

Institution: Newcastle University
Unit of Assessment: 20 Law
Title of case study: Improving the governance of common land in England and Wales
<p>1. Summary of the impact</p> <p>Research at Newcastle has been used to improve the governance of common land both locally and nationally. <i>Locally:</i> (i) by landowners to develop new models for community management of common land; and (ii) by the Foundation for Common Land and its constituent stakeholder groups to inform the development of self-regulatory commons councils under Part 2 Commons Act 2006. <i>Nationally:</i> (i) by the National Trust to develop new models for community management of its extensive common land holdings across England and Wales; and (ii) the research has influenced the development of policy by the Government Office for Science, and by the UK statutory conservation bodies, for the improvement of the environmental governance of common land.</p>
<p>2. Underpinning research</p> <p><u>Background</u></p> <p>Common land is typically privately owned, but subject to multiple land use rights vested in stakeholders (for example farmers with a right to graze livestock on it) and the public. It is also “open access” land for public recreation. The complexity of the property rights to which common land is subject make it difficult to manage; and especially difficult to manage in a way that secures environmental benefits for the rare habitats and flora/fauna that it often supports. There are 540,000 hectares of registered common land in England and Wales, much of which is designated under European or national environmental legislation. 210,806 hectares (approximately 57%) of England’s common land is in Sites of Special Scientific Interest (SSSIs). The poor condition of protected habitats on common land is a major problem for the implementation of public policy. In 2003, 67% of the common land in English SSSIs was in unfavourable conservation condition; in 2008 Natural England reported only 19% as in favourable conservation condition, with a further 48% of common land in English SSSIs in unfavourable but recovering condition.</p> <p><u>Research</u></p> <p>The underpinning research highlighted the need to understand and accommodate complex common property rights if strategies to improve the environmental management of common land are to be successful. The research examined the past, present and future governance of common land by placing the development of common property rights, governance principles and governance mechanisms in historical perspective. Furthermore, it challenged the assumptions of institutional literature on common pool resource governance using fieldwork and archival data focussed on four project case studies.</p> <p>Key insights leading to the impacts described in section 4 below were: (i) Common land is subject to more complex property rights than other land; and common property rights differ significantly in different localities; (ii) Common property rights have changed and developed over time, and customary practices continue to have relevance to their definition, scope and exercise; (iii) Statutory Measures for the registration and management of common land (e.g. the Commons Act 2006) fail to recognise the complexity and mutability of common rights, and the importance of locally mediated social practice in developing strategies for improving the management of common land; and (iv) Public Policy for the sustainable management of common land must recognise and accommodate common property rights when developing new models for the communal management of land. Unless this is done it will be difficult to implement public policy effectively and to improve the environmental quality of common land.</p> <p>The underpinning research was conducted during two AHRC-funded projects: (i) research grant ‘Contested Common Land - Environmental Governance, Law and Sustainable Land Management</p>

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1600-2010' (2007-2010); and (ii) Follow-on funding for 'Building Commons Knowledge' (2012-2013). The major grant project carried out fieldwork in four case study areas in England and Wales in 2008-2010: Eskdale (Cumbria), Ingleborough (North Yorkshire), the Elan Valley (Powys) and the North Norfolk Grazing Marshes (Brancaster, Norfolk). Contemporary governance issues were examined through qualitative data generation and analysis, focus groups with stakeholders in each case study and doctrinal research on the interaction of governance instruments and property rights. The research outcomes are published in **(1)**, **(2)**, **(3)** and **(4)**.

The research website **(4)** is a permanent free access research resource, containing extensive information for stakeholder groups, common appropriators/community groups. It is referenced on the DEFRA website: <http://archive.defra.gov.uk/rural/protected/commonland/research.htm>, and archived with British Library web archive of research resources: <http://www.webarchive.org.uk/>.

The research was undertaken by Professor Christopher Rodgers (Professor of Law, 2003-current) and the project PhD student.

3. References to the research

1. Rodgers, C.P. Winchester, A.W. Straughton E. and Pieraccini, M. "Contested Common Land - Environmental Governance Past and Present" (Earthscan 2010) xii and 227pp. ISBN 978-1-84971-094-7. (REF 2 Output: 168239).
2. Rodgers, C.P. "Property Rights, Land Use and the Rural Environment: A Case for Reform" (2009) *Land Use Policy* 26S 134-141. (DOI: 10.1016/j.landusepol.2009.09.018).
3. Rodgers, C.P. "Reversing the 'Tragedy' of the Commons? Sustainable Management and the Commons Act 2006" (2010) 73 *Modern Law Review* 428-453 (REF 2 Output: 157051).
4. Common Land Research Website; <http://commons.ncl.ac.uk> (includes all working papers, historical and qualitative research papers generated by the project, and LandNote software tool with interactive terrain maps of the 4 case studies).

The project monograph **(1)** has been widely recognised as an innovative example of effective interdisciplinary research: "*For sustainability questions we have to study more systems over time, as this important collection of studies illustrates*" - Elinor Ostrom (joint winner of the 2009 Nobel Prize for Economic Sciences); "*Contested Common Land exemplifies collaborative multi disciplinary landscape research at its finest*" (Professor Stephen Daniels, Director AHRC Landscape and Environment Programme); "*This is a unique publication ... a fine example of true interdisciplinary research, within a wide time frame. ... that should serve as the starting point for commons scholars and practitioners in England, Wales and the rest of Europe*". (2011) 5 *International Journal of the Commons* 559-560.

Table of relevant grants:

Principal Investigator	Grant Title	Sponsor	Period of Grant	Value
Christopher Rodgers	Contested Common Land - Environmental Governance, Law and Sustainable Land Management 1600-2010 (AH/0310/7215)	AHRC	2007-2010	£262,000
Christopher Rodgers	Building Commons Knowledge (AH/J013951/1)	AHRC	2012-2013	£93,571

4. Details of the impact

The research was designed to involve key stakeholders and interest groups in an iterative process leading to the collaborative production of relevant research outputs, and to maximise its impact. The research was selected by the AHRC as an 'impact case study' to illustrate the wider value of humanities research. The AHRC report stated that the research "*can be used to demonstrate and communicate in a highly accessible way both contemporary and historical land management issues to a diverse audience of policymakers and other stakeholders*" (p36) **(IMP1)**.

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Pathways to impact were incorporated in the work schedule for each AHRC project:

1. During the research grant, two symposia were held for stakeholders and the policy community. The research conclusions were then presented at stakeholder workshops held in 2009 and 2010 in each of the four case study areas: at Eskdale (Cumbria), Rhayader (Powys), Titchwell (Norfolk) and Ingleton (North Yorkshire).
2. During the Follow-on Funding Project the research impacts were widened by incorporating the National Trust and the Foundation for Common Land as project partners. Two workshops were run jointly with the National Trust. The first (London, January 2013) considered different governance models for engaging community interests in the management of common land. The second (Haslemere, April 2013) considered ways to improve the governance of common land for wildlife and ecology. The project concluded with a national conference - "Sustaining the Commons" - on 5th July 2013 in Newcastle.
3. These events facilitated the sharing of good practice in commons management, and for adapting management to reflect different property regimes. They were attended by: DEFRA, Natural England and Natural Resources Wales; the Foundation for Common Land; Scottish Crofters Federation; Federation of Cumbria Commoners; Surrey County Council; the Chilterns Partnership; the association of commons registration officers and other local government organisations; NGOs (e.g. the Open Spaces Society, the Wildlife Trusts and the RSPB); and individual commoners and commoners groups.

In a book entitled *The Public Value of the Humanities*, the research has been described by Stephen Daniels (Director of the AHRC Landscape and Environment Programme) and Ben Cowell (National Trust) as having "*helped reconstruct the collective memory of common land ... As well as informing and improving the governance of commons the project has enhanced wider scholarly understanding and public awareness*" (p112) **(IMP2)**.

The research has generated both *local and national impacts*. It has been used by:

Stakeholders, community groups and public bodies in the 4 case study areas

The project's work on property rights and on the continuing relevance of customary management have informed the way in which management issues have been considered and addressed in a modern context **(IMP1-6)**. In the Eskdale case study, for example, the research analysed manorial byelaws regulating land use on Eskdale common, Cumbria, dating from 1587 (the "Eskdale Twenty Four Book"). Daniels and Cowell confirm that: "*The project has effectively reintroduced this text to the commoner community as a whole, as part of the initiative to restore flexibility and local custom in the governance of Eskdale Common, and to address the new requirements of environmental law; a sustainable text for a sustainable landscape*" (p115) **(IMP2)**.

The policy community, national stakeholder groups and NGOs

The research has had an important impact in altering the awareness of key members of the public policy community. It has also emphasised the need for locally mediated solutions to self-management that take account of property rights and the historical development of appropriators' rights and duties **(IMP1-8)**. The Common Land Research website (<http://commons.ncl.ac.uk/>) has been used by Natural England to inform management guidance to stakeholders, e.g. "*The Contested Common Land project is developing ideas for the long term sustainable management of commons...the amateur with an interest in the history of the local common ... will [also] find much there to inspire and guide research*": Natural England, *Exploring our Common's Past* (Commons Factsheet No. 02, Natural England, 2010). Online via: <http://publications.naturalengland.org.uk/publication/115021>. The research was used by the Foundation for Common Land and Natural England in the development of the "Commons Toolkit", which provides guidance for stakeholders, landowners and commoners on commons management **(IMP7)**. And it has been used by NGOs working to promote the improved governance of commons in England and Wales. For example, the General Secretary of Open Spaces Society stated: "*The project demonstrated the importance of understanding the history of commons in securing their future.....and the different ways of working on and governing the commons in order to ensure their survival and the need for respect and sensitivity...this is extremely beneficial to the [Open Spaces]*"

Impact case study (REF3b)

society and to our members in championing the commons” (IMP8). One of the Trustees of the Foundation for Common Land (and former Principal Project Manager for Common Land, Natural England) said: “The Contested Common Land project has built up best practice and pooled it for the benefit of wider communities” (IMP4).

The National Trust is using the research to improve the governance of its common land estate in England and Wales, and to develop new governance arrangements for increasing community involvement in commons management. The research has helped the Trust to identify key issues that must be addressed in order to deliver the Trust’s policies for the sustainable management and improvement of its common land estate, which encompasses 66,000 hectares of common land (11% of all common land in England and 13% of common land in Wales). The East of England Director of the Trust confirmed that *“The National Trust gets enormous insights on a wide range of issues we deal with on a daily basis in managing our estate from working with academic partners...and this project is a good example of that in practice” (IMP3).*

The research contributed to the Final Report of the Foresight Land Use Futures research project: *Land Use Futures: Making the Most of Land in the 21st Century (IMP9)*. The Joint Deputy Head of Foresight confirmed: *“The evidence base for the Foresight project final report provides the crucial scientific basis for the findings, and [(2)] was a key component of that. The Foresight Report has been used to inform thinking across government since its publication...and the importance of the Land Use Report and its evidence base in informing policy is set to continue into the foreseeable future” (IMP10).*

5. Sources to corroborate the impact

- (IMP1) AHRC (2010) Landscape & Environment Programme impact case studies. Available at: www.ahrc.ac.uk/News-and-Events/Publications/Documents/Annual-Report-2009-10.pdf (page 36).
- (IMP2) Stephen Daniels and Ben Cowell, ‘Living Landscapes’ in Jonathan Bate (ed.), *The Public Value of the Humanities* (Bloomsbury Academic, 2011). Available at: <http://books.google.co.uk/books?id=zukodRN4NEsC>.
- (IMP3) Video Interview with the Director, East of England, The National Trust. Available on request.
- (IMP4) Video Interview with Trustee of the Open Spaces Society, of the Foundation for Common Land (formerly Principal Project Manager for Common Land, Natural England). Available on request.
- (IMP5) Video Interview with the Commons Project Officer, The Chilterns Conservation Board, Chilterns Area of Outstanding Natural Beauty. Available on request.
- (IMP6) Participant Questionnaires (anonymous) completed by participants at Commons Sustainability workshops (London January 2013, Haslemere April 2013) and Conference (Newcastle July 2013); and participant registrations for workshops and Conference. Original copies available on request.
- (IMP7) Natural England/Foundation for Common Land, ‘Commons Toolkit’ (Natural England, 2010). Catalogue Code: NE285-14GN. Available online at http://www.cumbriacommoners.org.uk/files/ne285_commons_toolkit.pdf.
- (IMP8) Email factual statement from the General Secretary, The Open Spaces Society. Available on request.
- (IMP9) Foresight Land Use Futures final report and impact review: *Land Use Futures: Making the Most of Land in the 21st Century. Final Project Report* (Government Office for Science 2010) (see especially page 81, at footnote 136). Available at: <http://www.bis.gov.uk/assets/foresight/docs/land-use/12-1128-land-use-futures-one-year-review.pdf>.
- (IMP10) Email factual statement from the Joint Deputy Head of Foresight; Government Office for Science. Available on request.