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Peat Use in the Barony of Kendal, Common of Turbary and the Levens Anomaly

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Common rights to peat were valuable in Westmorland, where there were rich deposits and a scarcity of wood. Locally, coal was of poor quality and expensive. In areas where there was no common of turbary the tenants and freeholders rented or bought peat mosses from the manorial lords. Getting peat was a communal activity and the rules and regulations set up in the manor courts were designed to encourage neighbourliness and respect towards the lords of the manors, their employees and to everyone in the community. The other priority was maintenance of the peat mosses and access roads, and the peat jurymen had severe penalties available to punish individuals who neglected the rules. Research in more southerly areas of the England shows that many common rights including those for peat, were lost as a result of parliamentary enclosure. The comparatively late date of most Westmorland parliamentary enclosures, as well as the well-preserved manorial records in the Barony of Kendal that were available to the enclosure commissioners, and the carefully-worded provisions of the awards themselves, all contributed towards the protection of turbary and also grazing rights in Westmorland into the twentieth century.

THE background to this topic is research undertaken into common rights to stone, coal and peat in Westmorland before and after parliamentary enclosure. Peat quickly became the central focus of the study, as there were few common rights to stone before the nineteenth century and coal deposits were thinly scattered, mainly on the southern fringes of the county. Peat on the other hand was ubiquitous and of great economic importance from pre-Norman times onwards. Neeson,[1] in her detailed examination of common rights in the Midlands and the south of England, demonstrated that many rights were lost after enclosure. This turns out not to have been the case for Westmorland. The work of the Nobel prizewinner Elinor Ostrom[2] on the efficient management of their rights by commoners formed a valuable framework for analysing in the Westmorland context and also to set against the contentions of Hardin[3], who believed that commoning was an inherently unstable system for managing resources.

To examine these differing views, the system by which peat as a domestic resource was managed in Westmorland, particularly exemplified by the Levens Hall, Lowther and Sizergh Castle manors, is described in detail. Before the coming of the Lancaster Canal into the county in 1819[4] and, more significantly, the arrival of the first railway in 1846[5], peat was a staple fuel for householders throughout Westmorland, used at all levels of society. Peat was burnt not only in the hearths of the humblest cottages, but also by the yeoman farmers, the craftsmen, the gentry and the aristocracy. The Wordsworth family sat by a peat fire at Dove Cottage[6], as did the le Flemings at nearby Rydal Hall.[7]

Common of turbary, the right to a free supply of peat, was a key contribution to the household budget of freeholders and tenants. Searle[8] shows that subsistence farming

was dependent on the "use-rights"stored in Cumbrian commons. Deposits of peat occur in nearly every township in the Barony of Kendal which comprised Kendal Ward and Lonsdale Ward, and encompassed the most populous part of the county, as far north as Grasmere and including Arnside and Kirkby Lonsdale to the south. Peat occurs in three main types. Raised bog predominates in the lowland and estuarine mosses, for example at Meathop, Levens and Brigsteer. Blanket bog is widespread in the upland parts of the county, above Kentmere and Longsleddale, with very deep deposits above the Lune valley settlements of Mansergh and Casterton. Fen carr peat is found in Westmorland only in the mosses to the west of Holme, although in Cumberland there are extensive deposits on the Solway Plain.

Raised bog is brown, fibrous, and relatively easy to work. When it is exploited in conjunction with an efficient drainage system, it can be dug without too much toil, then stacked and dried, forming easily-transportable turves. It also has the advantage that when the peat deposit is exhausted, the land below it can be reclaimed for agricultural use without major investment. Surviving estuarial peat mosses are now protected by the Department of the Environment, and are no longer available as a resource for burning, but many Westmerians remember peat fires with affection. During World War II a number of old peat workings, especially in the Lyth Valley[9], were re-opened, and used with whatever timber and kindling was available, to eke out the dwindling coal supplies. Estuarial peat not only burns well alone but also when it is combined with wood and coal. It also retains sufficient heat overnight to spring back into life with the help of a few dry sticks next morning. Blanket bog, by comparison, is darker in colour, nearly black when first dug, and it is very heavy both to extract and stack. Like fen carr peat it requires extensive and very well-maintained drainage. When neglected, or over-used, the bogs easily become waterlogged, and dangerous to livestock.

As a common right, peat, along with other fuel rights, including woodland resources and coal, was always appurtenant to a dwelling.[10] It could be inherited as part of a property, but it could not be bought separately from the messuage or tenement to which it belonged. The ancient right of estovers, (from the Norman French for 'necessities',) sometimes included peat, especially in areas such as Norfolk, where deposits were more extensive and timber was in short supply and needed for industry and shipbuilding. However, the term is more frequently found in the north used for woodland fuel, or greenhew, whilst peat is detailed as turbary right or common of turbary and this is the usual phrase in legal documents. After the Norman Conquest, peat, with all minerals, was vested in the manorial lords, but there is evidence to suggest that in the pre-Conquest period the thanes who controlled the border counties provided access to turbary to their tenants[11]. The 1217 Charter of the Forest, which extended the rights enshrined in Magna Carta, gave common right of turbary to freemen in all royal manors. In Westmorland the Crown held a number of manors in the Barony of Kendal during the fifteenth century, both in the Richmond and the Marquis Fee. The presence of these royal manors only partly explains the very great diversity of peat provision within the Barony. There was ample free peat in some manors, in the form of common of turbary, attached to specific dwellings occupied by freeholders and manorial tenants. In other manors freeholders often bought an accompanying turbary and paid a small rent to the manorial lord. Tenants who had

no common right to peat might have a specific moss room included in their rent. At the other extreme, residents in many manors paid a separate rent to the manorial lord for a peat moss: these rents could be high and carried similar obligations to those demanded of householders with a common right to peat.

When a new tenant took on a tenancy or a freeholder bought a property outright, if the property had common of turbary the location of the moss was usually stated in the tenancy agreement or deeds. For example, the manor court rolls for Casterton record that in 1747 'We find that Nicholas Thornber, gentleman, have conveyed and set over to Jonathan Cragg, yeoman, one messuage and tenement with one brackendale on Casterton Fell and a moss room on the common.'[12] The term moss room occurs frequently, both on estuarial mosses and in the areas of blanket peat on the lower slopes of the Pennines. However, a conveyance at Kendal, in July 1682, for £120, of a messuage with barns, orchards, land and meadow, and with 'common of pasture for all beasts and common turbary with appurtenances in Stramongate'[13] is much less clear. It was likely that the premises in Stramongate included a peat house for storing the winter supply, and it is probable that the common turbary was to the east of Kendal, beyond Peat Lane. There are many small deposits of raised bog turbary on the lower slopes of the fells to the east of Kendal[14].

Disputes over common rights form a useful resource for giving insight into where turbaries were located. For example a customary tenancy, with a common right to peat, is clearly defined at New Hutton in 1723. In an argument between the inhabitants, Peter Wilson of Lowhouse is described as the tenant of a 'customary messuage and tenement....of an annual rent of five shillings and eight pence.....and always of right has enjoyed commons of pasture and turbary upon the waste called Edge and Kinn.' This was a right which was shared by all the tenants of the Manor of New Hutton.[15] The conflict involved a disputed boundary for sheep grazing, and was, like so many disagreements between neighbours over shared rights, settled by negotiation within the community, at the manor court[16].

This case at New Hutton may give the impression that tenants with turbary right could dig for peat at any spot on the named waste where they pleased. This was far from true, however, in well-run manors such as New Hutton. It was one of many manors in Westmorland that were leased after 1705 to the Lowther family by the Crown[17]. The getting of peat was tightly controlled by the manorial customs that had been in place in each individual manor in the Barony since the early medieval period. It is interesting to compare the rules and regulations laid out by two neighbouring manors, those of Levens Hall and Dallam Tower. There was no common of turbary in any of the Dallam manors except for the relatively small manor of Nether Levens, and though there was common right to peat in some of the Levens Hall manors, their tenants in Levens itself had to pay rent. This was a sore point, as the tenants of Sizergh Castle, who lived in Strickland properties in Levens, did have common of turbary on the Levens mosses. This anomaly will be analysed below; suffice it to say here that, unsurprisingly, it caused aggravation and fistfights.

The Dallam tenants and freeholders in Beetham, Haverbrack and Arnside had to pay to rent peat mosses. In 1718 a group of eight men and two women agreed to rent moss rooms on Foulshaw Moss across the estuary from Dallam, from the then Lord of the Manor, Edward Wilson. Whilst a part of this moss went with the Stanley family manor of Witherslack, a portion of the eastern seaward marshes belonged to the Dallam estate.[18] The rent for the two smallest mosses, each taken by a women, was two shillings and sixpence a year, and the rent for the largest moss room was ten shillings annually. The rents were to be paid at Dallam Tower every year on the 20th of April, "betwixt the hours of nine and twelve in the forenoon, before they begin to grave or delve any peats".

In addition to rent, there was an obligation on each of the lessees who 'farmed' moss rooms, that they also had to provide one day's shearing at a place and time to be appointed or pay six pence in lieu. Furthermore, they had to lead to Dallam Tower cart loads of peat in proportion to the size of their peat moss or dale. The smallest peat room was 1 rood in length, a local rood being 19 feet 6 inches in the eighteenth century,[19] and the lessee was liable for a delivery of five cart loads, on pain of a penalty of five shillings for each default. The total number of 100 cartloads from the ten lessees at Foulshaw alone, would have ensured that Edward Wilson, his family and their servants had a good stock of fuel for the winter, and it is also worth noting that the Dallam estate itself was well wooded.

Boon days were a frequent requirement in Westmorland manors when customary tenants would be required to give one day's labour for hay making, shearing or harvest. However boon days for peats were less common, and there is no evidence that they were ever required at nearby Levens Hall. They were, however, a condition of tenancies at Hilton, near Appleby, as common of turbary was included in the rents of customary tenures there. Thirty-seven cartloads of peat went to Lowther in 1744.[20] The Lord of the Manor of Hilton also received 16 boon hens in 1704.[21] The customary tenures that are such a special feature of manorial tenure in Cumbria, where they apply in two thirds of the manors, were protected tenancies, 'of inheritance descendable from ancestor to heir according to ancient custom.'[22] As such, they had almost as much right of occupancy as that given by outright ownership of a property.

A further requirement from the lessees of moss dales at Foulshaw was that they must serve as a 'byrelaw man' for the mosses once in three years, and meet at the mosses by appointment on a date set by the lord of the manor to view them and deliver a report to the manor court jury at Michaelmas. This presentment had to list "all and every default done contrary to the severall articles herein sett down". A failure to undertake the duty of byelawman would incur a penalty of six shillings and eightpence, though whether this requirement applied to the two women tenants is open to question. Women, and children too, certainly undertook work in carrying peats to the drying grounds and unloading the dried peats into the peat houses at home.[23] In a peasant economy, with agricultural holdings averaging less than 50 acres, the family, of necessity, provided the total workforce. As late as the 1940s, as Adrian Bell showed, womens' tasks went well beyond poultry keeping and butter making on Westmorland farms.[24]

The 'severall articles' in the Dallam agreement included a number of rules and regulations on how the mosses were to be worked and protected from flooding as well as for maintenance of the access tracks. Regulating the turbaries was an essential component of good manorial management. Neglect of these rules incurred fines, usually of six shillings and eightpence for each default. The list of possible defaults was extensive, although in intention they were similar to the rules on common mosses at Mansergh,[25] and for rented mosses at Rydal. However, the penalties at Dallam look rather excessive by comparison with those of neighbouring manors.

Individual fines could be imposed for more than 20 separate offences. These included serious misbehaviour such as bringing dogs on to the mosses to bait the cattle that were pastured there, and this rule was also intended to protect the breeding wildfowl. Theft of another person's peat incurred a fine of ten shillings, divided equally between the manorial lord, and the wronged party. Failures to drain the runnels on each moss by the 6th of May, maintain their bridges and shore up their access tracks with whins, ling and sand brought more fines. Allowing any animal to pasture on the herbage "under colour of riding to work their turves or otherwise leading them" cost five shillings as did failure to attend the Michaelmas Court Leet. Unpaid fines were met with confiscation of turves and distraint on goods. Peat was nearly always restricted to use by the householders who had turbary rights, and lessees at Dallam had the same restriction on selling any of their peat, with a fine of ten shillings for every infringement. The sanctions covered every eventuality and there was very limited appeal against the decisions of the manor court jury. Neighbourly behaviour was demanded as a matter of course from all tenants, and the strength of the manorial system was that the customs were administered and upheld by one's own neighbours. The excellent manorial records kept by the Levens Hall families, and by the Lowthers and the Wilsons of Dallam Tower underpinned the system in Westmorland by providing a framework based on customs recorded through many centuries. They encapsulate the checks and balances that ensured a good degree of fair play in the management of all the best run manors.In addition these well-established and preserved records were invaluable for proving common rights in the period of parliamentary enclosure.

As at Dallam, the rules in the Levens Hall manors were designed to encourage respect, not only for the Lord of the Manor and his servants but also for other members of the community. However, by contrast with Dallam, the Levens mosses were extensive and close at hand so, in theory, a great deal more accessible. The Long Causey, (causeway) which served the main moss, figures as the central feature in the regulations. The route of the Long Causey altered over time, although it originally ran in a south-westerly direction, from Beathwaite Green, over the marshy ground to the present Gilpin Bridge Inn. It then turned south where it was linked in the early nineteeenth century to the new turnpike road just south of the inn.[26] It served a dual function, being part of the main highway between Kirkby Lonsdale and Cartmel, bridging the River Pool or Gilpin just north of the present Sampool Bridge. The maintenance of the section between Beathwaite Green and the Levens and Sampool mosses was crucial for access to the peat dales. But its status as a public highway meant that the cost of keeping it in repair bore down heavily on the inhabitants of Levens, especially the old Sampool

Bridge, which collapsed in most winters. The inhabitants of Witherslack complained in 1666 that they were "much damnified" by the decay of the cawsey and the bridge.[27]

For the next 150 years arguments and court cases raged as to which authority was reponsible for the highway. Levens, Heversham parish and Westmorland county at various dates were indicted for failing to maintain the road and the bridges. It was not until 1819 that the Trustees of the Ulverston and Carnforth Turnpike were allowed to divert the river and erect a new bridge further south on it.

The expense and pressure was finally off the small community, but the Long Causey and all the other causeways, including the Lords Plain Causeway and the Brigsteer Causeway at the north end of the mosses, were still the subject of regulation for the owners and tenants of the mosses. By comparison with the sanctions faced by the Dallam lessees, the jurors at the Levens manor courts may well have had a less complex task. In the Bagot manuscripts preserved at Levens Hall there is an undated document, in a seventeenth-century hand, possibly from 1655, entitled 'The antient articles given in charge to the mosse juries chosen out of Mr Preston tenants so well as to the Chief Lord of Over Leavens. The juries to present all defaulters to the Cheif Lord'.[28] Now the Preston family held the manor of Nether Levens between 1593 and 1694, at which date it was bought by Edward Wilson of Dallam Tower. In 1671 Sir Thomas Preston formally acknowledged that the Manor or Lordship of Nether Levens was held by him 'by fealty and the yearly rent of 10s 6d' of the Lord of the Manor of Over Levens.[29] As a mesne or subsiduary manor, Nether Levens manor was required to dance to the tune of the chief lord, who at that time was Alan Bellingham. The jurors had to examine the moss owners and tenants for any of the following offences; Selling their mosses without consent of the Lord, concealing any land or rents, graving the highway to the annoyance of their neighbours, or beyond the limits of the heads of their mosses, failing to ditch and drain their mosses, and not maintaining their gateshare of the causeway. Gateshares occupied jurors in the Levens manors in many hours of examination and adjudication. A gateshare was the length of the causeway, or gate, that gives the tenant access to his peat dale. In 1676 it was agreed between James Bellingham and Sir Thomas Preston, and all their tenants of Over and Nether Levens, that the each of the tenants of the two manors would make his gateshare of the causey, dress the main runner called the Pool, and keep the bridges in repair.

Tenants were also allowed, by applying for a licence to the moss jury, to sell their peat as long as they did not 'delve their mosses more than once over in one yeare.'[30] While the regime at Levens appears to be less onerous for the tenants, the moss jury had power to apply sanctions and in 1656 Miles Kirkby of Bradleyfield had to forfeit his moss at Brigsteer for being ten shillings in arrears of rent. The moss jury then let the moss to Elizabeth Shepherd, widow, of the White Lion in Kendal, on payment of the arrears and five shillings a year in rent, the tenant agreeing to perform the 'antient order and customs.'[31] The size of this moss is not given but many of the lessees at Levens who lived in the manor paid rents of one shilling or one shilling and ninepence. The Levens estate sold a lot of individual mosses to tenants and outsiders, for prices up to £30, and a token annual payment of three or four pence. All this compares favourably with the Dallam rents of two shillings and sixpence a rood and with an

onerous list of services demanded in addition. However, the Dallam estate, which lies almost entirely on the east side of the Kent estuary had limited peat reserves, so the Foulshaw mosses west of the Kent could command the higher rents because demand exceeded supply.

The process of winning the peats was seasonal, with a variable timescale, but it had to be fitted into the patterns and rhythms of agriculture. It was governed by the vagaries of the weather and the essential summer activities of the northern counties farming calendar. Ideally, turf cutting was completed between hay making and harvest, with late May into June considered the best months for cutting and stacking, in order to have good well-dried peats ready for carting in early September.[32]

Harvesting peat was a basic skill for rural labourers in areas where there were good deposits and until the arrival of mechanical turf strippers for commercial exploitation in the late nineteenth century, the tools had changed little over the preceding five centuries. In the north and in Scotland, removing the topmost layer was called feying, sometimes spelt feighing, and the tool was a feyer or flaughter. Once the surface was clear the first cut was made by the wide but shallow spade known as a sticker or cutter. As the digging went deeper, the graver, delver or nicker-out was used, with the uplifter to raise each turf. Each block of peat was roughly four inches wide, four inches deep and between ten and twenty inches long, depending on the local custom and the quality of the drying conditions. The getting, stacking, and drying of peat was very much a community activity; women and children took part, and participants were all too aware of slackers and those who might be tempted to steal from a neighbour's well-built stack.

The needs of the poor were not forgotten. Formal provision of turbary occurs in some townships, for example at Witherslack, where a turbary dale was set aside for the poor.[33] Mr. Jim Whetton, who was the peat factor for the Whitbarrow estate at Witherslack in the early to mid twentieth century, told me that a cartload of peats would be taken each autumn to every needy person on the estate. The work was undertaken by their neighbours, and the cost of carting was borne by the estate. Examples of this kind of informal neighbourliness recur throughout my research into peat use. At Casterton farmers with sledges brought peat down from the common turbary high on Brownthwaite Fell into the village for the cottagers, mainly widows and invalids.[34] Angus Winchester relates this neighbourliness, a sense of 'neighbourhood', to the ethos of the early manor court system.[35] It was a subtle combination of altruistic benevolence and innate pragmatism. It encouraged that essential mutual support within communities, which was especially necessary in the harsh conditions of upland farming settlements. Labourers on low incomes also gained where there was a turbary right with their tenancy. Neeson[36] suggests that in the Midlands fuel bought by householders in the late eighteenth century cost between 10 *per cent* and 14 per cent of a labourer's annual wages. Rotherham [37] calculated that costs in the north of England in the early nineteenth century were higher and averaged £5 *per annum*, at a time when the top wage a labourer could earn was two shillings an hour[38], making a maximum of £30 a year. Consequently, in a poor household, fuel could take as much as 17 *per cent* of the family budget.

A household supply of free peat was provided in less than a third of the manors in the Kendal Barony. The provision of common of turbary does not correlate in any way with the extent of peat deposits available in the manor. Generous common turbaries at Casterton and Mansergh contrast with the absence of common rights to peat in Kentmere and Longsleddale where there were extensive bogs. Neither was there common of turbary in any of the Dallam manors nor for the Levens Hall tenants in Levens, although Beathwaite Green, the heart of the old village of Levens, nestled up against the massive Levens mosses.

Common rights to peat not only varied from manor to manor, but also changed over time. The inhabitants of Helsington claimed common of turbary in 1838 at the time of parliamentary enclosure[39]. Helsington was a Levens manor from the time of the Bellingham purchase of the Levens Hall estate and manor in 1562. However, Alan Bellingham, who was then resident in Helsington, had bought the manor of Helsington earlier, in 1544, so he was able to add it to the Levens manors 18 years later. Helsington was a complex manor. Farrer [40] says that Underbarrow was a part of Helsington manor in the time of Elizabeth I, and Bradleyfield was certainly part of Helsington manor in 1579. At that date Thomas Bellingham of Middle Temple, London, bought the messuage and tenement of Bradleyfield, including common of pasture and turbary, for £43.[41] His brother James sold the tenant right of Bradleyfield in 1582, after his brother's death, to be held according to the custom of the Manor of Helsington.[42] So there were common rights to turbary in part of Helsington manor, in the sixteenth century, but tenants in the manor were paying rent for turbaries by the late seventeenth century, by which period Underbarrow was no longer a part the manor[43]. As if Helsington manor was not sufficiently complicated already, the Manor of Sizergh, which was held by the Strickland family, lay within it. The Stricklands had been manorial lords at Sizergh from at least as early as 1292[44]. There was a marriage in 1458 between a Strickland daughter, Margaret, and William Redmayne the heir to Levens Hall. The marriage was clearly designed to unite the two neighbouring families, as William was only 12 years old at the time of the wedding. Whatever the intention, both families were involved in a succession of legal disputes down the centuries, the Stricklands contending not only with the Redmaynes but also after them with the Bellinghams. When Colonel Grahme bought Levens Hall at the end of the seventeenth century, an uneasy peace descended on the two houses, partly because Grahme had a neighbourly character, but mainly because the senior members of the Strickland family were away from home, living in France in support of the exiled James II.

All the aggravation was caused by the problem of the Levens turbary anomaly. This contentious situation stemmed from the fact that the Stricklands had had property in Levens from the early medieval period, and they and their tenants had common of turbary on the Levens mosses. However, the Levens Hall tenants in Levens had no such rights and paid rent for their mosses. This difficult and unusual situation is first recorded in 1315, when a suit between Sir Walter de Strickland as the plaintiff and Sir Matthew de Redmayne as the defendant was settled in favour of Sir Walter. He and his tenants were granted common of pasture everywhere in Levens, common of estovers, wood for burning, building and fencing and the right for digging turves and to 'take in heaths and mosses at his and their will with free entry and free passage at all times of the year.'[45]

The rumblings of discontent among the Levens Hall tenants must have been great, and the row surfaced again in 1591. It is likely that the Bellinghams had tried to play down the Strickland rights in order to placate their own tenants, but the ploy failed. The case went to arbitration, stating 'controversies having arisen between Thomas Strickeland, esq. and James Bellingham, esq. they were submitted to the arbitrament of Sir Thomas Curwen, knt, Thomas Preston, Gerrard Lowther, Thomas Braythwat esquires and Thomas Hesketh, gent, who met on 27th August 1591.' There was a further meeting of the arbiters in September 1592, before an award was made. Once again, it was ruled that 'Mr. Strickland and his tenants of Levens, Syzergh and Brigster should enjoy such common of pasture and turbary as they had used for 50 years past, within the commons, waste grounds and mosses of Levens with right of way.'[46] Bellingham needed to re-consider his tactics.

By the beginning of the seventeenth century the Bellinghams were not a family who were adept at handling their public image. Their performance in the Kendal Tenant Right dispute of 1619-1626 varied, as Scott shows[47], from the populist but ill-advised and ill-judged, to confused and floundering. By the time they sold Levens Hall and estate to the Colonel Grahme in 1688, their reputation as manorial lords had sunk to a low ebb. As they were certainly not disposed after the 1592 arbitration to allow their own tenants to have common of turbary to match that of the Stricklands, they appear to have decided that their best option was a waiting game. The fights that broke out between Levens tenants and those of Sizergh entailed Levens in legal costs. In 1655 Robert Collingwood and his cousin Strickland were assaulted while attempting to take possession of a moss at Beathwaite Green, Collingwood was deposited in his own moss drain and the attorney's bill for the affair cost the Bellinghams £11.10s0d.[48]

Amongst the documents at Levens Hall there is a letter from Ireland, dated 26th February 1665.[49] It is from William Wright, an attorney, living at Castle Dermot in County Kildare. It is in answer to a query from Levens to which Wright comments that 'I understand that you and tenants of Leavens Lordships have some difference with them of Sedgwick, Stainton and Natland about yr mossis, in which it seems they would be equal with your tenants.' Sir Thomas Strickland had long held the manor of Sedgwick and judging by the number of Strickland tenants, upwards of 50, listed there in a 1543 Muster Roll, it was a substantial holding.[50] It would appear that Sir Thomas's tenants were renting turbaries at Levens on more advantageous terms than the Levens tenants. Wright goes on to comment 'and indeed they have more previlidg in some respects than yr tenants.' He points out that 'as for Sedgwick, they are yr next neighbour and therefore in point of neighborhode, charritie and equitie' they ought to be supplied in the second place next to Levens. But the other tenants in Stainton and Natland he admitted posed a problem. 'I know not how you can bring them off their supposed right at present, but for the future I suppose you may.' The solution proposed by the wily attorney was to wait until their mosses became worked out and enforce new tenancies on less favourable terms. Whether this ingenious strategy came into operation before the Bellingham reign as manorial lords ended in 1688 is unfortunately not shown in the records. From the eighteenth century onwards the Levens mosses were operated with no more trouble than would be expected. Many Kendalians bought mosses in the Levens manors, as while peat could be bought at

Kendal market, it was expensive. Machell[51] commented in 1692 that residents in the Kendal area obtained peat from Foulshaw. Peat from Foulshaw moss was taken to Kendal for sale by the tenant of High House on the Dallam estate in 1780. He was allowed to take a maximun of 300 cart loads each year, restricted to carts pulled by one horse only.[52] Some idea of the value of peat can be estimated from inventories accompanying wills. For example the peat and turves in the 'stack house' belonging to James Atkinson, webster, of Kendal, was valued on 27th November 1782 at eleven shillings and sevenpence.[53] With four months of winter ahead, and no peat harvest until the following autumn, this suggests an annual cost of at least £2. Earlier in the century, the dunghill and turf belonging to the late George Hilton of Beetham was valued in spring 1725, at 15 shillings.[54]

Conclusion

It will be seen from this over-view of the system for managing peat that in both the manorial period and after parliamentary enclosure the majority of manors in the Barony of Kendal were efficiently run, with regular manor courts, and well-kept records spanning five centuries. Ostrom[55] has identified six core principles of good management of common resources. Clear boundaries and the need for monitors to be accountable to the commoners are two requirements that apply generally in the study area. However, the four most significant principles in the Westmorland context are central to this study and define the effectiveness of the manorial system here into the nineteenth century and the success of parliamentary enclosure in upholding common rights. These four principles are, firstly, congruence between the rules and local conditions, and this was an essential in an area where climatic conditions and an upland landscape were rigourous elements for the agricultural community. Because the manor court jurors were local residents, and the most active enclosure commissioners, such as Crayston Webster, [56] were totally familiar with local farming requirements, the needs of the commoners were understood and taken into comsideration.

The second important principle for Westmorland was that the commoners themselves should have a voice and be able to contribute to rule modification and in the overview above we have seen this rule in operation throughout the manorial period and in the enclosure process, with good examples at New Hutton and Helsington. Graduated sanctions and regular local access to low-cost conflict resolution form the other two crucial principles that underpinned the system in our area. Both these are features in the manorial period through the manor courts, and the enclosure awards incorporated sanctions at varying levels for infringements of the rules.

In contrast to the situation in the study area, Neeson has shown the extent to which the rest of England lost rights. Rogers[57] has highlighted the circumstances in which tenants lost their customary rights at Croston, near Preston, because the manor courts had fallen into abeyance and there were no records available to them to back up their claim. In Westmorland there are no examples of tenants with turbary rights losing them on enclosure. One reason for this is certainly due to the fact that parliamentary enclosure was late in Cumbria, most acts taking place in the first half of the nineteenth century, and northern enclosure commissioners and the commoners themselves had

taken note of unfair losses of rights further south. The counties of Cumberland and Westmorland also had a far greater acreage of common, a good deal of which remained unenclosed. But, as Whyte[58] has shown, it was the quality of the commissioners that was crucial. He defines the essential attributes as 'Integrity, knowledge of the procedures involved, and sufficient fitness to cope with the rigours of the work.' The careful wording of the awards, of which Hutton Roof is a very good example,[59] reflects this integrity and characterises the work of many of the commissioners. One other factor that was invaluable in the Kendal Barony for preserving the common rights of customary tenants and freeholders was the existence of the excellent manorial records, such as jury verdicts in court rolls, that were available for consultation. There could be no argument against the documents held at Lowther Castle, Sizergh, Levens Hall and Dallam Tower. At Mansergh and Casterton, both Lowther manors, all the common of turbary was carried on into the twentieth century, complete with drying areas, and a large peat common was left unenclosed as well at Casterton. At Helsington the commissioners allocated the peat commons to the holders, who were already involved in a scheme to drain the mosses for agricultural use, on which they hoped to make a good profit in the long term.[60] Much of the peat in the Lyth valley and the Kent estuary is now pasture, or is being restored under the auspices of the Department for the Environment. Viable pasture commons survive to this day in Cumbria.[61]

Effective commoning depends on the pragmatic recognition of shared needs and community interdependence. This aspect is given insufficient attention by Hardin, but is central to Ostrom. Her interpretation of commoning has prevailed over his. In 1812, Thomas Wilkinson of Yanwath refers to the common as 'dealing out frugally its succour to human wants.'[62] He pointed out that it took nothing from peoples' pockets and was a comfort to the lower classes. He believed that if it were to be broken up, those who had most occasion to need it would get the least. While Wilkinson's view is endorsed by Neeson's findings further south, his pessimism and that of Hardin are unjustified as far as the Barony of Kendal is concerned. Here justice and northern pragmatism won.

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Notes and references

1. J.M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820*. (Cambridge, 1993)
2. E. Ostrom, *Governing the Commons* (Cambridge,1990)
3. G. Hardin, 'The Tragedy of the Commons' *Science,162*, (1968),1243
4. J.D. Marshall and M. Davies-Shiel. *The Industrial Archaeology of the Lake Counties*. (David & Charles, 1969.)
5. Ibid.
6. D. Wordsworth. *The Grasmere and Alfoxden Journals*. (Oxford, 2002)
7. CRO (K) WD/RY/Box 92/4
8. C.E. Searle, 'Customary Tenants and the Enclosure of the Cumbrian Commons' *Northern History* 29, (1993), 126
9. Information from Mrs Freda Downham of Natland
10. The laws governing turbary rights are laid out very comprehensively in W. Blackstone, *Commentaries on the Laws of England* (Londom 1794) and *Halsbury's Laws of England*, (London 1932)
11. M. Ellis. *The Manor and its Origins*. (London PRO Publications 1997)
12. CRO Carlisle D/Lons/5/2/11/277
13. CRO (K) WDFCF1/43 1682 Conveyance.

14. I am most grateful to the late Mr. R.A.Jarvis for showing me some of these deposits near Natland. He was responsible for surveying a number of the O.S. 1: 25,000 soil maps.
15. CRO Carlisle D/Lons/5/2/11/253 Settlement of Dispute.
16. Ibid
17. Cumbrian Manorial Records Online. Lancaster University.
18. I am very grateful to Mr Larry Walling for showing me this document
19. Nationally a rood could be anything betweeen 18 and 24 feet but a Westmorland rood was six and a half yards at Levens in 1763. Bagot MSS Box 16/2 .
20. CRO Carlisle D/Lons/L5/2/10/52 Hilton
21. Ibid
22. C.E. Searle op.cit.
23. J. Humphries 'Enclosure, Common Rights and Women' *Journal of Economic History* L.1. (1990)
24. Adrian Bell *Sunrise to Sunset* (London, 1944.)
25. CRO (K) WQR 1/63 Mansergh enclosure.
26. Bagot Levens Hall Mss Box 1/ 19
27. Le Fleming MSS; Historical Manuscripts Commission from British History online website, Witherslack 11
28. Bagot Levens Hall Mss. Box 1/17
29. W. Farrer *Antiquities of Kendale* (Kendal, 1919), 139.
30. Ibid p 139-140
31. Bagot Levens Hall Mss Box 1/16
32. Mr Larry Walling
33. CRO (K) WQR 1/ 7 Witherslack Enclosure ref 112.
34. The late Mr. Gerard Huck of Chester
35. A. Winchester 'Common Land in Upland Britain' (Paper given at Munich in 2006)
36. Neeson op. cit. 165ff.
37. I.D. Rotherham, *Fuel Economy and the Uplands: the effect of Peat and Turf Utilisation*, (Sheffield,1999)
38. A.Hillman, 'Early Union Activity: the case of Joseph Raven' *The Cumbrian Industrialist*, (1999), 21
39. CRO Kendal WDB/35/Box 16. Hoggarth Land Agents.
40. British History on line. Underbarrow p.10 footnote 6
41. Bagot Levens Hall Mss. Helsington Manor, Box 2/9/6 and 2/9/7
42. Ibid
43. Ibid
44. British History Online. Helsington and Sizergh p.3. 1292.
45. British History Online. Levens p.4. 1315
46. British History Online. Helsington and Sizergh pp 11 -12
47. J. Scott. 'The Kendal Tenant Right Dispute 1619-1626.' *CW2* (1998) pp169-182
48. Bagot Levens Hall Mss. Box 1/17
49. Ibid
50. British History Online Sedgwick p5 Muster Roll.
51. J.M. Ewbank, *Antiquary on Horseback* (Kendal, 1963), 60
52. CRO (K) WD/D/Ha 17
53. J. Somervell, *Some Westmorland Wills* 1636- 1738. (Kendal, 1928)
54. G. Hilton *The Rake's Diary* (Cumbria Archives Trust. 1994), 78
55. E. Ostrom, op.cit
56. I. Whyte, *Transforming Fell and Valley* (Lancaster, 2003). Crayston Webster has been identified by Professor Whyte in connection with at leasr 25 enclosure awards.
57. G. Rogers. 'Custom and Common Right; Wasteland Enclosure and Social Change in West Lancashire.' *Agricultural History Review* 41 (1993) 137.
58. Whyte, op.cit.
59. CRO (K) WQR/1/42, Hutton Roof Enclosure. 1822. The Commissioners were Thomas Buttle, a local land surveyor and Thomas Wakefield a Quaker from Yealand
60. CRO (K) WQR/1/94, Helsington Enclosure. 1855
61. E. Straughton, Management of Upland Common Land in Cumbria 1800-1965 Unpublished Ph.D. Thesis, Lancaster, 2006
62. T. Wilkinson. *Thoughts on Enclosing Yanwath Moor* (Penrith, 1812)