

***‘Sometymes on one mosse and sometyme on another’:
True Intercommoning in Early-Modern Lancashire.***

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In or around 1530, John Paslew, Abbot of Whalley, enclosed some two hundred acres of pasture within the wasteland known as Gunolf’s Moors. That place-name has since gone out of existence, but at the time it referred to a tract of Lancashire on the edge of the West Pennines – now divided between Withnell, Wheelton and Heapey. The question immediately arose as to whether the abbot actually had any right to enclose there. His claim was based on the Abbey’s manor of Wheelton: but James Standish, lord of Heapey, objected on the grounds that he and his ancestors ‘have always bene awners of the thridd parte of the forsaid Wast or commyn’. Standish’s claim can hardly have come as surprise to the abbot, as the abbot himself had earlier complained when another neighbour, Sir Richard Hoghton, lord of Withnell, had enclosed yet another part of Gunolf’s Moors – whereupon the abbot had started proceedings claiming he and his predecessor abbots

‘have ben seased in thayr demeyn as of Fee of and in the thrydde partie of all the residue of the sayde Moore called Gonnolmore and the same haldes and also helde in common with the sayd Sir Richard and oon James Standysh of Duckesbury’.

So, what we have here are three neighbouring lords in three neighbouring townships - all three claiming to own a full third of all the unenclosed waste associated with those townships – and all three claiming that none of the others was entitled to take any profit from any part of the waste without sharing it equally with the other two. And indeed this position was upheld when the case went to arbitration, and Standish was granted a parcel of old enclosed land in Wheelton called Monk’s Hills, in compensation for the abbot’s new enclosures.

It seems clear, then, that Gunolf’s Moors was an undivided waste in the common ownership of three neighbouring manorial lords. In other words it was not a manorial waste as usually understood- and as first codified in the Statute of Merton of 1236. That statute had made it clear that waste was effectively a manor’s private property – and that providing there was sufficient pasture left for the freeholders, then a manorial lord could approve (that is, enclose) in the residue of his waste. This however did not tackle the issue of a waste in which more than

one lord had interests - so when Merton was redrafted into the Second Statute of Westminster, it was further clarified that a lord could not be hindered from approving his own waste because of the objections of a neighbouring lord. But it seems the draftsman was thinking here less in terms of a shared waste like Gunolf's Moors, but rather of what is known as common *per cause de vicinage*, whereby accidental strays belonging to neighbouring lords were not regarded as trespassers. Tolerated trespass of this sort can appear very like intercommoning - and can sometimes be so described both at the time and by historians today: but wherever there is a notional boundary between manors, even if both sides disagree as to exactly where it runs, then that is not intercommoning but vicinage. Moreover, vicinage itself appears to have come to be defined quite literally, Rastell saying it can only apply between 'two townes where one lyeth nigh another'. Indeed vicinage was not actually even a right, for 'the one may not put his cattle in the others ground' - in other words, a neighbour's cow was only tolerated if it wandered in of its own accord. So vicinage - and the related custom of overleap - can readily be distinguished from true intercommoning, where the tenants of all the neighbouring lords could by right put any of their stock into any part of the waste. And it is this sort of true intercommoning which appears to have been not uncommon in early-modern Lancashire - especially in those districts characterised by extensive tracts of raised mires, known locally as mosses. Thus in a seventeenth-century case involving the wastes of West Lancashire, it was claimed that:

'Scarsebricke mosse Barton Mosse, Formeby Mosse and Meoles Mosse lye Comon and open together and all the adiacent Inhabitants, as well in Birkdale Ainsdale as in other places put there Sheepe and Cattle thereon and they goe Sometymes on one mosse and Sometime on another and soe have bene accustomed to doe for many yeares last past'.

The townships associated with these mosses lay in four separate parishes - Scarisbrick was in Ormskirk parish, Barton was in Halsall, Formby in Walton and Meols in North Meols parish. Although various parts had by this date acquired separate local geographic names, nevertheless they clearly still comprised a single intercommon, owned jointly by all the lords of the surrounding manors and used promiscuously by their tenants.

By the sixteenth century this seems to have been something of a legal anomaly. None of the contemporary law writers or commentators such as Rastell, Cowell,

Coke or Sheppard mentions intercommoning at all, other than by cause of vicinage. And none would have taken issue with the classic nineteenth century definition of waste as ‘the open, uncultivated and unoccupied lands parcel of the manor’, which specifically excludes the concept of wastes shared between manors. Contemporary case law too is almost non-existent on this subject. This is a rare example of a case involving the system of ‘mutual tolerance’ known as shack, found primarily in Norfolk. When this case came up in the Exchequer in 1585, Sir Edward Coke reported (in law French) ‘at first the Court was altogether ignorant of the nature of this common called shack’ - and so the court fell back on the old stand-by, *consuetudo loci est observanda* – ‘the custom of the place must be observed’. No doubt a similar verdict would have been recorded had the case involved true intercommoning on the Lancashire mosses instead.

There was, however, a legal framework for dealing with manors which had become divided into moieties or which were held in coparceny. This was referred to as tenancy-in-common or *pro indiviso* ownership – and a statute of 1540 – perhaps reflecting changing attitudes to private property – had given joint tenants and tenants-in-common the right to break up such arrangements, by allowing any one tenant-in-common to force a partition between him and the others through a Writ of Partition. However, this statute was concerned with partition *within* rather than *between* manors – and so doesn’t really deal with the sort of undivided multiple ownership which we have seen at Gunolf’s Moors. On the other hand the Gunolf’s Moors version of joint ownership would almost certainly not have been considered exceptional at the time in Scotland, where most wastes appear to have been held as *commonties*, defined as ‘the undivided common property of the neighbouring land owners’ . This form of ownership survives in Scotland to this day, though largely brought to an end by the 1695 Division of Commonties Act, (still on the Statute Books) which allowed the establishment of commissions to partition such wastes.

Returning to Lancashire, my own recent work in the archives of the Court of Duchy Chamber has provided evidence of the continued survival of true intercommoning. Whilst it would be untrue to claim that it was the norm , nevertheless out of 96 cases which I examined involving lowland wasteland enclosure, 27 definitely, and 11 possibly showed some evidence for their being, or having been, intercommoning of various sorts. Although the words enter common is only specifically used in a couple of the cases studied, its use at all, together with the use elsewhere in these cases of the legal terms *pro indiviso* or by cause of

vicinage - or its English translation for cause of neighbourhood - all this show a familiarity on the part of some of the lawyers at least, if not necessarily their clients, of the legal complexities involved.

The way in which these intercommons seem to have stood outside the 'normal' manorial system can be seen particularly well in this map of 1571 showing a group of mosses in Leyland hundred. Ten townships abut a central core made up of the White Mosse surrounded by turbary, or black moss, beyond which are the common pastures of each township. And further out still their enclosed arable lands. What is important is that the township boundaries only reach to the edge of the black moss. This absolute lack of boundaries across the waste contrasts with the assumption under Merton and Westminster II that a waste was always owned by a manor, separated from the neighbours by boundaries which were known, even though they might not be physically marked out on the landscape.

What we are looking at here seems rather to be the sort of undivided and shared resource which Vinogradoff back in 1892 suggested was 'a relic of a time when adjoining villages formed part of a higher unit of some kind'. According to Jolliffe (in the 1920s) that unit was 'the shire', an administrative unit which pre-dated the manor, and which contained perhaps a score of vills collectively sharing common pastures which he called 'shire moors', the ownership of which remained vested in the lord of the shire, not in the lord of the vill. Angus Winchester more recently has explored the possibility of a pre-Viking origin for such early structures, particularly those 'in which settlements in the lowlands had access to grazing grounds on the edges of the uplands' – citing Gunolf's Moors again - and he has postulated a two-tier model, with groupings of vills forming multiple estates linked under a single lord, above which were the 'shires' or hundredal manors. The key point here is the shared access to specialised resources over a wide area within the framework of some form of overlordship. But this model is by no means confined to Lancashire. For example Hoskins long ago recognised 'shire woods' such as the eponymous Sherwood Forest, common to the whole of Nottinghamshire – and other examples can be quoted.

But one thing that is particularly striking about lowland Lancashire is the way the largest of the mosses straddle the boundaries between hundreds. Thus Chat Moss separates West Derby from Salford Hundred, and Pilling Moss separates Lonsdale from Amounderness Hundred - while the extensive mosses which lie athwart the

Leyland/West Derby boundary have no distinctive name other than the use of the definite article - 'The Mosse' – as shown on Saxton's map of 1577.

Given the fact that at their centres these wastes would have comprised extensive tracts of living sphagnum moss, it may have been that no-one seriously considered marking out boundaries on them - any more than they would have attempted to do so on a lake. However, it may also have been that from earliest times these wastes were seen not merely as a no-man's-land, but rather as a common resource to be exploited freely by all the townships of the adjoining hundreds – and providing in different places rough grazing and fuel - fish, wildfowl and hares - the getting of marl and stone, timber and mast - and the cutting of hay, gorse, rushes, and heather.

Whatever the origins of such territories, the linkage to the age of feudal baronies seems beyond dispute. Thus the Penwortham barony had embraced much of Leyland hundred, including both the area of the White Moss as well as Gunolf's Moors – while the Makerfield barony made similar claims in the south of the county. Now while manorial wastes are normally called after the manor or township in which they lie, some Lancashire wastes retained their own distinctive names into the early-modern period. Thus in Lancashire in addition to Gunolf's Moors, we have Theyle Moor shared between Manchester, Oldham and Prestwich parishes – seen here in a map of 1556 - and Chat Moss in the south of the county - the only one of these distinctive names to have survived to the present day. Similarly, the presence of non-manorial waste names in other counties may suggest that these too were once intercommons: So Wedholme Flow in Cumbria might repay study. This large moss is shown on this eighteenth century map with a boundary running through it – a boundary which at that time divided two wards – the local version of hundreds – but which had earlier marked the division between the baronies of Wigton and Allerdale. Likewise the Weald Moors - the fen district of Shropshire - has been shown to have had an earlier existence as an intercommon. Indeed its very place-name, from OE *wilde-mor*, 'waste moor' perhaps suggests an early origin.

Elsewhere within Lancashire there were other mosslands which, while often extensive, were less 'hundredal' than Chat Moss, Pilling Moss and 'The Moss' - and which rather seem to reflect Winchester's second tier. Examples include those in Trafford; around Simonswood; in the Altcar/Formby/ Downholland district; at Farington moss; in the Lytham-Skipool valley; north of Kirkham; around

Cockerham; around Heysham; in the Arnside/Silverdale district and along the valley bottoms of Furness. Almost without exception, these wastes lay between townships. If you take the example of the Farington mosses, the White Moss discussed earlier, the boundaries of the surrounding townships now cross the peatlands, but then merely ran up to the edge of the waste, leaving the centre intercommoned by the neighbouring manors.

Now this type of commonty-style shared ownership, coupled with the fact that, as Jolliffe has said, a right on a 'shire moor' 'was not a localized one', restricted to some special part of the waste – this cannot have sat easily with developing early-modern ideas of private property. And when it came to a dispute over ownership, it was no easy matter for the courts to decide whether a particular parcel of waste was owned by a chief lord - or owned jointly by neighbouring lords in a true intercommon, - or shared between them by vicinage. The solution, as with the commonities in Scotland, was partition.

Such a partition was perhaps most easy to bring about where the Crown was lord, as for example in the extensive wastes on the Lancashire/Yorkshire border, illustrated by this impressive map by Christopher Saxton, where the Duchy settled the matter first by partitioning the wastes between the townships - then by apportioning the newly several wastes amongst the respective inhabitants, prior to enclosure. In lowland Lancashire too, the Duchy seems to have been more than happy to regularise a confused position into clear several manorial ownership. Certainly almost a third of the 96 cases I studied were about, or resulted in, the partitioning of a jointly-owned waste - and the making several of what had previously been common between lords. It would appear, then, that the Court of Duchy Chamber was effectively playing the same part in the dividing of these wastes as did the later Scottish Commonities Act – and with the same effect of making rare what had once been a common form of ownership. As a result, whether by local agreement or through the action of the courts, there would have been very few wastes in lowland Lancashire which, by the early seventeenth century, were still unpartitioned: and there would have been very few townships indeed by that date which did not have clearly known and marked-out boundaries.

How then does the story of the survival and demise of these intercommoned wastes fit into the wider history of the commons? No definitive general history of intercommoning has yet been written - but in the Hoskins model, marginal areas first became partitioned between individual hundreds, then between particular

manors, and then are further restricted by stinting. In the fairly closely related Thirsk model, increasing pressure on grazing leads to partition of intercommons followed by the stinting of the several common, and finally to enclosure. However Winchester has shown how in the uplands of northern England the intercommoned hills, which had formerly been part of forests or other large estates under single overlords, by the late middle ages had largely become divided between manors along 'natural' boundaries which often followed watersheds. This model - in which the important factor in the ending of intercommoning is the change in the pattern of overlordship - is clearly more relevant to lowland Lancashire than the Thirsk model - although the lack of obvious natural boundaries in the featureless lowland moorlands may well have contributed to their more widespread survival beyond the late middle ages in this region. However, that survival is clearly also related to the fact that many of these wastes were so extensive that overcharging was not a serious problem. And certainly it would appear that neither partitioning nor stinting had occurred to any significant extent in lowland Lancashire prior to this period - yet this absence of stinting may itself have been an important consideration in their demise - for in an intercommon, unlike a normal common, there was no single manorial court to oversee usage of the waste.

Indeed Rastell made the same point even in the case of vicinage, saying it could only work if the tenants themselves exercised restraint in the number of beasts they put in relative to the waste's capacity, 'for otherwise it were no good neighbourhood, upon which all this matter doth depend'. This, of course, is Hardin's 'tragedy of the commons' - or perhaps *a fortiori* the tragedy of the intercommons. Once the overlordship has vanished, an intercommon offends against nearly all the requirements for 'stable local common pool resource management', as identified by Elinor Ostrom. There is no effective monitoring, no mechanism for collective decision-making or conflict-resolution, no sanctions, and only long-established custom to provide the rules. An intercommon is thus highly vulnerable to any pressure, internal or external - as in the event of a failure by the relevant lords to agree amongst themselves, only the central government courts can sort out the problem - and their best answer, if the Duchy is typical, was partition.

In conclusion, in lowland Lancashire, where insufficient waste was hardly ever an issue, where there is little or no evidence for pressure on grazing, and where there are no obvious natural boundaries, it would appear that true intercommons survived in many places, even though the overlords had gone. With increasing

pressure on landlords to increase their incomes from their manors, though, these anomalous arrangements were increasingly seen as barriers to improvement - and partitioning was the logical response. The process can be seen by going back to Gunolf's Moors. By around 1500 the townships had become separated from the earlier overlordship, and from each other, but still shared their waste. By the end of the century, Heapey, Wheelton and Withnell had partitioned the moors between themselves (with Hoghton losing out).

Once partitioned, the lords could proceed to approve their wastes. Thus in facilitating partitioning, the Duchy court facilitated enclosure - and hence there arose in the region a different model of enclosure to the more widely-studied early-modern 'depopulating' enclosures, one which was based upon partitioning, approving and improving the waste. This model is probably equally relevant to any district in England where substantial wastes, whether lowland or upland, had survived into the early-modern period.

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