

Internship & Thesis Portfolio

Master's Program Politics and Society in Historical Perspective.
2015-2016

By: Aaron Roberts
Student Number: 5644062

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Internship Work Plan

- IASC (International Association for the Study of the Commons) -Website:

<http://www.iasc-commons.org/>

Aaron Roberts #5644062

1. The Internship Organization:

International Association for the Study of the Commons (IASC)

a. *Policy Goals of the Organization:*

The designated mission statement of the international association for the study of the commons is “bringing together multi-disciplinary researchers, practitioners and policymakers for the purpose of improving governance and management, advancing understanding, and creating sustainable solutions for commons, common-pool resources, or any other form of shared resource.”¹

The policy goals of IASC, as per their website, include:

- To encourage exchange of knowledge among diverse disciplines, areas, and resource types
- To foster mutual exchange of scholarship and practical experience
- To promote appropriate institutional design

b. *Methods the organization uses to achieve these goals:*

IASC strives to achieve its objectives of facilitating the coordination and communication of researchers, practitioners, and policymakers by pooling resources, research, and information as well as creating a forum for the accumulation and interconnection of thought about the subject of the commons. This is done more specifically in the organized conferences, publications, and databases of information it makes available to those interested within the field.

c. *The position of the organization in regards to the core themes of the masters' programme:*

IASC's study of the commons and place within the field of research is directly inline with the core themes of institutions of the masters program. The idea of the commons and common right are an ancient and relatively lost institution that served a distinct function historically and the association represents a revitalization of interest. With that said, the study of the commons is of distinct socio-political and historical relevance as well as pertinent to this day as we create policy going forward, and therefore distinctly within the subject matter of the masters program.

¹ The Home Website of the International Association for the Study of the Commons: <http://www.iasc-commons.org/about>

d. *Organizational structure:*

The organizational structure of the Association is a board based 501c3 non-profit company with an executive board. Officially originating from the campus of Indiana University in Bloomington, Indiana, the association now currently spans the globe with a history of staging conferences in 5 continents. The members and staff of the International Association for the Study of the Commons include researchers, practitioners, and activists from across the world and serves to unite and facilitate the research in the field of the commons.

e. *Corporate Culture:*

The corporate culture is that of a 501c3 non-profit company that defines itself as an international non-political academic research organization.

f. *My position in the organization:*

My position in the organization will be as a general intern, with responsibilities of case based information curating, case inventorying, social networking, and membership contact maintenance.

2. **Motivation and Learning Goals**

a. *My motivation:*

I am motivated to participate in the internship at the international association for the study of the commons because it as an organization is fascinating. The research of the commons represents the study of an ancient and mostly forgotten institution that could have definitive benefits in future policy as we enter a period of history that seeks to evolve and reinvent its cores ideas concerning social organization. As economic arrangements need rethinking in the light of massive wealth concentration and environmental degradation, the study of the commons proves to be exceptionally valuable as it involves sustainable themes of economic empowerment, localizing civilian markets, and the necessity of stewardship. The internship with IASC not only allows me to participate in the field of study but it gives me active work experience in an non profit research organization which I feel could be a fruitful outlet for my passions both in academia and public policy. The Association's main goals are heavily in line with the theoretical appreciations gained from the masters program, and thus constitute a logical application of that knowledge in the real world. As I study the socio political development in history in the masters program, the internship offers me the opportunity to

not only look to the past efforts in the commons but also shape the future ones.

b. *Learning Goals:*

- I would like to gain a systemic understanding of the community, work culture, and organizational structure of research non-profits like IASC. That would gain an understanding not just of its internal workings but how it and associations like it interact with academics, activists, policy makers, and the world generally.
- I would also like to gain an understanding of Dutch work culture, as being a student from the United States who would like to work internationally, flexibly adapting to foreign work environments and customs is a skill that is crucial. I would also like to create a valuable portfolio of work skills and habits that would help me in later career opportunities.
- In terms of academic skills I hope that this internship opportunity allows me to sharpen my ability to systemically collect, study, structure and assess information and theories, as well as develop a appreciation for the point of views with academia.
- In terms of communication skills I would like to develop the ability to write publically, develop a voice for academic conversation and argument, and develop my writing skills generally.
- Other goals include the development of awareness of current debates in the academic fields relating to the commons and commons institutional development such as the importance of civilian membership and organization vs. the utilization of governmental structures, as well as the relation of the commons and common property ownership to the market.
- Develop greater organizational habits and more efficient group coordination.
- Develop the ability to position information in a wider academic context, think and act with attention to the societal and cultural context of the Netherlands and more globally, and developing greater choice making skills.

My primary responsibilities in the internship include facilitating membership outreach, and case study curatorship.

Membership outreach pertains expanding and maintaining the contact database to facilitate outreach to prospective members and connections within the diverse academic and activist fields that relate to the multidisciplinary study of the commons. This sort of outreach also includes increasing visibility via social networking outlets, and streamlining the interconnection of social networking outlets with general operations.

Case study curatorship is the selection and presentation of successful projects in the field of the commons for public consumption and utilization (in the form of “impact stories”) for policy makers, activists, and practitioners. The availability of digestible information concerning applied commons projects connects the practitioners to the diverse network of academics, policymakers, and activists to encourage mutual exchange of scholarship and practical experience, as well as knowledge among diverse resource types, areas, and disciplines. With these responsibilities I am directly contributing to the pursuit of the institutional goals of IASC. To create and curate case studies, I will research various active and historical commons throughout the world outlining their historical development as well as the mechanisms for their functioning.

An supervisory role will be fulfilled by René van Weeren who will routinely monitor progress and be available for questions, as well as an individually updated weekly log of activities. General internship activities are independent and not location dependent and therefore most communication with René will be virtual, with the possibility of an off-site virtual workstation.

Schedule:

The approximate schedule of the internship is highly dependent on the needs and priorities of the association at the time although a rough time line of goals and projects is written below. Included in the schedule are the designated deadlines and events as established by the internship program handbook. The total hours worked for the internship will be 420 hours over 3-4 months. The general breakdown of internship activities will include 2/3rd dedicated to projects on an academic level that can be used in the creation of the internship thesis with 1/3rd dedicated to general internship responsibilities.

1st Week:

*8th -12th February 2016 Students will start the internship. Preparatory activities and the start of project research.

- Orientation meeting, establishing expectations and workspaces.
- Maintenance of database including identifying redundancies, incomplete entries, expired entries, and updating formatting.
- Identification and collection of contact information of prospective members and participants of those involved in commons related research, policymaking, and advocacy.

2nd Week:

*18th of February 2016: introductory lecture about the internships on cooperation and participation (Tine De Moor)

- Continuation of database maintenance
- Social networking outreach and integration.
- Beginning of case selection for the production of “impact stories”.

3rd Week:

*Deadline 22nd February 2016: internship research plan has to be submitted to your internship supervisor

*22nd-26th February 2016 Discussing research plan with internship supervisors in groups and individually. Dates to be confirmed later, probably on the 24th

(Wednesday) *3rd March 2016: Lecture 'Writing for a broader audience'; and short presentation by each student on ideas for topic of academic analysis

4th Week:

- Continuation of case research and writing of impact stories
- Begin formulation of final plan for the academic analysis
- Pursuit of social networking outreach goals (greater integration, likes/followers and hashtag viability)

5th Week – 7th Week:

*Deadline 14th March 2016: plan for academic analysis needs to be submitted

- Continuation of projects and development of final plan for the academic analysis

8th & 9th Week:

*Deadline 1st April 2016: progress report and final plan for the academic analysis Ultimately on 1 April 2016 the student needs to have submitted a progress report and the final version of the plan for their academic analysis. The progress report has to be submitted to both supervisors, the plan to the internship supervisor.

10th Week:

*11th -15th April 2016: Individual meeting with students on progress of the academic analysis.

- Continued progress on projects and academic analysis

11th week:

*21st of April: I will present my cases to Minor-students.

12th week - onward.

*25th April – begin combined work on internship and academic analysis

- Continuation of academic analysis works in tandem with internship responsibilities.
- May 10-13th - 2016 IASC European Regional Conference in Bern, Switzerland (May 10-13th) where I will assist in the set up and facilitate events.

Deadline 20 June 2016: submission final version portfolio (internship report, internship product and academic analysis).

Internship Report

By: Aaron Roberts

Internship Position: International Association for the Study of the Commons

Primary Responsibilities: (Internship Project) composing case studies, and operating the social media campaign.

Introduction:

The internship for the International Association for the Study of the Commons (IASC) was one of the internship positions that was offered through the university as an “internship project”. These projects work on a “specific theme” from outside organizations, in this case the theme being “the commons”, and while an outside organization, the International Association for the Study of the Commons is located inside Faculty of the humanities building on Drift 6. The International Association for the Study of the Commons is an academic non-profit “...devoted to bringing together multi-disciplinary researchers, practitioners and policymakers for the purpose of improving governance and management, advancing understanding, and creating sustainable solutions for commons, common-pool resources, or any other form of shared resource.” (<http://www.iasc-commons.org/about>) This internship lasted 13 weeks.

During the first meeting of students intending to pursue the practical track I was briefed about the opportunity to participate in this internship and I was immediately enthusiastic about the opportunity. Upon first hearing about the concept of the commons and the work of the IASC, I was immediately interested in the applicability and scope of the subject. In my native region of the San Francisco Bay Area in California, I myself had noticed a movement for the creation of intercity community gardens, which were being organized by locals to produce fruits and vegetables for nutritionally underserved communities at a low cost. Having this idea in my head, I was fascinated about the potential framework and study that organizations like the International Association for the Study of the Commons would examine, and I made sure to introduce myself to Tine de Moor that day.

My expectations were varied. Having never interacted with my professors and other academics in an employment or work setting before, I pegged my expectations to my experience working for non-profits in California, where I have interned and volunteered previously for organizations like EarthJustice, an environmental law firm, and Save the Bay, an environmental restoration organization. Through those internships I was able to gain experience observing and working side by side with environmental lawyers, fundraisers, and practitioners, gathering an understanding of the state of the profession, as well as obstacles and supports for the successful pursuit of the organizations goals. So, along with those expectations, I also expected to gather a greater understanding of how academia and non-profits can work together, how they are funded,

how they maintain and utilize the networks in their communities and how the very interdisciplinary study of the commons can reach out and work across the vast fields it overlaps with economically, socially, and politically. Another aspect that was critical to my participation with the IASC and my expectations was the fact that I am a foreigner. Being from the United States of America, and living in Europe, I was intent on gathering a greater understanding of the work culture in the Netherlands with the hope that this internship would aid in developing flexibility to work and network in an international setting.

Having these expectations in mind, I met for the interview with René van Weeran to discuss the responsibilities of the internship. René expressed that there were two main goals to be pursued in the internship, one was the compiling of case studies concerning the commons for the organization and constituting my “internship project”, and the other was taking charge of the social media campaign that the organization was in the process of revamping. Along with these responsibilities, the interns were charged with other responsibilities like maintaining mailing lists. These goals were articulated in my internship work plan as “case based information curating, case inventorying, social networking, and membership contact maintenance.” At the point in my internship where I produced the internship work plan, there was some ambiguity about what the Internship project would actually be, as I was often in meetings with my colleague, Pieter Bouwsema and the general message was that I would be concentrating on international qualitative case study research, while he would be primarily concerned with domestic quantitative research. In actuality, my internship project assignment was the creation of case studies of commons that had been visited on IASC conferences. These case studies would consist of researching and completing a form with 31 criteria important to the practice of commons including geographic size, location, membership requirements, history, and forms of governmental or written recognition of its existence. With this understanding of my assignments, I will now report on the 4 main themes present in my internship, the internship product, the social media campaign, problems I encountered, and a critical reflection on my learning goals and experience.

In line with the responsibilities established in the internship work plan, the first 2 weeks of the internship primarily concerned the maintenance of membership contact data. I think this task is important in understanding the functioning of nonprofits, as often member or donors as they are referred to in the nonprofit world are crucial for the funding and functioning of these organizations. My colleague and I were given the current mailing list of the organization consisting of over 5,000 names, emails, locations as well as a variety of other categories of information that varied in level of completion and legitimacy, and our initial task concerned the isolation of entries that were obviously or suspected false, contained deceased members, or redundant. Entries were organized and categorized in Microsoft Excel. This work started slow, but picked up good speed as Pieter and I began to remember the tricks to using Microsoft Excel, and by the end of the day we easily isolated and color-coded the three categories. For the next 9 days at the internship my task was shifted to gathering contact information for a variety of

associates, academics, and practitioners in the field or related fields to the study of the commons. Before I started these database entries, I reformatted the database using a template given to me by René, which included significantly more qualitative data categories for which my colleague and I actively sought out emails, occupations, locations, and social media information on more than 900 individuals in the field. Research for this was done primarily through Google, Twitter, Facebook, LinkedIn, and University pages with varying degrees of success. Through this process, I became much more skilled working with Microsoft excel and I became aware of the size of peoples Internet footprints, or the extent of data that is present online, something that I didn't expect to learn.

Internship Project:

In week three I began my internship project, which started off with the task of creating a list of all the various field trips, or excursions, that were hosted during the IASC Bi-annual conferences, including the location, name of the field trip, general topic, and possible contact details of those organizing or relating to the field trip. The purpose of this task was to generate a list of commons that had been visited or studied by the IASC for use in my case studies, which were to be my internship project. To accomplish this preliminary task I was given access to the IASC document archive on Google Drive, which had pamphlets, flyers, abstracts lists, and event planning documents. Of the 15 annual and biannual international conferences, approximately 6 conferences had relatively complete lists of excursions with some form of description and another 3 had at least references to some of their field trips. Besides these 6 – 9 conferences there was almost no information about excursions. Of those 6 – 9 conferences, I was able to find information about 74 identifiable excursions, and of those excursions I was able to find 56 that related to commons in practice or weren't explicitly unrelated to commons. Of those 56 cases, information often continued to be sparse, with descriptions of general regions and resources involved.

In week 5, after a week sifting through the conference documents and attempting to acquire as much contact and contextual information as possible for the excursions, I identified one case that looked like it could be promising to begin my first case study. The case specifically was of a weaver cooperative in Pochampally India, founded and led by the Ashkara Institute. This cooperative had information on its governance, business model, and growth patterns in a published Business plan, with supporting references from news articles. I initiated research through the internet databases, and the library on the on the cooperative, the weavers, and region of India that the cooperative was located. That region Pochampally in the Indian state of Telagana was the location of a large political land redistribution movement in 1950s called the Bhoodan movement, which had indications of being an inspiration for the cooperative. In my research, I ran into a number of problems, one of which was that there was no evidence of the cooperative existing past the first three years of its founding, and many of the references that were present in the material referring to the cooperative, had dead or defective links. After emailing the Ashkara Institute for an update on the status of this cooperative, I decided to move

on to a case study with more substantial documentation and evidence, leaving much of the case study unverified and incomplete. To refrain from making this mistake again I consulted Tine de Moor, the IASC president who advised me to avoid any subject that didn't appear to have extensive sources concerning it already, but that proved to be easier said than done.

In week 6, I began my case study on the Soni Semi-natural Grasslands of Japan. With the aide of the Digital library of the Commons, I was able to find detailed studies of the grasslands and similar grasslands with information about the history of the practice, the adoption of the Soni Grasslands into the national park system and its traditional annual clearing and burning practices that maintain the grass. One major obstacle that I encountered in the research process was the language barrier, which required me to not only translate sources, but also search for sources using the native Japanese names and terminology in Japanese kanji; new experience for me. As a result of the language barrier I was blocked from finding a broad source base for case study, but the sources I did have seemed to be exhaustive, relevant, and supported.

In week 8, I began the case study of Long Mynd in the Shropshire hills in the English county of Shropshire. I chose this case because of the availability of extensive information of the region, the availability of sources in English, and because I was planning on writing about the commons of England for my masters thesis. One problem I ran into was with the accessibility of relevant primary documents, which seemed to be in existence but kept in English archives to be accessed in person or for a fee, or kept in private with the commoners association. Another issue that I rapidly became aware of was the unlikelihood of finding comprehensive information about the governance structures themselves, and in this particular case study I had to utilize secondary literature about the region, about commons governance in England generally, and news reports to gather an idea of the functioning of this particular commons. While I did ask René if we had funding to get scanned documents from the archive, it didn't seem possible.

In Week 11, after meeting with my supervisors concerning the chronic issue of the lack of sources on which to create specific case studies, I made the decision to write about a particular forestry cooperative in Mexico called the "San Juan Nuevo Parangaricutiro enterprise". The choice of this case was a bit of deviation because it was not explicitly mentioned on the list of IASC Excursions, and while there was an IASC international conference in Mexico, the information concerning the excursions of that conference was lost. I argued that the choice was reasonable because there were ample sources discussing the operations and governance structure, as well as sources by IASC affiliated writers, of which incorporating and publicizing work was considered a general goal for IASC. This case study was quite interesting to me because the cooperative was organized and run by an indigenous peoples with the goal of creating sustainable self-sufficient economic growth in their region and it proved to be relatively successful. I found the goal of indigenous economic empowerment a very provocative and complementary to other studies I have completed in this program because of my previous work researching indigenous self-determination in the USA, Australia, and Brazil.

Towards the end of week 12, I finished the Mexican forestry case study and in week 13 I moved my attention to the case study of the grazing commons of Törbel Switzerland, which I was unable to complete. The reason I was unable to complete this case study before the end of my internship is because of competing directives and intensive source material. My primary source, *Balancing on an Alp* by Robert C Netting, was a book that took a while to acquire from the library, and required some intensive analysis to derive the information for a case study. That is to say the information required for the case study was not itself explicit in the literature and would require an analysis of the literature itself to derive specific criteria such as commons boundaries and legal recognition which I did not have time for. Also competing with this case study was my responsibilities to the Social Networking campaign that I really only received authorization to pursue in week 10.

Social Media campaign:

My primary responsibility besides the internship project work was the maintenance of the social media campaign, this provided me the opportunity to learn to write for a public audience, gain a greater understanding of Internet analytics, and virtually interact with the network and community surrounding the IASC. The main goals that I had created for myself in the campaign were to organize the pages, increase outreach (the number of people you can reach with your posts), increase interaction (the number of people that interact with your posts), and increase analytic potential or track more data on what social media usage works or doesn't work.

This ran into several issues with its execution that I will address later. Some successes of the social media campaign include:

-The consolidation of seven separate IASC websites into four on three different social media platforms. One caveat is that one of the LinkedIn public webpages was not accessible to IASC

Outreach:

- A 100% increase in the number of Facebook 'likes' which meant a doubling of outreach on that platform.

- A 500+% increase in the number of connections for the IASC Secretariat page, from 80 to over 500-600+, a massive increase in outreach.

- A 15% increase in Twitter followers.

Interaction & Analytics:

Developing an understanding of how to create greater interaction with subscribers on social media was definitely a learning process of trial and error. While I entered into the internship with an understanding of greater analytic trends, and how social media users can attract attention, I wasn't full aware of how to mobilize an already highly interested user base that an organization

like IASC already has. When I first started posting I believe I saw an 80% increase in interaction, but that may be due primarily to the regularity of the posting, and I was concentrating on hashtag usage and easy information accessibility. In week 11, I met with Tine de Moor to discuss priorities for posts on social media, in which she recommended that I concentrate on posts identifying specific IASC affiliated authors. In subsequent posts, this turned out to be a great success, increasing the outreach by 4,000% reaching four continents and thousands of people. At the same time as I was concentrating on increasing interaction, I also wanted to increase the amount of data we could receive about the interaction. To do this, I instituted a new link shortening approach using goo.gl, which provides analytics on who, where, and how many people utilize Internet links in our social media posts. This information can be helpful going forward to see who and where the most active audience to IASC social media posts are.

Problems:

Unfortunately there were numerous problems and organizational issues that plagued the implementation of the social media campaign and internship project. A problem encountered in the internship project was reconciling the specific topics presented in the excursion list with available source material. When I asked for more documents about the conferences to extend the excursion list, none were made available. The list of 56 excursions proved to be quite limiting, and descriptive information about actual commons that were involved with the excursions were vague. So isolating the common being referred to in the excursion, and then finding source material on it exhaustive enough to satisfy the 31 criteria required for a case study, often proved to be a fools errand. While I was instructed to simply “move on” if source information was not apparent, the list of excursions was too limited to do this effectively, and often when source information on or related to the topic appeared, it would either be superficial, unfocused and off topic, or unsubstantiated. When I sought help for this issue with research, I was made aware of more databases and places to look, but even with these new tools, the problem was not significantly assuaged.

The internship project presented me with some obstacles and general problems with conducting international research, but also gave me some insight into possible solutions going forward. One major issue I encountered was with the language barrier. When doing international research not knowing Hindi, Japanese or Spanish fluently proved to significantly decrease the availability of information to that what was available in English. Even with translation programs like those offered by Google, the amount of information lost can range from ~90% to ~20% which can seriously jeopardize research potential and deny the researcher the crucial information that contextualize or support a theory, and can remain unsubstantiated. Going forward with a research proposal like this in the future, I think the best possible way to acquire international data is to reach out to local academics or university departments in similar fields to guide the research process. In retrospect for this particular internship, creating a list of such contacts and getting Tine de Moor, who is both renown and respected in her field, to initiate such outreach would be of great assistance. Admittedly, this was attempted with outreach towards Angus Winchester, a

notable scholar of English commons, in the last few weeks of the internship, but by the time he responded the internship had already finished. Another pattern that I noticed concerns the interdisciplinary nature of commons study, where often crucial details about the functioning of a commons may cross between sociology, biology, politics, and history. In these cases trying to find very specific details such as commons boundaries, legal recognition, informal governance structure, and historical origin require study across a wide spectrum. From what I have gathered, such interdisciplinary research should be done as close to the source as possible, with a systematic search of each of those fields individually. In the case of the Shropshire hills case study, I am certain that having direct access to the archives would have been fruitful, as well as getting in contact with the commoners association which does not digitally publish its proceedings at all.

Problems with the social media campaign also present some insight for going forward with other social media campaigns. Firstly, it is important to use similar organizations as a template. When I first started managing the social media of the IASC, I initially tried using promotional and advertising groups as a role model for the social media campaign, but when these posts received little attention, I shifted to emulate an approach much in line with academic non-profits and this received significantly more outreach and interaction.

Another issue that consistently inhibited the internship was a matter of simple communication and organization. From my previous experience interning in non-profits, I expected significantly more guidance and interaction with the organization and my supervisors. In the beginning of the internship, my colleague Pieter and I were assigned to work in the ground floor study space, on a different floor than our supervisor René. What this resulted in was primarily email correspondence on an irregular basis, and sometimes not seeing René in person for over two weeks. As a result, often communication was lagged by as much as a day, and I was left relatively unguided. This problem was compounded by the fact that often when I did ask for guidance; the question and answer often would have to be checked with the organizations president Tine de Moor, creating a correspondence chain that could take up to a week to get a response. This became a significant issue when questions about case study source material, social network post publishing, and social network community interaction prevented me from actually proceeding with the task. As a result, I often assumed the lack of regular communication was intentional effort to support independent work and indicated that I was supposed to simply ‘figure it out’, which resulted in very stressful and sometimes futile attempts to make certain case studies work, as in the case of the Pochampally case study.

Efforts to address these problems were made including creating regular meetings with my supervisors, directly emailing the president of the organization with questions, and René more actively authorizing social media decisions. The meetings were a tremendous help, and really brought me into the organization to a point where I felt like I was learning about the actual operation of the IASC, that I was aware of the strategic goals of the IASC, and made much more aware of resources I can use to produce case studies. Unfortunately, these meetings started

occurring in the 10th week of my internship, at which point I only had three weeks left. This created a conflicting last three weeks for me as I was finally empowered to make the social media decisions and posts that needed to be made, and produced the greatest social media results at this time but this also detracted from the time I could of spent working on case studies.

Conclusion:

The extent to which I believe my learning goals formulated in the working plan have been achieved needs to be contextualized within the realities of the internship. I believe that I may have set unrealistic expectations from what goals I could achieve in this organization, which was significantly smaller, more diffuse and academic than I originally perceived. I have relisted my learning goals below:

1. "I would like to gain a systemic understanding of the community, work culture, and organizational structure of research non-profits like IASC. That would gaining an understanding not just of its internal workings but how it and associations like it interact with academics, activists, policy makers, and the world generally.
2. I would also like to gain an understanding of Dutch work culture, as being a student from the United States who would like to work internationally, flexibly adapting to foreign work environments and customs is a skill that is crucial. I would also like to create a valuable portfolio of work skills and habits that would help me in later career opportunities.
3. In terms of academic skills I hope that this internship opportunity allows me to sharpen my ability to systemically collect, study, structure and assess information and theories, as well as develop an appreciation for the point of views within academia.
4. In terms of communication skills I would like to develop the ability to write publically, develop a voice for academic conversation and argument, and develop my writing skills generally.
5. Develop greater organizational habits and more efficient group coordination.
6. Develop the ability to position information in a wider academic context, think and act with attention to the societal and cultural context of the Netherlands and more globally, and developing greater choice making skills."

Without a doubt I believe I have accomplished the learning goals listed in 5 and 6. Through this internship I have learned to be better organized as well as how and how not efficiently coordinate in a small work group. One particular thing I learned is to be more assertive and expressive of struggles and confusions I am having, not just in the particular task but also with

the communication structure itself. After the meeting with my supervisors in week 10, the quality of communication and coordination was much better and it seemed that it was an matter of bringing up the issue. Also, in regards to learning goal 6, I absolutely acquired a better understanding of the wider academic context that the interdisciplinary study of the commons represents and also how it interacts with academics globally, giving me better insight for making better choices in the future. In regards to Academic goal 4, I definitely learned to write for social media and case studies more effectively, and more succinctly but I cannot say that I have developed a particular voice for the academic conversation or argument or necessarily learned to write for the public generally. Social media writing is a distinctly different breed than that of more examined forms like articles, and I didn't necessarily interact with academics enough to develop any sort of academic conversational tone. This may have been because of my lack of attendance of faculty meetings, which were generally uncomfortable, and the cancelation of the trip to Bern Switzerland, which would have been an opportunity to mingle and meet academics in the field.

Concerning learning goal three, I definitely sharpened my ability to systemically collect, study, structure and assess information and theories, as well as develop an appreciation for the point of views within academia. Most of this goal was easily accomplished through my work on the case studies, which required me to pull out the information to build the theoretical framework piece by piece, although I didn't necessary develop an appreciation for different points of view within academia as much as I came to appreciate the nature of the interdisciplinary study of commons.

I must admit I believe I have failed to accomplish the main purpose of my 2nd academic goal. Being relegated to a different floor, and communicating with my supervisors primarily through email, for most of this internship it felt very virtual. I did not get the chance to see much of the goings on of the organization or the way the organization worked within itself. I feel like to truly appreciate the work culture of a region one must see how employees interact, what their work habits are, and how strategic planning is formulated. I am not sure that I was able to observe that, although it's possible that there wasn't a noticeable difference from the United States. In regards to academic goal 1, I believe that I have accomplished this to a degree. Through the management of social networking I gained an understanding of the community, organizational structure of IASC, its internal workings, and how it interacts with academics, activists, policy makers, and the world generally. With that being said, I cannot say that I know how relatable this experience has been to other non-profit academic organizations.

Critical Reflection:

I found that this internship taught me a good amount and I look forward to applying to applying these lessons in the employment world. I learned the importance of communication in the workplace, especially with ones supervisors, and I will make sure to establish clear lines of communication between myself and my employers as I venture onward in life. I also learned in

the complexities of international research, honed my research skills, received extensive practice using Microsoft excel, and learned how to publicly publish social media posts on behalf of a non-profit organization. Through this internship I was able to gather a much deeper understanding of CPRs, commons and their applicability as well as a greater understanding of the interconnection between educational systems. I was able to apply the lessons of my program in this internship as well as I studied the current status of English commons, which related nicely to a recent paper I wrote on English enclosure, and studying the economic empowerment of indigenous communal forestry operations was complementary to my earlier study about indigenous self determination policy.

Appendix I:

IASC Internship - Weekly Log

Week 1 February 8th – 12th 9:30 – 17:00

- Monday: Introductory Meeting and Database formatting to highlight redundancies, phony entries, and deceased members. This process came quite easily to me from my previous experience in the fundraising department of a non-profit, but required bit of exercise to remember how to use Microsoft Excel efficiently. Attended lunch with the faculty, which felt uncomfortable and forced, as I am not used to socializing with my professors or such well-respected academics in such a casual fashion, and the language barrier is palpable.
- Tuesday: Continued Database formatting and entry. This process while incredibly repetitive is a great use of excel, but also reminds me that there exists much more efficient software on the market for the maintenance of donor databases. Attended lunch with the faculty, with a similar feeling as Monday. Today, we shifted from formatting to adding members to the database through selectively scouring the Internet to find legitimate contact details.
- Wednesday: Continued Database entry. Not much to report, although I feel myself gaining an greater aptitude for Microsoft Excel.
- Friday: Continued Database entry and Development of work plan.

Week 2 February 15th – 19th

- Monday: Finalized & submitted work-plan. This was an interesting experience in the University bureaucracy as I was forced to run around and get a specific number of copies and fill out forms. Continued database entry.
- Tuesday: Continued Database entry. Database entry is a very monotonous task, but it does have tangible results, which is nice to see, and I do feel that I am quite skilled the shortcuts provided by Excel at this point.
- Wednesday: Continued database entry.
- Friday: Continued database entry until 13:30, and continued database entry from home.

Week 3 February 22nd - 26th

- Monday: Continued Database entry.
- Tuesday: Finished database entry with approximately ~930 new entries between Pieter and I. Began formatting list for presentation to René.
- Wednesday: Finished formatting database, presented the information in 7 sheets. The format of the data were:

Sheet 1: Titled: "New Entry Prospects" Our total new entries entered in the new format. Approximately 941 new entries, give or take some duplicates and entries we could not find emails for.

Sheet 2: Titled: "NF ML + New Entries" This is the reformatted original list that you gave us with the new entries included as well as alphabetized. You'll find this list contains the color coded duplicates (email: pink in row L), deceased (marked in yellow), as well as entries we have designated as obvious duplicates that can easily be removed (bright red). The New Format has some drawbacks, in that it no longer includes sections designating whether the database entry is deceased, or objects to mass messages (which has been indicated in a few cases)

Sheet 3: Titled: "OG ML" This is the original master list that you sent us in its original format, with color coded duplicate emails, identified missing names, and alphabetization by the first name.

Sheet 4: Titled: "Anon Members" Is simply our earlier work, were we identified emails without names attached.

Sheet 5 & 6: Titled "Deceased" & "Spam" is also our earlier work where we identified deceased entries as well as email entries that seemed obviously phony or non-serious entries.

Sheet 7: Titled "Prospects with no email" is our new entries that we were unsuccessful in finding emails for.

Began project of listing IASC conference excursions from the international conferences.

- Friday: Continued listing of biennial conference excursions. Contacted René and shifted focus from more intensive listings to a more cursory format to be listed in Excel and progressed to approximately 2006 in listing efforts.

Week 4 February 29th – March 4th

- Monday: Sick with flu. Worked from home and continued listing conference Excursions. I do appreciate the flexibility that this internship allows, as I am able to complete most of the required functions from my laptop.
- Tuesday: Continued listing Conference excursions with emphasis on current contact information and news. This proved to be surprisingly more difficult than I expected as much of the information listed on the conference documents is expired, especially internet links, which makes me contemplate the reliability of the internet as a space for historical archiving. Many of the listed organizations also have reorganized.

- Wednesday: Started more in detail analysis of excursions of interest. I.e. cases that successfully addressed an commons/cooperative/collective solution to a problem/issue.
- Friday: Started preliminary outline of a collective project in India. Discover a detailed and award-winning business plan for Microfinance/ Weavers collective in Pochampally, India. Information on the operations, membership requirements and effect on the community is exhaustive.

Week 5 March 7th – March 11th

- Monday: Continued work researching the extent of the cooperative scheme in Pochampally India, and its place within the context of the Bhoodan Movement. Looks fairly interesting and I wasn't aware of the effects of communist ideology in India.
- Tuesday: Continued Research on this subject, discovered media reports about the organization in its early stage. I am attempting to get in contact with the Akshara Network to get details on the status of the cooperative scheme.
- Wednesday: Still waiting to get details on the status of the Pochampally Weavers cooperative from the Akshara network, greater search into the particular Pochampally Chenetha Kalanetha Cooperatives reveals very scant details about the actual status or implementation of the cooperative plan. Media coverage does not cover practice of the organization and
- Friday: Accept that I will not discover enough documentation to substantiate a case study on the Pochampally Chenetha Kalanetha Cooperatives, and resign myself to search for a new case with multiple forms of academic literature about it.

Week 6 March 14th - 18th

- Monday: Discover case study information about Soni Grasslands in the Nara Prefecture of Japan with a detailed case study from the International Journal of the Commons, along with an active website and ample literature about Japanese grassland commons of a similar nature.
- Tuesday: Begin writing preliminary case study, researching possible historical origins of semi-natural grasslands in Japan, as well as the status of the national park structure. Start proposal on Social networking strategy with new techniques and tools to maximize outreach.
- Wednesday: Continue research on Soni Semi-Natural Grasslands case study, primarily interested in finding associated supplemental studies in English.
- Friday: Begin first draft of Soni Semi-natural Grasslands case study, alongside social media proposal.

Week 7 March 21st – 23rd

- Monday: Continued work on Soni Semi-natural grasslands research and writing. Issues that have arisen include finding and translating Japanese sources, which I have been able to do with limited success so far. The quality of automatically translated material is questionable, although I have discovered a case study of the operation that looks promising.
- Tuesday: Continued Work on Soni Semi- natural grasslands research and writing, emphasis expanding the research base. The singular case study has been very helpful but now I am looking to expand into the historical context and practice of this type of common.
- Wednesday: Finished final draft of Soni Semi-natural grassland case study and submitted to supervisor for approval.
- Friday: No internship because of Easter Holiday.

Week 8 March 29th – April 1st

- Tuesday: Began work on the Shropshire Hills case study of the Long Mynd grazing common. Research included exploring the history of the settlement of the region, looking for first mention of commons or grazing. There does not seem to be available manorial records on the Long Mynd Common. I have requested a book from the library that should arrive soon.
- Wednesday: Continued work on social media project, specifically the creation of email signatures to increase traffic to social media sites.
- Thursday: Continued work on Shropshire Hills case study.
- Friday: Continued work on Shropshire Hills case study.

Week 9 April 4th – April 6th

- Monday: Finished Shropshire Hills case study, and continued working on email signature project. Waited for archival information from the Shropshire Archives.
 - Updated Facebook and Twitter accounts for the International Association for the Study of the Commons. Including following and re-tweeting relevant accounts, and responding to questions.
- Tuesday: Sent Shropshire Hills case study to my supervisors René and Tine. Began researching Swindon Community Forest aka Great Western Community Forest for its potential as a case study. Updated twitter and Facebook accounts
- Wednesday: Finished email signature project. Continued researching Great Western Community Forest.
- Friday: Absent. Substituted time by working on Thursday March 31st.

Week 10 April 11th –

- Monday: After having repeated trouble finding viable material on the Great western community forest, I've pivoted to study the Forests of Dean, which has

significantly more comprehensive history about the politics of its management because of a controversy over the privatization of the land in 2011. Still trying to find legitimate academic sources and writing about the land and the issue, but so far looks promising. Wrote 2 emails to Tine in the morning, one about a question she had regarding our week 1 and 2 data entry and another about source material for case studies. No reply as of time of clock out. Went to Broodje Carlo for lunch, they have started charging 50 cents more for sandwiches, not sure how I feel about this.

- Tuesday: Spent the morning creating a list of case study subjects for meeting with Tine de Moor. Had a great meeting with Tine de Moor, discussed resources to help with the case studies, and was granted extensive access to the Social Media networks and flexibility to implement changes and updates to the existing structure. Still no progress in actually pinning down a thesis topic sadly, but that is, at least in my mind, due to the lack of progression with the case studies. Hopefully with the new tools I have I can make some serious progress with the study of the English commons and have a solid research question by the end of the week. I also was able to make significant changes to the Facebook and LinkedIn structure that should see major improvements in outreach, I'm hoping for a 100% increase in LinkedIn outreach by the end of the week. Also renegotiated schedule to work on Thursdays instead of Fridays.
- Wednesday: Spent the day implementing the social media proposals I discussed with Tine and René the day before: Merged redundant facebook sites, created an auto referral to the IASC email, Tweeted and posted the promotional material for Tine's lecture in Amsterdam, and increased references to other social media outlets we control. Then I combed the database in the digital library of the commons a bit more. What I found was increasingly disappointing. Working from the limited list of conference excursions to create case studies, I found almost no overlap in the material.
 - I am struggling with the lack of research literature on which to build case studies. This is made worse by the incomplete list of excursions that I am supposed to work from. René has informed me that he will get in contact with a researcher in the English commons, someone by the name of Winchester. I look forward to this greater supply of information as the English commons is seemingly hard to find information on.
- Thursday: I updated the social media with another post to excite people about the upcoming regional conference, made some small edits to entice membership and continued to look for more material on which to build case studies. This search for material seems increasingly futile and I am trying to think about ways to reorganize my search.

Week 11 April 18th – 21st

- Monday: Continued work on social media, posted update about the extended deadline for the Paris Thematic Conference. Drafted posts for the Institute for collective Action Newspaper. Continued scouring the Digital Library of the Commons for ANYTHING related to detailed case information in England. This is seemingly futile so I have switched to looking into Switzerland and Latin America where seemingly abundant amounts of research exists. I requested Robert McC. Netting's book *Balancing on an Alp* which is referred to in literature about swiss commons, and hopefully when it arrives will have the information I need. Still waiting on René's response about the database on the English commons.
- Tuesday: Still waiting for the book, I submitted my draft posts for the Newsletter to René, planning to meet on Thursday. Trying to find more information on the Törbel commons, and it doesn't look like there is too much definitive information although there is a lot of anthropological and ecological material. Unfortunately this lacks the definitive organizational information I need. Looking into Mexican community forestry activities, seems like there is some promising material there.
- Wednesday: Received book on Törbel, Switzerland and there was less information on the organization structure and land use than I was expecting, but I haven't given up hope on that case study yet. Decided to write about the San Juan Nuevo Parangaricutiro enterprise, a community forestry enterprise in Mexico that has some detailed case studies in the international journal of the commons about it. This is ideal because it can be used to highlight the world of the associated authors, although I am not sure this is a sanctioned case study because it is not on my list of IASC conference excursions.
- Thursday: Continued Work on San Juan Nuevo Parangaricutiro enterprise. I am becoming increasingly anxious about the utility of these case studies in the creation of an academic analysis, which is a pressing concern. The materials I am given (and have access to) and the limited choice of subjects are quite constraining. I sent an email to Tine de Moor to clarify the choices of case studies, and to get her input on the social media efforts. Another issue of concern is the balance of work for the Internship project (case studies) and general internship work (social media). While only 1/3rd of my time should be used for general internship work, as per the internship portfolio, I find that my time has been generally been split 50%/50%. I believe this is because the social media work is where I receive the majority of the support and direction from the organization. After lunch I worked from home where I was able to craft some sample posts about the Newsletter.

Week 12: April 25th – April 29th

- Monday: After speaking to Tine and René about the newsletter, it seems that posts about the newsletter are not needed, which leaves me a bit confused on

Appendix II: Poster

From the Manor To the Ranch By Aaron Roberts

A comparative study of the development of common right in the United States and England

Research Question:

How and why did England and the United States Diverge in their practice of common right?

Subquestion:

How did this divergence result in the creation of the Bureau of Land Management grazing system in the western United States?

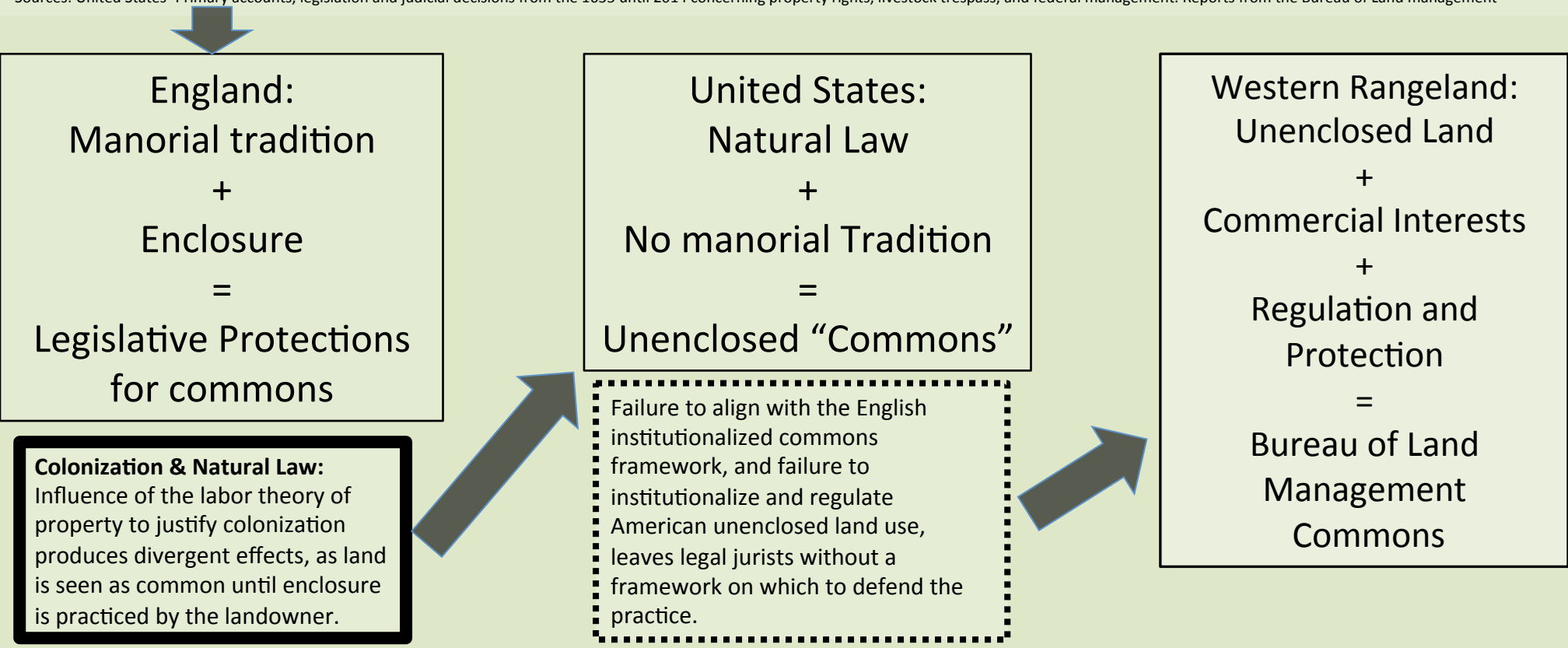
Methodology

Comparison of:

- progression of legislation, •political discourse, and •legal decisions regarding common right

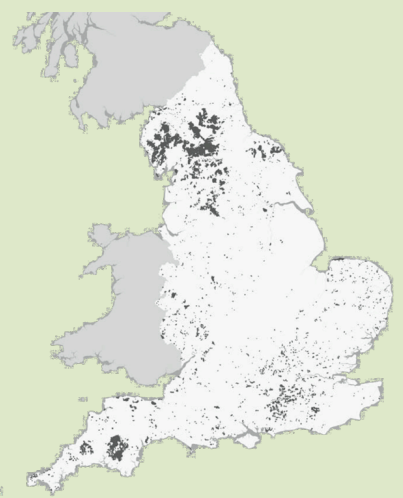
Sources : England -Legislation concerning the governance, status and enclosure of common land from 1235 until 2006.

Sources: United States -Primary accounts, legislation and judicial decisions from the 1635 until 2014 concerning property rights, livestock trespass, and federal management. Reports from the Bureau of Land management

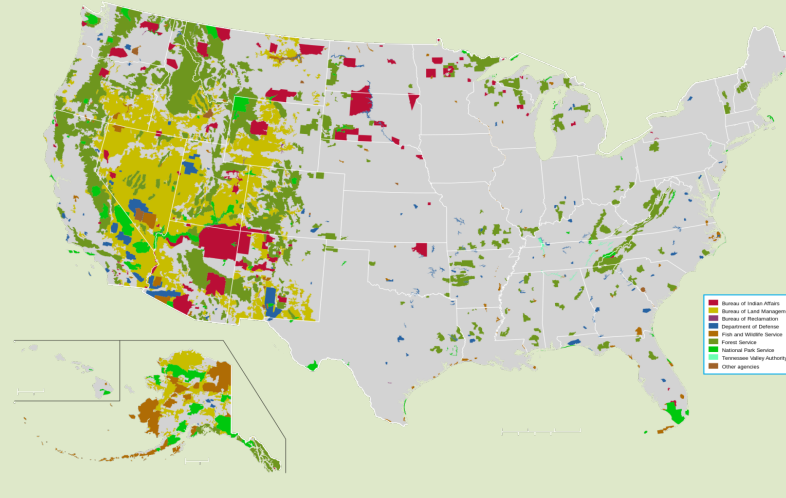


Colonization & Natural Law:
Influence of the labor theory of property to justify colonization produces divergent effects, as land is seen as common until enclosure is practiced by the landowner.

Failure to align with the English institutionalized commons framework, and failure to institutionalize and regulate American unenclosed land use, leaves legal jurists without a framework on which to defend the practice.



Practice:	England ^{1,2,3}	19 th century England ⁴	19 th century USA ⁵	USA BLM Lands ⁷
Defined Boundaries	X	X		X
Restricted Use	X	X		X
Legally Authorized Management	X			X
Legally Respected Use	X	X	X	X
Custom Based Use	X	X	X	X
Localized Regulations	X	X		X
Participant led Management	X	X		*
Authorized Sanctions for rule violation	X	X		X



Preliminary Conclusions:

1. Legislation regarding English enclosure successfully codified acknowledgement and protection for commons practices into the modern day.
2. The United States failed to extensively adopt manorial agriculture because of competition with colonies with freehold ownership but natural law justification creates common of all unenclosed lands.
3. The creation of BLM managed rangelands in the western United States is a direct result of natural law influenced common rights established in the colonial founding of the nation.

Internship Project: Case Studies of International Commons

By: Aaron Roberts

Contained within this internship project is a selection of case studies assembled from my internship at the International Association for the Study of the Commons (IASC). In these case studies, I identify the origin, extent, and functioning of commons through 26 criteria in four commons in four separate countries. These criteria, established by the International Association for the Study of the Commons, include key aspects for the functioning of self-regulated commons such as membership requirements, obligations, and barriers to entry, as well as boundaries, locations, and acts of government recognition. Researching these specific commons and how they fulfill the criteria in varying degrees contributes to the study of the commons by providing concrete examples of functioning common and the mechanisms that allow them to function. By providing these data points we can contribute to the base of knowledge about commons in practice with the goal of producing more inclusive, effective, and applicable theory. The pursuit of these case studies in international locales reveals the necessity to utilize local research, and research institutions as well as the need for cooperation across varying disciplines to further the study in the interdisciplinary field of the study of the commons. Through this study I have learned valuable lessons about the dynamic requirements of researching international locations, interacting with international research institutions, and researching across disciplines to produce relevant data. Two case studies in particular, those of San Juan Nuevo Parangaricutiro enterprise in Michoacán, Mexico, and Soni Semi-natural grassland in Tarōji, Japan contribute to the practical exercise of commons. The case study of Taroji Japan provides an excellent example of long standing semi natural commons and while the case study in Michoacán, Mexico provides an example of successful economically empowering and self-sufficient forestry management.

Case Study: Soni Semi-natural grassland, Tarōji, Japan -- Soni Highland Preservation Society

Type of institution for collective action	Community managed semi-natural common (Sasuki Grassland)
Name/description institution	Soni Highland Preservation Society
Country	Japan
Region	Nara Prefecture
Name of city or specified area	Tarōji in Soni Village
Further specification location (e.g. borough, street etc.)	The semi natural community managed grassland common of Taroji lies 1.87 km east of Soni Village. 34°31'18.7"N 136°09'58.2"E 1170 Taroji, Soni, Uda District, Nara Prefecture 633-1202, Japan
Surface area and boundaries	Approximately 305,764.31 m ²
Patron saint (if applicable)	Not applicable
Foundation/start of institution, date or year	2007 (Most recent restructuring of community stewardship organization)
Foundation year: is this year the confirmed year of founding or is this the year this institution is first mentioned?	No definitive start date for first management efforts but references in poetry to similar community grassland management dates back to 8 th century Japan. In 2007, the management developed into a more formalized structure of the "Soni Highland Preservation Society" reducing total community obligations to only interested volunteers.
Foundation act present?	N/A
Description of Act of foundation	N/A
Year of termination of institution	N/A
Year of termination: estimated or confirmed?	N/A
Act regarding termination present?	N/A
Description Act of termination	N/A
Reason for termination?	N/A
Recognized by local government?	In 1971 this common received recognition by the Japanese government as a part of the "Murou-Akame-Aoyama Quasi-National Park" and the Susuki grass ecosystem as a protected plant community.
Concise history of institution	
The Soni Plateau or Soni Kōgen (曾爾高原) is a community maintained semi-natural grassland common made	

of Susuki grass that has been in existence since time immemorial. It currently exists as a resource for the community by acting as a site for recreation, tourism generation, and artistic inspiration as well as erosion control, carbon fixation, watershed filtration, and pasture.

The initial founding of this common isn't specifically known, but the community stewardship of similar semi-natural grassland commons through a practice of annual burnings has been witnessed in documents dating back to the 8th Century. The original purpose of the grassland was to serve as an ample supply of Susuki grasses for the use in Thatch roofing, a very common form of Japanese roofing until the 1950s. While roofing for a house in the community was only done every 30-40 years, the community helped to maintain this common resource so that everyone had grass available for the necessary roof replacements and renovation. Until 1971 the maintenance of the grassland was organized under the traditional system of *Yui*, meaning mutual help, in which community contribution and reciprocation were the primary mechanisms to facilitate community participation. During roofing renovations, community members were not only allowed to harvest the grass from the communal grasslands but also were provided food and labor to assist through the renovation process. Gifts of food and labor were documented and later reciprocated when another member of the community underwent their own roof renovations.

The 1960s saw a decline in the amount of thatch roofing, in part due to a shift in energy supplies from wood burning to fossil fuels, which significantly decreased the utility of thatch roofs. Thatch roofing received greater longevity from the expulsion of smoke from wood fires, which had the effect of combating decay and rot. The transition to the burning of fossil fuels decreased the utility of these thatch roofs and precipitated its replacement by cheapening tile and metal alternatives. As a result, the utility of the grasslands declined significantly. A simultaneous rise in the demand for timber products and forestry plantations, reduced the grasslands of Tarōji village to their current dimensions. From 1971 to 2007 the management of the Tarōji semi-natural grassland was paid for by the government of the Nara prefecture on the requirement that each family of the Tarōji village volunteer one worker for the annual maintenance tasks of *yakkiri-kari*, *yakkiri-yak*, and *yama-yaki*, the traditional tasks of cutting and burning the grassland. Due to conflicts over obligations to participate, maintenance tasks were reorganized to use volunteers-only, and created the current form of the Soni Highland Preservation Society.

Since 2007, the annual cutting and burning of the Soni Plateau grasslands has been maintained by the volunteers of the Soni Highland Preservation Society and acts as a traditional seasonal event and tourist attraction.

Special events? Highs and lows? Specific problems or problematic periods?

Special Events: The maintenance of this common is done over the year in specific events based on the weather conditions and levels of moisture present in the grasslands and surrounding forest. The annual duties of stewardship include the *yakkiri-kari* in the late September or early October, which involves the cutting of a strip of the grass approximately 10 – 20 meters around the exterior of the grassland which is left to dry and then burned in late October in a process called *yakkiri-yak*. It is not until the spring in late March that the entire grassland is burnt in a celebrated process called *yama-yaki*.

Problematic Period: The grasslands of Soni notably declined starting in the 1950s as thatch for roofing became a lesser-used material, and as the demand for construction timber reached grew. The emergence of plantation forests of Japanese Cedar replaced grasslands in many regions of the village and the size of the grasslands were reduced to their current dimensions. Although Tarōji was able to negotiate the protection of the majority of its semi natural grasslands as a part of its traditional heritage, and the grassland was incorporated into government protection as a part of the Murou-Akame-Aoyama Quasi-National Park. In addition to this, the state also came to identify the grasses as a protected specific plant community.

Membership

Numbers of members (specified)

Membership in the Soni Highland Preservation Society is not strictly defined and preservation efforts are achieved through community notices from organizers to solicit volunteers for preservation responsibilities. In the stewardship of this commons approximately 30 individuals are involved in the maintenance activities such as the annual cutting and burning of the grassland.¹

Membership attainable for anyone, regardless of social class or family background?

Participation in preservation efforts are not limited to local volunteers and have included village and prefecture workers, as well as volunteers from the police and support from local community organizations.

Specific conditions for obtaining membership? (Entrance fee, special tests etc.)

Obtaining membership is achieved through volunteering to participate in the annual maintenance tasks of

cutting and burning the grasslands.
Specific reasons regarding banning members from the institution?
N/A
Advantages of membership?
While there is not a direct advantage to participation in the communal stewardship activities, the community in general receives a benefit from the grassland as it serves as a tourist attraction, watershed filter and natural carbon sink from extraneous air pollution.
Obligations of members?
Obligations of the members include participating in the annual maintenance tasks of cutting a firebreak in late August (<i>yakkiri-kari</i>), the burning of the firebreak in early October (<i>yakkiri-yak</i>) and the burning of the entire grassland in late March (<i>yama-yaki</i>)
Literature on case study
Shimada, D. (2015). Multi-level natural resources governance based on local community: A case study on semi-natural grassland in Tarōji, Nara, Japan. <i>International Journal of the Commons International Journal of the Commons</i> , 9(2), 486.
Sources on case study
¹ Shimada, D. (2015). Multi-level natural resources governance based on local community: A case study on semi-natural grassland in Tarōji, Nara, Japan. <i>International Journal of the Commons International Journal of the Commons</i> , 9(2), 486. Retrieved March, 2016.
² Shimada, D. 2014. The External Impacts of Traditional Commons and Present-Day Changes: A Case Study of Iriai Forest in Yamaguni District, Kyoto, Japan. <i>International Journal of the Commons</i> 8(1):207–235. Retrieved March 22, 2016
Related Material:
³ Toma, Y., Fernández, F. G., Nishiwaki, A., Yamada, T., Bollero, G., & Stewart, J. R. (2010). Aboveground plant biomass, carbon, and nitrogen dynamics before and after burning in a semi-natural grassland of <i>Miscanthus sinensis</i> in Kumamoto, Japan. <i>GCB Bioenergy</i> , 2(2), 52-62. Retrieved March 20, 2016.
Links to further information on this case study
Soni Plateau Website: http://www.soni-kogen.com/yearinfo.html (In Japanese)
Tourism Information: http://japan.apike.ca/japan_sonikogen.html
Case study composed by
Aaron Roberts, Intern, International Association for the Study of the Commons

***San Juan Nuevo Parangaricutiro enterprise, Meseta Purepecha region,
Mexico***

Type of institution for collective action	Indigenous Community Managed Forest Common
Name/description institution	San Juan Nuevo Parangaricutiro enterprise
Country	Mexico
Region	Meseta Purepecha, State of Michoacán
Name of city or specified area	Nuevo San Juan Parangaricutiro
Further specification location (e.g. borough, street etc.)	In the general vicinity of 19°25'30.5"N 102°08'38.4"W
Surface area and boundaries	Approximately 6,443 of the 18,138.323 hectares of communal land are worked, although indeterminate work expansion from this original amount has occurred since 1983.
Patron saint (if applicable)	n/a
Foundation/start of institution, date or year	Late 1970s working in conjunction with other nearby community operations, and in 1983 as an independent communal operation.
Foundation year: is this year the confirmed year of founding or is this the year this institution is first mentioned?	Achieved independent operation in 1981, and received formal governmental recognition of "agrarian community" status in 1991.
Foundation act present?	No
Description of Act of foundation	n/a
Year of termination of institution	n/a
Year of termination: estimated or confirmed?	n/a
Act regarding termination present?	n/a
Description Act of termination	n/a
Reason for termination?	n/a
Recognized by local government?	The San Juan Nuevo community managed forestry operation is supported by the creation of a recognized "agrarian community" formally created via presidential resolution in 1991. This 1991 resolution declared over 18,138.323 hectares as their communal land.
Concise history of institution	
The history of this community managed forestry operation has two distinct stories, one being the effort to establish indigenous community ownership of the land under the conditions set forth in 1917 Mexican Constitution, and second being the development and organization of a strong, sustainable, and empowering community forestry business.	
Acquiring Land Tenure Recognition: The San Juan Nuevo community managed forestry enterprise has the	

legal structure for its community ownership rooted in the 1917 Mexican constitution which accommodated for the existence of two types of communal land tenure agreements meant to prevent the appropriation of indigenous lands, these two types of land tenure agreement were called: "Ejidos" and "Agrarian Communities". The difference between the two is that "Ejidos" primarily concern the granting or redistributing of land to groups who were unable to demonstrate definitive ownership, while "Agrarian Communities" were granted communal land rights when longstanding cultural or historical connection to the land was proven. When this connection was proven the communities would apply to receive a presidential resolution, legitimizing their claim and demarcating the extent of the communal land ownership.

In the pursuit of this presidential resolution, in the 1970s the first step of the San Juan Nuevo Community forestry enterprise was demonstrating the *de facto* ownership of the land by isolating it from outside exploitation through the closing of the main road and limiting outside access. This effort to show *de facto* ownership through limited self-sovereignty and had the result of producing almost complete internal community investment in the forestry operation. This semi-sovereign forestry operation grew strongly, and in 1991 the community was able to secure a presidential resolution identifying approximately 18,138.323 hectares as their "communal land", and legally designating recognized members of the community as "comuneros".

Forestry Operations: In the late 1970s, San Juan engaged in a communal land exploitation arrangement with other communities and "Ejidos" in the form of a Union, but due to a failure to effectively coordinate San Juan withdrew from this union to establish its own independent operation in 1981. To effectively coordinate the sustainable exploitation of the communal forest resource, the neighborhoods required institutional arrangements that fit local customs, and preexisting institutions. As a result the community created a small and flexible "communal council" which could be routinely consulted to represent the views of the various neighborhoods in regards to the communal resource exploitation. This council would be selected from the larger communal General Assembly, and its small size would allow it to act as an executive board, with quicker and less laborious decision making abilities.

This operation was successful and consistently created a profit, even if marginal, every year of operation, and by 1983 the organization was able to purchase an industrial sawmill to increase production. This growth resulted in a jump in the number of employed forestry workers from 100 to 600 by 1986 and a diversification of the enterprise from sawmilling and forest harvesting to more technical forestry services.

Since the establishment of the independent community forestry operation the business has remained steady with 20 operational branches or productive areas, up to \$11 million dollars (USD) in annual sales, and approximately 1,400 people currently employed, 95% being from the local indigenous groups.¹

Special events? Highs and lows? Specific problems or problematic periods?

1981 – Becomes independent forest harvesting operation
 1983 – Acquires industrial sawmill and diversifies operation to include technical forestry services
 1986 – grows to employ 600 employees, a 600% increase from its first independent year.
 1991 – Receives legal recognition as an "agrarian community" as well as the designation of approximately 18,138.323 hectares as communal land.

Membership

Numbers of members (specified)

There are approximately 1,400 employees, with 95% of them being members of the local indigenous community. Of these employees 50% are full time and 50% are part time.

Membership attainable for anyone, regardless of social class or family background?

Membership is primarily exclusive to recognized members of the Indigenous community population also known as "comuneros"; as such the Purhepecha indigenous community makes up 95% of the members of the organization.

Specific conditions for obtaining membership? (Entrance fee, special tests etc.)

Membership is generally restricted to members of local indigenous community, with 95% of employees being members of the local indigenous population.

Specific reasons regarding banning members from the institution?

Membership in the San Juan Nuevo community forestry operations is exclusive to members of the local indigenous community for multiple reasons: firstly, wholly local indigenous membership allows the organization to support the claim for communal ownership over the land under the requirements of the

"agrarian community" category of the 1917 Mexican constitution. This claim, which started being asserted in the 1970s requires that the community has a longstanding traditional association or relation with the land that would justify communal ownership. Secondly, The San Juan Nuevo Community forestry operation's purpose includes creating sustainable economic, social, and cultural empowerment for the local indigenous community.

Advantages of membership?

Recognized membership with the indigenous forestry operations offers employment, training, education, improved living conditions but there are indirect benefits to the community at large as the forest operations accounts for approximately 75% of the economic growth in the region, and provides funding for cultural preservation through indigenous language lessons.

Obligations of members?

Obligations of the members include recognition as a member of the indigenous community, but also receiving training and education to work under specific standardized rules for the safety, sustainability, and growth of the organization. These include maintaining and operating under an effective managerial structure that has control reports, registry, work time(s), sales criteria, and other aspects of a private business organization.

Literature on case study

Orozco-Quintero, A. & Davidson-Hunt, I., (2009). Community-based enterprises and the commons: The case of San Juan Nuevo Parangaricutiro, Mexico. *International Journal of the Commons*. 4(1), pp.8-35. DOI: <http://doi.org/10.18352/ijc.138>

Merino, L , . Conservación o deterioro: el impacto de las políticas públicas en las instituciones comunitarias y en los usos de los bosques en Mexico. Mexico, DF: INE-SEMARNAT. 2004

Orozco-Quintero, A , . "Self-organization, linkages and drivers of change: strategies for development in Nuevo San Juan Mexico". 2007. Masters Thesis. University of Manitoba, Winnipeg, CA

Lopez-Arzola, R. 2005. Empowering community-based forestry in Oaxaca: the Union of Forest Communities and Ejidos of Oaxaca. In *The Community Forests of Mexico: Managing for Sustainable Landscapes*, eds. D. B. Bray, L. Merino- Perez, and D. Barry. Austin: University of Texas Press.

Sources on case study

¹Orozco-Quintero, A. & Davidson-Hunt, I., (2009). Community-based enterprises and the commons: The case of San Juan Nuevo Parangaricutiro, Mexico. *International Journal of the Commons*. 4(1), pp.8-35. DOI: <http://doi.org/10.18352/ijc.138> Pages 11, 13, 15-17, 19, 20, 22

Links to further information on this case study

<https://www.thecommonsjournal.org/articles/10.18352/ijc.138/>

Case study composed by

Aaron Roberts, Intern, International Association for the Study of the Commons

[Case Study: Long Mynd Common, Shropshire , England]

Type of institution for collective action	Upland Heath open access common
Name/description institution	Long Mynd Common
Country	England
Region	Shropshire County, West Midlands
Name of city or specified area	Shropshire AONB
Further specification location (e.g. borough, street etc.)	52.545117" N , -2.864792" W
Surface area and boundaries	Approximately 2214 Hectares, The Long Mynd common lies on a hill (the Long Mynd) within the Shropshire Hills 'Area of Outstanding Natural Beauty' (AONB) making up approximately 7% of the total natural reserve area. The common covers most of the higher central part of the hill and eastern valleys but does not include the southern, western and northern fringes of the hill.
Patron saint (if applicable)	Not Applicable
Foundation/start of institution, date or year	The formal registration and foundation of the current form of governance of the common dates back to 1965 when it was given to the National Trust under the Commons registration act of 1965, although previous mixed usage of the land dates back to the Bronze Age with significant grazing occurring in .
Foundation year: is this year the confirmed year of founding or is this the year this institution is first mentioned?	The formal acquisition of the land by the National Trust is clearly documented to have occurred in 1965, although other institutions have managed the commons previous to this point
Foundation act present?	Foundational Act for the most modern form of the institutionalized commons is the Commons Registration Act of 1965
Description of Act of foundation	The commons registration act of 1965
Year of termination of institution	Still in existence
Year of termination: estimated or confirmed?	Still in existence
Act regarding termination present?	No
Description Act of termination	Not Applicable
Reason for termination?	Not Applicable
Recognized by local government?	This institution is recognized in the commons registry as required under the Commons Act and Commons Registration Act, as well as through recognition by quasi-governmental non-profit organizations such as the National Trust. In terms of local government recognition the commons allows public access for recreational and educational purposes and is heavily advertised by the local government.
Concise history of institution	

The common of Long Mynd in the Shropshire Hills AOEB, has a distinctive position in the long and rich history of English settlement in Shropshire. This history can be witnessed in the numerous artifacts and ruins of the bronze age as seen in the tombs and barrows, as well as iron age remnants, with the ruins of the Broadbery Ring Hill fort dating back to 500 B.C.

In the function as a commons, Long Mynd has remained the largest unenclosed commons in all of Shropshire at approximately 2214 hectares, it survived the rampant enclosure movement that swept the late 18th to 19th centuries, enclosing over 27,000 km² or 21% of English land. While the first usage of the land as a grazing common is not distinctly documented, evidence of usage by squatters in the region date back to the 15th century with significant townships such as Shrewsbury said to be a direct descendant of the Middle Age squatter towns.

Due to the significant history of the region and the lack of need for agricultural improvement of grazing lands, the Long Mynd common has remained relatively unchanged, if reduced, to the modern day. In 1965, in an effort to preserve the natural beauty and historical heritage of the region, 802km² of the Shropshire hills, renamed the Shropshire Hills Area of Outstanding Natural Beauty (AONB), was given to the stewardship of the National Trust (for places of historical interest or natural beauty), which is a non-profit charity association that became an incorporated organization with statutory abilities under the National Trusts Act of 1907.

Since the purchase of the Long Mynd Common into the National Trust owned AONB, the use of the grazing commons has been regulated through multiple imposed legal limits on land use such as a High Level Stewardship agreement, and the designation of the land as an Environmentally Sensitive Area. While the national trust officially owns the land, the Long Mynd Commoners Association has ownership of common grazing rights on it. The common right to graze is currently held by 88 owners, with 16 regular graziers of sheep and ponies, amounting to ~3,000 actively grazing livestock. This is a significant reduction from the 110 common holdings at the purchase of the land by the National Trust in 1965 as well as the average 12,000 grazing livestock that were present up until the 1990s. This reduction in commoners and grazing animals is in part due to the negotiation of a High Level Stewardship agreement signed in 2000 which granted the local commoners Association almost 2 million £ for the reduction of their commons grazing rights. The Long Mynd Commoners Association, unlike a commoner's council, has no statutory powers and serves primarily as an organization for coordination of commoner's interests. Ownership of grazing rights is predicated on the purchase of land with the attached rights or lease of those rights, as stipulated in the Commons Act of 2007.

Aside from strictly grazing rights, the Long Mynd common also has value to the greater community as a recreational and educational site as well as one of environmental interest. The Long Mynd common is open access and provides recreation to over 300,000 visitors every year as well as 33,000 students, numerous athletic activities such as mountain biking, fell running, and paragliding. Environmentally on a greater scale the region contributes ecosystem services such as carbon storage, flood attenuation, and erosion control.

Special events? Highs and lows? Specific problems or problematic periods?

1965 - Registration under the Commons Registration Act 1965 - Legally registered the land as a commons and done in conjunction with the Transfer of the land to the National Trust for preservation

2000 - In ~2 million £ agreement, the Long Mynd common is designated an Environmentally Sensitive Area (ESA) requiring High Level Stewardship (HLS).

Membership

Numbers of members (specified)

As of 2014, there were 88 commoners registered with rights to graze on the Long Mynd Commons, and approximately 17 commoners actually utilizing that right.

Membership attainable for anyone, regardless of social class or family background?

There are specific conditions for attaining membership, according to the commons registration Act of 1965, and the Commons Act of 2007, ownership of land with common right is required to exercise the common rights of pasture on Long Mynd. Although the common right to graze can be lease for up to 2 years, and the common is free access for recreation and educational purposes.

Specific conditions for obtaining membership? (Entrance fee, special tests etc.)

There are specific conditions for attaining membership, according to the commons registration Act of 1965, and the Commons Act of 2007, ownership of land with common right is required to exercise the common rights of pasture on Long Mynd. Although the common right to graze can be lease for up to 2 years.

Specific reasons regarding banning members from the institution?
Common right to graze is attached to property ownership of the adjoining properties as stipulated when the common was first registered.
Advantages of membership?
The right to graze is of definitive financial value as seen in the 2000 settlement which awarded almost 2 million £ to holders of common right to reduce the amount of livestock sent to pasture on the Long Mynd common, as well as the
Obligations of members?
Maintain the standards for sustainable use as established in the High Level Stewardship agreement, and the Environmentally Sensitive Area Agreement, including prevention of overgrazing and the reduction of use of potentially harmful chemicals.
Literature on case study
Rowley, T. (1972). The Shropshire Landscape. London: Hodder and Stoughton. Aglionby J and R Morris, (eds) Better Outcomes on Upland Commons (Foundation for Common Land 2014) Related Legislation: "Commons Registration Act 1965". legislation.gov.uk. UK: The National Archives. 1965. Retrieved 4 April 2016. "Commons Act 1908 c. 44"; "Commons Act of 2007". legislation.gov.uk. UK: The National Archives. 1908; 2007. Retrieved 4 April, 2016.
Sources on case study
Rowley, T. (1972). The Shropshire Landscape. London: Hodder and Stoughton. Aglionby J and R Morris, (eds) Better Outcomes on Upland Commons (Foundation for Common Land 2014)
Links to further information on this case study
http://www.cardingmillvalley.org.uk/?page=41 Rowe, Mark. "Commoners Given 2 Million Pound to Help the Long Mynd Get Back to Nature." The Independent. Independent Digital News and Media, 25 June 2000. Web. 04 Apr. 2016. < http://www.independent.co.uk/environment/commoners-given-pound2m-to-help-the-long-mynd-get-back-to-nature-712261.html >.
Case study composed by
Aaron Roberts, Intern, International Association for the Study of the Commons.

Pochampally Chenetha Kalanetha Collectives, India

Type of institution for collective action	Ikat weaving and micro lending cooperative
Name/description institution	[Name of institution, or in case of no specific name, a short description identifying the institution]
Country	India
Region	Telangana, Nalgonda District
Name of city or specified area	Bhoodan Pochampally
Further specification location (e.g. borough, street etc.)	17.3861°N 78.6433°E
Surface area and boundaries	n/a
Patron saint (if applicable)	n/a
Foundation/start of institution, date or year	2008
Foundation year: is this year the confirmed year of founding or is this the year this institution is first mentioned?	2008 marks the first formal founding of the Akshara Network organized weaving cooperative project, with various small early cooperative institutions mentioned before 2008.
Foundation act present?	Yes
Description of Act of foundation	Formal Founding of the Pochampally Chenetha Kalanetha Collectives began in 2008 after winning "Best Business Plan" from Srijan 2008 where it received financial and business support for implementation.
Year of termination of institution	2013
Year of termination: estimated or confirmed?	Estimated (Last seen media reference)
Act regarding termination present?	n/a
Description Act of termination	n/a
Reason for termination?	n/a
Recognized by local government?	The Organization has "Geographical Indications of Goods" status from the Indian Government acknowledging the
Concise history of institution	
<p>The region of Pochampally, India is one with an rich history of collective action dating back to the start of the Bhoodan land reform movement in the 1951 when a mass popular push led by the Gandhian follower Vinoba Bhave, encouraged wealthy landowners throughout India to donate and distribute land for the agricultural needs of the large impoverished lower classes. Since then there has been the establishment of multiple thriving weaving cooperatives, but it wasn't until 2008 that these organizations started providing dynamic cooperative financial and marketing services to compete in the globally advancing economy. Through the Srijan Microfinance Business Plan Competition, the Akshara Network was able to compose and implement a cooperative business model that not only empowered the weavers by increasing the niche power of their product through experimentation, collective credit and greater control of the supply chain, but also posited a strategy to economically uplift the regional economy through greater political voice, and marketing of the region and the regions products. Since it's inception the organization has lent the strength of its voice to combat fluoride toxicity of its waters, and increase the profile of the region through promotion of tourism and</p>	

regional branding.
Special events? Highs and lows? Specific problems or problematic periods?
n/a
Membership
<i>Numbers of members (specified)</i>
Participating membership is given to weaving families with estimated projections starting in 2008 – 2009 at 250 Families; 2009 – 2010 at 1000 families; 2010 – 2013 at 2500 families
<i>Membership attainable for anyone, regardless of social class or family background?</i>
Not specifically exclusive to weavers, produces self-replicating autonomous sub-collectives.
<i>Specific conditions for obtaining membership? (Entrance fee, special tests etc.)</i>
Dependent on individual collective.
<i>Specific reasons regarding banning members from the institution?</i>
n/a
<i>Advantages of membership?</i>
Provides a common pool of capital for investment and material credit at a reduced risk, and a training hierarchy with skilled “gurus” for the promotion of domestic and onsite technical experimentation and innovation at a reduced risk. A leverage fund. Membership in the cooperative also allows for product differentiation as members can produce a distinctly “branded” product that is quality-guaranteed, negotiated from a stronger position, sold at a higher price, and constantly being innovated. While many other cooperatives exist in this region, the Pochampally Chenetha Kalanetha Collectives and collectives based off this model give a unprecedented combination of benefits and accepts a more inclusive membership.
<i>Obligations of members?</i>
Approximately an 8% revenue fee from sub collectives.
Literature on case study
G. Muralidhar, Vepoor Murali, Business Plan of the “Pochampally Chenetha Kalanetha Collectives” - 22 May 2008 http://www.aksharakriti.org/magazines/doc_download/240-pochampally-chenetha-kalanetha-bp-final Mott MacDonald, “Evaluation study of rural Tourism Scheme” http://docslide.us/documents/rural-tourism-evaluation-study.html
Sources on case study
http://www.aksharakriti.org/magazines/doc_download/240-pochampally-chenetha-kalanetha-bp-final
Links to further information on this case study
http://www.slideshare.net/srijan2008/pochampally-chenetha-kalanetha-020708 http://www.aksharakriti.org/magazines/doc_download/240-pochampally-chenetha-kalanetha-bp-final
Case study composed by
Aaron Roberts, Intern, International Association for the Study of the Commons

UTRECHT UNIVERSITY

From the Manor to the Ranch

A comparative study of common right
development in the United States and England

Roberts, Aaron W.

June 20th, 2016

This thesis tracks the development of common right concerning livestock grazing, from legal codification in England, through the colonization of America and into the creation of the vast grazing commons administered by the Bureau of Land Management (BLM) in the western United States. By following landmark legal decisions and legislation, the development from manorial legacy in England, to natural law infused legislation in the early United States, it is demonstrated that the current BLM grazing programs are not only a grazing common, with a distinctly unique form of common right, but also result of the post-colonial evolution of commons in the United States.

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Chapter 1: Introduction.

"The rise of capitalist practice and morality brought with it a radical revision of how the commons are treated, and also of how they are conceived." - Noam Chomsky

On April 12th, 2014, a group of armed protesters converged on Bureau of Land Management (BLM) lands in Clark County in the state of Nevada. This group came to support a rancher by the name of Cliven Bundy in his political quarrel with the Bureau of Land Management, which was attempting to round up and impound his livestock grazing on public lands. Through powerful armed posturing, the protesters forced the police working with the Bureau of Land Management to stand down, and Cliven Bundy's livestock continues to roam and graze freely on BLM lands to this day. While this sounds like a heroic show of populist power, it actually reveals a flash of the longstanding tensions concerning the management of rangelands throughout the Western States. Cliven Bundy was one of the 18,000 permitted grazers on the over 155 million acres of rangeland held by the federal government under the Taylor Grazing Act for the control and regulation of grazing on the vast western ranges. Bundy who had been a permitted grazer since 1954, stopped paying his permit fees in 1994, and by 2014 had accumulated almost one million dollars in unpaid fees and court order fines. The obvious question arises, why did he stop paying? Bundy's legal claim (*United States v. Bundy*) was that he possessed a right to graze, inherited from his family's grazing of similar lands in the 19th century.¹ When this claim was defeated, he repositioned himself under a much grander political claim that the BLM lands should be constitutionally relegated to the control of the states.² Whether Bundy knew it or not, both of these claims, while legally ruled defunct, did strike at the heart of the political debate and legal evolution that shaped the lands he had been grazing for 40 years, and elicits a greater examination of exactly how this situation arose.

Bundy's general claims in both of these cases can be simplified to two legal concepts: common rights, or the use rights over another's property based on tradition, and states' rights. While the purview of states' rights within the federalist structure of the United States is hotly debated, a lesser discussed topic is what constitutes common rights, and how, if at all, do they fit within the United States national historical

¹ Martinez, Michael (April 12, 2014). "[Showdown on the range: Nevada rancher, feds face off over](#)

² Strasser, Max. "[For Militiamen, the Fight for Cliven Bundy's Ranch Is Far From Over](#)". *Newsweek*. Retrieved June 10, 2016.

development. Interestingly enough, the discussion about common rights, sometimes stated as rights of common, originates all the way from the legal traditions of the United States' colonizing metropole, England.³ Going back almost a millennium, we can trace the legal evolution of commons and common right to reveal that not only did commons of one kind or another once exist throughout the United States, but they had a critical role in shaping the management of western rangelands, as we now know them.

In 1776, the United States and the England severed their colonial bond irrevocably. Although the bond was broken, the colonial legacy of that connection still remains engrained, albeit altered, in institutions that continue to this day. One significant lasting effect is the legacy of English common law, which when the United States was still in its infancy, was used to guide the early legal decisions and help build legal structures for the new nation.⁴ Through this tumultuous beginning, the legal institutions adapted to the newfound geography, and in the process, evolved into something distinctly different than its paternal endowment. One distinct realm of change concerned the concept of private property, as the paradigm shifted from one dominated by natural law, which justified the colonization, and English common law, which reigned in the country's naissence, to one of a more mature centralized constitutional framework.

The right to private property in the United States is one of its most fundamental values, being protected implicitly and explicitly throughout the U.S. Constitution and its accompanying Bill of Rights.⁵

Although the right to private property is firmly asserted in these founding documents, what is not specifically expressed is what constitutes private property and what legal implications do private property rights entail. In fact, the examination of these two questions reveals a distinct development and divergence from the inherited English common law, specifically with regards to the concept of "common right" as a form of property ownership.

³ "Rights of Common." *Rights of Common*. Web. 07 Feb. 2016.

<<http://www.foundationforcommonland.org.uk/rights-of-common>>.

⁴ English common law became fundamental in the creation of the legal structure in the United States. That was not always obvious, as early on natural law had predominance over certain property rights issues, as will be addressed later one and some practices in pure civil law were attempted. See: Eric T. Freyfogle, *The Enclosure of America* (Illinois Public Law and Legal Theory Research Papers Series, Research Paper No. 07-10 October 26, 2007 pg 45

⁵ U.S. Constitution, Fifth Amendment

The concepts of “the common” and “common right” in regards to land use, would most likely not inhabit a significant place in the either the legal or practical thoughts of the average modern day American. The lack of familiarity with these ideas is not because they have never existed, but today, “common right” or simplistically the right to utilize or access resources on another’s property from custom and tradition, and “common land”, or land communally or openly utilized, only earnestly exist in the margins, archives, and subtext of the legal code or relating to obscure traditionally held protections for things such as water for irrigation in the western states.⁶

This stands in contrast with England, where “common land” still openly occupies almost 372,941 hectares of land, equal to approximately 3% of the entire country. This common land has evolved from its feudalistic agricultural conception to also serve recreational and civic functions. Still an institution within the English legal framework, laws and legal decisions regulating their existence and exercise has been ingrained into England’s legal development since the first statute in the 13th century.⁷

8

The Legal Framework

To understand the extent of this divergence, a more in depth understanding of the legal concept of “common land” and how that creates what is called “common right” is required. Common land, at least how it conceptualized in England, is privately held land, over which others, often referred to as “commoners”, possess use rights, or rights of common, giving legally recognized access to specific resources.

The English legal system created an extensive classification of rights held by its commoners describing who would be entitled to such rights as well as the extent and purpose. Most established common rights were attached to a landholding as a subsidiary right also known as an “appurtenant” rights, although it was also possible to hold rights “in gross”, which could be transferred and inherited regardless of landholding. There also existed “common *pour cause de vininage*” which were common grazing rights held by those in neighboring settlements, although this concerned settlements where commons were contiguous, and did not actually allow

⁶ Eric T. Freyfogle, The Enclosure of America (Illinois Public Law and Legal Theory Research Papers Series, Research Paper No. 07-10 October 26, 2007 p. 48

⁷ "Rights of Common." *Rights of Common*. Web. 07 Feb. 2016.
<<http://www.foundationforcommonland.org.uk/rights-of-common>>.

⁸ The Commons Act 2006 (c 26)

the one settlement's commoner to graze on the contiguous commons but was more of a legal protection from the trespass of straying animals.⁹

These common rights historically came in many forms and varied based on the local arrangements made, but also on the terrain involved, usually designated into two types: "arable land" used for agriculture, and "waste". "Arable land" was related to communal agriculture arrangements such as open field or strip farming, which was usually the first to be enclosed, or fenced and privatized.

"Waste", unlike arable land, included undeveloped land, pasture, fen, and otherwise farm deficient land. This type of common provided a more significant common value, as it served an integral part of the rural economy providing grazing, fuel, and a wide variety of other resources.^{10 11 12} Waste common most directly relates to the development of common right as it contains the greatest variety of periphery rights and is not directly related to simple cultivation.

The common law of England recognized six non-exclusive categories of common rights over wastes, although many rights do not neatly fit within these categories. The first and most commonly used right was the right to pasture, which is still exercised in England and Wales and is centrally important to the rural economy of upland England and Wales.¹³ In practice, these commons were often regulated by two practices that reappear into the modern day, first was the practice of "couchancy and levancy", also known as "wintering", which controlled the amount of livestock grazed on common lands in relation to the capacity of attached land to feed the livestock in the winter months.¹⁴ The second principle is called "stinting", which is the permitting of a fixed number of grazing animals on the common.¹⁵

Besides grazing, a vast array of other common rights also existed such as *piscary* or the right to take fish from waterways, *turbary* or the right to collect sod or peat for

⁹ Rodgers, C. P., et al. *Contested Common Land: Environmental Governance past and Present*. Washington, DC: Earthscan, 2011. Print. Pg 6

¹⁰ Neeson, J. M. *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820*. Cambridge: Cambridge UP, 1996. Print. page 2

¹¹ Rodgers, C. P., et al. *Contested Common Land: Environmental Governance past and Present*. Washington, DC: Earthscan, 2011. Print. Pg 1

¹² "Waste" in England would also include wooded areas, but this was not universal and in continental Europe there was often a distinction for common woodland. (Moor, M. D., Shaw-Taylor, L., & Warde, P. (2002). *The management of common land in North West Europe, c. 1500-1850*. Turnhout, Belgium: Brepols. pg 19)

¹³ Rodgers, C. P., et al. *Contested Common Land: Environmental Governance past and Present*. Washington, DC: Earthscan, 2011. Print. pg 6

¹⁴ *ibid.*

¹⁵ *ibid.*

fuel, and *estover*, or the right to collect wood.¹⁶ One right existing rarely in England but emerging heavily in the colonial America is the right to take wild animals or *Ferae Naturae*. Using this framework we can study the divergence in the practices of common land use in both England and the United States, and develop a better understanding of its current practice.

The study of commons is convoluted, as the subject can be studied through a variety of academic lenses, and socio-economic, historical and political issues such as collective action, liberalism, and colonialism, all of which have influenced its development. This particular study will concentrate on the institutional development of the law and legal structure in the United States and England as it relates to the concept of common lands.

The argument presented in this thesis will demonstrate that the legal divergence in the institutionalization of common right seen between the United States and England can be traced to the segmented colonial development of the United States, its industrialization, the influence of natural law, and the late 19th century push for legal centralization. Nevertheless, the United States did develop an analogous form of commons in the grazing commons of the BLM western grazing lands.

Through examination of the historical origins and legal development of common right in England, and its adaptation and combination with natural law in the colonization of America, we can track a definite devolution of the U.S. common right into the 20th century as it struggles to adapt to increasing enclosure, industrialization, and legal codification. In comparison, in England, we see the emergence of common right from open field agricultural manorialism, followed by the crucible of enclosure from the 15th century until the early 20th, and an increasing inclusion of the public interest from the late 19th century until the present day. In the United States the inability to establish codified commons institutions during the late 19th century centralization of jurisprudence virtually eliminates landuse rights not held in full ownership by the 20th century.

With the historical context established, I will take a closer examination of how the historical development of the modern western rangelands represented a unique development of American common rights. Avoiding privatization and enclosure, U.S. western rangelands are to be held in perpetuity by the federal government to act as the

¹⁶ "Rights of Common." *Rights of Common*. Web. 07 Feb. 2016. <<http://www.foundationforcommonland.org.uk/rights-of-common>>.

landowner, and as ranching interests were established on the open land, grazing regulations, entitlements, and political interests institutionalized themselves to create the largest regulated grazing commons in United States.

Finally, with an understanding of the origin and function of these governance plans, a comparison between the management of the western rangelands in the United States, and the management structure of modern day grazing commons in England reveals that not only should the western rangelands be seen as an outcome of divergence in common right institutions, but also can be easily improved to be more sustainable and effective according to Elinor Ostrom's Eight Principles of Common Pool Resource (CPR) management.

Chapter 2. The Historical Development of Commons: England

The history of commons and common right in England can be traced back to manorial feudalism and the implementation of “open field” agriculture. In the “open field” system, communal farmers would procure long-term leases or exercise their common right to farm on large open “arable fields” as well as graze and harvest from nearby “common lands”. These lands that had common rights attached to them included the fertile agricultural “arable field” which was often jointly organized by the commoners into assigned strips of land, called selions, and farmed for the church, the lord of the manor, as well as the individual farmer. The selions were distributed across the open fields to reduce the harm of a bad harvest to an individual farmer. The management of individual commons was different from common to common, although accounts of their organization reveal that communities of commoners and manor lords would regularly meet to assign selions and determine limits to commons usage.¹⁷

The manorial agricultural system has been practiced since at least the 6th century Rome, where the “open field” system provided independence and employment for families who would lease, own, or work a share of the land in exchange for common right benefits and agricultural land access.¹⁸ In the manorial system the people who exercised these common rights were called commoners.¹⁹ The commoner had, as a matter of tradition or explicit agreement with the manorial lord, common rights to the reasonable sustainable exploitation of varying degrees of the “common land” or “wastes”.²⁰ While the open field system was capable of supporting the agricultural needs of the yeomen, the church and the landowning class, the “common land” and “waste” would sometime provide the auxiliary benefits of livestock grazing and fuel gathering as well as support minor “cottage trades”.²¹

As these rights were locally organized through manorial courts and informal arrangements the codification concerning rights of common didn't really occur at the

¹⁷ Neeson, J. M. *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820*. Cambridge: Cambridge UP, 1996. Print. Pg 111

¹⁸ Sarris, P. "The Origins of the Manorial Economy: New Insights from Late Antiquity." *The English Historical Review* 119.481 (2004): 279-311. Web. pg 1

¹⁹ "Rights of Common." *Rights of Common*. Web. 07 Feb. 2016.

<<http://www.foundationforcommonland.org.uk/rights-of-common>>.

²⁰ Paraphrase: of Roberts, A. “Rich Dirt; Dirt Poor: The decline of the commoner & Common Right in the English Agricultural Revolution” (2016)

²¹ Neeson, J. M. *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820*. Cambridge: Cambridge UP, 1996. Print. Page 2

parliamentary statute level in England until 1235 with the Statute of Merton, which dictated that while manorial landowners could enclose their property, in this case expand their agricultural fields into common lands and wastes, they had to secure their tenants continued ability to exercise their rights of common to do so, otherwise it would constitute an act of unlawful dispossession of common land.²² While this statute in effect increased enclosure and reduced the rights of common that tenant yeomen had, it was the first legal codification of their rights at a statute level.

The legal formation of these rights at the time was not always obvious or directly derived from manorialism, in Christopher Rogers, Elenor Straughton, and Margarita Pieraccini's collaborative work *Contested Commons: Environmental Governance Past and Present*, they parse out the development of commons in terms of property rights, identifying, among other things, the overlapping and fluidity of common rights in English development. They point to the "the opposing forces of private rights... and public 'ownership'..." as a theme that runs through codification of common right and recognize that a "shifting boundary" existed in what constituted a common land.²³ While land could for "all practical purposes" be identical to manorial waste commons with "...areas of semi-natural vegetation over which grazing rights were shared..." these commons sometimes originated from licensed use making it not technically derived from simple common right, and only receiving classification as such in the 20th century. Another quasi-common that emerged to be later legally classified as common was through the use of enclosed communal pastures, where individuals often with sole rights, or exclusive rights, communally grazed without manorial involvement at all.²⁴

From the 13th century onward we see the continued struggle of the commoner against the enclosure of common lands producing a multitude of legal dictates, political debates, and events such as violent uprisings. In the 15th and 16th centuries, England experienced the first surge of enclosure as a massive population decline caused by the Black Plague drove up the cost of labor, drove down the cost of rent, and made sheep farming significantly more lucrative to land owners.²⁵ As a result open field farming began its general decline and landowners, often unilaterally,

²² Statute of Merton, Chapter 4 (1235)

²³ Rodgers, C. P., et al. *Contested Common Land: Environmental Governance past and Present*. Washington, DC: Earthscan, 2011. Print. Pg 22

²⁴ Ibid.

²⁵ Geary, Frank. *Land Tenure and Unemployment*. London: GEORGE ALLEN & UNWIN, 1925. Print. page 38

transformed arable land, for which they could neither find enough tenants or labor to work as farmland, into enclosed pastureland.²⁶

These enclosures had drastic effects on the commoners' rights, as they caused unemployment, displacement, and sometimes the disappearance of whole villages that could no longer sustain themselves without access to the open field and commons.²⁷ In response, some ineffective and overly broad anti-enclosure legislation were passed in 1489, 1516, and into the 16th century but the movement towards greater enclosure steadily continued.²⁸ As enclosure continued and legislation easing the plight of unemployed and dispossessed yeomen failed to achieve any relief, many notable anti-enclosure rebellions and riots occurred in the country over the next century including Ketts's Rebellion (1549), the 1607 Midland Revolt, and the resulting Newton Rebellion.²⁹ At this point in the 17th century, the process of enclosure began its transition from landlords unilaterally enclosing the common fields to a process of Parliamentary enclosure, where landlords sought the use of the local parliament and governmental procedure to enclose their lands. These enclosures were structurally different than the unilateral enclosures by landlords because they also incorporated the input from freeholders and common right holders of the period.³⁰ Starting in 1604, containing over 5,200 acts and continuing until 1914, parliamentary enclosure enclosed over 27,000 km² of common land in England.³¹

Moving forward into the late 19th century, we see the majority of the parliamentary enclosures having been completed, with over 80% occurring between 1750-1819.³²

In the late 19th century and continuing into the 21st we see increasing appreciation of the commons of England, not just as agricultural spaces, but also as public and recreational spaces. For example, in 1879 we see the first of many formalized commons acts, which registers and regulates the functioning of over 30 commons in

²⁶ White, Graeme J. *The Medieval English Landscape, 1000-1540* (1). London, GB: Bloomsbury Academic, 2012. ProQuest ebrary. Web. 25 May 2016.

²⁷ Beresford, Maurice (1958). *The Lost Villages of England*, Sutton.

²⁸ Elton, G. R. *Studies in Tudor and Stuart Politics and Government Papers and Reviews 1946-1972*. Cambridge: Cambridge UP, 2003. Print.

²⁹ Russell, Frederic William. *Kett's Rebellion in Norfolk*. S.I.: British Library, Historic, 2011. Print.

³⁰ Inclosure Act 1773 CHAPTER 81 13 Geo 3, <http://www.legislation.gov.uk/apgb/Geo3/13/81>

³¹ UK Government, "Enclosing the Land". (<http://www.parliament.uk/about/living-heritage/transformingsociety/towncountry/landscape/overview/enclosingland>) Retrieved 12 May 2016.

³² Turner, Michael Edward. *English Parliamentary Enclosure: Its Historical Geography and Economic History*. Folkestone, Eng.: Dawson, 1980. Pg 110. Print.

England and Wales and also makes provisions protecting the public use of urban greens and commons by inflicting penalties on those that would develop them stating:

*“An encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance, and if any person does any act in respect of which he is liable to pay damages or a penalty”*³³

This section marks the first piece in a series that introduces the broader public into the dynamic relationship of common rights, no longer simply between the landowner and the commoner. After this legislation was passed, further expansion of this legal movement occurred with other legislation such as the Commons Act of 1899, which relegates management of primarily recreational commons or commons without known ownership, to district councils and national park authorities, as well as, the Law of Property Act in 1925, which designated approximately one fifth of all commons, those in metropolitan districts, as having a right to public use for “air and exercise”.³⁴

Into the 20th and 21st century, the public integration into the rights of common, as well as the solidification of the existing commons, becomes finalized with the Commons Registration Act of 1965, the Countryside and Rights of Way Act (2000), and the Commons Act of 2006, which for the first time extended public access and attempted to register all remaining commons, commons ownership, and rights of common throughout the UK.³⁵ The Commons Act of 2006, along with greater registration and protection of English commons, also formulated a new management structure called the “Commons Council”.

These three pieces of legislation finalize the movement, and can be argued to mark the end of enclosure, as they provide protections and sustainable management structures for the remaining commons, but they also mark a definitive transformation in the nature of that commons agreement. No longer are rights of common a traditional manorial-based agreement between a landowner and attached tenants, they have now been incorporated into the public sphere as a part of history and civil development. This development from feudal arrangement, through the crucible of

³³ Commons Act 1876, section 29 line 3

³⁴ Law of Property Act 1925 15 Geo 5 c 20

³⁵ Rodgers, C. P., et al. *Contested Common Land: Environmental Governance past and Present*. Washington, DC: Earthscan, 2011. Print. Pg. 15

enclosure, and finally public integration creates a distinct evolutionary path that, as we will see, was not to be successfully emulated in United States for many reasons.

Chapter 3: Historical Divergence of Common Right in the United States

“...in the beginning, all the world was America.” – John Locke

In the growth of the United States, the discussion of the development of common rights might seem strange, primarily because of the modern day exaltation and protection of private property being sometimes seen as crucial to the nations “exceptional” status.³⁶

Some accounts of early colonial settlement by some historians of the colonies assert that communal property was unfit for American practice on a cultural level, citing accounts of colonial leaders such as William Bradford in Allan Kulikoff’s book *From British Peasants to Colonial American Farmers*:

“...abandoned common property and common cultivation in 1623. William Bradford, the colony's leader, explained that the communal system had bred "much confusion and discontent and retarded much employment." Communal ownership and work had led "young men, that were most able and fit for labour and service," to "repine that they should spend their time and strength to work for other men's wives and children without recompense." Their wives, for their part, deemed being "commanded to do service for other men, as dressing their meat, washing their clothes, etc.," as "a kind of slavery" and neither could many hands brook it." In contrast, the division of land made all hands very industrious.”³⁷

Allan Kulikoff may happily cite William Bradford’s distaste for communal living, but the fact is throughout the colonial settlement common land, in a more general form, had its distinct place in America’s development. Admittedly, the American colonies did fail to implement extensive lasting manorial agricultural schemes, however this was mostly due to availability of land grants and competition of land tenure schemes throughout the colonies rather than a uniform cultural distaste for this form of land management. In New England, attempts at establishing manorial style open field agriculture had to compete with other colonies offering opportunities for freehold land ownership, as well as attract immigrants from Europe, which increasingly saw feudal agricultural schemes as outmoded.³⁸ That said, the creation of waste commons were significantly more prevalent than open field arable commons,

³⁶ Schweikart, Larry, and Dave Dougherty. *A Patriot's History of the Modern World*. New York: Sentinel, 2012. Print. Pg. 2

³⁷ Kulikoff, Allan. *From British Peasants to Colonial American Farmers*. Chapel Hill, NC: U of North Carolina, 2000. Print. Pg. 226

³⁸ Price, Edward T. *Dividing the Land: Early American Beginnings of Our Private Property Mosaic*. Chicago: U of Chicago, 1995. Print. Pg. 11

and their establishment can be seen in land distribution plans from New England to South Carolina.³⁹ These designated commons developed their own local informal or formal requirements for access, usually requiring acceptance by the freemen of the town and participation in the local church.⁴⁰

The colonial diversity of the land distribution schemes, immigrated cultural practices, and approaches to communing leave behind relics that can be witnessed today. One such example of this is the famous Boston Common in the state of Massachusetts, which served as a grazing common, a public meeting ground, and sustainably regulated cattle grazing for over two centuries. Another and significantly more peculiar example is that of New Haven Green in Connecticut, which was designed to hold the exact number of people that were believed to be saved in the second coming of Christ, approximately 144,000, and the common space has served civic functions as well as a site for animal grazing since the early 17th century.^{41 42}

While private property regimes were predominant and important to the founding political theorists of the United States, as can be seen in the many protections for property owners in the Constitution and the accompanying Bill of Rights, it cannot be said that commons and common right had no place in the colonial and developing United States.⁴³ The laws of the metropole adapted to the unique conditions that existed across the Atlantic, as well as through the process of colonization, and the varied semi-autonomous colonial governments that were developing in diverse geographic localities.

Common land and common rights significantly diverged from English practice throughout colonial America largely due to the mixing of common and natural laws concerning ownership and property. One significant factor in early United States legal theory was the labor theory of ownership, a principle in natural law that stated that a prerequisite of ownership was the working or cultivation of the land. This notion, made popular by the influence of John Locke and his book *Second Treatise of Civil Government*, was used to justify the taking of indigenous land in the colonies, by

³⁹ Ibid. pg. 162

⁴⁰ Ibid. pg. 30

⁴¹ Project for Public Spaces Inc. The Committee of the Proprietors of Common and Undivided Lands at New Haven & the City of New Haven Department of Parks, Recreation and Trees. *New Haven Green Placemaking Plan*. Project for Public Spaces Inc., Nov. 2012. Web. 10 June 2016.

⁴² Boston Common Management Plan, City of Boston, Boston Parks and Recreation Commission, December 1990.

⁴³ U.S. Constitution, Fifth Amendment

framing the “new world” as a “Universal Common” unlike the commons of England which were “common by compact, i.e. the law of the land...”⁴⁴ According to this theory, the “universal common” in America required no voluntary agreement or compensation to enclose or privatize because it existed outside the realm of governance and law. Although implicit in this interpretation of ownership is that the colonization of the Americas was fundamentally oriented towards enclosing and privatizing the land. As we look to the implementation of this concept in the legal record we find that it had the effect of creating huge ‘free-access’ commons on the land that remained unenclosed throughout the early United States into the late 19th century. As the United States developed its own system of commons, it often found it at odds with the old common laws of England.

This paradigm of thought, of property being constituted by enclosure or cultivation can be seen throughout the 19th century in the United States, but most clearly in southern cases concerning grazing commons and the trespass of livestock. The 1854 case of *Nashville & Chattanooga Railroad Co. v. Peacock* reveals this principle in action. In *Nashville & Chattanooga Railroad Co. v. Peacock* the supreme court of Alabama had to rule on whether compensation was required for the death of a cow that wandered onto railroad tracks. In Alabama at that time railroads were held liable for the death of all livestock unless the railroad could prove that “the killing was the result of accident, which could not have been controlled by the company by the exercise of the greatest degree of diligence and care.”⁴⁵ The defense the railroad employed in these not-unusual cases would be that the cow was trespassing under English common law and thus the railroad should not be held liable. The Alabama supreme court was quick to remind the railroad company that the state of Alabama never adopted that portion of common law and that its property regime was profoundly different and, both in the precedent and the statutory law, the entire state was “common pasture for the cattle and stock of every citizen,” except for those lands that had been fenced or cultivated.⁴⁶ This statute, which could be found in similar forms throughout the southern states of the U.S., embodied both the divergence from

⁴⁴ Locke, John. *Two Treatises on Government*. London: Printed for R. Butler, etc., 1821; Chapter 5, pg. 137

⁴⁵ *Ashville & Chattanooga Railroad Co. v. Peacock*, 25 Ala. 229 (1854) quoted in Eric T. Freyfogle, *The Enclosure of America* (Illinois Public Law and Legal Theory Research Papers Series, Research Paper No. 07-10 October 26, 2007

⁴⁶ Eric T. Freyfogle, *The Enclosure of America* (Illinois Public Law and Legal Theory Research Papers Series, Research Paper No. 07-10 October 26, 2007 pg. 17

English law that had occurred, and the American conception of commons. This also reveals that the American interpretation of common diverges strongly from what was found in England as well as what typically is considered common in the modern day which is not simple open access, but rather communally regulated and used land.⁴⁷

While the states differed in their development of land and property laws, the traditional use of unenclosed lands as commons with varying common rights is evidenced throughout the United States during the mid-19th century. For example, cases defending the open grazing on unenclosed land can be seen in California, South Carolina, Illinois, Mississippi, and Georgia, as well as rights to hunting on unenclosed lands in Vermont, South Carolina, Georgia, and Kentucky, and throughout New England the right to forage was heavily exercised.⁴⁸ These common lands weren't marginal either but differed widely. In many states in 1850 the amount of fenced or cultivated land was low, with just under 10% in the Southern states, and ranging from over 20% in Kentucky, Virginia, Maryland and Delaware, to less than 1% in Texas and Florida.⁴⁹

American Enclosure:

These open access common rights that dominated much of the understandings about property in the early 19th century United States are almost all gone from legislation and public consciousness because of a distinct evolution in the framework of property rights away from one that acknowledges a “right to roam” of the citizenry to one that asserts the “right to exclude” of the property owner. The causes for this shift in thought are amorphous, multifaceted and include many economic, cultural, political, and legal reasons. This legal development named the American Enclosure by legal historians such as Eric T. Freyfogle, lacks the extensive study and analysis that its English analogue had, although the reason for this may be due to the causes of the enclosure itself, one of which being the inability to formulate a definitive rights structure. Theorists like Freyfogle posit that the American Enclosure consisted of a multitude of causal trends that I have organized into two parts. The first part consisted of a bottom up movement away from the necessity of access to the commons, as subsistence agriculture diminished, affordability of fencing increased, and a need for

⁴⁷ Rodgers, C. P., et al. *Contested Common Land: Environmental Governance past and Present*. Washington, DC: Earthscan, 2011. Print. Pg. 9

⁴⁸ Eric T. Freyfogle, *The Enclosure of America* (Illinois Public Law and Legal Theory Research Papers Series, Research Paper No. 07-10 October 26, 2007 p. 4

⁴⁹ Ibid. Pg. 4

the proletarianization of freed slaves emerged after the American Civil War.⁵⁰ The second part consisted of a simultaneous top down movement through the centralization of common law as legal decisions increasingly abstracted interpretations of property rights without regard for traditional practice and custom.⁵¹

The legal centralization concerning American land use and jurisprudence itself coincided with three major changes that were occurring in American legal culture and politics. These changes were the decline of natural law, the rise of individualism, and the political effects of industrialization.

The centralization and abstraction was the product of a growing library of precedent accumulating from North Eastern urban courts who were the first to start publishing their rulings in 1789.⁵² As American precedent started to accumulate, judges increasingly looked towards the common law to decide their rulings, instead of natural law or the extra-legal considerations of custom. The open range common structure neither successfully created its own legal framework nor could conform to the legal framework that existed, such as the structure of commons in English common law. This lack of legal structure put the deciding justices in the position of deciding whether to follow the established configuration of the common law or to establish new precedent that would significantly undermine property rights without a structured limit.

The period also saw the rise of industrialization, which produced a powerful industrial class as well as greater availability of goods causing a reduction in the dependence on subsistence agriculture and the need for commons lands. The emergence of powerful industrial lobbying groups at this time contributed to the general centralization of legislation regarding land use as industrial interest groups pushed to promote the interpretation that land ownership was exclusive to solidify their control and exploitation of their land holdings.⁵³ As statutes created at county and state levels increasingly eliminated land use arrangements on the local level, the decline in subsistence agriculture reduced resistance to these dispossessions.

One trend that Freyfogle is apt to point out is the emergence of the individualism and the public – private dichotomy that occurs in legal interpretations of the period. Looking at the concept of liberty during this period, the late 19th

⁵⁰ Ibid. Pg. 19

⁵¹ Ibid. Pg. 26

⁵² Ibid. Pg. 43

⁵³ Ibid. pg 38

century, we see the evolution from one that identifies liberty as the freedom *to* exercise collective action for communal self-governance to a more Jacksonian interpretation that promoted individual liberty *from* interference in the pursuit of economic opportunity.⁵⁴ This inversion would have the effect of reframing the private and private property as outside of the public sphere and cementing the notion of property as exclusive.

Throughout the late 19th century these factors slowly deteriorated the utilization and legitimacy of common rights within the accepted American legal framework. Finally in 1922, Supreme Court Justice Oliver Wendell Holmes seemingly codifies the exclusivity of all private property and a rejection of common right in the decision of *McKee vs. Gatz* stating:

*“The strict rule of the English common law as to entry upon a close must be taken to be mitigated by common understanding with regard to the large expanses of unenclosed and uncultivated land in many parts at least of this country. Over these it is customary to wander, shoot, and fish at will until the owner sees fit to prohibit it. A license may be implied from the habits of the country.”*⁵⁵

This interpretation not only acknowledged the customary commons practices that occurred throughout the country, but also codified the actions into a preexisting legal category that secured the rights of the property and access onto the landowner of the unenclosed land. This represents a final rejection of that natural law paradigm that supported the creation of these commons, and did so with federal precedent, overruling the interpretations of lower state courts. While it didn't immediately enclose all the lands, enclosure now became an issue of property owners applying their rights, which Justice Holmes now asserted they always had.

While this may seem like the end of commons in America, emerging in the West at a similar time we start to see the codification of a completely new form of common rights in the grazing programs of the Bureau of Land Management. What is also important to note is that into the late 1970s we see this paradigm of complete property control tested with the emergence of the environmental movement, which puts a fissure in the conceptualization of property rights as completely exclusive in ownership and usage, to one which it is increasingly accountable for its indirect benefits and harms.

⁵⁴ Ibid. pg 35

⁵⁵ *McKee v. Gratz*, 260 U.S. 127, 136 (1892)

Chapter 3: Western Rangelands & the Bureau of Land Management.

The United States geography is vast and diverse, creating unique challenges to land management and property rights, especially in the western states. Large swaths of grazing lands, sometimes referred to as rangelands, in this multi-state region were initially held by the federal government for distribution to settlers. Some of these settlers developed a heavy reliance on the vast and available unenclosed grazing common, producing the institutional codification of common rights that failed to appear broadly elsewhere in the United States.

The history of the western grazing lands in the United States has its roots in the unique histories of the American West, specifically of Mexico, Texas, the American railroad, the ‘Indian Wars’, and the American Civil War. To avoid overindulging in these interesting but tangential stories, we should focus on the political, economic, and legal factors, that facilitated the creation of the land agency that is the U.S. Bureau of Land Management (BLM) and its current commons regulatory scheme. Using these factors as identified by Karen Merrill in her book *Public Lands and Political Meaning: Ranchers, the Government, and the Property Between Them*, we can piece together the formative political economic and legislative events that led to its creation. While the BLM was only founded in 1946, the origins of the agency’s responsibilities extends back to the mid-19th century when the dramatic expansion of the American western frontier created one of the largest grazing commons in North America in the form of public domain. This explosive expansion was due in part to some of the core themes of the western epic: removal and reservation of the numerous indigenous tribes, land purchases from Spain and France, and the annexation of land from Mexico and Texas.⁵⁶

These events massively increased the amount of inhabitable land in the control of the United States federal government, and it is this federal control that set the stage for the legal development of a common right in the form of modern day BLM Grazing districts. These lands referred to at the time as public domain, were placed under the control of the federal agency, the General Land Office, with the stated purpose “to handle the business associated with the sale of public lands for private ownership, transforming wilderness to agricultural use, and generating income for the Federal

⁵⁶ Merrill, K.R. 2002. *Public Lands and Political Meaning: Ranchers, the Government, and the Property Between Them*. Berkeley: University of California Press, p. 19.

government.”⁵⁷ This organization set out to survey, distribute and sell the newly acquired lands, and it did so with the assistance of the homestead acts, a series of legislative acts that served to give or sell portions of land throughout the public domain.⁵⁸

The U.S. land policy of the 19th century at the time had its basis in two pieces of legislation, the Land Ordinance of 1785, and the Northwest Ordinance of 1787, which stipulated that when the indigenous peoples had given up their land, government would survey and divide the public domain into townships of six square miles each, with increasing divisions down to 160 acres.⁵⁹ Even before the land could be surveyed and distributed western settlers had already begun staking out the western frontier, creating an obstacle of present and politically active squatters, which proved to be formative in the creation of later policy.

The Homestead Act of 1862, passed in the midst of the American Civil War, allowed a citizen or prospective citizens, heads of households or person above the age of 21, the settlement of up to 160 acres of public domain under the condition that they reside there for 5 years and improve and cultivate the land.⁶⁰ This act, requiring cultivation to acquire ownership, was another example of the effect of natural law, and resulted in the settlement of 1.6 million homesteads and privatization of 270,000,000 acres or 10% of all the United States lands at the time.⁶¹ While these figures are impressive, the act set the groundwork for lasting property issues throughout the west, as not all property was capable of sustaining cultivation, and neighboring unenclosed public domain land provide fertile opportunity for cattle ranchers to exceed the carrying capacity of the lands they did possess. Ranchers that did homestead in dry regions primarily did so around water sources effectively

⁵⁷ "Managing a Land Office Business." *General Land Office*. Bureau of Land Management, n.d. Web. 19 June 2016. <<http://www.blm.gov/es/st/en/prog/glo.html>>

⁵⁸ Homestead acts: Donation land claim act of 1850, Homestead Act of 1862, Southern Homestead act of 1866, Timber culture act of 1873, Enlarged Homestead Act of 1909, The Stock-raising homestead act of 1916, New Deal 1930

⁵⁹ Merrill, K.R. 2002. *Public Lands and Political Meaning: Ranchers, the Government, and the Property Between Them*. Berkeley: University of California Press, p. 27.

⁶⁰ Act of May 20, 1862 (Homestead Act), Public Law 37-64, 05/20/1862; Record Group 11; General Records of the United States Government; National Archives.

⁶¹ "Managing a Land Office Business." *General Land Office*. Bureau of Land Management, n.d. Web. 19 June 2016. <<http://www.blm.gov/es/st/en/prog/glo.html>>

denying others necessary access to this essential resource and maintaining greater control of the usage of neighboring public domain.⁶²

Throughout the west at this time we see the emergence of what is colloquially called the “Cattle Kingdom”. As the Civil War came to a close in 1865, the opening up of eastern markets to Texas beef gave birth to the great northern cattle drives and a boom of ranching throughout the West. For example, in the period between 1870 to 1880 the amount of cattle being grazed in Wyoming jumped from 11,130 to 278,073, a 2,398% increase, while in Colorado that number went from 70,736 to 346,839 a still impressive ~300% increase.⁶³ This boom period of the 1870s created massive personal wealth and political power for the cattle industry as profits reached up to 30 – 40 %.⁶⁴ In 1872, one of the first ranching political advocacy groups to establish themselves was the Wyoming Stock Growers Association (WSGA), which quickly consolidated other livestock associations to include 363 members with ownership of over two million head of livestock by 1883.⁶⁵ This group and similar ones provided centralization for political advocacy, aide in maintenance of the grazing lands, and created an informal barrier to entry for new ranchers.

As the cattle boom flourished in the 1870s and 1880s, overgrazing and property protection became increasingly pressing issues and informal and formal policing was widespread and frequently violent. Since public domain at this time had no formal barrier to use, few formal measures could be implemented besides the issuing of brands through local committees, and a resulting push for federal legislation made illegal branding a felony in 1879.- The vast majority of control over the open range was done through informal and often illegal measures. The stock growers associations played a major part in these controls as associations like the WSGA would divide the range into districts to organize and oversee cattle roundups, and decide who could and could not enter the cattle industry through the creation of blacklists of suspected rustlers, and the harassment of smaller cattle ranchers. As the range became overgrazed and the market for beef dipped in the late 1880s outbreaks of violence occurred in what was called the “range wars”. During this period, violence such as the Johnson County War in Wyoming broke out when the WSGA hired

⁶² Merrill, K.R. 2002. *Public Lands and Political Meaning: Ranchers, the Government, and the Property Between Them*. Berkeley: University of California Press, p. 156

⁶³ Ibid. p. 19

⁶⁴ Ibid. p. 20

⁶⁵ Ibid. p. 24

gunmen, named “the regulators,” to find suspected rustlers eventually resulting in the death of two people. This particular outbreak of violence outraged nearby farmers and small livestock owners producing a mob that required the intervention of federal troops. In other parts of the western rangelands, illegal regulating was attempted through the fencing of the public domain land, the creation of “dead lines” where cattlemen would kill livestock of the competing grazers and demarcate the ranges they used with the bodies, and the targeted overgrazing of lands both on the public domain and on the property of homesteads.⁶⁶ The federal response to these outbreaks of conflict and violence was mixed, primarily because congress intended to dispose of the land, and rarely exerted any governmental control over its use. The silence of Congress on the matter was interpreted as an important policy statement indicating a permission to use, as seen in the 1890 Supreme Court case *Buford v. Houtz*. A Justice in that case, Samuel Freeman Miller argued that:

“There is an implied license, growing out of the custom of nearly one hundred years, that the public lands of the United States, especially those in which the native grasses are adapted to the growth and fattening of domestic animals, shall be free to the people who seek to use them where they are left open and unenclosed and no act of the government forbids their use... The government of the United States in all its branches has known of this use, has never forbidden it nor taken any steps to arrest it.”⁶⁷

The Justice even went on to point out the divergence that had occurred between American Common law and the English practice:

“The owner of a piece of land who had built a house or enclosed twenty or forty acres of it had the benefit of this universal custom as well as the party who owned no land. Everybody used the open, unenclosed country which produced nutritious grasses as a public common on which their horses, cattle, hogs, and sheep could run and graze. It has never been understood that in those regions and in this country, in the progress of its settlement, the principle prevailed that a man was bound to keep his cattle confined within his own grounds, or else would be liable for their trespasses upon the unenclosed grounds of his neighbors... . Owing to the scarcity of means for enclosing lands and the great value of the use of the public domain for pasturage, it was never adopted or recognized as the law of the country...”⁶⁸

This judgement in 1890 not only verbalized the divergence that occurred in American legal development regarding commons, but also identified the current access to the plains as an “implied license” of “great value.” The extent of this

⁶⁶ Ibid p. 26

⁶⁷ *Buford v. Houtz* 133 U.S. 320, (1890)

⁶⁸ Ibid. 133 U.S. 328

“license” was also unclear, as it didn’t indicate a vested property right, and ranchers continued to try in many ways to control grazing lands for their exclusive use.

The first bureaucratic attempt at the regulation of the public domain took place in the executive creation of forest reserves, containing significant common domain grazing land. Starting in the 1890s, these reserves expanded to 194 million acres by 1909.⁶⁹ This created a divisive battle concerning grazing right, which reached a compromise with grazing interests group such as the newly founded National Livestock Association (NLSA) with creation of a grazing permit system to regulate use. This permit system created a three-tiered classification of grazers:

- Class A: Permittees would be those ranchers with “adjacent property” to the reserves
- Class B: Permittees would consist of ranchers who owned property that was not adjacent to the reserves, but who have utilized the public domain ranges in the past
- Class C: Permittees would include those “transient herders” who were not owners of property.

The classification system was hierarchical and offered priority to ranchers from A to C. As demands were so high on reserve land, this effectively eliminated transient herders. Also included in this system was a rule of “commensurate property” which gave greatest priority to ranchers who owned enough private land to support their animals when they were on not on forestlands.⁷⁰

These two principles for regulation of grazing set the foundation for the regulation and debate regarding grazing rights on public lands into the modern day. The concept of commensurability represented the first clash between regulators and the lobbying interests as they debated how to constitute it. Tying the ranchers grazing allotments to their private property created huge ramifications on the operations of livestock owners who utilized the public domain as a primary part of their grazing operations, and the grazing permits themselves had a contributing property value that quickly ingrained itself into appraised values for loans.

⁶⁹ Merrill, K.R. 2002. *Public Lands and Political Meaning: Ranchers, the Government, and the Property Between Them*. Berkeley: University of California Press, p. 30

⁷⁰ Ibid. pg 60

Still the lasting legacy of American Common right reemerged to test the new rules in the court case of *Light v. United States*, that questioned and clarified the nature of the federal ownership of the land. *Light v. United States* concerned a cattle owner name Fred Light who released cattle on unenclosed public domain resulting in them straying onto the unenclosed reserve land and the forestry service charging him with trespass. Light argued that since federal government held the title to the land *as proprietor only*, the federal lands were subject to the state policing powers, which allowed for access to unenclosed lands.⁷¹ The court decided that the nature of the reserves as public property was not of rightful ownership by all American people, but rather the governments right to hold the land in “public trust”. The “public” essentially meant the federal government, which acted both a *proprietor* (or land owner) and *sovereign* (or autonomous state).⁷² This distinction, was actually a distinct alteration of the classic liberal and natural law view of the state, which held the “role of the government is largely to protect private property and not encroach upon private property rights.”⁷³

By far one of the most formative and significant pieces of legislation concerning the organization of western lands in the 20th century was the 1934 Taylor Grazing Act. This act, which extended the federal governments regulatory capacity to include the public domain lands and organized defined grazing areas called districts, represented the end of homesteading, public domain, and establishment of a controlled common of over 80 million acres. The Taylor Grazing Act implemented a regulatory scheme very similar to those that were created for the forest reserves two decades earlier, with additional provisions and protections.

Three major and somewhat conflicting provisions were included to protect the established interests of ranchers and have proved to be the source of debate to this day.

Primarily, much like the permit system in the forest reserves, the Taylor Grazing Bill gave preference to

⁷¹ U.S. Supreme Court *Light v. United States*, 220 U.S. 523 (1911)

⁷² Merrill, K.R. 2002. *Public Lands and Political Meaning: Ranchers, the Government, and the Property Between Them*. Berkeley: University of California Press, p. 64

⁷³ *Ibid.* 65

“those within or near a [grazing] district who are landowners engaged in the livestock business, bona-fide occupants or settlers, or owners of water or water rights as may be necessary to permit the proper use of lands...” with an additional assurance saying that “Nothing in this... shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands.”⁷⁴

In addition to this provision we also see the firm assertion that “the creation of the grazing district or the issuance of a permit... shall not create any right, title, interest in or to the lands.” Although this seemingly conflicts McCarren amendment which stated:

“no permittee complying with the rules and regulations laid down by the secretary of the interior shall be denied the renewal of such permit, if such denial will impair the value of the grazing unit to the permittee, which such unit is pledged as security for any bona-fide loan.”⁷⁵

These provisions, which both include lasting protections and the firm denial of property rights, obfuscate the intent at the crux of the debate regarding grazing “rights”. This act and the political campaigning required to pass it, further complicate its interpretation, as the first director of the Grazing Bureau, (the forerunner agency of the BLM) Farrington Carpenter routinely campaigned to ranch lobbying organizations using the terms of “range rights”, and Harold Ickes, the head of the department of the interior, often used terms of “home rule” and “self-governance”.⁷⁶

Implementing the Taylor Grazing Act expanded on the regulatory structure used in the forest reserves in two ways. Firstly, the creation and regulation of “grazing allotments” within established “grazing districts” incorporated significantly more cooperation with local associations of stockmen as well as state officials, effectively decentralizing the bureaucracy to include public and private interests. Secondly, the establishment of grazing regulations such as requirements for “commensurability”, and maximum allowed grazing animals uniquely catered to the environmental capacity of the district with input from the local ranging interests.⁷⁷

This regulatory structure, which was brought under the control of the Bureau of Land Management in 1946, remained relatively unchanged until the 1970s, when environmental legislation emphasizing ecosystem protection and recreational use of

⁷⁴ United States. Cong. Taylor Grazing Act: Public Law 73-482, 73rd Congress, 2nd Session, 59 Stat. 1269. Cong. Bill. N.p.: n.p., 1985. Print.

⁷⁵ Ibid. p. 156

⁷⁶ Merrill, K.R. 2002. Public Lands and Political Meaning: Ranchers, the Government, and the Property Between Them. Berkeley: University of California Press, p. 64, 158

⁷⁷ ibid

all public lands emerged. Through these laws, such as the National Environmental Protection Act, and the Federal Land Policy and Management Act, environmentalists unseated the relationship between the government, the ranchers and the people, by identifying indirect effects and services provided by the ecosystems on the lands.⁷⁸ The current state of the management of the western rangelands hasn't significantly changed since, but as can be seen with Cliven Bundy case; the conflict over the "rights" of grazers is far from settled.

⁷⁸ Ibid. p. 206

Chapter 4: American Rangelands; Commons by Another name?

In the context of the development of common right in the United States, the BLM grazing lands represent a thought-provoking case study. While the initial conditions of American colonization prevented the U.S. from forming identical land arrangements as England, the dominance of natural law, and the resulting widespread practice of grazing on unenclosed lands did produce a codified, regulated, and entitled common on the western rangelands.

As common right was increasingly being removed from the common jurisprudence, primarily because the legal structure to support it wasn't in existence, the management of the western rangelands through debate and conflict formulated a legal structure for the protection and continued functioning of its grazing commons.

To effectively compare the development of the western rangeland commons with that of the English commons as a legitimate common with, at least a form of common right, and an effective form of commons, I will first define more strictly the concept of common land, and common right. Then comparing legal structure of BLM grazing lands to early American open access commons regulation, and the governance structure currently in England, I will demonstrate that the development of the codified common governance structure in the United States is at least practically similar to that in England.

Determining the legitimacy of the conceptualization of the BLM grazing lands as "common land" requires some caveats, since common land itself has no firm legal definition, and can be described as:

*"...land over which rights of common are exercised. A right of common is the legal right of one or more persons to take some part of, the produce of, or the wild animals on the land of another person."*⁷⁹

In this definition for English commons found in G. Gadsden's *Law of Commons*, the crux of the issue is whether or not grazing permits can be argued to constitute a "legal right" on BLM lands. While cases like the *United States v. Bundy* have shown that traditional grazing practice does not in itself provide a unrestricted right, it has been argued that the non-revocability of successfully exercised permits do

⁷⁹ Gadsden, G., *The Law of Commons* (London: Sweet & Maxwell, 1988) page 1

create a legally enforceable entitlement.⁸⁰ It is important to remember that commons in England themselves do not have the unfettered use rights like the ones that Cliven Bundy seeks to assert his right to, and the successful traditional exercise of commons in England came with a wide variety of communally enforced regulations. These regulations included mechanisms such as stinting, or setting maximum amounts of grazing animals, and wintering, or requiring grazers to have enough feed for their animals in the wintertime.⁸¹ Both of these practices are present in the arrangements of BLM managed grazing lands.⁸² Also, while the presence of grazing fees might be argued to undermine the proposition of a common right relationship between the BLM lands and the prioritized permitted ranchers, in a comparison to the current management system of English commons, which under the Commons Act of 2004 includes fees for participation in and registration of commons, shows it is not irreconcilable with the concept of common right.⁸³

Another question arises whether the land could be considered the property of “another person”. In regards to BLM lands, the law has shown in cases such as *Light v. United States*, that the government is in fact the proprietor or owner, of the land while simultaneously sovereign. Whether this qualifies as another person is up to debate, but ownership by non-individuals can be seen in the exercise of modern day commons in England by corporate charities such as Natural Trust in Shropshire, which maintains land ownership of a large grazing commons on Long Mynd in the Shropshire hills.⁸⁴ Also, historically it wasn't unprecedented for lords with juridical powers tantamount to the state to own and directly allow exercise of common right on their land.⁸⁵

Using this broad legal definition of common, we can see that at least theoretically the BLM practice represents a common with a form of legally exercised common right, although an examination of the more practical exercise of this common right can give us a clearer picture. In a comparison between the exercise of

⁸⁰ Raymond, Leigh. "Viewpoint: Are Grazing Rights on Public Lands a Form of Private Property?" *Journal of Range Management* 50.4 (1997): 431. Web.

⁸¹ Moor, Martina De., Leigh Shaw-Taylor, and Paul Warde. *The Management of Common Land in North West Europe, C. 1500-1850*. Turnhout, Belgium: Brepols, 2002. Print. Pg 25

⁸² Merrill, K.R. 2002. *Public Lands and Political Meaning: Ranchers, the Government, and the Property Between Them*. Berkeley: University of California Press, p. 87

⁸³ Commons Act 2006 (c 26) section 32

⁸⁴ Roberts, A., *Case Study: Long Mynd Common*, International Association for the Study of the Commons, (2016)

⁸⁵ Moor, Martina De., Leigh Shaw-Taylor, and Paul Warde. *The Management of Common Land in North West Europe, C. 1500-1850*. Turnhout, Belgium: Brepols, 2002. Print. Pg 19

commons in modern day England and the United States, and the 19th century England and United States, the convergence of the institutionalized modern day common practices becomes evident.

Table 1.

Practice:	England ^{86 87 88}	19 th century England ⁸⁹	19 th century USA ^{90 91}	USA BLM Lands ⁹²
Defined Boundaries	X	X		X
Restricted Use	X	X		X
Legally Authorized Management	X			X
Legally Respected Use	X	X	X	X
Custom Based Use	X	X	X	X
Localized Regulations	X	X		X
Participant led Management	X	X		*
Authorized Sanctions for rule violation	X	X		X

In this comparison of practices between England and the United States, we see the formation of an analogous institutionalized common on BLM grazing lands compared to those in England, as well as seeing the progression in the two locations over a period of almost 200 years. This comparative matrix is made using practical characteristics derived from Commons Councils, the English commons governance structure proposed in the Commons Act of 2006. Commons Councils come in different models, requires voluntary adoption by commoners, and are therefore not instituted fully across all English commons, but it offers a governmentally authorized decision making structure for governance of registered commons. The councils are assembled from representatives from the commons they are overseeing as well as

⁸⁶ Commons Act 2006 (c 26) part 2

⁸⁷ Rodgers, Christopher P.; Straughton, Eleanor; Winchester, Angus J.L.. *Contested Common Land : Environmental Governance Past and Present*. Florence: Taylor and Francis, 2012. Ebook Library.

⁸⁸ Moor, Martina De., Leigh Shaw-Taylor, and Paul Warde. *The Management of Common Land in North West Europe, C. 1500-1850*. Turnhout, Belgium: Brepols, 2002. Print.

⁸⁹ Ibid. p. 25

⁹⁰ Eric T. Freyfogle, *The Enclosure of America* (Illinois Public Law and Legal Theory Research Papers Series, Research Paper No. 07-10 October 26, 2007 p 22

⁹¹ More research concerning the implementation localized regulations of American unenclosed land use is needed, but legal interpretations from state supreme courts would indicate a legal block to the implementation of regulations on unenclosed land use.

⁹² "DOI: BLM: Livestock Grazing." *DOI: BLM: Livestock Grazing*. N.p., n.d. Web. 19 June 2016.

owners, and any relevant government authorities. The establishment of these Commons Councils include setting defined boundaries to the common, identifying and registering active and inactive common users, and the authority to make legally binding regulations about the use of their legally recognized common rights. The Commons Councils have oversight from environmental authorities to curtail environmentally damaging common use and enforce council regulations.^{93 94} The Commons Councils model proves to be a good metric of commons comparison because it represents extensive codification of the operations and governance of a common in a country with extensive tradition and protection for common land use. In the comparison between the BLM management structure and that of the Commons Councils we see that they share every criteria listed except participant led management. While the Bureau of Land Management does establish Regional Grazing Advisory Boards of local ranchers and is legally required to receive recommendations from them and state officials, there is no statutory requirement to incorporate that advice.⁹⁵

What is also revealed in this comparison is the failure of early U.S. unenclosed commons to create any of the institutionalized governance systems to organize its common right. While some early formal commons in the U.S. did develop regulation of use and users, such as the Boston common in Massachusetts, it seems, as far as this researcher can tell, that these examples represent an anomalous occurrence compared to the more widespread exercise of unenclosed commoning.⁹⁶ Also important to note that while jurists of the early United States have referred to this right to common on unenclosed land with the vernacular of common and common right, the modern day understanding of commons as institutions emphasize the informal and formal community controls over the use. What is shown in the early American unenclosed common arrangement seems to be a right to use, codified in early legislation, which without the framework of regulation, would presumably retard regulation implementation as enclosure was required by law before such controls could be put on

⁹³ Commons Act 2006, part 2

⁹⁴ Rodgers, Christopher P.; Straughton, Eleanor; Winchester, Angus J.L.. *Contested Common Land : Environmental Governance Past and Present*. Florence: Taylor and Francis, 2012. Ebook Library. Web. 16 May. 2016. Pg 72, 738

⁹⁵ *ibid.* Merrill pg 180

⁹⁶ Eric T. Freyfogle, The Enclosure of America (Illinois Public Law and Legal Theory Research Papers Series, Research Paper No. 07-10 October 26, 2007 p 22

the land. Greater research into attempts to regulate unenclosed land need to be done to fully clarify this relationship.

Having identified the apparent similarities between the governance of English commons governance and that of the BLM grazing lands, a more qualitative analysis of the systems as effective and sustainable governance structures can occur. In Elinor Ostrom's Nobel Prize winning book, *Governing the Commons*, she formulates eight design principles for the successful management of a common pool resource (CPR), or resources like unenclosed grazing lands, that are rivalrous but non-excludable.⁹⁷ Her design principles are guidelines for self-governing, self-organized, and long-enduring commons, and can be adapted to gauge, at least conceptually, the sustainability and effectiveness of western grazing land management.⁹⁸ While Elinor Ostrom's principles were not intended for use as a strict criteria in evaluating the sustainability of a commons structure, much less a centrally regulated one, they do give us an indication of what aspects of the management design align with the many examples of successful and robust common practices in places like Switzerland, Japan, and Spain.⁹⁹

Elinor Ostrom's eight design principles for self-governing, self-organized, and long-enduring commons include:

- (1) Clearly defined boundaries and group membership,
- (2) Matching rules governing use of common goods to local needs and conditions,
- (3) Ensuring that those affected by the rules can participate in modifying the rules
- (4) Developing a system, carried out by community members or those accountable to community members, for monitoring the observance of the rules,
- (5) Using graduated sanctions for rule violators,
- (6) Providing accessible, low-cost means for dispute resolution,
- (7) Making sure the rule-making decisions of community members are respected by outside authorities.
- (8) Building in responsibility for governing the common resource in nested tiers from the lowest level up to the entire interconnected system.¹⁰⁰

⁹⁷ Ostrom, Elinor. *Governing the Commons: The Evolution of Institutions for Collective Action*. New York: Cambridge UP, 1990. Pg 30 - 31

⁹⁸ Ibid pg 61 - 71

⁹⁹ Ibid.

¹⁰⁰ Ibid. Pg 90

These principles are presented in table 2, below, for easy comparison between England and USA in current management practices.

Table 2.

Design Principles ¹⁰¹	UK Grazing Commons ¹⁰²	USA Grazing Lands ¹⁰³
1. Clear Membership & Land Boundaries	Yes, registered boundaries; membership inherited or purchased	Yes, defined districts; permits prioritized for adjoining property & past use.
2. Localized Regulations	Yes, regulations determined by local council	Yes, localized regulations established for individual grazing districts & local needs.
3. Member participation in rulemaking	Yes, collective choice arrangements	* Somewhat, state & Grazing Advisory Board participation
4. Monitoring: appropriators or working for appropriators (users of the common)	Yes, Commons Councils with legally binding decisions	*All monitoring is through federal authorities
5. Graduated sanctions for regulation violations	Yes, graduated sanctions applied through criminal law.	*Discretion of BLM federal authorities. ¹⁰⁴
6. Low cost dispute resolution	*Commons Councils legally sanctioned decisions.	No
7. External recognition of the rights to self-organize.	Common councils are voluntary, come in many forms & are legally authorized	*No, with the exception of Grazing Advisory Boards
8. Shared responsibility for successful governance on every level	n/a	n/a

As demonstrated in **Table 2**, a significantly higher proportion of the principles in the governance structure offered by the English Commons Councils are satisfied in comparison to those managed by the Bureau of Land Management. Although this comparison is not without caveat, as many of the criteria are at least partially structurally satisfied or should not be considered applicable. One partially

¹⁰¹ Ostrom, Elinor. *Governing the Commons: The Evolution of Institutions for Collective Action*. New York: Cambridge UP, 1990. Print. Pg 90

¹⁰² Rodgers, Christopher P.; Straughton, Eleanor; Winchester, Angus J.L.. *Contested Common Land : Environmental Governance Past and Present*. Florence: Taylor and Francis, 2012. Ebook Library. Web. 16 May. 2016. Pg 81

¹⁰³ Merrill, K.R. 2002. *Public Lands and Political Meaning: Ranchers, the Government, and the Property Between Them*. Berkeley: University of California Press, p. 151

¹⁰⁴ Severity of sanction is dictated by BLM officers but can include a revocation of full or part of permit, or fees based on severity of violation, e.g. “be required to pay twice the value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations. If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of the final decision, the grazing permit or lease shall be cancelled. Such payment shall be in addition to any other penalties the authorized officer may impose under paragraph (a) of this section.” Found in the Code of Federal Regulations (CFR) section 4170.1-1 - Penalty for violations.

achieved principle is principle three, which concerns member participation in rule making. The Bureau of Land Management does not give any formal legal rulemaking capacity to the Grazing Advisory Boards or state officials, and while their input may be incorporated, their power to influence decisions concerning rules is primarily political.¹⁰⁵ Also, while principle four is partly structurally satisfied, in that much like the Commons Councils rules, BLM regulations are enforced by government authorities, the nature of the property arrangement is different so regulations are not enforced for the “appropriators”, in this case the grazers. In regards to principle five, graduated sanctions for BLM grazing lands are not inherent in the Code of Federal Regulations, although there does seem to be a spectrum of severity. Another factor that casts doubt on the satisfaction of principle five is also witnessed by the federal government’s inability to successfully enforce sanctions, given Cliven Bundy’s continued grazing after having both his grazing permit revoked and receiving a legal injunction, being the primary example.¹⁰⁶ Finally, principle seven for BLM land management is not realized although we should recognize the advisory capacity of Grazing Advisory Boards.

With these shortcomings in mind, this presents the opportunity for the BLM management to implement small and smart policy changes to align better with Ostrom’s eight design principles. One definite way to improve rule adherence, is through the incentivization of grazers to monitor each other. This would increase the competition between grazers, and produce healthier rangelands as rule violators would receive reduced grazing permits thereby reducing overall grazing and its harmful impacts. In this line of thought, small structural reforms could be done to satisfy principle eight in the BLM management of grazing lands. Principle eight, specifically intended for CPRs that are part of a larger system, requires “appropriation, provision, monitoring, enforcement, conflict resolution, and governance activities” to be organized in multiple levels of the nested enterprise. The extent to which BLM land management is truly a “nested enterprise” is questionable, as creation of regulations, management, oversight and enforcement is statutorily in the hands of the BLM, but empowering and incentivizing ranchers and livestock associations could increase sustainability and importantly reduce expenditures of

¹⁰⁵ Ibid. P. 141

¹⁰⁶ Pearce, Matt. "Cliven Bundy Still Owes the U.S. \$1 Million. What Are the Feds Doing to Collect It?" *Los Angeles Times*. Los Angeles Times, 7 Jan. 2016. Web. 19 June 2016.

management. While there is current subsidization of ranchers implementing their own land improvements, empowering ranchers and livestock associations to monitor, enforce, and arbitrate disputes could create progress towards the satisfaction of principle eight.¹⁰⁷ Also worth noting is that the U.S. federal government currently spends approximately 36.2 million dollars of its 79 million dollar budget for the BLM on the administration of its grazing program, while the commons councils program itself does not have a discernable cost to the public, with the exception of enforcement and oversight through public body institutions like Natural England.¹⁰⁸

¹⁰⁷ "DOI: BLM: Livestock Grazing." *DOI: BLM: Livestock Grazing*. Bureau of Land Management, n.d. Web. 19 June 2016. <<http://www.blm.gov/wo/st/en/prog/grazing.html>>

¹⁰⁸ Ibid.

Chapter 5: Conclusion

Cliven Bundy's stand may have been a protest over a claim to rights that was proven to be legally defunct, however the dispute over these rights was not without cause. In fact, the silent struggle over the existence of common right in the United States has been with the nation since its founding and is intertwined with core legal debates such as those over rights of property, the proprietary role of the government, and the dynamic struggle between central and regional control inherent in the practice of federalism. The development of the western rangelands proved to be a perfect arena for this struggle to play out.

In conclusion, by exploring the divergence in the development of a legal framework in regards to common right between the United States and England. I have sought to add to the overall study of the commons at large, while identifying the limitations of this paper and areas for further study and exploration.

By comparing the developments in England and America we've been able to get a sense of why the divergence occurred and how the two systems manifested common right differently. In England, common right progressed from the formal and informal manorial arrangements of lords with their tenants, through the legal crucible of enclosure to create the modern Commons Councils we see being implemented today. In the United States, the presence of a different colonial form of common land is widespread from its founding and into the 19th century. However, the incongruence with English commons and the inability to establish codified commons during the late 19th century centralization of jurisprudence virtually eliminated land rights not held in full ownership by the early 20th century. Nevertheless the US has developed its own legal framework of common right in the public domain lands of the western United States. Finally, with the comparison of the modern day commons practices of both nations we can see striking similarities in the practical aspects of the regulation schemes indicative of a modern day convergence. While it is important to recognize the profound differences that still exist in the practice of American commons and English commons, specifically concerning explicit identification of rights, and the distinct influence of the manorial legacy in England, the practical management of the commons in both countries still represent similar goals of protecting controlled entitled use.

Also, from this comparison arose two key policy prescriptions on how to manage the common most sustainably and efficiently in line with Elinor Ostrom's eight principles of long enduring common pool resource institutions.

I believe that this thesis contributes to the study of English and American commons by expanding the scope of the study across a millennium and connecting the origin of common right in the metropole, through its colonial divergence and evolution, and finally to its modern day codification, in which we can see divergent but common threads that shape common rights in different societies.

Limitations and problems were encountered in this study, most specifically concerning the gathering of resources about the implementation and decline of manorialism in early colonial United States, and developing a neutral framework for comparison of commons regulatory practices.

To further this study of American commons development beyond the scope of this paper, greater research needs to be done on the United States common enclosures including the lasting effects of the New England manorialism and other colonial demarcated commons, as well as the multicultural reactions to commons practice by European immigrants. It would also be worthwhile to undertake more intensive legal research regarding conflict between state provisions for unenclosed land usage and established regulated commons as we can see happening in the western lands with *Light vs. United States*. Research into conflicts of these sorts as well as early attempts at unenclosed land use regulation could shed valuable light on the inability to codify the early American commons arrangement. Further investigation into the comparison between English commons and BLM grazing lands, is also warranted to support efforts to increase legislation that could improve environmental sustainability and economic efficiency, especially in light of the effects of climate change. While studies have already been pursued on the environmental impacts of BLM grazing management, placing the environmental sustainability in a comparative framework could produce better policy prescriptions for the future. For such a study to occur greater auditing and research of the variety of commons practices and effects throughout England would be needed.

From an historical perspective, because so many exogenous factors are interconnected in the management of common land, greater research concerning the cultural exchange that occurred in the development of law and conceptions of property rights in England and the United States would be of great help in

understanding the relationships between post-colonial countries and their colonizing metropole.

Bibliography:

Concerning United States:

- 1) Donahue D. 2005. Western grazing: the capture of grass, ground, and government. *Environmental Law* 35:721-806.
- 2) Merrill, K.R. 2002. *Public Lands and Political Meaning: Ranchers, the Government, and the Property Between Them*. Berkeley: University of California Press, p. 183.
- 3) Eric T Freyfogle, *On Private Property: Finding Common Ground on the Ownership of Land* (Boston: Beacon Press, 2007)
- 4) Eric T. Freyfogle, *The Enclosure of America* (Illinois Public Law and Legal Theory Research Papers Series, Research Paper No. 07-10 October 26, 2007)
- 5) Bureau of Land Management: *Public Land Statistics*, 2014
- 6) The Federal Land Policy and Management Act, or FLPMA (Pub.L. 94-579)
- 7) The Taylor Grazing Act of 1934[1] (Pub.L. 73-482)
- 8) McCay, Bonnie J. *Oyster Wars and the Public Trust: Property, Law, and Ecology in New Jersey History*. Tucson: U of Arizona, 1998. Print.
- 9) "Mosses from an Old Manse: Another Look at Some Historic Property Cases about the Environment." *Cornell Law Review* 64 (5): 761-821. Cordell, John, ed.
- 10) William B. Scott, *In Pursuit of Happiness: American Conceptions of Property from the Seventeenth to the Twentieth Century*, Bloomington: Indiana Univ. Press, 1977, Pp. xi, 244.
- 11) Arneil, Barbara. *John Locke and America: The Defence of English Colonialism*. Oxford, England: Clarendon, 1996. Print.
- 12) Price, Edward T. *Dividing the Land: Early American Beginnings of Our Private Property Mosaic*. Chicago: U of Chicago, 1995. Print.
- 13) Horwitz, Morton J. *The Transformation of American Law, 1780-1860*. Cambridge, MA: Harvard UP, 1977. Print.
- 14) Martinez, Michael (April 12, 2014). "[Showdown on the range: Nevada rancher, feds face off over cattle grazing rights](#)". CNN. Retrieved June 10th, 2016.
- 15) Strasser, Max. "[For Militiamen, the Fight for Cliven Bundy's Ranch Is Far From Over](#)". *Newsweek*. Retrieved June 10, 2016.
- 16) "[Debunking false claims of Bundy's defenders](#)". *Las Vegas Sun*. April 27, 2014. Retrieved April 28, 2014.

- 17) Pearce, Matt. "Cliven Bundy Still Owes the U.S. \$1 Million. What Are the Feds Doing to Collect It?" *Los Angeles Times*. Los Angeles Times, 7 Jan. 2016. Web. 19 June 2016.
 - 18) "Managing a Land Office Business." *General Land Office*. Bureau of Land Management, n.d. Web. 19 June 2016.
 - 19) "DOI: BLM: Livestock Grazing." *DOI: BLM: Livestock Grazing*. Bureau of Land Management, n.d. Web. 19 June 2016.
- Concerning England:**
- 20) Rodgers, Christopher P.; Straughton, Eleanor; Winchester, Angus J.L.. *Contested Common Land : Environmental Governance Past and Present*. Florence: Taylor and Francis, 2012. Ebook Library. Web. 16 May. 2016.
 - 21) The Commons Act 2006
 - 22) Commons Registration Act 1965
 - 23) Turner, Michael Edward. *English Parliamentary Enclosure: Its Historical Geography and Economic History*. Folkestone, Eng.: Dawson, 1980. Pg 25. Print.
 - 24) "Enclosing the Land." *UK Parliament*. Parliament.uk. Web. 03 Feb. 2016.
<http://www.parliament.uk/about/living-heritage/transformingsociety/towncountry/landscape/overview/enclosingland/>
 - 25) Martin, J. M. "The Small Landowner and Parliamentary Enclosure in Warwickshire." *The Economic History Review* 32.3 (1979): 328. Web. 2 Feb. 2016.
 - 26) Clark, Gregory, and Anthony Clark. "Common Rights To Land In England, 1475–1839." *The Journal of Economic History* JEH 61.04 (2001). Web. 7 Feb. 2016.
 - 27) Neeson, J. M. *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820*. Cambridge: Cambridge UP, 1996. Print.
 - 28) Geary, Frank. *Land Tenure and Unemployment*. London: GEORGE ALLEN & UNWIN, 1925. Print.
 - 29) Shaw-Taylor, Leigh. "Parliamentary Enclosure and the Emergence of an English Agricultural Proletariat." *The Journal of Economic History* 61.3 (2001): 640-62. Web.
 - 30) Hammond, John Lawrence., and Barbara Hammond. *The Village Labourer: 1760-1832: A Study in the Government of England before the Reform Bill*. London: Longmans, Green, 1924. Print.

- 31) Frazier, Bill. "Common Recollections: Resisting Enclosure "by Agreement" in Seventeenth-Century England." *International Journal of Historical Anthropology* 3.2 (1999): 75-99. Web. 7 Feb. 2016.
- 32) Tate, W. E. *The English Village Community and the Enclosure Movements*. London: Gollancz, 1967. Print.
- 33) Allen, Robert C. *Enclosure and the Yeoman*. Oxford: Clarendon, 1992. Print.
- 34) "Rights of Common." *Foundation for Common land*. Web. 07 Feb. 2016.
<<http://www.foundationforcommonland.org.uk/rights-of-common>>.
- 35) Moor, Martina De., Leigh Shaw-Taylor, and Paul Warde. *The Management of Common Land in North West Europe, C. 1500-1850*. Turnhout, Belgium: Brepols, 2002. Print.