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**Common land in Western Europe: anachronism or opportunity for
sustainable rural development?**

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Abstract

The material and metaphorical territory of the common land has been struggled over for centuries. Various attempts to de-value and re-value the commons – both past and present – have cultivated a paradoxical and generally unresolved tension between common land as anachronism and as valuable resource. The purpose of this paper is to disentangle some of these mixed messages about commons, and the issues they raise for contemporary management, by drawing on examples of two different types of common land in a contemporary UK context. The problems that commons currently face in adapting to the pressures of a countryside where agricultural production is no longer the overriding objective are discussed with reference to common land in both the Highlands and Islands of Scotland and the Lake District in England. Exploring in particular the disparity between the declining use of common land, and their potential contribution to sustainable rural development, this paper investigates what stands in the way of common land producing greater social, economic and environmental benefits, and highlights efforts made at a local level to meet these challenges.

1. INTRODUCTION

The role of common land and communal management in the production of rural space has long been a site of contestation. Attempts to de-valorise and re-valorise the commons have been employed throughout history to legitimate or undermine common property as a viable form of rural governance, with far reaching implications for the distribution of resources. Dominant conceptualisations of commons shape the degree to which common property regimes can survive and thrive, and in much of Western European history the negative discourses have prevailed. Here, common property regimes were once widespread but declined in recent centuries due to an academic, cultural and political privileging of individual forms of property, combined with the pressures of population growth, commercialisation and industrialisation (North & Thomas, 1973; Dahlman, 1980; Neeson, 1993; Yelling, 1997; De Moor et al. 2002). It is estimated that only approximately 9% of the land area of Western Europe is now managed through common property arrangements (Brown, 2005).

However, at the present time there remains a somewhat paradoxical tension between notions of common land as anachronism, and common land as valuable resource. The purpose of this paper is to disentangle some of these mixed messages about commons, and explore the issues raised in the context of contemporary management of the countryside. Economic restructuring, socio-cultural recomposition and a changing policy context are transforming rural Europe. A key challenge for common property regimes is to adapt to a situation in which agricultural or timber primary production is no longer the overriding objective for the management of rural land due to the growing valorisation of more consumptive and multifunctional aspects (Marsden et al, 1993; Wilson, 2001; Mather, 2004). The economically, agriculturally and geographically marginal nature of the areas in which most vestigial commons tend to be found, amplify this challenge. The common property literature is thin on the particular challenges faced by first-world vestigial commons and how they might be addressed. More needs to be known about the role enduring commons play – and could play - and whether they are an anachronism or a rural development opportunity.

Drawing on examples of two different types of common land in a contemporary UK context, this paper investigates the role currently played by vestigial commons in the reproduction of rural space. In particular, it highlights and explores the disparity between the declining use and governance of common land, and the potential contribution such commons could make to sustainable rural development. The paper seeks to identify the barriers to common land providing greater social,

economic and environmental benefits, and efforts made at a local level to overcome these are discussed with reference to common land in both the Highlands and Islands of Scotland and the Lake District in England.

2. COMMON LAND: FROM UBIQUITY TO OBSCURITY?

Contested discourses of the commons

Struggles over the metaphorical territory of the commons go hand in hand with struggles over the material territory of common land. In the tension between de-valorising and re-valorising discourses over the centuries, it is overwhelmingly the former that have tended to dominate. The substantive significance of such negative discursive constructions of commons has been demonstrated by their deployment in legitimating countless acts of appropriation, privatisation and enclosure of commons in Europe and beyond. Individual forms of landholding have largely displaced the once ubiquitous common property arrangements (Dahlman, 1980; De Moor et al., 2002) - albeit with significant spatial and temporal variation (North & Thomas, 1973) – and pockets of common land that have survived been placed under substantial social, economic and environmental pressure.

Dominant discourses of devalorisation

Critics of property owned in common have included influential thinkers throughout history, such as Aristotle, Hobbes, Smith, Malthus, Locke, Hume, and Lloyd, whose ideas were heavily drawn upon to provide legitimacy for privatisation and enclosure (Burger et al., 2001; O’Neill, 2001; Ostrom, 1990). Such justificatory devices usually related to two key negative discourses: first, that common property encourages low productivity and inefficient resource use and is therefore an impediment to progress and improvement, and; second, that common property inevitably leads to resource degradation (De Moor et al. 2002). These have been particularly powerful when combined with Malthusian notions of overpopulation and poverty (McCay & Jentoft, 1998). The simultaneous privileging of private property, underpinned by discourses espousing its virtues of greater economic efficiency and productivity, was central to developing ideas of the liberal economic system and has continued to influence theoretical resource use debates for many years since (see Demsetz, 1967; Hardin, 1968; North & Thomas, 1973; Lloyd, 1833, cited in Baland & Platteau, 1996; Dahlman, 1980). Key ‘moments’ undermining common property regimes as a model of land tenure and management include the following two examples.

Firstly, the enclosure of common land in the UK occurred predominantly between the 17th and 19th centuries contemporaneous with the expansion of population, urbanisation, and the market economy, supported by specific legislation (Devine, 1994). This process accelerated in 18th century as the powerful discourse of modernisation, with its emphasis on the ‘improvement’ of agricultural land, proliferated. Landowners increasingly wanted their tenants to produce regular surpluses for market and believed that an individually based system was seen as a prerequisite to greater land productivity, innovation and market-orientation (Whyte, 1979; Devine, 1994; De Moor et al. 2002; Callander, 2003). The writings of Hume and Locke in particular were pivotal in underpinning this discourse of agricultural ‘improvement’. For example, Hume portrays a tragedy of a common meadow that goes undrained, and thus unimproved, as each neighbour shirks the trouble and expense and seeks to “lay the whole burden on others” (1978, *A Treatise on Human Nature* III, part I, section VII, cited in O’Neill, 2001, p.703). Similarly, Locke constructed unimproved land as ‘waste’, thereby legitimating its expropriation by others and justifying the delineation of private property, to ensure its improvement and ‘rational and proper use’ (O’Neill, 2001). In Locke’s formulation, the appropriation of land is justified through the application of labour such as cultivation and enclosure, whilst a lack of commerce or improvement signalled a surrender of any rightful claim to resources (Locke, 1988, 2.34, cited in O’Neill, 2001).

The results of the drive for agricultural ‘improvement’ were far reaching. In 1500 at least half of England (Wordie, 1983, cited in Shaw-Taylor, 2002), and approximately half of Scotland (Callander, 2003), were recognised as common land. However, by the mid-19th century, commons had virtually disappeared from all but the most upland and remote areas. The process was at first piecemeal and incremental, for example through legal procedures of small-scale amalgamation (Aitchison and Gadsden, 1992) or the non-renewal of lease periods or the refusal to acknowledge unwritten arrangements (Devine, 1994). Major legislation was only introduced when the demand for grazing land escalated in response to larger urban populations requiring food and housing the wool and leather industries expanding. In England, common rights were initially extinguished through private inclosure Acts (Turner, 1980), but in 1845 a general Inclosure Act was passed in order to facilitate more complete enclosure (Aitchison & Gadsden, 1992). In Scotland, the fate of common rights was not truly sealed until the passing and utilisation of major legislation in 1695 with two Acts: the Runrig Act which, “enabled owners of lands worked in runrig to have them disentangled and reallocated” (Symon,

1959, p.99), and the Division of Commonty Act, which, “empowered the Court of Session to divide the commonties among the proprietors claiming rights over them should a request be made” (ibid., p.99)¹.

Secondly, from the 1950s onwards, proponents of the ‘property rights’ school undermined the legitimacy of common property regimes for resource management, with significant impact on popular and scholarly thinking, steering policy towards the privatisation of common property regimes, particularly in fisheries and the Third World. The legitimacy of commons was eroded principally by their construction as an economic resource inherently prone to market failure and environmental degradation, and the simultaneous privileging of private property as the only way to bring about efficient resource use. According to this argument, greater incentives for the internalisation of externalities and the harmonisation of individual and collective interests could only occur if resource extraction was based on individual, tradable private property rights (Demsetz, 1967; Alchian & Demsetz, 1973; Barzel, 1989). Objections to common property included the particular costs associated with collective action, such as those incurred by the provision and operation of mechanisms for consensual decision-making, as well as those caused by opportunistic tendencies to violate or circumvent collective rules (Olson, 1965).

For example, the proposition that the joint use of resources would always tend towards the overexploitation and degradation of common resources has underpinned a number of influential models. Both Gordon (1954) and Scott (1955) aimed to show for fisheries that there is no point in self-restraint in the numbers of fish caught as there is no assurance there will be any left at a later stage: “wealth that is free for all is valued by no one because he who is foolhardy enough to wait for its proper time of use will only find that it has been taken by another” (Gordon, 1954, p.124). Similarly Hardin (1968) presented the problem as an imminent “tragedy of the commons” in which “Freedom in a commons brings ruin to all” (p.20) due to the logic of each rational herdsman seeking to maximise his gain by keeping as many cattle as possible. Constructed as economically rational, the herder always has an incentive to add one more animal to his herd and extract an additional resource unit, as all the

¹ The evolution of tenurial systems unfolded differently in the Highlands and Islands of Scotland due to the nature of the Highland Clearances – when landlords appropriated large sections of common land to create or expand large-scale pastoral holdings or deer forests to address the increased demand for leisure pursuits amongst the wealthy (Orr, 1982). It is notable that the Clearances did not signal the elimination of common land as new commons were set up in the areas to which people were cleared – probably because tenantry wanted more as labourers (for fishing & kelp industries) than as agricultural entrepreneurs.

benefit of the sale of the animal would be his alone while the costs of overgrazing would be spread amongst all users.

Counter-discourses of revalorisation

A number of alternative discourses seeking to defend or revalorise the commons can be identified in scholarship, policy, and practice. For example, counter-discourses of collective claims over land existed concurrently with historic enclosure movements and the agrarian transition to capitalism, underpinned by notions of moral economy, justice and rights (Thompson, 1993). Many texts employed such discourses to highlight the dispossession and expropriation of a peasant population and the creation of the working class (McCay & Jentoft, 1998), and in the context of the Highlands and Islands of Scotland, portrayed the injustices of the Highland Clearances and subsequent hardships experienced in emigration and the poorer conditions in the crofting townships to which people were moved (Hunter, 1976).

In Scotland, such discourses have been reproduced recently as part of revived land reform debate. Here, a small but increasing number of communities have mobilised themselves to take collective ownership or management of local natural resources (Wightman & Boyd, 2001; Mackenzie, 2004; Bryden & Geisler, in press). Official endorsement of this trend has come in the form of a community right-to-buy mechanism in the Land Reform (Scotland) Act 2003, and is backed by public funding through the Community Land Unit. This renewed commitment to community resource management is underpinned by notions of justice and social inclusion and seen as a vehicle for securing local resources and encouraging 'bottom-up' economic development, reflecting a discourse of the commons also increasingly found in many other parts of the world (Agrawal & Gibson, 1999).

A particularly influential alternative discourse in England and Wales concerned the central position of the commons in the access movement of the late 19th century. Again the notion of a collective claim was engendered but this time not in the name of agricultural livelihoods, but for amenity and recreation. By 1876, widespread enclosure sparked the fear that remaining open land would be lost to public amenity interests (Aitchison & Gadsden, 1992, p.166) and prompted the legislation that was pivotal in the survival of common lands in England and Wales. The enactment of the Metropolitan Commons Act 1866 and the Commons Act 1876 effectively prevented any further inclosures that might be to the detriment of amenity interests (Short & Winter, 1999).

Revalorising discourses of the commons have also been emerging in academic debate in recent decades. Firstly, many scholars have drawn attention to the plethora of empirical examples that demonstrate well functioning and historically enduring commons management (Ostrom, 1990; McKean, 1992; Bromley 1992; McCay & Acheson, 1987). That “herders themselves could agree on common rules and enforce them collectively” (Burger et al., 2001, p.3) failed to be acknowledged in the ‘tragedy’ discourse. Attention has also been drawn to cases demonstrating the common property is not necessarily less efficient than private property (Stevenson, 1991).

Secondly, the use of ambiguous nomenclature in a way that clouds commons issues – by conflating ‘common property’ regimes with open access - has been flagged up as instrumental in previous efforts to discredit common property (Hanna & Jentoft, 1996). For example, the use of the term ‘the commons’ rather than ‘open access’ was used in Hardin’s model to mean everybody’s and therefore nobody’s property, when it has been established that common property regimes can have well-defined, enforceable relations of entitlement, just like private property regimes.

Thirdly, some critics of the ‘property rights’ school take issue with the narrow, instrumental and decontextualised conception of commons, resource users and their goals, and instead espouse discourses portraying the multiple values and alternative normative concerns relating to commons. Often they resist the shift in focus of mainstream scholarship away from social issues such as poverty and inequality, to questions of efficiency and resource conservation (McCay & Jentoft, 1998; Johnson, 2004). McCay (2002) observes the multiple, diverse goals of commons management and highlights that the principal aim is not always the avoidance of environmental degradation and resource-unit scarcity, but can equally be the minimisation of conflict, the repelling of incursions from outsiders, or the claiming or reasserting of cultural identities and political power. Similarly, Mosse (1997) draws attention to the wide range of factors that can influence ‘rationality’ and that more intangible aspects of commons, such as symbolic aspects, also matter to actors and influence their behaviour.

Lastly, the commons have been revalorised in a new discourse of environmental management that acknowledges the cross-boundary or common-pool nature of many environmental issues, and the need to manage on an ecologically relevant scale. Policy documents increasingly acknowledge that the provision of many public goods, such as landscape, habitats and biodiversity, and the avoidance of public bads, such as diffuse pollution, can only happen effectively on an appropriate scale; which usually necessitates management across farm or other legal boundaries (e.g. Scottish Executive, 2002).

Therefore, the imperative to have well-functioning collective institutions to co-ordinate use and management is inescapable, with many lessons that can be learnt from common property institutions (Ostrom, 1990; MacKean, 1992; Dolsak & Ostrom, 2003).

3. OPPORTUNITIES FOR VESTIGIAL COMMON LAND IN THE UK

Within the mixed messages about commons circulating over the years, it is possible to discern a growing discourse of revalorisation of common property, particularly with respect to issues of access, social inclusion and environmental management. However, we know little about what this means for vestigial common land in contemporary contexts. Recalling the close link between the metaphorical and material reproduction of the commons, we need to understand better how existing common land is perceived and constructed, and the issues this raises for its contemporary role and management. This paper investigates this by drawing on examples of the two main types of vestigial common land in the UK, using data collected for common land in both the Highlands and Islands of Scotland and the Lake District in England.

Common land in England and Wales

At present, a total of 8,675 different commons exist in England and Wales, covering 550,000 ha. 183,000 ha are in Wales, which covers 8% of its total land area, and 367,000 ha are in England, which is 4% of its total land area (Land use Consultants, 2005). ‘Rights of common’ held in relation to grazing, timber, hay, peat, turf, fish and minerals are usually conferred through ownership of neighbouring land, although it is mainly the grazing rights that are exercised currently. Usually the landowner holds the sporting rights, and grouse shooting is an important use in some areas.

Common land in Scotland

In Scotland, crofting common grazings constitute the most prevalent form of historically enduring common land, where over 800 administrative units cover approximately 5,000 km², which is 7% of the terrestrial area (Crofters Commission 1999). Common grazings rights are usually linked to the tenancy of small individual plots of land known as ‘crofts’ or ‘inbye’; a form of tenure unique to the Highlands and Islands of Scotland. The original crofting legislation of the 19th century² specified rights for grazing livestock, cutting peat and collecting seaweed, but allowed landlords to retain title to the land,

² Crofters Holdings (Scotland) Act 1886 & Crofters Common Grazings Regulation Act 1891

and the sporting and mineral rights (Hunter 1976; Devine 1988). Subsequent legislation has extended and amended common grazings rights to allow crofters to: apportion part of the common grazings for exclusive use³; recoup 50% of any development value of land resumed by the landlord, for example, for a house-site⁴, and; collectively use any part of the common grazings to plant trees⁵.

Social opportunities of common land

Common land has both intrinsic and instrumental social value. Intrinsically, common land plays a key role in the reproduction of cultural and symbolic values associated with the crofting and hill farming way of life, and most stakeholders concur that common land is an important part of the UK's cultural heritage, including policy makers (House of Commons, 2006), visitors (Burton et al. 2005) and farmers and crofters themselves: "there is quite a lot of the whole heritage of this community tied up in the common grazings" (D9). Aside from this heritage value, however, official documentation concerning common land tends to place little or no emphasis on its social value. Nevertheless, analysis of in-depth interviews with farmers and crofters showed that the necessity of co-operation associated with most common land had a number of social benefits. On one hand, the growing isolation of farmers means that the carrying out of communal tasks (e.g. gathering or shearing) and attending commoners meetings is increasingly seen as valuable in terms of the social interaction involved (E1, E5, G1). Furthermore, common land has more instrumental value in producing and reproducing social capital, which is valuable both within and beyond the confines of the common land system: "You must co-operate on these fell farms, especially with these common lands ...[...]...when it's a wide spread and you're depending on farms in other valleys getting your stray sheep...[...]... it is essential that there is co-operation. And that therefore builds up quite a common thing in the social world as well, because they are your neighbours and you know their feelings and it gets on better, you get on better with them when you meet up in groups or meetings and such like" (F1). The necessity of co-operation encourages the creation and maintenance of social ties and norms of reciprocity, particularly between those who would not get on as well otherwise. Strengthening social cohesion in this way allows social networks to function as a medium for the exchange and pooling of resources and knowledge. Numerous interviewees stated the value of their common land related social networks in allowing them to access help with agricultural tasks when required, and as a safety net in times of illness, as well as aiding the

³ Crofters (Scotland) Act 1955

⁴ Crofting Reform (Scotland) Act 1976

⁵ Crofter Forestry (Scotland) Act 1991

success of non-agricultural ventures, such as through the mutual ‘word of mouth’ recommendation of diversified businesses such as cafes, campsites or B&Bs.

Environmental opportunities of common land

The basis for common land policy in England and Wales is very much grounded in the environmental rather than social and economic contribution that commons can make to sustainable rural development, acknowledging in particular the important role in providing a range of environmental public goods: “In recent years common land has increasingly become valued for its natural character, its landscape features, the open space and recreational opportunities it provides and its archaeological, geological and conservation interest” (Defra, 2002, p.iii). Common grazings have also been noted for playing a similar key role in Scotland with respect to recreation and tourism (Scottish Executive, 2005) and nature conservation (SCU & RSPB, 1992).

As low-input, extensive pastoral systems, common lands across the UK have been internationally recognised for their habitat and biodiversity value, with many sites protected under the EC Birds and Habitats Directive, or as Sites of Special Scientific Interest (SSSIs) or designated as Environmentally Sensitive Areas (ESAs). For example, over half of English Sites of Special Scientific Interest (SSSI) are subject to common rights (English Nature, 1999) and a large proportion of peatland and machair habitat of international importance occurs on common grazings land (SCU & RSPB, 1992).

Designated and non-designated areas of common land are also valuable for the restoration and maintenance of habitats and species important for the UK Biodiversity Action Plan because, with functional hefting and governance systems, common land allows viable stock management and the spatial management of grazing pressure over a large unfenced area. An absence of fences is particularly advantageous for bird species and large-scale management is more likely to overlap with an ecologically appropriate scale of management.

Economic opportunities of common land

Common land can under certain circumstances provide a valuable financial contribution to rightsholders, although there is a marked difference in the emphasis given to this aspect in policy between Scotland, and England and Wales. The potential of common land to offer income-generating opportunities is central to Scottish policy proposals relating to common land, likely due to the Highlands and Islands being seen as economically marginal and demographically fragile. For example, the economic opportunities offered by the generation of renewable energy is mentioned in both the

Crofting Reform Bill (Scottish Executive, 2005) and the Land Reform (Scotland) Act 2003. Examples of other types of renewable projects, such as small-scale hydroelectric schemes already exist on common grazings in Scotland.

Agricultural activity on common land produces a number of economic benefits that are crucial to a number of regional economies. Firstly, many agricultural holdings, especially smaller holdings, would not be viable without their associated rights to common land. Although agricultural returns and employment is, in direct terms, only a small part of the rural economy, studies have demonstrated the more significant multiplier affects for the rural economy as a whole (Roberts, 2003; Burton et al. 2005). Agricultural activity on common land plays a central role in the provision of the public goods that support the tourism industry that is so central to the economies of the Highlands and Islands and the Lake District. These goods include the visual landscape and aesthetic value, the amenity value (including sufficient grazing pressure to keep land passable), the conservation value, and the cultural value of forms of agriculture that are seen as more 'traditional'. For example, analysis suggested that the public place significant value on watching sheep being rounded up by working sheepdogs as they are walking or driving in the area (F2, G2).

4. CHALLENGES FOR VESTIGIAL COMMONS IN CONTRIBUTING TO CONTEMPORARY SUSTAINABLE RURAL DEVELOPMENT

Despite the substantial range of opportunities common land presents for the provision of economic, social and environmental benefits, a number of factors can often make the realisation of such positive outcomes difficult. Many factors relate to the challenge of restoring or maintaining the 'salience' of the land to the rightsholders. Several theorists have identified 'salience', or similarly 'dependence', as of substantial importance in providing impetus to the formation and operation of effective institutions for resource management (Agrawal & Yadama 1997; Ostrom 2001; Gibson & Becker 2000; Vatn 2001; Gibson 2001). Ostrom (2001) asserts that a resource is highly salient when "appropriators are dependent on the resource for a major portion of their livelihood or other important activity" (p.22), which matters because "if appropriators do not obtain a major part of their income from a resource ... the high costs of organising and maintaining a self-governing system may not be worth their effort" (ibid. p.25). The salience of, and dependence upon, vestigial common land in the UK has declined, essentially because 'traditional' uses based on hill livestock production are barely viable, and newer

uses face their own set of difficulties. The key challenge is to reverse this declining salience so that rightsholders have impetus to invest time, effort and money in common land.

Market opportunities

The fundamental market-related challenge for vestigial common land stems from the low returns generated by the long-established use for livestock production. Market prices for store livestock are poor and the hill-farming sector in general is struggling to keep up with competition from places such as New Zealand (SEERAD, 2004; Defra, 2005). Hence, there is a greater imperative to gain income from off-farm employment or diversification, either on the holding or on the common land. However, it is often hard for common rightsholders to capture their contribution to public good provision through the market. Those with a holding in a suitable location report tourist accommodation to be a crucial source of income, but sometimes find it hard to keep pace with rising standards and the increasing formality and bureaucracy of the system. The other main market opportunity for common land is renewable energy generation. However, the crux of the issue is how decision-making powers and financial benefits are distributed between the landowner and common rightsholders. At present, rightsholders in Scotland are entitled to be compensated 50% of the development value from such projects if the landowner chooses to go ahead with an energy generation scheme, but have little scope to participate in and shape appropriate proposals, and rightsholders in England and Wales have no entitlement to such benefits at all. The incongruence between the bundle of rights held by commoners and current economic opportunity set is clearly a barrier to diversification. Crofting Reform Bill acknowledges this drawback and proposes to open up use for a broader set of activities, including tourism. However, the Commons Bill does not appear to engage with the economic dimension to any great degree.

Policy framework

As alternative values attached to common land tend to be very public good based, rightsholders rely heavily on policy for their economic capture. However, the prevailing policy framework has often only allowed capture of the value of public goods provision to a limited degree due to its inadequate scope and restricted relevance to common land. Aside from the universal problems of agri-environment scheme under-funding, bureaucracy and over-generalised conditions, common land faces additional difficulties due to its tendency to be neglected in policy. The proposed common land reforms contained in the Commons Bill for England and Wales and the Crofting Reform Bill for Scotland signal the first serious attempts for a very long time to address commons-specific issues, such as lack of

effective local regulation, in rural policy. However, in the Scottish case at least, these reforms are seen as superficial and being eclipsed by other problems with the crofting system.

Furthermore, every time the Common Agricultural Policy is reformed, the issue of common land in the UK is sidelined or forgotten about until the main policy mechanisms have already been developed and commons have to be subsequently force-fitted into them. For example, the Land Management Contract (LMC) system in Scotland - launched in 2005 as part of the most recent CAP reform to help farmers and crofters look after farm and woodland environment, maintain high standards of animal welfare, and provide access opportunities - leaves out common land completely, despite the fact that it makes up the majority of crofters' working land area. After pressure from the Scottish Crofting Federation, the Scottish Executive has signalled its intention to incorporate common grazings in the third tier of the LMC system. However, the case of common land is generally not helped by the fact that the most powerful farming lobbies themselves tend to devalue common land in comparison with more 'productive' areas, in a similar vein and on the same basis as in the age of 'improvement'.

The way common land has been incorporated into past agri-environmental schemes has also been criticised on a number of fronts. Significant barriers identified in the interviews included the imposition of conditions, such as conservation areas having to be fenced, or that the agreement of all common rightsholders was necessary for entry into the schemes, meaning that it only requires one awkward rightsholder to halt progress in the scheme. Another problem was the perverse side effects that schemes could have for the common land system. For example, the measures of stock reduction and wintering away in the ESA scheme in the Lake District were widely reported as undermining the hefting system, which is vital for stock management, even grazing pressure and animal welfare.

Demographic change

The character of demographic change is affecting the number of active farmers and crofters available to contribute to the communal tasks associated with common land, as well as their capacity to do so. In both the Lake District and the Highlands and Islands of Scotland, the agricultural population is ageing, as access to housing, changing aspirations, diminishing profitability, and growing uncertainty, discourages the succession of young people willing to make agriculture a key part of their livelihood strategy. The increasing socio-economic and cultural heterogeneity from in-migration also affects the number of active rightsholders as people can acquire common rights with their holding but have no intention of using them. The corollary is that older and fewer common rightsholders make it difficult to

perform commons tasks efficiently, or indeed at all. Some cases of common land have a ‘co-operation threshold’; a critical number of people (and dogs) below which gathering cannot occur due to the nature of the terrain. Furthermore, gathering requires great fitness and many older farmers and crofters struggle to do the job and begin to lean more heavily on others in the group. Sometimes contractors can be used to help but they are expensive and do not always have necessary local knowledge to effect the ‘clean’ gather necessary for economic, health and welfare reasons.

Contested cultural and moral values relating to land use

Saliency is a function, not only of ‘external’ factors such as market and policy signals, but also of what the group of rightsholders themselves perceive as valuable, or as a potentially valuable opportunity. Patterns of in-migration have introduced new common rightsholders, whose ideas, values, and norms can differ greatly from those of the existing population. The social dynamics amongst a more heterogeneous group of rightsholders affects the way values are attached to, and in turn captured from, the land, and can thus lead to difficulties harmonising common land objectives between established pastoral use and newer sources of economic impetus for using the land. Many common rightsholders attach strong cultural values to the ‘traditional’ agricultural practices through which rights are exercised, and along with related symbols and discourses, such practices often form a key part of reproducing rightsholders’ identities. The reproduction of these more established identities and practices can constitute important currency in building the cultural capital required to be accepted within particular social networks. For social networks to function adequately for the co-operative tasks essential for common land management, it is important that particular norms are not undermined; for example, moral norms of reciprocity, co-operation, compromise, often underpinned by notions of the ‘common good’ (see Brown, in press). Such cultural currency can be fragile, and previously established informal common land institutions, with their particular rules, roles, norms of co-operation and reciprocity, practices and sanctions can become destabilised when new users repeatedly transgress the accepted order.

Resulting trends of declining use and involvement

Rightsholders interviewed in the Lake District and the Highlands and Islands of Scotland concur in that sustained co-operation for common land management requires necessity and saliency, and that a fundamental contemporary challenge is maintaining or regenerating this impetus when dependence on land for livelihood has declined, and the group of rightsholders are increasingly ageing and culturally heterogeneous. Overall, this challenge is proving difficult to meet for both types of common land.

Firstly, there are smaller numbers of rightsholders using the land agriculturally, there being few willing and able to commit to the demands of communal extensive livestock systems. Secondly, the magnitude and spatial distribution of grazing pressure is changing in a way that is leading to overgrazing of some areas and under grazing of others, sometimes on the same common. Thirdly, monopoly, breakdown or stagnation of local common land governance is becoming more widespread. In both contexts, the lack of effective legal mechanisms to back up informal commons management institutions is a stumbling block for adapting to current opportunities and challenges (see also Wilson, 1997; Rodgers, 1999; Short, 2000; Brown, 2005). The Commons Bill and the Crofting Reform Bill both propose measures to address this, although in both contexts there is a commensurate struggle for the empowerment of common rightsholders who seek a genuine voice in the debate over how to modernise the common land policy framework (Humphries, 2000; SCF, 2005). Moreover, such declining use and governance does not just affect the common rightsholders but has knock-on effects for the provision of public goods.

5. MEETING THE CHALLENGES IN PRACTICE

A minority of vestigial commons seem to be able to meet the aforementioned challenges more effectively than others within the current policy and market context. Two particular cases will be examined in more detail to see what factors help to explain this success; a common grazings in Scotland, and a commons in the Lake District.

Case 1: Common Grazings, Highlands and Islands of Scotland

Ten years previously, this common grazings was being overgrazed and monopolised by one or two rightsholders keeping significantly more stock than their 'souming' or share. As sheep production profits had declined, certain rightsholders had increased stock numbers in an attempt to maintain profit margins, and other rightsholders felt they lacked the moral authority to sanction their neighbours who were working hard and struggling financially. Recently, however, the rightsholders have managed to achieve major local re-regulation of the common grazings and secured a conservation management agreement, resulting in restored salience, improved environmental quality, and greater human and social capital. A number of factors were central in this achievement; many of them relating to the leadership, tenacity, and patience of two key rightsholders.

Firstly, there was a growing realisation amongst most of the 'active' rightsholders that something would have to be done about the declining grazing quality and decreasing financial returns. A

conservation management agreement was proposed as a way of allowing them to continue traditional agricultural use of the commons but in a way that was aligned with its internationally recognised habitat and biodiversity value. Secondly, SNH were prepared to make resources available for a management agreement due to the site's high conservation value, allowing the rightsholders to negotiate a viable rate of compensation for the necessary stock reduction and persuade SNH to drop their usual requirement that a managed area be fenced. Thirdly, the monopolising rightsholders who had to remove a significant number of 'illegal' stock without compensation before reaching the level at which they would be paid for stock reduction, were dealt with firmly but patiently. A great deal of time and effort was invested by a newly formed committee in communicating with the overgrazers in a way that conveyed to need for stock reduction yet avoided confrontation and awkwardness: "it was mostly achieved by talking about it endlessly, so people didn't get any surprises, and were helped not to get into positions where they had to appear to lose face or back down or anything" (D1).

Lastly, the Grazings Regulations were specifically re-written to accommodate both 'active' and 'non-active' graziers within the context of the management agreement. The later still had to pay their £1 per year subscription to the Committee - to simultaneously show their commitment and acknowledge their continued involvement and moral ownership – but they also received a certain amount each year for agreeing to put their grazings shares into the pot for strategic redistribution amongst 'active' rightsholders, and were not asked to contribute a certain amount of labour per year as the previous regulations had stipulated. Instead, a sub-group of 'active' rightsholders invested the necessary money and labour for common land tasks but agreed through the Committee how the unused shares would be allocated amongst themselves. Thus, the 'active' shareholders were able to claim the pecuniary benefits stemming from market and policy payments. The number of graziers was small enough to allow them to operate at a greater scale than their original shares, but was not so small that the co-operation threshold was crossed.

Case 2: Common land, Lake District

In this common land case, the opportunities for diversification into tourism and conservation are relatively good and have been taken up as much as possible by the rightsholders. The farms are well positioned to capture value from tourism (e.g. B&B, cafes, campsites), which is an accepted activity due to the long history of tourism in the area. For a number of holdings, tourism subsidises the agricultural side of the business. However, rightsholders were not as accepting of conservation as a new activity and thus had to work hard and be patient to reach an agreement amongst themselves.

However, achieving entry of the common into the ESA scheme was crucial for keeping communal livestock viable, and in turn maintaining the impetus for co-operation.

Some social bonds within the group are stronger than others due to a variety of cultural backgrounds, and social cohesion is something that is actively worked on since it is not possible to manage this common without co-operation. Experienced rightsholders acknowledge that some of the newer rightsholders with alternative income streams will never make as full a contribution as themselves and are resigned to doing more than their fair share in terms of organising and carrying out communal tasks, and gaining consensus for schemes. They “work with them probably to try and minimalise the negative impact they would be having ...[...]... those of us that are capable of doing it tend to do it for those that aren’t as capable ...[...]... they’ve come to it too late, and they’re not prepared to work at it so hard as those of us who rely on it for a livelihood. In a lot of cases, these people don’t actually need to be good farmers cause they’ve got enough other forms of income. If you need to be good at it, you’ll be bloody good at it” (E4). Moreover, certain individuals are prepared to absorb some of the potential conflict because they have seen other commons break down and feel for the greater good it is a fate to be avoided as far as possible: “it’s worth bending over backwards if somebody says it’s Wednesday when it is Tuesday, well we’ll agree with that, if it makes them happy and it gets the job going forward, agree with him and keep going, because it is worth a lot. It’s a big area up there ...[...]... it’s worth bending a little bit to be flexible because when you’ve seen it go wrong, and I’ve worked in a few places where the neighbours don’t get on, in these areas it is easier to agree than argue in the longer term ... because there aren’t many of us and they are getting less so we should try and get on with the ones that’s here” (G2).

6. CONCLUSIONS

This paper highlights the disparity between the positive, revalorising constructions of the commons increasingly found in policy and practical discourse relating to social inclusion and environmental management, and the realisation of such values for the majority of vestigial common land in the UK. Indeed, most of these enduring common property regimes are under serious social, economic and environmental pressure, with smaller numbers of rightsholders using the land, changing magnitude and spatial distribution of grazing pressure and stagnating formal and informal institutions. Nevertheless, there is evidence that vestigial commons in England and Scotland could provide more social, economic and environmental benefits than they do at present; for example, through the reproduction of symbolic

and social capital, the provision of environmental public goods, and opportunities for economic development.

However, the reasons that vestigial common property regimes are not better aligned with contemporary rural policy objectives include the following. Firstly, historically enduring common land has tended to be neglected in policy. As the details of reforms of the Common Agricultural Policy are fleshed out at the national level, common land tends to be forgotten about and ‘shoe-horned’ in at the last minute. The most powerful farming lobbies often carry underlying assumptions of common land as less important than more ‘productive’ areas, thereby reproducing some historical devalorising discourses of commons as anachronistic. Furthermore, the proposed legislation of the Commons Bill for England and Wales and the Crofting Reform Bill for Scotland is the first time in a very long time that serious moves have been made to address common land issues in rural policy more generally. Even so, the proposals for English and Welsh commons focus predominantly on environmental issues and those for Scottish commons focus predominantly on economic issues.

Secondly, the economic impetus for rightsholders to invest time and effort in common land to maintain has been generally in decline. Established uses related to agricultural production generate very low returns, and alternative values attached to common land tend to be very public good based. Public goods, such as landscape and biodiversity are difficult to capture through market mechanisms, and thus often rely heavily on policy for their provision. We know from previous work (e.g. Ostrom, 2001) that salience of the resource to rightsholders is a prerequisite of appropriate commons management. These examples confirm that there will always be an opportunity cost associated with time, money and effort invested in the common land against which the ability of any particular use to provide a livelihood will be weighed.

Thirdly, newer sources of economic impetus for using the land can often be difficult to harmonise with the strong cultural values attached to more established ways of using the land. Common land rights in the UK have been synonymous with pastoralism since their inception, and related practices, symbols and discourses often form a key part of reproducing rightsholders’ identities. The corollary is that new opportunities for common land use, such as forestry, may not provide the cultural capital required to reproduce their identity and allow them to be accepted within particular social networks; networks that are often central to essential co-operative commons tasks.

Fourthly, and closely related to the previous point, economic and demographic change in rural areas has disturbed and unsettled previously established informal common land institutions, with their particular rules, roles, norms of co-operation and reciprocity, practices and sanctions. For example, as profits from sheep production have dwindled, minority groups of rightsholders have increasingly avoided sanctions for exceeding their stock allowance, with the others lacking the moral authority to penalise their already struggling neighbours. In some cases, institutions have stagnated to the point that they need to be completely rebuilt and re-regulated. The difficulty in re-regulation is dealing with those that have vested interests in the extra-legal patterns of land use that have evolved.

Therefore, whether or not common land presents an opportunity for rural development in any particular case depends upon a number of cultural, institutional, economic, and policy factors. A crucial factor is the provision of market and policy frameworks that: a) allow rightsholders to capture the full economic value of common land and thus provide sufficient livelihood opportunities, and; b) remove extralocal institutional barriers to the rural development opportunities common land presents. To these ends, a policy audit for 'collective-friendliness' would be a fruitful first step. Nevertheless, within the current market and policy framework, some common threads were identified in the empirical examples for bridging the gap between common land decline and opportunity.

The rightsholders in UK common property regimes resisting decline were prepared to grasp available opportunities, but in a way that did not transgress established cultural orders, but allowed accepted rules, roles and practices to be subtly altered. The dominant 'ethic' was to see the land strategically and accept that conceptualisations of crofting and farming would have to expand to encompass diversification. This, in turn, occurred through effective communication and the hybridisation of related discourses.

Additionally, local institutional structures for governing common land had adapted to the new reality of rightsholder heterogeneity. There was no assumption implicit in the institutional arrangements that everyone will be involved in everything in the same way and to the same degree, but instead flexibility in organising inputs and outputs in ways that allow rightsholders to play to their strengths. Their rules, practices and sanctions did not assume that rightsholders had the same will and ability to contribute to common land use and management, nor that they all wanted to use and benefit from the land in the same ways, as was more often the case in the past. By not expecting or relying upon all rightsholders co-operating, sub-group co-operation could occur more effectively. In addition, ways for less 'hands-

on' rightsholders to become involved and contribute towards the commons were found (e.g. through the creation of 'shares' in local beef).

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