

The political culture of the English commons, c.1550–1650*

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Abstract

Although there has been plenty of work on enclosure and the riots against it, the ‘political culture’ of common lands remains obscure, despite considerable interest amongst social historians in ‘everyday politics’ and ‘weapons of the weak’. This article attempts to recover something of that culture, asking what political meaning was ascribed to certain actions, events and landscape features, and what tactics commoners used to further their micro-political ends. Using a systematic study of interrogatories and depositions in the Court of Exchequer, it finds a complex array of political weaponry deployed in commoning disputes, from gossip, threats and animal-maiming to interpersonal violence. In addition, it shows that the need to establish precedent, or ‘long-usage’, meant that certain physical acts and features were imbued with political meaning: acts of use, perambulations, old ridge-and-furrow, speech, even dying whispers, could all mean something in the politics of the commons. Moreover, commoners could be subject to moral scrutiny as neighbours, with antisocial behaviour liable to be used against them in disputes. All in all, it is argued that we are only just beginning to recover the politics of the English commons, and that there was much more to them than enclosure rioting.

Commons are political spaces. They are shared *between* people, and their survival depends on regulation and co-operation.¹ More than this, they are often physically ill-defined, as are rights to use them. Whereas, broadly speaking, a person’s rights on a private plot are clearly defined, those on a common are often not. Sometimes based on local custom, on prescriptive documents locked up in dusty chests, or on imprecise concepts of ‘neighbourhood’, rights of use on commons are thus subject to intense but invisible fields of social force, in which some users have better claims of use than their neighbours, while others are excluded altogether, and in which access is defined in part by the distribution of power.

Of course, all early modern historians know there was a politics of common land. But

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¹ G. Hardin, ‘The tragedy of the commons’, *Science*, 16 (1968), pp. 1243–8; E. Ostrom, *Governing the commons: the evolution of institutions for collective action* (1990); A. J. L. Winchester, *The harvest of the hills: rural life in northern England and the Scottish Borders, 1400–1700* (2000); L. Shaw-Taylor, ‘The management of common land in the lowlands of southern England, c. 1500–c. 1850’, in T. de Moor, L. Shaw-Taylor and P. Warde (eds), *The management of common land in north-west Europe, c.1500–1850* (2002), pp. 59–85.

our view of this politics is focused very sharply on one particular aspect: the *dissolution* of common rights, through the wide-ranging raft of changes known together as 'enclosure'; and it focuses on one particular *form* of political action: the riot.² The enclosure riot, indeed, is well established as a crucial pre-industrial act of protest: hedge-levelling has even been called a 'national pastime', but the focus on such dramatic moments of direct action has actually obscured the wider politics of common land.³ Rioting, it has been pointed out, is just one tactic by which groups of commoners could make a political point, and the crowd was 'not the only site for "popular politics"'. Indeed, as I hope to show below, there was a rich repertoire of political acts available to the early-modern commoner.⁴

Similarly distorting has been the tendency to characterize enclosure rioting as 'social protest'. This term was preferred, for example, by Roger Manning in his important study of early-modern rioting, partly because he felt localized protest against specific economic grievances was 'pre-political'.⁵ But the term brings baggage. Social protest, surely, implies a moment of agency for the relatively powerless. The archetypal scenario would see the wealthy landowner attempting to extinguish the common rights of the poorer plebeians, whose main response was to riot, albeit usually in a limited way, destructive of property rather than persons, and often in combination with litigation. But again, 'social protest' is just one aspect of 'popular politics', and the term – with all its implications of antagonism across social cleavages, even class struggle – becomes less necessary if, unlike Manning, we accept a wider definition of the 'political'. Indeed, just as Manning and others were publishing their important research into early-modern rioting in the 1980s, a root-and-branch challenge to established definitions of popular politics was gathering pace.

The critical argument was not simply that small communities *did* in fact act politically in the old sense of engaging with government, but that the whole concept of 'politics' needed redefinition. Influenced by the anthropologist James C. Scott, and responding to Patrick Collinson's call for social history 'with the politics put back in', Keith Wrightson argued in 1996 that 'politics' should really be defined as 'the social distribution and use of power'.⁶ Thus, aspects of village life which involved conflict, negotiation, process, discourse and mediation were in themselves political. His approach has been widely influential, particularly in the hands of his former

² K. Lindley, *Fenland riots and the English Revolution* (1982); R. B. Manning, *Village revolts: social protest and popular disturbances in England, 1509–1640* (1988), pp. 2–3; C. Holmes, 'Drainers and fenmen: the problem of popular political consciousness in the seventeenth century', in A. J. Fletcher and J. Stevenson (eds), *Order and disorder in early modern England* (1985), pp. 166–95; B. Sharp, *In contempt of all authority: rural artisans and riot in the west of England, 1586–1660* (1980). For a rounded recent discussion of the kinds of disputes that arose in relation to *urban* commons, see H. R. French, 'The common fields of urban England: communal agriculture and the "politics of entitlement", 1500–1750', in R. W. Hoyle (ed.), *Custom, improvement and the landscape in early modern Britain* (2011), pp. 149–74.

³ Manning, *Village revolts*, pp. 27, 31–131, 316.

⁴ M. J. Braddick and J. Walter (eds), *Negotiating power in early modern society: order, hierarchy, and subordination in Britain and Ireland* (2001); J. Walter, *Understanding popular violence in the English revolution: the Colchester Plunderers* (2005); id., *Crowds and popular politics in early modern England* (2006).

⁵ Manning, *Village revolts*, p. 310.

⁶ K. Wrightson, 'The politics of the parish in early modern England', in P. Griffiths, A. Fox and S. Hindle (eds), *The experience of authority in early modern England* (1996), pp. 10–11; J. C. Scott, *Weapons of the weak: everyday forms of peasant resistance* (1985); id., *Domination and the arts of resistance: hidden transcripts* (1990).

students, so much that we are now used to social history being written from this 'political' standpoint, with Scott's concept of 'weapons of the weak' now central to the vocabulary of the social historians.⁷ Wrightson, however, did more than just argue for a redefinition of politics: he also suggested areas in which his 'politics of the parish' might be explored. There was, he said of early-modern England, a politics of patriarchy, neighbourhood, custom, reformation and state formation, and of subordination and meaning. Each of these has garnered historical interest, both before and after Wrightson's chapter. This article is very much in this tradition: it hopes to open up a new angle on the 'politics of custom', or at least one particular area of custom.⁸

'Custom' is of course a rather ill-defined term, which had a contemporary legal meaning as well as a modern sociological one.⁹ It is not the purpose here to redefine custom, or to unpick its complex relationship with precedent and bylaw. Rather, this article will look in more detail at the politics of one area of the early-modern social experience which we usually consider part of 'custom', namely common land-rights. Much work on the politics of pre-modern 'custom' has considered both customary common rights and the widespread battles over customary land tenure.¹⁰ Yet these are very different aspects of rural life, even if both could be – including in the legal sense – 'customary'. Moreover, while the politics of customary land tenure have attracted considerable attention, those of common rights have tended to be studied in terms of 'social protest' rather than Wrightson's 'politics', which might often be between relative equals.¹¹ The emphasis here, then, will be on more than just rioting; rather I will consider the wider picture of political agency on common lands, asking what political *tactics* commoners used, and looking for clues as to the political *culture* of commoning, such as the political meanings ascribed to certain acts. It is an article about how people sharing (or wanting to share) a particular kind of resource *waged politics* in relation to that resource. Moreover, it

⁷ E.g. A. Fox, 'Custom, memory and the authority of writing', in Griffiths, Fox and Hindle (eds), *Experience of authority*, pp. 89–116; A. Wood, *The politics of social conflict: the Peak Country, 1520–1770* (1999); S. Hindle, *On the parish? The micro-politics of poor relief in rural England, 1550–1750* (2004).

⁸ Wrightson, 'Politics', pp. 22–5.

⁹ E. P. Thompson, *Customs in common* (1991), pp. 97–103.

¹⁰ Most obviously: Fox, 'Custom'; id., *Oral and literature culture in England, 1500–1700* (2000). Adding customary mining law to the mix: A. Wood, 'Custom, identity and resistance: English free miners and their law, c.1550–1800', in Griffiths, Fox and Hindle (eds), *Experience of authority*, pp. 249–85. Work specifically on customs of commoning has usually been eighteenth-century in focus, and less legalistic in approach: Thompson, 'Custom, law and common right', in *Customs*, pp. 97–184; J. M. Neeson, *Commoners: common right, enclosure and social change in England, 1700–1820* (1993); L. Shaw-Taylor, 'Labourers, cows, common rights and parliamentary enclosure: the evidence of contemporary comments, c.1760–1810', *Past*

and Present, 171 (2001), pp. 95–126. Also: B. Bushaway, *By rite: custom, ceremony and community in England, 1700–1880* (1982). For a recent collection of essays containing much interesting work on custom: Hoyle (ed.), *Custom, improvement and the landscape*.

¹¹ A point made recently by both Tine de Moor and Matthew Clark; T. de Moor, 'Avoiding tragedies: a Flemish common and its commoners under the pressure of social and economic change during the eighteenth century', *EcHR* 62 (2009), p. 2; M. Clark, 'The gentry, the commons, and the politics of common right in Enfield, c.1558–c.1603', *Historical J.* 54 (2011), p. 609. Work on the politics of enclosure in the last couple of decades includes: Neeson, *Commoners*; B. Frazer, 'Common recollections: resisting enclosure "by agreement" in seventeenth-century England', *International J. of Historical Archaeology*, 3 (1999), pp. 75–100; H. Falvey, 'Crown policy and local economic context in the Berkhamsted Common enclosure dispute, 1618–42', *Rural Hist.* 12 (2001), pp. 123–58; J. Walter, '"The Pooreman's Joy and the Gentleman's Plague": a Lincolnshire libel and the politics of sedition in early modern England', *Past and Present*, 203 (2009), pp. 29–67.

will try to see beyond the concept of social protest, accepting that there could be as much politicking between relative equals as between 'dominant' and 'subordinate' groups. Indeed, as Matthew Clark has recently shown, popular politics of this kind often fostered complex and shifting alliances in which dominant and subordinate groups could collaborate, and where the former could even deploy the language of poverty and subordination for their own purposes.¹² This is not so much a study of 'weapons of the weak', then, as – simply – of 'weapons'.

I

The critical locations for the politics of commoning were manor courts, or courts baron. It was here that commoning was policed. It is also likely that much related antisocial activity was presented at leets, technically royal not manorial courts but often rather poorly differentiated from courts baron.¹³ Ideally, then, if we are to reconstruct the politics of the commons, then we would sit in on these courts; but we cannot. And, although there is much scope for work on manorial courts, their bald lists of presentments only tell us so much. We can see from their records the kinds of offence prosecuted, and the fines levied, but these two are dots we cannot join. For example, in 1652, in Troutbeck (Westmorland), Thomas Lankester was amerced (6s. 8d. a time) for hounding and staff-herding in Troutbeck Forest.¹⁴ He was then fined at the same court for 'a hubelshou' against Miles Berwick. A hubbleshow was an act of disorder, essentially an affray: perhaps this one related to the illegal hounding and herding; maybe Berwick confronted Lankester on the fells? But we cannot know this. We cannot join the dots.

This article will deploy a different set of sources. Increasingly in the sixteenth and early seventeenth centuries, common rights were contested in the central equity and prerogative courts, no doubt partly a result of the pressures of both population growth and the increasing commercialization of agriculture, plus the more general growth in litigation in the period.¹⁵ The procedure of these courts, which hinged on the collection of written testimony, has left an astonishingly large paper trail, most notably of pleadings, interrogatories and depositions. The advantages of this material are numerous: it is vivid; it involved the sworn testimony of relatively ordinary people; but most of all, it joins the dots. If, say, Miles Berwick had been accosted by Lankester in a physical dispute on the commons of Troutbeck, then this is *exactly* the kind of connection that those constructing a case at equity would have brought to the court's attention. An example from Longsleddale, a couple of valleys down from Troutbeck, illustrates this perfectly, for witnesses attest that in 1576 one Richard Sheppard of Sadgill 'dyd assalte and beit wythe a longe pycked stafe Mattheuwe Todde ... for dryvyng off sheipe', wounding Todd's head and ear.¹⁶ This was part of a wider dispute between the two hamlets of Sadgill and Stockdale: we see tensions over grazing boiling over into violence; perhaps we can

¹² M. Clark, 'Resistance, collaboration and the early modern "public transcript": the River Lea disputes and popular politics in England, 1571–1603', *Cultural and Social Hist.*, 8 (2011), pp. 297–313.

¹³ E. Kerridge, *Agrarian problems in the sixteenth century and after* (1969), p. 24; Winchester, *Harvest*, pp. 26–51.

¹⁴ Cumbria Record Office (Carlisle), D/Lons/L5/2/11/10.

¹⁵ Manning, *Village revolts*, pp. 9–38; C. W. Brooks, *Lawyers, litigation and English society since 1450* (1998).

¹⁶ TNA, E 134/20Eliz/Hil4, Depositions of Hugh Sheppard of Kentmere and Richard Cowper of Sled-dale, 1578.

imagine Sheppard's decision to pick up his staff and set out onto the fells that day to confront Todd. Moreover, his carrying of the weapon was a *political* act: it conferred power. But so, too, was Todd's recounting of the incident to his neighbours – the witness above deposed that he had 'hard saye' of the assault – likewise its inclusion in the interrogatories collated for the lawsuit, and the two witnesses' decisions to swear to the allegation's truth. The equity suit, then, allows us a brief window onto these political acts.

The main records used here are the 'evidences', i.e. the interrogatories and depositions, collected by the Court of Exchequer, the smaller of the two main central equity courts. Up to 1649 it dealt with cases in which suitors were Crown debtors (which might be any financial connection to the crown, including the payment of rent) or officers, though this subsequently evolved into a legal fiction, opening the court to all-comers.¹⁷ This, of course, means that Crown manors are disproportionately represented in its records, though there is no reason to suppose this will significantly impact upon findings, save to note the frequent claim of Crown tenants that their interest happily coalesced with the monarch's. Suits were initiated by the presentation of an 'English bill', complaining of some injustice, or by an 'information' by the Attorney General, to which an 'answer' was given, possibly followed by a 'replication' and 'rejoinder' from plaintiff and defendant respectively. Similar to other central law courts, these pleadings tended to be rather formulaic. Much the most interesting material is to be found in the evidence collected for the case. This was gathered in the form of witness depositions, either collected by an Exchequer Baron in London or by commissioners nearer the community in question. Each side collated a set of 'interrogatories': leading questions to be put to witnesses of their choosing, usually senior inhabitants of the local area, who then answered all or some of them. Interrogatories were compiled with the help of attorneys, and gave each side an opportunity both to coax their own witnesses into setting out an acceptable narrative of the case, and to trip up those who deposed for the opposition. The answers were written down in summarised form by a clerk, signed by the commissioners supervising the making of the depositions, and then exhibited as proofs before the case proceeded to judgement. Witnesses were undoubtedly selected carefully by litigants and their counsel, so they usually stuck to script; technically, they should not have had a personal interest in the suit, but in the close-knit communities of early modern England such witnesses might be difficult to find.¹⁸

Equity depositions are not always seen in the most positive light. The legal scholar W. S. Holdsworth was particularly derisive: the procedure, he wrote, garnered 'the most unconvincing testimony at the greatest possible expense', and was a 'futile' method of recovering the facts.¹⁹ One might sympathise with this on reading the lament of the Duchy Court of Lancaster, adjudicating a commoning case from 1556, which appeared

so doubtfull to this courte for that a great number of personns which have deposed therin doe directlie depose the one syde againste the othere so as this Courte cannot well desine

¹⁷ W. H. Bryson, *The equity side of the Exchequer: its jurisdiction, administration, procedures and records* (1975); H. Horwitz, *Exchequer equity records and proceedings, 1649–1841* (2001).

¹⁸ C. Churches, "The most unconvincing testimony":

the genesis and historical usefulness of the country depositions in Chancery', *Seventeenth century*, 11 (1996), p. 214.

¹⁹ Quoted in Churches, "Most unconvincing testimony", p. 209.

which side ought to be best credited and thereapon to make an order therein except they shulde condemne a great number of deponentes of manifest perjurye.²⁰

Yet, we should not discount such evidence entirely because *sometimes* it was perjured. Most of the time, allegations by plaintiffs and defendants were backed by several witnesses, and witnesses probably usually misled by omission and weasel words rather than overt falsehoods. Moreover, many events are recounted in enough specific detail to have a genuine ring of truth, and comparing depositions to interrogatories allows us to see when witnesses have made significant embellishments to the phrases laid down by litigants.²¹ And, of course, even if suitors and their witnesses perjured themselves, their lies had to be convincing and based on real, identifiable experiences.²²

Exchequer evidences undoubtedly conceal much: they are proverbial tips of icebergs and without extensive searching through the archives both of the courts and of interested landlords we cannot hope to reconstruct anything like the totality of an individual suit. Such an effort would be Herculean in the extreme if it is to go beyond the confines of the local case study; my approach will be different: to collate evidence from a wide range of lawsuits. Such a bird's-eye approach has been taken before, particularly by Manning, using the records (especially the pleadings) of Star Chamber. But the approach taken here, using Exchequer *evidences*, has two advantages over Manning's. Firstly, given that Star Chamber was expressly charged with prosecuting disturbances of the peace, allegations of rioting in its pleadings may often have been legal fictions.²³ More seriously, any study of popular politics based on the records of Star Chamber will come out with the impression that rioting was critical and endemic: to use the court's records to study riots themselves, as Manning did, is intellectually justifiable, but to use them to see riots *in context* is circular. This is not the case in Exchequer, since no allegation of disorder was necessary for a suit to be heard at equity. Secondly, Manning's study was largely based upon pleadings, which tended to be stylized and dramatized, full – as Manning puts it – of 'hyperbole'.²⁴ Their descriptions of the weaponry carried by rioters, for example, were probably the formulaic inventions of attorneys rather than bearing any relation to facts 'on the ground'. When it came to framing interrogatories, however, litigants probably tailored their allegations to emphasize those which would be backed up by witnesses: indeed we can usually cross-check them with actual witness testimony. They are thus considerably more likely to tell us *what actually happened* than pleadings. Moreover, while pleadings were usually written by aristocrats, gentlemen, and their attorneys, evidences were forged in a dynamic interaction between litigants, counsel, and often plebeian witnesses. They thus provide a unique window on something close to popular mentalities.

Exchequer evidences also have the enviable advantage of being well catalogued in the

²⁰ TNA, DL 5/10, fol. 229r-v.

²¹ Cf. N. Z. Davies, *Fiction in the archives: pardon tales and their tellers in sixteenth century France* (1987), pp. 5, 21; L. Stone, *Broken lives: separation and divorce in England, 1660–1857* (1990), pp. 4, 7; Churches, "Most unconvincing testimony", p. 220.

²² Cf. T. Stretton, *Women waging law in Elizabethan*

England (1998), pp. 14, 19.

²³ Although for an argument that many Star Chamber 'riots' were in fact real see B. A. K. McDonagh, 'Subverting the ground: private property and public protest in the sixteenth-century Yorkshire Wolds', *AgHR* 57 (2007), pp. 191–206.

²⁴ Manning, *Village revolts*, p. 319.

National Archives. Thus, for the purposes of this study, all sets of Exchequer evidences, catalogued with the keywords of 'common' and either 'inhabitants' or 'tenants' were consulted. The inclusion of the last two was a way of emphasizing the politics of the wider community in the sample, although undoubtedly there will have been pertinent cases not picked up. This gave a total of 195 individually catalogued sets of proceedings, which form the backbone of what follows, although a few additional suits from the equity courts of Exchequer, Chancery, and the Duchy Court of Lancaster, plus the prerogative court of Star Chamber have also been used because they had relevant stories to tell. It would be misleading to categorize these suits, as they usually encompassed a complex array of disputed rights, but the majority relate to pasture rights on large common wastes (though in some cases it was pasture rights on open fields at stake), with enclosures, intercommoning between communities, and the boundaries between manors being the most frequently contested issues.²⁵ Their geographical coverage is wide: 28 per cent are from the north, 26 per cent from the midlands, 16 per cent from eastern England, 11 per cent from the south-east and 17 per cent from the south-west. Wales, however, provides just 3 cases (2 per cent). In terms of chronology, the majority of suits were from Elizabeth's reign, with some 63 per cent of dated sets of proceedings coming from 1570–99, while only 11 per cent were from 1620–42. Even if we remove the Baron's Depositions, which are only fully catalogued up to 1603, the sixteenth-century figure is still 60 per cent. Much more detailed work would be needed to confirm this, but it looks like Exchequer suits over common rights were on a declining trend by the reign of Charles I. This may reflect the sale of Crown lands under the first two Stuarts, but then the frequency of suits does not seem to increase after the Civil War, when a Crown interest was no longer required.²⁶ The suits contain nearly 3,900 interrogatories, and depositions from nearly 2,200 witnesses, with occupations recorded for all but 11.3 per cent of deponents. Witnesses were overwhelmingly male, just 1.7 per cent were women.²⁷ Of the males with occupational titles, 12.7 per cent were knights, esquires and gentlemen, 33.0 per cent were yeomen, 29.9 per cent husbandmen and 2.3 per cent other agriculturalists. Just 3.7 per cent worked in textiles, 7.8 per cent were small tradesmen (such as blacksmiths), 0.8 per cent worked in extractive industries, while fully 7.8 per cent were labourers. The remaining 2.1 per cent comprised a smattering of professionals and clergy, five servants and an almshouse inmate from Durham. The sample is thus socially inclusive, but the male rural middling sort forms its backbone.

There is, of course, one more glaring issue with using legal records for reconstructing any aspect of popular political culture, namely that they show us a view of society through a specifically legal prism. The events described, even if they took place without the participants *thinking* in terms of the law, are only visible because one side believed they were *relevant* to a lawsuit. Interrogatories were set out as a way of recording those elements of the story that were deemed legally relevant to the case rather than as an exact replica of what happened 'on the ground'. Of course, writing the history of popular politics with the legal system taken out

²⁵ This is a similar profile to the enclosure riots in Manning, *Village revolts*, pp. 57–8, 84–5.

²⁶ For the sale of Crown lands: R. W. Hoyle (ed.), *The estates of the English crown, 1558–1640* (1992).

²⁷ Cf. Wood, *Politics*, p. 132; N. Whyte, 'Custodians of memory: women and custom in rural England, c.1550–1700', *Cultural and Social Hist.* 8 (2011), pp. 153–73.

is both impossible and undesirable: the waging of law was a central political tactic in early modern England and Wales.²⁸ And yet, early modern people were more than mere litigants, and – as the following hopefully shows – there was potentially much more to politics than the law. Thus, while the law will always lurk in the background, and while careful attention is paid to the reasons actions were recounted to the court, the aim will be to read legal records against the grain, shedding light on those political actions which were *not* specifically legal; acts like the destruction of property, the angry threat, and the fellside brawl.

The following, then, is an attempt to recover something of the ‘political culture’ of the English commons. The article first discusses the ways in which commoners understood precedent, which was a crucial issue when use-rights were at stake. Here, acts of use, perambulations, landscape features, and speech might carry political meaning. It then considers how commoning intermeshed with issues of reputation in local communities, with witnesses drawing implied links between the people’s behaviour and their claims to common rights. Commoning, it is suggested, existed within a wider nexus of neighbourhood. Finally, it considers some of the more disorderly weapons deployed in commoning disputes, arguing that rioting was only one part of a picture which incorporates brawling, threats, and violence against animals. I cannot pretend to offer a complete taxonomy of the political culture of the commons; but what follows, at the very least, will hopefully show some of their complexity.

II

Equity suits over common land devoted most time to establishing ‘long usage’. This was the crucial plank of legal ‘custom’: for a practice to be ‘customary’ it must have occurred from ‘time immemorial’, technically having been uninterrupted since 1189, as well as being ‘reasonable’, and compatible with natural and divine law.²⁹ The evidence brought to the courts regarding long usage can tell us much about the culture of commoning. Of course, many witnesses simply recounted that a given practice had occurred throughout their remembrance, or theirs, their father’s, or even grandfathers’ remembrance. If not, they reported the ‘common reputacion’ as in Jacobean Penrith, ‘the voyce of the contrye thereabouts’ like a Forest of Wyre deponent in 1574, or the ‘common spekyng of old men of the cuntrie’ as was recounted to the Duchy Court of Lancaster in 1476.³⁰ These kinds of social memory, and their gradual replacement by written evidence, have been considered by Adam Fox and Andy Wood; the following, then, will focus on some of more subtle ways in which precedent and long usage were understood.³¹

It is a straightforward point, but the most obvious way of claiming precedent for a use-right was to exercise it, and the act of *using* a common unimpeded might establish customary *right* to do so in future. As a late-Stuart commentator had it, once ‘a reasonable Act is found to be

²⁸ J. A. Sharpe, ‘The people and the law’, in B. Reay (ed.), *Popular culture in seventeenth-century England* (1985), pp. 244–70.

²⁹ A. Wood, ‘The place of custom in plebeian political culture: England, 1550–1800’, *Social Hist.* 22 (1997), p. 47.

³⁰ TNA, E 134/17Jas1/East4, Interrogatories, 1619; E 133/1/207, Deposition of Thomas Lowe of Highley, 1574; DL5/1, fol. 111v, Deposition of John Gregory of Bole, 1476.

³¹ Fox, ‘Custom’, id., *Oral and Literate Culture*, pp. 259–89; Wood, ‘Custom, identity and resistance’.

good, and beneficial to the people ... they do use it and practice it again and again, and so by often iteration and multiplication ... it becomes a Custom; and being continued without interruption time out of mind, it obtaineth the force of a Law'.³² Thus, in pre-Reformation Warwickshire, the tenants of Brandon were refused permission to drive their animals through woodland in neighbouring Binley, as 'it wolde dryve the tennantes of Bynley to furdur inconveniens for that the tennants of Braunde wolde then take the same grownde as intercommoners with Bynley'.³³ Physical access was crucial: if a group of putative commoners could be excluded from the land, any claim of long usage was meaningless. Enclosure, in the physical sense, is the best-known way to seize possession of a common, but there were others. In Henry VIII's reign, Sir Ralph Langford pulled down two bridges in Withington (Lancashire), preventing access to a disputed common; he was ordered by the Duchy Court of Lancaster to rebuild them, but in 1533 the court found them 'nether sufficiently made ne well layed as they were before but be made & layd in suche fasyon as nether carte horse ne catall may passe over the same'.³⁴ Witnesses for Star Chamber reported similar bridge-destruction by the inhabitants of Somerton (Somerset) in the 1550s.³⁵ On Bardsea Moor in north Lancashire, James Anderton, Esq., stopped the tenants of Muchland from exercising turbary rights simply by blocking their access: 'both with settinge stakes & spyles, as alsoe with layeing great stones & makeinge severall ditches crosse over the said waye ... whereby the said tenants could not bringe their waynes & cartts loaden with their fuell'.³⁶

Another method of excluding unwanted commoners was to impound their animals or confiscate their tools. This was critical as it stopped one's rivals establishing a precedent for commoning, and simultaneously created one for its *prevention*, especially if there was no common-law recovery launched by a writ of replevin. Much testimony hinged on whether common rights had been disturbed by impounding or not. In Cranborne in northern Dorset, for example, it was deposed approvingly that in around 1561 the lord of Midgham (Hampshire) had attempted to graze sheep and cut heath and turf on Alderholt Heath, 'but the tennants of Alderholte did fett awaye the same heathe & turfe and would not suffer his shepe to go quietly'.³⁷ Another precedent-setting action was the perambulation of boundaries: incorporating a piece of land within a perambulation staked a claim to it.³⁸ In the 1570s, the landlord of Stockdale (Westmorland) instigated a perambulation of a disputed common to pre-empt the claims of neighbouring Sadgill. It was still remembered over fifty years later.³⁹ The territorial limits of common rights usually shared a boundary with another spatial community such as a borough, parish or manor, and thus acts performed specifically at those borders were

³² Quoted in Thompson, *Customs*, p. 97.

³³ TNA, E 133/2/258, Interrogatories and Deposition of John Fosten of Coventry, 1575.

³⁴ TNA, DL 5/6, fol. 88v.

³⁵ TNA, STAC 4/10/60, Interrogatories, Temp. Philip and Mary.

³⁶ TNA, E 134/13Jas1/East11, Deposition of John Fleming, Esq., 1615; cf. Manning, *Village revolts*, pp. 121–2.

³⁷ TNA, E 134/15Eliz/East3, Deposition of Robert

Wyllis of Damerham, 1573.

³⁸ S. Hindle, 'Beating the bounds of the parish: order, memory and identity in the English local community, c.1500–1700', in M. Halvorson and K. E. Spierling (eds), *Defining community in early modern Europe* (2008), pp. 205–28; Bushaway, *By rite*, pp. 81–97; N. Whyte, *Inhabiting the landscape: place, custom and memory, 1500–1800* (Oxford, 2009), pp. 59–74.

³⁹ TNA, E 134/8Chas1/Mich23, Interrogatories and Depositions, 1632.

significant.⁴⁰ In north Cheshire, the sale of bread demarcated the boundaries between the commons of Frodsham and Helsby. According to one witness:

John Smythe a baker of Chester hath sondry tymes brought breade to sell at Runkorne Weston and Haulton. And when he was comynge homewarde againe through Frodsham (having lefte some of his breade unsolde) the men or weomen of Frodsham aforesaid would folowe the said Smith untill he came to ... Lewins Brooke. And then they would buy of his bread and not before. So that this deponent doth think that when they were come over the said brook, called Lewins Brook, they were out of the compasse and Libertie of Froddisham.⁴¹

Elizabethan inhabitants of the borough of Woodstock (Oxfordshire) and neighbouring Hensington had an even more memorable signifier; Agnes Collyer of Cassington recalled that she

hathe sene the maior and comynalitie of Woodstock receave Kinge Henry the Eight at the neither end of Comon Acre and at the upper end of Sturtinge Grove and that shee hathe alwaies reputed the said places where Kinge Henri the Eight was received to be the uttermost bounds of the Borroughe of Woodstocke.

Moreover, she knew a gate called Barre Gates, and 'hathe sene the said Kinge Henry and the Quenes Majestie that now is received by the Maior and Comynalitie of Woodstock at the said gattes called Barre Gattes'.⁴² The boundaries of rights could also be transposed onto those of parochial responsibility. In a dispute over rights of common on the castle wall and ditch in Cambridge in 1628, it was pointed out that during a recent epidemic the widow living in a house built on the land was denied relief for herself and her children by the parish of Chesterton, 'for that they alledged that she was not of their parish'. A bachelor of arts had died in the same house and had been buried not at Chesterton, but at St Giles's Church in Cambridge. The town of Cambridge thus enjoyed rights on the land.⁴³ Not dissimilarly, the boundaries between tithe obligations might also, as Nicola Whyte points out, be connected in parishioners' minds to the spatial delineation of gleaning rights.⁴⁴

Physical remains might be as potent as memories. In Elizabethan Cawston (Norfolk), it was suggested that there were 'diverse plaine mencions of olde riggs and furrowes in ... Jerbrigges Wood, whereby ytt maye appeare that there hathe bene corne sowne in the same ground'.⁴⁵ The fact that timber had been cut in woods in Staveley (Derbyshire) was attested in 1607 by the 'diverse hundrethes of old stumps and rootes of the sayd trees yet remaininge', while the 'multitude of ancient pitsteades where charcoles have beene made' was evidence that the lord had customarily cut boughs and branches from old oaks.⁴⁶ The meaning of landscape features was not always clear, however, and could be contested. In a Cumberland case from 1602 one side alleged that an enclosure called Keldrickmyer had long been separate from Wetheriggs

⁴⁰ Cf. N. Whyte, 'Landscape, memory and custom: parish identities, c.1550–1700', *Social Hist.*, 32 (2007), pp. 166–86.

⁴¹ TNA, E 134/23&24Eliz/Mich1, Deposition of William Frodsham, Esq., of Elton, 1581.

⁴² TNA, E 134/25Eliz/Hil4, Deposition of Agnes Collyer of Cassington, 1583.

⁴³ TNA, E 134/4Chas1/Mich37, Interrogatories, 1628.

⁴⁴ Whyte, *Inhabiting the Landscape*, pp. 81–2.

⁴⁵ TNA, E 134/23&24Eliz/Mich14, Interrogatories, 1581. Many of the themes in this paragraph are central to Whyte, *Inhabiting the Landscape*, esp. pp. 125–64; the Cawston case is discussed on p. 145.

⁴⁶ TNA, E 134/5Jas1/Mich38, Interrogatories, 1607.

Moor, and there were 'diverse signes and tokens of ditches and fences which have of ancient tyme bene made for the devyding and severinge thereof'. But two local men deposed that these were in fact just water conduits and sluices.⁴⁷

Memories of speech could also become politicized in battles over precedent. In a north Lincolnshire dispute, where the occupants of Eastoft manor house claimed grazing rights in a common pasture, a local labourer recalled his time as a servant under the house's previous owners, saying that 'he hath often hearde' the occupier 'saye and affirme ... that she had noe right of common to hir howse wherein she dwelt in Eastofte in the pasture called Luddington Highe Pasture but through sufferance of the inhabitants of Luddington'.⁴⁸ In a 1560s intercommoning dispute in the Gloucestershire Cotswolds, the deathbed words of two Southam men were used against them by tenants in neighbouring Cleve. Both John Lorynych and William Keer were alleged to have told their sons to discontinue their challenge, the latter stating clearly that 'none of the inhabitants of Sowtham in respect of there lands holden of the said manor of right ought to have any common in and uppon the said wast grounde'.⁴⁹ But Lorynych's daughter, Anne Castle, who stood witness for the other side, told a different story. She recalled sitting with her father frequently during his final sickness

and not long before his death lyeing in his bed asked for his sonne William wherupon this deponent who sate there on the bed by hym went & called the same William to his father and whan the said William was come to hym he said to the same William as followeth in effect (William the matter is nothing greate for whiche I called yow) There is variance about the Hill & yow neade not to care for yow have common in every quarter there[,] which woordes were spoken with a feynt voyce.⁵⁰

To Anne, John Lorrynych had told his son not to worry about the outcome because he could claim rights of common as a tenant of *both* Southam and Cleve. Even the faint whispers of a dying man could be contested in the politics of the commons.

Similarly, words, actions, and even silence giving support to common rights might be remembered and used against the speaker should he later try and attack those rights. In a boundary dispute on the wild heaths of south Dorset, it was noted that the defendant George Savage had passed one of the plaintiff's witnesses digging turves on the land in question, but the witness 'never heard the said defendant George to find any fault with their soe doing or use any wordes against them to that purpose'. Indeed, according to the testimony of two others, Savage had given 'friendly speeches' to one man while he was digging; another witness even recalled him wishing 'God speed'.⁵¹ It was similarly inconvenient, meanwhile, if opponents to an enclosure had actually been employed on building it, as was alleged of the tenants of Hopesay and Aston-on-Clun in the Forest of Carewood in 1584.⁵²

Thus depositions recounting precedent allow us to tap into a wider culture of commoning,

⁴⁷ TNA, E 133/10/1510, Interrogatories and Depositions, 1602.

⁴⁸ TNA, E 134/13Jas1/Trin3, Deposition of Francis Seane of Luddington, 1615.

⁴⁹ TNA, E 134/6Eliz/Trin1, Interrogatories, 1564.

⁵⁰ TNA, E 134/7Eliz/East1, Deposition of Anne Castle

of Southam, 1565.

⁵¹ TNA, E 134/11&12Chas1/Hil9, Depositions of Edward Tommes of East Stoke, Edward Stourton of East Stoke, Edward Dolling of Wareham, Henry Cleeves of East Burton, 1636.

⁵² TNA, E 134/26Eliz/East16, Interrogatories, 1584.

in which memories, actions, landscape features, and even everyday speech were charged with political meaning. But there was a lot more to the politics of the commons than wrangles over precedent. The remainder of this article explores some other forms.

III

Occasionally, moral judgements were passed on those claiming common rights. To an extent, of course, this was a legal tactic to taint an opponent, but it also suggests a wider culture of gossip and reputation in which the 'common fame' of individuals could be related to their claims as both litigants and commoners. Rights of common could form part of a wider nexus of neighbourhood in which other factors such as conduct and reputation were seen as pertinent to people's claims as commoners.⁵³ In 1595, deponents in a Norfolk boundary dispute remembered that 'Old Drake of Brumwell' had been 'whipped for some thinge that was taken out of one Bishoppes howse' and was indeed 'a very lewd and bad man'. Witnesses in the same case were also asked whether they had 'heard' that one Patrick had forged a boundary document, bitterly regretting it on his deathbed, the accusation having – in this instance – clear implications for the facts of the case.⁵⁴ Other individuals were characterized as bothersome neighbours whose litigiousness was damaging the community, such as Robert Dawson of Luddington (Lincolnshire), described in 1615 as a 'busie trooblesome fellowe'.⁵⁵ Somewhat later, William Bostock of Abingdon, who had allegedly interrupted the townsmen's common rights, was known to his neighbours as 'Mad William Bostock', on account of his litigiousness.⁵⁶ In pre-Reformation Lancashire, it was known around Whalley Abbey that the monks employed one John Eastergate, 'otherwise called Rughe necke', to forge evidences in support of enclosures. Indeed, there was apparently 'a comon sayenge in the cuntrie that soe longe as Rughnecke lyved, Abbeis shuld never wante evidences'.⁵⁷

Both sides of the moral coin were in evidence in a 1587 interrogatory set by Garrett Wallys of Whittlesey (Cambridgeshire): he had allowed himself to be

greatly detrymented in his fermes by the forbearinge of the poore inhabitantes in eatinge his severalles', whereas his opponents were 'very troblesome persons and suche as have moved muche disorder & dislike in the towne by lewde and unorderedly perswacions with the inhabitants aswell in movinge sutes as in procuringe & threatninge men to contribucions in this and other sutes'.⁵⁸

In 1631 it was pointed out by the inhabitants of Warton-in-Lonsdale (Lancashire) that their opponent in a commoning dispute, Thomas Middleton of Leighton Hall, was a convicted recusant, who 'doth not come to the church to heare devyne service, nor hath done this six yeares and above'.⁵⁹ A particularly comprehensive set of denunciations comes from a

⁵³ Cf. Thompson, *Customs*, p. 101.

⁵⁴ TNA, E 133/8/1234, Interrogatories and Deposition of Peter Cullyner of New Buckenham, 1595.

⁵⁵ TNA, E 134/13Jas1/Trin3, Interrogatories, 1615.

⁵⁶ BL, Add. MS, 28,666, fols 275r–337r, Interrogatories and Depositions, 1650s.

⁵⁷ TNA, DL 44/196, Interrogatories and Deposition of Richard Townley, Esq., 1570.

⁵⁸ TNA, E 134/29Eliz/East23, Interrogatories, 1587.

⁵⁹ TNA, E 134/6&7Chas1/Hil13, Deposition of Thomas Dickonson of Warton, 1631.

late Elizabethan lawsuit from Warwickshire. Here, a series of witnesses who had been called to support the plaintiff Margaret Knowles's throwing open of Galley Common were subjected to brutal character assassinations. They were 'all poore men and women and they live very hardly and gett there livinges naughtely', were 'but paltery fellowes all of them and that there is none of them that beares aney credytt', were 'but poore folke and of no valew nor credytt', 'all poore men and women and such as are very poore and of no great reputacion', and – perhaps more pointedly – 'they are very poore folke most of them and yet somme of able enoughe to live'. And there were more specific allegations: Margaret Rochell had a child by her father-in-law; William Grantham 'did steale geese and wheat sheafes' and was 'a drunken fellow'; John Oldes stole a heifer; William Coleshaw stole a mare; William Chapleyn was 'a corrupte and a bad man' who had forged documents and committed perjury; Robert Vyncent had 'put awaye his wiefe' and 'kepte a whoore' in another man's house; John Stephenson was 'a roge and common begger'. Of William Gryffyn it was said that he had kept a whore for four years, had a child by her which he boarded out before taking the child back to his own house where he 'tooke his lynninge out of his cloake to make it garments'.⁶⁰

Many of these cases, most obviously the last one, were perhaps simply attempts to discredit witnesses, but in at least one case the suggestion was clearly made that two men claiming common rights would actually use them for ill. Humphrey Elcocks and John Sawier were claiming the right to hold cottages on the waste of Haywood Park in Staffordshire, but a string of witnesses testified to their bad character. To William Basseforde, a Tixall husbandman, they were 'so badd & lewd as he thinketh them not worthie to lyve amongst any honest men, for that the common voyce ys, that they have ben dayly receavors of theeves & roges'. Another witness had 'harde that the sayd plaintiffs are verie lewde & bad persons'; to another, they were 'known to be lewde & badd persons suche as ys muche evell reported of them for their conversacion and no good knowen by them'. John Bromall, husbandman of Shutborough, reported they were 'accompted verie badd persons and suche as many speake muche evell of for their bad lyf & conversacion', and that Elcocks, who was an indicted horse-thief, was so bad that he dare not 'shewe his head in Staffordshyre unlesse yt be by oule light to playe the knave'. Most tellingly, Richard Sherbrooke, a Shutborough husbandman (with whom, as will be seen, Elcocks had some history), reported to the court that:

the sayd plaintiffs are accompted verie badd & verie lewde persons & too bad to lyve and that the sayd Elcocks hath been an habowrer bothe of hores & theeves & a common companyon with suche people and that he this examinant dothe verely thinke that to the end he might have moore free conversacion with evell disposed people he fownde meanes to buyld that cottage in the place where yt now standeth beinge farr from neighboures & neare to a comon highe waye on the one syde & wylde wooddes & wastes on the other syde whereby they might have free accesse unto hym and the better meanes to escape uppon the detection of any their badd accions[;] and a notable place for the profession of horse staylinge wherein the sayd Elcocks ys thought verie skylfull as dothe well apeare for that he standeth now indicted

⁶⁰ TNA, E 133/7/1021, Depositions of William Devenshire of Galley Common, Robert Fullylowe of Stockingford, Anthony Strayne of Wolvey, Edward Stonehurst of Astley, William Mason of Potters Coton, 1591.

as this examynant well knoweth within the countie of Stafford for stealinge of a nagge & a mare of this examinants.⁶¹

In other words, the pair could not be trusted to live on the common. Of course, commons and forests were often portrayed as 'theevish places' which gave 'liberty and opportunity unto villainous minds'.⁶² Here is an unusually specific accusation.

Such judgements of fitness to enjoy common rights could work the other way. Despite plenty of evidence to the contrary, James Anderton claimed to have conducted himself 'honestlie and justlie' as steward of the Lancashire manor of Muchland and had 'alsoe beene a verrey good frend unto the homagers, tennants and inhabitants theare' (they were suing him).⁶³ The most unusual statement in support of commoning rights came from Colwyn Forest in Wales, where in 1599 commoners asked, rhetorically, whether their witnesses did 'heare it said read or reported' in 'histories, cronicles, records, books or otherwise' that there had been any 'rebellion, outradge, mutyney or sedicion don or commytted' by the forest's inhabitants. Or rather had they not always 'behaved them sealves like quiet subjects' since William the Conqueror's day, holding their land of English lords 'for which theire fethfull obedience there was no such cause or neade either in the tyme of King John or any other kinge of England to buyld any castell there or use any other force or garrison'.⁶⁴ Part of their reason for making such a point was no doubt to ensure that the court felt their common rights were 'agreeable' to the 'use of the state and for the good of the commonwealth', as a Privy Council directive to an enclosing landlord put it in the same decade.⁶⁵ It may well also be an attempt to deflect accusations of rebelliousness by this mountainous Welsh 'other', in much the same way that miners of Derbyshire and the Forest of Dean, or the commoners of Northamptonshire, did.⁶⁶ But it also reflects the more general point that commoning was related to notions of neighbourliness, with villagers connecting disputes over use-rights to wider assessments of character.

IV

Perhaps the most striking testimony that emerges from the Exchequer proceedings describes disorder. It should be emphasized that in the majority of cases, evidence of disorderly behaviour was absent. This might reflect the source material as much as anything. Disorder was only of tangential relevance to most cases: its recounting before the courts was a ploy to besmirch an opponent. But given that, if criminal acts had taken place, it was in the interests of at least one side to bring them up, we must suppose that most cases were thrashed out with little resort to disorder. Nonetheless, when it did occur, such disorder was a complex phenomenon, and there was more to it than just enclosure rioting.

⁶¹ TNA, E 134/38&39Eliz/Mich12, Depositions of William Basseforde of Tixall, John Allen of Great Heywood, Robert Hollies, John Bromall of Shutborough, Richard Sherbrooke of Shutborough, 1596.

⁶² Wood, 'Custom in plebeian political culture', p. 57.

⁶³ TNA, E 134/12Jas1/Hil17, Interrogatories, 1614.

⁶⁴ TNA, E 134/41Eliz/East30, Interrogatories, 1599;

disputants did sometimes relate their causes to 'national' events, e.g. Lindley, *Fenland riots*, p. 65.

⁶⁵ Walter, *Crowds*, p. 198.

⁶⁶ Wood, 'Custom, identity and resistance'; Neeson, *Commoners*, pp. 94, 179–80; Wood, 'Custom in plebeian political culture', p. 56.

One kind of 'disorderly' political weapon deployed was the use of threatening and abusive words. In an Elizabethan suit, the lord of the manor of Felmingham (Norfolk) was accused of giving 'spitefull and revilinge woordes' against the Queen's tenants of Suffield.⁶⁷ A 1583 case relating to the boundaries between Woodstock and Helsington in Oxfordshire got so bitter that one George Whitton, chief defendant, was harangued one Palm Sunday by Woodstock's mayor, 'cauling hym and thretanyng hym with most vile speches', saying he was a 'vile skurvie knave, a stinckinge knave, a spyinge knave, spitting in the sayd Whittons face, divers tymes clinching his fyst to streeke the sayd Whitton'.⁶⁸ Sometimes, whole communities could grumble about commoning practices: in early-Stuart Wiltshire, the tenants of Melksham felt that their neighbours in Bromham were overstocking a common pasture, so they 'did alwayes murmur and grudge at the inhabitantes of Bromham when they came to the common drift'.⁶⁹ In early-Stuart Kilmington (Somerset), many customary tenants had 'gruged and murmured' when John Hartgill, a local landlord, had put his cattle on their commons.⁷⁰ In both these cases the group of tenants who did the 'murmuring' were the ones who brought it to the attention of the court: grumbling countered potential accusations of tacit acceptance of a precedent; it was not seditious.⁷¹ But common speech could be brought up as a negative too, such as the allegation in 1616 that inhabitants of Rothwell (Northamptonshire) had 'bragged' that they could leave a disputed sheepwalk worthless by overstocking and trampling it with great cattle.⁷²

Wealthy landlords could engage in bragging and threatening as much as 'plebeian' commoners, indeed their power made their threats especially ominous. A Derbyshire litigant, accused of depopulating enclosures in Birchover, was alleged to have declared that he 'cared not for the statute of tyllage, and that the worst was he could be but fyned if he decayed the manor', and 'lett the plaintiff do what he canne & playe the promotor, there shuld not be a handfull of corne sown in Byrchover'.⁷³ Another landlord, Mr John Lane of Staffordshire, got one of his servants to publish a notice in the parish church of Willenhall in the 1590s, to the effect that:

those that weare Mr Lanes wellwillers, and would be contented to forgoe their right of comon in Bentley Hey, should subscribe their names and putt to their handes or marke in the same note. And that thereby Mr Lane might knowe who were his frendes and wellwillers, and that those which did not or would not subscrybe their names or putt to their marke in the same writing he would esteme of them accordingle, And that then if they caughte any hurte they might thancke themselves.⁷⁴

One of the more frequent threats was to ruin opponents through litigation. In 1581, it was alleged that the defendants in a suit about common rights in Cawston (Norfolk) had 'gyven owtt that they wyll sewe or wery in sewte' any inhabitants of the manor who opposed them.⁷⁵

⁶⁷ TNA, E 133/10/1599, Interrogatories, Temp. Eliz.

⁶⁸ TNA, E 134/25Eliz/Hil4, Interrogatories.

⁶⁹ TNA, E 134/13Jas1/East14, Deposition of William Hayward of Melksham, 1615.

⁷⁰ TNA, E 134/7Chas1/Mich20, Interrogatories and Deposition of John Leversage of Kilmington, 1631.

⁷¹ Cf. Walter, *Crowds*, pp. 200–4.

⁷² TNA, E 134/14Jas1/Mich37, Interrogatories, 1616.

⁷³ TNA, E 134/39&40Eliz/Mich19, Interrogatories, 1597.

⁷⁴ TNA, E 133/8/1188, Interrogatories and Deposition of Thomas Tomkys of Clement's Inn, 1595.

⁷⁵ TNA, E 134/23&24Eliz/Mich14, Interrogatories, 1581.

The cantankerous James Hebblethwaite of Norton was supposed to have instigated a number of common-law suits against the Queen's bailiff over use of a stinted pasture, saying that he 'wold never leave him out of sutes'.⁷⁶ In Walton-on-Thames (Surrey), it was alleged that the plaintiffs had threatened 'they would make the defendant spend much money about his common and that they were forty to one and would make him spend twenty shillings to ther two pence'. Two witnesses attested to these threats, although one thought the sum was 12*d.* to every tuppence.⁷⁷ But meanings could be contested. In 1595 the defendants in a suit about the rights of non-resident cottagers in Wilberton on the Isle of Ely alleged that William Payne, one of the plaintiffs, had said 'that he trusted within a yeare or two that never a poore knave or scrobb in the towne of Wilberton should kepe a bullock ther'. A menacing statement at first glance, but one of the defendants' witnesses remembered it in a rather different light, deposing that:

he hard William Payne saye (beinge in a great a anger because he se[e] many sheepe of Thomas Sanders & others fedinge in the herd walke) and use these or the like speches, if they will goe to it meaninge as this deponent thinketh that if they wold feed with their sheepe in the herd walke as they beganne that never a poore mann in the towne shold kepe a cowe.⁷⁸

Thus Payne's words look more like a *defence* of the rights of the poor.

Words and threats were one thing, but commoning disputes could also escalate into physical violence; indeed, there was a tableau of violent disorder deployed which was far wider than the enclosure riot of established historiography. Given the political importance of the driving and impounding of animals, noted above, it is no surprise that such acts were potential flashpoints. On Holland Fen in 1580, two 'fengraves' were charged with driving illegal sheep from the fen, which they did while armed with a pike and an iron fork. They were reprimanded by a JP, but soon returned with a third accomplice and a threatening dog.⁷⁹ Similarly disorderly was a case from Whittlesey in Cambridgeshire, where it was alleged that two defendants, on the 10 June 1586, entered into a disputed waste called the Pingle 'with longe staves', where they and four others seized the complainant's cattle in a 'disordred manner', impounding them, whereupon 'the bells runge and so contynued ringinge for a longe tyme' (in a slightly odd twist, the plaintiff also alleged that the bells had been bought with money better spent on repairing a local bridge, evidenced by a recent accident in which a traveller fell off the dilapidated structure and drowned). The ringing of the bells was probably not mere triumphalism, but it served to *publicize* the act of impounding.⁸⁰ It emphasized the act's legality, and thus the precedent set. Other forms of disorderly impounding included driving opponents' animals an inconvenient distance, or harming them in the process.⁸¹ Impounding could also be physically resisted, as in Steeple Ashton (Wiltshire) where a group of men, at least one brandishing a dagger, resisted

⁷⁶ TNA, E 133/5/708, Interrogatories, 1586.

⁷⁷ TNA, E 134/29&30Eliz/Mich17, Interrogatories and Depositions of David Chyld of Sunbury, Richard Dybbs of Apse, 1587.

⁷⁸ TNA, E 134/37Eliz/East19, Interrogatories and Deposition of William Marshall of Wilberton, 1595.

⁷⁹ TNA, E 134/23&24Eliz/Mich15, Deposition of John

Metcalf of Swyneshead, 1581.

⁸⁰ TNA, E 134/29Eliz/East23, Interrogatories, 1586; cf. Manning, *Village revolts*, pp. 44, 53–4; it may also have been an expression of joy: cf. Bushaway, *By rite*, p. 226.

⁸¹ E.g. TNA, E 134/36&37Eliz/Mich24, Interrogatories, 1594; TNA, E 134/20Jas1/Hil8, Interrogatories, 1622.

the bailiff in 1581, or in 1618 on a Somerset moor, where one John Kelson threatened to unhorse officers performing a drift, and took possession of the driven sheep.⁸²

Nor did the potential for disorder end once animals had been herded into the common pound: their owners could, in a fairly flagrant act of defiance, spring them straight out again. In the Forest of Chute on the Wiltshire-Hampshire border, swine belonging to a certain Mr Thornborough were impounded by the forester's servants whereupon 'the pound was afterwards broken upp and the swyne lett oute and the locke throwghen into the pond'.⁸³ In Dacre in Cumberland, a 1593 suit alleged that when cattle wrongfully agisted by Thomas and John Lancaster were impounded, they would simply 'breake the pindfolde, and carrye the cattell awaye'.⁸⁴ The legitimate way of recovering animals was to get a court to issue a replevin, indeed the process of distraint and replevin was a method of testing rights of both commoning and possession at the common law. However, the presentation of replevins to pounders did not always go smoothly. In 1622, it was alleged that the keeper of one Exmoor pound, when presented with a replevin for some impounded sheep, was ordered by his master the forester 'to treade the said replevin under his feete, saying his master would beare him out in the doing thereof'.⁸⁵ On Quernmore waste, near Lancaster, a group of men guarding impounded animals overnight in 1541 refused to act on a replevin brought to them on the grounds that they could not read it, sending for a scholar to do so. The owners had little time for this, and broke the animals out regardless.⁸⁶

Much of the violence reported was small in scale: petty, unorganized, perhaps usually in hot blood, like the assault on Sadgill Moor described at the beginning of this article. In many cases it was probably an escalation of a long-standing dispute: in a sixteenth-century controversy over grazing in Westwood between the Warwickshire villages of Coombe and Brandon, it was alleged that servants of the bailiff of Brandon were 'often warned' by William Cole of Coombe not to pasture their sheep there, but when they continued to do so, Cole 'grevously beate' one of them.⁸⁷ On occasions, however, disputes over common rights did boil over into widespread disorder and violence; this was undoubtedly more likely when commoning was just one of a set of tensions threatening to rip a community apart. In 1586, a dispute over the town lands of Beccles (Suffolk) led, the day after a new town charter was ratified, to a serious riot. One JP was woken from his sleep at 11pm by panicking town officers, reporting that

a great company of men were come from the howse of one John Rede dwellinge a myle of, weaponed to trouble the towne of spyte and malyce, because God hadd sent the towne a newe charter for the assurance of their comon which the Redes would have taken awaye ...

But although commoning was the precipitating cause, there were wider issues at stake. Much testimony was spent establishing the character of William Downing of Rushmere. To one side, Downing was 'a sedicious trobler of the comon peace or disquieter of the comon people'

⁸² TNA, E 134/25Eliz/Trin4, Deposition of Thomas Witcombe of Steeple Ashton, 1583; E 134/20Jas1/Hil8, Deposition of John Colston of Mark, 1622.

⁸³ TNA, E 134/33&34Eliz/Mich8, Deposition of Thomas Reynolds alias Bushe of Sarsen, 1591.

⁸⁴ TNA, E134/35&36Eliz/Mich23, Interrogatories, 1593.

⁸⁵ TNA, E 134/20Jas1/Mich20, Interrogatories, 1622; cf. Lindley, *Fenland riots*, p. 54.

⁸⁶ TNA, DL 3/40/L3b, Deposition of John Green, 1541.

⁸⁷ TNA, E 133/2/249, Interrogatories, 1575.

who had 'sought to hurte others to his owne advancement' and was 'noted as an undertaker or dealer in bad causes'. To the other, however, he was a good man, 'well accounted of the worshipfull & better sort of people', although 'many of popishe affectation have muche malysed the man many yeres for his Christian behaviour and dealinge againste them'. Thus, at the background of this dispute over common rights lay the tensions of the English Reformation. Indeed, so fraught did this particular case become that one of the judges called in to arbitrate it admonished one side for their bad conduct, saying that 'he didd never see suche disorder amongst the rude people of the Northe where he is Justice of Assize'.⁸⁸

Although this is a clear case of quite turbulent disorder, other 'riots' were altogether more limited affairs. One such took place in Cannock Chase in October 1591 when, according to 48-year-old miner Henry Wilcox, he

comynge into the Quenes forest neere to a place there called Canoppe, did fynde thereabouts the number of syxe persons weponed, some with longe billes, some with longe staves, & some with spades, & some of them were betinge & shakinge downe the mastes to theyr pigges & swyne, & there were grete fyres made nere to the place & this deponent demaunding what were theyr names, they refused to declare theyr names, But sayd that theyr dwellinge was at Mynsterworthe ...⁸⁹

Although technically riotous, six people shaking down wood for their pigs and making fires is hardly the stuff of social revolution. More insidious was the guerrilla campaign waged by inhabitants of Cawston (Norfolk) against the cony warren of Thomas Hirne kept on the Great Heath in the 1590s. On a string of occasions the warreners accosted men at night-time on the heath with nets, ferrets and occasionally dead rabbits.⁹⁰ The violence offered to these nocturnal rabbit-killers was minimal, but a few years later in the adjacent county of Suffolk, attempts to destroy offending rabbits ended with two of the cony-takers attacked with dogs and 'greeviouslie wounden that they were both in daunger of there lyves soe as theye hardlie escaped death'.⁹¹ Violence against animals, indeed, is an underexplored area in the history of early-modern agrarian politics.⁹² It would be good to know, for example, how commonplace were actions like those of George Sheppard of Sadgill (Westmorland), who 'malitiouslie kilde' animals on a disputed common with stones.⁹³ It seems possible that such animal-maiming constituted a major weapon in the commoner's armoury.

There were a number of references enclosures being pulled down, but these were often reported as a *positive* act.⁹⁴ I have counted 18 cases of enclosures being pulled down in the

⁸⁸ TNA, E 133/4/658, Interrogatories and Depositions, 1586; cf. Manning, *Village revolts*, pp. 237–8. For the larger context of this suit, D. MacCulloch, *Suffolk and the Tudors: Politics and Religion in an English County, 1500–1600* (1986), pp. 110–11, 195, 209, 244, 254, 268, 326–8.

⁸⁹ TNA, E 134/34Eliz/Hil23, Deposition of Henry Wilcox of Colford, 1592.

⁹⁰ E 134/43&44Eliz/Mich7, Depositions of John Dalderby of Cawston and John Buller of Haveringland, 1601; see also S. D. Amussen, 'A Norfolk village: Cawston, 1595–1605', *History Today*, 36 (Apr. 1986), pp. 15–20.

⁹¹ TNA, E 134/5Jas1/Mich15, Deposition of Thomas Rushbrooke of Thurston, 1607; note that in this case it was the rabbit-catchers themselves who brought this to the court's attention. Attacks on warrens are discussed in R. B. Manning, *Hunters and poachers: a cultural and social history of unlawful hunting in England, 1485–1640* (1993), pp. 128–31.

⁹² But see Manning, *Hunters*.

⁹³ TNA, E 134/16Jas1/East24, Interrogatories and Deposition of Christopher Bateman of Hugill, 1618.

⁹⁴ Cf. Thompson, *Customs*, p. 117.

sample lawsuits, and 10 of these were positive references, i.e. the destruction was brought to the attention of the court by its beneficiaries. These were protests, in Walter's words 'deliberately fashioned' to assert 'legitimacy', and may have been defensible at common law.⁹⁵ A particularly good example of this comes from Elizabethan Warwickshire, where the tenants of Sowe, defendants in a 1578 suit over pasture rights, claimed that 'at souche times as the complaynants father did inclose the same the tennants of the said manner did continually pull up and cast downe the hedges and ditches of the same and there tooke and used theire lawfull common of pasture'; this they did in a 'peaceable and quiet manner'.⁹⁶ Many cases in which enclosures were pulled down were simply, as one side saw it, the rightful exercise of legality. As Blomley pointed out not so long ago, broken hedges 'can signal violence and riot, or the legitimate assertion of common right'.⁹⁷ In the Exchequer evidences it is often the latter we see. Of course, memory can be misleading, and in some cases the dismantling of boundaries might have been ordered by a court, but recounted later in such a way as to make it *look* like spontaneous protest. In the 1642 testimony of a Worcestershire yeoman, it was recalled that forty years ago a man called Helden erected a house, warren and pinfold in Iverley Wood in Kinver Forest. For four years, Helden impounded cattle which pastured there, forcing their owners to seek replevins for their return, 'and nott longe after the said house and pound were pulled downe, and the conyes destroyed ... butt by whome they were pulled downe and distroyed this deponent knoweth nott'. However, from other deponents (and the interrogatories), we learn that this act of destruction was on the orders of the Court of Exchequer itself.⁹⁸

And yet, surely it was in commoners' interests to *say* if a court order lay behind such actions, and thus it is surprising that such backing was rarely mentioned. Moreover, there are cases of direct action in which commoners clearly made a point of publicizing them. One striking case is from Heckington in Lincolnshire. On Sunday 7 June, 1601, six men armed 'with dyvers weapons' entered a disputed enclosure called Stray Close, where they proceeded to break down the hedges and ditches, and pastured some 60 to 80 head of cattle there. When Anthony Malyn, a local gentleman, arrived to drive the cattle out, he had hardly moved them before they were rescued and returned to the close. The field was then guarded by rioters and their accomplices through the following day, during which commoners continued to bring cattle in, their numbers swelling to a potentially damaging 200 or 300 head. Neighbours, meanwhile, were encouraged to carry away all the remaining hedges, completing the annihilation of the enclosure. Most arresting about this case is the testimony of Malyn, which is worth quoting at length:

Edward Davenant one of the defendants came to this deponent & told him that hee had made work for him for hee had throwne downe the Straye Close and putt cattell into it, whereuppon this deponent went forthwith to the said close with a purpose to drive owte the said cattell but when hee came there the said Edward Davenant Henry White & William Christopher

⁹⁵ Walter, *Understanding Popular Violence*, p. 2; Bushaway, *By rite*, pp. 98–9; Thompson, *Customs*, pp. 117–18n.

⁹⁶ TNA, E 134/20Eliz/East4, Interrogatories, 1578.

⁹⁷ N. Blomley, 'Making private property: enclosure,

common right and the work of hedges', *Rural Hist.* 18 (2007), p. 16.

⁹⁸ TNA, E 134/18Chas1/East1, Deposition of John Ouldenhall of Harvington, Interrogatories and Depositions, 1642.

went into the said close & the said Davenant leaping over the said Fenditche tooke a staffe owte of John Coxes hand one of the said defendants, and the said Coxe forthwith *gott another staff owte of the hands of a stander by, who were many in number*, and ever as this deponent forced to drive the cattell forthe of the said close at one of the breaches made by the said defendantes the said Davenant, White, Christopher & Coxe rescued the said cattell in suche forceable manner as this deponent colde by no meanes drive them further ...⁹⁹

The public nature of the action is clear. Davenant specifically made the incursion known to Malyn – rather gleefully – and the fact that bystanders were ‘many in number’ suggests they were alerted in advance. The rioters were not just destroying an enclosure. They were making a point.

But of course one side’s legitimate removal of an illegal fence could be another’s riot.¹⁰⁰ In 1584, for example, the tenants of Raby had pulled down enclosures made Henry Wigglesworth by the orders of the Queen’s officers, but had been indicted for it.¹⁰¹ Indeed, what to make of such actions could hinge on when they took place: if they were perpetrated at daytime and in full view of the community, they could be sold as legitimate acts restoring a rightful *status quo ante*; if at night then they took on a more sinister appearance.¹⁰² In the Forest of Colwyn (Radnorshire), tenants recounted how, when part of their common was enclosed, they ‘quietly in the day tyme (and not in the nyght) did throwe downe & deface the said dich for the quiet occupying & enjoying of there said common’. Their opponent disagreed, claiming his ditches had been ‘overthrown by nighte’ on the 30 April back in 1584.¹⁰³ This element of *publicity* brings us full circle. In order to maintain common rights it was critical to use them publically, and for all the gossip, the threats and the violence, it is this element of public use which emerges as the most important tactic of commoning. If you wanted rights, you had to exercise them publically, if you wanted to challenge them, you needed to do so in such a way as it would be noticed, and you absolutely *must* not appear to give your assent. It mattered whether commons were used at daytime or night, as in some Buckinghamshire woodland in the 1660s, where a witness recalled:

he never knew any of the inhabitants of the townships and places in the interrogatory mentioned make any *publique* claime to or pretend to have any right to cutt or carry away any wood in the said wood called St Johns Wood other then bushes or hases and if any were cut he conceives they were cut by stealth.¹⁰⁴

Gathering wood by day was commoning; doing so by night was theft.

⁹⁹ TNA, E 134/44&45Eliz/Mich29, Interrogatories and Deposition of Anthony Malyn of Heckington, 1602. Emphasis added. Cf. Thompson, *Customs*, pp. 119–20.

¹⁰⁰ Lindley, *Fenland riots*, p. 58.

¹⁰¹ TNA, E 134/26Eliz/East11, Interrogatories, 1584.

¹⁰² E.g. Lindley, *Fenland riots*, p. 30.

¹⁰³ TNA, E 134/41Eliz/East30, Interrogatories, 1599.

¹⁰⁴ TNA, E 134/18Chas2/Mich13, Deposition of Thomas Widmer of Hughenden, 1666. Emphasis added.

V

Drawing this together, can we make any general points about the 'politics of the commons'? It is not my argument that all of these forms of politics were unique to battles about common rights, far from it. But it remains likely that the politics of the commons had a particular character which might emerge more clearly if similar work were performed on, say, tithe disputes or lawsuits relating to copyhold tenure. One wonders, however, if the physicality of the politics of the commons might have been one of its more distinctive (if by no means unique) features. The political tactics described usually had an immediate practical rationale; and this is best understood as part of a culture in which physical action was critical. Rights were affirmed by use, prevented by physical exclusion. Even in a period in which written documentation was growing in volume, the politics of the commons remained not just oral, but kinetic. Violence was usually short, sharp, and had an immediate purpose: a bloodied shepherd would no doubt think twice about depasturing on a contested common again, as might someone who was gossiped about (although 'Mad' William Bostock does not seem to have been much bothered). Commoners may also, as neighbours, have been held to a certain moral scrutiny. Ill-fame was undoubtedly often aired as a legal tactic, but litigants could only do so if neighbourly behaviour was talked about in disputant communities, and it seems likely that witnesses were unwilling to support the commoning claims of bad neighbours.

There is little obvious evidence for ritual. Bob Bushaway has shown how rituals could perform legitimating functions in the defence of common rights, perhaps most strikingly in the Wiltshire forest of Grovely.¹⁰⁵ Martin Ingram, meanwhile, shows that sexual politics was often acted out through quite elaborate popular rituals; and western rioters against early Stuart enclosures are known to have rallied to the cause of Lady Skimmington, invoking a popular shaming ritual.¹⁰⁶ Indeed, Manning himself suggested that ritual was a major component of popular rioting in the period.¹⁰⁷ And yet, there is no mention in these lawsuits of ritualized mocking, threats, or inversion. Even perambulations, which we know *were* often 'theatrical', are described in a matter-of-fact way. This is curious, and it is of course possible that the sources simply omit references to the more ritualized elements of events which were also interpretable as practical expressions of right. The issue requires further research: were, for example, pound-breaches attended by any kind of theatrical display? Is the ringing of church-bells better interpreted as a ritualized expression of divine sanction, or a practical way of forestalling accusations of covert riot? Perhaps both.

Another point to make is that the 'weapons' detailed above are not just 'weapons of the weak'. The truly weak, in fact, rarely feature. On the one hand, the poor's common rights were supported by William Payne of Wilberton; but on the other, witnesses in Warwickshire were dismissed as 'paltery fellowes' and 'poore folke ... of no valew nor credytt'. The evidence we have, then, is not truly plebeian. It was a Lancashire gentleman, Thomas Middleton,

¹⁰⁵ Bushaway, *By rite*, pp. 209–11.

¹⁰⁶ M. Ingram, 'Ridings, rough music, and mocking rhymes in early modern England', in Reay (ed.), *Popular culture*, pp. 166–97; D. Underdown, *Revel, riot*

and rebellion: popular politics and culture in England, 1603–1660 (1985), pp. 107–12.

¹⁰⁷ Manning, *Village revolts*, passim.

who arranged for the riotous destruction of turving carts on a common in 1628; and it was a Norfolk gentleman who, in 1591, paid men to throw down two gates and a dyke about a common in Carleton.¹⁰⁸ It was a mayor of Woodstock who clenched his fist at a neighbouring commoner, insulting him and spitting in his face. If this article has shown that there was a cut and thrust to the politics of the commons, a complex culture of meaning, of action, and of violence both angry and tactical, then it was a cut and thrust of which the rural elite were a part. It is well-known that most deponents in equity suits relating to custom were old men, a gerontocracy, but they were also overwhelmingly representative of the rural middling sorts: there were some labourer deponents, but the majority were yeomen and husbandmen. A crucial point, then, is not that there were 'weapons of the weak' deployed in the politics of the commons (though surely they were) in the sense of tactics deployed by subaltern groups to fight powerful oppressors. It is that the politics of the elite and the middling sort, when it came to the particular demands of commoning, were diverse, sometimes tumultuous, and always complex. Waging law was just one of a series of weapons which ranged from low-level murmuring and gossip, through the impounding of animals in inconvenient places, through attacks on animals and threats and actions of interpersonal violence, right up to full-scale rioting. Even the use of the law, critical as was the question of long-usage to the establishment of a legal 'custom', rested on a complex culture in which certain actions were taken to establish or negate certain aspects of precedent.

Perhaps this period saw a gradual formalization of the politics of the commons. Wood and Fox have noted the increasing use of written evidence such as legal decrees and customals for the establishment of custom in the sixteenth and seventeenth centuries.¹⁰⁹ Perhaps the early-modern period saw the gradual withdrawal of the elites from this political culture of the commons, and their greater reliance on the relative certainties of the law and Parliament.¹¹⁰ Maybe this cultural shift happened in much the same way as the one Peter Burke has argued for across Europe, in which elites gradually retreated from 'popular' culture.¹¹¹ But it seems just as likely that elites and middling sorts moved together, as the latter also became more literate and more engaged in the wider English legal system. These, though, must remain questions for the future. For now, one thing that can safely be concluded is that despite generations of scholarship on enclosure riots, the full history of the politics of the commons, of the nuances of action and meaning they encompassed, has only begun to be unravelled.

¹⁰⁸ TNA, E 134/6&7Chas1/Hil13, Interrogatories and Depositions, 1631; E 133/7/997, Interrogatories and Depositions, 1591.

¹⁰⁹ Wood, 'Custom, identity and resistance'; Fox,

'Custom'.

¹¹⁰ Holmes, 'Drainers and fenmen'.

¹¹¹ P. Burke, *Popular culture in early modern Europe* (third edn, 2009).