

Common Property and Property in Common

By MICHAEL TURNER*

IT does not fall to many reviewers to comment on the two hottest properties in a subject within two years of one another, but that considerable pleasure has befallen me. If 1992–3 was the year when Bob Allen focused the microscope on the economic background and consequences of enclosure in the English Midlands, and has made us all think again about agricultural productivity, amongst other issues, then 1993–4 will be remembered for Jean Neeson's dissection of the consequences which befell the apparently passive majority of those who shared in the economic gifts of ownership in common, and then had to bear the losses when property in common was privatized. If Allen applied the rigour of economic analysis and quantitative control on the claimants of the English countryside, then Neeson has given back to those claimants a certain individuality. Here, therefore, we have two complementary tales to tell. The first has been told, here we review the second.¹

Neeson's *Commoners* is the other face of the property rights debate which so fascinated the economists when they gazed over their shoulders at the laboratory of the past, the laboratory of human experience.² If their tale was essentially, though not always exclusively, concerned with the tangible property of acres, roods and perches, of the economic models which helped to explain the scattering of that property in a common-field system and then presided over the realignment of that property into well-defined, discreet bundles, then they necessarily mainly neglected the intangible property of the English village community – the commons in all their many manifestations, and the commoners who resided over them in a system of economic and social management in which all

participants had a say. It was not always fun, but at many levels it actually worked for the majority of country people. The commoners' rights may not always have been recognized as written property rights, but they represented a way of life which was as tangible to the participants as any document proving ownership. The long-held view that enclosure recognized the legal rights of even the humblest of men is a legal semantic in a situation where the legal instrument of custom and practice was not properly accommodated.³ These, and other questions are confronted in this book, as indeed they have been by others at various levels by a return to an altogether more human approach to the economics of the village community than has otherwise prevailed for many years. Jane Humphries has argued for a substantial re-assessment of the value of common rights in the eighteenth century, in particular as regards the essential contribution of women and children to the family economy, a subject which Keith Snell had previously emphasized, and Peter King has opened our eyes to the value of gleaning as a vital addition to the annual earnings of labouring families. Most recent of all, in the pages of the *Agricultural History Review*, Graham Rogers has explored custom, common right, the value of the waste, and the damage done to them by enclosures in west Lancashire, by looking minutely at the impact of enclosure on the social structure of the village of Croston.⁴ There have also been re-statements of the essentials of communal village life through ritual and custom,

¹ Paraphrasing J D Chambers, 'Enclosure and labour supply in the Industrial Revolution', reprinted in E L Jones, ed, *Agriculture and Economic Growth in England 1650–1815*, 1967, pp 104–5, which is more or less the optimistic orthodoxy of the 1950s and 1960s, a contradiction of the line of argument put particularly elegantly by J L and B Hammond on behalf of an earlier generation.

² Jane Humphries, 'Enclosures, common rights, and women: the proletarianization of families in the late eighteenth and early nineteenth centuries', *Jnl Econ Hist*, L, 1990, pp 17–42; K D M Snell, *Annals of the Labouring Poor: Social Change and Agrarian England, 1660–1900*, Cambridge, 1985; Peter King, 'Gleaners, farmers and the failure of legal sanctions in England 1750–1850', *Past and Pres*, 125, 1989, pp 116–50; *idem*, 'Customary rights and women's earnings: the importance of gleaning to the rural labouring poor, 1750–1850', *Econ Hist Rev*, 2nd ser, XLIV, 1991, pp 461–76; Graham Rogers, 'Custom and common right: waste land enclosure and social change in west Lancashire', *Ag Hist Rev*, 41, 1993, pp 137–54.

* A review article of J M Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700–1820*, CUP, 1993. xiv + 382 pp. £35.

¹ R C Allen, *Enclosure and the Yeoman: The Agricultural Development of the South Midlands 1450–1850*, Oxford, 1992, reviewed in *Ag Hist Rev*, 41, 1993, pp 86–8.

² See the useful summary in G D Libcap, 'Property rights in economic history: implications for research', *Explorations in Economic History*, 23, 1986, pp 227–52. And on why land represented special problems in eighteenth-century discussions regarding private property and exclusive ownership, see U Vogel, 'When the earth belonged to all: the land question in eighteenth-century justifications of private property', *Political Studies*, XXXVI, 1988, pp 102–22.

especially by Bob Bushaway, and most recently by the late Edward Thompson.⁵ Neeson's book brings all these issues together in one powerful study, which in its own way quantifies custom and the ownership of property in common and thereby brings out its tangible importance.

The stall is set out on page 1: 'The soil itself, the land, was not the commoner's, but the use of it was. That use, what the law called a *profit à prendre*, was common right'. The essential heart of the system was what Neeson called possession without ownership, what I have described as the tangible within the intangible. She lifts a veil on common rights and their essential role in communal social relations. It is a world we have lost, but was it a large or small world when the great enclosing of the eighteenth century took place? Was it an anachronism, worst still a vestigial remnant of an anachronism, or was it a large, and certainly living organism? Neeson's investigation of contemporary eighteenth-century objective observation as well as subjective opinion answers emphatically yes to this last question, especially in her concluding chapter which restates much of her case and attempts to put the notion of a widespread peasant economy existence back into the life and soul of eighteenth-century village life. Inevitably, a system which was transformed over just a few decades, and on a large scale, can hardly be regarded as evolutionary. It therefore imposed a radical change on the nature of social relations in England. Some readers will blanch at the supposed scale – England is her language not mine – but although the earthquake which both she and Allen have begun has its epicentre in the English Midlands the ripples should still be evident to varying degrees at the outermost parts of the kingdom. They will take on a variety of hues. Common rights differed because of land use: the dominantly arable was different from the dominantly pastoral countryside, the clays are not the chalks, and the moors are not fens. To the various participants there was no such thing as a national economy, but rather a myriad of local and exclusive economies some of which had features in common. And while these local economies were not all transformed at the same time, their aggregate metamorphoses by sometime in the nineteenth century added up to a way of life that had certainly been drastically eroded, though not always completely lost.⁶

While recognizing that for some of these communities the eighteenth century was the fag end of the process, and for others the beginning, and yet for others the lull before the storm, Neeson attempts to dispell what she regards as an incorrect orthodoxy that a peasant way of life had already disappeared by the eighteenth century.⁷ As in so much economic and social history, the eighteenth is the vital century of change, of introspection, and indeed of circumspection. Neeson's century is the eighteenth. And a clear enough outcome of that century, and its final acts and scenes in the nineteenth, was a contribution 'in turning the last of the English peasantry into a rural working class' (p 12). It has long since ceased to be my involvement with economic history but I do recognize that it is the type of tale which needs to be told and retold, and in many guises, to put back into much reductionist economic history the facts about the human condition and the cultural experience.⁸

Chapter 1 poses the essential question – what was the value of the commons? The answer is developed in an essay on contemporary thought – a wide-ranging survey of the pros and cons associated with the survival or destruction of the commons and the act of commoning. It ranges over the individualized arguments regarding the value of the commons to the commoner, and also over the value in wider senses related to the national interest, a debate which was particularly lively during the last quarter of the eighteenth century and the first quarter of the nineteenth with the crises of food supply and the waging of war. This was a period rich in regular doses of national introspection. But if contemporaries told the story as it was, and not through half-remembered facts, then the historian

teenth-century England: a neglected class', *History Workshop Journal*, 18, 1984, pp 57–8; and for Cumbria in the legal context of manorial customs of tenancy where broad rights of common were seen as an add-on extra problem in the lords' attempts at securing the total alienation of their property, see C E Searle, 'Custom, class conflict and agrarian capitalism: the Cumbrian customary economy in the eighteenth century', *Past and Pres*, 110, 1986, pp 106–33, especially pp 120–1, 125–31. And on the multitude of local studies, and the most recent debates on the ideas of a surviving peasant economy and peasant class well into the nineteenth century, see the collection of essays in M Reed and R Wells, eds, *Class, Conflict and Protest in the English Countryside 1700–1880*, 1990.

⁷ A view also confronted by Humphries, 'Enclosures, common rights, and women'.

⁸ A point of view which is becoming popular in the unmasking of the peasant face in the mixing of the proto-industrial, petty trading, and agricultural settings, an aspect which Neeson touches upon many times. See also Reed, 'The peasantry'; J M Martin, 'Village traders and the emergence of a proletariat in south Warwickshire, 1750–1851', *Ag Hist Rev*, 32, 1984, pp 179–88; R W Malcolmson, 'Ways of getting a living in eighteenth-century England', in R Pahl, ed, *On Work: Historical, Comparative and Theoretical Approaches*, Oxford, 1988, chapter 2, pp 48–60; M Reed, "'Gnawing it out": a new look at economic relations in nineteenth-century rural England', *Rural History*, 1, 1990, pp 83–94.

⁵ B Bushaway, *By Rite: Custom, Ceremony and Community in England, 1700–1880*, 1982; E P Thompson, *Customs in Common*, 1991, especially chapter III, pp 97–184. See also R W Malcolmson, *Life and Labour in England, 1700–1780*, 1981, for aspects both of custom and the value of common rights.

⁶ On the survival of customary practices of one sort or another, sometimes well into the nineteenth century, see King, 'Gleaners, farmers', especially pp 145–50; M Reed, 'The peasantry of nine

who resorts to the distorting lens of empirics does so perhaps because the lens of contemporary polemic seems no less distorting. There was though a common current of social engineering. The tricky question has always been related to motive – to what extent was enclosure a class conspiracy, not simply an accident which robbed the poor along the way, or accidentally removed the independence of even lowly property owners, but more importantly was it a conspiracy to rob them of their senses of, or their actual state of, independence, that is to make them wage dependent, to fashion an available labour force to meet the demands of a newly-emerging commercial world? To this extent the contemporary opponents and proponents of the commons – parties on the one hand who saw in the commons the preservation of an indigent and idle poor and on the other who saw an essential synergy between the commons and agriculture in general – nevertheless prophesied together that enclosure would yield a 'more biddable, available labouring class' (p 30).⁹

After the introductory shadow boxing, Part I of this study is about 'Survival', the sharp end of the use of common rights, the value of those rights to the users, whether as a means of fodder for keeping animals within the common-field system, or as forage of an altogether different sort across the wastes for fuel, foods, and materials. All these resources were community resources in which common usage 'was not a charity for the weakest in the village' (p 174), but a tangible shared resource which even without the full panoply of the legal document was nonetheless vested in tangible ownership. And shared ownership brought with it a shared responsibility to keep that resource in good order. It was also something to be enjoyed in non-pecuniary ways – the wastes were a place of sport and, common customs associated with communal living, they were festivals of fun and celebrations of collective association.

Common rights of grazing sounds like a precise ownership in a precise good. Most of the time it was, but it was not always vested as an appendix to the deeds of ownership of real property or to cottages or other dwellings. It could also have a more general application. It could include precise instructions as to depasturing animals at certain times of the year on certain well-regulated parts of the village, whether on the common arable, the waste, the common pasture, the roadways or the routeways and baulks across the open fields, but it could also include the more general access to furze,

peat, fen sedge-straw, and gleaning in the open fields immediately after harvest, as well as other valuable ways to improve the very existence of a commoning class.¹⁰ Thus historians who only recognize the legality of commons' practices through the legal instrument, which can and did contain many and sometimes most of these features, should not turn a blind eye to custom and local habit with or without the legal trappings. The legally intangible was certainly tangible to the recipients of custom, and their losses must be valued in the debit and credit analyses of history.¹¹ They counted for a lot and if their value was at times considered a hindrance to so-called progress, this was often a smokescreen aided and abetted by often harsh and impossibly restricting 'paragraphs' regarding proof of ownership inserted in the enclosure process.

One aspect of the tale which may be subject to diametrically opposite interpretations regards the stinting of commons or commonable places. Were the stints so badly regulated that the commons were inevitably overstocked? If so, this acted as an anti-social barrier to agricultural progress which all could enjoy. In addition, is this view supported by the evidence of revising the rules and regulations governing stinting in the face of complaints about overstocking? Neeson's view is that in the main the revision of field rules and regulations and other rewriting of commoning practices recognized the pressure on those practices, yes, but also pointed to their personal and community value, and the care with which they were maintained and supervised. My own early thoughts on stints suggested two problems: a land hunger in general; but particularly a land hunger to extend the pasture during times when the terms of trade had moved away from arable production. While it may have been true that there was a 'well-regulated, time-tested system' in operation (p 153), Neeson does not satisfactorily confront the issue of the ultimate pressure on the communal resources, that possibly within its own successes it bred its own destruction. The end result, the enclosure, became the only relevant truth against which no amount of local policing of communal laws and customs, no level of fines, or articles of agreement could hold at bay for ever. Indeed, the pressure on these resources in Cumbria, an area with otherwise strong customary practices, might be just such an example of success breeding its own destruction, especially by the peasantry

⁹ A point also made by Humphries by implication when she itemizes the contemporary view which bemoaned those common rights which diverted labour away from wage-earning opportunities: 'Enclosures, common rights, and women', pp 28–9.

¹⁰ Where it was prevalent gleaning could count for 10 per cent or more of the annual income of labouring families, King, 'Gleaners, farmers', p 116; *idem*, 'Customary rights and women's earnings', pp 462–6.

¹¹ A point emphasized by Humphries who embraces gleaning, but also other activities enjoyed as of right and essential to the family economy: 'Enclosures, common rights, and women', pp 21–35.

themselves in their bid to salvage a share of disappearing use-rights.¹²

Neeson has plundered the archives of Northamptonshire particularly, the county of her original thesis, but also more extensively of those in the Midlands in general, to demonstrate the value of 'commoning', and to dissect the threats which hung over it. This is exposed empirically in Part II with firstly a case study of the two villages of West Haddon and Burton Latimer for which there survives unusually good records regarding opposition; secondly a detailed statistical appraisal of landownership and occupancy changes in Northamptonshire both in its own right and in relation to similar analyses in neighbouring Midland counties; and thirdly a chapter on the resistance to enclosure.

The two case studies are interesting but they divert by their particular detail from the main flow of arguments of the book, especially since there is that later chapter on the wider aspects of opposition to enclosure. This chapter details the many forms of opposition to enclosure, whether by negotiation locally, and at Parliament, or by local violent action. Inevitably, as in other studies of opposition it is difficult to quantify the weight of opposition of the silent majority of commoners. My conclusion, which Neeson quotes (p 292) was that 'peasant opposition has been badly underestimated'. The latest research still cannot put the peasant case by weight of example, but it does add further to the general feel for greater opposition than has been readily appreciated.¹³ If apparent passivity of the silent majority was once proof of concurrence it is now surely a better proof, ultimately, of helplessness, but certainly not without a struggle.¹⁴ This is another area where we must guard against the reductionist overviews, lest they be too readily

taken as objective truths, especially from neighbouring disciplines. Thus, recently, while recognizing the loss to the commoners through the extinction of common rights, a law professor then remarked that 'most villages appear to have regarded the last waves of enclosures as welcome reprieves from archaic land tenure arrangements, and rarely protested the change'.¹⁵

In her statistical study Neeson takes a now familiar technique of using the land tax returns in association with the incidence of enclosure to unmask the changes in landownership and land occupancy. Along with the work of J M Martin, John Walton and Turner, on Warwickshire, Oxfordshire and Buckinghamshire, all of whose studies she cites, she shares the importance of pioneering so-called turnover studies, that is the turnover of landowners and occupiers as a result of enclosure. But in the process she takes the importance of such studies various stages forward compared with her fellow pioneers, for she is also interested in what happened to the English [*sic*] peasantry as a class. More than others she looks closely at the loss of independence as a landlord/tenant relationship developed, but she links it to the idea of the destruction of the wider peasant economy in which the loss of commoning was also crucial to that once independent peasant class of small owners and occupiers. If an agricultural social and economic ladder ever existed for the peasants, now it was destined for one-way traffic. She takes the methodology a stage further by differentiating size groups, in what look like fairly precise terms. One conclusion is that both the small owners and the small landlords were more vulnerable than their larger neighbours because of enclosure. Thus, after enclosure 62 per cent of the original owners of under 5 acres in the parishes studied disappeared from ownership, compared with 28 per cent of owners of over 100 acres. The equivalent figures for landlords were 64 and 26 per cent (with total changes for all owners of 49 per cent and 52 per cent for landlords). These figures are high compared with the control group of parishes which remained in open fields over the same period, but they are certainly comparable with other studies of Midland counties. The one exception which alas is not cited is the study of the East Riding by Dr Jan Crowther whose measured rates of turnover are nowhere near as high as those found in the Midlands.¹⁶ An appreciation of this, one hopes, will encourage

¹² C E Searle, 'Customary tenants and the enclosure of the Cumbrian commons', *Northern History*, XXIX, 1993, pp 126-53. See also N Gregson, 'Tawney revisited: custom and the emergence of capitalist class relations in north-east Cumbria, 1600-1830', *Econ Hist Rev*, 2nd ser., XLII, 1989, pp 18-42, especially pp 29-33.

¹³ Of 5494 English enclosure bills presented to Parliament from 1730 to 1839, 1453 were dropped for one reason or another, including 568 where a counter-petition was presented. Thus, 26 per cent of original bills were dropped and 10 per cent accompanied by counter-petitions. The figures for Northamptonshire were 21 and 11 per cent, seemingly not a special county, but along with Buckinghamshire which has a similar record (22 and 13 per cent) there is enough other evidence in the local record to attest to the importance of peasant opposition. M Turner and T Wray, 'A survey of sources for parliamentary enclosure: the *House of Commons Journal* and commissioners' working papers', *Archives*, XIX, 1991, pp 257-88, especially p 261. See also M Turner, 'Economic protest in rural society: opposition to parliamentary enclosure in Buckinghamshire', *Southern History*, 10, 1988, pp 94-128.

¹⁴ E P Thompson was as important as anyone in encouraging interest in the so-called 'seeming passivity of the victims' of enclosure. He also referred to the fatalism of the cottager. His view was that 'this passivity may be overstated'. He was right. E P Thompson, *The Making of the English Working Class*, 1968 ed, p 240.

¹⁵ R C Ellickson, 'Property in land', *The Yale Law Journal*, 102, no 6, 1993, pp 1315-1400, especially p 1392.

¹⁶ J E Crowther, 'Parliamentary enclosure in eastern Yorkshire, 1725-1860', unpublished PhD thesis, University of Hull, 1984, pp 464-76, especially p 474, where we learn that from a study of 33 parishes the rate of property turnover on and around enclosure was 28 per cent.

similar studies of heavily enclosed areas but away from the Midland heartland. Therefore, before we allow Jean Neeson the use of language which embraces the whole of England and its peasantry, we should ease back on her reins and remind her that while the country is not large, it is and was a complex place.¹⁷

As one of the pioneers of using the land tax she knows well the limitations to their use, but like fellow pioneers she makes sensible allowances. Yet breathing fire down all our necks is the substantial work of Donald Ginter.¹⁸ Ginter's criticisms of the uses made of the land tax by Martin, Turner, and others is substantial, though Neeson's earlier work curiously escapes completely unscathed from his strictures. Nevertheless, she is aware of his work though she only takes up the challenge of reply in a superficial way in an appendix on how she uses the land tax.¹⁹ This is particularly important given her policy, which was always open to criticism, of transposing a tax paid in money into an indication of the size of land in acres, or in this case of broad acreage groups (less than 5 acres, 5 to 25 acres, and

so on). Ginter may yet have a field day in review over the continued use of this practice. I think it is still justifiable, if used relatively imprecisely and not in the quest for objective truth about the precise status of landowning and occupying individuals.²⁰ The proximity of publication of Ginter's book might help to explain why Neeson's fuller response will be delayed, but given that she may be the only pioneer of the land tax remaining in the field, her response must be swift to limit the damage which may have been inflicted already by Professor Ginter's heavy boots.

If Bob Allen has made us rethink the role of enclosure in the progress of English agriculture, and if he is correct that before enclosure the so-called yeoman's revolution was more effective than the post-enclosure landlords' revolution, then Jean Neeson's new study is an important complement. The combination of damage done to real property rights and to the rights of property in common single out the eighteenth century and the early decades of the nineteenth as a watershed in the social and economic working of many English villages. If in so many ways the gains from enclosure are in doubt, but the damage is plain to see, then we must ask ourselves – if it wasn't broken, why did we fix it?

¹⁷ Welcome moves to studies of places peripheral to the Midland heartland include Rogers' excellent study of the village of Croston in west Lancashire, but whose place is emphasized in a regional setting: Rogers, 'Custom and common right'. See also Searle, 'Customary tenants'.

¹⁸ D E Ginter, *A Measure of Wealth: The English Land Tax in Historical Analysis*, 1992.

¹⁹ Neeson, *Commoners*, Appendices pp 331–45; see also p 228n.

²⁰ See my review of Ginter in *Jnl Hist Geog*, 19, 1993, pp 79–80. See also the essays in M Turner and D Mills, eds, *Land and Property: The English Land Tax 1692–1832*, Gloucester, 1986.

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