form of currency, its value can be adjusted to fit circumstances (by changing the number of animals which can be grazed for one cattlegate, for example), allowing sensitivity to the (changing) carrying capacity of the common, while retaining an equitable (or at least the pre-existing) pattern of access. Numerous examples are recorded, from the seventeenth century to the twentieth, of communities adjusting stints, implying progressive refinement of

⁷² H. R. French, ‘Urban common rights, enclosure and the market: Clitheroe Town Moors, 1764–1802’, *AgHR* 51 (2003), pp. 40–68.

⁷³ *House of Commons Debates*, 11 Apr. 1918, 104, cc 1656–8, Mr Jowett.

grazing levels to match carrying capacity. Sometimes (as on Scales Moor, Ingleton, discussed above) they suggest a fresh approach after a false start. More commonly, perhaps, they suggest a perceived need to adjust stocking levels (usually by reducing them) in order to restore sustainability. Examples abound of manor courts in the Midlands ordering progressive reductions in the stint on common land (both open field common and permanent pasture) in the seventeenth and early eighteenth centuries,⁷⁴ and similar adjustments could be made in the stinted cow pastures of northern England.⁷⁵ Such examples of active management appear to be evidence of local institutions successfully adapting to changing pressures.

Successful matching of stinted rights to the carrying capacity of the common also depended on devising the correct 'conversion formula' for translating a stint expressed in terms of cattlegates or beastgates into a right to graze a particular number of a particular type of livestock. An imperfect conversion formula might be disclosed only when economic pressures changed the balance between different species of livestock, as occurred on the commons at Wasdalehead (Cumb.) by c.1800, when a switch from mixed livestock to a monoculture of sheep was said to have exposed an over-generous equivalency of sheep in the stinting formula.⁷⁶ Proactive management in this area occurred on Scales Moor, cited above, when the stintheolders updated their stinting formula on the eve of registration in 1968, suggesting that they did not want to become trapped in an outdated formula when registering their grazing rights. The legal finality of the Commons Registration Act 1965 appears to prevent future alterations and adaptations, freezing the relationship between rights and carrying capacity.⁷⁷ The same could be said for any historic stinting acts and awards which did not allow for possible changes to the number and formula: once static, it could be argued that stints lose their quality as an adaptive and sustainable tool.

A potentially problematic consequence of stinting was the commodification of grazing rights and their severance from the holding to which they originally belonged. From an ecological point of view this might not be of immediate concern, provided that the upper numerical limit was observed, and for many graziers the right to dispose freely of their stints was both highly valued and, in some areas, a deep-rooted tradition. But a free market could create monopolies that could, in turn, impact on the social and ecological sustainability of the common. A dominant stint-holder could have the power to determine the condition and use of a common, perhaps to suit non-agrarian interests such as game preservation (as occurred on grouse moors), ecological conservation, amenity or military use (as on firing ranges). In cases where the owner of the soil acquired a majority or full complement of stints, the question must be asked whether

⁷⁴ Examples include: Lower Slaughter, Glos., where the sheep stint on the open fields was reduced from 60 per yardland in 1604 to 50 in 1609 and 45 in 1655 (*VCH Glos.*, VI, p. 131); Newcastle-under-Lyme (Staffs.), where stinting was introduced 1590 and the levels reduced 1636 and again in 1649 (*VCH Staffs.*, VIII, p. 49); Willingham (Cambs.), where the stint on the sheep pasture on the fens was cut by nearly half in 1677 and further reduced in 1733 (*VCH Cambs.*, IX, p. 406).

⁷⁵ For example Shap (Westm.), where the stint of New Intake was reduced from five to three beastgates per

'dalt' or share in 1671: J. Whiteside, 'Paines made at Shap', *Trans. CWAAS*, new ser. 3 (1903), p. 158.

⁷⁶ One cattlegate gave the right to graze 15 sheep: Cumbria RO (Whitehaven), D/Lec, box 94, draft brief in case of *R. Grave v. I. Fletcher*, c.1800.

⁷⁷ However, the Commons Act 2006 (c. 26, ss. 26–37) gives statutory commons councils the power to create 'live' grazing registers and to manage the exercise of grazing rights. Hence, greater flexibility may be possible in the future.

the land in question had not rather ceased to be common in anything other than a purely legal sense: in such cases what was being sustained was not communal use of a landed resource.⁷⁸ The severance and transfer of stints could also result in stints going out of circulation or simply disappearing from view, having passed into the hands of those with no interest in exercising, selling or leasing them.⁷⁹ Severance issues were heightened in the early twenty-first century by the effects of the *Bettison v. Langton* case (2001), which determined that once common rights were quantified, they could be severed from the holding and treated as saleable property.⁸⁰ This had widespread implications, particularly on those commons with no tradition of stinting or severance before quantification under the 1965 Act. But in a further twist, the recent ban on severance of rights included in the 2006 Commons Act has implications for stint-owners whose tradition of transferring stints predates the 1965 Act.⁸¹ The issue of severance remains a controversial one.

In drawing this survey to a close, we might return to a deceptively straightforward question: what was a stint? At one level, the answer is simple: it was the right to graze a specified number of livestock on a common. But how that right was perceived – what it represented in terms of possession and property, from what basis it was derived, its (potential) value – was more complex. A stinted right carried with it cultural connotations, reflecting an array of changing conceptions of what constituted a common right. Where stints originated as agistment rights on seigneurial pastures, a stint might originally have been conceived of as a licence from the lord, a licence which, in origin, may even have been explicitly time-limited and which might, presumably, be rescinded. That would be very different from a stint on the community's common grazings that was explicitly tied to a holding (40 sheep on the common per yardland, for example) or a number of cattlegates in an enclosed pasture shared by a group of neighbours. By the sixteenth century, such distinctions of origin were largely forgotten; by then a stint defined an individual's customary entitlement as a member of the farming community. However, a numerical grazing right could also be conceived of as a marketable commodity. Stints were being traded by the seventeenth century. They could thus be severed from their roots in the community and redefined as private property, a process which gained statutory approval in the regulatory stinting schemes of the nineteenth century and the Commons Registration Act of 1965. The history of the apparently simple notion of placing a numerical limit on grazing rights on the common can be viewed as a subtle indicator of changing cultural currents in the relationship between farming communities and their landed resources.

⁷⁸ See, for example, the case of Stagshaw Common (Northumberland CL 5), Decision of the Commons Commissioner, 15 July 1974, Ref. 27/D/20–23 (available at www.acraew.org.uk).

⁷⁹ Some stint-holders' organizations tried to keep a running record of transfers: for example Burgh marsh

management committee maintained a register of stint owners which could be cross-checked against the original enclosure award: CRO (C), DSO 198/6.

⁸⁰ *Bettison v Langton* [2001] 3 All ER 417. For comment see Rodgers, 'New deal for commons?', pp. 32–5.

⁸¹ Commons Act 2006 (c. 26, s. 9).