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**Durability in Diversity?
Illustrations from some long-lived Commons in England and
Ronaldshay**

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Durability in Diversity? Illustrations from some long-lived Commons in England and Ronaldsay

Summary

This paper will use the tools of ***comparative historical method*** to understand the survival of the commons in England and Wales despite the historic enclosures of the early centuries.

From the several case studies¹ both academic and from the field it appears that property rights matter to support the commons and that in turn the survival of the commons demonstrate the significance of institutions of self-governance at the local level without which it is difficult to sustain diversity in either human or natural ecology. I attempt to support this argument in Parts I & II.

Part I :

Enclosure of the Commons Revisited :

It would not be an exaggeration to say that no one in England is far away from the commons in the area they live in! Plagiarisation though this may be, but no one who has been in England can miss the village greens, the networking of public footpaths and bridle-paths and the meres and heaths all over the country-side. Indeed London itself is a conglomerate of commons!

In the present times 8,675 commons (CPRs in IASCP terminology) in England have survived despite the Enclosures of the medieval commons.² Indeed, they have withstood challenges from both the *exogenous* impact of statutory institutions of property rights on the customary usages of the commoners and from *endogenous* factors which changed patterns of land-use - (of which the commons were an integral part) - in response to demands for food, fodder and now environmental goods and services.

This paper will attempt to examine these long term changes in detail for one case study - that of Ronaldsay to the North East of the Orkney Islands, in particular; and

¹ Field work by the author in Ronaldsay in the Orkneys form the core of this paper. Supported by her own research on the legal evolution of Customary Law and the Village Community in Great Britain from the works of Henry Sumner Maine and G.L. Gomme.

² Adrian Walters, 2005. Sudbury's Ancient Common Lands. (Sudbury Common Lands Charity, Sudbury).

further draw on the other illustrations derived from the research of several scholars in – the field. It is our understanding that the endurance of these and other commons in England bear testimony to the diversity of both ***institutional and structural*** re-alignment of the commons both to the changing legal environment which governed natural resources and the use patterns in the country at large and in certain commons in particular. The paper will seek to analyse the roots of such diversity in the demonstrable nature of local self-governing capacities which have come into play.

Illustratively : First, over the last two centuries the institutional response of local action to changed legal environments has been diverse. The commoners were supported in their battle for the commons by organized movements like that of the Commons Preservation Society in 1865 and its founder President Lord Eversley, and then ably supported by scholars like John Stuart Mill and others. Further the commons took centre-stage in a pan-European debate in the last quarter of the nineteenth century among legal scholars like Henry Sumner Maine, Emille de Laveleye, E. Nasse, the German Historical School and Fustel de Coulanges !

Ultimately, a hundred years later – in 1965 - the existence of the commons were formalized in England by the Common Lands Registration Act.

Second, every time the danger of the dissolution of the commons came up the tide of erosion has been stemmed by realigning the commons to new institutions and ever changing situations of demand for the products of land and natural resources. Thus it is that the commons have become the core resources for environmental goods like clean air, clean water and habitat for the wild.

Part II : Case Studies:

God made the Orkneys; but the people of North Ronaldsay made the island what it is today.³ Its unique landscape was crafted by the islanders in historical times which is preserved today by a system of self-devised institutions policed by its inhabitants. Thus it is that both the pastoral commons and a unique breed of sheep survive in an environment which is not only uncertain and therefore risky but which have to cope with the changing nature of both farming and pastoral activity.

The island's rocky foreshore is battered by the strong winds from the north sea which also throws up sea weeds on to the rocks. The inhabitants turned round this bleak foreshore by excluding the sea from the island with a strong wall which then ***created an 'enclosed' common pasture land for all the sheep.*** Both the transformed landscape and the number of a rare breed of sheep have been maintained by a unique set of customary institutions which governs the commons which is not only the pastoral resources but the wall itself!.

This walled-in landscape not only supplemented the island's meagre land resources which was insufficient to support both the arable and pasture on the scale required, but has also had an un-intended consequence of enabling the island to breed a rare variety of sheep whose digestive system mutated as a result of consuming sea-weed! Further this genre of commons may also be the beginning of a new direction of building up institutions for coastal protection which the melting of the Arctic ice-cap may well require!

³ This is plagiarized from the saying about Holland and the Dutch!

This case study will be supplemented by a second set of case studies carried out by Alan Albery's recent research on the forest commons of Pamber, north Hampshire, and his research on the Odiham Commons.

Durability in Diversity? Illustrations from some long-lived Commons in England and Ronaldsay

Minoti Chakravarty-Kaul

Part I

The “comparative historical method” of analysis :

This paper will attempt to resuscitate the comparative historical method to analyse the durability of the commons both over time and space. The narratives obtained from England date back as far as 1235 and earlier and yet they can be compared with those available from the records of colonial India dating from early 19th century. Likewise, the method is useful for we are likely to get clues from countries like India in the nineteenth century to fill in some of the missing information about commons and the community in historical records of England dating back to earlier centuries. Further, will India and the Third World benefit from the example of England where the commons survived into the 21st century despite the radical transformation of the village and the community?

The method was successfully used by Sir Henry Sumner Maine in the late nineteenth century when he recognized the ancient systems of land-use pattern and customary law like those of the Teutonic and Celtic communities of Europe flourishing in village India in the nineteenth century at a time when they had already been transformed by modern governments and legislation in the West. The example of India as the seat of Ancient Law provided Sir Henry with a historical sample which supported his theory of the evolution of institutions of property rights both individual and communal in Europe.

Here we will compare two sets of narratives –

- First, the stories of long-lived commons in England like those of the Odiham commons and The New Forest which are striking examples of the commons **renewing** their identity as it were, by being aligned to new uses and by new agencies which are stakeholders almost like new commoners. The Odiham commons is a SSSI (Site of Special Scientific Interests) and the Hart Council was required by the CROW Act 2000 “to

conserve and enhance the SSSI' and this it proposed to achieve through bio-diversity which English Nature, another organization, believed could be achieved through grazing. The New Forest continues to provide grazing but "for many, communing is as much a social and cultural tradition, or a second income or interest for a professional commuter."⁴ All this was possible through diversity of institutions of rights and use and that too because the composition of the community itself has changed and ready to adapt to situations of rapid population growth and urbanization in erstwhile village and metropolitan common lands and forests.

- Second, from the shepherding institutions on the grazing commons of North Ronaldsay which is an island in the Orkneys and the Chamba territory of the Himalayas. We hope to explain the **persistence** of the commons in the context of uncertainty and high risk situations because the rationale of communal institutions lay in the possibility of risk sharing embedded in land-use patterns.

The 'waste' and the community in a comparative context :

'The waste' is now a classic term which has inextricably been associated with the commons in the distant past. So also was 'the waste' ascribed a position of operational significance in historically established **category of land-use pattern** devised by agri-pastoral communities in the pre-agrarian revolution European country-side. However the distinctions between rotating fallows in a two-field or three-field system and the uncultivated 'waste' at large were not always sharp. In England ownership of 'the waste' however was of political significance as a **category of property** in rural landscapes in England and the right of user was a privilege which was often a political weapon for manipulating allegiance. The Manor and its 'waste' represented such power play.

The significance of this ancient conception of 'the waste' had been corroborated in the context of colonial India. The officials of the East India Company scouted around for open spaces as early as 1815 to set up colonies for Europeans in the salubrious climes of the Himalayan regions of Kumaon. It was G.W. Traill, co-incidentally from the Orkneys, who was the first Commissioner of Kumaon and also the one to clarify that the existence of open space did not mean that there were no rights to them. In a classic statement to the authorities he was to describe "the Himalayas are not a howling wilderness"⁵ and that sheep had left their hoof prints on those hill-sides over thousands of years establishing their customary right to the pastures. Availability of waste lands was crucial for expansion in cultivation, particularly plantations and therefore a source of revenue for the East India Company. Thus it is that a Waste Land Policy in India was outlined by Lord Canning, the first Viceroy of India as early as 1861.

More important was the settlement of Northern India after the sub-continent became a formal colony in 1857. In the first fifty years of East India Company's presence in Delhi had convinced the settlement officers like T. Fortescue, W.B. Martin and C. Metcalfe that land was held on communal tenure and that the distribution of the land was

⁴ Peter Walsh : 3.

⁵ Batten's Report in *Garhwal Settlement Report*, 1856-64 :49.

on a two field or a three field system. The arable was in scattered strips while the pasture was in a compact holding which was the long term fallow rotated. Indigenous terms used for land fallows, initially not fully understood, ultimately gave officials clearer perception that what they were recording in India in the 19th century had already existed in England and other countries in Europe in the earlier centuries prior to the enclosures.

More importantly, the existence of common lands as part of a system of alternating fallows in a two-field or three-field system with the arable in scattered strips and collective rights over the pasture existed in India in the 19th century when famines still stalked the land. The existence of this along with transhumant pastoral and sedentary agriculture underscored the need for risk dispersal. Such a system, with the commons as integral to it would survive so long as uncertainty and risk were high whether it was in India or in England in the previous centuries.⁶

Also the records of ownership of the fallows proved to scholars of jurisprudence like Henry Sumner Maine and economists like Emile de Laveleye in the second half of the nineteenth century, that ownership of land and particularly the rights over the waste were from the earliest times in the hands of communities like in the villages of the east as in India and those of the Teutonic and Celtic tribes of Europe in earlier centuries. This similarity in land-use patterns and distribution of property rights in India in early nineteenth century to what was true of Europe in an earlier period gave impetus and support to the use of the comparative method in long term analysis. A significant consequence of this observation was the enunciation of a famous theory of institutional analysis - **Sir Henry concluded that movement of societies over time was from status to contract.** Later George Laurence Gomme was to extend this method to the history of the village community in England “which may be said to be almost universal ... and it is not the history of a British institution, but the history of a human institution in Britain.”⁷

Renewing Identity : From Wastelands to Environmental Buffers

The Common Lands in England

There are as many 8,675 commons (CPRs in IASCP terminology) in England which have continued to be so not because they responded to new legal and market environments but because they aligned themselves to the changes. Thus as the context of the English economy moved towards non agricultural occupations and urban conglomerations the commons also veered towards mitigating the influence of pressured living in towns and cities and catered less to agri-pastoral requirements. Such adaptation speak volumes for self-governed collective action which instigated institutional change from law makers and then set about aligning themselves to changing legal and market environments thus set in motion

⁶ Minoti Chakravarty-Kaul, 1996 : ch 2.

⁷ George Laurence Gomme. 1890 : 3.

The stories of the commons and the communities which sustained them in England tell us of continuity *within* change.

Despite the nineteenth century debate surrounding the roots of the commons as Folk-Land,⁸ the technical image of the commons in England as ‘open spaces’ or ‘the waste’ has been associated with the Manorial Waste, Commonable Land and Royal Forests. This is not exhaustive “because ‘quasi-rights’ of common have been recognized and the Commons Registration Act of 1965 stretched the first two somewhat. … In the context of the New Forest there is some manorial waste.”⁹

Prior to 1066 and the development of the common law, parcels of land were used in common. Come the Normans adapting to the system there emerged the situation of manors being granted by the King. The surrounding areas were organized on what is termed a two-field or three-field system where the cultivated fallow was grazed in common. The commonable land were those where rights of common may be exercised periodically and not continuously.¹⁰ Thus there were commonable lands where rights of commons like that of Shire were exercised by all; there were Lammas Land where not all owners have common rights and Gated Pastures which are more common in North England where the one or more owners do not have any common rights. The Royal Forests were like Epping Forest, Forest of Dean, Exmoor, Dartmoor and New Forest. The latter has registered rights since 1635 and subsequent acts of 1851 and 1871. Here subsist rights of Royalty to “vert and venison”, of common pasture and also of pannage. The New Forest gave significant advantage to the commoner as grazing was free.

Threats to the commons came from enclosure which date back to the Statute of Merton in 1235 when “the Lords of the Manors were allowed to inclose or approve, as it was called, parts of the waste lands of their Manors”!¹¹ Even Royalty was known to have tried enclosure in the New Forest. After 1700 private Inclosure Acts allowed privatization and about half the manorial waste was enclosed by the 1845 general Inclosure Act. The New Forest was both a forest and a commons. On the one hand Royalty wanted “rolling enclosures” as early as 1698 to allow timber to grow and thus the Navy received timber till 1862 but the presence of hundreds of owner occupiers led to protest against enclosure of grazing land. The New Forest Association was formed in 1866 with the clear political objective of protecting the Forest. Curiously enough this was also a period when scientific forestry in colonial India was about to begin and a Forest Department was set up.

A counter process began in the 19th century with rapid urbanization and urban interests for open space, air and recreation. Decision making was shifting to urban interest as they became “‘larger society’ in England”.¹² At the same time contends E.L.

⁸ Eversley, 1910 :6. “the researches of Professor Vinogradoff … contends with much force that the term “Fold-Land” does not connote land owned by the people, but land held by customary tenure as opposed to land held by :boc”, or written charter.”

⁹ Peter Walsh: 1.

¹⁰ G.D. Gadsden, 1988 in Peter Walsh : 1.

¹¹ Lord Eversley, 1910 : 9.

¹² E.L. Jones. 1974 : 13.

Jones “An exiguous southern English peasantry would have lacked the self-perpetuating political voice guaranteed to French or German peasantries by tariff protection.”¹³ Urban pull on peasantry for “cash earnings from regular employment have led at last to the voluntary abandonment of rights over heathland in places with smaller and less organised communities than in the New Forest.”¹⁴ Further urban interests were championed by Parliament itself. It was more interested in maintaining manorial wastes for recreation as against agricultural interests. A series of enactments beginning with 1836, enclosures of land within a given distance of London and large towns were forbidden and the village greens and town greens were included under the Commons Act of 1899.

Diversity of institutional support to the Commons and the Community

Intellectual support :

The story of the battle for public rights over the commons, forests and footpaths of England and Wales unfolds in the writing of Lord Eversley the founder President and Chairman of the Commons Preservation Society established in 1865. He was to write that even though technically common lands were the waste of the Manor “there have existed from time immemorial the rights of adjoining owners of land in turning out cattle and sheep on them, and to dig turf, or cut gorse, bracken or heather for fuel, litter or thatching”.¹⁵ Thus “their permanence in this condition has been due to the fact that the ownership of them has never been complete and absolute.”¹⁶

Further intellectual support also came from John Stuart Mill who served on the Committee of the Commons Preservation Society between 1865-73. Mill was also one of those liberals who even contemplated land reforms as a measure to give back the commons to the poor. This was achieved to a certain extent by the General Inclosure Act of 1845 when it gave powers to Commissioners within narrow limits “to require that allotments should be made for … field-gardens for the labouring people.”¹⁷

The investigations of Professor Nasse, Von Maurer, Sir Henry Maine and Seebohm showed that the rights to the common were a survival of a system of collective ownership of land which had existed all over Europe. The land was owned in common. Part of the land was cultivated in a rotation of two-field or three-field system out of which one field was left fallow. Each field was cut into strips and members of the community took the strips which were distributed in a scattered way. These fields were opened up for communal grazing after the harvest. These were the common fields and a large part of the inclosures in Tudor times were of these lands. Each of these fields then were not obliged to be open to common grazing.

Diversity of use :

The commons have survived in England because their **use has been diversified** from the purely agricultural and pastoral to providing other goods in demand when

¹³ Ibid.

¹⁴ Ibid : 16.

¹⁵ Lord Eversley, 1910 : 2.

¹⁶ Ibid: 2.

¹⁷ Ibid : 17

population grew, when imports of food allowed substitution of domestic production and when technology of cultivation took to use of inorganic manures and when mechanical devices replaced animal power. Not all of the commons now are then associated with the erstwhile ‘wastes’ of the feudal manors in rural areas nor do the commons provide resources for grazing, fuel wood(estovers) or for digging turves for fuel (turbary) any more. Technology has transformed sources of energy and therefore superseded the necessity to cut fuel from the commons. Metropolitan London had for example 74 Commons in 1910 including the 5,800 acre Epping Forest and even today there are well designated areas like Clapham Commons and Hampstead Heath which retain even the caption of ‘the commons’ attached to their names. The growth of population in their neighbourhood would not make it possible and “even dangerous”¹⁸ to turn out valuable cattle on them. Lord Eversley was to observe that “People have taken the place of cattle and sheep and use the wastes for recreation.”¹⁹ Thus the commons are sources of fresh air and recreation. Some of these commons, like the Odiham Common (Hampshire) is a Site of Special Scientific Interests.²⁰

The legal environment :

Institutional change by way of enactments made a difference to both the control over enclosures and also the incorporation of inhabitants as recognizable bodies concerned with their rights to the commons. Parliament had repealed the Statute of Merton and after a struggle of thirteen years in the law courts to save the Banstead Commons, Parliament sanctioned a scheme for the regulation of commons and these were placed under the control and management of a body of Conservators elected by the ratepayers of the district. Litigation then became a source of information and also led to the formation of public opinion. Finally the composition and nature of the community itself has undergone change. The community has gone from strength to strength but each time its composition has undergone change keeping in touch with the de facto situation but never losing sight of the roots of traditional rights. Today the community is not of ‘the Commoners’ alone, although there are institutional distinctions, but incorporates ‘the public’ and the boundaries of such communities are no longer just the village or even the ratepayers of districts but environmental agencies like the National Trust; similarly rule-making for the governance of the commons are no longer the preserve of the owners of the soil but of Parliament.

The legal environment has sharpened definitions of rights to the commons. In particular access rights to the commons like forests and mountains and moors have been of real significance. This has made a great difference between Scotland and England. In rural England the commons were not recognized as essential for health and recreation but in some of the mountainous parts like in Wales “the common rights over wide ranges have been the means of securing to the public unrestricted access to and enjoyment of the mountain tops, and have prevented the owners of the land from excluding the public.”²¹ The Law of Property Act, 1925 in its s193 (1) gives “rights of access for air and exercise”

¹⁸ Ibid : 2.

¹⁹ Ibid,

²⁰ Report CLI 1/3/35, 15/2/2002.

²¹ Ibid : 3.

to Metropolitan Commons, Manorial waste and any common which was wholly or partly situated in a Borough or Urban District as defined by the pre-1974 boundaries of that area. By s 193 (2) the Lord of the Manor or any person entitled to the soil of any land subject to rights of common may dedicate the land by deed for public access. Thus access to the Urban Commons is of **right** while access to the Dedicated Rural Commons depend on the **deed of dedication**. “The Wild Creatures and Forest Laws Act, 1971, s1 abolished Monarchical prerogative rights to wild creatures and franchises of forest and free chase. It also abrogated (revoked) the existing forest laws, excepting as regarding verderers... By implication the New Forest as a common is confirmed.”²²

Finally documentation of the commons in the paintings of Gainsborough and Constable in England has done much to retain the romantic image of the commons in England. Austrian Impressionism has also contributed to the records of the commons in Europe.

Part II

Case Studies

North Ronaldsay – Persistent Commons and Sustained Community

In contrast to England in 1800 Scotland saw most of its commonty divided “in the course of the previous century”²³ while in the Orkney islands they remained intact till the middle of the nineteenth century when there were “108,000 acres of common land amounting to 45% of the total area of the island.”²⁴ However division of commonty was rapid thereafter and so thorough that by “1978 only 6 common grazings remained extending to a total of 1032 acres amounting to 0.5% of the total agricultural land.”²⁵ However among these islands is North Ronaldsay which is to the north west of the cluster and still **retains an unique commons**.

The Island of North Ronaldsay is itself unique for several reasons, not the least for its sheep which are perhaps the last remnants of a ‘native’ breed which feed on seaweed. Not only have the animals survived with the intake of seaweed but their digestive system seem to have undergone mutation in the process.²⁶ This evolution in

²² Peter Walsh : 10.

²³ William P.L. Thomson. 1981 : 73. “Common Land in Orkney”. *Orkney Heritage*. Vol 1; p 73.

²⁴ Ibid.

²⁵ Ibid.

²⁶ One of the island’s children had done a school project on North Ronaldsay’s sheep and in response to her query from some scientists who had analysed the innards of the sheep a

nature is noteworthy but more so because it has been the result of institutional change designed by a collective body of a farming community which has ensured that the numbers of sheep have been kept steady at least since the 1839 Sheep Regulations. This makes their resource governance like their sheep “the last remaining elements of communal farming in the Orkneys”.²⁷

The Orkneys are a group islands to the north of Scotland and remote as these are, perhaps North Ronaldsay, the 4 mile long and 2 mile wide island, situated on its north-eastern extremity, is perhaps even more isolated. The redeeming feature is however its climate which is not as severe as that of Norway and 10 degrees Farenheit higher than most regions in the same latitude and it is further north than the southern tip of Norway. The influence of the Gulf Stream has been to warm the island. It is possible that the nature of its isolation together with the scarcity of resources, have taught its inhabitants, the “value of its abundant supply of seaweed which is washed up to the low lying shores by the strong tides.”²⁸

The community of farmers used this resource to *“create” so to say its own grazing commons - from out of the seaweed on its own rocky foreshore*. The island’s sheep are kept on the seashore by a continuous 5 ft-6ft high 12 mile long drystone dyke around the island. There is little evidence of the origin of the present day North Ronaldsay sea-weed sheep. They live on a narrow strip of beach and foreshore even during the bitter winters outside the stone dykes which surrounds the island, the only exception being that the ewes at lambing time are brought inside the dyke to feed on grass for three to four months. The lambs are ear-marked before returned to the beach with their mothers, so that their owners can identify them in the communal flock. (pamphlet and personal communications)

Then when the clipping and dipping season arrive the sheep are herded off the beaches into the stone-built “Punds” by the collective efforts of the island’s sheep farmers, The act of punding is perhaps one of the last remaining elements of communal sheep grazing which is thus kept alive.²⁹

The farmers additionally used the seaweed as a fertiliser (applied untreated to the land) for burning when supplies of coal and peat were low. This saved them from turf-manuring by stripping off the turf from off the areas of the commons. The kelp-making industry came in the 1720s, generating a huge demand both of seaweed and labour. The seaweed was hauled up and dried on the beaches and then burned in shallow stone pits. The resulting kelp formed an oily liquid which when dried hard was shipped south and further processed to extract minerals, particularly iodine, for various industrial processes. It is this iodine which is found in the digestive tracts of the sheep!

Map 1. North Ronaldsay.

report was made showing that the digestive system of the sheep had changed as they were taking more iodine from the seaweed than they would if they grazed on grass!

²⁷ Pamphlet.

²⁸ Ibid.

²⁹ Ibid.



Institutions of Land-Use and the Collective Action

Uncertainty, Risk and land-use patterns :

Indigenous terminology documents the land-use practices and the logic that underlay them. This is evidenced in the similarity of purpose behind the land-use patterns in the Orkneys and in the northern plains of India - and that was to tackle the problem of risk larger than what an individual could tackle when conditions were uncertain and therefore risky. There was a time in the 17th and 18th centuries when the village lands were un-enclosed and undivided in both the regions. Thus "at the beginning of the nineteenth century there were perhaps 108,000 acres of commons in Orkney amounting to 45% of the total area of the islands. This land was commony – common not just in the sense that it was used in common grazing but, since boundaries of properties were not defined on hill land, it was owned in common by the proprietors of adjacent arable ground."³⁰

The crofter in North Ronaldsay like in the other islands had his farm as a "part of a *tun-ship* (township), surrounded by a turf wall to keep the domestic animals away in summer from the cultivated fields. He would possess a number of tiny strips of land, called rigs, awkwardly inter-mingled with those of his neighbours. He would be bound by age-old usages and an astonishing variety of superstitious practices."³¹ This statement passes over the real explanation of crofters accepting scattered pieces of land.

A comparison with the northern plains of India in the last two centuries shows that the system of scattering in the arable was fairly universal particularly in situations where uncertainty in precipitation and severe climatic affecting conditions of cultivation were likely. It was central to a system of fallowing which enabled co-ordinated use of the land for grazing after the harvest and supplemented manuring of the arable.

The logic of cultivation in scattered fields -

One major reason which probably explains scattering is that it enabled a certain degree of equality by homogeneity in conditions of cultivation. This alone could induce collective action. This is truer still about conditions of uncertainty affecting individuals. There is a greater inducement to co-operate when adverse circumstances equally confront those who have to tackle it. In North Ronaldsay, as elsewhere in the Orkneys or even in

³⁰ Thomson, 1981 : 73.

³¹ Stromness Museum : 5.

England – severity of weather in general and micro-climatic factors in particular like soil composition, proneness to water-logging, exposure to sun and wind differed from field to field. This is explained in detail by Joan Thirsk and further theorized by Carl Dahlman who highlighted the logic of the three-field and four-field system of fallows to counter the exhaustion of soil by continuous cultivation for both food and fodder in the absence of inorganic fertilisers and paucity of organic manure when cattle had to be killed before the winter season for the lack of fodder. Scattering of individually held fields made sense because it spread risk from uncertainty by equalising the degree of exposure to all those who belonged to the village community of the manor or the crofter as in the case of the Orkneys. The grazing fallow after the crops were harvested were as important as when the crop was standing on the field. It was access to the grazing commons which was of the essence. So scattering equalised conditions which was essential for any institution of land-use to be effective.

Thus it was that scattering of holdings in the arable imposed certain co-ordinated land-use practices both when some crop was standing and when it was fallow after harvesting of the crop. Timing of certain agricultural practices needed discipline and policing which involved costs unless the members of the *tunship* took it upon themselves jointly to regulate them. Thus it is that access to the common lands was essential because the run-rig township was unenclosed except for the turf ring dyke which separated the arable land from the common. No individual could graze his sheep in his scattered strips of arable without trespassing on his neighbours, and therefore the sheep had to be banished from the arable strips across the dyke to the common grazing or else they would trample the standing crops. Not only were the rules for such co-ordination in existence even as early as 1299, but had been re-formulated by the County Acts of 1614 which fixed dates for the removal of the animals across the dyke. Typically it was the 15th of April for sheep and 1st of May for the cattle.

The scattered run-rigs became the grazing commons when it was opened to the cattle after the harvest and so it was necessary to regulate the stock. Older records in some parishes are found called the *coo-gild* (cowsworth) which was the Orkney version of the *souming* in Gaelic Scotland. The *coogild* was not a unit of grazing but as a measure of arable land. There was always four cowsworth to the mark of land, Thus “one mark of land entitles the occupier to graze for cows or eight sheep. This was not only the number entitled to graze on the commons but also the stock which could feed on the stubble. Some of these rules were transgressed as is evident from the Bailie Court records of a mass of cases where breaches of agricultural regulations were prosecuted by it.³²

Despite this the rules regulating stock had been abandoned and forgotten. “There was one regulation strangely absent from the County Acts. They contained no reference to the number of stock which might be kept – no equivalent of the *souming* of the Gaelic speaking parts of Scotland.”³³ Despite this, the Napier Commission of 1883 was to discover that the “Orkney commons were understocked”³⁴ On average they were only 57% capacity.

³² Thomson, 1981 : 78.

³³ Ibid.

³⁴ Ibid.

Such under-stocking however was not the case in North Ronaldsay but neither was free-riding over-looked. Rules strictly modified the access, use and policing of the commons. The North Ronaldsay Regulation of 1839 clearly indicate that the tenant farmers experienced great inconvenience from the fact that “many people owned large numbers of these sheep and were in no ways accountable for the rents of the island and that such people did not give assistance in repairing and keeping up fences round the island. ... thereupon resolved that tenants alone shall in future have the privilege of keeping sheep on the shores of the Island, subject strictly to the regulations after written. ... thus 67 tenants were to have 1862 sheep.”³⁵

The rules of use recorded enforced the sheep be “taken off and kept outside and taken off the arable and pasture lands on or before the first day of April in each year, and any lambs found straying loose at any time shall be forfeited from the owners, and it shall be allowable and proper for any reason who finds them staying loose to cut off their ears.”³⁶ Upon the numbering of the sheep in the months of February March each year if the number was found to be above the number allowed then the animals would have their ears cut and the excess was to be forfeited but from the number of old sheep and from the hogs.³⁷

The dyke itself was a part of the land-use pattern separating the common pasture on the foreshore from the arable lying within the dyke. There was significant saving in transaction costs here. The dyke kept out the stray cattle and prevented damage to crops to be grown; grazing of the sheep on the foreshore outside was free from any supervision since the institution of marking sheep enabled the collective use of the foreshore. The burden of keeping the dyke in order would have been enormous if it was not shared. The dyke building and repair was regulated by rule fifth of 1839, and the tenants were bound to “repair and keep up the whole outside dykes ... in proportion to the number of sheep which they have the rights of keeping” as in the list. Sanctions were imposed on “dyke leapers ...at the time of at the time of the numbering of the sheep”.³⁸

Another aspect of land-use practice which cemented the community was to do with “poinding”. “A man from each house, shall attend at each poind” This was the practice of collective dipping of the sheep at a public appointed enclosure in the wall. Once again any infringement of this was duly fined.

Rules regulating land-use were re-iterated or changed by the North Ronaldsay Native Sheep Regulations in 1873, 1902 and once again in 1968.

Institutions of Property Rights

Property Rights of access, use and policing the Commons:

Governing the “created” commons :

³⁵ Sheep Regulations, 1839 :1.

³⁶ Ibid. Ninth Rule : 3

³⁷ Ibid. Tenth Rule : 4.

³⁸ Ibid. Seventh Rule : 3.

Institutions governing common lands in the Orkneys can be traced back to late thirteenth century. But by the 1695 Act division of commonties³⁹ gave fixed boundaries and established individual ownership of hill land. However the customary ‘use-and-wont’ grazing continued. The commons were important to the small farmer or crofters and also to cottars. The governance of the common lands were done by the Country Acts of 1614 which although were an attempt to modify the Scandinavian laws but with regard to agricultural practices continued to be based on Soid Brevet (Sheep Letter) of King Haakon issued in 1299. Not for long. Common grazing were individualised and by 1978, only 6 such grazings to a total of 1,032 acres remained amounting to only 0.5% of the total agricultural land.

This description tells us that the scattering of holdings on unenclosed arable had meant that individuals would have had to collaborate with other run-rig holders if they were to keep the sheep off from the undivided arable lands. This required institutions of property rights to regulate access to the commons. This was even more evident after the 1695 Act provided for division of commonties which gave fixed boundaries and individual ownership of hill land. Although in Scotland the commonties were divided up in the eighteenth century, but in the case of the Orkneys the common lands remained virtually intact even till the beginning of the 19th century.⁴⁰

In 1839, 67 tenants of North Ronaldsay got together to tackle free-riders who kept sheep but were not rent-paying. The rules of access to the foreshores were made such that “tenants alone shall have the privilege of keeping sheep on the shores of the island”. For this privilege each one would get a ‘sheepmark’ for which he would pay. Since hogs were destructive and so were to be forfeited. The sheep would have free access on the foreshore. But the right to keep a certain number of sheep also obligated the tenant “to repair and keep up the whole outside dykes ... in proportion to the number of sheep they have the right of keeping.”⁴¹

The obligations included keeping the sheep outside the dyke and so taken off the arable and pasture lands on or before the first day of April in each year and if any lamb or sheep was kept inside after that date had to be kept from straying and if found by any person loose then they could forfeit them and the finder could cut off their ears.

Restricting numbers was very much on the agenda and these were numbered in the months of February, March and April and any excess would be forfeited but this would be taken only from the old sheep or hogs. Thus 67 tenants were allowed to keep 1862 sheep and hogs.

It was essential for every house to send one man for each *poinding* on the public appointed poinding day and no one was allowed to *rue his sheep* in any other place except the appointed place unless in the presence of authorised sheep men.

Any of these rules if broken brought on fines and sanctions. For example, “if any man refused to build up his share of dyke when called upon, his sheep may be poinded from the beach by the tenants and held in poind by one of the sheepmen and if not

³⁹ Thomson, 1981 : 73 Commonty was “common not just in the sense that it was used as common grazing but, since boundaries of properties were defined on hill land, it was owned in common by the proprietors of adjacent arable land.”

⁴⁰ Thomson, 1981 : 73.

⁴¹ Regulation, 1839 : 3.

redeemed in the course of one week from the day of poinding the sheep would be marked and forfeited to the factor for the proprietor, that is to say have their ears cut off.”⁴²

Adequate care of animals was also included among the rules. For example no dogs were allowed in the Nessses for two and a half months beginning on the 15th April in lambing time and if there were stray dogs they were to be shot. So also were no sheep to be bound or shackled in the Nessses but the owners were to make their dykes above sheep-leaping height. So also no sheep were to be killed without being first shown to one of the sheep men.

Above all the authority of the sheepmen were bound in by rules which would give them both authority but with less inducement to abuse. Thus the last rule stated that each of the 11 sheepmen sworn in “shall be allowed to keep *ten sheep* over the number falling to be kept by his farm, as a remuneration for his trouble, *but he shall not be bound or to uphold dykes for any more than his statutory number as stated in the list.*”⁴³

In spite of these rules there were problems in enforcing the above rules and also those of 1873 and so the tenants once again met the Proprietor in Holland House on the 30th of October, 1902 to amend the rules. Among the amendments appeared one about mending of dykes. If a tenant delayed or refused to build his share of the dyke then the Sheepmen could authorise the task being done by others at his expence and if he refused to pay then his sheep were to be forfeited and sold to defray the cost. Non-tenants could keep sheep but with the proviso that they obeyed the rules made.

Another significant change was the election of the Sheepman – two from each of the five townships for five years. These were to be sworn before a Magistrate.⁴⁴

Once again in 1968 North Ronaldsay revised its Sheep Regulations. The number of sheep had increased from 2117 in 1902 to 2,176 while the number of tenants were 71 in number. No major change was evident but it was apparent that the fines were now to be credited in the North Ronaldsay Common Good Fund instead of the Nursing Fund of 1902 or to be paid to the Inspector of Poor as in 1839.

Comparing two systems of risk aversion :

Shepherding in Chamba and North Ronaldsay – cases of evolved grazing commons using Eco-system Principles

The Gaddi shepherds of Chamba in the Himalayan country-side have virtually evolved their pastoral commons outside their homeland just as the islanders of North Ronaldsay created their grazing commons on the foreshore right outside the dyke encircling the island. Chamba, a district in the North-West Himalayas is as remote as North Ronaldsay, and it goes to the credit of its transhumant shepherds known as Gaddis to connect with alpine pastures, valleys and village commons in the plains of northern India. Such activity has supplemented Chamba’s land resources which were insufficient to support both food and forage for the shepherd and their sheep. Thus it is that the Chamba

⁴² Ibid : 4.

⁴³ Ibid : 5.

⁴⁴ Regulation 1902 : 5.

shepherd had to make arrangements outside the state - in the forests of both Government reserves and individually owned forest of the erstwhile 25 Princely states and on the village commons and on the fallows of cultivated fields of terraces on the hill-side, small villages in the foothills of the Himalayas and also in the village commons on the plains. They have to co-ordinate with others who are not only pastoralists like themselves but also with local owners of forests and arable fields.

- While the Gaddis have adopted ***transhumance*** as a matter of necessity imposed on them by the geo-morphological relations of the northern plains to the mountains the islanders of Ronaldsay have devised a system of transferring their sheep seasonally to outside of the dykes in order to supplement scarce grazing resources on arable. Both the systems of shepherding require collective co-ordination.
- The Gaddi shepherds are ***acephalous*** because of the remote character of their homeland which makes physical collectivity difficult if not impossible. They have had thus to create not only their “commons” but also their “community” with whom they share the grazing commons both in forests and cultivated terraces. Reciprocity based on good will sustains such a system of shepherding and not any legal institutions of access and use. The situation in Ronaldsay has succeeded with regulations of grazing with provision for sanction against cheating in matters of privileges and shirking in case of responsibilities.
- Gaddi grazing activities have been inordinately vulnerable even in seemingly remote locations of alpine pastures. Consequently, they have built up a degree of self-governed resilience not only against natural calamities but also against political machinations. The islanders in North Ronaldsay have also built up resilience against environmental hazards with little help from the outside except in the present times.

Conclusion

The State and Pastoralists

The dilution of institutions of collective problem-solving in North Ronaldsay :

Both in North Ronaldsay and in Chamba district of the Himalayas the rules governing property rights and patterns of land-use were widely affected by several factors not the least being the institutions of the State in the form of statutory regulations. The market, technology and demographic factors also influenced the complex institutions and the conditions under which ‘communities’ of shepherds and cultivators functioned.

In the Orkneys, large areas of former commony were brought under cultivation. Reclamation of dykes called “Flitting out the dykes” may not have been done in North Ronaldsay but absenteeism is a problem and the right to divide the commons into individual holdings was also a factor which reduced the incentive to collective action. In the Orkneys at large the extension of cultivation increased from 54,000 acres to 89,500 acres by 1885. This 66% increase was mostly from former commony. Consolidated holdings was a way to improve agriculture no doubt but was “accompanied by a

decreases in the rural population.”⁴⁵ A part of the community has been thus deprived of resources on which it depended. It drew comments from writers like William Thomson that “Life had been hard, scraping a living on the fringes of the commons, but with the disappearance of much of the crofter-cottar population, a vital element was lost from the traditional Orkney way of life.”⁴⁶

However, the flag for the commons still flies in North Ronaldsay and recognition of such communal effort has come from the outside as when in 1997 gales destroyed parts of the 12 mile drystone dyke. Some of the help to repair the dyke exposed the problems which now confront the island to share the repairs! Speaking to the islanders it was apparent that any substitution of collective effort with outside help has certainly played a role in diluting the strength of institutions in problem solving. **Despite these vicissitudes the commons and the community of shepherds persist.**

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⁴⁵ Thomson, 1981 : 88.

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