

## Occupy! Historical geographies of property, protest and the commons, 1500-1850

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## **Occupy! Historical geographies of property, protest and the commons, 1500-1850**

**Briony McDonagh\* and Carl Griffin†**

### Abstract

This paper examines issues surrounding protest, trespass and occupation - brought to the fore as a result both of recent social movements including the global Occupy movement and of emerging critical discourses about so-called 'new enclosures' - through a historical lens. Wary of histories of property and protest that rely heavily on the notion of the 'closing of the commons', the authors present a different story about the solidification of property rights, the securitisation of space and the gradual emergence of the legal framework through which protest is now disciplined. They do so via an exploration of three episodes in the making of property in land and three associated moments of resistance, each enacted via the physical occupation of common land. The first examines strategies for opposing enclosure in early sixteenth-century England; the second considers the Diggers' reimagining of property and the commons in the mid seventeenth century; and the third analyses the challenge to property rights offered by squatting and small-scale encroachments in the late eighteenth and early nineteenth centuries. In so doing, the paper begins to rethink the relations between past and contemporary protest, considering how a more nuanced account of the history of common rights, enclosure and property relations might nevertheless leave space for new solidarities which have the potential to challenge the exercise of arbitrary power.

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Suddenly, in 2011 occupations were everywhere. Student sit-ins, the symbolic gathering and occupying of prominent ‘public’ spaces during the so-called Arab Spring, the *Indignados* of Spain, the Direct Democracy Now movement in Greece, and the Occupy movement, all united by their shared use of the physical occupation of prominent and symbolic spaces by way of protest. If ultimately their aims were different, the technique of gathering together and occupying tied the protests together. The act of occupation is not a new one, though rarely has the physical and spatial act been given such symbolic prominence as in the Occupy movement. The practical and symbolic act – and thus public performance – of occupying public space was not just rooted in political symbolism but also a direct critique of the ‘privatization’ of public space. Occupy thus reclaims and remakes space for the public against the interests of those who seek to exclude and delimit the use of space supposedly once of the public.<sup>1</sup> Central to this assertion is the mobilization of the idea of the ‘commons’ to historically and conceptually underpin its actions. Indeed, central to Occupy’s declared intent is the belief in the importance of, and a desire to return to, the ‘commons’, to throw off private property in land and, simply put, return the land to the people. In this oft-repeated narrative, before the demonic act of enclosure – on which more below – the land was of the people, unrestricted and unregulated for all to use. Enclosure closed the commons down, the hedges and fences erected forcing the poor from their land and gifting it to the wealthy rulers of rural England.<sup>2</sup> A similar story can be written for many countries worldwide, variably with colonists and capitalists appropriating the land of the indigenous and indigent. But we use England here deliberately because the contextual story told in this emergent ‘new enclosures’ discourse – not just in geography but in the wider critical social sciences and humanities – is a story about enclosure in England. The reasons for enclosure in England assuming such a totemic global status await systematic analysis, but it is important to note that the lessons learnt from enclosing rural England

were directly applied in the carving up and making private property of those sovereign states the British Empire colonized.<sup>3</sup> In this way, privatization and colonization are intertwined in land, and struggles against privatization and colonization similarly rooted in the soil of the dispossessed.

Or so the oft-repeated narrative goes. The problem, so this paper goes on to argue, is that this narrative offers a mythic version of the commons wherein the land belonged to the people. Yet the land has never been public in this sense. The idea, the cultural construct, of public space is a relatively recent thing, a product of Victorian civics and the rise of liberal thought and stabilised in the now prevalent discourse of the popular ‘right to the city’.<sup>4</sup> But the land never belonged to the people. The commons, common land, were not common in that it was held in common. What made it common was its being used in common facilitated by the granting of common rights: variously, to farm strips of land in the ‘open’ fields; to graze livestock upon commons and wastes; or to gather fuel, fodder, food, building materials and minerals from commons.<sup>5</sup> While this is not, as we will see, the same thing as stating that there has always been property in land – our current understanding emerged in the sixteenth century – access, use and settlement of land since time immemorial has been granted as a right enrolled in the local manor. And such rights came with responsibilities and/or the payments of ‘fines’, and with varying degrees of enforcement and efficacy of regulation and restriction. Thus contra to the discourses of Occupy – and here it is important to note that Occupy’s language and claims draw upon and precisely mirror recent reappropriations of the ‘commons’ in critical studies – the ‘commons’, or rather common land, was neither a individualistic, uncontrolled Hardin-esque free for all, nor an unregulated, communitarian public space.<sup>6</sup>

In this narrative, the enemy – the commons’ antonym – is enclosure, those acts of making private that which was once supposedly public. But before enclosure common land was ‘owned’.

The act of enclosure signified the removal of (some or all) common rights and the excluding of those now without use rights (though note that certain rights of access were retained in some places, for instance to kill vermin).<sup>7</sup> Moreover, enclosure as an act of making private property, as a way of spatially excluding, is neither a temporally nor conceptually stable practice. The emergence of modern property rights, and specifically the idea that property in land was an enactment of spatial exclusion, emerged only in the sixteenth century. As the next section asserts, before then the concept of property was not invested in the thing itself but in rights to and in the thing. This is not to argue that there were not earlier acts of enclosing – clearly there were – but rather that each episode of enclosure and resistance to it always has its own particular geographies and histories.<sup>8</sup>

While the politics of land and the commons has long been a canonical concern in rural history – essays by Alun Howkins in *History Workshop Journal* in 2002 and 2014 being notable recent landmarks – outside of work on international development, the interest of geographers has waxed and waned.<sup>9</sup> The recent resurgence of interest by geographers in ideas of the commons and enclosure is therefore of particular note. Responding to, as Jeffrey *et al* have put it, the fact that ‘enclosure has emerged in recent years as a key process of neoliberal globalisation’, geographers have both returned to the foundational intellectual and legal contexts of the ‘enclosure movement’ and revived and reframed the ‘commons’ and ‘enclosure’ as more-than-material metaphors in the present.<sup>10</sup> But there is a disjuncture between historical analyses and geographers’ metaphorical appropriations.

It is here that this paper offers both a historical geographical corrective and a point of historiographical departure. It presents a different story about the history of land becoming property, something gradual and processual, a testing and teasing out of rights and access through which the modern concretized version of exclusive property in land emerges. This process

provoked opposition: property did not suddenly become, nor was the becoming uncontested. Notwithstanding the conceptual slippage and Occupy's challenge to the modern idea of property, the parallels with Occupy are striking in the shared attempt to assert use rights. Moreover, the tool of resistance was the same: occupying land to make the claim to use rights, engaging in acts of transgression and trespass. We also argue that attempts to concretize property rights and thus exclude others from land were in themselves the catalyst for the emergence of the technique of occupation as a spatial strategy for the excluded. This is not to say that the practice of occupation was invented in the sixteenth century, for earlier practices of literally staking claims to title represented occupations of a sort. Rather, it is to argue that the practice of occupation took on a different political meaning against the emergence of property as a spatially exclusive concept. And herein lies an irony: occupation as a protest practice borrows the logic of property, while at once trying to resist it. An individual or small group might occupy space as a means to resist the extension of private property rights, but whatever their claims for the commonweal their act of occupation was mimetic of individual, private possession.

What follows teases out these emergences and complexities through the lens of three moments in the making of property in land and three associated moments of resistance, each enacted via physical occupations of common land. The first examines strategies for opposing enclosure in early sixteenth-century England; the second considers the Diggers' reimagining of property and the commons in the mid seventeenth century; and the third analyses the challenge to property rights offered by squatting and small-scale encroachments in the late eighteenth and early nineteenth centuries. These episodes also serve to detail some of the foundational ways in which the securitisation of space, and the attendant legal framework used to discipline protest, emerged. In so doing, the paper begins to rethink the relations between past and contemporary protest,

considering how a more nuanced account of the history of common rights, enclosure and property relations might nevertheless leave space for new solidarities which have the potential to challenge the exercise of arbitrary power.

### OCCUPYING ONE'S COMMON

The decades around the turn of the sixteenth century were a crucial moment in the history of property. It was then that the modern concept of property in land – as bounded, spatially exclusive and individually owned – first emerged. English medieval lawyers had not recognised property in land, but only goods and chattels. They had, moreover, seen property not as a shorthand for the goods themselves but as a right in or to the thing, an understanding fitting at a time when land typically had multiple use rights attached to it, each often invested in a different individual. Only in the fifteenth and sixteenth centuries did the concept of absolute property in land begin to emerge, a linguistic and legal development that was intimately bound up with land use changes, specifically enclosure.<sup>11</sup> As land was enclosed and common rights extinguished, previously distinct rights were increasingly bound together under a single legal owner and access to land increasingly determined by legal ownership.

The emergence of this new spatially exclusive concept of property in land was paralleled by changes in the use of other important concepts. The term ‘trespass’, for example, had originally referred to a general wrong against someone and was used in the mid thirteenth century to refer to a violation of the law not amounting to a felony, a category of crime which included theft, assault and even rape.<sup>12</sup> Yet by the mid fifteenth century this definition of trespass had hardened and the notion of trespass against property as a civil offence was beginning to emerge. By the mid seventeenth century the term was widely used to refer to an encroachment or intrusion on property

– specifically, an illegal entry into property – and a century later Sir William Blackstone defined it as ‘an entry on another man’s ground without legal authority, and doing some damage, however inconsiderable, to his real property’.<sup>13</sup> That damage might arise as a result of deliberate vandalism or the strategic occupation of the ground, but just bruising the grass by walking on it was enough to make a case for trespass. Thus we may point to a progressive spatialization of the term trespass, so that the generalized medieval concept was increasingly used in early modern England to discipline those that passed beyond a limit – a limit which may or may not have been visible on the ground, as Blackstone notes – or were otherwise ‘out of place’. Much the same was true of the verb ‘occupy’ and its derivatives. Originally used to refer to the holding of an office, by the mid-fifteenth century the term occupation was increasingly applied to the possession of real property.<sup>14</sup> Thus plaintiffs in the sixteenth-century courts asserted that they had ‘peaceably occupied and enjoyed’ land until evicted or menaced by the defendants who now unlawfully occupied their property.<sup>15</sup> Like trespass, occupation thus emerged as an increasingly spatialized concept over the course of the sixteenth century.

While the term ‘occupy’ was primarily used by litigants to refer to the possession of houses and land, it was also occasionally applied to the use of common land and resources. Thus, for example, the tenants of Disley in Cheshire argued that they had ‘continually used and occupied a common pasture’ until they were put out of possession by others who grazed their animals there.<sup>16</sup> Litigants from Sutton, also in Cheshire, used much the same terminology, stating that they had ‘from time immemorial occupied common of pasture’ in the town moor until armed men from neighbouring Macclesfield had driven away their cattle and assaulted the Sutton men.<sup>17</sup> In constructing common land as occupied by the commoners, litigants both emphasized commoners’ right to these resources and tried to provide a legal framework for their defence. The implication



was that if commons and common rights could be occupied in much the same way as private property, then they might also be defended at law, whether that was in the common law courts, manorial courts or central equity courts. Here occupation functioned as the basis for a legal defence of common rights, a way of resisting encroachments on common land whether that threat came from neighbouring communities or enclosing landlords. As those involved in anti-enclosure riots were undoubtedly aware, occupation as an assertion of customary rights drew on two logics: firstly, on the emerging idea that possession was nine-tenths of the law; and secondly, on the notion that customary rights rested jointly on antiquity and on continual usage.<sup>18</sup> As a synonym for protest ‘occupation’ appears only in the second decade of the twentieth century, yet – as this paper demonstrates – the practice of occupying land as a way of resisting private property had by then existed for several centuries.<sup>19</sup>

Numerous instances of local communities who resisted enclosure and the extension of private property rights survive today in the records of the Star Chamber and other central equity courts. The surviving court papers provide evidence of the range of strategies used to defend common rights and otherwise resist changes to the use and ownership of agricultural land and resources. This included litigation at both the Westminster courts and other more local courts – for which evidence is generally much more scanty for the sixteenth century – as well as a suite of what we might call ‘self-help’ strategies, modes of direct action by which groups and communities attempted to influence the allocation of local resources or defend important rights.<sup>20</sup> Crucially, as modes of direct action many of these strategies revolved around the physical occupation of land or resources, a taking back of what once had been common – in the limited sense outlined in the introduction – or a reestablishing of access to such common resources. It is these geographies of protest we turn to here.

Perhaps the best known of the range of practices by which enclosure could be resisted was hedge-breaking. In this most totemic of protest practices, groups of men, women and sometimes children banded together to pull down, dig up and burn the hedges and fences encircling enclosed land. Such incidents were recorded across much of sixteenth-century England from Somerset to Yorkshire and from Sussex to Lancashire.<sup>21</sup> As Nicholas Blomley points out, those who damaged hedges and fences both destroyed private property – the boundary itself, which belonged to the landowner – and attacked an important symbol of private property.<sup>22</sup> In doing so they dissolved the boundary between individualized, absolute property and non-property, between land held in severalty and that subject to common rights. Yet hedge-breaking was about much more than the destruction of a boundary feature. The point in breaking a hedge was to let cattle and sheep in to graze the ground in dispute, land which had once been grazed but from which the animals had been turned out by those who enclosed and hedged it. Thus accounts of hedge-breaking are almost always accompanied by complaints that rioters turned sheep, cows or horses into the closes in question, animals which usually belonged both to the rioters and their neighbours and are sometimes explicitly acknowledged to be those making up the common herd.<sup>23</sup> Here the commoners' animals physically occupied the space on behalf of their owners, reasserting customary grazing rights by consuming the grass growing there.

Animal occupations such as these did not only occur in cases where hedge-breaking was also reported. Sometimes gates and gate posts were removed in order to allow animals into enclosed land, or the gates simply held open while the town herd was driven into a hedged close where they quickly ate, trampled or otherwise destroyed the crop growing there.<sup>24</sup> To the owners of these enclosed parcels, this was trespass: the animals had passed beyond a limit (the hedge) and damaged private property (the grass), as in Blackstone's later formulation. Such animal trespasses

were also a means of negotiating the boundaries between townships, especially where those boundaries ran through manorial wastes.<sup>25</sup> Custom and use were seen to delineate parochial geographies, and as in cases about enclosure and common rights, the physical occupation of land in dispute by one party's cattle or sheep was understood as a key determinant of ownership. Stray or out of place animals could be impounded under either common law or manorial by-laws, and the Star Chamber and other equity courts are full of cases referring to the impounding and subsequent rescuing of animals.<sup>26</sup> Such cases sometimes explicitly refer to the animals as having trespassed on the land in dispute and even occasionally refer to cattle and sheep as disorderly or riotous, echoing much of the language used to describe the people involved in anti-enclosure riots.

Occupations could, of course, be executed by people as well as animals. Plaintiffs bringing cases for hedge-breaking sometimes mention that the rioters occupied the fields for a week or more. At Finedon in Northamptonshire, a large group of men were said to have spent more than a week pulling up hedges and digging up their roots, attended throughout by the ringing of the local church bells.<sup>27</sup> At Oundle in August 1611, rioters were said to have occupied land for twelve days, building 'cabbens and fortes' and using large dogs to keep the plaintiffs out. As at Finedon, the rioters were accompanied by the ringing of church bells, the playing of bagpipes, much shouting and general merriment.<sup>28</sup> There is no explicit mention here of either hedge-breaking or common rights, but the large group involved and the early August date suggests that customary rights to graze the stubbles after the harvest may lie at the heart of this case. Four years earlier, a spate of anti-enclosure riots known collectively as the Midlands Rising had spread across parts of Northamptonshire, Leicestershire, Warwickshire and beyond. Rioters at Newton – ten miles to the east of Oundle and even closer to Finedon – had set up a camp in the recently enclosed fields, where they'd spent several days digging up the hedges before eventually being violently driven

off by the local Justices of the Peace and their retainers.<sup>29</sup> Details of the camp itself are sparse, but such incidents undoubtedly registered with enclosing landlords as bodily occupations of their property, a troublesome peopling of the landscape where they must have wished to see only grass and sheep.

Not that protest necessarily always took the form of protracted occupation of the land in dispute. Small groups or communities might demand or simply take resources which had once been common but to which access was now curtailed by hedges or other barriers. Thus, for example, a large group assembled on Pickering Moor in North Yorkshire to cut peat when their rights to this important fuel source, as well as to common grazing, were extinguished in the early sixteenth century.<sup>30</sup> At North Newbald in the East Riding of Yorkshire sixty people assembled on the village green in 1524 demanding underwood from recently enclosed land, while at Singleton Grange in Lancashire local men were said to have broken fences belonging to a local landowner in order to remove cartloads of marl from the land.<sup>31</sup> There were undoubtedly instances where communities quietly continued to remove wood or foodstuffs like nuts and berries from enclosed land, perhaps under cover of darkness, a situation which might or might not be tolerated by the landowner. Yet these community trespasses were something different: these were mass assemblies intended to attract attention and forcibly resist the privatization of land and other resources, though the invasion itself was only temporary.

Even fleeting occupations could leave their mark: the consumption of a grass crop, the breaking of hedges or the lopping of trees visibly signalled local opposition to the attempts to secure land or resources to the individual. In some parts of England, the conversion of arable land to pasture was resisted via mass invasions on the land, where rioters ploughed up the pasture – described in the subsequent court cases as having ‘subverted the ground’ – sometimes even

manuring it and planting it with seedcorn.<sup>32</sup> As a mode of direct action, these mass ploughings were highly effective: the plough teams returned the land to its pre-enclosure use, resisting the depopulating impacts of conversion to pasture and making it difficult and costly for the landowner to return the land to pasture. The newly ploughed field, moreover, acted as a highly visible symbol of local opposition to land use change. In reasserting customary rights and the rule of communal agriculture via a physical remaking of the space, those involved quite literally subverted the property claims of enclosing landowners.

As we have argued, modern concepts of property rights did not emerge fully formed in the early sixteenth century. Instead there was a gradual solidification of property rights and law across the early modern centuries. As a result, these kinds of disputes, occupations and trespasses went on throughout the sixteenth and seventeenth centuries and beyond.<sup>33</sup> The next section of the paper turns to a rather different occupation of the commons, that of the Diggers' occupation of Surrey commons in 1649.

### TAKING BACK THE COMMONS

By the late winter of 1649, Charles I had been executed and the world was – in a phrase drawn from a ballad of the time and later popularized by Christopher Hill – ‘turned upside down’.<sup>34</sup> In this heady climate, a small group of men and women occupied common land in a remote corner of Walton-on-Thames near Weybridge in Surrey. Here the Diggers – as they came to be known – planned to found a new community where they would grow their own crops and practice a communal form of living which valued the land as a ‘common Treasury for all’.<sup>35</sup> There had been five men involved in the first day of the digging on St George’s Hill, but by the end of the first week twenty or thirty people had gathered together to burn the heath, dig the ground and plant it

with carrots, peas and beans, and there were plans afoot to plough the land for barley.<sup>36</sup> The land was probably unstinted – that is, commoners were unrestricted as to the animals they could graze – and the grazing freely utilized by the tenants and householders of Walton and the surrounding parishes.<sup>37</sup> It was also Crown land and, they argued, the king being dead the land was ‘returned againe to the Common people of England’.<sup>38</sup> This then was an agrarian squatter settlement, a mass occupation of under-utilized common land and though the group were small in number, their published writings invited others to join them and further expand the community.

The Diggers’ manifesto and the other published writings of Gerrard Winstanley – one of the original group on the common and author of numerous radical tracts put out before, during and after the occupation at St George’s Hill – offer a way into exploring the colony as the concrete manifestation of the Diggers’ communitarian vision. For Winstanley and the Diggers, the Walton colony was the first step in taking back the commons and thus restoring land, resources and freedoms which had been lost at the Norman Conquest. As Winstanley put it in the Diggers’ first manifesto – *The True Levellers’ Standard Advanced*, published at the end of April 1649 – the land had been stolen from the people and ‘hedged into In-closures’ by the rich while the poor lived in ‘miserable povertie’. England would never be free ‘till the poor that have no Land, have a free allowance to dig and labour the Commons, and so live as comfortably as the Landlords that live in their Inclosures’.<sup>39</sup> What Winstanley and the Diggers offered was a very particular history of property and the commons, one which drew heavily on the idea of the Norman yoke and on the theft of the people’s inheritance by the rich. It was also heavily influenced by Winstanley’s religious radicalism: the idea for the Diggers’ colony had come to him in a dream and, as John Gurney points out, the Diggers may have deliberately chosen a particularly barren stretch of land in Walton precisely because it offered them the opportunity to prove that they had divine blessing

for their venture.<sup>40</sup> What it wasn't – and in sharp contrast to the anti-enclosure riots and occupations discussed above – was an attempt to reclaim customary rights lost as a result of the enclosure of a specific parcel of land.<sup>41</sup>

Instead, the Diggers offered a much more radical critique of existing concepts of property and property rights as they were practiced in mid seventeenth-century England than had the participants in anti-enclosure riots a century earlier. While there was some confusion in the reports about the colony published in the London newsbooks, Winstanley and the Diggers insisted that no private property would be affected: their focus was to reclaim common and uncultivated land and thus 'make the barren Ground fruitfull', rather than pull down park palings or otherwise attack private property.<sup>42</sup> Yet even to imply, as Winstanley repeatedly did, that the wastes were not privately owned was a wilful misunderstanding of the legal basis of common land which went against centuries of established legal and customary practice, as commentators at the time recognised.<sup>43</sup> As one put it, the Diggers were 'crack brained people' who 'thought because they were called commons, they belonged to any body, not considering that they are commons only for the inhabitants'.<sup>44</sup> In Winstanley's formulation, the commons were the birthright of the people which had been stolen away from them, an argument which he framed in historical, religious and moral terms, and which in turn drew on a popular tradition which Alun Howkins argues was still evident well into the nineteenth century.<sup>45</sup> The Diggers did not need to pull down hedges or park palings. Just to assert that common land belonged not to manorial lords but to the people was a creative remaking of the commons which undermined established understandings of property in dangerous ways. To occupy and dig the land, and so make Winstanley's radical vision concrete; and then to encourage others to do the same, really was to turn upside down the established social order.

While the precise mechanics of change remain unclear in Winstanley's writing, the Surrey colony was undoubtedly envisaged as the first of many, the beginning of a wider movement to reclaim the commons of England for the benefit of the poor and needy.<sup>46</sup> In *A Declaration from the Poor Oppressed People of England* (published in late May 1649), Winstanley outlined plans to cut down and sell the wood growing on common land – which like the land itself, he saw as the people's inheritance – and use the profits to support the population of a larger network of communes until each community became self-sufficient.<sup>47</sup> Squatter settlements were established at Wellingborough in Northamptonshire and Iver in Buckinghamshire in spring 1650 – both of which published manifestos that showed the influence of Winstanley and melded religious radicalism with more local concerns over land and resources – as well as in Kent, Gloucestershire, Nottinghamshire and elsewhere.<sup>48</sup> With the exception of Wellingborough and Iver, we know very little about these other settlements but none lasted more than a few months before being crushed by the combined might of local landowners and the republican Council of State.

Yet the idea of occupying common land and founding a community was far from unique to the Diggers, as our third case study will argue. Other communities were successfully founded by squatters, sometimes with the support of the local landowner who saw the benefit of increased rents from former wasteland even if there was also opposition from other tenants and neighbouring manorial lords.<sup>49</sup> The analogies with squatter settlements were not entirely lost on contemporary commentators. Royalist pamphleteer Marchamont Nedham, for example, largely ignored the ideological underpinnings of the Diggers' project in order to dismiss them as 'poor people making bold with a little wast-ground in Surrey, to sow a few Turnips and sustain their Families'.<sup>50</sup> As Gurney has demonstrated, as many as a third of the Diggers were local men and many of the most active individuals came from Cobham and the surrounding parishes.<sup>51</sup> The Walton colony was on



some level a response to local issues including poverty and ongoing disputes over access to resources – conditions which may help to explain the fact that locals were willing to join the commune – even if it was the unique political circumstances of the 1640s and the religious and political convictions of Winstanley that made it happen.<sup>52</sup> Thanks to his published writings we know far more about Winstanley's vision than we do about either the other Diggers' colonies or unrelated squatter settlements, yet it was this very public and dangerously radical politics which meant the Diggers' colony was never going to be tolerated.

The Diggers suffered repeated assaults throughout their time at Walton, being violently driven from the hill on several occasions, their houses pulled down and their crops trampled. In early June 1649, two local freeholders led a procession of men dressed in women's clothing to the hill where they attacked the Diggers with staves and clubs.<sup>53</sup> While the authorities feared the radicalism of Winstanley's ideas, local antagonism may have sprung from a feeling that the Diggers' colony encroached on the Walton tenants' and freeholders' common rights in the waste.<sup>54</sup> In *A Watch-word to the City of London* (published August 1649) Winstanley complained that the common herd had been turned into a close near his home destroying the corn growing there.<sup>55</sup> This sounds like much the same kind of *quid pro quo* animal trespass seen a century earlier in disputes over common rights and enclosure, and is probably best interpreted as form of direct action against Winstanley. Suits for trespass were brought against the Diggers in June 1649, and when damages were awarded against them one of the Diggers was briefly imprisoned and several cows distrained from Winstanley's home. In circumstances directly paralleling several of the Star Chamber cases discussed above, the cattle were quickly rescued by Winstanley's supporters though he later claimed the animals had been badly beaten while in the bailiff's care.<sup>56</sup> This was a well-rehearsed

discourse: litigants who complained about their cattle being wrongfully distrained typically alleged that the animals had been ill treated by the other party.<sup>57</sup>

Such was the scale of the opposition to the Walton colony that the Diggers had moved to a new site in nearby Cobham by late August 1649. Here they had a different reception. Opposition to them was led by a handful of local gentry rather than freeholders, the latter perhaps being more tolerant of the colony in part because many of its occupants were Cobham men.<sup>58</sup> Yet even here the Diggers did not go unmolested and the second colony survived only eight months until April 1650 when a combination of legal action and violent evictions brought it to an end. Several of the Diggers were indicted at the Southwark assizes for riot, illegal assembly, trespass, digging up the commons and illegally erecting cottages – the latter a standard charge brought against those who illegally enclosed the commons as private property – and, three weeks later, the remaining houses were burnt down and the Diggers evicted.<sup>59</sup> Men were hired to stop the Diggers returning and the commoners' cattle were turned onto the corn sown by the Diggers.<sup>60</sup> Thus the colony – itself an occupation – was brought to an end by a reoccupation of the commons and a reassertion of common use rights, even if it was private property interests which ultimately lay behind the Diggers' eviction. Here there is something of an irony. Measures more usually utilized to defend common rights in the face of enclosure and the extension of private property – including animal trespasses and legal actions against those who illegally erected cottages on common land – were used to evict the Diggers, a collective who claimed the commons not as private property but as communal treasury for all. From this complex constellation of ideas about what the commons were and whom they were for, we see the re-assertion of the status quo. The commons were for legally defined commoners – those with long established customary rights, usually attached to a particular dwelling in the village – not for the poor or the people more generally. Thus the Diggers'

experiment failed, even if their principles and practices have continued to resonate with some groups and individuals throughout the subsequent centuries.

### SQUATTING AND ENCLOSURE FROM THE BOTTOM UP

The afterlife of the Diggers awaits its historian. Indeed, it is far from certain that all of the ‘occupations’ that occurred in the immediate aftermath of the St. George’s Hill commune were directly inspired by either Winstanley’s political vision or the Diggers’ actions. Rather, as Howkins has noted, notwithstanding that all such occupations followed a common pattern of the landless moving on to the common, erecting ‘rough’ cottages and planting the land, many sites ‘may have grown out of more local conditions’.<sup>61</sup> As the previous section notes, the Diggers’ protests represented a continuity of demotic action, albeit opportunistically seizing the initiative in the chaos of the 1640s, that itself was rooted in a deeply held set of popular beliefs that the land had been ‘taken away by the Norman masters’. While this particular take on the familiar discourse of the Norman yoke persisted well into the nineteenth century through the radical jingoisms of William Cobbett, the most obvious continuity beyond the Restoration rested not in Diggers-style settlements or in the throwing down of enclosures, but in the practices of squatting.<sup>62</sup> The piecemeal throwing up of rough, single dwellings on the commons, Crown lands and wastes, often with gardens and even small paddocks and plots of cultivated land, represented *de facto* plebeian enacted enclosures.<sup>63</sup> Or, as Peter Linebaugh’s calls them, ‘enclosures from the bottom up’.<sup>64</sup>

To take just one historical-geographical example, the sheer geographical scale of the New Forest and the fragmented material governance of the Crown lands provided ample opportunity for small-scale enclosures and assarting, encroaching upon and clearing forest. According to the report of the commissioners appointed under the aegis of the New Forest Acts – passed in 1800 to

further powers to ‘protect’ the growth of timber in the forest – there were many hundreds of inhabited encroachments within the bounds of the forest.<sup>65</sup> Yet if there are obvious echoes here with the activities of the Diggers, there are also critical differences, not least in terms of scale and politics. While the Diggers and other earlier encampments were both practical and political statements in the making of community (read ‘commonwealth’), squatting when undertaken by the landless was almost without exception low level, opportunistic and individual. Yet from such unplanned and uncoordinated practices developed settlements, ad hoc assortments of cottages coalescing through time into bona fide settlements. For instance, in the New Forest, a squatters’ community developed at Beaulieu Rails to become the village of East Boldre, itself given full parish status in 1839. This happened in the face of repeated attempts in the late eighteenth and early nineteenth centuries to erase encroachments and level the dwellings. According to Rev. William Gilpin, rector of neighbouring Boldre but better known as an aesthete and one of the originators of the idea of the picturesque, Lord Warden of the Forest, the Duke of Bedford, had been thwarted in his attempts to level this ‘nest’ in the face of:

[S]uch sturdy, and determined opposition from the foresters of the hamlet, who amounted to more than 200 men, that he was obliged to desist ... no measures which he could have taken would have been effectual in repressing so inveterate an evil.<sup>66</sup>

As Gilpin’s comments make clear, squatting and assarting in the forest went neither unnoticed nor unopposed by the authorities. The battle – for that it often literally was – between the forest officers (or rather their lackeys) and the squatters was fought on an epic scale across constantly shifting sites. By the late eighteenth century, both the generic ancient forest law as well as dedicated New Forest parliamentary acts were dead letters in preventing and clearing

encroachments in the face of vested interests, corruption and inadequate tools of measurement and surveillance.<sup>67</sup> The failed New Forest Bill of 1792 proposed the strengthening of these powers by forcing the keepers to report all encroachments within twelve months of their being made, it hitherto not having been a statutory requirement of their office.<sup>68</sup> By late 1807, forest officers were even considering bringing actions of trespass – it being an area of English tort law, and thus a civil rather than criminal offence – against encroachers, though again inadequate mapping of encroached land proved a major problem in proceeding.<sup>69</sup>

As the existence of settlements like East Boldre, Minstead and Nomansland today attests, the squatters won the battle.<sup>70</sup> Ultimately, squatters' settlements had to be considered differently, as potential assets rather than as unlawful incursions. Emergent settlements like East Boldre provided a valuable flexible workforce for farms on and at the edge of the forest as well as in emergent forest industries, including the dockyard at Buckler's Hard in Beaulieu parish. Beyond labour market issues and the howls of protest from those with recognized common rights, small incursions upon commons and wastes were of little material consequence to manorial lords. As Gilpin saw it, such encroachments represented a mere 'petty trespass on a waste'.<sup>71</sup> Instead, a common strategy was to make official the encroachment by entering the property on the manorial roll and charging quit rents, thus turning an unlawful incursion into a source of income.<sup>72</sup> This 'continuous process of legitimisation over time' also means, as Colin Ward has suggested, that it is impossible to delineate the number of squats or their geographical distribution.<sup>73</sup>

We also know that beyond profiting from encroachment the practice, in some contexts, was actively encouraged by landowners. This had, moreover, long been the case. From at least as early as 1189 – but gaining pace in the reigns of Henry III and Edward I – the Crown profited from the effective selling of forest land through assarts, a policy also used to encourage settlement in periods

of low, or negative, population growth from the reign of Henry VIII onwards.<sup>74</sup> So much was true in the New Forest, and is systematically documented during the reign of Henry III.<sup>75</sup> While later material does not mirror this systematic approach to recording, the archive occasionally does detail approval for clearing forest land. Thus, for instance, Sir John Barbe was granted ‘leave to cleanse some ground from shrubbs and bushes near his tenement’ in 1694: in other words, to encroach and assart the forest.<sup>76</sup> Moreover, in both Ashdown and in the New Forest many encroachments were made not just by the poor seeking a practical solution to their poverty, but by those who held land at the edge of commons and wastes, and even by major landowners seeking to increase the value of their rentals. In 1807, by way of example, it was represented that while once the encroachments on the New Forest were made by the ‘poorest people ... Now the larger encroachments are made are made by men of substance who are prevailing themselves of 6-8 acres’ at a time.<sup>77</sup>

This is a reminder both of the scale of the problem faced by the authorities in the New Forest and the diverse socio-economic backgrounds of those who assarted land. Indeed we must be careful not to claim that squatters were heroic proto class warriors. They were not. While both were component parts in the economy of makeshifts of the poor, squatting and common rights acted in contradiction.<sup>78</sup> As Brian Short’s analysis of ‘lifespaces’ in the nineteenth-century Ashdown Forest in Sussex attests, those who held legitimate, registered common rights muscularly sought to defend their rights – and hence their livelihoods – against the actions of squatters, just as the commoners and freeholders of Walton and Cobham had also done.<sup>79</sup> Yet the Crown lands, like the commons and wastes which survived the ongoing parliamentary enclosure movement, continued, in Sara Birtles’s phrase, to be ‘magnets for the poor and dispossessed’. This was in part a function of their spatiality: wastes and common pastures tending to ‘exist at the fringes of settlements where limited squatting was less obtrusive’. It was also a function of the ‘diverse

natural products' found upon them that allowed squatters to eke out a 'basic subsistence'.<sup>80</sup> Depending on regulatory and surveillance systems, there was, therefore, a chance for the poor to settle, to occupy common land. Wherever remnant commons and wastes survived the parliamentary enclosures of the eighteenth century, opportunities to occupy the land were a vital way in which hitherto landless families got by.<sup>81</sup> In totality, such occupations represented a conscious attempt to take the land back for and by the people.

They also occurred on a scale far in excess of any sustained occupation in the modern period, and ultimately were far more successful than more coordinated attempts at settlement. Indeed, as noted, only occasionally does the archive detail more systematic plebeian attempts to create settlements *en masse* on the commons. Moreover – as was undoubtedly the case for the Diggers a hundred and fifty years earlier – such attempts were far more likely to be thrown down, representing both a more blatant challenge to the rights of enrolled commoners and to considerations of property as well as a bigger target than many smaller encroachments. For instance, in the context of the insurrectionary spirit in south Somerset in the early 1830s where local radical politicking combined with revolutionary sentiment, frequent reform and election rioting, and a huge upturn in trade unionism, there were at least two recorded attempts to systematically settle commons that attracted the attention of the local and national authorities.<sup>82</sup> At Stoke under Hamdon near Yeovil in March 1832, 'many of the lower classes' had 'taken possession of and enclosed within these last three Days a very large portion of the valuable waste'. This being Crown land, the right attaching to the Duke of Cornwall but 'leant by his officers by Copy of Court Roll to divers tenants of that manor', the case was swiftly reported to the Home Office. On another manor 'a few miles off' a similar settlement had been recently effected and though it was feared that 'serious disturbances' would occur 'when the Parties are sought to be

quitted from their wrongful occupancies' they were removed.<sup>83</sup> Of course, parliamentary enclosure massively reduced the scope for occupations from the bottom up at the same time as placing added pressure on those areas of common and waste that remained. Indeed, it is arguably no coincidence that a spike in the number of encroachments committed in the New Forest in the 1740s and 1750s occurred at the same time as an early wave of enclosure in the neighbouring counties.<sup>84</sup>

Notwithstanding that similar political sentiments underwrote later radical land settlement schemes – notably the short-lived Owenite Harmony Hall plan in rural Hampshire in 1840 and the Chartist Land Plan of 1845 to 1851 – such formal, coordinated occupations of the land represented a decidedly different take on the communitarianism of the Diggers.<sup>85</sup> Indeed, beyond persistent small-scale encroachments on wastes, commons and Crown lands, and the short-lived coordinated occupations in places like Stoke under Hamden, it is in other forms of temporary and occasional uses of commons and wastes that the earlier spirit of resistance lived on. Many radical political meetings from the 1790s through to the final demise of Chartism took place on commons and wastes. In part this was pragmatic and opportunistic, commons and moorland wastes offering space for large gatherings that were often beyond the direct surveillance of urban authorities. Thus a Manchester Chartist meeting in September 1838 on Kersal Moor reportedly attracted some three hundred thousand working people.<sup>86</sup> But it was also a political statement, gathering and occupying that land which was of the people. Or, in the words of a Kent Swing activist describing a gathering on the common at Rhodes Minnis in 1830, 'it was the Common that of every body'.<sup>87</sup> The act of working people gathering together on commonable land was therefore a deliberate act of occupying that which was theirs, something not yet taken away and enclosed by the systems of private property in land and the associated regimes of agrarian and industrial capitalism. As the social historian Roger Wells has stated, this discourse of making claims to, symbolically using and



defending access to land for food, fuel and recreation was a constant theme of rural protest in the first half of the nineteenth century.<sup>88</sup>

## CONCLUSIONS

Staking claims to land is necessarily an ancient practice for, by definition, in one person asserting title it acts to exclude others. Even before the wholesale shift of title under the Norman Conquest, we know that in Anglo-Saxon England grants of land were accompanied by pronouncing anathema to those acting against the gift, asserting both the importance of protecting title and the threat of opposition.<sup>89</sup> If we do not know how, or indeed explicitly if, such oppositions were manifested, we do know that common rights were recognised by the early Normans. They were documented in the Domesday Book of 1086 as being practiced by free tenants (*common appendant*) as well as given formal protection in afforested areas in the form of forest law.<sup>90</sup> Thus staking claims to land through practice, making claims through occupation, was deeply rooted: culturally, economically and legally. The moments of claim-making detailed in this paper are, therefore, just that, moments in a far longer historical geography of the concretization of the modern, spatially exclusive concept of property in land. But they represent pivotal moments in this becoming that both underline the continuity of certain claims and practices – not least that of occupation – as well as demonstrating that this was not a neat, linear process, but rather subject to complex contestations and contradictions.

What the examples detailed in this paper attest is that against attempts to make land exclusive – or, to put it another way, to make it more private by restricting and/or eliminating use rights held in common – the practice of occupation did not so much emerge as assume a different

meaning. If the exercise of common rights – often stinted, regulated, controlled and resented – had once represented an act of resistance against controlling impulses, the acts of occupation detailed in this paper represent a reworking, a reinstatement of that which was now lost or threatened, a remaking as ‘common’ through a dissolution of the boundaries between absolute private property and non-property.<sup>91</sup> In several forms, from mass trespasses on recently enclosed land to the setting up of new communities on the commons, from squatting through to buying land for the working poor, to occupy was to take back, to (re)assert that which was theirs but had been taken away, whether that ‘theft’ was recent and material or ancient but deeply felt. If all such practices, whatever their practical differences, were united by offering a critique of the idea of exclusive property in land they were also united in being drawn in the languages of custom and use, specifically the idea that one could make claims to land via use rights rather than an assertion of exclusive ownership. Yet they were also all mimetic of the spatial logic of private property, borrowing the idea of physically occupying land in order to destabilize claims to exclusive and individualized private ownership. This was not a rejection of law or capitalism, but rather an adjustment, a creative remaking of the commons which, for brief moments at least, had the potential to challenge the emerging logic of absolute property in land. Conceived in this way, historical geographies of land-based occupation can be understood, after David Harvey, as a response to a long history of accumulation by dispossession, demotic reactions to earlier waves of privatization and commodification in land.<sup>92</sup> Conversely, as the foregoing analyses attest, occupation could also be a way of making property, encroachments on commons and wastes a literal grabbing of land by the poor and rich alike.

Acts such as trespass, hedge-breaking and wood-taking might seem, at such temporal distance, to be partial, circumscribed acts of resisting absolutes, but through repetition and

collective action they represented a genuine testing and negotiating of the limit of property. It was through such acts that cracks in property's grid, to paraphrase Nicholas Blomley, emerged.<sup>93</sup> An understanding of trespass is telling here. The act of trespass against land, that most obvious act of refusing to sanction new bounded property forms, was, as noted, a civil offence, and thus subject to complex and expensive civil action. Against this, magistrates often either used their discretion in such cases, or fined the defendant on another point of criminal law which, when dealt with summarily, required little explicit proof, such as the taking of wood.<sup>94</sup> The 'solution' for landowners came in the form of the 1820 Malicious Trespass Act.<sup>95</sup> The Act, revised in 1827, allowed for the summary conviction of property 'offenders' simply by asserting that defendants were out of place. This was not only a radical reworking of the idea of trespass, it now being both a civil and a criminal offence, but also represented a controversial transformation of the prosecution of offences against property.<sup>96</sup> If the Diggers had fundamentally challenged the very idea of absolute property in the mid seventeenth century, by the early decades of the nineteenth century the concept and practice of private property in land had increasingly solidified, given legal and material form via the ongoing enclosure movement and by such judicial responses to ongoing acts of resistance as these.<sup>97</sup> To put it bluntly, the landowners had by then won the battle for England's countryside.

Yet in many ways this is to paint too simplistic a picture, for resistances were not always a clear-cut case of the dispossessed (or disadvantaged) acting against capitalist accumulators. In relation to squatting we see that other individuals – rich and poor alike – occasionally acted in defence of their common rights. Similarly, it would be wrong to suggest that all poor rural dwellers supported and stood to benefit from oppositions to Diggers-style occupations. Besides, as the foregoing analysis has shown, many of the moments of opposition were rooted not only in mimesis

but also often in an explicitly ironic and distinctly Bakhtinian carnivalesque, the turning upside down of the order of the world for a moment.<sup>98</sup>

The moments of opposition considered here, and the story of the way in which the strategy of occupation as we understand it today emerged in antagonism to forms of accumulation by dispossession, have profound consequences for how we understand the use and languages of occupation in the twenty-first century. If the strategy of occupation had never really gone away – something usefully attested by the existence of the Hyde Park Diggers and Digger Action Movement of the 1960s and 1970s – its potency has been drawn to attention by both the global Occupy movement and in the practices and languages of such movements as the Landless People’s Movement in South Africa, the Landless Workers’ Movement in Brazil and the Bhumi Uchhed Pratirodh Committee in India.<sup>99</sup> These interrelated movements and moments may transcend the scale of most of the networks of opposition detailed here, but the contexts are strikingly familiar, and therefore the practices, claims and successes of the past can meaningfully form a toolbox of opposition for today. We know that past protests, not least in the critical context of rural England – that hotbed of the making of the tools of colonial governance and the context of so much inspiring work that has subsequently conceptually underpinned work in development studies and social movement studies – are frequently drawn upon to inspire and legitimise the present, the example of the Diggers 2012 occupation/eco-camp at Runnymede writing this influence large.<sup>100</sup> If the commons as they were practiced in medieval and early modern England were not always the challenge to property we sometimes imagine them to be, we still hope that in offering this carefully nuanced history of enclosure and common rights, and in detailing the complex and contingent interplay between property and protest, we can open up spaces for new solidarities in the

contemporary world. That the commons never did belong to the people, does not mean they should not.

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<sup>1</sup> J. Pickerill and J. Krinsky, Why does Occupy matter? *Social Movement Studies* 11 (2012) 279–287.

<sup>2</sup> On the prevalence of this discourse and its mobilization in Occupy see: <http://occupywallstreet.net/story/think-commoner>, accessed 24 March 2015.

<sup>3</sup> J. Powell, *The Public Lands of Australia Felix: Settlement and Land Appraisal in Victoria 1834–1891*, Melbourne, 1970, 32; R. Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, Berkeley, 2000, 59–60 (originally published in 1990).

<sup>4</sup> S. Gunn, *The Public Culture of the Victorian Middle Class: Ritual and Authority in the English Industrial City, 1840–1914*, Manchester, 2007. On the ‘right to the city’ discourse see D. Mitchell, The end of public space? People's park, definitions of the public, and democracy, *Annals of the Association of American Geographers* 85 (1995) 108–133; D. Mitchell, *The Right to the City: Social Justice and the Fight for Public Space*, New York, 2003.

<sup>5</sup> On common rights and their uses, see R. Allen, *Enclosure and the Yeoman: The Agricultural Development of the South Midlands, 1450–1850*, Oxford, 1992; J. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700–1820*, Cambridge, 1993.

<sup>6</sup> For two useful overviews of the ways in which the idea of the commons has been repurposed in recent work in the wider humanities and social sciences, see A. Jeffrey, C. McFarlane and A. Vasudevan, Rethinking enclosure: space, subjectivity and the commons, *Antipode* 44 (2012) 1247–1267 and B. Maddison, Radical commons discourse and the challenges of colonialism, *Radical History Review* 108 (2010) 29–48.

<sup>7</sup> B. McDonagh and S. Daniels, Enclosure stories: narratives from Northamptonshire, *Cultural Geographies* 19 (2012) 107–121.

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<sup>8</sup> See, for example, C. Dyer, Conflict in the landscape: the enclosure movement in England, 1220–1349, *Landscape History* 29 (2007) 21–33.

<sup>9</sup> A. Howkins, From Diggers to Dongas: the land in English radicalism, 1649–2000, *History Workshop Journal* 54 (2002) 1–23; A. Howkins, The use and abuse of the English commons, 1845–1914, *History Workshop Journal* 78 (2014) 107–132.

<sup>10</sup> For notable examples see N. Blomley, Enclosure, common right and the property of the poor, *Social and Legal Studies* 17 (2008) 311–331; Jeffrey, McFarlane and Vasudevan, Rethinking enclosure; A. Vasudevan, C. McFarlane and A. Jeffrey, Spaces of enclosure, *Geoforum* 39 (2008) 1641–1646.

<sup>11</sup> D.J. Seipp, The concept of property in the early common law, *Law and History Review* 12 (1994) 29–91; M. Sampson, ‘Property’ in seventeenth-century English political thought, in G.J. Schochet, P.E. Tatspaugh and C. Brobeck (Eds), *Religion, Resistance and Civil War: Papers Presented at the Folger Institute Seminar*, Washington D.C., 1990, 259–275; G.E. Aylmer, The meaning and definition of ‘property’ in seventeenth-century England, *Past and Present* 86 (1980) 87–97; J. Brewer and S. Staves (Eds), *Early Modern Conceptions of Property*, London, 1996.

<sup>12</sup> P. Schofield, Trespass litigation in the manor court in the late thirteenth and early fourteenth centuries, in: R. Goddard, J. Langdon and M. Müller (Eds), *Survival and Discord in Medieval Society: Essays in Honour of Christopher Dyer*, Turnhout, 2010, 145–160.

<sup>13</sup> Trespass, in: OED.com; William Blackstone, *Commentaries on the Laws of England*, Book 3, Chapter 12, available at <http://www.lonang.com/exlibris/blackstone/bla-312.htm>, accessed 11 March 2015.

<sup>14</sup> Occupy, in: OED.com.

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<sup>15</sup> R. Stewart-Brown (Ed.), *Lancashire and Cheshire Cases in the Court of Star Chamber*, Lancashire and Cheshire Record Society 71, 1916 [hereafter *LCSTAC*], 73; The National Archives [hereafter TNA], Court of Star Chamber [hereafter STAC] 2/9/226.

<sup>16</sup> TNA, STAC 2/13/278-86; *LCSTAC*, 92.

<sup>17</sup> TNA, STAC 2/16/50-53. See also TNA, STAC 2/13/83-84 where the local landowner at Stoke Gifford (Somerset) argued that the tenants had more common in the moor than they could occupy – in other words, make use of – and he was therefore justified in his enclosure of parts of the moor.

<sup>18</sup> B. McDonagh, Making and breaking property: negotiating enclosure and common rights in sixteenth-century England, *History Workshop Journal* 76 (2013) 32–56; E.P. Thompson, *Customs in Common*, London, 1991, 97.

<sup>19</sup> Occupation, in: OED.com.

<sup>20</sup> Litigation proceeded on a variety of grounds from loss of common rights to disputes over rights of way and allegations of riots and other misdemeanours.

<sup>21</sup> McDonagh, Making and breaking property, 37-9.

<sup>22</sup> N. Blomley, Making private property: enclosure, common right and the work of hedges, *Rural History* 18 (2007) 1–21.

<sup>23</sup> For example, TNA, STAC 2/5/72-6, 2/17/221, 2/19/97, 160 and 134, 2/23/34, 2/24/262, 2/26/139, 2/28/111; *LCSTAC*, 83 and 103; W. Brown, H.B. McCall and J. Lister (Eds), *Yorkshire Star Chamber Proceedings*, Yorkshire Archaeological Society Record Series [hereafter *YSTAC*] 41, 45, 51, 70 (1909–1927) IV, 103105. For early seventeenth-century cases, see TNA, STAC 8/61/33, 8/145/7, 8/148/7, 8/159/16, 8/198/21.

<sup>24</sup> TNA, STAC 2/13/278-86; W.K. Boyd (Ed.), *Staffordshire Suits in the Court of Star Chamber*, Volume II, William Salt Archaeological Society 37, 1910, 72–73.



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<sup>25</sup> *YSTAC* I, 78; *LCSTAC*, 43–46 and 99–100; TNA, STAC 2/23/298 and 2/23/234; G. Bradford (Ed.), *Somerset Proceedings in the Court of Star Chamber*, Somerset Record Society 27, 1911, 146–151.

<sup>26</sup> For example: TNA, STAC 2/17/221, 2/19/160, 2/20/364, 2/20/357, 2/23/34, 2/26/139, 2/26/250, 3/3/58, C1/839/21 and C1/845/35–36; *LCSTAC*, 92–94, 114 and 120–136.

<sup>27</sup> TNA, STAC 2/17/396, 2/26/250, 2/26/359, 2/28/133, 2/30/138 and 2/32/70.

<sup>28</sup> TNA, STAC 8/121/20.

<sup>29</sup> S. Hindle, Imagining insurrection in seventeenth-century England: representations of the Midland Rising of 1607, *History Workshop Journal* 66 (2008) 21–61; J.E. Martin, *Feudalism to Capitalism: Peasant and Landlord in English Agrarian Development*, Basingstoke, 1983.

<sup>30</sup> *YSTAC* II, 180.

<sup>31</sup> TNA, STAC 2/16/94–5; *LCSTAC*, 94–95.

<sup>32</sup> TNA, STAC 2/19/244, 2/20/155, 2/26/139, 2/28/96, 2/27/70, 2/27/50, STAC 3/5/4, 3/8/44 and STAC 4/7/11; Yorkshire Archaeological Society Archives, H49.

<sup>33</sup> For eighteenth-century examples, see *Northampton Mercury*, 10 May 1784 and 4 March 1786; Neeson, *Commoners*, 194 and 278.

<sup>34</sup> C. Hill, *The World Turned Upside Down*, Harmondsworth, 1975.

<sup>35</sup> *The True Levellers Standard Advanced*, in: T. Corns, A. Hughes and D. Loewenstein (Eds), *The Complete Works of Gerrard Winstanley*, Oxford, 2009, Volume II, 6.

<sup>36</sup> C.H. Firth (Ed.), *The Clarke Papers*, Camden Society, 1894, 209–212. For an overview of the Diggers' actions at Walton and Cobham, see J. Gurney, *Brave Community: The Digger Movement in the English Revolution*, Manchester, 2007.

<sup>37</sup> Gurney, *Brave Community*, 138.

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<sup>38</sup> *The Speeches of the Lord Generall Fairfax and the Other Officers of the Armie, to the Diggers at St George's Hill in Surrey*, London, 1649.

<sup>39</sup> *The True Levellers Standard Advanced*, 5 and 13.

<sup>40</sup> Gurney, *Brave Community*, 137.

<sup>41</sup> Though see D. Taylor, Gerrard Winstanley at Cobham, in: A. Bradstock (Ed.), *Winstanley and the Diggers, 1649–1999*, London, 2000, 37–42 on a recently identified document which establishes that Winstanley and five others were fined in the local manorial courts in 1646 for digging peat on the commons of Cobham without licence. In *A Declaration from the Poor Oppressed People of England*, in: Corns, Hughes and Loewenstein (Eds), *Complete Works*, 31–42, Winstanley complained specifically of rich freeholders who overstocked the commons and refused to let the poor cut wood and turves, perhaps a reference to his own experience at Cobham.

<sup>42</sup> *A Perfect Diurnal of Some Passages in Parliament*, London, 1643, 2448, cited in Gurney, *Brave Community*, 125.

<sup>43</sup> See, for example, *A Declaration from the Poor oppressed People of England*, 36; *A Watchword to the City of London and the Armie*, in: Corns, Hughes and Loewenstein (Eds), *Complete Works*, 83 and passim, where Winstanley offered to debate with the local manorial lord about whether ‘the commons *ought* to be free to all’ (emphasis added).

<sup>44</sup> *A Perfect Summary of an Exact Dyarie*, cited in Gurney, *Brave Community*, 123.

<sup>45</sup> Howkins, From Diggers to Dongas. For a contemporary example of squatters using this kind of argument, see <https://diggers2012.wordpress.com/>, accessed 11 March 2015

<sup>46</sup> *The True Levellers Standard*, 14. By the time *An Appeal to the House of Commons* was published in July 1649, Winstanley was arguing for the co-existence of two property systems, see Gurney, *Brave Community*, 158.

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<sup>47</sup> Gurney, *Brave Community*, 141–142.

<sup>48</sup> Gurney, *Brave Community*, 185.

<sup>49</sup> See for example, TNA, STAC 2/13/278-286, 2/17/248, 2/19/187, 2/20/71, 2/21/126 and 2/21/256.

<sup>50</sup> Cited in Gurney, *Brave Community*, 123.

<sup>51</sup> Gurney, *Brave Community*, 131.

<sup>52</sup> On local involvement in the commune, see Gurney, *Brave Community*, 128–134.

<sup>53</sup> *A New-years Gift for the Parliament and Armie*, in: Corns, Hughes and Loewenstein (Eds), *Complete Works*, 147.

<sup>54</sup> Gurney, *Brave Community*, 156.

<sup>55</sup> *A Watchword*, 97.

<sup>56</sup> *A Watchword*, 90–96.

<sup>57</sup> See B. McDonagh, *Making and breaking property*, 41.

<sup>58</sup> Gurney, *Brave Community*, 128–134, 165–170.

<sup>59</sup> TNA, Records of Justices of Assize, Gaol Delivery, Oyer and Terminer, and Nisi Prius 35/91/10 and 35/91/4.

<sup>60</sup> Gurney, *Brave Community*, 194.

<sup>61</sup> Howkins, *Diggers to Dongas*, 5

<sup>62</sup> L. Nattrass, *William Cobbett: The Politics of Style*, Cambridge, 1995, especially chapter 8; I. Dyck, *William Cobbett and Rural Popular Culture*, Cambridge, 1992, chapter 2.

<sup>63</sup> In the New Forest these rudimentary dwellings were typically of cob construction, and were so many that this became accepted as the vernacular style of the area, see J.F. James, *Vernacular*

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architecture in the New Forest. Domestic buildings in cob: a note on the social background, *Hampshire Field Club and Archaeological Society* 15 (1977) 20–26.

<sup>64</sup> P. Linebaugh, Enclosures from the bottom up, *Radical History Review* 108 (2010) 11–27.

<sup>65</sup> New Forest Act, 1800: 39 & 40, Geo. III c.86, An Act for the Better Preservation of the Timber in the New Forest and for ascertaining the Boundaries...’. The 1801 New Forest Act (41 Geo. III c.108) consolidated and extended the powers of the 1800 Act in relation to the creation of new Crown sylvicultural enclosures. See C. Griffin, More-than-human histories and the failure of grand state schemes: sylviculture in the New Forest, England, *Cultural Geographies* 17 (2010) 451–472. On the findings of the report, see Abstract of proceedings of commissioners appointed under the New Forest Acts, 39 & 40 Geo. III [c.86] and 41 Geo. III [c.108], and Schedule of lands in the New Forest, distinguishing those deemed encroachments from those discharged, abstracted from the proceedings of the commissioners appointed in 1801 [under 39 & 40 Geo. III c.86], TNA, LRRO 5/25 and 50. According to a report given to a meeting held in 1792, there were then 901 encroachments. While the accuracy of this account cannot be verified, the source is likely to be the Commissioners of Woods’ so-called ‘5<sup>th</sup> Report’ of 1789, *5th Report of H.M. Commissioners of Woods, Forests, and Land Revenues*, British Parliamentary Papers, XLIV, 1789; see also, Meeting held 7 January 1792 & other papers respecting the number of cattle & other matters, Hampshire County Record Office [hereafter HCRO], 2M30/669.

<sup>66</sup> W. Gilpin, *Forest Scenery*, Third edition, London, 1808, 46. On the persistent ‘problem’ of squatting in the established parishes of Beaulieu and Boldre, see J. James, *East Boldre: A New Forest Squatters Settlement, 1700–1900*, Southampton, 1994.

<sup>67</sup> On the decay of the material governance of the forest from the middle of the eighteenth century, see P. Roberts (Ed.), *Ruin and Reform: New Forest Administration, 1739–1769*, Lyndhurst, 2007.

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As R. Reeves (Ed.), *Use and Abuse of a Forest Resource: New Forest Documents 1632-1700*, Lyndhurst, 2006, notes though, the problem of effective local governance and control had far deeper roots.

<sup>68</sup> On the bill and opposition to its measures, see Draft petition to the House of Lords from Rev. Sir C. Mill and other owners of lands and tenements adjoining to the New Forest, c.1792, HCRO, 2M30/669, Also see *Hampshire Chronicle*, 23 January 1792.

<sup>69</sup> Further case respecting the encroachments in the New Forest, HCRO, 2M30/670/B, undated, but late 1807/early 1808.

<sup>70</sup> Daniel Defoe had in the early years of the eighteenth century proposed a scheme for creating planned settlements on forest heaths such as the New Forest, see D. Defoe, *A Tour Through the Whole Island of Great Britain*, London, 1962, 200-206 (originally published 1724-26).

<sup>71</sup> Gilpin, *Forest Scenery*, 47.

<sup>72</sup> For instance, see G. Rogers, Custom and common right: waste land enclosure and social change in West Lancashire, *Agricultural History Review* 41 (1993) 142. G. Mingay and J. Chambers, *The Agricultural Revolution, 1750–1880*, London, 1966, also asserted that, on enclosure, many squatters' encroachments were even formalized and the squatters granted the land that they had occupied.

<sup>73</sup> C. Ward, *Cotters and Squatters: Housing's Hidden History*, Nottingham, 2002, 148.

<sup>74</sup> J. Langton, Forest fences: enclosures in a pre-enclosure landscape, *Landscape History* 35 (2014) 7; T. Bishop, Assarting and the growth of open fields, *Economic History Review* 6 (1935) 13–29.

<sup>75</sup> Roll of profits of assarts made in the New Forest from the time of the first coronation of Hen. III to Michaelmas 28 Hen. III., TNA, E 32/155.

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<sup>76</sup> Entry Book: 8 February 1694, in: W.A. Shaw (Ed.), *Calendar of Treasury Books*, Volume 10, 1693–1696, London, 1935, 475–487, <http://www.british-history.ac.uk/cal-treasury-books/vol10/pp475-487>, accessed 27 April 2015.

<sup>77</sup> B. Short, Conservation, class and custom: lifespace and conflict in a nineteenth-century forest environment, *Rural History* 10 (1999) 136; B. Short, Environmental politics, custom and personal testimony: memory and lifespace on the late Victorian Ashdown Forest, Sussex, *Journal of Historical Geography* 30 (2004), 470–495; Petition to the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled, undated, but 1792, and letter from Thomas Stone, Lyndhurst, to George Rose, 22 October 1792, and Case and further case concerning encroachments on the New Forest, with opinions of the Attorney and the Solicitor General and Serjeant Lens, 1807, HCRO 2M30/669 and 670. For the deep history of land politics in Ashdown, see L. Merricks, ‘Without violence and by controlling the poorer sort’: the enclosure of Ashdown Forest 1640–1693, *Sussex Archaeological Collections* 132 (1994) 115–128.

<sup>78</sup> S. Williams, Earnings, poor relief and the economy of makeshifts: Bedfordshire in the early years of the New Poor Law, *Rural History* 16 (2005) 21–22.

<sup>79</sup> B. Short (Ed.), *The Ashdown Forest Dispute, 1876–1882: Environmental Politics and Custom*, Lewes, 1997, 41–42.

<sup>80</sup> S. Birtles, Common land, poor relief and enclosure: the use of Manorial resources in fulfilling parish obligations, 1601–1834, *Past and Present* 165 (1999) 80; L. Shaw-Taylor, Labourers, cows, common rights and parliamentary enclosure: the evidence of contemporary comment c.1760–1810, *Past and Present* 171 (2001) 125.

<sup>81</sup> J. Chapman and S. Seeliger, *Enclosure, Environment and Landscape in Southern England*, Stroud, 2001; Howkins, *The use and abuse of the English commons*; C. Rodgers, E. Straughton,

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A. Winchester and M. Pieraccini, *Contested Common Land: Environmental Governance Past and Present*, London, 2011.

<sup>82</sup> C. Griffin, The culture of combination: solidarities and collective action before Tolpuddle, *Historical Journal* 58 (2015) 443–480.

<sup>83</sup> J. Philips, Monacute, to Lord Melborne, 22 March 1832, TNA, HO 52/19, 407–408.

<sup>84</sup> On which local chronologies, see Chapman and Seeliger, *Enclosure, Environment and Landscape*.

<sup>85</sup> On the Owenite and Chartist settlements, see M. Chase, *The People's Farm: English Radical Agrarianism, 1775–1840*, Oxford, 1988; M. Chase, Chartism and the land: 'the mighty people's question', in: M. Cragoe and P. Readman (Eds), *The Land Question in Britain, 1750–1950*, Basingstoke, 2010, 57–73; E. Royle, *Robert Owen and the Commencement of the Millennium: The Harmony Community at Queenwood Farm, Hampshire, 1839–1845*, Manchester, 1998.

<sup>86</sup> K. Navickas, *Loyalism and Radicalism in Lancashire, 1798–1815*, Oxford, 2009, 131–175; K. Navickas, Luddism, incendiarism and the defence of rural 'task-scapes' in 1812, *Northern History* 48 (2011) 64–67; K. Navickas, Moors, fields and popular protest in South Lancashire and the West Riding of Yorkshire, 1800–1848, *Northern History* 46 (2009) 93–111.

<sup>87</sup> Deposition of Ingram Swaine, 6 October 1830, Centre for Kentish Studies, Q/SBe 120/11.

<sup>88</sup> R. Wells, Historical trajectories: English social welfare systems, rural riots, popular politics, agrarian trade unions, and allotment provision, 1793–1896, *Southern History* 25 (2003) 85–245.

<sup>89</sup> A.J. Robertson (Eds), *Anglo-Saxon Charters*, Cambridge, 2009, no. xxii, 44, cited in H.R. Loyn, *Anglo-Saxon England and the Norman Conquest*, Abingdon, 2014, 177.

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<sup>90</sup> T.E. Scrutton, *Commons and Common Fields: Or the History and Policy of the Laws Relating to Commons and Enclosures in England*, Cambridge, 1887, 3; J. Manwood, *A Treatise and Discourse of the Lawes of the Forrest*, London, 1598.

<sup>91</sup> On the use and regulation of common rights, see B. Waddell, Governing England through the manor courts, 1550–1850, *Historical Journal* 55 (2012) 279–315; Neeson, *Commoners*, chapter 4. For regulation in forests, see J. Birrell, Common rights in the medieval forest: disputes and conflicts in the thirteenth century, *Past and Present* 117 (1987) 22–49; G. Jones, Swanimotes, woodmotes and courts of ‘free miners’, in: J. Langton and G. Jones (Eds), *Forests and Chases of England and Wales c.1500–c.1850: Towards a Survey and Analysis*, Oxford, 2005, 42–43.

<sup>92</sup> D. Harvey, The ‘new’ imperialism: accumulation by dispossession, *Socialist Register* 40 (2004) 63–87.

<sup>93</sup> N. Blomley, Law, property, and the geography of violence: the frontier, the survey, and the grid, *Annals of the Association of American Geographers* 93 (2003) 121–141.

<sup>94</sup> On magistrates’ summary discretion, see P. King, The summary courts and social relations in eighteenth-century England, *Past and Present* 183 (2004) 125–172.

<sup>95</sup> Malicious Trespass Act (1820), 1 Geo. IV c.56.

<sup>96</sup> P. King, *Crime and Law in England, 1750–1840: Remaking Justice from the Margins*, Cambridge, 2006, 35.

<sup>97</sup> We note too the importance of the game laws in the solidification of private property rights in the first half of the nineteenth century.

<sup>98</sup> M. Bakhtin, *Rabelais and his World*, Bloomington, 1984. On the carnival and opposition, see G. Seal, Tradition and agrarian protest in nineteenth-century England and Wales, *Folklore* 99 (1988) 146–169.



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<sup>99</sup> On the wider context of this see S. Borras and J. Franco, Global land grabbing and trajectories of agrarian change: a preliminary analysis, *Journal of Agrarian Change* 12 (2012) 34–59.

<sup>100</sup> Here we are thinking particularly of the defining work of such scholars as E.P. Thompson, Eric Hobsbawm and George Rudé. On the Runnymede Diggers, see <https://diggers2012.wordpress.com>, accessed 11 March 2015.