

Conflict in the landscape : the enclosure movement in England,
1220-1349

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ABSTRACT

Between 1220 and 1349 groups of people destroyed enclosure banks, hedges and fences in defence of their common rights. Many law suits were provoked by encroachments on common pastures. This reflected the importance of an enclosure movement which had its main impact in wooded, upland or wetland landscapes. It led to large areas being taken out of common use, and a growing proportion of land being controlled by individuals. The beneficiaries of enclosure included the lords of manors, but also landholders below the gentry. The opponents of the movement had some success in preserving areas of common pasture.

KEYWORDS: enclosure, commons, agriculture, woodlands, parks, conflict.

The English enclosure movement of modern times, and particularly the phase of parliamentary enclosures between 1750 and 1850, transformed the landscape of open-field regions, and helped to make profound changes in the economy. Much attention has rightly been given to preceding phases of enclosure, between 1400 and 1750. In the seventeenth century enclosure followed disafforestation, and marshlands and fenlands were drained and brought into more intensive use. Land was taken into new or enlarged parks, and most famously in the champion landscapes of the 'central province', especially in the fifteenth century, many open fields were converted into pasture closes, and villages deserted. All of these processes of enclosure met with protests and even violent confrontations. In the eighteenth century the main opposition from villagers took the form of slow compliance, foot-dragging, and 'passive grumbling' (Neeson 1993, pp. 259-93). In earlier centuries those losing their rights of common acted more robustly, including those who attacked parks such as that at Wilstrop in Yorkshire in 1497, the groups of villagers who forcibly removed enclosure hedges in dozens of places between 1510 and 1625, and the various rioters in fenlands and forests in the early and mid seventeenth century (Beresford 1957, pp.

376-7; Manning 1988, pp. 31-131 ; Wood 2002, pp. 82-95; Lindley 1982; Sharp 1980, pp. 82-155). Not all enclosure schemes caused such troubles, and landscape historians in particular are aware of the evidence for late medieval and early modern enclosures by agreement.

The purpose of this article is to draw attention to the enclosures of the period 1220-1349, which because they reached their height in the middle of that period could be called 'the enclosure movement of the thirteenth century'. It will be shown that this movement caused much contention, that it took place on a large scale with widespread effects, and that it had implications for the emergence of property rights. The changes associated with this 'enclosure movement' are well known to those familiar with the period. Everyone uses the generalisations (even the clichés) which describe developments in the countryside – the growth and reorganisation of settlement, the extension of cultivation, land reclamation, internal colonisation, assarting, emparking – but the word 'enclosure' is usually absent. The terminology of making closes was employed at the time, and phrases permitting recipients of land grants '*ad claudendum fossandum et hayandum*' (to enclose, ditch and hedge) often appear in charters of the period (e.g. Saltman 1967, p. 201).

Enclosures in 1220-1349, like those between 1550 and 1850, belong mainly to a period of growth in population, of towns, in industrial employment, in demand for foodstuffs and raw materials, and in profits from land. The economy did not expand continuously in the three centuries after 1550, and nor was this the case in 1220-1349. Growth faltered soon after 1300, but the really decisive drop in population and agricultural profits came after the Black Death of 1348-9. The downturn of the early fourteenth century, and indeed the critical episode of the Great Famine in 1315-17, may itself have stimulated moves to improve new land, as lords and peasants sought to compensate for diminishing returns from existing resources.

Historians have tended to take a positive view of landscape change in the period. Achievements like the draining of the wetlands around the Wash, or the Somerset Levels or Romney Marsh required a great deal of co-operation between the inhabitants, and technical skills among the anonymous engineers (Silvester 1999; Rippon 2000). Clearing woodland depended on much hard labour, by the employees of lords, or peasants working on their own account. The peasants assarters in particular have been viewed sympathetically as a socially disadvantaged group practising self-help. Rational agricultural practices, such as specialised animal

husbandry, were helped by the creation of compact blocks of land, like those found in some monastic granges, vaccaries and bercaries. New closes contributed to cultural landscapes, and we appreciate that gardens and parks which surrounded castles and aristocratic residences provided the elite with settings for courtly and chivalric occasions. The correct ordering of space, and even symbolism, influenced the plots and curtilages created during town planning (Johnson 2002; Lilley 2005). Some of those who planned the changes have been regarded as far-sighted improvers, notably monastic lords, and in particular the Cistercian order.

On the other hand, agricultural expansion in 1220-1349, especially after about 1270, has been seen as causing economic problems as the ploughing of pasture deprived the arable of manure, and much of the new land has been thought to have been of low quality. The proliferation of smallholdings could have led to impoverishment. Here the focus will be on the social disruption that resulted from enclosure: all of the colonisation and rationalisation of the period involved the occupation by lay lords, monks, castle owners, peasants and townsmen of land which had previously been common and especially common pasture. Every new use of land was accompanied by the digging of ditches, heaping of earth to form banks, planting of hedges, setting up fences, or other measures to define boundaries and exclude people and animals. Reclamation, assarting, founding granges and vaccaries, emparking, establishing new towns, and many agricultural improvements were accompanied by acts of enclosure. One person's improvement meant that another lost valuable assets. Above all grazing land was diminished, but commons which were eroded by enclosure also provided fuel, fodder, litter, rushes, nuts and raw materials for building and crafts.

DIRECT ACTION AGAINST ENCLOSURE

Disturbances, even riots, directed against enclosures are recorded sporadically over the period 1221-1348, and here twenty-one of them are analysed to give a profile of the events and their circumstances. Hundreds of offences in which people broke into closes or parks and committed misdeeds have not been included, as these did not necessarily involve the destruction of enclosures or the assertion of common rights. The evidence comes from proceedings before the king's courts at Westminster, the justices in eyre in the counties, the forest courts, special commissions recorded on the patent rolls, and manorial courts. Incidents are occasionally mentioned in cartularies.

There was no systematic collection of records of these disturbances by those in authority, so there is an element of accident in their survival, and in our discovery of them. No doubt many more records exist, waiting to be noticed, and many similar undocumented incidents must have occurred. Destruction of enclosures by persons unknown was regarded as a sufficiently serious problem in 1285 to justify legislation in c. 46 of the second Statute of Westminster (*Statutes* 1810, vol 1, p. 94; Kosminsky 1956, p. 350).

In a characteristic case a jury in Dorset reported to an inquest in 1297 that in January of that year Robert de Wodeton and seven other named 'malefactors' pulled down an enclosure bank belonging to Henry Baret at Lydlinch, by force, at night (*Somerset and Dorset Notes and Queries* 1905, p.195). Lydlinch lay in Blackmore Forest, and the other disturbances were mainly located in royal forests or woodland landscapes such as the New Forest, the Chilterns, the Forest of Dean, or north Worcestershire. One occurred on the edge of the Somerset Levels, at Nyland, another on marshland in Galtres forest, and another on high ground at Oxenhope near Haworth in Yorkshire. The attack at Crowmarsh in Oxfordshire recorded in 1301 threw down a dyke around a piece of meadow in the Thames valley on the edge of the Chilterns (*Cal Pat Rolls* 1895, pp. 628-9). Only one incident is recorded in a champion landscape, at Stoneton in Northamptonshire (now Warwickshire) in 1270-1, and here the specialisation in open fields and cereal crops still allowed room for a heath and a spinney in which grazing rights could be disputed (*Plac Abbrev* 1811, pp. 179-80). In the Lydlinch case two people from Chickerell, a champion village in south Dorset, John Comandyn and Roger le Perer, travelled 30 kilometres to the wooded north of the county because a tenurial link between their home village and Stoke Gaylard near Lydlinch gave them an interest in the woodland. Similarly a tenant from the open-field village of Gonalston in Nottinghamshire helped others at nearby Epperstone to destroy a ditch which prevented him from exercising his common rights in a wood, as reported in 1288-9 (*Plac Abbrev* 1811, pp.216-17).

The enclosure movement of 1220-1349 apparently did not have much impact on the champion landscapes which were subject to rigorous regulation and intense use. The contentious land was mainly located in the areas of 'old enclosure' in woodland country, or on moorlands and wetlands, with their more pastoral economies and room for further development. One of the issues in contention concerned common access to woodland for the purpose of obtaining fuel and timber, which has already

been the subject of a study, and therefore will not be emphasised here (Birrell 1987). Occasionally the link between enclosure and assarting is made clear. At Hepworth on the manor of Wakefield in Yorkshire in 1314 the ditch and fence that were destroyed surrounded a *royd* (meaning assart), and other activities of the encloser, Adam the Wainwright, included taking land from the common, offending against the 'vert' (vegetation, often trees) of the forest, and exchanging land with a neighbour, presumably to consolidate parcels of land in preparation for enclosure (Lister 1917, pp. 48, 57, 63, 80, 105).

To return to the sample of incidents, most were committed by groups of people. The names are given of between four and forty individuals, often more than ten, but accompanied by 'others', so quite large crowds may have been taking part. A less precise description, such as the destruction of a bank and ditch in King's Norton Wood in 1332 by 'men' from the three large villis of King's Norton, Solihull and Yardley suggests a sizeable assembly (*Cal Patent Rolls* 1893, p. 268). In one case in 1231, at Flaxley in Gloucestershire, only one person was named, but he is likely to have been the leader of a group (*Curia Regis Rolls* 1961, pp. 520-1). As these collective deeds were planned to remove the enclosures, they required much labour. We are told of banks thrown down or broken down, ditches filled, fences and hedges uprooted, and the fence posts and plants burnt or carried away. These acts of destruction would often have been directed at considerable lengths of hedges and ditches surrounding a large area of land. For example the enclosed ground disputed at Fawley in Hampshire in 1324 consisted of 140.5 acres (57 hectares) in three different places (Hockey 1974, pp. 228-9). At Nyland in Somerset in 1276 we are told the precise length of the offending ditch – 2060 feet (628 metres) (Landor 1926, pp.75-81), and the bank around Epperstone wood was estimated at 400 perches (2000 metres). The descriptions, which were usually written by the enclosers, or on the basis of their complaints, sought to represent the events as single episodes, like any other crime, but the incidents may have been spread over a number of days or even weeks. The authors of the documents aimed to put the attackers in the worst possible light, so it was emphasised that, like a gang of evil-doers, they came at night, carried out their acts 'by force and arms', and at Lydlinch 'committed enormities'. At Fawley (Hampshire) in 1324 a group were said to have beaten the abbot of Beaulieu's servants, so that he was deprived of their services, but this was a conventional

lawyers' phrase, and is the only example among the twenty-one examples where violence against persons was alleged.

An impressively large number of names of those destroying enclosures were recorded, suggesting that not all of their actions were committed secretly or under cover of darkness. These named individuals, who were presumably prominent in the action, or the ring leaders as their opponents would have regarded them, can be found in other documents, and are revealed not to have been notorious felons or outcasts or marginals, but respectable and responsible pillars of the community. They included beneficed clergymen (the parson of Stoke Giffard at Nyland, and the parson of Fawley in 1330) and bailiffs and reeves. The eight named disturbers of the peace at Fawley in 1330 included four people from Hardley, all of whom paid tax to the lay subsidy of 1327 (Stagg 1979, pp. 184-5 ; TNA:PRO E179/173/4). Three of them, John Chippe, John de Falele and William Bryan, contributed more than their fellow villagers. The rioters at Bledlow in Buckinghamshire in 1227 included Robert le Palmer, and a Palmer appears as joint tenant of a virgate (c. 30 acres or 12 hectares) in a custumal compiled about twenty years later (Jenkins 1945, p. 31; Chibnall 1951, p.120). Most of the accused could be accurately described as peasants, often better-off peasants. The occasional surname suggestive of a craft occupation, such as a smith, is included in the lists of offenders, and very rarely a woman. Agatha Chipp of Hardley who took part in the Fawley disturbance of 1330 appears in the contemporary tax list, so she was a householder, and the owner of animals in need of pasture. Some objectors belonged to the elite. Robert de Bello Alneto who helped to destroy a dike at Haversham in Buckinghamshire according to a complaint in 1227 was a member of the Bellany family who transferred 65 acres (26 hectares) of free land in 1254 and held a small manor (Jenkins 1945, p.35; Hughes 1940, p. 103; *VCH Bucks* 1927, pp. 356, 370). In an unusual dispute at Great Corby in Cumberland in 1290 the objections to an enclosure by Walter de Rothbury were led by Maud de Multon, his baronial overlord, who complained that by local custom her approval should have been obtained for any improvement of the waste (*Plac Abbrev* 1811, p. 223; TNA: PRO, CP 40/91, m. 302 , transcript by Paul Brand). This reminds us that tensions between one lord and another may lie behind some of these actions.

In at least ten of the twenty-one examples, the opponents of enclosure came from more than one village. For example, at Oxenhope in Yorkshire, those who in 1346 broke William de Baildon's hedge and ditch and put their cattle to graze on

his corn and grass, judging from their surnames, came from at least three nearby townships to the south and east of Haworth (Baildon 1924, p. 84). When a crowd demolished the enclosure and burnt the hedge set up by Adam de Walton, the king's sergeant at arms on West Moor in Galtres forest in 1348, twelve came from Huby, one from 'Hessey', eight from Sutton-on-the-Forest, seven from Shipton, eight from Newton-on-Ouse, and at least two from Linton-on-Ouse (*Cal of Patent Rolls* 1908, p. 63), which form a ring some 8 kilometres in diameter around the disputed land. These pastures was subject to intercommoning, and the same practice is found, often between three or more villages, in other disputes. This suggests that enclosure and access to pasture were less likely to be contested within the territory of a single village or manor, where boundaries were fixed, the grazing rights agreed, and any disputes could be settled in the manor court or through pressure from neighbours.

Intercommoning arrangements were much more difficult to define precisely, as the animals mingled 'horn under horn', and no single lord or other authority established rules for the pasture. The villagers from adjoining communities could meet at byelaws or 'binlaws' and make arrangements among themselves (Hilton 1983, p.151-2), but major quarrels were more likely to come before the king's courts, as they alone had a wide enough jurisdiction.

Those who removed the enclosures are found not to have been lawless ruffians, as their accusers implied, but landholders and heads of household. The enclosers appear to have been mainly landlords, and the documents refer to two earls, a bishop, five monastic lords and various lesser lay lords. Some of the enclosures were indeed made by lords for their own profit. At Nyland in Somerset the abbot of Glastonbury in 1276 increased the size of an existing ditch to form a canal by which building stone could be carried by boat to the abbey, thereby creating a barrier for access to a pasture. Flaxley Abbey, based in the Forest of Dean, in 1231 was enclosing Timbridge Wood, for its own use, which infringed the customary rights of Richard of Blaisdon (*VCH Glos* 1996, p. 138). Common access to woods seemed to be the issue at Norbury in Staffordshire in 1311, when eighteen people threw down fences and felled trees inside the enclosure set up by Thomas son of Jordan of Flashbrook, who claimed that they had intruded into his 'several close' (Wrottesley 1889, p.13; Birrell 1987, p. 22). One incident was provoked by the enlargement of a park. At Great Corby in Cumberland Walter de Rothbury raised a pale, as he said 'on his own soil', and he convinced the jury in 1290 that the twenty-one people from

Cumwhinton who knocked down the fence still had sufficient pasture 'outside the close'. The result was reversed soon afterwards because of the intervention of the overlord (see p.00 above).

More often the maker of the enclosures was a tenant or group of tenants – we have already seen that in Galtres forest Adam de Walton, the king's tenant, had caused the offence, and at Hepworth the tenant of the ditched and fenced land was apparently a peasant-artisan living on an assart - Adam the Wainwright of the Rode. At Yardley in Worcestershire in 1221 the non-aristocratic Thomas of Swanshurst enclosed the land, but his lord Ralph de Limesi came to his support (Stenton 1934, pp. 448-51). The bishop of Worcester struggled with his opponents in King's Norton in order to defend the interests of his tenants of Alvechurch who had enclosed land on two disputed pastures (Worcs. County Record Office, ref.821, BA 3814, fos. 71, 79). The lords' motives in allying with their tenants were presumably to gain rents from the new fields, holdings and buildings which were being developed. They also had a wider interest, by showing themselves to be 'good lords' who looked after their tenants. In fact lords often had a rather weak control in these pastoral and woodland landscapes. Sometimes they promoted new settlement and enclosure by renting out parcels, but one suspects that the initiative often came from the tenants, and the lords were willing to accept the changes as long as their superiority was acknowledged and the rents paid. These disputes involved a degree of competition between peasant and peasant over the use of land.

The idea which gave the protesters the strength of purpose to demolish the enclosures was undoubtedly their belief in common rights, sanctioned by their long existence. They were given confidence to carry out their actions because the rights were shared by whole communities, so they acted in the interests of many neighbours. They did not lightly or easily decide to remove hedges, as they were taking the risk of being punished : each of the offenders at Fawley in 1330 were fined 2s., and the leader had to pay 3s. 4d. The King's Norton Wood rioters were originally threatened with a collective fine of £300, though this was later reduced to £13 6s. 8d. Damages might be levied, like the 10 marks (£6 13s. 4d.) awarded to John son of Reginald de Grey when the jury found in 1306 that the pasture at Simpson in Buckinghamshire claimed as common by the men of Woughton-on-the-Green had been held by the Greys in severalty for thirty years (*Plac Abbrev* 1811, p. 258). They could be liable even when they won their case. At Iver in Buckinghamshire in 1243 it

was agreed that the common rights of the eleven protesters should be restored, but that they should pay the encloser, Philip de Couele, 4 marks (£2 13s. 4d.) in compensation (*Curia Regis Roll* 1991, p. 301). The cause of the would-be defenders of the common pasture was often lost, and the court in some cases ordered the restoration of the ditches, banks and hedges.

Direct action was a desperate remedy, but the protesters were impelled to take risks in defence of their rights. Even if some of the enclosures that they removed were quite small, and large areas of open pasture were still left, they were concerned not with short-term gains, but to prevent an encroachment which could be taken as a precedent, and which would threaten to reduce drastically the amount of grazing available. Resistance presumably played a part in the survival of large commons into later centuries.

The disputes over the enclosure of common pasture do not demonstrate the lawlessness or violence of the age, but rather the opposite. Under some circumstances, and especially in immediate reaction to an illegal enclosure, those with common rights were allowed by the law to remove the ditches and banks. 'Bracton', writing in the early thirteenth century, stated that a wall, bank or hedge placed illegally could be 'undone' and demolished, without even a writ, if action was taken immediately (Woodbine and Thorne 1968-77, vol. 3, pp. 168, 189). Banks set up by the abbot of St Albans at Barnet (Hertfordshire) were cast down because they impeded old-established access to common pasture, and it was decided in 1290 that this stayed within the law because it was done swiftly. One tenant however suffered a financial penalty because he went on to burn the fences ! (*Plac Abbrev* 1811, p. 282). Most 'rioters' were in fact very restrained, directing their actions against the specific hedges and fences to which they were objecting, and not embarking on some destructive spree. The attack on the enclosures was often no more than a stage in a long-running dispute. The quarrel between Alvechurch and King's Norton over West Heath and *Dodenhaleshey* went on from 1273 to 1287. It began when the men of King's Norton destroyed enclosures made by Alvechurch tenants. A compromise whereby the West Heath enclosures and four on the other pasture were to be preserved did not work, and in the end the King's Norton people gave up their claim to *Dodenhaleshey*, but were compensated in money and by a confirmation of their pasture rights on West Heath (Dyer 2005, p.61). The attack on the hedges at Fawley in 1324 had its origin in a grant of waste in 1317. We hear about a problem only

when it reached the courts, but this is likely to have been preceded by petitions and social pressure of which records seldom survive.

ENCLOSURE UP TO c. 1349

The origin of the tensions and disputes lies in the formation of landscapes, especially in the woodlands. The boundary clauses of pre-Conquest charters, presumably intended to prevent dispute, depict in the woodlands a combination of open land shared by neighbours (arable, meadow and pasture), and enclosed crofts, with numerous references to ditches and hedges (Hooke 1985, pp.154-89). In these mixed landscapes one can see many possibilities for conflict over access to common land, and over the management of the enclosures. For example, later sources tell us that the crofts and closes under cultivation were supposed to be thrown open for common grazing in the years when the land lay fallow, and every year after the harvest.

Intercommoning in large pastures and woods appears at an early date. At Woodchester in Gloucestershire in 896 a dispute over boundaries was complicated by the interest of four villages in the pasture, including Thornbury at a distance of more than 16 kilometres (Harmer 1914, pp. 24-5, 56-7). The well-known connections between estates and parcels of remote woodland pastures found in Kent and the west midlands would become more contentious when local populations established themselves permanently in the wooded appendages. Clearly visible are the ingredients of conflict, between individual peasants, between communities and individuals, between lords and peasants, between contiguous communities, and between rival lords. At the same time, societies devised methods for resolving quarrels and keeping the peace, and the Woodchester charter is just one example of compromises being brokered, most of which were undocumented. The landscape itself provides evidence of bargaining, as when an estate or township boundary surrounding an otherwise simple block of land performs some strange manoeuvre, such as jutting out to take in a parcel, presumably a piece of meadow, pasture or wood that was regarded as essential by one party in a negotiation. Numerous examples of territorial islands, attached to a distant parent manor, could have resulted from exchanges and subdivisions when great estates were fragmented (Fox 2006, 78-97).

Moving from this formative period to the thirteenth century, the growth in population, agricultural production and land values sharpened the existing tensions and created new problems. The impact on the landscape, especially the woodland

landscape, can be divided into the effects of expansion, intensification, privatisation and status enhancement.

Expansion is a well-known characteristic of the thirteenth century, which resulted in the clearance and occupation of new land. Assarts in woodlands can be found throughout the country, and the scale of the encroachments in royal forests were especially well documented in the records of the justices of the forest. We find 2148 acres (870 hectares) in Northamptonshire forests described as assarts in the early thirteenth century, or 791 acres (320 hectares) of assarts attributed to a single landowner (Beaulieu Abbey) in the New Forest between 1236 and 1324. Using the records of the landlords large areas of new land are known, for example 6,200 acres (2511 hectares) in the weald of Kent at South Malling on the estate of the Archbishops of Canterbury in c. 1240-1348 (Hallam 1988, pp. 199, 211, 185). The details of the offences in the forest records refer to the ditches and hedges set around the cleared parcels, and the crops sown (Birrell 1999). The size and shape of the assarts can be traced on early maps, and detailed landscape studies of individual forests, for example at Wychwood, Feckenham and Whittlewood have located the areas cleared and enclosed at this time (Schumer 1984 ; Dyer 1991; Jones and Page 2006).

Drainage schemes in marshes and fens brought into agricultural use very large acreages, which sometimes became extensive pastures, but in many cases individual parcels, defined by ditches or hedges, resulted from the reclamations. By the late thirteenth century they occupied much of the marshland landscape adjacent to the fenland of eastern England, and can be observed over large areas of the Somerset levels. In Romney marsh some regular field divisions belong to the twelfth century, and land at Belgar was being 'inned' and enclosed in the early fourteenth (Hall and Coles 1994, 146-8; Rippon 1997, p.227; Rippon 2002, pp. 90-1; Vollans 1995, pp. 120-2).

Expansion in moorlands and upland pastures could add to the common fields of villages on the edge of the waste, but in many areas we see the multiplication of isolated farms. On the Durham wastes, which covered the high land in the western part of the county, landlords and especially the bishops of Durham granted 'moorland farms', many of them in the region of a hundred acres, which would be fenced and held in severalty. Of 118 grants made between the mid-twelfth and late fourteenth century, the great majority fell between 1249 and 1316. In addition

there were many smaller peasant encroachments, which are also found on the other side of the Pennines in Cumbria (Dunsford and Harris 2003; Winchester 1987, pp. 160-3). In west Yorkshire assarting can be equated with enclosure, as so much of the new land was surrounded with ditches, banks and hedges: here the encroachments were recorded in especially large numbers in the first three decades of the fourteenth century (Moorhouse 1981, vol 3, pp. 660-7). In Cornwall in St Neot parish a number of farmsteads such as Stuffle and Colliford stood surrounded by small enclosed fields as islands in the still unenclosed waste (Austin, Gerrard and Greeves 1989, pp. 231-3).

In general the movement to expand the quantity of agricultural land shifted the balance between common land and the land held and managed by individual cultivators.

The thirteenth century was also a period when the exploitation of resources intensified. Expansion did not bring agriculture to unused wastes for the first time, as almost all land, no matter how rough its vegetation or remote its situation, was being put to some purpose in the early middle ages. In the thirteenth century grazing land was being converted into arable, and was fenced at least in the months when the corn was growing. In upland regions the extension of the infield, or the increase in the area occupied by the outfield had the same consequence. Although no wholesale conversion of two field systems into three fields is recorded, inhoking was frequently practised, so that a growing number of peasants in champion villages as well as on open fields in the woodlands found that part of the fallow field was fenced off to allow an extra crop to be taken. In eastern England the more intensive cropping of fields, with the reduction of the number of fallow years, and even the elimination of fallows, was not accompanied by the permanent enclosure of the arable, but animals were still excluded from land which had perhaps previously been grazed in every third or fourth year.

Woods were being brought into more intensive use, and instead of the relaxed regime of wood pasture in which animals grazed among the trees, more lords were fencing off woods to protect the springs and allow cycles of coppicing. Finally, non-agricultural use of the land was extended as demand increased for industrial products, and more land was at least temporarily denied to common grazing as mines for iron, tin, lead and coal were sunk, quarries, claypits and sandpits excavated, kilns, ovens, furnaces, and salt pans built, and ponds, leats and other water works constructed for industry. Mounds of debris from mining or salt extraction were left as

permanent obstacles to subsequent agricultural activity (Beresford and St Joseph 1979, pp. 251- 65). Most millponds for corn grinding had been established well before 1200, but the number of fish ponds grew, most of which took no more than an acre of ground each. They were often associated with, or contained within, enclosed spaces such as parks, gardens, moated sites and monastic precincts. Ponds were provided with their own enclosures, with inevitable loss of common pasture (Aston 1988, pp. 93, 431, 476-7).

Extension of cultivation and intensification in agriculture brought more land into private use. The rural population grew by more than a million between 1200 and 1300, and at least 200,000 new households were formed, most of them occupying a house with its associated yard, garden and outbuildings. Some were being added to existing nucleated villages, but the majority were being established in areas of dispersed settlement as part of hamlets or as isolated farmsteads. Add to these the large numbers of new town dwellers, and we must expect that more than 50,000 acres of land was enclosed for what can loosely be called residential purposes. This also led to intensification, as much horticulture was practised in the rear of both rural and urban house plots, and space was also used for pig keeping, poultry, beehives and other small-scale but productive sidelines. Probably a larger acreage was privatised by lords when they brought land together into compact blocks for granges in a variety of landscapes, though often in the woodlands where the Cistercians and other new orders were especially strong. These establishments are most commonly associated with the monastic orders, but isolated farmsteads were founded in the woodlands, often belonging to the estates of lesser lay lords, like Heybarne in Lillingstone Dayrell in Whittlewood (Jones and Page 2006, pp.119, 177-80). On the hills large estates, secular as well as monastic, fenced grazing land for vaccaries and bercaries, and built housing for animals..

In the thirteenth century lords brought their demesnes under direct management, and they were expected to provide a surplus for sale. Not enough demesnes have been located and mapped, but we understand that the arable land of some was scattered in parcels over the open fields, mingled with the holdings of their tenants, and that others were kept in separate blocks. We do not know which arrangement came first, nor whether lords moved to consolidate their demesnes in their thirteenth-century hey day. An example of privatisation of grazing is found at Bibury in Gloucestershire in the late thirteenth century, when the lord decided to

exclude the peasants' animals from feeding on the demesne pasture, a prohibition that could readily be enforced because the demesne lay in its own field (Dyer 2007).

The exclusive control of land had its basis in ideas and culture as well as economic utility. Some orders of monks chose to occupy remote sites and separate themselves from secular society because they believed in an ideal of spiritual isolation. Secular lords, whose manor houses were often located in the middle of villages, might move away to a more secluded site, as if to emphasise their superiority. They needed more space to develop around their houses the moats, ponds, gardens, and pleasure grounds which were becoming fashionable in the twelfth and thirteenth centuries. These were enclosures on a small scale, compared with the parks which took in many thousands of acres in the thirteenth century. Some 3,200 parks are estimated to have existed by c.1300, and the majority lay in woodland or upland landscapes (Rackham 1980, p. 191). They must be regarded as designed for recreation and status rather than any useful function. Lords found parks convenient and profitable as pastures – they sometimes provided a 'living larder' in which a household would keep the animals destined for the table; the 'herbage of the park' could be rented as a source of income; and the trees formed a useful reserve of timber. Their principal purpose, however, was to serve as a hunting ground, which would bring the aristocratic owners pleasure, would enhance their social standing, and satisfy their sense of identity (Miles 2005).

ENCLOSURE PROCEDURES AND THE LAW

On the landscapes outside the champion country, the woodlands, wetlands and uplands where ground was especially debatable, the pressure to enclose became a particular source of contention in the thirteenth century. This exploration of enclosure and the problems it caused began with the dramatic incidents of the destruction of hedges, but now the more routine processes and subdued conflicts need to be examined.

A would-be encloser, in order to avoid trouble, sought permission from the lord on whose manor the pasture or waste lay, and made sure that the users of the common pasture had also given their consent. If the lord had taken the initiative and granted the land, the charter might include a statement that enclosure was allowed. A typical example of c. 1243 by Maurice de Bevington to St Augustine's Abbey Bristol, conveyed about 50 acres of land in Bevington, on the wooded fringes of the

Severn estuary in south-west Gloucestershire (Walker 1998, pp. 142-3). Part of the land was already enclosed – it lay in two crofts, and judging from the field names Newland and Goldemore Brec some had been assarted. Another part of the grant was called Sunderlond , meaning separate land. On the boundaries were crofts held by other tenants, and this was evidently an area both of enclosure and mixed land use, as a fifth of the grant consisted of meadow and pasture. Maurice allowed the canons ‘to enclose all the aforesaid land with hedges and ditches, without any obstacle, impediment or contradiction from me or my heirs’. He still provided for the canons to enjoy common rights for their animals on his land in the village. Such an unequivocal grant carried great authority, but nonetheless those with common rights would still have resented the arrangements.

Problems that arose from enclosures would surface in manor courts. In 1315 the great manorial court of Wakefield, with jurisdiction extending over a large swathe of wooded and hilly country in west Yorkshire, heard that Robert Carpenter of Wakefield had enclosed land with a ditch and fence just to the south of the town, and offended the men of Thornes and Snapethorpe (Lister 1930, p.22). They demanded that the lord’s court should grant them common on the land in the ‘open time’ (after the harvest). The same court was active a year or two later discovering all over its many townships that a large number of assarts had been made without the lord’s permission, which gave the court much business in insisting that fines and rents be paid (Stinson 1983).

If free tenants had common rights, or if the land was not contained within the jurisdiction of a single manor, settlements of disputes were more likely to appear in private charters. In 1240 in the woodlands of Warwickshire at Sutton Coldfield Thomas earl of Warwick and Henry de Acellis drew up a document which was called a final agreement (*conventio*) (Mason 1971-3, pp. 171-3). As was often the case they were acting over the heads of the tenants who had made assarts, enclosed land and quarrelled over common grazing rights. Twelve of the earl’s tenants held assarts, and Henry granted away all of his rights in the land, except that common grazing should still be allowed in the open time when the corn and hay had been carried. In return the earl agreed to limit the amount of assarting in the future, and named some clearances which would still go ahead in one defined area – 6.5 acres (2.6 hectares) in one place, 10 acres (4 hectares) in another. Henry, as an inferior, was making more concessions than the earl, but in compensation he was released from hunting services

and granted an enclosed assart in *Burhale*. Settling the interests of the various parties who had rights over previously open land was never easy, and even this apparently comprehensive agreement omitted the concerns of the local parish church. Shortly afterwards in another document the rector of Wishaw gave up his claims on the cleared and enclosed land. Many thousands of private treaties of this kind must have been going on at this time, mostly unwritten, or recorded by lords whose archives have since been lost.

Agreement in the king's court could result in a final concord, indentured copies of which were made for both parties, and a third preserved in the archives. They sometimes settled the problems that could arise when two villages and their lords claimed rights on the same piece of land. Such contiguous villages were Arrow and Weethley in south-west Warwickshire, in a woodland landscape near the edge of Feckenham Forest. In 1230 a problem had arisen over common pasture in three plots of land totalling 47 acres (19 hectares) which had been cleared and enclosed by tenants. There had been a case in the king's court in which Richard and Joan de Weethley's rights to common pasture in Arrow had been questioned (Stokes and Wellstood 1932, pp. 86-7; Maitland 1887, vol 2, pp.320-1). The lady of the manor of Arrow, Aubere Marmiun, agreed that the land in Weethley be enclosed, as long as she could have common pasture after the crops had been collected. Richard de Weethley, who seemed to be representing the community of the village of Weethley, gave up claims to common grazing on assarts in Arrow, with the same exception of access in the open time. Both parties agreed that the agreement made no difference to their common rights in lands other than the assarted holdings.

Actions brought under the assize of novel disseisin have generated most evidence for enclosure disputes. The origins of the assize lay in Henry II's ambition to bring a larger section of society under the protection of the king's courts, with obvious benefits for the extension of royal authority and the generation of judicial profits. A free tenant who had been deprived of land could use a simple procedure through a writ to have the royal courts consider the grievance, which allowed tenants to complain of dispossession by their lords. Many actions were brought by freeholders of apparently low status, judging from the small pieces of land mentioned, who sought the protection of royal justice even against great magnates. Changes in legal practice made the assize even more popular in the thirteenth century: for example, cases could

be brought after a considerable lapse of time, so until 1229 disseisins dating back to 1210 could be heard by the courts (Sutherland 1973, pp. 47-74).

These legal developments are relevant to our investigation of enclosure because one basis for litigation was provided by the construction of hedges and banks that blocked access to pastures. Cases are recorded briefly on the pipe rolls as early as 1167 and 1168 (Sutherland, pp. 11-12), and they appear in considerable numbers in the court records themselves when they become available, such as the eyre rolls of the first decades of the thirteenth century (e.g. Stenton 1937). In the Warwickshire eyre of 1221 seventeen novel disseisin cases related to pasture rights were recorded, in most entries giving no more detail than that the plaintiff had been deprived of common pasture, though at Nunley in Wroxall Alard son of Geoffrey was accused of raising a bank to the damage of Elias of Nunley and the hurt of his free tenants (Stenton 1940, pp. 183-4). Presumably the enclosure of common pasture lay behind most of the complaints. The village lay mainly in the wooded Arden district to the north and west of the county, at Bearley, Bedsworth in Tanworth-in-Arden, Cubbington, Edstone, Finham, Longdon in Solihull, Sheldon and Stockingford in Nuneaton, where assarting was likely to have been in progress. In other records, such as that of the Northamptonshire assize in 1202 -3, there were more explicit references to the raising of banks and enclosure with fences, and in four cases the court judged that the banks and fences should be removed (Stenton 1930).

In 1236, after a time of some tension between Henry III and his more powerful subjects, the Provisions of Merton were issued, which dealt with matters which troubled the barons (Stacey 1987, pp. 98-116 ; Brand 2003, p. 391) . The provisions covered such concerns as wardship and marriage, but c.4 was devoted to the problem of the use of novel disseisin by tenants to pursue claims to common pasture (*Close Roll* 1908, pp. 337-8). It begins with a statement that many magnates had enfeoffed knights and free tenants 'with small holdings in large manors', and were prevented from turning the rest of their manors, defined as wastes, woods and pastures, to profitable use because of the legal protection given to the tenants' common pasture rights. It was therefore provided that in future novel disseisin cases the justices should allow land to be improved (by enclosure) as long as the free tenants still had sufficient pasture, 'as much as belongs to their tenements', and had entry and exit from their tenements to the pasture.

The Provisions of Merton in legislating on common pasture were not introducing an entirely new principle. The justices in eyre in Worcestershire in 1221 after a mass assault on an enclosure at Yardley heard from the defendant that the 'law of Arden' allowed enclosure as long as reasonable pasture was left for the free tenants (Stenton 1934, pp. 448-51). Sometimes it is alleged that the 1236 law caused a new wave of enclosure because lords were given a green light, but the effect of the provisions was not so far reaching or revolutionary. It strengthened the lords' legal position if a novel disseisin was brought, but there were many other arguments in favour of the encloser that could be used in court, and in any case plenty of room was left for debate about the definition of 'sufficient'. If the new law was making a drastic change, we would expect that novel disseisins arising from enclosure of pasture would have diminished, as plaintiffs found that their pleas ended in failure, but plenty of examples are found in the courts after 1236. The Wiltshire eyre of 1249, and the Shropshire eyre of 1250 both dealt with numerous cases. In twenty-four of the Shropshire novel disseisins resulting from enclosure of common pasture, eight ended in a victory for the plaintiff, in that the court found that in all or part of the claim he had been disseised, and the defendant had to restore his rights and sometimes pay damages (Clanchy 1970 ; Harding 1980). Other plaintiffs lost for a number of reasons, including the technical point that the place named as the location of the offence was not a vill. Most often it could be argued that the plaintiff had no common rights. Only one defendant, Walter Haket, who had assarted 36 acres (15 hectares) of heath land at Bromdon, successfully used the argument that the plaintiff, John de Bromdon, was left with enough pasture as stated under the Provisions of Merton (Harding 1980, pp. 104-5). Lords evidently felt that the law did not fully protect their interests, as the second Statute of Westminster in 1285 raised the problem of neighbours as well as tenants who brought cases under the assize of novel disseisin, and ruled that the same principle applied that they had no grounds for complaint if they had been left with 'sufficient pasture' (*Statutes* 1810, vol 1, p. 94).

Legal complaints, whether through novel disseisin or the assize of nuisance or other opportunities, continued throughout the thirteenth and early fourteenth century. They do not show that lords who wished to assart or improve their land could easily ride roughshod over the rights of others, nor that enclosure was prevented on a large scale by legal action. They demonstrate that enclosure was occurring, and that it was contentious. One should emphasise that the court records reflect a much larger

movement in society, and only a small fraction of contested enclosures came into the official record.

A novel disseisin could end in a compromise which settled the quarrel. Ashleworth was a manor of St Augustine's Abbey Bristol, in the valley of the river Severn in Gloucestershire. At Foscombe, a mile to the northwest of the village, on the edge of the wooded district of Corse, the abbey (or its tenants) cleared land and had enclosed it with a hedge and bank (Walker 1998, pp. 234-7). The justices in eyre at Gloucester in 1241 considered a novel disseisin directed against the abbot from Philip de Coaley, who may well have been acting on behalf of a group of villagers. Although the abbot won his case, he was anxious to settle all the differences, and he therefore negotiated an agreement with seven people. He paid a mark (13s. 4d.) to Philip de Coaley in exchange for his surrender of any claim to common rights in the assart at Foscombe, and 13s. 4d., 20s. and £2 13s.4d. each to three others, all of whom gave up their rights of common. Three more landholders surrendered without mentioning any payment, one of whom explicitly included in his renunciation 'all my men, both free and serf'. He was not alone in acting on behalf of tenants. The novel disseisin apparently between a single plaintiff and a lord is revealed to have been voicing the concerns of six other individuals and an unknown number of their tenants. Similarly the abbot was renting out the assarted land, so he stood at the head of another group of interested parties.

ENCLOSURE AND PROPERTY

The Provisions of Merton were designed to strengthen the hands of lords, and after 1236 lords profited, either from larger demesne lands, or more intensively exploited land, or new or larger parks, or more rents from peasant assarters. Gentry lords in particular through assarting, enclosure and purchase could build up landed estates (Coss 1991, pp. 95-119). Those of lesser rank also benefited from enclosure. The many free tenants with small holdings at or below 5 acres (2 hectares) lacked the resources to appropriate land from the common, and would not be able to hire lawyers to bring cases to court, but an important layer of free tenants below the gentry were both active in enclosure, and led the opposition.

Henry II's legal reforms, and the introduction of the assize of novel disseisin, are said to have played an important role in changing ideas about private property.

The king was bringing under his protection the tenants of the great aristocrats, and was thereby offering them security of tenure, and ultimately promoting the idea that the people were subjects of the state, and not merely subordinates of the magnates. If they suffered injustice, tenants could appeal to the king's courts for help, at modest cost and through a relatively rapid procedure. This only applied to free tenants, but it still had the potential to empower many thousands of people. The court cases of the first half of the thirteenth century demonstrate the independence of these tenants, who were buying and selling land, subletting, clearing new assarts, disputing inheritance with relatives, quarrelling with lords and neighbours, and co-operating within their communities. Their lords did not control every aspect of their lives. They had to pay rents to lords (mostly in cash) with occasional dues such as reliefs, and they were expected to attend their lords' courts, but they were coming to regard their holdings as their property. This included the appurtenances of the holding, those intangible rights which were essential for the effective cultivation of the land. Bracton said that if rights appurtenant to a free tenement such as common pasture were denied, then the tenant has been disseised just as when he or she was deprived of land (Woodbine and Thorne 1968-77, pp.165-7). On the other side of the argument, the tenant who was clearing woodland or heath and fencing it also believed that he would own the new land. All of these developments could be seen as reflecting the onward march of individual private property and modernity, but we should not forget the collective framework, represented by the common pastures and the communities of peasants who regulated them, and the continued influence and power of the lords (Milsom 2003, pp. 85-97).

When the royal courts extended their scope in the late twelfth century only to free men, by tests devised by the lawyers perhaps a half of the population were classified as servile or villeins (because they paid marriage fines, or served as reeve). As customary tenants they were kept under the jurisdiction of their lords, and had no access to the assize of novel disseisin. They shared in the common pastures threatened by assarting and enclosure, and no doubt joined the crowds removing banks and hedges. At Bledlow in Buckinghamshire a member of the Palmer family, customary tenants, helped to break down a dike in 1227, and the name of another member of the group, Richard le Vilein, speaks for itself. The customary tenants' legitimate sphere of legal action lay within the manor courts, which gave them opportunities to defend their interests. As officers of the courts, as chief pledges,

tithingmen and jurors, they could make presentments to the court reporting illicit enclosures. Many disputes are found in the Wakefield manorial courts, of which we have seen examples (p. 00) . Tenants could bargain collectively with the lord. In the manor of Halesowen in Worcestershire in 1301 the lord's intention to hand over a common pasture for enclosure and cultivation was prevented when the community (unfree and free together) offered to pay a collective fine and annual rent (Wilson 1933, pp. 158-9).

Villein tenants were themselves active in clearing new land and enclosing it. For example in Feckenham Forest in Worcestershire a number of tenants of customary half-yardlands at Hanbury called Thomas Davy, Cristina Wynter and Geoffrey ate Mere in 1299 held parcels of free land including assarts. In the forest pleas held in 1270 Thomas David, Henry Winter and Richard de la Mere are linked to purprestures of an acre, or of even smaller size, which were newly enclosed and had buildings placed on them. They presumably belonged to the previous generation of the same villein families (Hollings 1934-50, 175-9; Birrell 2007, p. 82-3).

The assarting of woodland and pasture could have an impact both on tenures and the landscape. Some clearances expanded the amount of open-field land. Studies of open fields can reveal furlong names referring to woods or wold, or names like 'breck' show that land had been cleared and brought into the fields. New land can sometimes be shown, in the Chilterns in the twelfth and thirteenth centuries for example, to have been added to the standard yardland holdings, contributing a few extra acres to each (Roden 1973, pp. 329, 350). As late as 1305 and 1306 when a new hamlet was carved out of the waste on Dartmoor at Dunnabridge, each of the five tenants received equal shares of just over 19 acres (8 hectares), and they proceeded to farm the land in an open field system (Fox 1994, pp.152-3). Enclosure might be put into reverse : large enclosed assarts could be subdivided into strips, and converted into patches of open field, as happened at Coleshill in Warwickshire (Roberts 1973, p. 228).

On the other hand the assarts in a woodland landscape came increasingly to form a separate area of enclosures, existing alongside areas of open fields. The hedged parcels tended to be small, usually of no more than 3 acres, and irregular in shape. They carried the name of the tenant responsible for the clearance (Gilbert's assart) or a field name describing its enclosed state (Green croft). They were measured in acres and roods rather than the customary units of yardlands, nooks, oxgangs or wists, and

they were held by free tenure or some form of leasehold, for a cash rent. A varied vocabulary was used in different regions for pieces of land separate from the open fields and often held as a supplement to existing holdings – rodeland or foreland for example. Outside the champion landscapes – in the Weald of Kent, Surrey and Sussex, in the forest of Arden, in the woodlands of the North Riding - the proportion of land held in enclosures increased in relation to that lying in open fields. At Whiteparish in the wooded part of south Wiltshire it has been calculated that the enclosures made from the downland pasture (300 acres or 122 hectares), together with 800 acres (324 hectares) of assarts from woodland contributed to an increase in the arable area from a thousand acres (400 hectares) in 1086 to 2,800 acres (1134 hectares) in 1350 (Taylor 1967, pp. 86-91).

In spite of the tendency for parcels of assarts to be subdivided, they often remained as crofts and closes into the seventeenth and eighteenth centuries, only to be enlarged and rationalised to meet the needs of modern farming. The enclosures from wood and waste, some of it in the hands of villein and bond tenants, extended the amount of land which the tenants could regard as in their ownership. The tenures were more likely to be free; the burdens of rent were often low, and the holdings rarely subject to labour services or servile dues; and the land was also relatively free of the restraints of communal agriculture.

CONCLUSION

In the thirteenth century in a countryside coming under increasing pressure from rising population, social competition and commercial development, many thousands of acres of land were enclosed, in the course of expansion in settlements, agricultural land and pleasure grounds. In the early fourteenth century the end of growth seems to have encouraged further ditch digging and hedge planting, as taking in new land offered a prospect of increased revenues. The enclosures, unlike in later periods such as the fifteenth and eighteenth centuries, were concentrated mainly in the non-champion landscapes of the uplands, wetlands and woodlands. Diverse sections of society in those landscapes might be drawn into enclosing land, including lay magnates, monasteries, and members of the gentry. In many cases however, whether they were acting under the encouragement of their lords, or on their own initiative, the closes were made by peasants and occasionally by artisans and townspeople. We cannot be certain that the land was exploited more productively, as was and is argued

in the case of the enclosures of later centuries, though intensity of use increased, for example by the conversion of grassland and woodland to arable.

We can however be sure that the decision to enclose caused resentment and contention, leading to many legal actions in both seigneurial and royal courts. Aggrieved cultivators who lost their common grazing sometimes turned to direct action and destroyed the ditches, hedges and fences. The enclosers believed that their actions brought them advantages in agricultural production, but many of their neighbours knew that the closes damaged their ability to keep animals on the commons. Many of these conflicting interests were reconciled, resentments were calmed, and sections of common were preserved. The fundamental divisions of interest cannot be doubted. The disputes were focussed on specific fields and fences, but in the background lay a more fundamental tension between individual ownership and the welfare of the whole community. The long-term impact of the enclosure movement was to increase the proportion of land that was regarded by its tenants as held securely, separate ('several') in relation to their neighbours, and under their own control.

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