

Communities, Protest and Police in early Nineteenth-Century Oxfordshire: The Enclosure of Otmoor Reconsidered¹

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Abstract

This paper revisits the violent and protested riots which followed the enclosure of Otmoor in Oxfordshire. The redistribution of property rights attended upon enclosure united local communities in protest, fostering social solidarities which transcended class divisions. In order to contain the disturbances magistrates were forced to experiment with new methods of policing. The article suggests that, where enclosure intruded new notions of property rights into communities where traditional entitlements were extensive and widely valued, new patterns of economic allocation would require new police powers to make them work.

IN the years since Eric Hobsbawm and George Rudé published *Captain Swing* in 1969, the literature on rural protest in nineteenth-century England has grown in both range and sophistication.² A number of recent studies have deepened our understanding of the dynamics of social protest and extended our awareness of the diverse idioms of rural protest.³ In the process old explanatory paradigms have generally been abandoned. Gone is the tendency to constrain rural protest within a framework of formed or incipient class relationships. The concept of largely static class relationships

as the nodal point of rural social conflict has proved descriptively clumsy and analytically blunt. Those who have sought to retain social class as a central dynamic in their reading of rural society have adopted E P Thompson's reformulation of class not as a given set of social relations but as a constructed and contested narrative of social experiences.⁴ In the work of Jeanette Neeson, John Archer, Roger Wells, Mick Reed, Keith Snell, Alun Howkins, and Ian Dyck we encounter a rural England comprised not of static, or normative, class conflicts but rather of mutable social alignments.⁵ In essence rural England was a theatre for the making and remaking of class relations.

Perhaps the most fruitful line of approach has been the displacement of simple class models of rural protest with more subtlety shaded analyses of the

¹ This is a revised version of a paper delivered to the British Agricultural History Society's Conference on 'Conflict and Cohesion: Midlands Rural Society in the Long Eighteenth Century' held in the School of Continuing Education of the University of Birmingham on 24 September 1994. I am grateful to Dr Richard Hoyle for inviting me to contribute to the conference and to the participants for their helpful comments on my original paper.

² E J Hobsbawm and George Rudé, *Captain Swing*, Penguin ed, Harmondsworth, 1973.

³ Amongst this now extensive literature see especially John Bohstedt, *Riots and Community Politics in England and Wales 1790-1810*, Cambridge, Mass, 1983; John E Archer, 'By Flash and a Scare', Arson, Animal Maiming, and Poaching in East Anglia 1815-1870, 1990; David Jones, *Crime, Protest, Community, and Police in Nineteenth-Century Britain*, 1982, pp 33-84; Roger Wells, 'Rural revels in southern England in the 1830s', in Clive Emsley and James Walvin, eds, *Artisans, Peasants, and Proletarians, 1760-1860*, 1985, pp 124-65; E P Thompson, *Whigs and Hunters*, 1975; R W Malcolmson, *Life and Labour in England 1700-1780*, 1981, pp 108-35; Andrew Charlesworth, ed, *An Atlas of Rural Protest in Britain 1548-1900*, 1983; John Stevenson, *Popular Disturbances in England 1700-1870*, 1979, chaps 5 and 11; Mick Reed and Roger Wells, eds, *Class, Conflict, and Protest in the English Countryside, 1700-1880*, 1990.

⁴ E P Thompson, *The Making of the English Working Class*, Penguin ed, Harmondsworth, 1968, pp 9-12, 937-9; idem, *The Poverty of Theory and Other Essays*, 1968, pp 1-210, 245-301.

⁵ J M Neeson, *Commoners: Common Right, Enclosure, and Social Change in England, 1700-1820*, 1993; Archer, *By a Flash and a Scare*; Roger Wells, *Wretched Faces: Famine in Wartime England, 1793-1801*, Gloucester, 1988; M Reed, 'The peasantry in nineteenth-century England: a neglected class?', *History Workshop* Jul, XVIII, 1984, pp 53-76; K D M Snell, *Annals of the Labouring Poor: Social Change and Agrarian England, 1660-1900*, 1985; Alun Howkins, *Reshaping Rural England. A Social History 1850-1925*, 1991; Ian Dyck, *William Cobbett and Rural Political Culture*, 1992.

communal context of popular protest.⁶ Barry Reay's elegant study of the Hernhill Rising of 1838, with its emphasis on protesters' sense of community, local tradition, and communal norms, typifies this approach.⁷ The customary culture, which played so large a part in defining plebian mentalities and shaping popular protest, became the central focus of E P Thompson's mature work.⁸ Thompson's bi-polar model of a patrician society and a plebian culture does not render class analysis redundant, but offers a very particular contextualization of class tension within the cultural forms of a more traditionally ordered rural society. By making us more sensitive to the role of custom as a powerful organizing principal in rural society, recent historians have given us important insights into the ways in which rural England was shaped. Custom offered a compelling, popular, and anti-modern discourse on entitlement, defining and legitimating rights such as commoning, gleaning, and benefits in kind, which in turn upheld what Jeanette Neeson has described as 'the economy of multiple occupations'.⁹ This is not to suggest that communities embodying customary entitlements and traditional rights were harmonious. Customary entitlements could themselves constitute the nodal points of intra-communal conflict. Open fields, commoning rights, and other entitlements had to be policed, and with the rise of the enclosure movement explicitly 'improving' economic principles first challenged and then subverted the salience of custom

within rural communities.¹⁰ In short, the paradigm shift from class to community does not necessarily imply that rural communities were any the less fissured but rather that those fissures are best understood within the vernacular of communal discourses rather than in the more formalized language of class conflict.

The Otmoor disturbances in Oxfordshire offer a useful case-study through which to examine and develop models of community and conflict in late-Hanoverian rural England. Not only did these disturbances span half a century, from the 1780s to the 1830s, but they saw local communities polarized between enclosers and defenders of common rights, between legal and customary notions of economic and social entitlements, and between those who favoured new police methods and those who bitterly resisted them. Simultaneously village communities found themselves in conflict with county government, and even with the Home Office by the 1830s. The Otmoor riots reveal communities in conflict on an usually wide scale. Moreover, despite the attempts of one historian (Bernard Reaney in 1970) to explain the Otmoor riots in terms of the conventional parameters of class struggle, the history of the Otmoor struggle confounds rather than confirms the normal class paradigm.¹¹ Frequently we see class solidarities fractured rather than reinforced, we see the prerogatives of property coming into conflict with a disposition to make concessions in order to restore order, and we see notions of legal entitlement confronting customary expectations. Thus at

⁶ C J Calhoun, 'Community: towards a variable conceptualization for comparative research', *Social History*, V, 1980, pp 105-29; *idem*, *The Question of Class Struggle. Social Foundations of Popular Radicalism during the Industrial Revolution*, 1982; Bob Bushaway, *By Rite: Custom, Ceremony and Community in England 1700-1880*, 1982.

⁷ Barry Reay, *The Last Rising of the Agricultural Labourers, Rural Life and Protest in Nineteenth-Century England*, 1990.

⁸ E P Thompson, *Customs in Common*, 1991, pp 1-15, 97-184.

⁹ Neeson, *Commoners*, p 290; Peter King, 'Gleaners, farmers and the failure of legal sanctions in England 1750-1850', *Past and Present*, 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.

¹⁰ Neeson, *Commoners*, pp 134-57.

¹¹ For a valuable, if partial account see B Reaney, *The Class Struggle in Nineteenth Century Oxfordshire*, 1970. A descriptive summary of events from 1832-35 is offered by A V Brown, 'Last phase of the enclosure of Otmoor', *Oxoniensia*, XXXII, 1967, pp 35-52. See J L and B Hammond, *The Village Labourer*, ed by G E Mingay, 1978, pp 49-56; M G Hobson and K L H Price, *Otmoor and Seven Towns*, 1961, pp 14-16; W E Tate, *The English Village Community*, 1967, p 210. The geography and patterns of cultivation on Otmoor are well covered in C J Bond, 'Otmoor', in *The Evolution of Marshland Landscape*, Oxford University Department of External Studies, 1981, pp 113-35.

the height of the Otmoor crisis, in the spring of 1831, the chairman of Oxfordshire's quarter sessions, W H Ashhurst, argued that everything, even by implication a strict interpretation of formal property rights, should be subordinated in the attempt to restore peace to the county, remarking that, 'whatever might be a person's private feelings, under the circumstances in which Otmoor was placed, it was the duty of every man to allay the feelings of irritation which were there, and to preserve the peace'.¹² Simultaneously, the principal landowners of Otmoor asserted the unfettered rights of property, as redefined through the act of enclosure, informing the Home Secretary that, 'even were we willing, as proprietors, to abandon our clear and indisputable title, we need hardly point out to your Lordship the mischievous consequences which must ensure from allowing property...to be arrested from us by undisguised force'.¹³ Here private economic rights directly confronted local politicians' sense of a greater public good and, simultaneously, village communities were experiencing a convulsive transformation of their economic structure and cultural identity.

I

Otmoor was a large area of waste land north-east of Oxford. The low-lying wetlands were surrounded by seven towns, whose inhabitants enjoyed a *de facto* right to common on the moor.¹⁴ Otmoor was subject to regular flooding which critically impaired its agricultural usefulness, and this dampness was thought responsible for a serious strain of cattle distemper known

locally as 'Moor Evil'.¹⁵ Despite this, both Davis and Arthur Young, who surveyed Oxfordshire for the Board of Agriculture in 1794 and 1807 respectively, considered the quality of the soil good, and enthusiastically endorsed the idea of enclosure. Many local landowners were equally sanguine.¹⁶ In fact, such optimism was ill-founded, but it was of immense importance in stimulating the movement to enclose the moor and curtail commoning rights.¹⁷ If Otmoor was to be cultivated it would require very substantial capital investment in drainage, fencing, outbuildings, and other basic infrastructure. Capitalizing the project presupposed substantial returns for major landowners and implied a concentration of ownership among a smaller number of self-consciously 'improving' landowners. In this brave new world of enhancing the use-value of underproductive land, customary rights to commoning on the moor found no place, indeed were construed as fundamental obstacles to improvement. The essential legal instrument for legitimizing the engrossment of private holdings at the expense of common rights was an enclosure act.

The turbulent history of Otmoor began in 1786, when the young Alexander Croke proposed draining and enclosing the moor in an attempt to increase the yield of his small estate of Studley Priory. He presented details of a scheme costing an estimated £5250, and canvassed a rate of 9d in the pound to be levied on each of the seven towns to defray the expense.¹⁸ Public notices of the intention to petition for a

¹² J Dunkin, *History and Antiquities of Bullingdon and Ploughley*, 1823, i, pp 123-24.

¹³ R Davis, *General View of the Agriculture of Oxford*, 1794, p 22; Arthur Young, *General View of the Agriculture of Oxfordshire*, 1813, pp 227-31.

¹⁴ C S Read, 'The farming of Oxfordshire', *JRASE*, XV, 1854, p 251. Read wryly commented that, 'Like all undertakings destitute of an honest foundation, this enclosure did not prosper'.

¹⁵ A Croke, *Short View of the Possibilities and Advantages of Draining, Dividing and Enclosing Otmoor*, 1787. Croke gave an autobiographical sketch in his *Genealogical History of the Croke Family*, 1823, ii, pp 706-30. His tenure as judge in the Vice-Admiralty Court in Nova Scotia between 1801 and 1815 was marked by controversy.

¹² W H Ashhurst in conversation with Richard Smith, 26 March 1831, cited in *Proceedings on the Trial of the Information, King v Smith*, 1832, p 64. For Ashhurst's career, see David Eastwood, *Governing Rural England. Tradition and Transformation in Local Government, 1780-1840*, 1994, pp 59-61.

¹³ PRO, HO 52/15/473, Sir A Croke, T L Cooke and P Serle to Lord Melbourne, 27 April 1831.

¹⁴ The Otmoor towns were: Charlton, Oddington, Noke, Beckley, Horton, Fencott, and Murcott.

private act were posted in 1786 and immediately torn down in an unequivocal demonstration of popular hostility. Croke attributed this to the precipitate action of W E Taunton, the county's clerk of the peace, who had a smallholding at Charlton-on-Otmoor and initially favoured the idea of enclosure.¹⁹ However, the root cause of popular resentment was a justified belief that Croke's scheme would effectively prohibit commoning on Otmoor. Croke's reply, that in practice commoning was limited by the wetness of Otmoor, underestimated both the marginal utility of common rights and the depth of popular anger.²⁰ The villagers, unusually, found an aristocratic ally in the lord of the manor, the earl of Abingdon. The radical earl, whose sympathies embraced Wilkes, the American colonists, and the French revolutionaries, promptly blocked the bill, and proclaimed that, 'As Lord of the Manor, besides the dictates of humanity, I should feel it my duty to protect the cause of the poorer inhabitants in preference to those of the richer who need no such protection'.²¹ Abingdon demonstrated both his contempt for Croke and his populist *bona fides* by impounding Croke's cattle, insisting that he had no right to common pasture. Although he lost ensuing court cases, Abingdon proved his point, and Croke, *pro tempore*, abandoned his aspirations to the life of a leisured gentleman and returned to Oriel College, Oxford, to train as an advocate.²² He summed up the outcome of this first skirmish, with sarcastic bitterness: 'As his Lordship has marshalled the parties, there are, on the one side, the Earl

of Abingdon and the Otmoor mob...on the other all the respectable gentlemen and landholders'.²³

Croke later described his 1787 scheme as 'patriotic'.²⁴ Rather less patriotic – to his mind at least – was the revival of plans for enclosure by none other than W E Taunton, after Abingdon's death in 1799 had removed the principal, or at any event the most respectable, obstacle to enclosure. A bitter pamphlet war between Croke and Taunton ensued, in which the clerk of the peace defended his actions as honourable and consistent, and Croke pilloried Taunton as opportunistic and mischievous. In 1800 the duke of Marlborough, another local landowner, in concert with Taunton introduced an enclosure bill against which Croke petitioned. Mutual antagonisms effectively scuppered the bill, and traditional rights survived as a consequence of proprietorial disagreement.²⁵ It was ironic, if inevitable, that the enclosure act for Otmoor²⁶ was secured in 1815 when Croke was in Nova Scotia and in the face of his vicarious opposition.²⁷ There was no spontaneous demonstration of popular outrage at this expropriation of communal rights. Instead enclosure commissioners were appointed and went about their work tortuously. The enclosure settlement was not finalized until 1829, at a cost of around £20,000.²⁸ Too often enclosure has been conceived in stark terms, as the forcible transfer of property and other entitlements from smallholders and a diminishing peasant class to major property owners. The example of Otmoor, like Neeson's work on Northamptonshire, hints at more equivocal, and more obviously contested processes, in which the interests and pri-

¹⁹ Bodleian Library (hereafter Bodl), G A Oxon b 96(5), A Croke, *Letter to the Proprietors of Otmoor*, 1800, pp 1–2; W E Taunton, *Answer of Mr Taunton to a letter written by Dr Alexander Croke*, 1800, pp 6–10; A Croke, *Second Letter to Proprietors of Otmoor*, 1800, pp 4–13. Taunton was attorney to the earl of Abingdon and ceased to advocate the 1786/87 scheme once the earl's opposition was known.

²⁰ Croke, *Short View*, pp 8, 21 *et seq.*

²¹ Earl of Abingdon, *Case of Otmoor*, reprinted 1831, p 7. Original italics.

²² Bodl, G A Oxon 4° 49, p 216; Croke, *Genealogical History*, ii, p 709; *idem*, *Second Letter*, *passim*.

²³ Bodl, G A Oxon b 96(4), A Croke, *Answer to Lord Abingdon's Case of Otmoor*, np, nd [?1787].

²⁴ Croke, *Genealogical History*, ii, p 709.

²⁵ Hammond, *The Village Labourer*, pp 50–51.

²⁶ 55 Geo III, c 100.

²⁷ A Croke, *The Case of Otmoor*, 1831, p 8 *et seq.*; Reaney, *Otmoor*, p 27.

²⁸ PRO, HO 52/9/339–45, Account of Otmoor by A Croke and T L Cooke prepared for Robert Peel.

orities of the propertied emerge slowly and ambiguously.²⁹

II

What had hitherto been a local dispute exploded in 1830 with what became known locally as 'The Revolution of Otmoor'.³⁰ Following the recommendations of the enclosure commissioners, a new cut had been made for the river Ray. This greatly reduced the problem of flooding on the moor, but resulted in the Ray breaking its banks upstream and flooding prime agricultural land. Again fissures were emerging not simply between the propertied and the unpropertied but between different interests within the propertied elite. Newly enclosed property was being valorized at the expense of other property values. In June 1829 aggrieved farmers led an attack upon the new cut and threw down its embankments. As a result twenty-two were indicated for felony at the Oxford assizes. At the ensuing trial, however, Mr Justice Park directed the jury to acquit because the defendants had acted 'to relieve themselves from the inconvenience of having their own lands overflowed'.³¹ Park's judgment was limited and technical, but was widely, and incorrectly, interpreted as a declaration of illegality against the whole enclosure. Park's decision, however misconstrued, emboldened the protest movement and on 28 August parties from the Otmoor towns began breaking enclosure fences.³² By 3 September magistrates were finding it impossible to swear-in special constables, and were requesting troops.³³ A series of sporadic attacks culmi-

nated on 6 September when a crowd estimated at five hundred destroyed enclosures and swelled the cry: 'Otmoor for ever!'.³⁴ Forty-two arrests were made and prisoners taken under armed guard from Islip to Oxford gaol. Rioters reached Oxford first and addressed the crowds at St Giles Fair, with the result that when the convoy arrived brickbats, stones, and abuse were hurled. On the corner of Beaumont Street the prisoners were dramatically rescued and a great popular triumph was consummated.³⁵

This was the stuff of popular legend, retold then, as now, 'with advantages'. Both symbolically and politically it amounted to serious defeat for both the enclosers and the magistracy. Meanwhile the protest movement acquired a more regular rhythm and clearer patterns of organization. Under cover of darkness, crowds of between one and five hundred ventured on to the moor with blackened faces, frequently disguised as women, and carrying pitchforks, bill-hooks, and even guns. Their targets were the fences, hedges, and bridges being erected during the day by the enclosers.³⁶ Traditional police measures were wholly ineffective, and magistrates quickly became convinced that order could only be restored by calling in the yeomanry and stationing troops around Otmoor.³⁷ The rioters sought to raise the stakes, claiming to have 'all the county on their side', and urging sympathetic consideration of their case, 'lest *Otmoor for ever*

²⁹ Neeson, *Commoners*.

³⁰ Bodl, G A Oxon 4° 49, 187.

³¹ PRO, HO 52/9/351-54, Park to Peel, 25 September 1830. Park agreed they might have been guilty of riot, but they were not tried under this charge.

³² Oxford County Record Office (hereafter ORO), documents relating to the Otmoor riots, 1829-35, CPZ 15/1, MSS copy of article from *Gentleman's Magazine* on the Otmoor troubles; CPZ 15/3, Memorandum of J W Henley.

³³ PRO, HO 52/9/208, T L Cooke to Peel.

³⁴ PRO, HO 52/9/213, Macclesfield to Peel, 7 September 1830; ORO, CPZ 15/1 and 3.

³⁵ PRO, HO 52/9/332, Capt Hamilton to Peel, 10 September 1830.

³⁶ PRO, HO 52/9/344-45, (?deposition of Cooke); ORO, CPZ 15/8, Ashhurst to Melbourne, 23 January 1832; CPZ 15/17, Deposition of Richard Thornton, 3 August 1833. The actions of the Otmoor protesters were strikingly similar to those of the *Demoiselles* defending forest rights in the Pyrenean foothills; see J M Merriman, 'Demoiselles of the Ariege, 1829-31', in Merriman, ed, *1830 in France*, New York/London, 1975.

³⁷ PRO, HO 52/9/213, Macclesfield to Peel, 7 September 1830; HO 52/9/219, Weyland etc, to Peel, 7 September 1830; HO 52/9/228, Lord Churchill to Macclesfield, 9 September 1830; HO 52/9/357, Weyland to Peel, 9 November 1830; HO 52/15/467, Croke to Melbourne, 27 February 1831.

become a war cry beyond the county'.³⁸ The dramatic events of 6 September and the intensity of violence thereafter constituted a challenge which magistrates could neither ignore nor abate by traditional means.

The gravity of the problem lay in the attacks being more than spontaneous popular uprisings. Actions were concerted and strategy premeditated.³⁹ In the first instance the inspiration came from local farmers who orchestrated sorties on to Otmoor, and were deeply suspicious of the enclosers. As late as February 1833 Ashhurst thought there was 'much reason to believe that some of the Farmers still give encouragement to these outrages - as it is known that there was a meeting of the Farmers just before the fences were destroyed on the Friday night'.⁴⁰ Farmers were not alone in lending coherence and calculation to the movement. Magistrates were convinced that, 'the Parish Constables have so strong a feeling, and are so mixed up in the matter as to render it useless to expect them to do the[ir] duty'.⁴¹ Otmoor exposed the critical weakness of the system of parish constables, for whom communal loyalty was the transcending obligation, and the passage of time did little to erode constables' sympathetic indulgence. In 1833 Michael Cooke, a constable at Fencott, was still shielding and encouraging rioters.⁴² The *Crown* at Charlton-on-Otmoor was the starting and watering point for many nocturnal sorties.⁴³ Here Richard Price, a Charlton overseer, procured ample quantities of beer for volunteer attackers, and urged them to 'go into [*sic*] Otmoor, and cut all down if

you can, but mind you are not caught'.⁴⁴ Thus the riots not only articulated communal concerns but were disciplined by traditional village hierarchies.

Itinerant radicals fortified the protest. One such, Josiah Jones, supplemented offers of refreshment with the moral assurance that 'the common was taken away in a roguish way'.⁴⁵ Material assistance was also offered. In the *Crown* there was a box labelled 'Otmoor Subscriptions'.⁴⁶ Most notorious was the fund established by Richard Smith, a radical Oxford wine merchant, who placed newspaper advertisements in April 1831 urging contributions for those 'who have suffered not only by iniquitous enclosure, but also by imprisonment'.⁴⁷ Smith was also seen in the *Crown* encouraging the opponents of enclosure to persevere with their strategy of violence which, he believed, would ultimately defeat the enclosers. He was prosecuted on the grounds that his advertisement was prejudicial to the trial of rioters, but the jury split equally and the case was lost. Smith maintained that the trial was mounted by Tories who objected to his active support for Reformers in the 1831 county election.⁴⁸ The involvement of Smith hints at the wider political significance of the Otmoor protests. As one hostile poster had it, the people of Otmoor were being 'misled by artful and designing persons'.⁴⁹

Thus the disturbances were sustained by a broad social grouping whose diversity and momentary coherence constituted a serious problem for magistrates. Even proprietors conceded that 'the lower classes of Farmers and the poor in the whole neighbouring Country take part'.⁵⁰ By 1834 this

³⁸ PRO, HO 52/9/226, Anon to Peel, 10 September 1830.

³⁹ PRO, HO 52/9/211, Weyland and others to Peel, 6 September 1830.

⁴⁰ ORO, CPZ 15/8, Ashhurst to Melbourne, 19 February 1833.

⁴¹ PRO, HO 52/9/336, Weyland etc to Peel, 11 September 1830.

⁴² ORO, CPZ 15/15, Thornton's deposition, 3 August 1833. Richard Thornton was the only labourer to give evidence to magistrates. He came forward too late to enable charges to be made upon his testimony.

⁴³ PRO, HO 52/15/469, Croke and Cooke to Melbourne, 21 February 1831.

⁴⁴ ORO, CPZ 15/17, Thornton's depositions.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Jackson's *Oxford Journal*, 2 and 23 April 1831.

⁴⁸ *Trial of King v Smith*, pp iii-v; ORO, CPZ 15/15 and 17, Thornton depositions.

⁴⁹ Bodl, G A Oxon b 96(10), A Croke, *To the Inhabitants of Otmoor*, 1831.

⁵⁰ PRO, HO 52/9/343.

alliance was fragmenting. The farmers, who had as much to lose by the general flouting of property rights as they had to gain from the events of 1829–30, rediscovered a deep distrust for the excesses of popular activity. As early as 1832 Croke thought 'the principal farmers...heartily tired of the business'.⁵¹ It was not, however, until 1834 that the labourers became profoundly suspicious of the farmers' overweening self-interest and thus this critical axis of alliance was fractured.⁵² The eventual disintegration of the opposition owed much to the resolution of the authorities and the persistence of the enclosers. Failure bred disillusionment, and gradually, as support ebbed, the Moor towns were isolated and resistance evaporated.

III

At their zenith, the threat posed by the riots was intensified by the apparent incapacity of customary guarantors of authority. Initially both magistrates and the enclosers were bewildered and constrained by what they construed as ambivalence of the law. Mr Justice Park's judgment of 1829 was widely regarded as legitimizing direct action in defence of traditional rights.⁵³ Later, in 1831, four men were tried for riot and the most the terror of the law could muster were two sentences of eight weeks' imprisonment. This was followed by acquittals of rioters and the fiasco of Smith's trial.⁵⁴ J M Davenport, who became clerk of the peace in 1831, was in no doubt that these judgments had had profound effects. 'It unfortunately happened...at the outset of the Otmoor depredations the Defendants on more than one prosecution were acquitted. These acquit-

tals – however just the Verdicts of the Juries on those occasions may have been – re-excited the Rioters, and did in every point of view monstrous harm'.⁵⁵ These judgments gave rise to magisterial uncertainty: justices were eager for convictions but could not afford further acquittals. Davenport thought 'that if some examples could be made they would have an excellent effect on the public mind', and, for this reason, 'magistrates have most anxiously wished to effect a conviction'. However, given the solace rioters found in acquittals, justices could only allow a case to proceed if conviction was 'highly likely'.⁵⁶ This was a view with which Ashhurst, as chairman of the quarter sessions, wholly concurred.⁵⁷ In 1833 Ashhurst considered a proposal to prosecute, at the county's expense, three men arrested carrying bill-hooks on Otmoor. Ashhurst insisted that the county take an opinion from Mr Serjeant Trelford, who duly advised on the difficulties of proving conspiracy. In the light of Trelford's opinion, Ashhurst vetoed the prosecution, arguing that 'it would be madness to go on with the indictment of these men'.⁵⁸ A year later justices did risk bringing a case, based upon circumstantial evidence, for destruction of a bridge at night, and the judge's 'stern comments' were believed by magistrates to have had 'a beneficial effect'.⁵⁹

Magistrates' difficulties arose, in large measure, from problems in procuring evidence. Davenport thought rioters were so firmly in league that offering rewards for evidence was a pointless exercise, while Ashhurst and his fellow magistrates lamented the law's leniency towards those

⁵¹ ORO, CPZ 15/8, Croke to Ashhurst, 26 January 1832.

⁵² ORO, CPZ 15/17, Layard to Ashhurst, 8 and 28 January 1835.

⁵³ ORO, 'Cases and Opinions' (compiled by J M Davenport), CPX 1, p 9.

⁵⁴ ORO, CPZ 15/5, Bundle of depositions etc on 1831 trial; 'Clerk of the Peace's Notebook' (kept by J M Davenport), CPN 1, p 268. Cases were brought at the county's expense.

⁵⁵ ORO, CPX 1, p 11.

⁵⁶ *Ibid.* The Otmoor trustees also thought convictions essential to their being able to enforce the enclosure act; see Bodl, Leigh Papers, MS Dep. 48/12, bundle 1, Cases against Coleman and others, 1832, p 6.

⁵⁷ ORO, CPZ 15/8, Ashhurst to Melbourne, 9 February 1833.

⁵⁸ ORO, CPZ 15/17, Ashhurst to Davenport, 9 July 1833; cf CPX, pp 8–12.

⁵⁹ ORO, Quarter Sessions minute book, QSM II/9, Easter 1834.

found guilty of breaking fences.⁶⁰ Magistrates sought to invoke the moral authority of central government to counterbalance the law's equivocations and successfully petitioned the Home Office to offer a reward of £100 for information leading to rioters' arrest or prosecution. Magistrates placed considerable weight on 'the salutary effect which would be produced by the matter being taken up by the Government, and of the impression that would be felt that the outrages have assumed so serious a complexion as to call for the interference of Executive authority'.⁶¹ Despite the Home Office's intervention, a belief persisted that the case of the Otmoor rioters was a moral one, and the law, by failing to condemn *all* offences against property, legitimized, or at any rate failed to discourage, popular protest. Croke had few illusions on this score: 'Magistrates have shown too great lenity to offenders, and juries have acquitted persons against the evidence. From this relaxation of justice, laws cease to be the wholesome terror of evil-doers, or a protection to the property of individuals'.⁶²

The nature of disturbances also confounded traditional communal methods of policing. While parish constables connived at rioting, fellow townsmen refused to serve as special constables.⁶³ A scheme suggested by Ashhurst for armed special constables to patrol Otmoor foundered on villagers' reluctance to undertake general police duties.⁶⁴ 'As might be expected the special constables merely told the Magistrates that they would not act for such a purpose [the general policing of

Otmoor], and told the old tale, that they would prevent any disturbances taking place in their own town'.⁶⁵ A suggestion that Otmoor be patrolled by special constables from distant parts of the county who were unsympathetic to the rioters was dropped on legal advice that the 1831 Special Constables Act only permitted men 'from the neighbourhood' to be sworn.⁶⁶ If sympathy with the rioters undermined the utility of local constables, the risks of confronting armed rioters strengthened local citizens' resolution not to be sworn-in as special constables, with even 'the greater number of those who might be well-disposed...express[ing] their unwillingness to expose their lives to hazard'.⁶⁷ In the face of a concerted and armed challenge the traditional system of untrained volunteer constables was not only likely to be ineffective but was also demonstrably inappropriate.

The remaining response to riot was a military one. Troops were stationed around Otmoor in 1830, and during 1831 the yeomanry were frequently called out.⁶⁸ In late January 1832 Ashhurst succeeded in persuading Melbourne to station regular troops on the moor,⁶⁹ and in March visited the Home Office personally to urge Melbourne to postpone their withdrawal.⁷⁰ Although willing to use the yeomanry, *faute de mieux*, Ashhurst considered them ill-suited to general policing. The arrival of yeomanry always ended the disturbance until the yeomanry withdrew and then the rioters reconvened. The consequence was that the yeomanry felt 'they are needlessly

⁶⁰ ORO, QSM II/8, Michaelmas 1832; PRO, HO 52/19/268, Ashhurst to Melbourne, 19 February 1832. 7&8 Geo IV, c 27 had reduced the sentence to two months gaol or a fine, and in this respect, at least, Peel's liberalization of the criminal law was unwelcome to magistrates.

⁶¹ ORO, CPZ 15/2, Minute book of Otmoor committee, 14 February 1833; see also CPZ 15/8, Phillips to Ashhurst, 20 February 1833; CPZ 15/14, bundle of posters.

⁶² Croke, *Case of Otmoor*, p 4.

⁶³ PRO, HO 52/15/467.

⁶⁴ ORO, CPZ 15/9, Proposals of 23 February 1832. Ashhurst estimated the annual cost of this scheme at £1201.

⁶⁵ ORO, QSM II/8, Easter 1832, Report of Ashhurst and Henley; cf CPZ 15/10, Ashhurst's memorandum book, 14 March 1832. CPZ 15/11 lists those willing to serve as special constables in March 1832: 11 from Charlton, 10 at Fencott, and 5 at Murcott.

⁶⁶ ORO, CPX I, 7-8; cf 1&2 Will IV, c 41.

⁶⁷ ORO, CPZ 15/8, Ashhurst to Melbourne, 23 January 1832.

⁶⁸ *Jackson's Oxford Journal*, 5 March 1831; PRO, HO 52/15/489, Macclesfield to Peel, 25 May 1831.

⁶⁹ ORO, CPZ 15/8, Ashhurst to Melbourne, 14 February 1832; Phillips to Ashhurst 3 April 1832. Phillips was the Home Office official dealing with Otmoor.

⁷⁰ ORO, CPZ 15/10, 12 March 1832.

called out' and became ill-disciplined.⁷¹ For these reasons justices had rejected Home Office proposals to station a troop of yeomanry permanently on Otmoor. 'The Magistrates feel that the Yeomanry are a Body very ill adapted to such a service, and that the season of the year is peculiarly inconvenient for the Farmers to be taken from home'.⁷² In order to limit public hostility to the yeomanry justices insisted that it remain under the overall direction of the civil power. This probably blunted its operational efficiency, and certainly frustrated its more enthusiastic officers.⁷³ The yeomanry could be effective in dispersing riotous gatherings, but was maladroit when it came to surveillance and unsophisticated in day-to-day policing.

Amidst these perplexing circumstances, the quarter sessions handed the management of the Otmoor problem over to a special committee of nine leading magistrates under the chairmanship of Ashhurst.⁷⁴ Hitherto the sessions had tended to play down the gravity of the disturbances. In 1830 the lord lieutenant dismissed the riots as a local matter,⁷⁵ and throughout 1831 Otmoor magistrates and proprietors rather than formal meetings of quarter sessions forged policy and co-operated with the Home Office.⁷⁶ By August 1831 local justices were finding defending their own enclosures 'embarrassing and delicate', and pressed the Home Office to raise the matter with the High Sheriff.⁷⁷ The appointment of a special standing committee of the quarter sessions in 1832, the Otmoor Committee,

marked the formal assumption of responsibility by the county. This committee immediately concluded that all normal resources were spent and 'that the strongest constabulary force which the Magistrates of the county have it within their means to raise for the suppression of the outrages which still exist on Otmoor will prove totally powerless and insufficient to meet the exigencies of the case'.⁷⁸ With the Home Office refusing to sanction the stationing of troops on Otmoor for an indefinite period, the committee persuaded their fellow magistrates to approve the deployment of a trained professional police force on Otmoor. Although the quarter sessions had conceded in 1831 that policing these troubles was a legitimate charge upon the county, many magistrates remained sceptical as to the cost-effectiveness of adopting new and more elaborate methods of policing.⁷⁹ Despite these reservations the committee appointed and armed fourteen Metropolitan constables, and for three years Otmoor was policed by a force paid and administered by the county.⁸⁰ Predictably perhaps, there was considerable local hostility to the force, and constables, along with the houses where they lodged, were frequently attacked.⁸¹ Problems were not eased by the conduct of Chamberlayne, the superintendent, who was accused by one of his officers of 'drunkenness, partiality, negligence and tyranny'. Chamberlayne was later dismissed and under the guidance of his successor, Mr Layard, both the effectiveness and the reputation of the force improved. The county later affirmed that Layard's 'quiet, but at the same time firm and proper conduct has conciliated all Parties'.⁸² The force was never of

⁷¹ ORO, CPZ 15/8, Ashhurst to Melbourne, 23 January 1832. Otmoor magistrates shared Ashhurst's reservations, PRO, HO 52/15/497, Croke, Cooke and Serle to Melbourne, 28 July 1831.

⁷² PRO, HO 52/19/282, Ashhurst to Melbourne, 2 April 1832.

⁷³ ORO, CPZ 15/10, 12 May 1832. A month later the Otmoor committee attempted to dispense with the yeomanry, 2 June 1832.

⁷⁴ ORO, CPZ 15/2, *passim*. Davenport acted as secretary to the committee and he, Ashhurst and J W Henley did the bulk of the work.

⁷⁵ PRO, HO 52/9/277, Macclesfield to Peel, 10 September 1830.

⁷⁶ PRO, HO 52/15/*passim*.

⁷⁷ PRO, HO 52/15/499, Croke and others to Melbourne, 1 August 1831.

⁷⁸ ORO, QSM II/8, Epiphany 1832.

⁷⁹ *Ibid*, Michaelmas 1831; PRO, HO 52/19/268.

⁸⁰ ORO, CPZ 15/2, 24 February 1832; QSM II/8, Easter 1832. All constables carried pistols.

⁸¹ ORO, CPZ 15/10, 8 and 10 February, 5 November 1833.

⁸² ORO, QSM II/10, Trinity 1835.

sufficient size to prevent all attacks upon enclosures, but it did deter some rioters by increasing the likelihood of detection. The moor was patrolled on moonlit nights, and Layard gradually gathered sufficient information to pre-empt attacks and make arrests. In an ironic reversal of fortunes, by 1834 landlords could enclose at night under police protection.⁸³ The novelty of the force, coupled with the organizational efficiency developed under Layard, enabled it to achieve a degree of success which had eluded more traditional approaches.

The principal objection to the new force was less its novelty than its expense. In the first full year it cost the county £1174 (13 per cent of county expenditure), and between 1832 and 1835 the cost totalled £2870.⁸⁴ There was hostility in other parts of the county to funding a police operation designed to protect what was, in effect, property speculation in a small locality. While the quarter sessions came to see Otmoor as more than a local *Jacquerie* and thought it essential to the peace of the county that order be restored on Otmoor, their Otmoor committee was under constant pressure to reduce the number of police deployed. From September 1832 they were withdrawing constables, but, despite the secrecy which surrounded this decision, the reduction of the force to four officers contributed to a renewal of attacks in early 1833.⁸⁵ The committee responded by again increasing the force to eight constables, and thereafter were more circumspect in reducing numbers and less eager to heed calls to cut expenditure. In an effort to conciliate ratepayers elsewhere in the county, the committee persuaded Otmoor proprietors to pay the wages of

constables remaining after the autumn of 1834.⁸⁶ The county continued to pay Layard and meet additional costs, and as late as April 1835 the committee was still urging the quarter sessions 'to incur this temporary expense, in order to procure permanent relief to the county from this burden'.⁸⁷ Although the quarter sessions stood firm in the face of sustained pressure to abandon an expensive experiment, the cost of the operation probably reinforced Oxfordshire magistrates' reluctance to adopt the County Constabulary Act in 1839.

In sanctioning special police measures magistrates' primary concern was not the defence of property. In May 1832 magistrates told Otmoor proprietors that, 'The County would have been happy – as was their hope – could this arrangement have effected the double end of ensuring the security of public peace and private property – but both these objects are not to be attained under the present circumstances'. In such circumstances, magistrates believed that maintaining public order remained their principal obligation, and proprietors themselves were instructed to 'take measures for the effectual protection of your private property'.⁸⁸ This was not to suggest that magistrates were uninterested in the threat to property, nor did they normally perceive any sharp distinction between preserving public order and protecting private property.⁸⁹ Indeed, they were deeply perturbed by the 'fixed determination' of the inhabitants of Otmoor 'not to give any protection to the property on Otmoor',⁹⁰ and agreed with Layard that, through their corporate actions, there was a danger of the 'lower orders' undermining the prerogatives of property and 'appointing

⁸³ ORO, CPZ 15/15, Layard's report 2 March 1834.

⁸⁴ ORO, CPZ 15/12, Bundle of accounts. In the financial year 1833–34 the cost fell to £977, and the next year to £499 14s 6d.

⁸⁵ ORO, CPZ 15/8, Ashhurst to Melbourne, 19 February; QSM II/9, Epiphany 1833; CPZ 15/2, 22 September 1832, 1 January, 14 February 1833. The committee realized that any future reduction 'must be a gradual one'.

⁸⁶ ORO, QSM II/10, Michaelmas 1834, Epiphany 1835. With four constables on Otmoor this cost the trustees £7 per week.

⁸⁷ *Ibid.*, Easter 1835; cf QSM II/9, Trinity 1833, Epiphany 1834.

⁸⁸ This resolution of the Otmoor committee was conveyed by letter to major proprietors: ORO, CPZ 15/2, 5 May 1832.

⁸⁹ See ORO, QSM II/8, 7 February 1832; QSM II/9, Trinity 1834.

⁹⁰ ORO, QSM II/8, Easter 1832.

themselves dictators of what shall or shall not be done on Otmoor [*sic*].⁹¹ The Otmoor crisis does, however, indicate that magistrates' commitment to the defence of private property was not unlimited and, *in extremis*, the protection of property became a private responsibility whilst maintaining public order was always a corporate duty.⁹² To suggest that between 1830 and 1835 Oxfordshire sessions were concerned exclusively with the property rights of those who advocated and stood to gain from enclosure is to attribute to them a narrowness of purpose and a coherence of outlook which their often tentative responses do not bear out. It was with profound relief that the Otmoor committee informed the quarter sessions in October 1835 that 'the county ceases to have a Police Force on the Moor'.⁹³ It was hardly a victory, but the crisis was over.⁹⁴

IV

As we have seen, recent work has tended to construe rural protest in later-Hanoverian England as both emanating from and contributing to complex processes of social dealignment and realignment. The Otmoor disturbances illuminate precisely one such moment of social transformation. The Otmoor Enclosure Act disturbed patterns of authority and allocations of entitlements both within and between village communities. Parish elites which normally governed the communities as parish officers found their role redefined as the defenders of communal rights against

external expropriation.⁹⁵ The larger farmers who normally insisted on the rights of property found themselves prominent agents in a violent struggle to defend customary entitlements. And if this alliance of the propertied and the non-propertied in defence of an older community identity ultimately foundered, if property rights eventually again fissured rather than united village communities, the Otmoor disturbances constituted a moment when a sense of community translated into collective action embracing different social groups and transcending more conventional class divisions.

The Otmoor episode also illuminates the interconnections between custom, property, and the law. In sponsoring enclosure, major local landowners tended to identify the public interest with their private advantage. The economics of improvement, as defined by enclosure and mediated by the market, were presented as reallocating private property in ways which might enhance public prosperity. But communities organized around agrarian capitalism, like those embodying customary and collective property rights, depend for their stability on both conventional assumption and legal norms. When, as in the Otmoor riots, conventional assumptions come into conflict with a redefinition of legal entitlement, a latent dissonance between law and custom is revealed. In this dissonant conflict, legal rights were temporarily abated in order to secure public order and restore a sense of communal equilibrium. Coming, as it did, in conjunction with the 'Swing Riots' of 1830-1 the Otmoor uprising highlighted the importance of community and custom in the stabilization of a society with very limited police resources.⁹⁶ The passage

⁹¹ ORO, CPZ 15/15, Layard to Ashhurst, 28 January 1835.

⁹² It was this aspect of county policy which baffled the fifth earl of Abingdon who thought the interests of property and public order inseparable: ORO, CPZ 15/17, Abingdon to Davenport, 11 May 1832.

⁹³ ORO, QSM II/10, Michaelmas 1835.

⁹⁴ It is impossible to calculate the cost of the riots to the county. The county records do not contain detailed accounts of expenses. In addition to the cost of the police, £263 13s 0d was spent on special constables before March 1832: ORO, CPZ 15/12. Prosecutions for the St Giles riot cost £243 12s 2d, and calling out the yeomanry cost £25 per day: PRO, HO 51/19/254, Ashhurst to Melbourne, 5 February 1832. The final cost was probably around £4500.

⁹⁵ For the political role of village elites see Eastwood, *Governing Rural England*, pp 24-42; David Eastwood, 'The republic in the village: parish and poor in Bampton 1780-1834', *Journal of Regional and Local Studies*, XII, 1992, pp 18-28.

⁹⁶ For 'Swing' in Oxfordshire see Hobsbawm and Rudé, *Captain Swing*, pp 110-13.

from communities which embodied at least residual common rights to communities in which possession and property rights were construed in rigidly private terms was both complex and contested. The Otmoor disturbances reveal some of those complexities and the extent to which new patterns of economic allocation would require new police powers to make them work.