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International Seminar - Paris, 25-26 April 2013

*Commons' Sense :  
The Failure and Success of British Commons*

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## Commons' Sense: The Failure and Success of British Commons

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Historically, Britain's common lands have been the test case for *all* common lands - and perhaps all kinds of collective enterprise – whether in western Europe or in Britain's empire.<sup>1</sup> And ever since their final 'enclosure' (privatization) with a series of private Acts of Parliament in the late eighteenth and early nineteenth centuries, the meaning of those commons – the *sense* that we have of them - was that they failed.

They failed – it was said - because they could not enable as much economic growth, or as much innovation, as individual land ownership:

- At the time: in the decades of their final near-extinction<sup>2</sup> this was the opinion of agricultural experts, of Parliament and the judiciary.
- And commons' enclosure became understood throughout Europe as the reason for England's 'superior' agricultural productivity in the nineteenth century.<sup>3</sup> And the inspiration for the attack there on commons.<sup>4</sup>
- In the twentieth century the 'failure' of the commons became the opinion of leading agricultural historians particularly in response to the rise of Communism between the wars, and to the Cold War later on.<sup>5</sup>
- And those historians, in turn, provided Garret Hardin in his 'Tragedy of the Commons' with his evidence for the necessity of regulation in order to avoid overpopulation. The commons didn't work, he said, because they *weren't* regulated. This misleading (and empirically barren) account of common lands became the most cited article in Social Sciences for a generation.

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1 E.P. Thompson, *Customs in Common* (1991); R.Drayton, *Nature's Government: Science, Imperial Britain and the 'Improvement' of the World* (Yale, 2000).

2 A rough estimate of current common land in England and Wales is one million acres (under 3%): E. Straughton, 'Beyond enclosure: upland common land in England and Wales since 1800', in I. Whyte and A. Winchester, *Society, Landscape and Environment in Upland Britain*, (Society for Landscape Studies, Supplementary Series, 2004), pp. 88-9. A. Everitt 'Common land' in *The English Rural Landscape*, ed. Thirsk (2000), pp. 210, 235, estimates commons in the 1690s as covering 25-30% (8-9 million acres) of England and Wales.

3 N. Vivier, 'European Agricultural Networks, 1750-1850: A View from France', in John Broad (ed.) *A Common Agricultural Heritage? Revising French and British divergence. Agricultural History Review Supplement 5* (2009); Vivier, 'Les Biens Communaux au XIXe Siecle. Perspectives de Recherches', *Histoire et Societies Rurales*, no. 1, 1er semestre 1994.

4 M-D Demélas et N. Vivier *Les Propriétés Collectives face aux Attaques Libérales (1750-1914) Europe Occidentale et Amérique Latine* (2003).

5 Ernle (1912); Clapham (1926); Chambers and Mingay (1966). For a cogent account see R.C. Allen, *Enclosure and the Yeoman* (1992), chap. 1.

But ‘The tragedy’ was also the high water mark of commons’ ‘failure’: gradually the tide has begun to turn:

Newer work shows that the users of British commons – the commoners themselves - regulated their commons to ensure they remained productive. So:

- They organized grazing<sup>6</sup>
- They altered common field systems <sup>7</sup>
- They adopted new crops.<sup>8</sup>

And there is good evidence to show that Britain’s ‘agricultural revolution’ did not need the enclosure of the commons – *that* revolution happened in the century before enclosure not after it.<sup>9</sup> Enclosure’s revolutionary power was no more than ‘a myth propagated by eighteenth-century improvers’ – a myth that generated more in rent than it did in efficiency.<sup>10</sup> We know now that:

- Productivity levels during the French wars were as high on English common fields as on enclosed ones. <sup>11</sup>
- Small farmers were as productive as large farmers.
- Their inter-dependence sped the diffusion of new crops, the raising of young stock, the production of milk and cheese, pigs and poultry, fertilizer etc.<sup>12</sup>
- And the similarities between English and French farming at this time appear to be greater than their differences.<sup>13</sup>

Moreover historians now think that the commons ‘worked’ (succeeded) in a different sense too (here they have returned to an earlier claim made by the first historians of enclosure):<sup>14</sup>

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<sup>6</sup> Neeson (1993); Thompson, *Customs*; A. Winchester, *The Harvest of the Hills. Rural Life in Northern England and the Scottish Borders, 1400-1700* (2000); E. Straughton, ‘Beyond Enclosure: Upland Common Land in England and Wales since 1800’ in *Society, Landscape and Environment in Upland Britain*, ed. I.D. Whyte and A.J.L. Winchester, Society for Landscape Studies, supplementary series 2, 2004.

<sup>7</sup> T. Williamson, ‘The Rural Landscape: 1500-1900, the Neglected Centuries’, in Della Hooke, ed., *Landscape: the Richest Historical Record* (The Society for Landscape Studies, 2000).

<sup>8</sup> Allen, *Enclosure and the Yeoman*, p. 207: ‘most of the growth in yields between the middle ages and the nineteenth century was accomplished before the elimination of peasant agriculture in the eighteenth century.’

<sup>9</sup> Kerridge (1973); Havinden (1961); Yelling (1977); cf. M. Turner in Broad, ed. (2009).

<sup>10</sup> Williamson, ‘The Rural Landscape’, p. 111.

<sup>11</sup> A. Antoine ‘Métayage, ‘Farm Productivity, and the Money Economy’, in J. Broad, ed., *A Common Agricultural Heritage?*

<sup>12</sup> W. Marshall (1790) Vol 2 pp 2734.

<sup>13</sup> Broad, ed., *A Common Agricultural Heritage?*

<sup>14</sup> J.L. Hammond and B. Hammond, *The Village Labourer* (1911)

- They were the first rung on the landholding ladder.<sup>15</sup>
- They could offer the landless and land-poor fuel, food and pasture.<sup>16</sup>
- They enabled the development of petty capitalism by providing materials or space for all kinds of crafts-people and trades-people: wood-workers, brick and basket-makers, travellers, truffle-men, dyers, apothecaries and herb-women all got some of their livings from commons.<sup>17</sup>
- They gave women and their children a productive role in the family economy.<sup>18</sup>
- They gave men more secure employment than either the pastoral agriculture that followed enclosure in the mid 1700s or the arable agriculture that followed it later on.<sup>19</sup>
- Ecologically, some commons supported species and landscapes that enclosure would destroy – and avoided the dangers of plant and animal mono-cultures.<sup>20</sup>
- And we know now that commons were more than sources of products and rights they were *places* too: places of solitude, of familiarity, of ritual, of memory. They embodied all the associations of a life, the lives of the people you knew and the lives of the people living there before you.<sup>21</sup>

This is good news – and I was one of the bearers of it in a book I wrote called *Commoners*.

Nevertheless, I know now, as I knew then, that the commons – though regulated - didn't always work for everyone:

- Regulation itself might be used to exclude the poor, the transient, the immigrant;<sup>22</sup>
- Regulation might be ignored: large commoners could overstock the

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15 Hammond and Hammond (1911); J.V. Beckett, *A History of Laxton* (1988).

16 Neeson, *Commoners*, chap 2; Straughton (2004), p. 93.

17 A. Everitt, 'Common Land' in J. Thirsk, ed., *The English Rural Landscape* (2000), pp. 216-17; A. Hall, 'Fenland Worker-Peasants', p. 37, 60.

18 J. Humphries, 'Enclosures, Common Rights and Women: the Proletarianization of Families in the late Eighteenth and Early Nineteenth Centuries', *Journal of Economic History* Vol. 50 (1990), pp. 17-42.

19 Allen, *Enclosure and the Yeoman*; K. Snell, *Annals of the Labouring Poor. Social Change and Agrarian England 1660-1900* (1985).

20 Neeson, *Commoners*, chap. 3; Straughton, in Whyte and Winchester (2004) 91; cites Pollard 1997 on 'contribution' of marginal land; T. Williamson, *The Transformation of Rural England* (2002).

21 England: John Clare, Thomas Bewick, *Memoir*; for highland Scotland see David Craig, *In Search of the Clearance Highlanders* (19--).

22 A. Winchester and E. Straughton, 'Stints and Sustainability: Managing Stock Levels on Common Land in England, c.1600-2006', *Agricultural History Review* Vol. 58 (2010); generally: Straughton (2004) and citing Singleton (2000 p. 97). N. Vivier, 'Les Biens Communaux au XIXe Siecle', p. 134.

commons despite bylaws and courts.<sup>23</sup>

- Essential local resources might become commercial goods, again despite local law.<sup>24</sup>

This ‘enclosure before Enclosure’ could reduce the value of the commons for the poorest in a village - those without land, or without much of it. And it precluded compensation for the loss of what access they retained when commons were fully enclosed by Parliamentary Acts later on.

And it happened in the same circumstances as that final Enclosure: it happened because it benefitted a relatively small number of the largest landowners, usually landlords.<sup>25</sup>

My argument in *Commoners* was that *this* ‘failure of the commons’ – their enclosure *de facto* before their Enclosure *de jure* – was not inevitable. Access to commons for small landholders, and even for the landless in some circumstances, did not disappear everywhere or entirely before their *final* Enclosure by Parliament. Despite *case* law, such as the 1607 decision that residents (‘inhabitants’) without property could not have common right, many commoners - propertied or not - continued to observe their *local* laws, their ‘custom’ – their practice – or tried to.<sup>26</sup> And when their rights were extinguished by Acts of Parliament they protested.<sup>27</sup>

The question was: What *enabled* the survival of broad access to these commons and what *destroyed* it?

- Of course there are no simple answers; there was no single common: the experience of the commons was varied. And the negotiation required in order to share them was perpetual: not set once, for all time. Elinor Ostrom knew this and so do the many writers who have followed her into the world of modern commons. These scholars have identified scores of different factors that may enable or disable particular commons.<sup>28</sup>

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23 C. Searle, ‘Custom, Class Conflict and Agrarian Capitalism: the Cumbrian Customary Economy in the Eighteenth Century’, *Past and Present* 110 (1986) pp. 106-33.

24 J. Neeson, ‘Coastal Commons: Custom and the Use of Seaweed in the British Isles, 1700-1900’, S. Cavaciocchi ed., *Ricchezza del Mare, Ricchezza dal Mare Secc. XIII-XVIII. Atti della ‘Trentasettesima di Studi’* Istituto Internazionale di Storia Economica ‘F. Datini’, Prato, 11-15 (2005), pp. 343-67.

25 S. Wade Martins, *Farmers, Landlords and Landscapes. Rural Britain, 1720 to 1870* (2004), pp. 12-13.

26 Neeson, *Commoners*, chap. 2; ‘Coastal Commons’ (2005).

27 Neeson, ‘The Opponents of Enclosure in Eighteenth-Century Northamptonshire’, *Past and Present* 105 (1984).

28 A. Agrawal, ‘Common Resources and Institutional Sustainability’, in *Drama of the Commons*, ed., Ostrom et al., (2002), pp. 41-85.

In her early work (1990) Ostrom described a number of ‘design principles’ now well-known to everyone interested in commons, and elaborated not least by Ostrom herself.<sup>29</sup> They are a good place from which to start to explain the history of British commons as well as the success and failure of current commons worldwide.

So I’ll use them here to describe the commons of two island communities - the Hebrides and the Channel Island of Guernsey - at the height of Parliamentary Enclosure, during the wars between Britain and France, 1793 to 1815. They will suggest some answers to the question of how the least powerful commoners managed to continue to share commons before their final Enclosure.

The commodity at issue here is seaweed. Seaweed was a vital source of fertilizer, fuel, food and fodder for many coastal communities worldwide – it still is. It was also – as potash – an industrial product. Over the course of the eighteenth century Scottish landlords increasingly captured the seaweed on the Hebridean foreshore for their own use; despite its customary use by the inhabitants, and despite its immemorial use by their own tenant farmers. Then the landlords made their tenants burn the seaweed to make potash for export, despite the needs of the land for fertilizer. They did this by raising rents.<sup>30</sup> During the war this was immensely profitable. (Scots landlords lived like kings – or at least like *English* landlords.) When peace came, profits fell like a stone and landlords encouraged their tenants to leave the Hebrides. They replaced them with sheep and, later, deer and game birds.

In Guernsey, in contrast, the foreshore remained open both during the war and in the peace that followed. Even the landless kept access. Attempts to turn seaweed (“vraic”) into potash failed when Guernsey’s legislature - the States - decided that the primary use must be agricultural and only surplus seaweed could be used to make potash.<sup>31</sup> Other threats to its collection were also repulsed at the highest levels. The shores remained open in the nineteenth century and a new market-gardening economy blossomed in the hands of very small producers who brought both ‘startling growth and unprecedented prosperity’ to the island.<sup>32</sup>

29 E. Ostrom, *Governing the Commons. The Evolution of Institutions for Collective Action* (1990), p. 90; for Ostrom herself on the multiplicity of factors see ‘Coping with Tragedies of the Commons’, *Annual Review of Political Science* Vol. 2 (1999), p.514.

30 M. Gray, *The Highland Economy* (1957), pp. 130-37.

31 Neeson unpublished ms: ‘The Wastes and War’; unlike the Ile d’Oléron at the same time: Phillippe Lafon, *L’Or Brun d’Ile d’Oléron*, pp. 17-20.

32 Crossan, *Guernsey 1815-1914*, p. 37. For the historical productivity of small farmers in Japan see Allen, *Enclosure and the Yeoman*, pp. 11-13; for the present see J. Studwell, *How Asia Works* (2013).

## Why the difference?<sup>33</sup>

If we look first at commons regulation we can see that Guernsey – unlike the Hebrides – satisfied most of Ostrom’s ‘design principles’.

- Both the users and the right to use the resource were clearly defined.<sup>34</sup>
- Enjoyment depended on local conditions<sup>35</sup> and changed as those conditions changed.
- Those who drafted the regulations also used the resource themselves; and they were elected by other men who used it too.<sup>36</sup>
- Penalties varied with the gravity of the offence and were imposed by officials who were accountable to the other users.<sup>37</sup>
- Conflict-resolution mechanisms were accessible.<sup>38</sup>
- Finally, the highest authority outside the island (the Privy Council in London) recognized and respected Guernsey’s self-regulation.<sup>39</sup>

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33 Neeson, *Wastes and War* (ms in preparation).

34 This included the rule that confined vraicking by boat to rocks out of the reach of onshore vraickers using carts and horses. Such boundaries deter conflict between incompatible technologies and deter conflict between users, Ostrom, ‘Coping with Tragedies of the Commons’, p. 511.

35 W.T. Berry, *History of the Island of Guernsey*, p. 286; Macculloch, *Guernsey Folklore*.

36 On structure of government see R. Hocart, *An Island Assembly. The Development of the States of Guernsey, 1700-1949* (1988), chap 1. Two constables and the douzeniers were elected by the adult male rate-payers in each parish; cottagers and labourers were not rate-payers and so did not vote: Crossan, *Guernsey 1815-1914. Migration and Modernisation* (2007) pp.190-91. In a rural parish adult male rate-payers were about a third of all adult males; the rest were cottagers, artisans, tradesmen, and (relatively few) labourers: Crossan, *Guernsey Welfare* (forthcoming) I am grateful to Dr Crossan for sharing this information with me. Constables and douzeniers used vraic; jurats on the Royal Court did not. The twelve jurats interpreted and enforced vraic customs in consultation with the parish constables and the parish douzaines; senior constables sat *ex officio* in the States and, with the junior constables and douzeniers sat in the States of Election which chose the jurats, Crossan (2007) pp. 11-12.

37 Representation on matters related to vraic likely depended not only on the right to vote but on the strength and intimacy of parish relationships – many of which were familial. Here it’s important to note that holding a parish office was a desirable mark of status in a world with relatively few sources of social differentiation. As a result, deeply unpopular actions would carry a high price. In these circumstances a broad consensus might prevail.

Reciprocity in a commons is improved when those who use it ‘are well-known in a community, have a long-term stake in that community, and find it costly to have their reputation for trustworthiness harmed in that community’: Ostrom, ‘Coping with Tragedies of the Commons’, p. 510. On status and office see T.F. Priaux, ‘Secular parish administration in Guernsey’, *Quarterly Review of the Guernsey Society*, 22 (1966), pp. 50-1, cit. Crossan, p. 190.

38 Hocart, *An Island Assembly. The Development of the States of Guernsey 1700-1949* (Guernsey, 1988); Berry, *History of the Island of Guernsey* (1815), pp. 177-78; Duncan, ‘The Late Tax Question’, *Guernsey and Jersey Magazine* vol. 1(1836), p. 115; F. Dally, *The Channel Islands*, 2nd ed. 1860, pp. 37-8.

39 Crossan, *Guernsey 1815-1914*, p. 204; Dally, pp. 253-8.

So the design principles, applied to Guernsey, suggest why commons were shared successfully. And we can add to them what the editors of *The Drama of the Commons* (2002) called ‘the arrangements that drive the Drama’ forward. In Guernsey these ‘arrangements’ included:

- secure title to land,
- owner-occupancy,
- and inheritance laws that kept properties small, more or less equal, and difficult to consolidate into large farms.

(I shall return to them in a minute.)

Now Guernsey’s poorest commoners – the numerous cottagers with tiny plots of land and some labourers with none at all - were excluded from formal decision making about the commons. But they were *not* excluded from the commons themselves. At a time when Scottish landlords captured the foreshore and Enclosure extinguished common right in English villages Guernsey commons were left unscathed. We need to understand why:

Was the resource, for example:

- too abundant to need preservation? Probably not. Islanders didn’t think it was abundant;<sup>40</sup> they said that it must be rationed – so they regulated it.
- Was it a ‘common pool resource’ – like air and water - from which was difficult to exclude users. But it wasn’t in the Hebrides.<sup>41</sup> It was quite possible to exclude the poor – there.

What about more cultural explanations?

- Size, for example. Was the small size of these communities and the resulting intimacy of their social relations a factor?<sup>42</sup>
- Or ‘mutuality’? Did shared work and play enable shared commons? Did a habit of daily co-operation strengthen the ties between the poor and the

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40 Neeson, *Wastes and War*.

41 Neeson, *ibid*.

42 Ostrom et al., *Drama of the Commons*, chap 1.



better-off?<sup>43</sup>

Or what about the economic value of the landless to the landed: as labour, as traders in *vraic*, and suppliers of *vraic* ash from their hearths <sup>44</sup>

These cultural, social and economic relationships were important<sup>45</sup> but in contemporary *English* villages the prospect of Parliamentary Enclosure trumped all of them.<sup>46</sup> So perhaps they are not *enough* to explain why the least powerful kept their access to the commons in Guernsey.

Finally, perhaps no one *wanted* to exclude the smallest commoners from the Guernsey foreshore. Perhaps enclosure was simply not an issue? In fact, this was not the case. Attempts were made to enclose the shores where commoners dried their seaweed over the course of the eighteenth century, culminating in a case tried before the Royal Court in 1811 and appealed before a Royal Commission that visited the island in 1815.<sup>47</sup>

When these attempts were made to ‘enclose’ the foreshore in Guernsey they failed. I think they failed for three reasons:

First, solidarity: all the users of the foreshore – whether rate-payers or cottagers and labourers – resisted enclosure. They did this in daily practice – by following custom season after season; and they did it with arguments before the jurats (judges) in the Royal Court.

This persistence was rooted in a universal sense of right: in 1815, on the eve of the Royal Commission’s inquiry into enclosure, the island’s Lieutenant Governor told the Privy Council in London that the ‘whole island’ was against enclosure, believing that access to the foreshore was ‘a right...inherent in the island at large’.<sup>48</sup>

This consensus ensured support for the right at the highest levels including the States and judiciary. But perhaps they had no choice: if they had turned instead

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43 Neeson, ‘Gathering the “Humid Harvest” of the Deep’: the Mid-Summer Cut *Vraic* Harvest in Nineteenth-Century Guernsey’, *Transactions and Report of the Société Guernesiate* (2010), pp. 519-36.

44 Neeson, *Wastes and War*.

45 Neeson, *Commoners*, chap. 10.

46 Neeson, *Commoners*, chaps. 7,8.

47 Neeson, *Wastes and War*.

48 TNA PC1/4051: Correspondence concerning the Royal Commission to Guernsey, 1815. Miscellanea: Unbound Papers 1814-23: Doyle to Privy Council 20 February 1814.

towards ‘improvement’ and followed the English example they would have found that the islanders’ secure title and inheritance laws stood in their way. In other words: the sense of right was rooted in widespread ownership and its reproduction down the generations.

Second, necessity: there was in Guernsey a sense of the value of commons. By this I mean that there was general agreement on agriculture’s need of *vraic*: a sense of its significance expressed by merchants, jurats and the Privy Council as well as town-dwelling consumers. Half of Guernsey’s wheat was home grown. The need for seaweed to produce it was both clear and proverbial:

No *vraic*, no corn; no corn, no cows; no cows, no bread for children's mouths.<sup>49</sup>

Third: an understanding of the wider value of the sort of society that commons enabled. Guernsey in the 1830s was not England. And in the 1840s it was not Ireland. It escaped their social catastrophes: unemployment, disorder, famine. And those who *wrote* rather than *farmed* knew the value of this escape.<sup>50</sup> So a society of independent yeomen was the aim.<sup>51</sup> And, to a far greater extent than anywhere else, it was the reality thanks to Guernsey’s system of tenure and its inheritance laws: ‘we have’, said one Guernsey writer, ‘no primogeniture, no absenteeism, no eldest sons, and Heaven be praised, no Nobility’<sup>52</sup>

So: the lesson of these commons – the sense to make of them – is that they survived best where:

- the right to use them, while regulated, was also widely enjoyed;<sup>53</sup>
- title to them was secure;
- landowners, commoners and regulators were the same people; and where the wider community understood the value and, indeed, the necessity of the commons.

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51 Neeson, *Wastes and War*.

52 J. Duncan, *Guernsey and Jersey Magazine*, Vol. 4 (1837).

53 Ostrom, 'Coping with Tragedies of the Commons', p. 510; Agrawal, 'Common Resources and Institutional Sustainability', pp. 51, 62 for discussion of the argument that 'small numbers' of users protects the resource.

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