New Challenges for Old Commons: the implications of rural change for crofting common grazings

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1. Introduction

This paper concerns the way in which 'old' common property institutions cope with and respond to 'new' challenges posed by postproductivist rural change. Common property regimes were once widespread throughout much of the Western European landscape but the prevailing trend over the last few centuries has been towards their demise. The interrelated pressures of population growth, commercialisation, industrialisation, successive rounds of enclosure legislation, and an academic and cultural privileging of individual forms of property, have all conspired to effect the extinguishment and erosion of communal resource rights (North & Thomas, 1973; Dahlman, 1980; De Moor et al. 2002). Nevertheless, a number of these 'old commons' have survived to the present day in countries such as Norway, Spain, Portugal, Italy, Switzerland, Scotland, England, Wales, and Ireland.

Crofting common grazings constitute the most prevalent form of historically enduring common property regime in Scotland covering 7% of its total land area. However, like all rural areas in Europe, the context in which they are situated is becoming increasingly postproductivist in character, reflecting a general shift in emphasis from a dominance of production-oriented agriculture and forestry towards a growing valorisation of more consumptive aspects (Marsden *et al*, 1993). On one hand, global economic forces and policy changes have made it increasingly difficult for producers to maintain profitability, particularly in marginal areas where commons are most frequently found. On the other hand, changes in affluence and societal values have catalysed concern for issues such as animal welfare, food quality, conservation, aesthetics, environmental quality, access and recreation (Winter, 1996; Marsden, 1999). Linked to both of these drivers is a twofold demographic trend, comprising the simultaneous in-migration of urbanites and out-migration of farming offspring (Ilbery & Bowler, 1998).

Despite these new challenges posed by postproductivist rural change, however, there has been little systematic study of the role and operation of common property institutions such contexts. This is surprising considering that common grazings constitute a significant part of Scotland's rural resource, and particularly considering the recent resurgence of interest in common property regimes and commons issues in both policy and practice in Scotland. Firstly, what can perhaps be conceived of as 'new commons' institutions are increasingly being created as communities mobilise themselves to take collective ownership or management of local natural resources. This trend has now been endorsed in the form of a community right-to-buy mechanism featured in the Land Reform (Scotland) Act 2003. Secondly, the expansion in ownership of land by CARTs (Conservation, Amenity and Recreation Trusts) in the UK might also be seen as an example of 'new commons' institutions. Thirdly, and intimately related to the first two points, there are the 'newly perceived commons' comprising a range of possible benefits from natural resources that are difficult or inappropriate to commodify and assign private rights to, such as ecosystem services, visual landscapes and cultural heritage. Their less tangible nature can lead to tensions between different individuals and groups regarding access to, and control over, natural resources, but in this respect property rights with a communal element can play a profound role in mediating the way people engage with such resources.

The delineation of these 'new commons' adds a sense of urgency to the goal of understanding better the relationship between common property and the socio-cultural, economic and

environmental landscape. Historically enduring commons such as crofting common grazings provide a valuable opportunity to investigate the way in which common property rights are claimed and exercised by individuals and groups and the implications of changing rural circumstances. To this end, the aim of this paper is to elucidate the legal and *de facto* institutional circumstances of crofting common grazings in Scotland, and provide a preliminary assessment of how they figure both with the prevailing trends in rural areas, and with common property theory.

The remainder of the paper is in four main sections. The first discusses some of the different ways of conceptualising common property rights for natural resource management, focussing on two key approaches. After providing some geographical and historical background of the empirical case of crofting common grazings, the second section gives a detailed exposition of the legal delineation of common grazings rights. The third section provides a brief account how these common property rights are exercised in practice, utilising the results of a recent empirical investigation. The final section discusses the issues raised by a consideration of historical commons in the light of contemporary rural change. This will include some theoretical reflection on the two key approaches in contemporary common property theorising with respect to their strengths and weaknesses for understanding crofting common grazings, and perhaps other commons in postproductivist contexts.

2. Conceptualising common property rights

There are many different approaches to the conceptualisation of property rights, although one can identify some shared elements. Most concur in as much as property rights are mechanisms enabling the holder to enjoy a resource or benefit-stream without interference from others. Usually seen as a tripartite relationship between the rights-holder, the resource, and everybody else, a property right involves both rights and duties. If one person has a right to a resource, everyone else has a commensurate duty to respect it (after Hohfeld, 1913; 1917). Crucially, for a right to be meaningful, it must encompass the capacity to exclude other parties who would also like to enjoy that resource, which requires an authority system to back up the resource claim.

There are also a number of ways in which conceptualisations differ, particularly as regards common property rights. Figure 2 summarises the key differences observed in various analytical approaches to the study of property rights for natural resource management. These will be elaborated throughout this section of the paper with reference to three discernible 'schools of thought'. They also constitute criteria that may influence the appropriateness of each approach for the elucidation of historical commons in a post-productivist context.

Figure 2: Key differences between the various approaches to property rights

- Varying emphases on different types of property right (e.g. withdrawal or alienability)
- Varying emphases on different types of entities that can hold rights (e.g. groups, individuals);
- Varying emphases on different authority systems for enforcement (e.g. State, local user group);
- Varying emphases on different methods of establishing and maintaining enforcement of the property rights (e.g. rules, norms, coercion);
- Property rights as clear-cut and stable versus property rights as fluid and dynamic;
- Different theoretical assumptions regarding degree to which formal property rights determine the rights exercised 'in practice'.

The first perspective is that of the 'property rights' school, which propounds that, "property rights of individuals over assets consist of the rights, or the powers, to consume, obtain income from, and alienate … assets" Barzel (1989, 2). Underpinned by the liberal economic model, this approach focuses heavily on rights to resources that can be separated from particular individuals and transferred to others in market exchange in the pursuit an efficient allocation of resources.

Accompanying this instrumental conceptualisation of rights, the tendency has been to privilege private, individual property rights at the expense of communally-held rights. Common property regimes have often failed to be acknowledged, been conflated with open access, or condemned as inefficient by 'property rights' scholars. Furthermore, the State is viewed almost exclusively as *the* authority system, and the customary or informal practices of local groups are seen as somehow interfering with and detracting from it.

The substantial limitations of this approach for understanding common property regimes have now been thoroughly documented (e.g. MacCay & Acheson, 1987; Ostrom, 1990; Bromley, 1992) and widely accepted, so will not be elaborated here. It is more pertinent to illuminate the vibrant, contemporary common property debate that the extensive critique and revision of the 'property rights' perspective has generated. Mehta et al (2001) identifies two key strands to the debate: approaches of New Institutional Economics, and what is termed an emergent 'post-institutionalist agenda'.

The dominant perspective is underpinned by New Institutional Economics (NIE), and its proponents have done much to curb previous tendencies to make generalisations about various property rights regimes. They highlight instead the need to look at the specific resource, user, and institutional characteristics when assessing the appropriateness of any property rights arrangement for a particular resource management scenario (Ostrom, 1990; Devlin & Grafton, 1998). This has opened up vital analytical space for a deeper understanding of common property regimes.

The second, emergent perspective is to varying degrees informed by social constructivism, and whilst acknowledging a number of valuable insights provided by NIE scholarship, they seek to highlight its limitations and challenge many of the assumptions used (for example, see Peters, 1987; Mosse, 1997; Li, 1998; Steins & Edwards, 1999; Cleaver, 2002). A number of key differences between the two main strands of the common property debate are summarised in Table 1, and will be expanded below.

First, a fundamental discrepancy centres on the difference between the notion of property rights as stable, rule-based social relationships, and property rights as interactive social processes. NIE scholars typically view rights as the product of rules (Ostrom & Schlager, 1996) and therefore as relatively fixed, changing only when the rules change. In contrast, the emergent view holds that rules themselves are subject to constant interpretation, negotiation, reinterpretation and change, and, as a consequence, property rights are rarely static and clear-cut in practice. Statutory elements in particular may give the appearance of rigidity and clarity, but even they are subject to interpretation by legal actors (Berge, 1998).

Table 1: Summary of emerging and mainstream perspectives

Theme	Mainstream views	Emerging views
Institutions	Static, rules, functionalist, formal	Social interaction and process, embedded in practice, struggles over meaning; formal and informal; interlinked with knowledge and power
Property regimes	CPRs as a set of rules based on collective action outcomes; clear boundaries	Practice not rule determined; strategic; tactical; overlapping rights and responsibilities; ambiguity, inconsistency, flexibility
Legal systems	Formal legislation	Law in practice; different systems co-existing
Resources	Material, economic, direct use-value, property	Also as symbolic, with meanings that are locally and historically embedded and socially constructed
Governance	Separated levels – international, national, local; micro-level focus	Multi-level governance approaches; fuzzy/messy interactions; local and global interconnected

(Source: abstracted from a larger table in Mehta et al (2001, 4)

The alternative outlined by Mehta *et al* (2001) propounds a more fluid, dynamic conception in which property rights are simply authoritative claims for access to and/or control over resources that are constantly being (re)constructed, negotiated and contested by various stakeholders. Static notions of institutions do not allow an understanding of the recursive and mutually constitutive nature of the relationships between key factors. As Meinzen-Dick & Pradhan (2001) state, "rather than seeking a single definition of property rights, it is better to recognise the multiple and often overlapping bases for claims, and to regard property rights and the use of resources as negotiated outcomes" (p.10).

Second, the two perspectives conceive differently of authority systems for defending resource claims. NIE approaches recognise that such authority systems can equally be the State or a local user group, but often place a greater emphasis on more formal institutions in analysis. McCay (2002) has observed that although the importance of 'softer' informal aspects, such as social norms, is often explicitly acknowledged in NIE frameworks, the latter do not provide tools that embrace the situated nature of these variables, and thus fail to bring them directly into the analytical picture. The conceptualisation of commons as an isolated system marginalises a number of important factors associated with the social, economic, cultural, historical and political contexts within which common resource systems are embedded (McCay & Jentoft, 1998; McCay, 2002).

Meizen-Dick & Pradhan (2001) also identify a tendency for NIE to view resource governance in terms of one principal, discrete, clearly bounded authority system when most resource management regimes have multiple authority systems existing simultaneously at a number of different scales. Drawing upon legal pluralism, they propose that, "instead of trying to identify a single authority, whether it be the state or formal user groups, it is better to identify the overlapping and polycentric forms of governance that influence resource management" (ibid, p.15). Legal pluralism has been developed principally in developing countries, where the discrepancy between *de jure* and *de facto* property rights can often be vast. Nevertheless, there has been a small degree of recognition of its broader potential for first world scenarios, as here too property is rarely as simple and clear-cut as sometimes supposed (Fortmann, 1996).

Third, there are disparate conceptions of the various mechanisms for establishing and maintaining inclusion and exclusion from a particular benefit stream. The principal mechanisms for thus protecting and enforcing property rights (which are not mutually exclusive) are: 1) rules, regulations and statutes; 2) values, norms and customs; and, 3) coercion. As indicated previously, both key common property perspectives highlight the role of both rules and statutes, and values and norms, albeit with different emphases. Moreover, both these mechanisms invoke the notion of legitimacy. However, the conceptualisation of legitimacy differs significantly between NIE and emergent approaches.

A typical NIE perspective is that, "by the term 'rules' we refer to *generally agreed-upon* and enforced prescriptions that require, forbid, or permit specific actions for more than a single individual" (Ostrom, 1986 cited in Ostrom & Schlager, 1996, 250, emphasis added). The importance of legitimacy is advanced more strongly by Bromley (1991), who incorporates it into his very definition of a right, stating that it is, "the capacity to call upon the collective to stand behind one's claim to a benefit stream" (p.15). Thus, for Bromley it is the acceptance and support of the collective that makes it possible to enforce a resource claim. This interpretation is a step towards the emergent perspectives, in that it does not privilege any one authority system, and allows for a relatively dynamic conception of legitimacy. However, the idea of '*the* collective' is problematic and begs a number of important questions. For example, who is the collective? Who is included and excluded, and how? Is there only one collective? In this regard, emergent views point out that, in practice, it is likely that a range of collectives will be connected to any one resource, and emphasise the negotiated and contested processes through which the legitimacy of competing resource claims are established, maintained, or eroded.

Fourth, a key distinguishing feature between the NIE and emergent approaches is that the latter give power an explicit and central role in explaining the delineation of access to and control over benefit streams. Power relations are deemed very important for understanding real-world situations as, "they often determine the distribution and actualisation of rights" Meizen-Dick & Pradhan (2001, 11). Rather than being a homogenous group, commons users and other stakeholders are socially differentiated actors with multiple identities, and hence, often have disparate claims on common resources that compete for legitimacy and dominance (Li, 1996; Leach *et al*, 1999). The bases for such resource claims may be material or symbolic, and their struggle for dominance may take place at a subtle level. Actors can appeal to particular meanings and definitions relating to: the resource, it's use and social groups; to reaffirmed or created identities; as well as to (re)interpretations of historical events, in order to legitimate and strengthen claims to access and control resources (Fortmann, 1996). Conversely, the struggle can occur at a more overt level, perhaps employing a degree of coercion. Indeed, even if one accepts that the struggle for legitimacy always involves the interplay of power relations, it is still possible for power to be exercised by individuals lacking legitimacy.

Lastly, the two strands of the common property debate seem to use different theoretical assumptions regarding the degree to which formal property rights (*de jure*) determine the rights exercised in practice (*de facto*). On one hand, NIE analyses often assume little or no discrepancy between a right to a benefit stream defined in formal laws and regulations and the corresponding benefit stream claimed 'on the ground', due to their normative view of property rights. On the other hand, emergent perspectives stress that actual configurations of use and control effects often deviate from the official delineation. Moreover, they warn that conflating the two scenarios in the analysis of 'real world' natural resource management could be highly misleading. Benda-Beckmann *et al* (1997) stress this crucial distinction, stating that, "principles, rules or laws concerning property rights do not reflect actual practice or actual configuration of property rights' relations. It is important to differentiate between the legal construction of rights from the

actual social relationships that connect concrete right holding individuals, groups and associations with concrete and demarcated resources" (p.26).

3. Crofting common grazings and their institutional arrangements

a) Geographical description

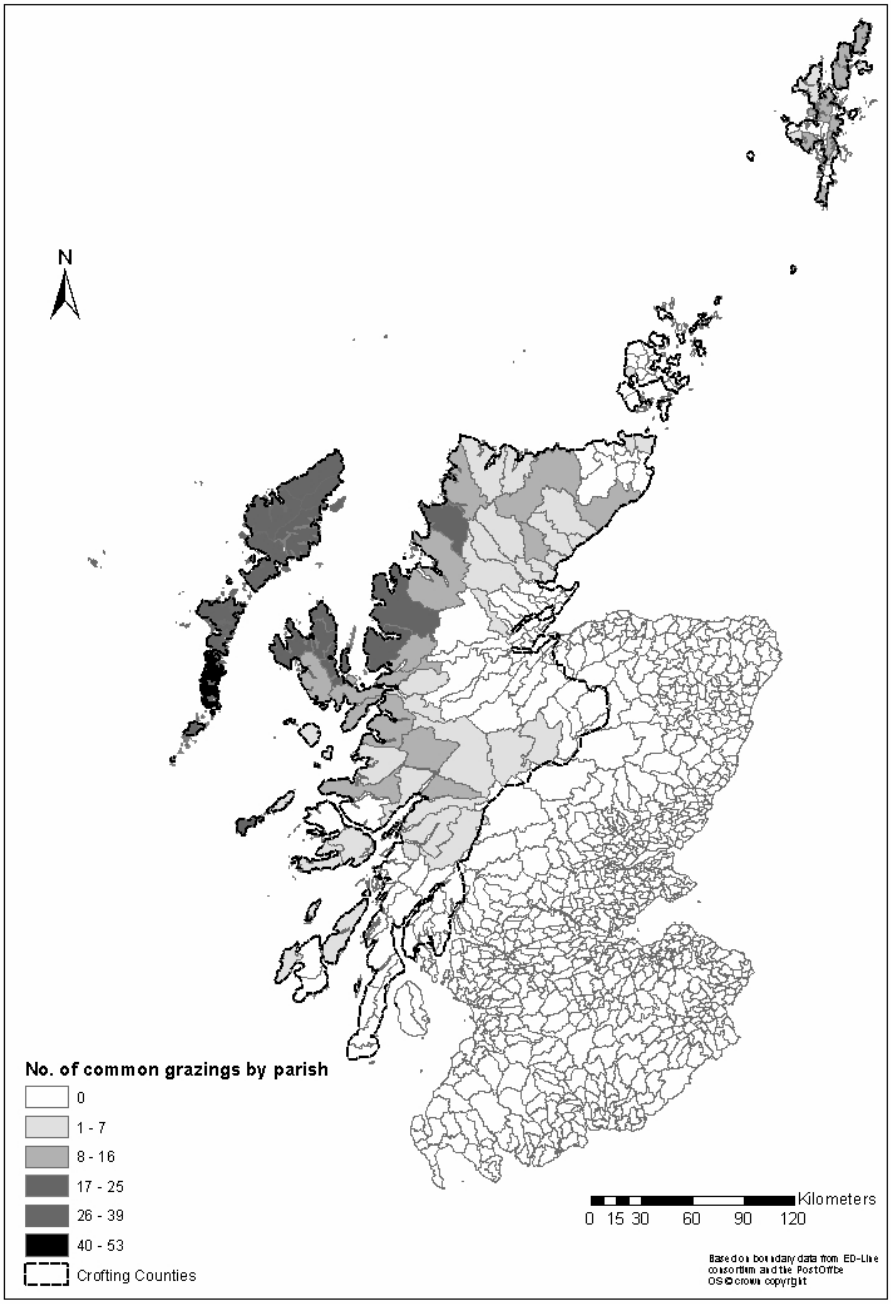
Crofting common grazings are found only in the Highlands and Islands of Scotland (see Fig.3), and constitute by far the most extensive type of historical land-based common property regime of the few to survive in Scotland up to the present time.[1] Currently, there are over 800 distinct common grazings units covering nearly 5,000 square kilometres, which is roughly 12% of the area of the Highlands and Islands (Crofters Commission, 1999). They are distributed primarily on the islands and coastal areas of the northern and western seaboard, stretching from the Argyll Islands in the South at latitude 55.6°, to Shetland in the North at latitude 60.8°.

Common grazings are more prevalent in some counties than others, for example, they cover less than 20% of all mainland counties but account for over 50% of land area in Shetland and the Western Isles (see fig.4). The average size of a common grazings, is 617 Ha, but can vary enormously from as little as 10 Ha to as much as 10,550 Ha. Each common grazings unit can be constituted in more than one parcel, and it is not uncommon to find two or three parcels. A frequent arrangement is a relatively small inner or coastal common grazings parcel situated in close proximity to the village with a larger "hill" parcel stretching onto higher ground away from it. It is often the case that no fence exists between the "hill" sections of different township's individually regulated common grazings. Further, in some areas there are "General Commons" that are shared and regulated between multiple townships.

Areas where common grazings are found are generally cool, wet and windy with salt-laden prevailing westerly winds. Topographically, common grazings have rugged terrain that is frequently steep and/or uneven and punctuated by peat bogs, and can extend to elevations over 1000m. The soils are generally poor, either having impeded drainage and low fertility or, on higher ground, being of a thin and fragile nature with a low rate of organic matter accumulation (SNH, 2002). The combination of all these factors makes common grazings agriculturally marginal, although considerable variation exists in land quality from area to area.

[1] Others include village greens, common mosses, and a small number of commonties (Callander, 2003).

Figure 3: Distribution of Crofting Common Grazings

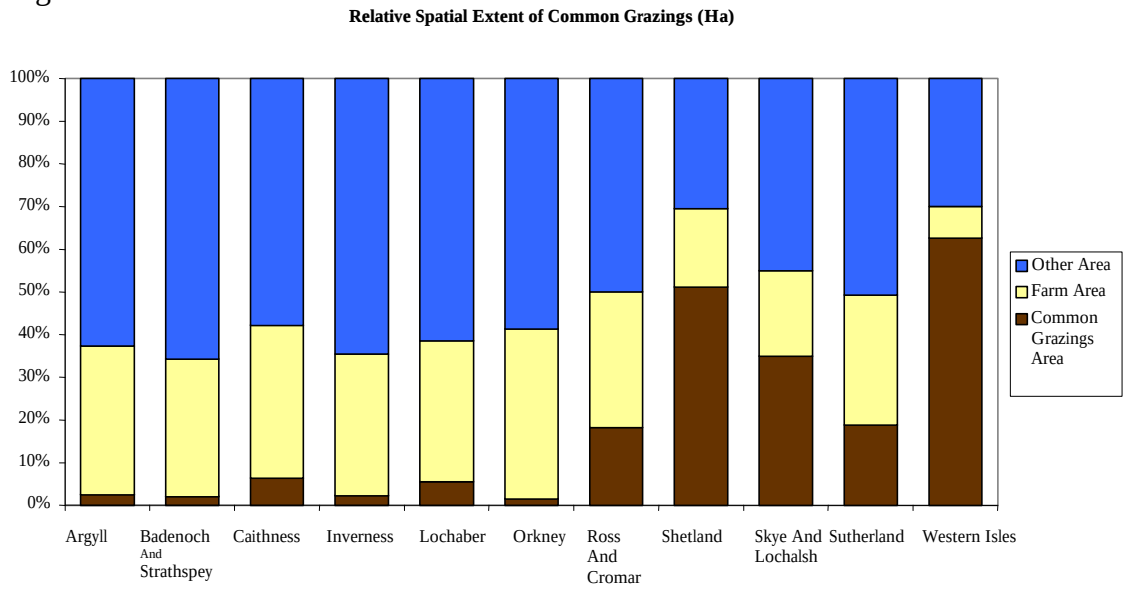


Source: Crofters Commission Data.

Overall, the land cover of common grazings is predominantly rough grazings consisting of heather moorland and peatland, but there are also small areas of woodland, improved grassland, bare rock and machair[2]. Streams and small lochs are also found in abundance. Most of common grazings land is considered semi-natural habitat. Deer are the only large native wild mammals and are thought to be particularly influential in shaping this habitat (SNH, 2002). Common grazings have significant conservation value with many sites protected under the EC Birds and Habitats Directive, or as Sites of Special Scientific Interest (SSSI).

[2] Machair is fertile, low-lying, base-rich, sandy coastal meadows of high conservation value (Warren, 2002).

Figure 4.



(Source: Agricultural Census 1999)

b) Historical context

In Scotland, as elsewhere in the UK, the vast majority of land under communal land tenure was replaced by individual private property between the 17th and 19th centuries contemporaneous with increasing industrialisation, population growth, urbanisation, expansion of the market economy, and supported by specific legislation (Devine, 1994). The incomplete nature of the enclosure process allowed commons to persist in some areas, although the precise circumstances of their survival and their legal histories are somewhat different in different parts of the UK. Crofting common grazings survived partially due to their inferior agricultural quality and remote location, but mainly due to the imposition of the Crofters Holdings (Scotland) Act in 1886 and the Crofters Common Grazings Regulation Act in 1891, which, for the most part, effectively 'fossilised' the basic pattern of land occupancy as it was at the end of the 19th century. Despite a number of amendments, additions, and some consolidation, crofting law has in essence remained relatively unchanged since this time.

Prior to this landmark legislation it was common for agricultural tenants in these areas to have communal access to rough pasture as part of their tenancy, but it would be more accurate to describe this access as a privilege rather than a right, leading to much insecurity. The contraction of the area of land made available for common grazings as well as total removal of access 'rights' were not infrequent occurrences as landowners developed their estates for deer stalking and large-scale sheep farming. Such actions added fuel to the growing civil unrest caused by years of eviction, resettlement in poorer quality areas, emigration and famine. In response, the government passed the 1886 Act and created the crofting system: a unique form of land tenure found only in the Highlands and Islands, encompassing a number of small, individually held agricultural plots known as "crofts" or "inbye" (upon which the crofter's house is usually situated) plus the associated areas of common grazings, constituted in villages known as "townships". This tenure conferred on crofters a set of rights unavailable to any other kind of tenant farmer in the UK, including security of tenure, fair rent, right to bequeath, and compensation at the end of a tenancy.

The institutional arrangements relating to crofting matters are notoriously complicated, thus, will be explained in stages. The first section will begin by identifying the key resources provided by common grazings as well as the key stakeholders perceiving those resources, and who may or

may not hold rights to them. The following sections will explain the regulatory structure and the property rights relations that link the resources and the actors together.

c) Institutional arrangements I: overview of resources and stakeholders

The main resources perceived in common grazings areas (summarised in Fig.5) include: minerals (such as sand, gravel or stone); big and small game for hunting (principal species being red deer, grouse, rabbits, and hares); fishing (principal species being salmon and trout); livestock grazing (for sheep, cattle and horses); woodland (for timber, shelter and conservation); peat (for fuel), seaweed (for fertiliser), heather and grass (for thatching); scenery and aesthetics (physical and cultural landscape); opportunities for recreation (such as hill walking and climbing); conservation and environmental services (such as biodiversity, carbon sinks and waste assimilation); potential sites of development (such as housing, sports facilities or wind farms); and, the ground and remainder (referring to anything left over after any specified rights have been exercised).

Figure 5: Principal resources

- Minerals
- Game
- Timber
- Livestock grazing
- Peat
- Seaweed Heather and grass
- Scenery/aesthetics
- Recreational opportunities
- Biodiversity & environmental services
- Site for potential development
- Ground and remainder

Figure 6: Key stakeholders

- Landlord
- Crofters
- State
- Residents
- Members of the public
- Interest groups
- Investors

The key stakeholder groups (summarised in Fig.6) are, firstly, the landlord who is by definition the legal entity holding the title to the land, usually an individual or company. Secondly, there are crofters and occasionally other agricultural tenants of the landlord who hold specified rights to the common grazings. Thirdly, there is the State operating principally through the Crofters Commission (a government body charged with the functions of reorganising, developing and regulating crofting, and promoting the interests of crofters) but also through its local authorities and its environmental and development agencies. Fourthly, there are members of the public, some of whom might be local residents who are not crofting or agricultural tenants but who value certain aspects of the common grazings, some of whom might be organised into interest groups which are usually recreation or conservation oriented. Lastly, there are investors who may be interested in developments on the common grazings.

The key rights-holders (as opposed to stakeholders) make up a smaller list, comprising the landlord, the state, the crofters, and members of the public, although the bundles of rights they hold are for the most part very different. The use rights and decision-making rights held in minerals, game, the ground and remainder are usually bundled together, as are the use rights and limited decision-making rights for grazing, peat, seaweed, and thatching materials. The former bundle is normally held by the landlord, and the latter by the landlord's crofting tenants. The configuration of rights dealing with development, woodland, and conservation and environmental goods are more complex and will be described more fully in due course.

Common grazings regularly form part of a bigger estate, which is owned by the landlord usually for the main purpose of hunting and fishing. However, some common grazings span more than one estate and thus have a number of different landlords. The crofter's rights to the common grazings are essentially linked to the tenancy of a separate, individually held piece of land, namely their croft or "inbye" land. The rights are *not* linked to residency or membership of a community as in some countries.

d) Institutional arrangements II: regulatory structure

The formal institutional arrangements for the regulation and management of the common grazings exist on a number of levels. At the constitutional level there are several acts of parliament that serve as the fundamental framework for the crofting system. The Crofters (Scotland) Act 1993 consolidated many of these acts and is thus one of the principal pieces of current legislation. However, a new Crofters Act is currently being developed as part of the Scottish Executive's Land Reform proposals[3]. Crofting legislation defines the basic legal rights and responsibilities of crofters, provides for a quasi-governmental body devoted solely to the development and regulation of crofting (the Crofters Commission), and substantiates local-level rules where necessary.

At an intermediate level there exists the Crofters Commission, which is granted with specific regulatory powers and duties to assist it in carrying out its aforementioned functions. A key implication is that many of the activities crofters wish to undertake must gain the prior approval of the Crofters Commission. Another is that the Crofters Commission must as far as possible solve problems that cannot be tackled on a local level. This body is also responsible for administering a small number of important funding mechanisms that specifically target crofters[4].

At the local operational level, there is a Grazings Clerk and a Grazings Committee who are elected by "the shareholders" (crofters holding rights in the common grazings). These individuals serve on a voluntary basis and do not have to be crofters, although they invariably are. Once elected, they have statutory powers and duties with respect to the management, maintenance and improvement of the resource (MacCuish & Flynn, 1990). The Grazings Clerk is responsible for administrative duties, while the Grazings Committee[5] is responsible for three main tasks:

1. MANAGEMENT - making and enforcing Grazings Regulations;
2. MAINTENANCE – maintaining the common grazings and fixed equipment;
3. IMPROVEMENT – improving the common grazings.

The Grazings Clerk and Committee are often the first port of call for the resolution of tensions and conflicts due to their responsibility for enforcing the Grazings Regulations. If issues cannot be resolved at this level, the Crofters Commission becomes involved, and if still unresolved it becomes a matter for the Scottish Land Court. Any person in breach of the regulations is guilty of an offence under criminal law and can be given a penalty of up to £200. With a continuing offence, the offender can be liable for a further £0.50 a day after the Grazings Committee has served notice on it.

The Grazings Regulations deal with aspects of stock management (e.g. fixing dates for the movement of stock and co-operative activities) and resource maintenance and improvement. They are not legally binding until confirmed by the Crofters Commission, who in turn must

[3] A recent piece of Land Reform legislation included the conferment to crofters of the right to buy their land (in effect buy the landlord's interest) even if the current owner does not wish to sell.
[4] Such as the CCDS (Crofting Community Development Scheme) and the CCAGS (Crofting Counties Agricultural Grant Scheme).
[5] The Grazings Committee must have a minimum of three members, and a majority is a quorum.

consult with the landlord. If a committee fails to make satisfactory regulations, the Crofters Commission may make them in their stead. The legislation specifies a number of matters that the regulations must provide for:

- Recovery from shareholders of maintenance, improvement and general committee expenses;
- The number and kind of stock each crofter is entitled to put on the grazings (known as the "souming");
- The alteration of soumings in improved areas where crofters have not contributed to improvements;
- Peat-cutting and seaweed collection;
- Summoning of meetings and the procedure and conduct of those meetings.

The manner in which "soumings" (stock allowances) were originally calculated was complicated and far from being a uniform procedure (Coull, 1968; Hunter, 1976). Variously based on common grazings carrying capacity (as judged by the estate factor[6] or land surveyor), wintering capacity of the "inbye" ground, the area of the "inbye", and the rent paid to the landlord, there are many inconsistencies both within and between townships. Soumings are either expressed as a fraction of the total stock allowance for the common grazings or as an actual number of sheep, cattle and horses. It is normally possible to substitute different stock types but the formula varies from place to place.

In a minority of common grazings, all the stock are communally owned by a Sheep Stock Club and managed together as one flock sometimes employing a part-time shepherd. Instead of being able to run his or her own stock on the common grazings, each shareholder is entitled to a dividend of the profits at the end of the year, calculated according to the original souming. Interestingly, there is no mention of Stock Clubs in any of the crofting legislation. Hence, their regulation must be provided for solely at a local level in the Grazings Regulations.

Another institutional arrangement that was formerly frequently written into the Grazings Regulations was the 'open township'; a temporary system of common property existing only in the winter whereby the stock of the township were allowed to wander over the "inbye" land to graze the residual vegetation from the year's crops. In 1955, however, a new round of legislation made it possible for a crofter to apply to the Grazings Committee (and failing that the Crofters Commission) for consent to exclude the stock of others from his "inbye" ground. This, coupled with a decline in traditional arable cropping, has resulted in the slow but steady individualisation of the inbye ground, with a proliferation of fencing where there was none before.

e) Institutional arrangements III: property rights relations in detail

The configurations of different rights, bundles and rights-holders found in common grazings institutions is summarised in Table 2, based on the framework of Ostrom & Schlager (1996).

Mineral rights

Almost without exception the mineral rights on common grazings land are held by the landlord of that estate, with the rights of withdrawal, management and exclusion qualified by government planning procedures. However, the right of alienation belongs wholly to the landlord who is free to lease it to another party. The crofters are required to allow the landlord (or their contractor) access to the common grazings for the purposes of searching for and mining or quarrying minerals, but the landlord must pay compensation to the crofters for any damages sustained.

[6] The 'factor' is the landlord's representative who manages the estate.

Table 2: Summary of the types of rights held in common grazings resources

X means presence of a property right. (x) means presence of partial or strongly conditional rights.	Types of Rights	**LAND-LORD**	**CROFTERS**	**STATE**	**MEMBER OF THE PUBLIC**
Mineral	Access	X			
	Withdrawal	X			
	Management	X			
	Exclusion			X	
	Alienation	X			
Hunting/ shooting/ fishing	Access	X			
	Withdrawal	X			
	Management	X		(x)	
	Exclusion	X			
	Alienation	X			
Peat	Access	X	X		
	Withdrawal	X	X		
	Management	X	X	X	
	Exclusion	(x)		X	
	Alienation				
Grazing	Access		X		
	Withdrawal		X		
	Management		X	X	
	Exclusion			X	
	Alienation				
Timber/ woodland	Access		(x)		
	Withdrawal		(x)		
	Management		(x)		
	Exclusion	X		X	
	Alienation				
Development	Access	X			
	Withdrawal	X	X		
	Management	X			
	Exclusion	X		X	
	Alienation	X			
Outdoor Recreation	Access	X	X	X	X
	Withdrawal				
	Management				
	Exclusion			X	
	Alienation				

Game & Fishing rights

The full scale of rights (from access to alienation) relating to the hunting and shooting of game[7] and fishing are virtually always held by the landlord. An exception is the crofters' limited right to take ground game (rabbits and hares) as a form of vermin control. They also have the right to claim compensation for any damage caused by game. With both fish and game it is not the creature that is 'owned' but the right to capture and kill them, and until capture they are wild animals. Indeed, both game and fisheries are fugitive resources with common-pool aspects. To reflect this, organisations have been set up to co-ordinate management and enforcement of rights[8]. In addition, there are numerous statutory and local-level restrictions relating particularly to the timing of resource withdrawal, but also to the conditions of the disposal of resource 'units'[9]. With respect to alienation it is competent for the landlord's game and fishing rights to be leased to another party. This is a frequent occurrence and the revenue is often an important source of income for estates. Furthermore, rights to game and salmon are heritable titles and can be separated from the land and sold completely. Rights to capture fresh water fish belong to the riparian owner and can only be leased.

Grazing rights

Grazing rights are recognised in crofting legislation as forming part of a statutory crofting tenancy (i.e. part of "the croft"). Despite the technical possibility of separating these two components of a crofting tenancy, in the vast majority of cases the grazings rights go with the croft (MacCuish & Flynn, 1990). "A right of common grazing, though it may be established by prescription, is usually founded upon a grant in the feudal title[10] of the proprietor" (ibid, p.47). Rights to graze stock on the common grazings are held almost exclusively by crofters. However, in rare cases there are grazing rights attached to non-croft houses in a township, which are usually vestiges of a former pattern of holdings where rights might be given to the residents of a farm house or a minister's house for horses and a "house cow". The landlord does not possess any grazing rights to this area.

The crofters' grazings rights encompass rights of access, withdrawal and management, but stop short of rights of exclusion or alienation. The management rights must be shared to a large extent with the Crofters Commission, which also holds exclusion rights. There are no rights of alienation as the other collective-choice rights are bound in law to be held between the Crofters Commission and the Grazings Committee. The arrangement for sharing the management rights between the Grazings Committee and the Crofters Commission involves the former being the active manager, but one who must gain the approval of the latter for a large range of actions, including the crucial approval (and thus legal recognition) of the Grazings Regulations. The Crofters Commission possess rights of exclusion by way of their power to decide who can and cannot be assigned a croft tenancy when one becomes available.

A further element of grazing rights is the right of any shareholder to apply to the Crofters Commission to apportion part of the common grazings for their exclusive use. The Commission must consult the Grazings Committee and often consult the landlord and other shareholders too.

[7] Game here refers to deer, hares, rabbits, pheasants, partridges, grouse, black game, capercailie, ptarmigan, woodcock, snipe, wild duck, widgeon and teal.

[8] For example, a structure of salmon fishery management bodies for the main rivers in Scotland has existed since the 19th century, known currently as District Salmon Fishery Boards, which has statutory powers for management and enforcement. There are bodies for freshwater fish management also but these are less co-ordinated and standardised. Also there exist Deer Management Groups, which are encouraged by the government (through the Deer Commission) to co-ordinate management.

[9] For example, it is illegal to sell rod caught salmon or sea trout.

[10] It should be noted that feudal tenure has recently been abolished with the passing of the Abolition of Feudal Tenure etc (Scotland) Act 2000.

If granted, the right may be conditional on fulfilling actions such as the erection of fencing or the improvement of the land. It is technically possible to fully apportion, and thus effectively privatise, the common grazings. However, this is extremely rare.

Peat rights

Although the right of peat-cutting is commonly associated with the grazing rights, it is separable from them. Both the landlord and crofters have access and withdrawal rights to cut peat from the common grazings, but these rights are limited by the domestic requirements of the users. Crofters have a prior right to cut sufficient peat for the present and prospective requirements of their croft, and the landlord (or anyone authorised by the landlord) has the right to take any peat surplus to the requirements of the crofters. However, peat can only be taken by the landlord for domestic or estate use and not for commercial peat extraction. Thus the alienability of these rights is rather limited even for the landlord. In addition, the landlord has the right to specify the areas in which peat may be extracted. The Crofters Commission has a limited management right insofar as it retains the power to design a scheme regulating the crofters' access to and withdrawal of peat if it is deemed necessary. It also has a limited exclusion right insofar as it can influence who can be assigned a croft tenancy, and thus the peat rights that form a part thereof.

Woodland, timber and tree-planting rights

Until 1992 crofters did not have any forestry-related rights to the common grazings, and the rights to any existing trees were held by the landlord, although it seems that the landlord did not have the right to plant trees either. However, the Crofter Forestry (Scotland) Act 1991 conferred onto crofters the right to plant trees on the common grazings and to use it as woodland, but only on the condition that the Grazings Committee obtain the written permission of the landlord as well as the approval of the Crofters Commission. Thus, the landlord and Crofters Commission possess strong rights of exclusion. There are no alienation rights as it is solely the Grazings Committee who can apply for consent. If granted the consent gives crofters the right of withdrawal and access. Once consent is given it lasts a maximum period of seven years before becoming void. However, if consent is not given the crofters have no right of appeal. Unlike some agricultural tenancies there is no right enabling the crofter to receive compensation for any trees planted if the tenancy comes to an end. The legislation also specifies that these rights should *not* be exercised in such a way that the whole of the common grazings becomes woodland.

Seaweed, heather and grass rights

In the past, seaweed was widely used as a fertiliser for arable cultivation on the croft and heather and grass were used for thatching for the croft houses. However, these rights are exercised very rarely nowadays. The main exception is crofters who collect seaweed for their croft in conjunction with their participation in an Environmentally Sensitive Areas (ESA) scheme, in which they are specifically paid to cultivate the machair for environmental benefits.

Development rights

In general terms, if a development (e.g. building of a house) takes place on the common grazings the law articulates that the landlord and the crofters must share the development value 50:50. However, the crofters have *no right* to initiate development themselves, and the landlord's right to initiate development is conditional upon two separate levels of state permission. Firstly, the state reserves the right to prevent any development that is thought to contravene the public interest through the planning system. Secondly, if a landowner wishes to undertake a particular development he must apply to the Scottish Land Court to resume the relevant portion of land from the crofting system[11]. This authority is usually conditional upon the development being for

[11] Also known as 'decrofting'.

the good of the common grazings, the estate or the public interest, for example, housing, public facilities, or any purpose likely to create local employment.

Recreational rights

Members of the general public have recently been given a 'right of responsible access' to land and water for outdoor recreation and passage by way of the Land Reform (Scotland) Bill, which completed its passage through the Scottish Parliament in January 2003. Prior to this there was a widely perceived but legally ambiguous 'right to roam'.

Rights to scenery, conservation and environmental goods and services

There are a number of laws and regulations dealing the protection of conservation and environmental goods and services, although these are far from comprehensive. There is a degree of protection given to particular wildlife but many of the laws and regulations relate to the prevention of pollution, and some are notoriously difficult to enforce for agricultural circumstances (Lowe et al, 1997).

The main UK conservation designation is the SSSI (Sites of Special Scientific Interest), which in total covers 11% of the area of Scotland. However, under Natura 2000 the system is currently in transition from the SSSI designation to the SAC (Special Areas of Conservation) designation. The previous SSSI arrangement specified and prohibited a number of PDOs (Potentially Damaging Operations) for each designated area. The government had the right to force the landowner to refrain from taking a PDO-related action, and the landowner had a corresponding duty to refrain. However, the government was then obliged to pay the landowner compensation, and if there were insufficient funds for the compensation, the landowner could go ahead with the forbidden action. This procedure has been heavily criticised for allowing landowners to claim 'money for nothing'.

The new system removes the liability rule protecting the landowner and places an emphasis on payments for positive management measures. Here as with non-designated areas, the general scenario is that the public may benefit from the privilege of certain conservation or aesthetic goods that a land manager voluntarily provides, but has no corresponding right. If the land manager wished to stop providing such goods, the public has no recourse but to 'buy' them (unless the action is so severe it is covered by the aforementioned laws). Thus, if the government wants to increase the provision of conservation goods, the land manager must, firstly, consent, and secondly, be paid for positive management through a management agreement or similar.

4. Common Grazings in Practice

To understand how common grazings institutions operate in practice, one must also grasp the ways in which rural change is manifest in common grazings scenarios. This involves an examination of the trends in both resource use and in the associated institutions.

a) Trends in common grazings use

As with most rural areas, the opportunities for the generation of revenue and maintenance of livelihoods in crofting areas have generally been contracting with the declining profitability of upland livestock production[12] and the limited expansion of possibilities for alternative uses. The overall result for common grazings has been a decline in the relative socio-economic importance

[12] Due to levels of subsidy and poor market prices and exacerbated recently with the outbreak of Foot and Mouth Disease in 2001.

of the resource, both in comparison to the individual "inbye" land, and in comparison to other sources of income and employment.

Crofting agriculture has never been a full-time activity, with supplementary employment in industries such as fishing, weaving, oil, or the public sector being an integral part of the system. Nevertheless, it is widely acknowledged in crofting circles that, at least until the 1950s, most crofting townships could rarely have survived without common grazing to provide for many of their subsistence needs, and even as this contribution waned, the resource remained an important as a source of cash income, principally from sheep production. In recent years, however, the proportions of household income provided by crofting agriculture have been substantially reduced and in many cases are now negligible[13]. Indeed, it is becoming increasingly common to find previously ancillary employment now subsidising the agricultural activity on the croft. The foremost value of crofting agriculture appears now to be the cultural and symbolic value, with livelihoods essentially being maintained by other employment or pensions.

The accompanying economic imperatives have induced many crofters to reduce or remove the stock they have on the common grazings. On average only 75% of available grazing shares are currently used, which is 78% of the shares used 10 years ago. Some crofters have quit stock-keeping altogether, whilst others have continued to run stock on their "inbye" land only, seeing it as the only way to continue in agriculture within the time-constraints of a full-time job. On average only 50% of shareholders currently run stock on the common grazings, and this figure is decreasing each year, although, the extent of the decline varies greatly between individual cases. For example, in over 8% of cases all of the shareholders ran stock on the common grazings, but in 9% of cases there was only one agricultural user (effectively *de facto* privatisation), and 7% of common grazings have no shareholders using them at all (effectively abandoned). The percentage of shares used is higher than the number of users because in some cases where a crofter has reduced or removed stock, other crofters have increased their stock to utilise the unused shares.

Despite the overall decrease in grazing intensity, the grazing impact has not always decreased but become more uneven spatially. It is now common to find simultaneous undergrazing and overgrazing on the same common grazings, because less stock are hefted[14] to the hill, shepherding is now rare, and stock are frequently turned out on the nearest area of common grazings (sometimes just overnight), and remain close to the boundary fence in anticipation of being brought in or fed.

Another marked trend is the change in user attributes. Due principally to the movement of exurbanites into crofting areas, shareholders are becoming increasingly heterogeneous, both culturally and socio-economically. In tandem, the set of meanings and values attached to the common grazings by both shareholders and wider society has broadened considerably. The previously dominant values surrounding the resource's ability to provide a (partial) livelihood is increasingly being challenged by conservation and amenity values, as well as different socio-cultural and symbolic values.

b) Common grazings institutions in practice

It is perhaps unsurprising that paralleling the declining use of common grazings is a general decay of local common grazings institutions. This is evidenced in the diminishing capacity of the

[13] Sutherland and Bevan (2001) found that less than 1% of crofting household income comes from agricultural returns.

[14] Hefting is a grazing practice whereby ewes and their offspring return every year to the same area of land.

institutions to involve shareholders with the will or ability to invest time, effort and/or finance in communal resource management. Many of the more formal institutional elements are often still in place, such as the registration of an official Grazings Committee with the Crofters Commission[15], but the less formal operational aspects are often either stagnating or absent. Consequently, the role played by local common grazings institutions in crofting townships is changing inexorably, but so is the role *expected* of them by government agencies and the like. The great irony is that, more often than not, there is a great disparity between the actual and projected roles, each of which will be elaborated in turn.

Firstly, the Grazings Committees are generally less active, and command substantially less interest and respect than they did in former times. Previously, it was not uncommon for Grazings Committees to be considered as a form of local government, dealing with the issues central to the running of the township, and accordingly wielding much power. Now it is generally very difficult to recruit members on to the Grazings Committee of a common grazings, and meetings are becoming increasingly rare and badly attended.

Secondly, communal activities with respect to both stock management and resource maintenance and improvement have become less frequent occurrences and involve much fewer participants than in the past. Once universal activities such as stock gathering, dipping and clipping are now becoming rarer. For example, in Table 3 it can be seen that only 68% of common grazings have any communal stock gathering. Whereas once these co-operative activities were social occasions involving the entire township, they are now typically carried out by three to five individuals.

Table 3: Co-operative activities on common grazings

Collective Activity	Stock Gathering	Stock Management (e.g. sheep dipping)	Resource Maintenance (e.g. fencing repairs)	Resource Improvement (e.g. reseeding)	Stock Club[16]
Percentage of common grazings units on which activity occurs	68%	49%	63%	24%	7%

Furthermore, where daily co-operation was once the norm, only 3% of cases now perform this, and 18% of cases have no co-operation at all (see Table 4). Of the shareholders that do run stock on the common grazings, many are either in full-time employment or are rather aged, making it very difficult to assemble the required human resources at a mutually convenient time. Where common grazings size and topography does not permit crofters to gather their stock alone, the decision must be made whether to invest in working together with the other shareholders, hire contractors, or remove their stock altogether.

Thirdly, there is a marked decline in the adherence of the shareholders to the Grazings Regulations, accompanied by lower levels of monitoring and fewer incidences of regulation enforcement. In 54% of cases the Grazings Clerk admitted that the Grazings Regulations were not adhered to, and the actual figure is likely to be higher. The reason often given is that the perceived relevance and need for the Regulations is much less clear than in the past. Nowadays, if a shareholder exceeds their 'souming', either nobody cares about the infringement, or there is

[15] Up to 96% of common grazings still have a Grazings Committee.
[16] In a stock club a livestock herd is administrated and managed wholly as one unit in order to produce an annual dividend for shareholders.

insufficient backing from the other shareholders for rule enforcement, often due to the parlous state of agriculture. At first sight it may seem unproblematic for the few remaining 'active' shareholders to work out their own informal system of distributing the unused rights either implicitly or explicitly, and in the short term this is often the case. However, where the rights have become ambiguous over time, and the legitimacy of the Grazings Committee has been eroded, difficulties have been known to arise at a later date in cases when the resource has become revalorised by a new development or project (e.g. crofter forestry) and disagreements occur about who should hold which rights.

Table 4: Frequency of co-operation on common grazings

Frequency of Co-operation	Mean Percentage of Cases
Every day	3%
Every few weeks	15%
Every few months	37%
Once or twice a year	27%
Never	18%

Simultaneously, the role *expected* of common grazings institutions particularly by government agencies and funding bodies is also changing. It is seen less about regulating access to and appropriation of resource units, and more to do with playing a more community-oriented entrepreneurial role, usually involving diversification from the productivist agricultural model.

The clear message from policy documents (e.g. the Scottish Executive's land reform policy) is that greater co-operation and inclusiveness is desired with regard to rural resource use and control. On one hand, more and more crofters are of external and usually urban origin. On the other hand, crofters are increasingly being steered towards the involvement of the wider 'community' (i.e. non-crofting residents) in projects involving common grazings, with the government seeing the resource as an asset for all the residents of the area and not just those holding formal rights. Therefore, pressure is mounting to engage with and harmonise a greater diversity of interests in the common grazings, both within the group of shareholder crofters and between shareholders and the wider community.

This is perceived as a great challenge, if not a threat, to many existing shareholders. Local common grazings institutions always served as a forum for avoiding and solving conflicts between different interests, but for most of the time since the inception of formal common grazings institutions, the shareholders have been a far more culturally and socio-economically homogenous group than they are now. Formerly, all crofters were agriculturalists and all were poor. As one interview respondent said, "it was easier in the old days, we were all the same then … we all had nothing".

Furthermore, the delivery of EU and UK government rural development policy in crofting areas, principally through government bodies[17] and agencies such as Local Enterprise Companies the Crofters Commission, Scottish Natural Heritage and the Forestry Commission, has increasingly employed competitive bidding as the primary mechanism for distributing resources for development projects and schemes. The key implications for representatives of common grazings shareholders (usually the Clerk or Committee members) are twofold. If any ideas or projects for the common grazings are to be taken forward, first, there has to be a general consensus built amongst the shareholders regarding the nature and details of the endeavour, and, second, there

[17] Primarily SEERAD (Scottish Executive Environment and Rural Affairs Department).

must be at least one individual with the awareness, skills, and enthusiasm to facilitate such consensus-building and to complete a "winning" application.

c) Counter-trend to institutional decline

For the most part, this projected image of local common grazings institutions provides a stark contrast to the empirical reality described above. Nevertheless, despite the rather gloomy overall picture of crofting common grazings, the trend towards disuse and institutional stagnation is not universal. Indeed, there is a small but crucial counter-trend that demonstrates that there is no inevitability in the decreasing use and institutional decay experienced on most common grazings. Approximately 8% of common grazings could be described as dynamic, in that they have high proportions of shareholders using the resource, frequent co-operation, and high levels of Committee involvement and vitality. Two broad types of "dynamism" can be identified, which are not mutually exclusive. There is the dynamism that accompanies the pursuit of 'traditional' agriculture whereby a critical mass of shareholders is considerably committed to common grazings use and associated co-operation. There is also the dynamism that accompanies endeavour to diversify common grazings use through the development of projects usually with the draw down of grants.

However, to say that common grazings use is diversifying is to simplify the issue, since there has been no unidirectional trend. In the post-war period, the diversity of uses of the common grazings actually contracted, as products provided by the resource were gradually replaced with substitutes purchased from elsewhere. The decline of the 'house cow' as a household milk provider, the waning in cereal and vegetable growing, the decline in the use of peat for fuel, and the use of modern building materials rather than stone and heather, are all good examples. This, coupled with the then-substantial opportunities to generate revenue from sheep/lamb sales and subsidies, led to a far-reaching transition to a phase of sheep monoculture that is still largely dominant in crofting today. Nevertheless, there are some signs that land use on common grazings is now diversifying again, with new opportunities being taken in areas such as forestry, tourism, conservation and heritage management and renewable energy generation.

Forestry is not at all a historically prevalent land use on common grazings, as until recently neither crofter nor landlord had the right to benefit from any trees planted there. This situation changed with the passing of the Crofter Forestry (Scotland) Act 1991[18] and the availability of favourable forestry-related grants. Now approximately 12% of regulated common grazings have been approved for a crofter forestry scheme[19]. Further opportunities have been grasped in the form of agri-environmental schemes, although so far only 17% have actually entered into some kind of conservation management agreement[20].

One of the most pertinent issues for common grazings in the near future is widely thought to be the drive towards increasing energy generation from renewable sources such as wind, wave and biomass. The Scottish Executive has committed itself to further development of these sources as demonstrated by the Renewables Obligation (Scotland) 2002, which states that Scotland must contribute to the total of 10% of the UK's energy requirements that must come from renewable sources by 2010. So far there is only one common grazings with planning permission to install a wind farm but there are a number of such proposals in the pipeline.

[18] The Crofter Forestry (Scotland) Act 1991 entitled Grazings Committee to plant trees on up to 10% of the common grazings with the consent of the landlord and the Crofters Commission.
[19] Up to September 2001, Source: Crofters Commission Annual Report 2001-2002.
[20] Through schemes such the RSS (Rural Stewardship Scheme), a Habitat Management Scheme, or through being an area designated as a SSSI (Site of Special Scientific Interest) or as ESA (Environmentally Sensitive Areas).

5. Issues for further investigation

From the illustration of common grazings outlined above, the variation between dynamic and stagnating local institutional arrangements is striking. A minority of institutions appear to be capable of adapting to and taking advantage of the shifting configuration of opportunities and constraints, whilst the others do not. These observations provoke the crucial question: why is there a differential institutional response to changing rural circumstances? In other words, why are some local institutions in decay and others thriving when they are all underpinned by an identical formal structure and are subject to very similar external pressures? The empirical investigation raised the following as possible explanatory factors:

Socio-economic factors

Most likely, socio-economic factors such as demography or the nature and availability of local employment affect the capacity of local resource management institutions. Demography may be particularly pertinent as the rural population of the Highlands and Islands is both ageing and declining, especially in remoter areas. However, these factors alone do not explain the institutional differentiation, as common grazings with very similar demographic and employment profiles can still vary enormously in terms of institutional dynamism, often in counter-intuitive ways. For example, there are common grazings with numerous, relatively young shareholders that are institutionally moribund, and cases with few, aged shareholders that are very dynamic. Similarly, having a ready source of employment in close proximity seems to influence the vibrancy of common grazings institutions, but not in a unidirectional way.

Not holding property rights to newly-valorised aspects of the resource

Since crofters are not the only kind of actor with rights to the resource it is possible that at present, the most pertinent rights are held by the landlord or the State. For example, renewable energy generation is put forward as one of the major opportunities for common grazings but Grazings Committees are relatively powerless to initiate such development[21], and even if the landlord does so, the shareholders cannot receive more than 50% of this development value. Conversely, the purchase and installation of wind turbines and infrastructure is extremely capital intensive in the early stages. In the absence of greater government support, it is questionable whether crofters can surpass this obstacle without the business skills and financial backing of their landlord. This scenario may also be applicable to other types of development.

Difficulty of capturing "newer" values

Many of the increasingly valorised aspects of common grazings, such as conservation, aesthetics and amenity, are less tangible than productivist aspects and have public good characteristics. Such values are more difficult to capture economically, because excluding people from the good can be problematic, opportunities to capture value directly through market mechanisms are few, and policy mechanisms such as designated areas and agri-environmental schemes are notoriously under-funded. Some shareholders capture such values *indirectly* through market mechanisms if they have a tourist facility such as Bed and Breakfast. However, non-shareholders are equally free to capture this value, so holding property rights to the resource does not confer any extra advantage in this regard.

Inter-institutional conflicting values

The values underpinning the opportunities provided by common grazings revalorisation are not always compatible with the interests and values of the shareholders. For example, chances to earn income from conservation management or forestry can be perceived as a threat to more

[21] Unless community ownership has been established.

"traditional" crofting activities and a general challenge to crofting as a(n essentially agricultural) way of life, even if the former generate greater financial rewards. There is a tension between policy and market signals on one hand, which are felt to reflect the wishes of the urban majority and the wishes of the 'traditional' rural minority on the other, particularly with respect to the way land should properly be used and how people should be able to earn a living from it. This tension can also be manifest within a crofting township between the shareholders and the (usually exurbanite) non-crofter residents.

Intra-institutional conflicting values

Similar frictions can also exist *amongst* the shareholders regarding the principal values they might aim to realise from the common grazings. Most common grazings have at least some exurbanite shareholders so the above situation can apply within the collective too, but it is rarely as simple as a local versus incomer issue. Appeals are frequently made to various fluid and unstable identities, especially to notions of what it is to be a "real crofter" or not, and what it is to practice "proper crofting" or otherwise. The negotiation and contestation of such notions means that certain users, uses or objectives can have greater legitimacy than others, thus shaping both the land use outcomes and the nature, magnitude and distribution of the benefits produced.

Institutional "fit"

The institutional capacity to cope with rural change seems to be affected by a lack of "fit" or congruence, both between formal and informal institutional arrangements, and between these and the current set of opportunities and constraints. Firstly, there seems to be an increasing discrepancy between the way informal common grazings institutions are supposed to compliment the formal institutional structure, and their current operation. The lack of monitoring or enforcement of the grazings regulations is but one example. Secondly, many 'resources' perceived in common grazings today were not recognised as such when the formal crofting institutions were formulated. This is evidenced in the relative lack of formal, detailed specification of rights to more recently valorised aspects of common land, such as biodiversity, aesthetics, exposed hill-tops (for wind energy), and until recently, trees and woodland. Such 'resources' are not necessarily easy to delineate rights to, but a more systematic approach to their 'appropriation' could prove superior to 'shoehorning' into the 'traditionally' oriented framework. The challenge would be having a sufficiently flexible institutional framework to deal with the, perhaps unexpected, ways in which common grazings might be valorised in the future.

Concluding Remarks

Historical commons found in post-productivist contexts present a range of new challenges to both popular and academic understandings of commons. Here the pertinent issues for commons institutions differ both from those experienced in the past 'on the ground', and from those typically discussed in the common property debate. Fresh challenges stem from: a) the decline in economic importance of 'traditional' commons products; b) the increasing diversity of values attached to the commons by an increasing diversity of people; c) the public good characteristics of many of the 'newer' goods demanded of the resource; d) the principal issue being resource revalorisation rather than overexploitation; e) tensions arising between increasingly disparate resource claims. Therefore, a key area for commons research is to understand how commoners and commons institutions have responded to these challenges, and the social, economic and environmental outcomes thus produced.

Preliminary empirical investigation of common grazings in the Highlands and Islands of Scotland revealed a twofold response to such challenges. The overall trend was one of declining use and institutional decay, but there was also a small counter-trend of cases displaying high

levels of use and co-operation. The pertinent issue thus to be addressed involves explaining this differential response. The empirical findings draw attention to a number of possible explanatory factors requiring further investigation including: socio-economic trends particularly in population and employment; the specification of rights to newly valorised aspects of the resource; the difficulty of capturing 'newer' values; inter- and intra-institutional conflict of values; and, institutional "fit" between formal and informal institutions, and between these and broader rural circumstances.

Gaining a deeper understanding of these issues requires the researcher to go beyond mainstream common property theory, underpinned heavily by New Institutional Economics, and draw upon insights of the 'post-institutional agenda' identified by Metha *et al* (2001). This is due to the significant differences between typical common grazings scenarios (and possibly other post-productivist commons) and those commons scenarios to which NIE frameworks are most aligned.

Common grazings scenarios are characterised by multiple resource types (private, public, common-pool), multiple uses, and multiple user-groups, giving substantial scope for tensions between different resource claims, and requiring multi-purpose governing institutions. In addition, the dependence upon or salience of the resource to the rights-holders is generally low and in decline, leading to a situation where the revalorisation of the commons is the key concern, *not* the aversion of 'tragic' overappropriation. Furthermore, the formal institutions are uniform across all common grazings and have remained remarkably unchanged for the last century, whilst informal institutions have tended towards decay with many demonstrating substantial discrepancies between their characteristics and the important characteristics identified by Ostrom (1990). Paradoxically, this is concurrent with increased pressure from policymakers on informal institutions to access newer benefit streams, which are less specified in rights and legislation that more traditional benefit streams. Contextual factors, such as demographic change and local employment appear to be of central importance, but the relationship between them and common grazings use and governance requires further exploration.

In contrast, commons scenarios to which NIE frameworks are most aligned are characterised by a single resource type (common-pool), single use, and single user group with single-purpose governing institutions. Dependence upon or salience of the resource is assumed to be high, and accordingly, avoiding over-appropriation is the key concern. Analytical approaches tend to be apolitical, overlooking the tensions and struggles between different values and interests, and static, giving little consideration to the social interactions through which access and control is secured or otherwise by particular individuals and groups. Formal institutions tend to be privileged over informal institutions, and where the latter are the focus, they tend to be decontextualised and not seen as embedded in broader socio-cultural relations.

Overall, it is conceded that mainstream approaches to understanding commons are useful both for highlighting a range of important factors, as well as for mapping out configurations of formal property rights associated with common-pool resources. However, it is clear from this study and other empirical work that commons not meeting certain conditions or assumptions do not simply fail or disappear. The outcomes are rather more complex, and in the current political climate, the response is unlikely to involve the elimination of common property in such scenarios. Rather, real-life commons and their impact on social, environmental and economic spheres need to be understood. Accordingly, the priorities for common grazings research are to better understand what is *actually* happening, and why.

Mainstream approaches can help to assess the desirability of particular resource, user and institutional characteristics but they cannot so easily address questions about how and why certain conditions or assumptions are, or are not met, and how these relate to particular outcomes. Aspects that are of central importance in post-productivist commons are often assumed away in mainstream analysis, instead of being specifically problematised and their effect on commons institutions understood. Thus, at present, mainstream approaches appear better equipped to explore normative property rights issues than to explain how property rights and relations are played out in practice in specific contexts such as common grazings.

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