



**THE TAMING OF LONDON'S COMMONS**

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## SUMMARY

This thesis looks at the process by which commons in the metropolitan region of London came to be valued as urban amenities worthy of preservation and regulation in the nineteenth century. It contends that the form of the movement that arose to press for preservation and the manner in which commons were regulated were inspired by the middle class. The reactions of this class to urbanization and industrialization channelled preservationism's energies along certain lines. Attitudes towards history, nature, the working class, and recreation that were shaped by urban life in turn shaped the approach to commons.

The first section of the thesis focuses on the reasons for the emergence of these attitudes and how they brought the question of open spaces into prominence. Middle-class opportunities for recreation expanded, leading to a greater demand for facilities. The rapidity of urban growth inspired disquiet and led to nostalgia for the disappearing countryside. Commons left in their original state were welcome bits of rus in urbe. An important theme in these early discussions was the need for recreational space for the working class. In highlighting the requirements of the this class, commentators were adopting a strategy that would be central to preservationism's eventual success. Its goals were to be couched in the language of the public good, not in terms suggesting naked self-interest by the middle class. This continued in all struggles for individual

commons throughout the metropolis. It was a happy coincidence that private and public aims meshed so perfectly.

Next the thesis reviews the response in Parliament to pressure for legislation to protect commons following the threats to Hampstead Heath, Epping Forest, and Wimbledon Common. In 1866 legislation was passed by which metropolitan commons could be dedicated to the public. The need for subsequent measures was soon apparent and the efforts of preservationists to secure these are noted, as well as their attacks on the enclosure process throughout the country.

The legislation passed by Parliament made the Metropolitan Board of Works responsible for commons within its jurisdiction. Much of the thesis concentrates on its efforts to acquire and manage commons and suggests that the Board was the primary agent in their "taming" along middle-class designs. The role of the Commons Preservation Society is also discussed, although it is noted that the standard account of preservationism by the Society's chairman fails to recognize the Board's work. The events surrounding the acquisition of the Hackney commons are explored in some detail because they illustrate conflicts that were typical elsewhere.

There was more to the taming of commons than their acquisition by some authority. Their management provided opportunities to encourage some activities and banish others. How should common rights be treated? What games should be allowed? Could any restrictions be placed on people wishing to hold public meetings? These were some of the questions faced by

the Board, some of which defied easy answers. As well, schemes gave authorities certain powers with respect to the physical appearance of commons. But it was often difficult to decide whether an action contributed to or detracted from a common's beauty. A certain ambiguity surrounded landscaping questions. People wanted the appearance of their commons to suggest unkempt nature but they also wanted it to signify that these were safe places for recreation. To achieve this, some features had to be excised or at least cut back.

The final results were varied but overall, Londoners seem to have received most of what they wanted from their commons. Some such as Shepherd's Bush were similar to parks; others like Hampstead Heath or Wimbledon were decidedly different. But on no commons did conditions resemble those at the end of the eighteenth century that inspired calls for enclosure. By 1900, commons fitted comfortably into the city.

## DECLARATION

This thesis contains no material which has been accepted for the award of any other degree or diploma in an university, and to the best of my knowledge and belief, it contains no material previously published or written by any other person, except when due reference is made in the text. It may be photocopied or loaned.

Neil P. Thornton

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## ABBREVIATIONS USED IN NOTES

B.L.	British Library
FBW	Fulham Board of Works
GLRO	Greater London Record Office
HBW	Hackney Board of Works
H.C.	House of Commons
H.L.	House of Lords
HLRO	House of Lords Record Office
HOSC	Hackney Open Spaces Committee
MBW	Metropolitan Board of Works: Parks, Commons and Open Spaces Committee, Minutes and Papers. Greater London Record Office.
P.P.	Parliamentary Papers
PRO	Public Record Office
WDBW	Wandsworth District Board of Works

## Introduction

Let us not be satisfied with the liberation of Egypt, or the subjugation of Malta, but let us subdue Finchley Common; let us conquer Hounslow Heath; let us compel Epping Forest to submit to the yoke of improvement.<sup>1</sup>

This bellicose cry from Sir John Sinclair in 1803 (during his eight-year absence from the presidency of the Board of Agriculture) was part of a general, though not unanimous, chorus of condemnation of commons and wastes in England. In 1795 Sinclair had equated common lands with "that barbarous state of society, when men were strangers to any higher occupation than those of hunters and shepherds".<sup>2</sup> The hostile attitude of the Board of Agriculture itself was expressed in its county surveys. Peter Foot's report on Middlesex in 1794 stated that waste lands were a "nuisance to the public" and should be enclosed because they offered little assistance to the poor. A subsequent survey of the same county by John Middleton disparaged commons as "the constant rendezvous of gipsies, strollers and other loose persons ... [and] ... of footpads and highwaymen".<sup>3</sup> The author of the report on Surrey suggested that Kennington Common should be built over

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<sup>1</sup>Cited by Elie Halévy, A History of the English People in 1815 (London: T. Fisher Unwin, 1924), p. 202.

<sup>2</sup>Cited by J. L. Hammond and Barbara Hammond, The Village Labourer (London: Longman, 1978; orig. publ., 1911), pp. 8-9.

<sup>3</sup>Peter Foot, General View of the Agriculture of the County of Middlesex with Observations on their Improvement (London: John Nichols, 1794), pp. 30, 86; Middleton cited by Michael Robbins, Middlesex (London: Collins, 1953), p. 38.

and expressed surprise that Wimbledon Common and Putney Heath "should remain in their present uncultivated state".<sup>4</sup>

Hounslow Heath and Finchley Common had particularly bad reputations arising from their strategic locations along major approaches to London. Robert Southey's fictional Spanish tourist commented on Hounslow Heath at the beginning of the nineteenth century:

This heath is infamous for the robberies which are committed upon it, at all hours of the day and night, though travellers and stage-coaches are continually passing; the banditti are chiefly horsemen, who strike across with their booty into one of the roads which intersect it in every direction, and easily escape pursuit; an additional reason for enclosing the waste.<sup>5</sup>

Macaulay identified Hounslow Heath and Finchley Common as the most notorious open spaces in the late seventeenth century but he added that "Cambridge scholars trembled when they approached Epping Forest even in broad daylight".<sup>6</sup> Travellers on the eastern side of London were no more secure crossing Blackheath.<sup>7</sup> Many other commons had sinister associations. According to a late nineteenth-century chronicler, Tooting Bec was once the home of

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<sup>4</sup>Cited by Thomas E. Scrutton, Commons and Common Fields (1887; reprint ed., New York: Burt Franklin, 1970), pp. 140-41.

<sup>5</sup>Robbins, pp. 124-25; Robert Southey, Letters from England (London: The Cresset Press, 1951; orig. publ., 1807), pp. 44-45.

<sup>6</sup>Thomas Babington Macaulay, The History of England from the accession of James the Second, Popular edition (London: Longmans, Green and Co., 1889), Vol. I, p. 186.

<sup>7</sup>Leland L. Duncan, History of the Borough of Lewisham (London: Charles North, the Blackheath Press, 1908), p. 27.

a "semi-gypsy tribe [who] were little better than half-civilized savages" and a danger to anyone "who incautiously came near their kraal".<sup>8</sup> Indeed gypsies on any common usually provoked complaints although they had some defenders. Fairs, such as the one regularly held on Peckham Rye, helped other commons earn their low reputations.<sup>9</sup>

Hounslow Heath and Finchley Common were vanquished by enclosures early in the nineteenth century but Epping Forest, despite a narrow escape, was rescued and thrown open to the public during the 1870s. It was one of the major victories for those fighting to preserve commons. By the end of the nineteenth century these commons bore little resemblance to the Hounslow Heath which had shocked Southey's traveller. They had, in fact, been subdued, but not in the fashion advocated by Sinclair. No longer the perceived haunts of criminals, nor recently improved acres for agriculture, these open spaces were now prized urban amenities subject to the dictates of a predominantly middle-class, urban, industrialized society. But the transformation from reviled ugly step-sisters of the landscape to veritable Cinderellas was a long and turbulent process. The final products, the park-like but distinctive commons scattered around the metropolis, were the results of many victories, defeats, and compromises among a variety of determined interests. This

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<sup>8</sup>Frederick Arnold, Jr., The History of Streatham (London: Elliot Stock, 1886), pp. 114-15.

<sup>9</sup>John Talbot White, Country London (London: Routledge and Kegan Paul, 1984), p. 58.

thesis is an examination of the rescuing of London's commons during the nineteenth century.

The standard account of their preservation is that penned by George John Shaw Lefevre, Commons, Forests and Footpaths, the second edition of which was published in 1910. Shaw Lefevre (1831-1928; created Baron Eversley in 1906), a radical Liberal M.P., was founder and often chairman of the Commons Preservation Society, and his history of the movement revolves around its fortunes. The work is admirable as far as it goes, and provides important details about various struggles, particularly the legal questions involved in each. But the partisan nature of the book leads Shaw Lefevre to ignore or underplay the role of other parties, most notably local government. Furthermore he was writing too soon after the events to place them in perspective. Sir Robert Hunter (1844-1913), the Society's second solicitor, wrote a work that examined the legal aspects of the issue in greater depth but this suffers from many of the same drawbacks as Shaw Lefevre's.<sup>10</sup>

The Commons Preservation Society was founded in July 1865, shortly after a Select Committee of Parliament had issued a report on metropolitan open spaces.<sup>11</sup> The Society, which included John Stuart Mill and Thomas Hughes among its charter members, soon became the recognized voice of preservationism

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<sup>10</sup>Robert Hunter, The Preservation of Open Spaces, and of Footpaths, and Other Rights of Way, second edition (London: Eyre and Spottiswoode, 1902).

<sup>11</sup>W. H. Williams, The Commons, Open Spaces and Footpaths Preservation Society, 1865-1965: A Short History of the Society and Its Work (London, 1965), p. 1.

which was now a force of some political significance. During the next two decades its supporters would organize to protect commons in Wimbledon, Tooting, Wandsworth, Hampstead, Epping Forest, Hackney, Blackheath, Fulham, Hammersmith, Clapham, Streatham, Plumstead and elsewhere. Their influence extended well beyond the metropolis, forcing a review of the enclosure process throughout the country. Without the Society's efforts, commons throughout the country might well have fared worse. But within London, much of the trench-work in the acquisition and management of commons was carried out by local government, particularly the Metropolitan Board of Works. This contribution has earned little recognition.

Much of this thesis is devoted to redressing this imbalance while, at the same time, treating the entire subject of preservationism in nineteenth-century London. It does not detail the stories of most commons but concentrates on those which had the most significance. These include Hampstead Heath, Epping Forest, Wimbledon Common, the commons at Tooting and Plumstead, Shepherd's Bush and Clapham Common. Special attention is reserved for the Hackney commons as the struggles there were typical of the overall battle preservationists were waging.

Preservationism did not emerge as a mature force from a vacuum in the 1860s. Part One of the thesis examines the ripening conditions that nurtured its development. It begins with a brief explanation of the terms encountered in any discussion of commons and common rights. An understanding of these was

necessary for preservationists eager to penetrate the misconceptions prevalent in the community. For adherents to the philosophy of the Commons Preservation Society, common rights were the cornerstone of their method of protecting open spaces. This chapter is followed by a short historical account, particularly as it relates to the nineteenth-century debates. It will be evident that in some respects the struggles that broke out over metropolitan commons in this period were merely another chapter in a story of conflict that began centuries earlier, and which contained, in embryonic form, many of the issues with which the modern movement wrestled.

But the movement to preserve London's commons stood out from the past, arising from and being shaped by conditions in the sprawling metropolis. This was a time of growing middle-class influence and attitudinal changes within this class laid the foundations for preservationism. During the first half of the century middle-class thinking shifted dramatically in its appreciation of the city and this is the subject of the next chapter. When cities evoked pride and the countryside was near, commons were less likely to be viewed sentimentally and more apt to be seen as ugly and dangerous. But as cities lost some of their appeal, and as they grew larger, making the countryside more distant, open spaces began to be perceived in a new light. The major re-shaping of London carried out by the Victorians was unsettling for many, in both a physical and psychological sense. Debates about the quality of urban life led people to question the practices of builders and railways and to emphasize the need for

sanitation and amenities. As Victorians flocked to urban centres, they tended to romanticize rural life. Saving commons was a method of retaining a link with the countryside.

Victorians expressed their disquiet about urban life by romanticizing the past as well and commons were well situated to benefit from this. They were more than rustic reminders; they had survived the centuries. Preservationists did not make reverence for the past the primary theme in their efforts to get their message across, but it was an significant ingredient nonetheless. More important, the methods of the Commons Preservation Society were influenced by this indulgence in the past. Commons might well have had a different fate in an age that only looked forward. That professional historians were publishing studies of medieval times reinforced the view that commons were part of England's heritage and worthy of preservation.

Much of the growth of London was caused by increasing numbers of working-class inhabitants and their plight was a concern to an important section of the middle class, the social reformers and philanthropists. One of the issues that they, in tandem with many conservative critics of industrialization, focused upon was the lack of recreational space for the poor in the expanding cities. Enclosures were cited as contributing to this situation. In response, the working class adapted to new conditions by modifying its activities, while middle-class reformers sought to direct change along morally sanctioned channels. An overriding obsession was working-class drinking, a



vice many believed arose as a consequence of the paucity of areas on which to play. The need for recreational space was one of the most oft-repeated refrains by open-spaces advocates throughout the century.

That preservationists were motivated to some degree by genuinely philanthropic impulses seems indisputable. But the needs of the poor provided a screen for more self-interested goals. Preservationism gathered strength only when members of the middle class began to participate in outdoor recreational activities after the mid-century mark. As cricketers, equestrians and Volunteers, they appreciated the value of open spaces; as tacticians they learned that a cause that benefits the general public, and especially the poor, will win more support than one based on middle-class gratification. This method of winning converts by speaking on behalf of the poor was a fundamental reason for the eventual success of preservationism.

The penultimate chapter in Part One looks at parks, the Victorians first response to the need for urban open spaces. London was blessed by its royal parks and it was the growing northern cities such as Manchester that led the way in public parks. Over time observers' expectations of the behaviour of park visitors relaxed and the non-catastrophic aftermath was an important lesson for those worried about working-class behaviour on commons. While parks were recognized for the benefits they brought to an area, preservationists would emphasize the distinctiveness of commons. They were aesthetically different and, more practically, they could be made

available to the public at much less cost than the creation of a park. Furthermore, many believed that behaviour on commons could be less restrained than that in parks.

Part One closes with a brief introduction to local government, particularly the Metropolitan Board. Given the structure of the Board and its duties, it is not difficult to understand why its part in the proceedings has not received much positive attention. It was often uninspired and slow. Nevertheless, it and the district boards and vestries were on the front lines when disputes broke out. They had to make decisions after hearing arguments from opposing camps, and they received the brunt of the criticism from those dissatisfied about the state of their common.

Part Two deals with the three commons where conflicts occurred that made the issue of open spaces more than a local question. Hampstead Heath is noteworthy because the dispute there started as early as 1829. It was a classic showdown between a lord of the manor and some of his commoners. Many of the themes that would recur during struggles for commons in the latter half of the century received a preliminary airing at Hampstead. The passionate level of the dispute spilled into the political arena. Although Parliament displayed little creativity in its early discussions of the Heath, it was willing to act as a barrier to the ambitions of the lord of the manor. This was an early demonstration of the power of public opinion in furthering the preservationists' aims. Parliament's adoption of a more active role with respect to metropolitan open spaces came in

response to crises at Epping Forest and Wimbledon Common in the early 1860s. M.P.s were being pressured to find a way of protecting these and other commons.

Parliament's increasing involvement in this issue is the subject of Part Three. A Select Committee was established and from its deliberations came the 1866 Metropolitan Commons Act. The Act was an important first step but it was not radical. No one was calling for government intervention on a grand scale. The aim was to provide a framework for voluntary schemes of management. The immediate effect was negligible but gradually the Metropolitan Board of Works acquired commons through schemes drafted according to the Act. Parliament itself felt the need to amend the legislation, and some preservationists sought protection for commons in other towns and cities.

Since 1845 enclosure agreements were supposed to provide allotments for recreation and gardens for the poor. These provisions had been omitted more often than not. The fuss over metropolitan commons affected enclosures throughout the land. They came to a halt in the first half of the 1870s until the Conservatives brought in new legislation.

Under the stewardship of the Commons Preservation Society, the Metropolitan Commons Act had been drafted in such a way as to protect existing common rights when a scheme for management was introduced. This created many problems and Part Four examines how the Metropolitan Board of Works fared as it tried to acquire commons. Its experiences at Tooting and Plumstead are briefly discussed. At Tooting the difficulties of

arriving at a scheme before the 1866 Act are apparent. In addition, the power of common rights to influence events is revealed. The Plumstead events demonstrate the importance of the Commons Preservation Society in halting encroachments and in taking legal action against lords of the manor. They also show that tenacious lords could gain concessions.

The bulk of Part Four is a case study of the Board's acquisition of the Hackney commons. Hampered by a flawed scheme, the Board faced many problems as it tried to exercise its authority. The Hackney chapters illustrate the range of interests that became involved in these issues, from the vestries and district boards, to a proletarian preservation society, and a firm lord of the manor guided by a determined steward. The legal profession benefited from the events at Hackney. The district board's role in preservationist issues is also highlighted by tracing its solitary struggle against an encroacher.

Acquiring commons was only the first step for the Metropolitan Board. Part Five looks at its management of them. The Board was required to maintain common rights while promoting public use of the sites. This often proved to be a delicate balancing act. The public had to be controlled through bylaws and keepers to enforce them. People were not homogeneous in their desires for the commons. From games to meetings there were sharp differences of opinion on what sorts of activities should be permitted. The Board was also compelled to make arrangements with the military for its use of commons. Many of these wild open spaces which people wanted saved as

commons were in sorry physical shape. Landscaping was necessary yet steps that were too drastic would be condemned as making a common too park-like. Fortunately, the Board's parsimony reduced the likelihood of grand projects being proposed or executed.

A middle-class preservationist movement succeeded in rescuing commons from the designs of builders and some railway companies and, through management by conservators or local government, turning them into attractive urban amenities that both gave people a sense of wilderness and provided them with space for recreation. To some extent preservationists were early environmentalists before a vocabulary of appropriate terms was in place. They questioned assumptions about the benefits of unrestricted development, insisting that urban landscapes required open spaces that met certain aesthetic and utilitarian criteria. At the same time, they were far from radicals, despite occasional taunts to that effect. Their efforts were limited to protecting open spaces that were already there. They were not promoting elaborate plans on the redevelopment of slums. Most, concerned with protecting property values, would not have advocated building cheap housing too near a common.

There was a great deal of ambivalence in the middle-class response to the changes brought forth by industrialization, and some of this is evident in the attitudes towards commons. In the 1860s most members of the middle class might well have been unable to articulate any visions of the future for these open

spaces beyond that they should be able to use them. Unless they had been involved in a dispute over a local common, their awareness of the issue was probably slight, a situation that would change over the years. By the end of the century, the commons were closer to middle-class models than anything else. This class was the main beneficiary of most schemes. Its members lived closer to the commons and the types of activities that they engaged in were those that were sanctioned. Middle-class support was essential for preservationism to succeed. Yet it was also necessary to present the movement as one carried out in the name of the poor. This not only helped persuade governments, it also relieved guilt among the middle class. The voices of the working class were relatively silent through these years but that they demonstrated on various commons when they were threatened suggests that they too, valued these sites for recreation and leisure. They presented their arguments in ways which antagonized middle-class preservationists, but beyond the differences, the two groups were struggling for similar goals.

London's commons at the end of the nineteenth century were not quite as any one interest group would have wanted based on its attitudes in the 1860s. The Commons Preservation Society had anticipated that common rights would be maintained as a means of warding off encroachments and enclosures and allowing public access. The Metropolitan Board, more sensitive to property rights, expected to gain authority over commons by purchase. As this thesis reveals, the actual results forged a compromise

between these views, which were, essentially, representative of differences within the middle class.



## **Part One: The Roots of Preservationism**



## 1.1 Definitions

A modern Londoner, asked to describe that city's commons, would likely give an answer that embraced the idea of land that was open to the public. Such a reply would be correct. But the response of a Londoner in 1850 might not have been all that different: the commons, surely, belonged to the people. In this case the information would have been quite inaccurate. Members of the public had no legal rights over commons (except over specific rights of way). Yet everyday practice diverged from lawbook theory to such an extent that the mid-nineteenth-century Londoner's erroneous opinion expressed a *de facto* truth. People played games or rode horses on their favourite common with little interference. Others turned out donkeys, sheep, or cows, although they had no right to do so. Turf, sand, and gravel were freely removed from some commons. Gypsies encamped on them subject, perhaps, to minor harassment. There were variations. To the west, Wormwood Scrubs and Eel Brook Common were managed by the manorial court of Fulham and used by the commoners for their cattle. The court found it difficult, nonetheless, to prevent recreational use by the local inhabitants. Regulations applied to animals elsewhere, as on the Hackney commons, for example. But members of the public generally faced few barriers when they wished to use metropolitan commons at this time and, as a result, most did not view the legal questions surrounding this use as pressing concerns.

Insofar as commons were unthreatened and those with rights of ownership over them maintained their *laissez-faire*

attitude, there was little reason to question the status quo. But as the growing metropolis encircled some commons and approached the borders of others, circumstances changed and more divergent interests began to emerge. What was an equestrians' paradise to one group appeared as prime building land to another. A common viewed by some as a playground for children was valuable grazing land in the eyes of others.

A corollary of the public's lack of rights over commons was its inability to take legal action when one was enclosed or encroached upon. Thus substantial portions of Epping Forest were enclosed during the first half of the century with little resistance. At best, incensed citizens might alter plans through persuasion but this was precarious protection and hardly the cornerstone on which to construct a program to preserve commons. True, preservationists devoted considerable energy to persuading the public of the virtues of their message in order that its opinions would weigh on politicians and parties with interests in commons, but not all such people were sensitive to this type of pressure. The main body of preservationists, represented after 1865 by the Commons Preservation Society, employed public opinion to augment its basic strategy of rescuing commons by harnessing the existing rights of commoners.

The strategy had many attractions including the possibility of saving metropolitan commons with a minimum of public expense. But would it work? Were common rights capable of fulfilling this role? How much power did commoners or lords of the manor have? As commons received more covetous

attention, the ambiguities behind their status came into relief. Centuries of often colourful disputes had settled the record to some degree but many issues remained unresolved at the beginning of the nineteenth century. For people who became involved in the struggles for commons, the question of definitions and the complexities of the law were more than arcane mysteries best left to solicitors; they were the maps of the terrain to be won. An explanation of the terms will clarify the discussion that follows.

Put simply, commons are the wastes of manors. A common is land "the soil of which belongs to one person, and from which certain other persons take certain profits".<sup>1</sup> In most cases the owner is the lord of the manor. Legally, "the owner of the soil of a common is owner at common law of everything upwards to the heavens and downwards to the centre of the earth except such things as custom, usage, or grant has conferred upon the commoners".<sup>2</sup> This definition seems to give substantial power to the owners but, as many of them would discover, custom, usage, and grant conferred significant rights on the commoners. It remained to be seen if these rights could be used to benefit the public.

In addition to commons, there were in the metropolitan area lammas lands, a type of commonable land. Commonable lands, as distinct from commons or wastes, are those lands,

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<sup>1</sup>Hunter, p. 2.

<sup>2</sup>Halsbury's Laws of England, fourth edition (London: Butterworths, 1974), vol. 6, para. 639; hereafter Halsbury's Laws.

arable or meadow, which are used after the harvest for pasture. Lammas lands are distinguished by the fact that during the 'open' season, after the harvest, those with a right to turn out animals are a class greater than those with a right to the land during the closed season. Thus, over ordinary commonable lands a group of individuals would cultivate their crops on their allotments in the field and after the grain had been harvested, turn their beasts out to graze in common. Over lammas lands, the inhabitants of an entire parish might have the right to turn out animals after the harvest although none or only a few had any claim to the land during the rest of the year. Although the times of the open and closed seasons varied, traditionally Lammas Day on 1 August (or Old Lammas Day on 12 August) marked the beginning of the open season which lasted until April.<sup>3</sup> In metropolitan London, lammas lands played an important part in the struggle for open spaces in Hackney and, to a lesser extent, in Fulham.

Who were the commoners in whom the preservationists placed their hopes? In the nineteenth century there were two major classes of tenants eligible to hold rights of common (a third class, leaseholders, could not): freeholders and copyholders. Freehold descended from the medieval tenure of knight service or from socage tenure, the non-military tenure of the free person.<sup>4</sup> Before the Statute of Quia Emptores in 1290, a freeholder could,

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<sup>3</sup>When the English calendar was altered it was provided that the periods for commencing common enjoyment should be reckoned by the old account of time. [24 Geo. II c. 23 s. 5.] Hence Old Lammas Day on 12 August.

<sup>4</sup>A. W. B. Simpson, An Introduction to the History of the Land Law (Oxford University Press, 1961), pp. 12-13.

through a process of subinfeudation, create his own tenants, who in turn could create others. Subinfeudation exacted a cost from those higher up on the feudal ladder because they were denied feudal incidents. By the statute subinfeudation was stopped: any land alienated from a freeholder would be held by the same lord from whom the freeholder held. Thus after 1290 no new freeholds could be created in a manor, although in the nineteenth century they could be created by enfranchising copyhold tenures.

The other tenure, copyhold, descended from the villein tenure of the middle ages. The term copyhold was well entrenched by the fifteenth century. It arose out of the incongruity that many holding villein tenures were not of villein status and derives from the use of a copy of the manorial roll to substantiate the holding.<sup>5</sup> Although technically copyhold tenure was at the will of the lord, it was in fact quite secure because it was protected by the custom of the manor.

In the middle ages freeholders went to law at the king's court whereas copyholders were originally restricted to the manorial or customary court. These courts were a source of revenue for lords of the manor and were relinquished reluctantly. By the fifteenth century the central courts were starting to make rulings which affected copyholders and by the late sixteenth century they had extended their jurisdiction to give copyholders protection equal to freeholders. However, whereas freehold tenure was uniformly governed by the common law of the nation, the central courts tended to recognize local traditions when

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<sup>5</sup>Simpson, pp. 149, 151.

dealing with copyholders.<sup>6</sup> In effect this meant that local customs governing the uses of commons would not be ignored. By the nineteenth century, then, the rights of common attached to freehold and copyhold were generally similar, but the methods for ascertaining them were not. The manorial rolls delineated the rights of the copyholders whereas the freeholders' were enshrined in the common law. Nonetheless, the manorial rolls often indicated whether freeholders had exercised rights and were used as evidence in disputes over them.

Much copyhold land was enfranchised during the nineteenth century both compulsorily and voluntarily. It was a much debated point whether or not the common rights attached to the copyhold were lost on enfranchisement. Generally it was held that if they were lost under common law, they could be sustained in equity.

What rights did these commoners hold and how did preservationists believe they could be used to protect their chosen commons? Rights of common, or profits à prendre, are distinguishable from easements, such as rights of way over commons, in that the latter do not involve the taking of anything of monetary value. The basic right of common is that of pasturage, the right to turn out beasts on the common. The animals take something of value through their mouths. A right is classed according to what type of tenure it is associated with and who holds it. The right can be common appendant, common appurtenant, common in gross, or common pur cause vicinage.

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<sup>6</sup>Simpson, pp. 13, 145-53.

A right of common appendant is, perhaps, the most venerable. It is attached to freehold which was anciently arable and is a right to turn out all commonable cattle, "levant and couchant", that is the number of cattle which the freehold tenement can maintain during the winter. The right is said by common law to be part of a freehold grant by the lord of the manor; it is not dependent on any separate agreement. As no new freehold could be created in a manor after the Statute of Quia Emptores in 1290, it was sufficient to prove that one's land was ancient freehold (as distinct from enfranchised copyhold) to claim a right of common appendant. Unlike other common rights, which had to be used to be maintained, no evidence of usage was required. Although the right was originally attached to land "anciently arable" the land did not have to remain arable to claim the right; the possibility of it being returned to that state was sufficient.<sup>7</sup> The right might be lost if the land to which it was attached was altered to such an extent that it no longer bore any resemblance to productive farmland. This had been the fate of much freehold in the metropolis but an attempt by the lord of the manor of Plumstead to dismiss freeholders' claims because their land had been built over was unsuccessful. The judgment by the Lord Chancellor recognized that permanent buildings would destroy appendant rights but ruled that rights that were grants from the lord were not affected.<sup>8</sup> If the freehold tenement was

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<sup>7</sup>Halsbury's Laws, para. 547-49.

<sup>8</sup>Warrick v. Queen's College (1871) L R 6 Ch 716 at pp. 719-20, 730-31, citing Carr v. Lambert L R 1 Ex. 168. See chapter on Plumstead.

divided, an appendant right was divisible and apportionable. The animals which could be turned out under this right were the beasts of the plough, oxen and horses, or those which manured the land, sheep and cows. Other animals were only included if the custom of a particular manor permitted.

Because it was unnecessary to prove the right by evidence of use, it was a troublesome obstacle to lords of the manor who wanted to enclose. Though they might claim that other rights had been lost through non use, this argument could not be marshalled against rights appendant. In and around cities, where many common rights had been lost because they were more suited to the country, the fact that rights appendant retained their legal status was not lost on strategists for the protection of commons. Opponents of a scheme put forward by the lord of the manor of Wimbledon in 1865, for example, countered his claim that there were few, if any, commoners there by reminding him that he had ignored the freeholders.<sup>9</sup>

Common of pasture appurtenant is attached to specific lands by virtue of an express grant, or acquired by prescription. Animals such as geese, pigs, goats, and donkeys can be included, as can any animal that a lord might indicate in a grant. The land to which the right is attached does not have to be anciently arable, nor belong to the manor.<sup>10</sup> Often it is the copyhold tenement; the grant of the tenement specifies the rights included.

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<sup>9</sup>P.P. First Report from the Select Committee on Open Spaces (Metropolis), 1865 (178), VIII. 259, qq. 720, 1307.

<sup>10</sup>Scrutton, p. 43; Hunter, p. 44.



The right may be for a fixed number of animals or for animals levant and couchant. It cannot be for an unlimited number of cattle because such a right would damage the common. Usually the limit was expressed as a certain number of animals per acre of the tenement. This right had to be exercised to be sustained, although the courts were often needed to determine if a right had, indeed, been lost.

Of the two lesser types of common of pasture, the first, common in gross, refers to a right attached to a person irrespective of any land, while the second, common of pasture by reason of vicinage (or "pur cause de vicinage"), occurs when cattle of one manor are allowed to stray over an adjoining common belonging to another manor. Neither figured in the struggles over metropolitan commons.

Most authorities agree that only a right of common of pasture can be appendant.<sup>11</sup> The other rights of common are generally appurtenant (as pasturage itself often is) and are as follows. The right of turbary is the right to take peat or turf for fuel in the commoner's house. There are restrictions to the uses of what is taken under the right. It does not extend to taking grass turves for gardens.<sup>12</sup> The right may be claimed by prescription in respect of an ancient messuage or appurtenant to a new house erected in continuance of an ancient messuage,

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<sup>11</sup>Halsbury's Laws, para. 576.

<sup>12</sup>Thomas H. Carson, Prescription and Custom: Six Lectures Delivered in the Old Hall of Lincoln's Inn during Hilary Term, 1907 (London: Sweet and Maxwell, 1907), p. 125. The custom of taking grass plots for gardens was held to be bad for copyholders.

provided no greater burden is placed on the common. This qualification was important in some nineteenth-century cases where commoners might claim rights with respect to new houses. It was important to determine the limits of the rights attached to the old dwellings. Turbary may be a right of common in gross.<sup>13</sup>

Estovers, from the Norman-French "estouffer", to furnish, is the right to take loppings of trees, gorse, furze, underwood, and heather for fuel or for repairs of a house, farm buildings, hedges or fences. The conditions which govern estovers are similar to those which pertain for turbary.

These rights are substantiated by copies of grants or are claimed by prescription, which assumes a grant. Only persons capable of taking a grant can hold them, such as the freeholders or copyholders of a manor. This generally excludes the inhabitants of a particular area or members of the public because granting a profitable right to an unspecified number of people (a village might grow) would endanger the common.<sup>14</sup> The point was argued in 1866 in the Epping Forest case when the Master of the Rolls ruled that a grant from the Crown--in this instance to inhabitants of a parish to lop trees--in effect created a corporation.<sup>15</sup> A corporation was capable of receiving a grant,

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<sup>13</sup>Hunter, 60-61; Halsbury's Laws, para. 376:

<sup>14</sup>Hunter, p. 60; Halsbury's Laws, para. 579; D. R. Denman, R. A. Roberts, and H. J. F. Smith, Commons and Village Greens (London: Leonard Hill, 1967), p. 463.

<sup>15</sup>Willingale v. Maitland (1866) L R 3 Eq 103.

but a grant from anyone else would not have this power and would be ruled invalid.

There is also a right to dig sand, gravel, loam, clay, coal and minerals from a common. The right can be claimed by grant or prescription and may be appurtenant to land held or held in gross.<sup>16</sup> A statutory right for parishes to take gravel and sand for the repair of roads was granted by the Highways Act of 1835.<sup>17</sup> As gravel digging disfigured commons, preservationists urged parishes to abandon the practice but, in some areas such as Plumstead, cooperation was not forthcoming. It was not until the Commons Act of 1876 that more stringent conditions curtailed gravel digging. Rights to take materials from commons seemed to conflict with other rights, often that of pasture, and preservationists were willing to make this claim when they thought a lord of the manor had encouraged such activities with the aim of spoiling the surface of a common.

Rights such as piscary (fishing) do not enter into the cases dealing with metropolitan commons.

Once the nature of rights had been established, it remained to prove that they were valid. The law, contrary to historical evidence, treats all rights of common as if they were grants from the lord. Thus evidence of that transaction confirms a right. Rights appendant are assumed to have been granted with the freehold and require no separate documentation of any kind. Rights appurtenant depend on a grant to detail the particulars.

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<sup>16</sup>Halsbury's Laws, para. 585.

<sup>17</sup>5 & 6 Will. IV, c. 50.

But more often than not, the document conferring a right will have been lost. In the absence of an actual grant, a claim must be substantiated by prescription. Prescription is the method by which a practice that has been carried on for a number of years is recognized as an actual right. In the words of one justice in the early twentieth century, "All prescription pre-supposes a grant".<sup>18</sup>

There are three methods by which prescription may be claimed: at common law; under the doctrine of a modern lost grant, or under the Prescription Act of 1832. However claimed, a right must be reasonable; that is, it must not inflict damage on a common. For this reason rights often have limits, such as the number of animals that may be turned out, or specific dates during which a right may be exercised. The right of lopping trees in an Epping Forest manor, for example, was good only between 11 November and 23 April.<sup>19</sup>

A right claimed at common law must have been enjoyed since the time of legal memory, or 1189 (the first year of the reign of Richard I), but the demonstration of usage for many years is sufficient proof in the absence of any counter claim. Unlike claims under the 1832 Prescription Act, no fixed number of years is needed. The claim can be defeated by evidence

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<sup>18</sup>Carson, p. 12 citing Lord Lindley (Hodgson v. Gardner's Co., 1903, A C 239).

<sup>19</sup>Lord Eversley, Commons. Forests and Footpaths, revised edition (London: Cassell and Company, 1910), pp. 87-88.

showing that usage has commenced or must have commenced within the time of legal memory.<sup>20</sup>

The doctrine of the modern lost grant arose to meet situations in which the origin of a right could be shown to be later than the time of legal memory. By the fiction of assuming a modern lost grant, the right could be substantiated.

The Prescription Act of 1832 sought to end ambiguities associated with these two methods. It provided that a claim for a right which had been exercised for thirty years could not be defeated by showing that the right had begun at some time prior to the thirty years, though it could be defeated by any other way in which it was vulnerable. If the right had been exercised for sixty years it was deemed absolute and indefeasible unless it could be shown that consent had been expressly given by the lord or that stealth or coercion had been used, in which case the claim was defeated. The lord of the manor is assumed to have acquiesced to a right claimed by prescription in the sense that he was aware of the act, had the power to interfere, but did not.<sup>21</sup> One drawback to the use of the Act to establish rights of common was that if the lord of the manor was only a tenant-for-life (under a family settlement) the thirty-year rule did not apply and sixty years usage had to be shown.<sup>22</sup>

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<sup>20</sup>Halsbury's Laws, para. 590.

<sup>21</sup>Halsbury's Laws, para. 594; Carson, pp. 13-14.

<sup>22</sup>Halsbury's Laws, para. 596; Hunter, pp. 48, 50; 2 & 3 William IV c. 71, ss. 1, 7.

## 1.2 Historical Background

By placing their faith in common rights preservationists evoked the long history of commons, a history rich in conflict over these rights. The very antiquity of commons was one of their strong attractions. Their origins were lost in a time increasingly romanticized by Victorians with their interest in things medieval. It was possible to exploit this sentiment so that harming commons became something of a sacrilege. Employing a minor sleight of hand, preservationists proposed to use common rights for a purpose at odds with their original intentions. There was hardly a need to preserve grazing land on a common surrounded by houses and clearly the trend was against the continuance of these practices. The rights were to be used to keep commons open for the public. As such it was important to stress that common rights had an historical affinity with the people. This was not difficult. In a stereotypical rural manor, most of the people were commoners; their victories against the lord of the manor were popular triumphs. By the mid-nineteenth century, when rural unrest was rare, middle-class suburbanites could identify with these struggles. Nor was the basis for this identification solely romantic myth. Some past conflicts had centred on commons in the London area and had focused on issues that preservationists would still be addressing in the 1800s. The history of commons was an important element in the preservationist movement both in the sense of emphasizing the connections commons had with the past and in the more technical

sense of unearthing the histories of individual manors to try to verify rights. A brief summary of that history will highlight the aspects that influenced the nineteenth-century movement. Victorian attitudes towards the past and their relationship to preservationism will be examined in a later chapter.

Commons existed long before there was individual ownership of them. When population was small and land adequate the wastes were freely available to all; when those conditions changed, regulatory mechanisms appeared. By the thirteenth century the law accepted the jurisdiction of the lord of the manor over commons and wastes.<sup>1</sup> The appropriation of commons by manors or by villages had been going on for centuries; the difficulty for historians is to chart this development. In England the first whittling down of access to commons probably occurred in the eighth century. W.G. Hoskins points to evidence of common lands being attached to particular settlements at this time in the south-eastern part of England.<sup>2</sup> This process continued and intensified in the period preceding the Conquest but, as Joan Thirsk notes, the survival of intercommoning (villages or manors sharing commons) reminds us that the control of commons by single communities was not something that happened uniformly throughout the country.<sup>3</sup> One estimate suggests that it took until the thirteenth century for this pattern

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<sup>1</sup>W. G. Hoskins and L. Dudley Stamp, The Common Lands of England and Wales (London: Collins, 1963), p. 35.

<sup>2</sup>Hoskins and Stamp, pp. 10-11.

<sup>3</sup>Joan Thirsk, "The Common Fields", Past and Present, 29 (December 1964), p. 4.

to become standard.<sup>4</sup> Victorians, less obsessed with the chronology of these developments, easily saw commons as part of the land system inherited from communities of free Anglo Saxons.

Tracing the history of commons inevitably confronts one with the manor. Were manors a relatively late feature of Anglo-Saxon England, imposed on an existing network of independent villages?<sup>5</sup> This was the view of Maitland, Vinogradoff, Stenton and many other historians. In 1958, however, T.H. Aston placed the manor at the beginning of Anglo-Saxon occupation. As he states, "that organization of settlement and agriculture ... was already old when Ine [King of Wessex, 688-726] described it in his laws".<sup>6</sup> This thesis does not erase the free Anglo-Saxons from English history but, as Aston confesses, "they are very elusive figures". Rather than finding a general downgrading of status during the Anglo-Saxon period he observes more evidence of people rising in rank. As population grew, settlements could spring from individual and humble origins or be established by lordless groups in new areas. The exercise of lordship was not uniform and Aston believes only a long history of manorial development can account for the diversity of forms which later

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<sup>4</sup>Hoskins and Stamp, pp. 34-35.

<sup>5</sup>Edward Miller and John Hatcher, Medieval England. Rural Society and Economic Change, 1086-1348 (London: Longman, 1978), pp. 20-23.

<sup>6</sup>T. H. Aston, "The Origins of the Manor in England" in Social Relations and Ideas: Essays in Honour of R. H. Hilton, eds. T. H. Aston et al. (Cambridge University Press, 1983; orig. publ., Transactions of the Royal Historical Society, fifth series, 8, 1958), pp. 1, 25.



medieval records show.<sup>7</sup> After the Conquest Norman lords consolidated manors and also exacted heavier burdens on the tenants in an effort to make them more profitable.<sup>8</sup> Regardless of when the manor came into being in Anglo-Saxon England, the image of the oppressive Norman lord had currency in later centuries. Nineteenth-century preservationists liked to find English virtues among the commoners.

To push the origins of the manor to the beginnings of Anglo-Saxon occupation alters, but does not nullify, the picture of commons and wastes being gradually attached to settlements. Whether villages fell under the control of manors, or whether they emancipated themselves from lords, it was population growth that led to the more intensive use of neighbouring lands. Early population patterns are difficult to map but some historians question whether Anglo-Saxon settlement advanced over a thinly populated countryside.<sup>9</sup>

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<sup>7</sup>Aston, pp. 2, 4, 38-42. In a 1983 postscript Aston stands by his original argument and examines the influence of inheritance customs and population growth on Anglo-Saxon manors, pp. 26-43.

<sup>8</sup>Miller and Hatcher, pp. 21-23.

<sup>9</sup>C. C. Taylor, for one, in a contribution to the debate on the origins of the open-field system, argues that archaeological evidence proves "beyond doubt" that agriculture occupied a greater expanse in late Roman times than in the twelfth and thirteenth centuries and that this supported a population which was "densely settled" over most of Britain. C. C. Taylor, "Archaeology and the Origins of Open-Field Agriculture" in The Origins of Open-Field Agriculture, ed. Trevor Rowley (London: Croom Helm, 1981), pp. 19-20.

Whatever the situation in pre-Conquest England, most authorities accept that there was a dramatic increase in population after that event, possibly a doubling by the time of the Black Death. This had a major impact on manorial development with respect to the use of land. The demand for food led to the cultivation of former waste. Yet pasture was a vital part of the peasant economy and with fewer acres available further limitations on its use were inevitable. One obvious method was to restrict the number of animals which could graze on the common. From the thirteenth century manorial records reveal the acceptance of the principle of "levancy and couchancy" to determine the number of animals a person might turn out, that is, the number of animals his or her tenement could support during the winter. In parts of the country, such as the Midlands where pasture was under greater pressure, a further refinement was being used, namely specifying the number of cattle.<sup>10</sup> These methods were still in use in the nineteenth century.

Population growth after 1066, with the attendant erosion of pasture as land-use became more intensive, seems an indisputable cause of the struggles over commons in the twelfth and thirteenth centuries. As more land was transformed from waste to arable certain groups were threatened. It is a fair inference that the disputes that appear in the records are representative of a greater number. Two modern historians write

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<sup>10</sup>Hoskins and Stamp, pp. 36-38; Miller and Hatcher, pp. 38-39.

that the situation "seems to have generated something like a battle for common rights between lords and tenants".<sup>11</sup>

One result of these unsettled conditions, the Statute of Merton in 1236, cast an uneasy shadow over nineteenth-century debates about commons and enclosures. By this statute, lords could approve (enclose) against any common provided they left sufficient land to satisfy the rights of their freeholders.<sup>12</sup> No formula was included to determine if a sufficient amount of a common had been left. Merton was extended by the Statute of Westminster II in 1285 which limited the right of opposition by tenants of neighbouring manors if they had sufficient common to satisfy their rights. Both statutes were reaffirmed during the reign of Edward VI. Their provisions were eventually interpreted to apply equally to copyholders.<sup>13</sup>

Was the Statute of Merton a boon to lords who complained of being thwarted in their efforts to improve their wastes by the demands of their enfeoffed knights and freeholders? Or, was it offered as protection to commoners from the greediness of landlords by guaranteeing that their rights would not be abrogated?<sup>14</sup> There are grounds for both arguments but even before the 1800s it was viewed as an instrument for

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<sup>11</sup>Miller and Hatcher, p. 39.

<sup>12</sup>See Appendix.

<sup>13</sup>3 & 4 Edw. VI, c. 3; Hunter, p. 14.

<sup>14</sup>Miller and Hatcher, p. 39; Warren O. Ault, "Open-Field Husbandry and the Village Community: A Study of Agrarian By-laws in Medieval England", Transactions of the American Philosophical Society, new series, 55, part 7 (1965), p. 6.

unilateral action by lords of the manor. Most commentators seem to accept that the statute was a confirmation of the common law rather than a new departure but not all nineteenth-century participants in the struggles for commons were of this opinion. They saw it as strengthening the hand of the lords and consistently called for its end. It undermined, although certainly did not defeat, the argument for the statute's repeal to admit that it merely confirmed the law. Merton generated emotional heat in the nineteenth century because its presence raised the spectre of enclosures outside the realm of Parliament. It seemed very much an instrument for high-handed lords of the manor who would, if challenged, assert that they had left sufficient common to satisfy any common rights. They might reinforce their case by claiming that most rights had been lost through non use. Nonetheless, the preservationists probably overdramatized the threat from the statute. It was not a procedure without risk. In the nineteenth century the courts affirmed that the onus of proof that sufficient land had been left for the commoners' pasturage was on the lord.<sup>15</sup> The courts were generally reluctant to back enclosures based solely on the statute and lords might face a Sisyphean task trying to track down all those who held rights.<sup>16</sup>

Another question which was raised with regard to the Statute of Merton was whether a lord could approve against

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<sup>15</sup>Halsbury's Laws, para. 649. The rules for determining sufficiency were laid down in the Banstead commons case, Robertson v. Hartopp in 1889. (They are irrelevant today as under the Commons Registration Act, 1965, claims must be quantified.)

<sup>16</sup>Ault, p. 6, n. 16.

rights other than pasture. Preservationists maintained that even if a lord could show sufficiency of pasture had been left, he could not approve at all against such rights as turbary. Generally this view held but with qualifications. A case could not be sustained against a lord if he enclosed land over which no rights of turbary could be supported. In the cases concerning metropolitan commons Merton was occasionally used by a lord to justify an action but no court ever seconded these. A lord was more likely to use the statute as a threat. Its repeal was recommended in 1865 by the Select Committee on Metropolitan Open Spaces but nothing was done. Other attempts were similarly unsuccessful. The statute was all but repealed by the 1893 Law of Commons Amendment Act, which gave the Secretary of State for the Home Department authority to approve any enclosure under the Statutes of Merton and Westminster II.<sup>17</sup>

Merton was a response to troubled times with respect to commons and it is from these centuries-old disputes that the case law defining common rights derives. Attempts by lords of the manor to encroach upon these rights were often met by fierce resistance. Indeed, popular resistance to the loss of commons had been part and parcel of enclosures from the beginning, a tradition with which nineteenth-century preservationists proudly linked themselves. Riots, pamphlets and sermons had all been mobilized in the struggles. In the Tudor period the government

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<sup>17</sup>56 & 57 Vict. c. 57. Merton remained on the statute books until 1953 by which time it was by far the oldest statute there. W. E. Tate, A Domesday of English Enclosure Acts and Awards, ed. with introd. Michael E. Turner (Reading: The Library, University of Reading, 1978), p. 331.

also opposed enclosures, fearing the depopulation of the countryside and the decrease in domestic grain production.<sup>18</sup> A 1581 publication complained that "these enclosures do undo us all ... all is taken up for pasture .... and where forty persons had their livings, now one man and his shepherd hath all".<sup>19</sup> Sixteenth-century enclosures usually cleared the land for sheep; two centuries later enclosures were used to create consolidated farms from common fields. Common wastes were often enclosed as parts of operations whose main targets were these common fields, but separate actions for the wastes were not unknown.

Not all protest centred on the countryside. There are surprisingly early echoes of an appreciation for the non-agricultural use of London's commons, revealing that the issues with which preservationists wrestled in the nineteenth century were far from new. One of the earliest examples has the most modern ring. In 1548 Edward Hall recorded an incident that occurred early in the reign of Henry VIII. Londoners, armed with shovels and spades, levelled hedges and filled in ditches which had been made by the inhabitants of Islington, Hoxton, Shoreditch, and other towns to enclose the common fields such that "neyther the yong men of the City might shoote, nor the auncient persons

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<sup>18</sup>Harold Perkin, "Public Participation in Government Decision Making. The Historical Experience", in The Structured Crowd: Essays in English Social History (Brighton: The Harvester Press, 1981), p. 188; Jon S. Cohen and Martin L. Weitzman, "Enclosures and Depopulation: A Marxian Analysis", in European Peasants and their Markets, ed. William N. Parker and Eric L. Jones (Princeton University Press, 1975), p. 171; Tate, p. 19.

<sup>19</sup>Cited by J. Frome Wilkinson, "Pages in the History of Allotments", Contemporary Review, 45 (April 1894), p. 532.

walke for exercise". But, continued Hall, the situation was now worse than ever because the wealthy were enclosing to provide gardens for their summer homes, a practice he condemned as vain. Islington had long been a traditional recreation ground for Londoners.<sup>20</sup> Here was a prototypical pattern for future preservationist propaganda: the "people" taking direct action to save their recreation grounds while the rich made their illegal land grabs.

Despite Tudor strictures against enclosing, Henry VIII prohibited his subjects from hunting "from the palace of Westminster to St. Giles-in-the-Fields, and thence to Islington, to Our Lady of the Oak, to Highgate, to Hornsey Park and to Hampstead Heath". The king enclosed some of these areas to preserve his game, a move which no doubt inconvenienced the inhabitants, but which contributed to their preservation as open spaces.<sup>21</sup>

In Elizabeth's reign an Act of Parliament was passed that reflected the use of commons around London for shooting and recreation. The "Acte against newe buyldings" in 1592 made it illegal for any person to

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<sup>20</sup>Cited by John Stow, A Survey of London (1603), ed. with introd. Charles L. Kingsford (Oxford: Clarendon Press, 1908), vol. 2, pp. 77-78; Pieter Zwart, Islington: A History and Guide (London: Sidgwick and Jackson, 1973), p. 15.

<sup>21</sup>S. E. Rasmussen, London: The Unique City (London: Jonathan Cape, 1934), p. 92.

inclose or take in any parte of the Commons or Wastes Groundes scituate lienge or beinge within thre Myles of any of the Gates of the saide Cittie of London, nor to sever or to devide by any Hedge Ditche Pale or otherwise, anye of the saide Fieldes lying within three Myles of any of the Gates of the said Cittie of London as aforesaid, to the let or hindruance of the traynyng or musteringe of Souldiors or of walkinge for recreacion comforte and healthe of her Maj. People, or of the laudable exercise of shotinge...<sup>22</sup>

The prohibition against building was later extended to ten miles, a measure which encouraged the siting of large houses outside this radius especially in the eighteenth century when improved roads facilitated access to London. In these areas "land was cheaper and bits of common more easily seized and enclosed".<sup>23</sup>

Thus commons figure in a minor way in early attempts to control the shape of London. But royal decrees and Parliamentary Acts notwithstanding, the city continued to grow over the centuries, inevitably at a substantial cost to existing open spaces. In some cases resistance was offered; in others not. Some examples from various parts of the region from the sixteenth to the nineteenth centuries give a sense of the diversity of responses. One fifth of Tooting Common was enclosed in 1569; the person responsible received a mild rebuke. Further enclosures of Tooting Graveney Common in the eighteenth century met little resistance.<sup>24</sup> Leigham Common, north of

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<sup>22</sup>35 Eliz. I, c. 6, s. 4, cited by Rasmussen, p. 82.

<sup>23</sup>James S. Ogilvy, A Pilgrimage in Surrey (London: George Routledge and Sons, 1914), vol. 2, pp. 386-87.

<sup>24</sup>Arnold, p. 107.



Streatham and east of Tooting, was completely built over.<sup>25</sup> In 1794, when the Duke of Bedford sold the furze on Streatham Common for £80, the poor expressed their anger at being deprived of this resource by setting fire to it. Other inhabitants apparently approved. After a portion of the common used for the poor's cattle was enclosed

a hackney coach drove to the spot, when six men, dressed in black, and crapes over their faces, got out of the carriage, and with carpenter's implements cut down the paled enclosure, returned into the coach and drove off.<sup>26</sup>

One quarter of Hampstead Heath disappeared between 1690 and 1734 while smaller portions continued to be snatched in later years, usually for building.<sup>27</sup> The sale by the lord of the manor of Canteloves of most of the wastes and common lands of Kentish Town, and the subsequent enclosure of and building on the land, drew forth a response from the Vestry of St. Pancras in 1725 giving power to churchwardens, overseers, constables and Headboroughs "with any other inhabitants" to tear down the fences. The Vestry promised to indemnify participants against any legal action. Despite this, by the end of the century, the common had been reduced to a patch of slightly larger than three

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<sup>25</sup>Balham News-Letter, 16 May 1913.

<sup>26</sup>Gentleman's Magazine, 64 (June 1794), p. 571, cited by Arnold, p. 122.

<sup>27</sup>Michael Chambers, "Hampstead Heath Survey, 1680", Camden Historical Review, 11 (1980), p. 20.

acres on the west side of Highgate Road. A little over two acres of this was eventually added to Parliament Hill.<sup>28</sup>

In Wandsworth, the foiling of an enclosure attempt in the early eighteenth century is the probable origin of the somewhat riotous Mayor of Garratt celebrations during which colourful characters were elected "mayors" amidst much drinking and mayhem. The occasion inspired a play by Samuel Foote, performed in 1763.<sup>29</sup> The residents' zealously about their common was sustained for many generations.

Other areas suffered in the late eighteenth and early nineteenth centuries. Over 850 acres of commons and lammas lands were lost in Lewisham by an enclosure Act passed in 1810. Only that part of Blackheath in the parish was spared. Sydenham Common in the south-west disappeared. Some two hundred years previously, when the common was 500 acres, a long dispute between the new owner and the commoners, led by their vicar, had produced a victory for the latter. Local opinion was not similarly mobilized in the nineteenth century.<sup>30</sup>

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<sup>28</sup>Walter E. Brown, St. Pancras Open Spaces and Disused Burial Grounds (St. Pancras, 1902), p. 71; Gillian Tindall, The Fields Beneath (London: Temple Smith, 1977), p. 86.

<sup>29</sup>Anthony Shaw, The Mayor of Garratt (Wandsworth Historical Cameos, No. 1, Wandsworth Borough Council, 1980), p. 3-4. Boswell reported that he "laughed much at it". Frederick A. Pottle, ed., Boswell's London Journal, 1762-1763 (New York: McGraw Hill, 1950), p. 281.

<sup>30</sup>Duncan, pp. 42-50, 56; White, pp. 54-56; Tate, p. 145.

Dulwich Common, which had an unsavoury reputation, was enclosed in 1805, part of the land going to Dulwich College.<sup>31</sup> In 1889, Walter Besant could look back over two centuries and list 500 acres of commons that had been lost in Lambeth. Some of this had disappeared in an enclosure act in Croydon in 1797 that enclosed 2200 acres of wastes and 750 acres of common fields. Only Kennington Common had been spared by its conversion into a park. Many of the commons Besant missed had been part of the Northwood of Surrey and the Westwood of Lewisham.<sup>32</sup> Norwood's commons and wastes had a "notorious" reputation before enclosures began to tame them. Oliver Cromwell, one of the first to interfere, justified his actions on the need to rid the area of various malefactors hiding out there.<sup>33</sup>

In the eastern part of the metropolis, at Charlton, the Maryon Wilson family, whose main notoriety in the nineteenth century would stem from actions at Hampstead Heath, enclosed during the Napoleonic wars.<sup>34</sup> The 300 acres of Bromley Common in Kent were enclosed in two stages in 1764 and 1821.<sup>35</sup> On the western edge just over 500 acres of Hounslow Heath were lost by

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<sup>31</sup>Ben Weinreb and Christopher Hibbert, eds., The London Encyclopaedia (London: Macmillan, 1983), p. 243.

<sup>32</sup>Walter Besant, South London (London: Chatto and Windus, 1899), p. 308; Hammond and Hammond, pp. 251-56; White, pp. 54-56.

<sup>33</sup>Rev. James Johnston, Parks and Playgrounds for the People (London: Hamilton and Adams and Company, 1885), p. 13; Ogilvy, vol. 2, p. 386.

<sup>34</sup>White, p. 67.

<sup>35</sup>The London Encyclopaedia, pp. 95-96.

the Stanwell Enclosure Act of 1789 which also dealt with over 1600 acres of commonable land. An earlier attempt in 1767 had been defeated, the commoners expressing their jubilation by marching down Pall Mall wearing cockades in their hats.<sup>36</sup> Most early victories tended to be temporary. Power was in the hands of the lords of the manor.

The lords triumphed over isolated pockets of resistance because the prevailing attitude towards commons was apathetic or hostile. These attitudes persisted during the first half of the nineteenth century but with declining strength. When Plumstead Common suffered from enclosures and encroachments in the mid-nineteenth century after the appointment of a new agent, the tide was beginning to turn. Preservationists there organized and linked up with the greater movement forming in the metropolis. Similar things were happening in Wimbledon, Epping Forest, Banstead, Berkhamstead, Hackney, Tooting and elsewhere. These efforts would halt the disappearance of London's commons and change the process of enclosure throughout the country. The struggle had a long pedigree which preservationists were determined to honour.

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<sup>36</sup>Hammond and Hammond, pp. 262-66.

### 1.3 Ambivalence about Cities

Resistance to enclosures was often minimal during the first third of the nineteenth century because urbanization had removed many of the traditional functions of commons, despite the persistence of "back-yard" agriculture and domestic animals in the spreading cities.<sup>1</sup> Those who derived benefits from them, such as gypsies, cottagers, or the poor, were politically weak. For the middle and upper classes they could have rather sinister associations as the refuges of undesirables and this was particularly true around London. The odium which clung to commons like Hounslow Heath, Enfield Chase, and Blackheath attached equally to many elsewhere in the metropolis.<sup>2</sup> When the threat from highwaymen declined, footpads and gypsies sustained the objectionable reputations.<sup>3</sup> If not the haunts of dangerous people, commons were often undrained, overgrown, and impassable. Small wonder that shopkeepers and business people

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<sup>1</sup>H.J. Dyos and Michael Wolff, "The Way We Live Now", in The Victorian City: Images and Realities, ed. Dyos and Wolff (London: Routledge and Kegan Paul, 1973) pp. 898-99.

<sup>2</sup>Some of this was relative: people's memories were somewhat contradictory when they reflected on the extent of past lawlessness in an area. An 1821 book about Kentish Town claimed it was safer because highway robberies had ceased to be a problem, but a writer in the 1860s regarded this earlier period as dangerous. Tindall, pp. 117-18.

<sup>3</sup>An ostler in George Borrow's The Romany Rye, who is an authority on highwaymen, cites enclosures as one of the causes of their disappearance. The Romany Rye, (London: Dent, Everyman's Library, 1969; orig. publ. 1857), p. 145.

were more enchanted by a vision of new houses on their local common than by one of gorse in bloom. It was difficult for commons to be appreciated as charming fragments of countryside when the countryside itself was still so much in evidence and urban life had yet to acquire many of the negative connotations brought by cholera, poverty, and overcrowding. As this 1827 observation attests, these years were characterized more by enthusiasm for the growth of cities than by widespread alarm at the disappearance of rural land: "Fields, that were in our times appropriated to pasturage, are now become the gay and tasteful abodes of splendid opulence, and of the triumphs of the peaceful arts".<sup>4</sup> That commons and open spaces had much to offer the city-dweller only started to become apparent to a wide audience as the city's benign façade began to crumble. Before that, appreciation was localized.

The confidence in cities that had marked the Regency period was waning before Victoria came to the throne. The Tory radical, William Cobbett, and like-minded thinkers had always been hostile but middle-class reformers and politicians, when challenged by shocks of the magnitude of the cholera epidemic of 1832, had to face the deficiencies as well. Some of the harshest criticisms of cities appeared in the second quarter of the century when awareness of the problems caused by urbanization first became widespread. These problems, relating to diseases, the

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<sup>4</sup>James Elmes and Thomas H. Shepherd, Metropolitan Improvements: or London in the Nineteenth Century (1827), cited by Donald J Olsen, The Growth of Victorian London (London: B. T. Batsford, 1976), p. 39.

water supply, sewage, and accommodation, called for solutions. Overwhelmed by the size of the task, reformers and people in authority shied away from comprehensive remedies in favour of piecemeal measures to prevent matters getting worse.<sup>5</sup> The perception that cities were inimical to health and appeared to foster destructive habits among the poor spurred philanthropic efforts to save the victims through charity and education. Critics noted the lack of opportunities for working-class recreation, an issue open-spaces advocates would seize.<sup>6</sup> For obvious reasons the energy consumed on sanitary reform far outweighed that expended on the merits of open spaces, a subject which tended to remain a sub-theme for reformers until the 1860s. Yet the issue never disappeared in the shadow of more urgent topics and occasionally shone on its own.

Although unanimity was lacking, there was more acceptance of the realities of urban life during the latter part of the century.<sup>7</sup> Robert Vaughan's The Age of Great Cities in 1843 was one of the most uncompromisingly celebratory statements on the benefits of cities. Vaughan disliked anti-urban sentiment: "Its true tendency must be to bring back the rudeness of a feudal age."<sup>8</sup> But many continued to distrust the city and they found

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<sup>5</sup>William Ashworth, The Genesis of Modern British Town Planning (London: Routledge and Kegan Paul, 1954), p. 53.

<sup>6</sup>See discussion of recreation in chapter 1.5.

<sup>7</sup>Harold Perkin, The Origins of Modern English Society, 1780-1880 (University of Toronto Press, 1972), pp. 160-63.

<sup>8</sup>Cited by Ruth Glass, "Urban Sociology in Great Britain: A Trend Report, Current Sociology, 4, 4 (1955), p. 30.

common ground with an ambivalence present even in those who had accommodated themselves to it. The urban middle class took imaginative flights from their brick environment into the countryside, or into the past. Their vision of a perfect city was one softened by nature, hence the ubiquitous private gardens.<sup>9</sup> As H. J. Dyos remarked, there was a "devious determination to bring as many rustic features as possible on the urban scene".<sup>10</sup> When an organized movement to protect commons arose, it was centred in London, the world's largest urban centre. Its members had urban interests; they were not rural commoners. It succeeded largely because it fed the desire for nature in the city by providing areas of relative wilderness. The landscapes of commons had been shaped by human activities for centuries but they often bore little resemblance to those of ordered parks. Inhabitants of areas near commons valued this difference, as authorities would discover. The message of the desirability of these havens of urban greenery was easily married to the one advocating open spaces for the urban poor.

Preservationism also benefited from the pattern of growth in London. The middle class led the colonising assault on the suburbs in the nineteenth century, accelerating a trend towards class-segregated areas which stretched back to the seventeenth century and was quite pronounced by the end of the

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<sup>9</sup>For an account of the benefits gardens were believed to provide see S. Martin Gaskell, "Gardens for the Working Class: Victorian Practical Pleasure", Victorian Studies, 23 (1980), pp.479-501.

<sup>10</sup>H. J. Dyos, Exploring the Urban Past: Essays in Urban History, eds. David Cannadine and David Reeder (Cambridge University Press, 1982), p.60.



eighteenth.<sup>11</sup> Indeed the eighteenth century produced a "happy jostle of villas built for lawyers, merchants, artists, doctors, dowagers and younger sons" along the Thames and around the "village common".<sup>12</sup> In this flight to the suburbs, the wealthiest were able to appropriate the choicest spots and around such commons as Wimbledon, Clapham, Tooting, or Hamsptead Heath, a resident gentry settled. Once established they sought to protect their investment by protecting their local open spaces. Members of this class were often found among the front ranks of preservationists. In Clapham they acted well before the nineteenth-century movement took shape. The common there was "little better than a morass" in the mid-eighteenth century. Alarmed at this, and by encroachments, residents formed a committee in 1768 under the leadership of a magistrate and carried out improvements.<sup>13</sup> Some one hundred years later a witness before a Select Committee on Metropolitan Open Spaces attributed the common's survival against encroachments to its wealthy residents. He noted that nearby Wandsworth Common, where such a community did not reside, had been cut up by railways.<sup>14</sup> The efforts of the eighteenth-century Claphamites

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<sup>11</sup>Olsen, pp. 18-19; L. D. Schwarz, "Social Class and Social Geography: the Middle Classes in London at the end of the Eighteenth Century", Social History, 7 (1982), p. 178.

<sup>12</sup>Nicholas Taylor, The Village in the City (London: Temple Smith, 1973), p. 39.

<sup>13</sup>J. H. M. Burgess, The Chronicles of Clapham (London: The Ramsden Press, 1929), pp. 29-30, 63.

<sup>14</sup>P.P. Second Report from the Select Committee on Open Spaces (Metropolis), 1865 (390), VIII. 355, q. 1914.

were directed at neutralizing the types of features that threatened their enjoyment of the common. In addition to upgrading the landscape, they tried to end fairs, "a great nuisance to the inhabitants". They were only partially successful.<sup>15</sup> Middle-class residents of nineteenth-century suburbs would react in a similar fashion. Commons were to be, in a sense, wilderness under glass, with the unpredictable and the unpleasant relegated to the outside.

The slums and squalor that appeared in London in the wake of industrialization were not enough in themselves to generate ameliorative efforts on their behalf. Those with the means to undertake them generally lived removed from the eyesores. But when overcrowded and unsanitary areas were identified as the breeding grounds of disease, apathy was harder to maintain. Similarly, when fantasies of the urban poor taking to the streets began to haunt comfortable citizens, they were more easily persuaded that reforms might be prudent.<sup>16</sup>

Cholera induced panic and mobilized public opinion because of its rapid and seemingly unpredictable progress. It was not confined to certain geographical areas nor to one social class. Efforts to combat the disease were hampered by conflicts about its cause between contagionists and those who believed it spread

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<sup>15</sup>Burgess, p. 34.

<sup>16</sup> Phillip McCann, "Popular Education, Socialization and Social Control: Spitalfields 1812-1824" in Popular Education and Socialization in the Nineteenth Century, ed. McCann (London: Methuen, 1977), pp. 14-15.

through miasma.<sup>17</sup> Although the germ theory held its own in 1832, it was not until 1883, when Koch isolated the bacillus, that it properly triumphed. John Snow had demonstrated that cholera was water-borne in 1849 but his findings were not regarded as conclusive by many. Most sanitary reformers adhered to the miasma theory to explain the spread of diseases.<sup>18</sup> For example, Dr. Southwood Smith, a prominent physician and sanitary reformer in the first half of the century, wrote in 1830:

The immediate, or the exciting cause of fever is a poison formed by the corruption or the decomposition of organic matter. Vegetable and animal matter, during the process of putrefaction, give off a principle, or give origin to a new compound, which, when applied to the human body, produces the phenomena constituting fever.<sup>19</sup>

However mistaken, the belief in miasmas was more likely to support the need for open spaces to provide ventilation for overcrowded slums than a belief in the germ theory. In that sense, it was a beneficial error.

The fledgling science of statistics added urgency to the need for measures to cope with the unhealthiness of towns and cities. From the 1830s evidence was incontrovertible that death rates in congested areas were unacceptably high. The pioneering statistician, William Farr, had much to do with linking high

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<sup>17</sup>R. J. Morris, Cholera 1837: The Social Response to An Epidemic (London: Croom Helm, 1976), pp. 14-16, 28-31.

<sup>18</sup>Royston Lambert, Sir John Simon, 1816-1904, and English Social Administration (London: MacGibbon and Kee, 1963), p. 49.

<sup>19</sup>Cited by Alexander John Youngson, The Scientific Revolution in Victorian Medicine (London: Croom Helm, 1979), p. 22; Smith was Octavia Hill's grandfather.

densities and high mortality. His contributions to the Annual Reports of the Registrar-General occasionally underscored the desirability of better ventilation through wider streets, more parks and less-crowded living arrangements. Farr was slow to abandon the theory of the airborne transmission of disease as his contribution to the fifth report of the Registrar-General makes clear:

The existence in the atmosphere of organic matter is therefore incontestable; and as it must be most dense in the densest districts, where it is produced in greatest quantities, and the facilities for decomposing it in the sunshine and sweeping it away by currents of wind are the least, its effects--disease and death--will be most evident in towns and in the most crowded districts of towns.<sup>20</sup>

Later in the century large commons like Hampstead Heath and Wimbledon would be celebrated for the healthy fresh air which they brought to the metropolis. Farr's hope for more open spaces was not ill-founded. Between the 1840s and the 1870s, as London's population doubled, the acreage per person halved from .04 to .02. That the death rate declined only slightly in the face of this population increase has been characterized as a victory of sorts for sanitary reformers.<sup>21</sup> Had they taken no steps, mortality figures would have risen. Yet the figures also reveal the inability to cope with the problem of overcrowding which,

<sup>20</sup>Cited by John M. Eyler, Victorian Social Medicine: The Ideas and Methods of William Farr (Baltimore: Johns Hopkins University Press, 1979), pp. 127, 145.

<sup>21</sup>John R. Kellest, "The Social Costs of Mortality in the Victorian City", in Business, Banking and Urban History: Essays in Honour of S. G. Checkland, eds. Anthony Slaven and Derek H. Aldcroft (Edinburgh: John Donald, 1982), pp. 158-59, 163.

according to Shaftesbury, was worse in 1884 than in previous decades.<sup>22</sup> This observation was made after most metropolitan commons had been protected and serves as a reminder that these open spaces were rarely situated in or near high-density, working-class areas.

Disease was, perhaps, the most alarming by-product of overcrowding in terms of its capacity to threaten in an unpredictable way but urban problems could not be isolated from one another. Novels like Oliver Twist depicted crime thriving amidst poverty and congestion. Although most of the victims of crime came from the same class as the perpetrators, the higher classes were not immune and their complaints and fears caught the attention of authorities. Observers were also shocked by the moral degeneracy of slum dwellers, from the seemingly ubiquitous drunkenness to sexual irregularities. Memories and tales of the Gordon riots and the French Revolution made others view the poor as potential insurgents. The necessity of implementing sanitary reform as an essential step in dealing with these problems was becoming more evident (although other reformers placed their faith in education). But, despite the attention being directed to various urban crises, debates about solutions and how they might be implemented were not of a nature to engage large percentages of the population. On the

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<sup>22</sup>Ashworth, p. 20.

contrary, many members of the middle class remained unaware of the issues or apathetic.<sup>23</sup>

As long as major sanitary projects needed doing, open spaces remained, at best, a minor preoccupation of most reformers. For example, the Health of Towns Association, founded in 1844, focused on the "physical and moral evils that result from the present defective sewerage, drainage, supply of water, air and light, and construction of dwelling houses".<sup>24</sup> Nonetheless, one of its founders was Robert Slaney, the radical M.P. who had established the Select Committee on Public Walks in 1833, the first Parliamentary study of urban open spaces.<sup>25</sup> Membership of the Association crossed political lines suggesting

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<sup>23</sup>M. W. Flinn, ed., "Introduction" to Edwin Chadwick, Report on the Sanitary Condition of the Labouring Population of Great Britain (Edinburgh University Press, 1965), p. 69; Ashworth, pp. 65, 68.

<sup>24</sup>"Abstract of Proceedings", cited by S. E. Finer, The Life and Times of Edwin Chadwick (London, Methuen, 1952), p. 237.

<sup>25</sup>Slaney, the Liberal M.P. from Shrewsbury, had an obsession with industrial towns unmatched by his contemporaries. He was reluctant to support any measures which interfered with the freedom of capitalists to operate, but he promoted schemes to improve the lot of the working class. Parks were one of his major concerns. Paul Richards, "R. A. Slaney, the Industrial Town and Early Victorian Social Policy", Social History, 4 (1979), pp. 85, 88-89, 96-97. J. R. Vincent places Slaney among the first (of three) generations of radicals who influenced the Liberal party. Their heyday was the 1830s when they were promoters of specific schemes--such as parks or drains--for the betterment of the working class. Their opinions had little weight by the 1860s. J. R. Vincent, The Formation of the British Liberal Party, 1857-1868, second edition (Hassocks, Sussex: The Harvester Press, 1976), p. 29.

there must have been some cross-fertilization of ideas.<sup>26</sup> Edwin Chadwick's 1842 Report on the Sanitary Condition of the Labouring Population of Great Britain contained a short section on parks but its conclusion made no recommendations with respect to open spaces in general.<sup>27</sup> For the most part, important tasks like drainage received more attention. Nor is it surprising that primacy was accorded the basic nuts and bolts of sanitary reform; until they were in place the call for more greenery sounded somewhat extravagant. Voices spoke up, nevertheless, calling attention to the need for open spaces to bring health to the poor, to wean them from drink, and to provide facilities for exercise and recreation. Nor were these cries in the wilderness. As a result of their pressure individuals and cities began to build parks, a precedent that aided the preservation of commons.<sup>28</sup>

As cities grew and their problems became more manifest, people readily romanticized the virtues of the countryside. Preservationists would capitalize on this type of thinking by presenting commons as rustic islands in a bricks-and-mortar sea. Arguments of this nature had a twofold effect. They appealed to the middle-class love of rural England and they assuaged middle-class guilt by setting preservationism in a

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<sup>26</sup>David Roberts, Victorian Origins of the British Welfare State (Archon Books, 1969; orig. publ. 1960), pp. 72-73.

<sup>27</sup>Edwin Chadwick, Report on the Sanitary Condition of the Labouring Population of Great Britain, ed. M. W. Flinn (Edinburgh University Press, 1965), pp. 421-25.

<sup>28</sup>See chapter 1.7 on parks.

philanthropic frame. Thus a letter in Punch in 1866, announcing the formation of the Commons Preservation Society, spoke of saving open spaces with their "green turf and gold gorse, their May blossoms and wild rose-bush" for the "white faces drifting all over London".<sup>29</sup> Even as the middle class became more accommodated to living in the city, suspicions were retained about its desirability and its effect on the poorer classes.

The perils of residence in London were frequently pointed out. The danger was not simply that city-bound workers would become a population of inebriates, though the threat of this was real enough.<sup>30</sup> Life in the city was detrimental to physical health in other respects as well, a fact sometimes camouflaged by the steady influx of country people. Speakers at an 1869 meeting to garner support for the conversion of a disused burial ground near Holborn into a public open space expressed their hope that the 500 working girls from a nearby ammunition factory would exercise there during meal breaks. Such recreation by future mothers would help ensure that the next generation was free from disease and counter the effects of living in London.<sup>31</sup>

Despite the presence of strong defenders of cities, appeals such as this were not likely to be challenged by claims that life in the city was beneficial to the health of the poor. It

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<sup>29</sup>Punch, 50 (17 February 1866), p. 71.

<sup>30</sup>See chapter on recreation for discussion of drink.

<sup>31</sup>Times, 3 November 1869; Reflecting the inability of many Victorian reformers to promote recreation for its own sake, one person suggested that walking over the site would inculcate reverence for the dead.



might be held that cities could progress to the point where such claims would be valid but the evidence for the negative side was too overwhelming. Preservationists, who were not a particularly anti-urban group, cited this evidence in making their case that commons would help improve conditions.

Alarm over the effects of urban life persisted well after the primary battles over commons had been won. In 1881 Lord Brabazon, the founder of the Metropolitan Public Gardens Association, was convinced that a cordon thrown around large cities blocking immigrants from the countryside would soon make the seriousness of the situation manifest.<sup>32</sup> The message had been delivered earlier in the century by men such as Leigh Hunt and Lord John Manners but, if anything, the jingoism supporting this type of argument increased as the century wore on and imperialism flowered. Brabazon couched his appeal for play grounds in patriotic language: "If individual energy is sapped in the mass of the population by lack of physical strength, the work of that nation will be lacking in excellence and vigour and it will have to take a lower rank in the world's hierarchy".<sup>33</sup> A more apocalyptic view of the effect of town life appeared in 1887:

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<sup>32</sup>Lord Brabazon, "Health and Physique of Our City Populations", in Social Arrows, second edition (London: Longmans, Green and Company, 1887), pp. 19-20; orig. publ. in Nineteenth Century, July 1881.

<sup>33</sup>Lord Brabazon, "A Plea for Public Playgrounds", in Social Arrows, p. 44; orig. publ. in Quiver, April 1885.

Town residence is changing the Anglo-Dane into the small, dark, Celtic type, whom the Norseman dispossessed. The modification is reversion to an earlier, lowlier, ethnic form. Just as the physique is changed, so is the psychique. There is the same precocity, the same emotional temperament. The town-dweller is a retrocedent Celto-Iberian; and the prophecies of the old Cymric bards are being fulfilled.<sup>34</sup>

This depiction of the effects of town life reflects the influence of Social Darwinism.<sup>35</sup> A devolutionary disaster on this scale was doubtlessly beyond the restorative powers of a few extra acres of open space, but the passage demonstrates the extreme view of the unhealthiness of city life. Proponents of open spaces, like Brabazon, could exploit these fears by making the physical well-being of every city-dweller, and that of the urban poor in particular, an issue of national importance.

Middle-class alienation from cities involved more than distaste for their ugliness or concern for their effect on the poor. There was also a spiritual separation connected with an infatuation with the gentry. The middle class failed to embrace the industrial system which it created. No ideology of capitalism took root with the tenacity needed to supplant codes and behaviour based on land and tradition. One historian has described the period of the 1851 Exhibition as the "high-water

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<sup>34</sup>J. Milner Fothergill, "The Effects of Town Life Upon the Human Body", The National Review, 10 (October, 1887), p. 167.

<sup>35</sup>Anthony Sutcliffe, "In Search of the Urban Variable: Britain in the Later Nineteenth Century", in The Pursuit of Urban History, eds. Derek Fraser and Anthony Sutcliffe (London: Edward Arnold, 1983), p. 241.

mark of educated opinion's enthusiasm for industrial capitalism". But gentry values were never washed away. They accommodated themselves to the new forces and undermined the "religious pride and confidence of the ideologists of progress".<sup>36</sup> Sons of successful industrialists were sent to public schools and universities where they both imbibed a gentrified atmosphere and were spared the obligation of making a living. A study of government in Leeds and Birmingham found that three generations of town councillors succumbed to the appeal of the "country-house ideal".<sup>37</sup> Indeed, this ideal grew as the century tried to find comforting images in a rural England that never was. Middle-class recreation, with its public-school basis and code of amateurism, provided one means for the adoption of gentry values. Harold Perkin sees the entrepreneurial ideal having more success but ultimately being undermined by the professionalization of government and to a lesser extent by resurgences of paternalism from the aristocratic ideal.<sup>38</sup>

Adherence to these values was a response to uneasiness about change and encapsulated a desire for order and stability. The most dramatic breaks from the past were found in the cities. Disquiet about new conditions had been expressed by the likes of

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<sup>36</sup>Martin J. Wiener, English Culture and the Decline of the Industrial Spirit, 1850-1980 (Cambridge University Press, 1981), pp. 28, 42.

<sup>37</sup>E. P. Hennock, Fit and Proper Persons: Ideal and Reality in Nineteenth Century Urban Government (London: Edward Arnold, 1973), p. 3.

<sup>38</sup>Perkin, The Origins of Modern English Society, 1780-1880, pp. 221-24, 251, 255-64, 270-72, 320-39.

Southey, Coleridge, Howitt and Cobbett, but their protests were personal and did not represent a widespread turning away from industrialization in the first half of the century.<sup>39</sup> But their writings, especially those of Cobbett, were read in the second half when perceptions about the effects of modern life accentuated the desire to return to a past best exemplified by the unchanging English village. Cobbett's views of the middle ages were, as Raymond Williams notes, fuel for Victorians critical of their own times.<sup>40</sup>

William Morris, whose work built on that of the earlier critics of industrialism, blamed the loss of commons directly on the forces of capitalism:

There are of the English middle class, today ... men of the highest aspirations towards Art, and of the strongest will; men who are most deeply convinced of the necessity to civilization of surrounding men's lives with beauty; and many lesser men, thousands, for what I know, refined and cultivated, follow them and praise their opinions: but both the leaders and the led are incapable of saving so much as half a dozen commons from the grasp of inexorable Commerce: they are helpless in spite of their culture and their genius as if they were just so many overworked shoemakers: less lucky than King Midas, our green fields and clear waters, nay the very air we breathe, are turned not to gold (which might please some of us for an hour maybe) but to dirt; and to speak plainly we know full well that under the present gospel of Capital not only there is no hope of

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<sup>39</sup>Malcolm Thomis, Responses to Industrialization: The British Experience 1780-1850 (Newton Abbot: David and Charles, 1976), p. 52.

<sup>40</sup>Wiener, "The Changing Image of William Cobbett", Journal of British Studies, 13, 2 (1974), 138-41; Raymond Williams, Culture and Society 1780-1950 (London: Chatto and Windus, 1967), p. 19.

bettering it, but that things grow worse year by year, day by day.<sup>41</sup>

Those who despaired of their times or who had given up on the city looked wistfully both to the middle ages and to the countryside.<sup>42</sup> As traditional society succumbed to the forces of change, it was increasingly preserved in romantic imagery. The strengths and beauties of rural life were contrasted with perceived urban horrors. This was particularly true in the second half of the century. Hence the emphasis on commons as unmanicured specimens of nature in the propaganda of preservationists. It was an effective argument as even those more attuned to the city hoped to surround themselves with what could be salvaged of the countryside.

Anti-urbanism flourished partly because the countryside became, in Martin Wiener's word, "empty". It was, therefore, "available for use as an integrating cultural symbol". The urban middle class, in particular, read the literature that pandered to this trend. This harking back to rural England was indulged in by diverse parties on the political spectrum.<sup>43</sup> The right stressed the stability and order of an hierarchical society while the left emphasized the community values to be found among yeomen farmers, town craftsmen, or agricultural labourers. For many, the inhabitants of the idealized countryside were less important

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<sup>41</sup>William Morris, Art and Socialism, cited by R. Williams, pp. 151-52.

<sup>42</sup>Attitudes towards the past are examined in chapter 1.4.

<sup>43</sup>Wiener, English Culture, pp. 49, 55.

than the landscape itself, the picturesque qualities of which seemed to embody England. That the fantasy landscapes they dreamed about were the products of eighteenth-century planners was little noticed. As Howard Newby notes, the romantics created rural idylls where agriculture was all but ignored as a necessary and profitable undertaking and where beauty adhered to set patterns having little to do with the true countryside.<sup>44</sup> Mid-Victorian artists under the influence of Ruskin created comforting pictures of country retreats by using variations on the theme of gardens. Commons and forests were parts of these worlds which represented something thought to be essentially English.<sup>45</sup> George Eliot had found depictions of the countryside in which farming and farm workers were romanticized distasteful as early as 1856 but the style continued.<sup>46</sup> The middle-class notions of rustic beauty that evolved from these trends would be the ones pursued by groups like the Commons Preservation Society.

Yet, for all the re-invention of the countryside carried out by the Victorians, their obsession with it was not merely the expression of dissatisfaction with the city. It reflected also the fact that for many urban dwellers, rural life was a part of their

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<sup>44</sup>Howard Newby, Green and Pleasant Land? Social Change in Rural England (London: Hutchinson, 1979), pp. 15-19.

<sup>45</sup>Peter Brandon, "Wealden Nature and the Role of London in Nineteenth-Century Artistic Imagination", Journal of Historical Geography, 10, 1 (1984), pp. 61-62.

<sup>46</sup>Pamela Horn, The Changing Countryside in Victorian and Edwardian England and Wales (London: Athlone, 1984), p. 3.

past, or of their parents' or grandparents' past. Despite the dramatic changes taking place within Victorian society, many traditional practices continued to be carried out or had only recently been lost. During much of the period, memory kept much of this alive. By the end of the century, however, when urbanization had progressed to the point where older ways of thinking were more completely supplanted, middle-class city-dwellers were ready to become avid consumers of rural England.<sup>47</sup>

But well before that point the urban middle class wanted its links to the countryside to be more tangible than books and paintings provided. Both commons and parks could provide the sought after haven of rus in urbe but preservationists of the 1860s and 1870s based their appeal on the differences between the two. While not disparaging parks, they emphasized the romanticism of commons, present because of a certain rawness in their scenery. Thus the Chamberlain of the City of London testified before a Select Committee in 1869 that on encountering large crowds in Epping Forest during the blackberry season he was led to reflect on

the very great desire existing in the minds of the working and trading classes to get out of the Metropolis, not into a park, not into Victoria Park, but to get out into some open spaces where some traces of nature remained undisturbed,

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<sup>47</sup>Alan Everitt, "Past and Present in the Victorian Countryside", Agricultural History Review, 31 (1983), pp. 167-69; Horn, pp. 3, 223-24.

and where they might enjoy the delights which nature affords.<sup>48</sup>

Parks, which were created and in some sense artificial, could not match this type of experience. Commons, on the other hand, were the products of centuries, having survived the enclosures and hostility of earlier times. Now they lay waiting, their fate in the hands of the people.

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<sup>48</sup>P.P. Report from the Select Committee on Metropolitan Commons Act (1866) Amendment Bill, 1868-69 (333), X. 507, q. 257.



#### 1.4 Preservationism and History

Don't you dote upon the Middle Ages? ... Such charming times! ... So full of faith! So vigorous and forcible! So picturesque! So perfectly removed from the commonplace! ... If they would only leave us a little more of the poetry of existence in these terrible days! <sup>1</sup>

Mrs. Skewton, in Dickens' Dombey and Son, expressed a view embraced by many middle-class Victorians. In an age made uneasy by rapid change, the medieval period evoked images of stability, order, beauty, and charm. The attitudes towards the past that developed during the century influenced the form that preservationism took. Apart from their pastoral associations, one of the chief attractions of commons which distinguished them from parks was their antiquity. The medieval village common, with its important role in the life of the community, fitted comfortably into re-creations of the past. While it was apparent to all that commons no longer functioned in the same way, they could still be held up as assets to the urban community. That they had roots in the distant centuries made it possible to characterize assaults on them as something akin to blasphemy and to plead that they should not be treated merely as ordinary property. That those roots contained a still-evolving pattern of common rights gave preservationists their strategy to save commons. In a climate less intrigued by history, the approach might well have been different.

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<sup>1</sup>Charles Dickens, Dombey and Son (London: Gresham Publishing, n.d.), p. 300.

The past can be mined in various ways. Because the history of commons encompassed struggle, there were at least two sides to which nineteenth-century people could respond. For preservationists, the battles fought by the commoners represented the good fight. The enemies were repressive lords. Popular and scholarly histories, in addition to romantic literature, provided sustenance for ideas of ancient rights which could be tapped by preservationists. Such ideas coloured the political thinking of many other Victorians as well, from Tories to Radicals. For example, the centralizing philosophy of Edwin Chadwick was opposed by Joshua Toulmin Smith of Birmingham, one of the founders of the Anti-centralisation Union in 1854, who used the ancient folk-moot as a model to demonstrate the lineage of an English preference for local decision-making. Government interventionism was often viewed as threatening the heritage of freedom bequeathed by the Anglo-Saxons.<sup>2</sup> Preservationists' use of history tended to be subtle rather than blatant. They placed more emphasis on the practical value of commons to alleviate current problems than on making contemporary lords of the manor resemble Norman villains. But the historical angle was not ignored. It reinforced the notion of continuity and nurtured the idea that people had a moral claim to commons even where they had no legal right. It had its practical influence as well. Preservationists' use of common rights, which they occasionally had to rescue from oblivion, was predicated on a belief in their

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<sup>2</sup>Ken Young and Patricia Garside, Metropolitan London: Politics and Urban Change, 1837-1981 (London: Edward Arnold, 1982), p. 27; Roberts, pp. 22-23.

vitality. They had been won in previous struggles and now had the opportunity to be of further service. The mythology of the free Anglo-Saxons was present too. Preservationists promoted a model of local control of commons; they saw no need for massive government involvement. At most they wanted Parliament to give them the means to achieve their goals. Had Victorians not indulged in the past, the romantic flavour of preservationism might have been absent and the eventual results quite different.

When William Cowper-Temple, the Liberal Commissioner of Works, introduced the 1866 Metropolitan Commons Bill in Parliament, he said of commons: "No institution handed down to us from our Saxon forefathers had contributed more to the happiness of the people."<sup>3</sup> This bill, the first significant legislation to address preservationists' concerns, proposed to protect commons for public enjoyment through the use of rights of common. These fading ancient rights were to be given a revived purpose. It seemed appropriate to make the link to Anglo-Saxons, who, for most Victorians, represented the original free English. Christopher Hill describes the period between 1820 and 1880 as a "heyday" for middle-class enthusiasm for the Anglo-Saxons.<sup>4</sup> Variations on the notion of free Anglo-Saxons and oppressive Norman rulers had been aired many times in English history, most notably during the seventeenth century, but they had ceased to be a potent symbol for working-class radicals by

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<sup>3</sup>H.C., 3 Hansard 182: 623, 20 March 1866.

<sup>4</sup>Christopher Hill, "The Norman Yoke" in Puritanism and Revolution (London: Secker and Warburg, 1958), pp. 111, 115.

Victoria's accession. As Hill comments, free Anglo-Saxons only appeared as suitable subjects for inquiry by Oxford students after they "had ceased to be a rallying cry for the discontented masses". Instead, they appealed more to middle-class tastes.

This was reflected in popular literature, as exemplified by Walter Scott's Ivanhoe (1819), and in academic circles as well. Popular histories, which influenced nineteenth-century public opinion more than the works of scholars, often presented the Saxons as the true English. Elizabeth Penrose's (Mrs. Markham's) History of England (1823) contains a passage in which a mother tells her children that as the Saxons were more numerous than the Normans "we are still almost all of us chiefly of Saxon descent; and our language, and many of our habits and customs sufficiently declare our origin".<sup>5</sup> Dickens' A Child's History of England (1851-53) presents a gallery of unpleasant and often tyrannical kings, from which Alfred is excepted because he possesses all the Saxon virtues. The English-Saxon character is lauded as the "greatest character among the nations of the earth".<sup>6</sup> This indulgence in Anglo-Saxons cannot be described as a necessary condition for the commons preservation movement but, combined with a general Victorian predilection for things medieval, it influenced its direction.

Free Anglo-Saxons did not become the exclusive property of the Victorian middle class any more than did preservationism.

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<sup>5</sup>Briggs, Saxons, Normans and Victorians (The Hastings and Bexhill Branch of the Historical Association, 1966), pp. 4-5.

<sup>6</sup>The Works of Charles Dickens, Standard edition (London: Gresham Publishing, n.d.), Vol. III, p. 341.

The Norman Yoke retained some of its radical flavour, in which form it was adopted by some of the more uncompromising preservationists. As J. W. Burrow points out:

although Saxons and Normans may have increasingly lost their place in radical polemics as the century wore on, there was still sufficient indignation on behalf of a dispossessed peasantry to keep the argument from usurped ancient rights flickering, if indeed it can ever be altogether exorcized from agrarian economic history.<sup>7</sup>

The theme appeared in discussions of wider land issues. The Land Tenure Reform Association, of which J. S. Mill was a prominent figure, included the preservation of commons in its platform but its main targets were the large landed estates kept together by primogeniture and family settlements.<sup>8</sup> The Norman Yoke was not absent from the Association's propaganda. In 1873 Thorold Rogers told a meeting that the "custom of primogeniture ... was introduced into this country by William the Norman .... [it] is the symbol of the nation's slavery to the foreign conqueror".<sup>9</sup>

On a similar tack an 1870 article on the land question separated the landowners from the rest of the population and drew depressing conclusions. If the present small numbers of landlords had the power to do with the land as they liked it was "clear that the English people exist merely on the sufferance of

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<sup>7</sup>J. W. Burrow, "'The Village Community' and the Uses of History in Late Nineteenth-Century England", in Historical Perspectives. Studies in English Thought and Society in Honour of J. H. Plumb, ed. Neil McKendrick (London: Europa Publications, 1974), p. 262.

<sup>8</sup>Examiner, 20 May 1871, p. 503.

<sup>9</sup>Cited by Hill, p. 119.

the landowners who are truly masters of the situation; ... as a nation we have no locus standi, no common inheritance, no territorial rights whatever".<sup>10</sup> Preservationists wanted the public to think of commons as part of this inheritance, something whose fate should not be decided without their voice.

That common rights preceded manorial rights made appeals to history attractive. The greater antiquity of common rights, Mill wrote, gave them "more of the sacredness which the friends of existing land institutions consider to attach to prescription".<sup>11</sup> Many people assumed that, as descendants of Saxons, they had rights over commons already, an impression preservationists spent little energy correcting. During the struggles over particular commons, speakers occasionally made references to an Englishman's rights. At an open-air meeting in 1867 to protest against an enclosure in Epping Forest, the crowd was told they were not worthy of the name of Englishmen if they did not resist the oppression by every means in their power.<sup>12</sup> Disputes over whether the public had the right to hold meetings on commons often echoed with language about ancient rights.

In the general fawning over the middle ages, the distinction between Saxons and Normans was often blurred, Victorians projecting their values on both and preferring to see

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<sup>10</sup>[David Syme], "The Land Question in England", The Westminster and Foreign Quarterly Review, 94 (1 October 1870), p. 247.

<sup>11</sup>J. S. Mill, "Mr. Maine on Village Communities", Fortnightly Review, 9 (May, 1871), p. 547, cited by Burrow, p. 263.

<sup>12</sup>Times, 23 April 1867.

continuity between the two.<sup>13</sup> Some, like Carlyle, had a strong preference for the Normans; their predecessors were, in his eyes, a

gluttonous race of Jutes and Angles ... lumbering about in pot-bellied equanimity; not dreaming of heroic toil, and silence, and endurance, such as leads to the high places of this universe and the golden mountain tops where dwell the spirits of the dawn.

Carlyle ranked order above liberty.<sup>14</sup> What many of the people who indulged in nostalgia for the past shared was a critical view of their own society. Those who despaired of their times or who had given up on the city often looked to the middle ages for their models. John Ruskin, whose later writings "expressed the most extreme anti-urbanism to be found anywhere", failed to revitalize the countryside along medieval models through his St. George's Guild, but his ideas influenced the art and architecture of the

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<sup>13</sup>Asa Briggs, Saxons, Normans and Victorians, p. 4.

<sup>14</sup>Thomas Carlyle, Frederick II, I, p. 415. cited by William Stubbs, The Constitutional History of England, sixth edition (Oxford: The Clarendon Press, 1897), p. 236, n. 1; Briggs, pp. 3-4; Alice Chandler, A Dream of Order. The Medieval Ideal in Nineteenth-Century English Literature (Lincoln: The University of Nebraska Press, 1970), p. 146.

Victorians along paths away from modernity.<sup>15</sup> William Morris was attracted to the middle ages in this spirit. He admired the Anglo-Saxon but was more interested in the fourteenth century when it seemed the peasants were beginning to free themselves from Norman feudalism.<sup>16</sup>

The past was not merely evoked to highlight the shortcomings of the present. When confidence was waxing, past exploits became preludes to an expected rosy future. Thus a giant statue of Richard I greeted visitors to the 1851 Exhibition.<sup>17</sup> Nor did preservationists use the past merely to escape the complexities of modern life. Many of them were Liberals with little desire to revert to pre-industrial patterns. Like many Victorians, the medieval past was important to them because it could be used to nurture a sense of history. Archaeological ruins were popular among the nineteenth-century middle class because they provided visual evidence of England's past and allowed individuals to come to terms with the startling leaps that had

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<sup>15</sup>G. Robert Strange, "The Frightened Poets", in The Victorian City: Images and Realities, vol. 2, p. 487; Chandler, pp. 207-8. His sincere belief in the moral benefits of nature and art were an influence on one of his pupils, Octavia Hill, whose efforts he encouraged. Ruskin was a founding member and substantial contributor to the London Association for the Prevention of Pauperization and Crime which later became the Charity Organization Society. Hill, who is most well known for her work in housing, became an important member of the Commons Preservation Society. E. Moberly Bell, Octavia Hill. A Biography (London: Constable and Company, 1942), pp. 30-31, 107-8.

<sup>16</sup>Chandler, pp. 221-22.

<sup>17</sup>François Bédarida, A Social History of England, 1851-1975, trans. by A. S. Forster (London: Methuen, 1979), p. 6.



taken place to bring them into the present.<sup>18</sup> In a less dramatic fashion, commons were also visual links with the past and their preservation in the new role of urban amenities seemed a creative way of affirming historical continuity.

Nineteenth-century historians contributed to an atmosphere sympathetic to the retention of commons and common rights. In harmony with attitudes in the wider community, these rights were more often than not linked to free Anglo-Saxons, frequently held up as models of the ideal Englishman. When Frederic Seebohm's The English Village Community placed the origin of the village community (and the Celtic tribal community) in pre-Roman times and described it as little more than "settled serfdom" under a lord, a reviewer observed: "How different this view is from the common view of early English society, in which freedom was the rule and serfdom the exception, need hardly be pointed out."<sup>19</sup>

The century witnessed the advent of serious study of medieval institutions based on documents. Such scholarship was important both for its style and its content. The techniques of skilful research applied to preservationists' cases made them formidable when they came to trial, while the contents of the professional historians' books led to wider public acceptance of

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<sup>18</sup>Charles Dellheim, The Face of the Past (Cambridge University Press, 1982), pp. 31, 37-45.

<sup>19</sup>Frederic Seebohm, The English Village Community, fourth edition (London: Longmans, Green, and Company, 1896), pp. 438-39; Times, 16 July 1883.

ideas that favoured the cause. Irrespective of the political orientation of these scholars, their works tended to reinforce the notion of the Anglo-Saxon community as the progenitor of English institutions, especially at the local level. Before Seebohm, the overriding tendency was to see Germanic origins behind English development. Seebohm's alternative caused only temporary disarray among the Germanists who soon regained centre stage, most notably in the person of William Stubbs.<sup>20</sup>

The early major studies of the Anglo-Saxons were not strident portraits of a free people, but they contained enough to demonstrate that the Saxons planted the seeds of future liberties. Sharon Turner's The History of the Anglo-Saxons (1799-1805) was a pathbreaking study based on documents in the Cottonian Library.<sup>21</sup> Turner (1768-1847) was a Tory whose writings were less a celebration of transported Germanic institutions than the story of the growth of Anglo-Saxon virtues from rude beginnings. He was careful to qualify Anglo-Saxon freedom:

inequality was as much the character of the Anglo-Saxon society as of our own superior civilisation.... In talking of the Anglo-Saxon freemen, we must not let our minds expatiate on an ideal character which eloquence and hope have invested with charms almost magical. No utopian state, no paradise of such a pure republic as reason can conceive, but as human nature can neither establish nor

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<sup>20</sup>G. P. Gooch, History and Historians in the Nineteenth Century, second edition (London: Longmans, Green and Company, 1913), pp. 395-96.

<sup>21</sup>Southey declared that "so much information was probably never laid before the public in one historical publication". D.N.B.

support, is about to shine around us when we describe the Anglo-Saxon freeman.<sup>22</sup>

Turner was eager to correct what he perceived to be popular misconceptions of Anglo-Saxon freedom among his contemporaries.

Turner identified Christianity as a major influence for good among the Saxons. But even before their conversion, their Teutonic inheritance had one glory, the witena-gemot or national parliament, which Turner likened to the House of Lords. All classes were represented except the servile, and even their interests came to be considered after the Church gained a voice and because the king himself wanted to keep them loyal. Turner's account is, therefore, a narrative of gradual improvement largely stemming from the wisdom of the parliament. This is an example of a conservative use of Saxons: they developed many of the essential English institutions which had a vitality that allowed them to survive the Norman Conquest.<sup>23</sup>

John M. Kemble (1807-1857), a political radical, in his influential 1849 work, The Saxons in England, did not postulate a libertarian paradise. Rank was important: "in our history there is not even a fabulous Arcadia, wherein we may settle a free democracy". There were kings, nobles, freemen and serfs. Yet Kemble put the best face on this and produced an image with considerable appeal:

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<sup>22</sup>Sharon Turner, The History of the Anglo-Saxons, seventh edition (London: Longman, Brown, Green, and Longmans, 1852), vol. 3, pp. 1, 4-5, 68, 75.

<sup>23</sup>Turner, vol. 3, pp. 156-59, 163-64.

We are not to imagine that [the king] could at any time exercise his royal prerogatives entirely at his royal pleasure: held in check by the universal love of liberty, by the rights of his fellow nobles, and the defensive alliances of the freemen, he enjoyed indeed a rank, a splendour and an influence which placed him at the head of his people,--a limited monarchy, but happier than a capricious autocracy.<sup>24</sup>

Historians' depictions of post-conquest England were a marked contrast to this.

Kemble also wrote about the structure of Saxon communities, linking the freedoms they enjoyed with their agricultural institutions:

The Mark or boundary pasture-land, and the cultivated space which it surrounds, and which is portioned out to the several members of the community, are inseparable; ... they make up the whole territorial possession of the original cognatio, kin or tribe.... Its most general characteristic is, that it should not be distributed in arable, but remain in heath, forest, fen and pasture. In it the Markmen ... had commonable rights.

In the second and more important sense of the word, the Mark is a community of families or households, settled on such plots of land and forest as have been described.... The Mark was a voluntary association of free men, who laid down for themselves, and strictly maintained, a system of cultivation by which the produce of the land on which they settled might be fairly and equally secured for their services and support.<sup>25</sup>

Turner's and Kemble's works both affirmed the origins of important English traits and institutions in the Anglo-Saxon

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<sup>24</sup>John Mitchell Kemble, The Saxons in England, new edition revised by Walter de Gray Birch (London: Bernard Quaritch, 1876), vol. 1, p. 161.

<sup>25</sup>Kemble, vol. 1, pp. 42-43, 53-54.

period, particularly those concerned with a just exercise of power. Scholarly pursuit of the middle ages intensified during the 1860s and 1870s, the same decades as commons and other aspects of the land question became political issues. E. A. Freeman's six-volume History of the Norman Conquest was published between 1867 and 1879. Freeman had a benign view of the Conquest which he saw as a "turning point" that sharpened nascent political structures, the origins of which were to be found in Germanic society.<sup>26</sup> A Gladstonian Liberal, he underlined the importance of ancient freedom as a starting point. "As far at least as our race is concerned, freedom is everywhere older than bondage."<sup>27</sup> As Burrow notes, Freeman "contributed notably" to the myth of the village community.<sup>28</sup>

Another who unwittingly fostered the myth was Henry Maine, a Tory, who was less than pleased to be dubbed a "prophet of agrarian radicalism" on the appearance of his Village Communities in the East and West in 1871.<sup>29</sup> This work drew upon his experiences in India where he found evidence of earlier forms of communal land ownership and on recent German scholarship on the Teutonic community. For Maine, the

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<sup>26</sup>Frank Barlow, "The Effects of the Norman Conquest", in The Norman Conquest, Its Setting and Impact (London: Eyre and Spottiswoode, 1966), p. 125.

<sup>27</sup>The Growth of the English Constitution from the Earliest Times, third edition (London, 1870), p. x, cited by Burrow, p. 264.

<sup>28</sup>Burrow, p. 268.

<sup>29</sup>George Feaver, From Status to Contract. A Biography of Henry Maine, 1822-1888 (London: Longman, 1969), p. 120.

significant step towards private property occurred when the periodic redistributions of lots were ended and "each family was confirmed for a perpetuity in the enjoyment of its several lots of land". The commons and common fields were evidence of continuity in English history, but Maine did not idealize them. Quite the contrary. He claimed that there was "but one voice as to the barbarousness of the agriculture perpetuated in the common arable fields, and as to the quarrels and heart-burning of which the 'shifting severalties' in the meadow land have been the source".<sup>30</sup> In other words, the medieval form of land ownership was something from which people should be grateful they had advanced.

But while Maine wanted no part in the romanticization of the past, his book contained sufficient descriptions of ancient practices that Mill could use it to launch an attack on the current state of land ownership:

The system under which nearly the whole soil of Great Britain has come to be appropriated by about thirty thousand families ... is neither the only nor the oldest form of landed property and ... there is no national necessity for its being preferred to all other forms.<sup>31</sup>

Whether written by radicals, Liberals, or Conservatives, histories of medieval England that contained accounts of commons, common fields and the communities that tended them evoked a period when at least some measure of control was in the hands of the

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<sup>30</sup>Henry Maine, Village Communities in the East and West, third edition (London: John Murray, 1876), pp. 78-79, 82, 87.

<sup>31</sup>J. S. Mill, "Mr. Maine on Village Communities", Fortnightly Review, 9 (May 1871), p. 549, cited by Feaver, p. 120.

humbler folk. It seemed evident that land was now in the hands of fewer numbers (a perception that led to the New Domesday survey). Even Macaulay's popular history, which did not wax nostalgic for the past, admitted that the loss of commons produced hardships for the poor:

In one respect it must be admitted that the progress of civilisation has diminished the physical comforts of a portion of the poorest class. It has already been mentioned that, before the Revolution, many thousands of square miles, now enclosed and cultivated, were marsh, forest, and heath. Of this wild land much was, by law, common, and much of what was not common by law was worth so little that the proprietors suffered it to be common in fact. In such a tract, squatters and trespassers were tolerated to an extent now unknown. The peasant who dwelt there could, at little or no charge, procure occasionally some palatable addition to his hard fare, and provide himself with fuel for the winter. He kept a flock of geese on what is now an orchard rich with apple blossoms. He snared wild fowl on the fen which has long since been drained and divided into corn fields and turnip fields. He cut turf among the furze bushes on the moor which is now a meadow bright with clover and renowned for butter and cheese. The progress of agriculture and the increase of population necessarily deprived him of these privileges.<sup>32</sup>

For all this, Macaulay believed the advantages brought by progress far outweighed these setbacks.

William Stubbs in his influential Constitutional History of England (1873-78), portrayed the Saxons arriving in England with a pre-existing order. But the imported institutions did not remain static. The changes that took place, according to Stubbs, were most prominent among the upper levels of society leaving the lower "in which we trace the greatest tenacity of primitive institutions, and in which the permanent continuity of the modern with the ancient English life depends for evidence, comparatively

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<sup>32</sup>Macaulay, Vol. I, p. 206.

untouched".<sup>33</sup> He marked one change, the acceleration of the trend towards private ownership of land, for special notice: "we may safely assume that, although traces still remain of common land tenure at the opening of Anglo-Saxon History, absolute ownership of land in severalty was established and becoming the rule".<sup>34</sup> Stubbs provided scholarly confirmation of the Saxon origins of many sentimentally valued English traits.

These transplanted German institutions grew with sufficient vitality that subsequent invaders could not overthrow them. The Danes "sank almost immediately into the mass of Angles".<sup>35</sup> The Norman, on the other hand was a useful tonic:

[H]e held the rod of discipline which was to school England to the knowledge of her own strength and power of freedom: ... he was to give a new direction to her energies, to widen and unite and consolidate her sympathies: to train her to loyalty and patriotism: and in the process to impart so much, and to cast away so much, that when the time of awakening came, the conqueror and the conquered, the race of the oppressor and the race of the oppressed, were to find themselves one people.<sup>36</sup>

Popular radicalism declined to celebrate this Norman accomplishment.

At the local level Stubbs recognized that commons and common lands were evidence of the strength of the mark system although he refused to commit himself as to whether the system

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<sup>33</sup>Stubbs, vol. 1, p. 75.

<sup>34</sup>Stubbs, vol. 1, p. 80.

<sup>35</sup>Stubbs, vol. 1, p. 298.

<sup>36</sup>Stubbs, vol. 1, pp. 235-36.



was carried to England. It was not an individual's role in the mark community which determined his political status but his ownership of land. For Stubbs the manor came after the township. Despite the increasing centralization of the Anglo-Saxon state under Edgar, the preservation of shire divisions and institutions acted as bulwarks to the survival of freedom. The persistence of local customs in the townships and hundreds planted "the seeds of future liberties".<sup>37</sup> Hence the veneration of local records--the manorial rolls--by preservationists to rescue rights that had fallen into disuse because of urbanization.

Although the Anglo-Saxons had arrived at an approximation of feudalism before the Normans arrived, their system was subordinated to the "simple and uniform feudal theory" of the conquerors.<sup>38</sup> Traditional customs survived but were now incorporated into a legal theory which declared them grants from the lord. This was the legal framework within which all cases to do with rights of common operated. These changes, Stubbs admitted, "opened the way for oppression; the forms they had introduced tended, under the spirit of Norman legality and feudal selfishness, to become hard realities". Here were all the ingredients for a "Norman Yoke" view of history, but Stubbs steered well clear. The "better consolidated Norman superstructure" was superimposed on the "better consolidated English substructure" in a successful amalgamation. Stubbs allowed that there was a bad spell in the early years of the

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<sup>37</sup>Stubbs, vol. 1, pp. 90-91, 96, 229-30.

<sup>38</sup>Stubbs, vol. 1. p. 282.

Norman occupation but by the reign of Henry II, when the Normans had become Englishmen, the evils had been eradicated.<sup>39</sup>

Maitland had observed the paradox that "our leading village communists, Stubbs and Maine, are men of the most conservative type, while Seebohm, who is to mark conservative reaction, is a thorough liberal".<sup>40</sup> Nonetheless any support which the writings of Stubbs or Maine gave to political applications of the free Saxons was largely unintentional. The net effect of Stubbs' history was to affirm the constitution: there was no need to regain a lost world as the existing institutions, which had evolved over centuries, allowed for the representation of all interests. Nor did the liberal Seebohm eulogize the village community. He hoped that knowledge would "at least dispel any lingering wish or hope" that such might return. "Communitic systems such as these we have examined, which have lasted for 2,000 years, and for the last 1,000 years at least have been gradually wearing themselves out, are hardly likely ... to be the economic goal of the future."<sup>41</sup> Few, if any, preservationists wanted to return to the past but they argued that there was no need to bury it completely. Commons were not fossilized remnants deserving to be eradicated by progress but neglected treasures which could, with protection and care, adorn the urban landscape.

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<sup>39</sup>Stubbs, vol. 1, pp. 280, 297, 302.

<sup>40</sup>C. H. S. Fifoot, ed., The Letters of Frederick William Maitland (Cambridge University Press, 1965), pp. 59-60, cited by Burrow, p. 258.

<sup>41</sup>Seebohm, p. 441.

The appeal of history, combined with the anti-urbanism and anti-intellectualism of large sections of the middle class, laid a fertile bed for the form which the movement to preserve commons took. Had the middle class not indulged in the myths of the past and of rural England, commons might have been dealt with in a more business-like manner. A number of them might have disappeared in an atmosphere less restrained about the progress of capital. More might have become tidy parks of reduced size and greater supervision. That members of the public believed--however inaccurately--that they had a right to use commons, and that, in practice, they were rarely interfered with when they did, gave credibility to the preservationists' arguments. It was true that the method advocated by the Commons Preservation Society--preserving commons by maintaining rights--had to be modified in practice, especially where the Metropolitan Board of Works became involved. However doting people were about the middle ages, there were others immersed in the present. Romantic thinking about commons was not to interfere with dogma surrounding the sanctity of private property. The Society's effective espousal of its beliefs, however, blunted the demands of some lords of the manor and encouraged others to dedicate their interests to the public. In addition, the Society influenced the decisions of the Metropolitan Board of Works. Small wonder that Shaw Lefevre's history is largely a justification of its atavistic approach.

### 1.5 Commons and Recreation

Commons were valued for a variety of reasons. Those in rural areas provided products important to the livelihoods of commoners, cottagers, and wanderers. To a lesser extent similar benefits were derived from commons near towns or cities. Not all users needed to take something to gain satisfaction. During the nineteenth century, many areas came to be appreciated for their beauty. Both rural and urban commons could attract such sentiments but the emotions associated with the latter were often more poignant because they expressed a desire to avoid being penned in by bricks and mortar. Some Londoners took an early delight in metropolitan commons. Before its enclosure in 1827 the thickly wooded Penge Common in South London was described as a "cathedral of singing birds".<sup>1</sup> A naturalist in 1847 wrote that Burnham Beeches, a common near Windsor, "surpass[ed] any sylvan locality I have yet met with". It was "a spot of great beauty, and of singular wildness and picturesque variety of character".<sup>2</sup> Hampstead Heath was widely known for its scenic attractions and other metropolitan commons garnered their share of this type of devotion, which, not surprisingly, grew as city-dwellers lessened their contacts with the countryside.

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<sup>1</sup>Besant, South London, p. 312.

<sup>2</sup>Edward Jesse, Favorite Haunts and Rural Studies (London: John Murray, 1847), pp. 186-87. Burnham Beeches was acquired as an open space by the City of London in 1879.

Antedating by many centuries those who took an aesthetic interest in commons were people who visited them for recreational purposes; they, too, took no products from the surface, although their use might well affect its quality. As early as the sixteenth century enclosures were opposed in the London region because they threatened to deprive people of space on which to practice shooting or to walk for pleasure and exercise. But it was during the open-spaces debates of the nineteenth century that the arguments for commons as recreational areas gained their greatest potency. Of all the reasons put forth for protecting commons none was more central or repeated so often as that which stressed the benefits they would bring to the poor for healthy exercise and recreation. The point was being made well before the appearance of preservationist organizations, but they kept it alive as a cornerstone of their policies. It arose early in the century from the perception that opportunities for play were decreasing as a result of enclosures, urbanization, and official disapprobation. Criticism of conditions was not the property of one political viewpoint but ranged from Tories enamoured of traditional blood sports to rational recreationists who wanted to promote safer, more educational pastimes. Preservationists later in the century were able to get additional mileage from the argument simply because the issue remained. Not only had little been done to improve the situation during the first half of the century, but there were now many more people with time on their hands due to the shorter work week.

Although organized preservationists continued to stress the needs of the poor, it was the middle class that stood to benefit most from the exploitation of rescued commons. It remained much more practical to mask this fact behind the philanthropic smokescreen of providing commons for the "pent-up workers whose monotonous existence in this big bulging city we dignify with the name of life".<sup>3</sup> But it was not until the middle class itself partook of recreational activity on a large scale that a successful movement for the preservation of commons arose.

When urban commons that were used as playgrounds were enclosed or encroached upon, a somewhat different population was affected than that injured when rural commons disappeared. Apart from the resident commoners, who might well be sponsors of the enclosure, most of the inhabitants of the district had no formal links to the manor and no legal voice in its governance. It was this type of loss that drew scattered attention to the serious repercussions of diminishing open spaces. As early as 1801 Joseph Strutt (1749-1802), author of a book on popular pastimes, sounded a warning as regards London:

The general decay of those manly and spirited exercises, which formerly were practised in the vicinity of the metropolis has not arisen from any want of inclination in the people, but from the want of places proper for the purpose: such as in time past had been allotted to them are now covered with buildings, or shut up by enclosures.<sup>4</sup>

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<sup>3</sup>Punch, 50 (17 February 1866), p. 71.

<sup>4</sup>Sports and Pastimes of the People of England (1801), cited by Hugh Cunningham, Leisure in the Industrial Revolution, c. 1780-c. 1880 (London: Croom Helm, 1980), p. 81.

Complaints in this vein were not, of course, limited to London. Enclosures around Oldham between 1802 and 1807, for example, were unwelcome because no recreational allotments had been made. A local historian wrote that "the advantages of these moors as places of recreation and exercise had rendered them spots deeply endeared to successive generations".<sup>5</sup> Similar alarms were raised elsewhere.

Those who were disturbed by industrialization and urbanization tended to see measures like this as part of a plot by capitalists and sabbatarians to undermine traditional recreations and suppress the spirit of the people. William Windham described an unsuccessful foray by Parliament in 1802 against bull and bear baiting as "the first result of a conspiracy of Jacobins and Methodists to render the people grave and serious".<sup>6</sup> Cobbett, in keeping with his hostility to change, decried attempts to outlaw blood sports and remained a boxing enthusiast throughout his life.<sup>7</sup> A gypsy in George Borrow's The Romany Rye says "I cannot say that I approve of any movements, religious or not, which have in aim to put down all life and manly sport in this here country".<sup>8</sup>

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<sup>5</sup>Robert Poole, "Oldham Wakes", in Leisure in Britain 1780-1939, eds. John K. Walton and James Walvin (Manchester University Press, 1983), p. 73.

<sup>6</sup>Cited by William B. Boulton, The Amusements of Old London (London: The Tabard Press, orig. publ. 1901), vol. 1, p. 93.

<sup>7</sup>Daniel Green, Great Cobbett, the Noblest Agitator (London: Hodder and Stoughton, 1983), pp. 19-21, 218.

<sup>8</sup>In an appendix Borrow fulminates against the temperance movement and the tendency to disparage boxing. Borrow, pp. 38, 358-66.

In 1836 Dickens lambasted the pretensions of sabbatarian legislation that would ruin Sundays for the working class but permit the upper classes to partake of their pleasures by exempting servants from the bill's provisions. He described a village where the minister had organized cricket games on Sunday evenings as an example of religious observance coexisting with wholesome exercise.<sup>9</sup> Walter Besant recalled the 1840s as a time of "dullness [when] recreations of all kinds were so many traps and engines set for the destruction of the soul".<sup>10</sup> Bismarck, on a visit to England during the same period, was reproached for whistling on a Sunday.<sup>11</sup> Unsettled by these excesses, many conservatives found solace in idealized portraits of the past. Young Englanders admired the hardiness of the pre-industrial peasant, and Lord John Manners, for one, argued in A Plea for National Holy-Days (1842) that a restoration of recreations was desirable to arrest the physical deterioration of the lower classes.<sup>12</sup>

Historians are currently assessing the fate of popular recreation during this period to determine if the forces working against it had much success. One of the earlier studies, that by

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<sup>9</sup>"Sunday Under Three Heads", in The Works of Charles Dickens, Standard edition (London: Gresham Publishing, n.d.), Vol. I, pp. 457-79.

<sup>10</sup>Walter Besant, "The Amusements of the People", Contemporary Review, 45 (March 1884), p. 342.

<sup>11</sup>Erick Eyck, Bismarck and the German Empire (London: George Allen and Unwin, 1950), p. 14.

<sup>12</sup>Chandler, pp. 158, 162-63.



Robert W. Malcolmson, indicates that they triumphed. He characterized the second quarter of the nineteenth century as a dark age for popular recreation.<sup>13</sup> But Malcolmson has been criticized for overstating his case before adequate research has been carried out at the local level. John K. Walton and Robert Poole describe the decline of wakes in Lancashire, for example, as "gradual and relatively gentle".<sup>14</sup> John M. Golby and A. W. Purdue suggest that English culture was commercial and individualistic long before 1800 and they reject the notion that popular recreations receded at this time because "traditional" bonds were being broken.<sup>15</sup> They second the conclusion of Walton and Poole that popular culture survived because of industrialization, not in spite of it.<sup>16</sup> Hugh Cunningham had already noted the commercialization of leisure and had found evidence of its growth between 1780 and 1840.<sup>17</sup>

These studies make it clear that popular recreations survived, but they do not dispute that they were under attack, nor that they had to adapt. By the mid-century mark, popular culture

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<sup>13</sup>Robert W. Malcolmson, Popular Recreations in English Society, 1700-1850 (Cambridge University Press, 1973), p. 171

<sup>14</sup>John K. Walton and Robert Poole, "The Lancashire Wakes in the Nineteenth Century", in Popular Culture and Custom in Nineteenth-Century England, ed. Robert D. Storch (London: Croom Helm, 1982), pp. 103-4.

<sup>15</sup>John M. Golby and A. W. Purdue, The Civilization of the Crowd: Popular Culture in England, 1750-1900 (London: Batsford Academic and Educational, 1984), pp. 21, 26

<sup>16</sup>Walton and Poole, p. 120; Golby and Purdue, p. 90.

<sup>17</sup>Cunningham, p. 9.

had changed. Malcolmson, Cunningham, and other historians, have cited the disappearance of commons as one manifestation of official disapproval of traditional activities.<sup>18</sup> Walton and Poole suggest that poverty undermined Lancashire wakes as much as anything during the first half of the century but that pressure from authority, represented by "industrialist magistrates" and the new police forces, was greatest in the second quarter.<sup>19</sup> The presence of police suppressed some of the wilder features of wakes in Birmingham and they were used in London to check bull-running and fairs.<sup>20</sup>

Behind these attitudes was the new time sense of industrial capitalism. Time was more ordered as punctuality and regular attendance were needed in the new factories. Old practices, such as St. Monday, were discouraged although their elimination was uneven, some surviving in places into the twentieth century. The custom of taking Monday off retained its greatest vitality among skilled artisans, while losing support among factory workers when they accepted the Saturday half-holiday from the 1840s on. One study suggests that commons and small holdings helped workers in Birmingham resist the economic

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<sup>18</sup>Malcolmson, pp. 107-10; Cunningham, pp. 81-3.

<sup>19</sup>Walton and Poole, pp. 115, 117.

<sup>20</sup>Douglas A. Reid, "Interpreting the Festival Calendar: Wakes and Fairs as Carnivals", in Popular Culture and Custom in Nineteenth-Century England, pp. 125, 133; Cunningham, p. 44..

forces driving them towards obedience to the factory clock.<sup>21</sup> In practice the process involved give and take: factory owners were sometimes compelled to grant holidays to workers during local festivals or be faced with high absenteeism.<sup>22</sup> Often these festivals took place on open spaces.

Popular culture became less violent as the century progressed but this was not necessarily the result of middle-class indoctrination. The working class remade its own culture. Golby and Purdue contend that rural people happily left the countryside for the richer, more commercial, city. They were not the ones to romanticize traditional pastimes.<sup>23</sup> It is generally recognized that the working class became more integrated into British society during the second half of the nineteenth century, even if debate persists over the exact nature of that integration. Gareth Stedman Jones emphasizes the importance of entertainment in weakening the political ambitions of the London working class while Peter Bailey believes that the working class appeared to conform to middle-class expectations as a strategy to secure concessions from their social superiors. He calls this a kind of exploitation in reverse. The middle class was an easy target: it latched on to working-class respectability as

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<sup>21</sup>Douglas A. Reid, "The Decline of Saint Monday, 1766-1876", Past and Present, No. 71 (1976), pp. 77, 84-87; E. P. Thompson, "Time, Work-discipline, and Industrial Capitalism", Past and Present, 38 (1967), pp. 74, 80-86.

<sup>22</sup>Peter Bailey, Leisure and Class in Victorian England (London: Routledge and Kegan Paul, 1978), p. 12.

<sup>23</sup>Golby and Purdue, pp. 11-12.

confirmation of its own power to remake society in its own image.<sup>24</sup> Cunningham also comments on the perception by the working class that capitalism was not particularly vulnerable; as a consequence the goal became to obtain the best bargain within the system.<sup>25</sup> If certain types of behaviour won access to public places, such as parks or commons, then such behaviour was adhered to. But as open spaces disappeared in the first half of the century, much of the development of working-class culture took place in the pub or in the streets, and was not readily grasped by middle-class reformers. The pub was also the medium through which country pastimes were sustained in the city.<sup>26</sup>

For all their energies, middle-class reformers never triumphed over the pub and music hall, and other factors were at least equally important in the changes which took place in popular recreation.<sup>27</sup> Working-class respectability "did not mean church attendance, teetotalism, or the possession of a post office savings account. It meant the possession of a presentable Sunday suit, and the ability to be seen wearing it."<sup>28</sup> The pub may have lost some of its social and economic associations and had its

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<sup>24</sup>Gareth Stedman Jones, "Working-class Culture and Working-class Politics in London, 1870-1900; Notes on the Remaking of a Working Class", Journal of Social History, 7 (1974), pp. 460-508; Bailey, pp. 178-80.

<sup>25</sup>Cunningham, pp. 185-87.

<sup>26</sup>Bailey, pp. 8-9; Brian Harrison, "Pubs", in The Victorian City: Images and Realities, vol. 1, p. 173.

<sup>27</sup>Bailey, pp. 171-78.

<sup>28</sup>Jones, p. 475.

hours reduced, but it remained an important centre for leisure, and middle-class efforts to curtail drinking failed.

By the Edwardian period, it had become inescapably clear that middle-class evangelism had failed to recreate a working class in its own image. The great majority of London workers were not Christian, provident, chaste or temperate.<sup>29</sup>

As Cunningham points out, the rational recreationists had a program that was unrealistic. Leisure could not be the bridge between classes as long as reformers failed to perceive that leisure patterns were largely determined by work. Furthermore, middle-class attitudes were determined by the past, with little awareness of developing social conditions. According to Cunningham the level of sophistication failed to go beyond the "peer-peasant" stage, and reflected middle-class nostalgia for romanticized notions of pre-industrial society.<sup>30</sup> Patrick Joyce's study of northern factory workers stresses the determining influence of work on leisure while noting the patterns of deference that prevailed. He too underlines the amount of independence retained by the workers. Their adherence to the paternalism of their employers had its limits and collapsed if they failed to receive the economic premiums. Overall, however, the formation of a factory class was the source of

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<sup>29</sup>Jones, pp. 470-72.

<sup>30</sup>Cunningham, Leisure, pp. 120, 125.

inter-class harmony. These conditions were unique to the north.<sup>31</sup>

While romantics and reformers lamented the disappearing opportunities for play, the middle classes remained generally lukewarm to the fostering of recreation. During the first half of the century they found it easy to find fault with the leisure activities of the lower classes (and of the upper classes as well) but the alternatives they proposed were not embraced with enthusiasm. Their primary concern was that recreational time not be wasted, that it contribute to the moral betterment of the person involved. Unlike the upper and lower classes, the middle class did not have a tradition of popular pastimes, and the first opportunities to indulge were greeted with mixed feelings.<sup>32</sup> Middle-class bywords were work and profit, and sabbatarianism promoted the serious Sunday, the traditional working-class day for recreation.

Sabbatarianism waned somewhat after the mid-century mark as members of the middle class began enjoying themselves at play. Prior to this, it was primarily reform-minded radicals or reactionaries who called attention to shortcomings in recreational facilities. In the early 1830s, members of the first group, led by Robert Slaney, the M.P. for Shrewsbury, convinced politicians to establish a Select Committee on Public Walks to examine the problem. Its members heard a Middlesex magistrate

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<sup>31</sup>Patrick Joyce, Work, Society and Politics: The Culture of the Factory in Later Victorian England (New Brunswick, N.J.: Rutgers University Press, 1980), pp. 50, 90-98, 134-36, 180-86.

<sup>32</sup>Bailey, p. 64.

describe, in language reminiscent of Strutt's, changes that had taken place around London:

Wherever there was an open place to which people could have access they would play, but they are now driven from all.... I have witnessed their dissatisfaction at being expelled from field to field, and being deprived of all play-places.<sup>33</sup>

The Select Committee was Parliament's first inquiry into the question of urban open spaces and though its recommendations had little immediate effect on legislation, they were cited in later years by interests fighting for parks. The message that commons were needed by people for recreation and physical health gained more momentum in the 1830s and 1840s as awareness of the living conditions of the urban poor increased, but commentators tended to lament past losses rather than call for steps to protect existing commons. In part this was because few metropolitan commons were in immediate danger.

In 1835, J. A. Roebuck published a comparison between the amusements of the aristocracy and those of the "people". The latter were having their commons and village greens, on which for generations they had had "the right of playing cricket or bowls or of dancing" taken away while the aristocracy's pleasures continued unabated.<sup>34</sup> William Howitt commented that "football seems to have almost gone out of use with the inclosure of

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<sup>33</sup>P.P. Report from the Select Committee on Public Walks, 1833 (448), XV. 337, qq. 101, 105, cited by Malcolmson, p. 110.

<sup>34</sup>J. A. Roebuck, "On the Amusements of the Aristocracy and of the People", in Pamphlets for the People (London, 1835), pp. 1-15.

wastes and commons".<sup>35</sup> Testifying before a Parliamentary Committee in 1843, a resident of Sheffield endorsed this view:

Thirty years ago [Sheffield] had numbers of places as common land where youths and men could have taken exercise at cricket, quoits, football and other exercises .... Scarce a foot of all these common waste remains for the enjoyment of the industrial classes.<sup>36</sup>

The 1833 Select Committee aside, these concerns found their way into Parliament in a somewhat disorganized manner. During an 1836 debate in the House of Lords on a bill to facilitate the enclosure of open and arable fields, some members erroneously believed that commons were under threat. Accordingly, Lord Holland informed the House:

It had been a matter of surprise to all foreigners and indeed a reproach to this country that though its laws and institutions were formed on proper and liberal grounds, yet there were no places provided suitable for the healthy exercise and recreation of the people.

Lord Ellenborough made a familiar link. It was

extremely desirable that the people should have some open space to which they might resort for healthful recreation. It was much better for them to have such places left open to them, than to be shut out and left no other resource than the ale-house and beershop.<sup>37</sup>

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<sup>35</sup>Cited by James Walvin, Leisure and Society, 1830-1950 (London: Longman, 1978), p. 84.

<sup>36</sup>Walvin, pp. 2-3, 84.

<sup>37</sup>H.L., 3 Hansard 35: 1226-27, 15 August 1836.



Similar confusion between commons and common fields led the lower House to criticize the bill.<sup>38</sup> At this time Parliament was just becoming accustomed to the idea that it had a role to play in the provision of urban parks. Members had shown that they could frustrate proposals that threatened particular commons such as Hampstead Heath but they were a long way from even dreaming of a comprehensive program to preserve them. Nonetheless, the facility with which politicians mouthed platitudes about the lack of space for the recreations of the people demonstrated the presence of a constituency that would be receptive to the preservationists' program at a later date.

Strutt's warning that the "manly" sports were being neglected was a theme which echoed through successive decades, often entwined with a romantic longing for the pre-industrial past. The anxiety was not directed solely towards the working class. In 1824 Leigh Hunt, the editor of the Examiner, wrote that the intellectual life of the suburbanite was not "so good for digestion as the football and target shooting in which our gallant apprentices excelled of old. Our shopmen partake with others of the sickliness of a lettered generation". He called for the restoration of "manly games" by the setting aside of "certain grounds and enclosures" because no activity could "dispense with the necessity of exercise in the open air".<sup>39</sup> A sedentary urban existence was bad for all. Hunt failed to ignite his generation but

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<sup>38</sup>H.C., 3 Hansard 35: 1271, 16 August 1836; Scrutton, pp. 156-57.

<sup>39</sup>Examiner, 25 April, 24 September 1824.

messages similar to his eventually percolated to the surface and contributed to middle-class enthusiasm for sport and games.

Those who did focus on the problem of open spaces reached predictable conclusions formed more by the moral anxieties of the period than by a simple desire to improve people's health. As unsophisticated as these arguments were, they retained currency throughout the century.

The most widely accepted and repeatedly stated consequence of the lack of open spaces in cities was a recourse to drink. Slaney made the link with alcohol when pushing for his Select Committee in 1833. He told the House of Commons that "at present the poor workman in the large manufacturing towns was actually forced into the public house, there being no other place for him to amuse himself in".<sup>40</sup> Edwin Chadwick, testifying before the 1834 Select Committee on Drunkenness, called for "the substitution of innocent for gross and noxious modes of excitement" and suggested the provision of cricket grounds, public walks, and horticultural and zoological grounds with "free admission of persons decently dressed ... on Sunday, after the morning service" to lure people away from the pub. He further stated:

I have heard very strong representations of the mischiefs of the stoppage of footpaths and ancient walks, as contributing, with the extensive and indiscriminate

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<sup>40</sup>H.C. 3 Hansard 15: 1054, 21 February 1833, cited by Malcolmson, p. 171.

inclosure of commons which were play-grounds, to drive the labouring classes to the public-house.<sup>41</sup>

It is not difficult to appreciate why this type of argument remained popular. Working-class drinking, particularly in urban areas like London, was, perhaps, the most prominent and difficult social problem of the century.<sup>42</sup> In an age made fretful by this, open-spaces advocates offered a comparatively simple remedy. Although they did not claim that adequate parks and commons would, by themselves, rid society of alcohol abuse, the equation was constantly made that insufficient recreational space was one of the root causes of the evil.

William Bardwell, in Healthy Homes (1854), lamented that the London workman, unlike his Parisian counterpart who had access to broad boulevards, had no places for recreation "but the tap-room, the penny theatre or the obscurer haunts of misery and crime". Somewhat in advance of contemporary thinking, he called for legislation to preserve Lincoln's Inn Fields (an issue at the time), to widen thoroughfares, to restrict buildings on the borders of parks, and to expand and preserve commons.

The beautiful chain of commons, Wandsworth, Tooting, Clapham, Peckham Rye and Deptford, should be most religiously preserved from encroachments, and their boundaries enlarged on all possible occasions.... A hundred years hence, the metropolitan counties will be studded with houses, all within hail of each other. Where, then, will be

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<sup>41</sup>P.P. Report from the Select Committee on Inquiry into Drunkenness, 1834 (559), VIII. 315, q. 325; Cunningham, p. 81.

<sup>42</sup>Annual arrests for drunkenness were never less than 17,000 in London during the 1860s. Golby and Purdue, p. 116.

our places of recreation?--Where our commons and our forests?<sup>43</sup>

Lincoln's Inn Fields was still an issue four years later when a correspondent to the Times urged the owners to open it to the poor during the summer:

The ginshops at present stand in the way of all who are labouring in this crowded neighbourhood for the physical, moral and spiritual improvement of the poor. Why not try some counter-attraction--if not this year, at least next summer?<sup>44</sup>

This plea recognizes that an open space is not a guaranteed solution to the problem, but reasons that nothing can be lost by trying it.

Some held little hope that drunkenness could be curbed in existing cities. James Silk Buckingham, traveller, journalist and M.P., had, in 1835, introduced an unsuccessful bill to permit the creation of public walks and other amenities for the working class. But he had more ambitious plans in mind and in 1849 published one of the earliest schemes for a model town. Free of intoxicants, his geometrically laid out 'Victoria' would have a

Public Promenade or Park, embellished with the usual auxiliaries of fountains, arbors, and flowers of every variety; a Botanical Garden, and living Collection of Natural

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<sup>43</sup>William Bardwell, Healthy Homes, and How to Make Them (London: Dean and Son, 1854), pp. 45-50.

<sup>44</sup>Times, 8 July 1858.

History, in all its branches; a Gymnasium for athletic exercises and manly games; and a Public Cemetery.<sup>45</sup>

All Buckingham's open-air adornments had an educational or moral function; they were not designed as places for spontaneous and unstructured play. This is one area where later advocates of open spaces displayed more sophistication. They moved away from unrealistic expectations of working-class behaviour and recognized that commons were ideal locations for letting off excess energy and for indulging in some kinds of activities which might be out of place in a public park. Nonetheless, as the rules drawn up for commons made clear, there continued to be boundaries to what was acceptable.

On a more modest scale Charles Kingsley thought it would be more productive to take the town-dweller into the countryside than to create patches of country in the city. He proposed the erection of large blocks of workers' accommodation on new sites which would be surrounded by open fields. This reconstructed medieval idea would break the link between drunkenness, bad air and poor housing.<sup>46</sup> While hardly practical, the vision testifies to the belief in the recuperative power of nature.

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<sup>45</sup>James Silk Buckingham, National Evils and Practical Remedies (London: Peter Jackson, Late Fisher and Son, 1849; reprint ed., New York: Augustus M. Kelley, 1973), pp. xxii, 151-52.

<sup>46</sup>Charles Kingsley, "Great Cities and Their Influence for Good and Evil", lecture delivered 5 October 1857, in Sanitary and Social Lectures and Essays (London: Macmillan and Company, 1880), pp. 472-73.

By the 1860s the connection between drink and the lack of open spaces had become a commonplace, but it was no less urgent for reformers. Slaney uttered a similar refrain to his 1833 speech when he told the House of Commons in 1861 that the lack of the "means to enjoy fresh air" was driving the working man into the public house.<sup>47</sup> At the 1867 meeting of the National Association for the Promotion of Social Science the Medical Officer of Health for Paddington noted:

Men crave for bodily and mental relaxation and excitement, but, for want of beneficial means for gratifying this craving, are obliged to resort to artificial stimulants, hence the corrupting influence of drinking habits felt in every section of the community.

He believed that the "upper ranks [had] in some measure emancipated themselves from this pernicious vice" by becoming involved in other activities, but the working classes had not this option. He called for more public money to supply the necessary amenities in the form of playgrounds, gymnasia, public baths and libraries.<sup>48</sup>

Cunningham and Malcolmson conclude that these voices over-dramatized the relationship between the lack of useful recreational facilities and the pub. There were, Cunningham

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<sup>47</sup>Robert A. Slaney, Motion to Consider Means to Improve the Dwellings and Promote the Comfort and Cheerfulness of the Working Classes in Towns. Speech delivered in the House of Commons, 12 March 1861 (London: Hatchard and Company, 1861), p. 23.

<sup>48</sup>William Hardwicke, "Recreation of the Working Classes", Transactions of the National Association for the Promotion of Social Science (London, 1868), pp. 472-73.

notes, many new forms of recreation which members of the working class were developing to replace those which were under attack.<sup>49</sup> But insofar as middle-class opinion believed the pub to be an evil from which the lower classes should be weaned, it was sympathetic to suggested means to accomplish this. Open spaces had an immediate appeal as something embodying everything pubs were not. It was self evident that a walk with the family in the fresh air, or an afternoon of sport was preferable to hours spent amidst rough company in the cramped quarters of the pub.

Another consequence of the lack of open spaces for recreational activity was physical degeneracy, whether accompanied by drink or not. Cobbett, Leigh Hunt and Lord John Manners had bemoaned this; they would be joined by many others, particularly when patriotism flourished. In the mid-1860s some expert opinion speculated that a family living in London would not be able to prolong itself beyond three generations.<sup>50</sup> If unchecked, trends like this would produce an increasingly inefficient work force and a growing mass of urban poor. The paucity of open spaces available for games during fears of military unpreparedness in the early 1860s had led working-class schools to stress drills as the preferred form of exercise.<sup>51</sup> As a general rule, preservationists refrained from explicit jingoism in

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<sup>49</sup>Cunningham, p. 106; Malcolmson, p. 171.

<sup>50</sup>Robert Allen, "The Forest of Essex", Cornhill Magazine, 9 (March 1864), p. 350.

<sup>51</sup>J. S. Hurt, "Drill, Discipline and the Elementary School Ethos", in Popular Education and Socialization in the Nineteenth Century, pp. 170-71, 189.

their literature and speeches but middle-class anxieties about these questions made their message easier to swallow. There were exceptions. Lord Brabazon's comment about the dire consequences of an unfit population was cited in the preceding chapter. In 1885, after the primary battles over commons had been won, a clergyman continued the campaign with lofty patriotism:

Next to religious culture, England owes to her sports and pastimes that moral as well as physical power, which has been the secret of her political pre-eminence. The mimic battles and friendly contests of our recreation grounds ... have materially helped to make us victorious in many a hard fought field, without malice to our conquered foes--the friends of the vanquished, and the benefactors of subject peoples. But are we not in peril of losing our manhood, by the gradual but rapid absorption of the vacant spaces in our cities and their suburbs, on which the manhood of our youth was developed? We are rearing houses of brick and mortar on the old commons and wastes of England on which our fathers trained a vigorous race, endowed with the virtues of hardihood and courage with a delight in exercise and love of fair play which sent forth their youth fitted to fight the battle of life with credit to themselves and benefit to others. The ancient commons and wastes which were the birthright of the poor and the training ground of the youth of England, are disappearing, and with them will disappear the virtues nurtured on that virgin soil.<sup>52</sup>

During the first half of the century the focus was on the unsuitability of unhealthy workers for sustaining industrial growth. As W. L. Burn and others have pointed out, the mid-Victorians believed that material and moral progress proceeded

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<sup>52</sup>Johnston, pp. 5-7.



in tandem.<sup>53</sup> In some eyes, both were threatened by a slide in the well-being of the workers. Later, an unfit working class seemed to imperil the nation in a more direct fashion. The poor physical condition of volunteers for the Boer War seemed to confirm the gloomy predictions made during decades of worry about this issue.<sup>54</sup>

By the 1850s conditions were beginning to look more promising for working-class recreation. Concrete gains were few but the issue now preoccupied many reformers. Their perspective was narrow, of course, but within its limitations the message was taking root that commons and open spaces were valuable venues for morally sanctioned pastimes. Politicians had demonstrated that they were receptive to this type of reasoning. As yet, relatively few people perceived any need to take measures to protect London's commons but their numbers would grow as particular ones faced danger and as more middle-class residents came to associate commons with their recreational pursuits.

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<sup>53</sup>W. L. Burn, The Age of Equipoise (London: George Allen and Unwin, 1964), p. 106.

<sup>54</sup>Hurt, p. 189.

## 1.6 The Growth of Recreation

For all its obsession with working-class recreation, a joyless middle class would not have supported a movement for commons and open spaces merely to provide a possible alternative to the pub. The explosion of middle-class interest in its own capacity for enjoyment was most important. Peter Bailey states that the 1860s and 1870s were the most traumatic decades for the middle classes faced with new forms of recreation but, as the experience proved non-catastrophic, moral censoriousness loosened.<sup>1</sup> Initially they had adopted the attitude that recreational activities should provide moral and physical reinforcement for the individual, not dissipation, the perceived result of both working-class and aristocratic indulgence. Leisure should complement work, and although the type of activities which were deemed to fit this criterion widened as the century progressed, and a more relaxed, even hedonistic, attitude made headway, the old concern never disappeared. The rules drawn up for people using commons testify to its survival.

For both classes recreational opportunities were enhanced by the shorter work-week and the provision of holidays. More organized activities such as excursions arose in response and helped bring attention to open spaces as places to visit. The ubiquitous presence of children in Victorian society raised questions about their use of time.

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<sup>1</sup>Peter Bailey, "'A Mingled Mass of Perfectly Legitimate Pleasures': The Victorian Middle Class and the Problem of Leisure", Victorian Studies, 21, (1977), pp. 23-37.

Much middle-class recreation was linked to self-improvement. One avenue that developed was a fascination with fitness, and outdoor activity as a means to attain it. In the early nineteenth century, as in the eighteenth, the common outdoor recreations included activities such as boxing and animal fights. Later, the emphasis shifted. As Brian Harrison writes, "by depriving many of its employees of physical exercise, industrial society helped to create the demand for sports which required exertion from human beings rather than from animals".<sup>2</sup> Bruce Haley describes the interest in sport after 1850 as a "national mania".<sup>3</sup>

Middle-class enthusiasm for sport was based on the belief that a healthy body was the optimal vessel for a healthy mind. The muscular Christianity of Kingsley and Hughes gave credibility to this as did the writings of Carlyle, Newman and Herbert Spencer.<sup>4</sup> Kingsley, who had been influenced by Carlyle's depiction of heroes, made one of the most explicit connections between physical and moral health. The playing fields, he wrote, gave boys "virtues which not books [could] give them ... self-restraint, fairness, honour ..." <sup>5</sup> Samuel Smiles had written that

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<sup>2</sup>Brian Harrison, Drink and the Victorians (London: Faber and Faber, 1971), p. 331.

<sup>3</sup>Bruce Haley, The Healthy Body and Victorian Culture (Cambridge: Harvard University Press, 1978), p. 124.

<sup>4</sup>Haley, p. 21; Colin Ford and Brian Harrison, A Hundred Years Ago: Britain in the 1880s in Words and Photographs (Harmondsworth, Middlesex: Penguin Books and Allen Lane, 1983), p. 140.

<sup>5</sup>Charles Kingsley, "Nausicaa in London", in Sanitary and Social Lectures and Essays, p. 125.

"practical success in life depends more on physical health than is generally imagined".<sup>6</sup> Herbert Spencer, not surprisingly, adhered to this view: "The contests of commerce are in part determined by the bodily endurance of the producers".<sup>7</sup> All of these reinforced the links between physical fitness, moral health, and material advancement. Spencer was addressing the middle class on the need for physical education but others were pointing to the necessity of a healthy working class as well.<sup>8</sup>

Games were a way of fostering fitness and inculcating manly virtues and it was hoped that their adoption by the working class would have a morally uplifting effect. The arbiters of improving pastimes found virtue in some sports and nothing to recommend in others. Approval was bestowed on cricket, for example, which served as a metaphor for life's struggles. The Book of Sports for Boys and Girls in 1853 called it "the king of games. Everybody in England should learn it".<sup>9</sup> To see Hackney Downs covered with cricket players on a Saturday was an inspiration for a least one observer.<sup>10</sup> Football was similarly blessed but activities of a purely working-class character, like cockshy, Aunt Sally, or anything involving gambling, were

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<sup>6</sup>Cited by Haley, p. 205.

<sup>7</sup>Herbert Spencer, Education: Intellectual, Moral and Physical, cheap edition (London: Williams and Norgate, 1879; orig. publ. 1861), p. 132, cited by Bailey, Leisure and Class, p. 127.

<sup>8</sup>J. S. Hurt, p. 167.

<sup>9</sup>Cited by James Walvin, "Children's Pleasures", in Leisure in Britain, 1780-1939, p. 232.

<sup>10</sup>See chapter 5.2, Managing the Public.

suppressed. In some parts of the country, their banishment from public open spaces led to their resurrection on grounds connected with pubs.<sup>11</sup>

While middle-class rhetoric extolled the virtues of bringing sport to the people, actions often heightened the distance between the two classes. All classes might play on a common but it was hardly the ambition of the barrister, who had fought for its preservation, to bowl out a dock worker. By and large the two classes kept to themselves. Furthermore, a barrier was arising to institutionalize the separation. The code of the gentleman amateur precluded working-class participation in sports on equal terms with the middle class.<sup>12</sup>

Public schools had long emphasized sport and middle-class attendance at these helped reinforce the distance between the classes. Southey's Spanish tourist commented on the importance of sport in schools at the turn of the century:

bodily endowments hold the first, mental the second places. The best bruiser enjoys the highest reputation; next to him, but after a long interval comes the best cricket player; the third place, at a still more respectful distance, is allowed to the cleverest.<sup>13</sup>

Works of fiction, notably Tom Brown's Schooldays, helped fan the obsession. Although there would be criticism of the concentration on athleticism, it was overwhelmed by those

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<sup>11</sup>Robert D. Storch, "Introduction: Persistence and Change in Nineteenth-Century Popular Culture", in Popular Culture and Custom in Nineteenth-Century England, p. 10.

<sup>12</sup>Bailey, Leisure and Class, p. 131.

<sup>13</sup>Southey, p. 272.

singing its praises. Indeed public schools increased their fixation on sport as the century progressed, mixing it with liberal doses of jingoism. If the school graduate continued to pursue sports in adult life, it was natural that he should adhere to the values followed in his youth.

Public schools are often credited with preserving football during the first half of the century when it suffered a decline among the working classes as a result of enclosures and a general attack on a game that was often unruly and not always confined to the playing pitch. Not only was football a very rough game, it had, in the eighteenth century, lent itself to seditious purposes by providing cover for people protesting against enclosures.<sup>14</sup> Certainly there were differences of approach between the public schools and those outside their ambit. The headmaster of Shrewsbury from 1798 to 1836 dismissed the game as "only fit for butcher boys" and, unlike cricket, it was not widely played by gentlemen after their school days. A graduate of Eton stated in 1831: "I cannot consider the game of football as being at all gentlemanly; after all, the Yorkshire common people play it."<sup>15</sup> Nonetheless, football made rapid headway among both classes in the second half of the century. In London, for example,

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<sup>14</sup>Tony Mason, Association Football and English Society, 1863-1915 (Brighton: The Harvester Press, 1980), p. 10.

<sup>15</sup>Peter C. McIntosh, Physical Education in England Since 1800 (London: G. Bell and Sons, 1952), pp. 23-24; Walvin, Leisure and Society, p. 86.

gentlemen amateurs remained an important part of the game after northern clubs had been infiltrated by professionalism.<sup>16</sup>

The popular game of the early century still awaited the uniform rules and regulations which evolved in the public schools between 1845 and 1852. While it is true that middle-class graduates of public schools sometimes used football as part of their evangelizing missions to the working class this influence should not be overemphasized.<sup>17</sup> Cunningham doubts that the game of football disappeared from poorer neighbourhoods to the extent often portrayed. He believes the decline of open spaces merely forced it into the streets (despite the 1835 Highways Act which tried to keep it off), and that it retained an indigenous class tradition. The growth of working-class participation in football (and other sports) was primarily a consequence of longer hours away from work. He perceives working-class enthusiasm towards middle-class overtures later in the century more as a means to gain money and playing space than anything else.<sup>18</sup>

Football expanded rapidly in the second half of the century along more organized lines. Clubs formed from various sources: churches, pubs, the workplace (Woolwich Arsenal, for example). In the 1870s and 1880s, about one quarter of all clubs formed had connections with religious bodies.<sup>19</sup> Volunteer corps,

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<sup>16</sup>Mason, p. 69.

<sup>17</sup>Mason, p. 14, 24; J. A. R. Pimlott, The Englishman's Holiday: A Social History (Faber and Faber, 1977; reprint ed. Hassocks, Sussex: The Harvester Press, 1976), p. 86.

<sup>18</sup>Cunningham, pp. 127-28.

<sup>19</sup>Ford and Harrison, p. 140.

after the movement became predominantly working class, formed clubs which were important to the growth of the game.<sup>20</sup> For every club that came into being, there were numerous casual teams and youths playing wherever space permitted. Football also had the advantage of being cheap: a ball and space on which to play were all that was required. A common need not be dedicated to the public to be used for the game but the rumoured disappearance of popular venues brought participants within the preservationists' ranks.

Other sports besides football were expanding and using their numbers to advantage. As many as fifteen had formed national organizations by 1890 as Victorians took up various activities and as spectators became an integral part of the economics of leisure.<sup>21</sup> Golf, which had had its own organization since the turn of the century, began to gather momentum in the 1870s and accelerated rapidly in the 1890s when an average of one club was formed every week in England. Golf, more than football and cricket, needed large open spaces: an average course required 100 acres. The demands of golfers led to disputes over the use of commons. Mitcham was one such area where legal battles between contending groups were not settled until the eve of the Great War.<sup>22</sup> Golfers in England were drawn primarily from

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<sup>20</sup>Cunningham, The Volunteer Force (London: Croom Helm, 1975), pp. 118-19.

<sup>21</sup>Golby and Purdue, pp. 78-79, 165.

<sup>22</sup>Haley, p. 135; John Lowerson, "Scottish Croquet", History Today, 33 (May 1983), pp. 26-27.



the ranks of the upper classes in contrast to the mixed backgrounds of players in Scotland.<sup>23</sup>

Structured outdoor activity was not confined to sport as the Volunteer movement demonstrates. Volunteers used open spaces for drills and shooting and they were an important minor lobby for the retention of commons. Many individuals pursued solitary interests: walking, painting, model boating, swimming. Naturalists, both on their own, and in groups, had opinions about commons, particularly large ones such as Epping Forest.

Although contemporaries continued to worry about certain aspects of the new trends in recreation, by and large they welcomed the directions they were taking. William Hardman wrote in 1861:

Now our spirit has been aroused, and muscular Christianity, Volunteer movement, Alpine climbing, and the art of self-defence are in the ascendant. The affected Dandy of past years is unknown; if he exists, he is despised. Wine drinking is out of date, and intemperance among the educated classes becomes rarer every day. The standard or average English gentleman of the present day must at least show vigour of body, if he cannot display vigour of mind.<sup>24</sup>

Fashions were not constant. By the late 1860s and 1870s youth preferred a more casual appearance and the explicit trappings of athleticism were shunned by the elite. In 1870 Leslie Stephen observed:

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<sup>23</sup>Ford and Harrison, p. 141.

<sup>24</sup>S. M. Ellis, ed., A Mid-Victorian Pepys, the Letters and Memoirs of Sir William Hardman, M.A., F.R.G.S. (London: Cecil Palmer, 1923), pp. 26-27.

It has become impossible to hear a gentleman described as "manly" or spoken of as a "good fellow" without conceiving a certain prejudice against him; even those simple terms are beginning to connote a decided imbecility; whilst the still more exalted vocabulary of the true muscular Christian has been drawn upon too freely for further use.<sup>25</sup>

But if some of the shine had faded from the extremes of athleticism, people were not returning to the sedentary life. Activity remained desirable. In 1881 Lord Brabazon echoed the thoughts of Hardman in asserting that exercise had had a beneficial effect:

The effeminate shop-clerk, against whom 'Punch' at the time of the Crimean War used never to be weary of levelling the shafts of his ridicule, has developed into the stalwart volunteer, the oarsman and the bicyclist.<sup>26</sup>

Brabazon's Metropolitan Public Gardens Association was tireless in its efforts to secure smaller open spaces such as burial grounds and school playgrounds for wider use.

Thus, whether participants in organized sport, Saturday afternoon informal games, or individual pursuits, members of the middle class had a desire for open spaces that was not present in the first half of the century. Nonetheless, there continued to be a reticence about selling preservationism on these terms. Promoting commons as amenities essential for the health and recreation of the poor was the seductive strategy which was preferred. It was difficult to oppose a movement that sought to

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<sup>25</sup>"Athletic Sports and University Studies" Fraser's, 82 (1870), p. 692, cited by Haley, pp. 220-21.

<sup>26</sup>Brabazon, "Health and Physique of our City Populations" in Social Arrows, p. 8.

provide fresh air to slums, make children healthier, cut alcohol abuse, promote family activities, encourage wholesome recreation, and, perhaps, educate people as well. Virtue was on the side of the preservationists. The argument worked because members of all classes enjoyed certain activities and had an interest in having commons saved. The working class was more than a shield behind which to hide selfish middle-class motives. Later chapters recount working-class participation in struggles for particular commons. But, when all is said and done, the major beneficiaries of successful schemes for commons were likely to be members of the middle class newly emancipated from sabbatarian-influenced thinking on the correct way to spend leisure time.

Opportunities for recreation grew as more time was available. Working-class leisure expanded from 1850 as legislation brought down the number of hours worked and the weekly half-holiday spread.<sup>27</sup> Acceptance of the half-holiday was a gradual and uneven development throughout the country. (Where it was adopted organized sport benefited as it was possible to charge admission to events, something which could not be done on Sundays.)<sup>28</sup> The middle class also exploited its reduced time at work.

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<sup>27</sup>Pimlott, p. 142; J. A. Banks, "The Contagion of Numbers", in The Victorian City: Images and Realities, vol. 1, p. 113.

<sup>28</sup>Mason, p. 3.

Industrialization had been accompanied by a reduction in holidays: the Bank of England closed on forty-seven days in 1761; by 1834 it closed on four.<sup>29</sup> Sir John Lubbock's Bank Holiday Act of 1871 was a major advance in the recognition by society that holidays were just and affordable. Conservatives such as Lord John Manners were not alone in calling for more of them. His appeal, however, had been published in 1842. In an address to the National Association for the Promotion of Social Science twenty-five years later, the Medical Officer of Health for Paddington was making the same pitch in underscoring the need for breaks from work:

Our public holidays are too few .... In former times, when labour was not so ardent, holidays were many; now that civilization advances and labour begins to be more intense, the exhaustion is consequently greater, and the period of rest must be more frequent or more prolonged.<sup>30</sup>

In other words, society would profit in the long term by ensuring that its members were not crippled by overwork. But holidays were viewed with sufficient suspicion that Parliament threw out a bill to establish them in 1868 and Lubbock's success in 1871 was due partly to the name he chose for his measure. Lubbock's bill was aimed primarily at the class of clerks who had not benefited from factory legislation, but the House of Lords amended it in such a way as to give it broader effect, and shops and other establishments soon recognized the day and closed. As well as confirming traditional holidays, Christmas, Boxing Day,

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<sup>29</sup>Pimlott, p. 81.

<sup>30</sup>Hardwicke, p. 476.

Good Friday, Easter Monday and Whit Monday, the Act brought into being the August Bank Holiday, of which the public, after some hesitation, took full advantage.<sup>31</sup>

There were obvious class distinctions in the ways in which bank holidays were spent and opinion was divided on their merits. The Times, for one, had a rosy view, but the 1872 August Bank Holiday described here was a "distinctly middle-class" affair:

Rational, sober, and modest amusements are more and more supplanting all others, and the riot which made some old fashioned folks doubt whether Holydays could do people any good has become all but a thing of the past.<sup>32</sup>

Octavia Hill admitted that behaviour tended to be unrestrained on bank holidays, but it was, on balance, less unruly than in the past. She credited the opportunities to unwind in places like Epping Forest, Blackheath and Hampstead Heath with improving the situation.<sup>33</sup> Open spaces became important destinations for holiday crowds, a fact that invariably produced some anxiety. Hill's attitude reflects something of the more tolerant perception of working-class recreation compared to the period before the mid-century mark.

Not all observers felt so generous. In 1872, shortly after Hampstead Heath had been secured for the public, one of the

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<sup>31</sup>Pimlott, pp. 142-48.

<sup>32</sup>Times, 6 August 1872, cited by Donald Read, England 1868-1914: The Age of Urban Democracy (London: Longmans, 1979), p. 108.

<sup>33</sup>Octavia Hill, Our Common Land (And other Short Essays) (London: Macmillan and Company, 1877), pp. 3.

leaders in the struggle to save it complained to the Metropolitan Board of Works about the events he had witnessed that Easter:

I never saw so much disorder considering that the number of Visitors was not nearly so great as sometimes. There were innumerable trucks for the sake of all kinds of eatables and drinkables on every part of the Heath; especially along the path on the High Heath were sticks for the games of Aunt Sally. By the flagstaff the mobs of players were so great that no decent person could either walk or ride and the grass is totally destroyed.<sup>34</sup>

Six years later the economist, W. S. Jevons, was less than enthusiastic about the same spot:

Witness the Bank Holiday on Hampstead Heath, where the best fun of the young men and women consists in squirting at each other with those detestable metal pipes which some base genius has invented.

But Jevons was more sympathetic and felt that the poor had been ill-served by a society intent on suppressing their popular amusements. The enclosure of commons and village greens, together with the upper-class idea of "keeping people moral by keeping their noses to the grindstone" had produced a people who had quite forgotten how to amuse themselves. Consequently, they behaved with "senseless vulgarity" when let loose in the fresh air.<sup>35</sup> Thus, while both Jevons and Hill observed people on these commons apparently enjoying themselves, Jevons believed the

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<sup>34</sup>GLRO, Metropolitan Board of Works: Parks, Commons, and Open Spaces Committee, Minutes [hereafter MBW] 980, 17 April 1872, pp. 544-46.

<sup>35</sup>W. S. Jevons, "Amusements of the People" in Methods of Social Reform (London: Macmillan and Co., 1883; reprint ed., New York: Augustus M. Kelly, 1965), p. 3; orig. publ., Contemporary Review, 33 (October, 1878).

quality of this enjoyment to have been impaired by an imposed morality, while Hill, on the other hand, found optimism in comparisons with the past.

As time went on, Jevons' pessimism seemed to echo in other assessments of the holiday. Gissing's The Nether World contains a depressing depiction of the celebrations at the Crystal Palace: "A great review of the People. Since man came into being did the world ever exhibit a sadder spectacle?"<sup>36</sup> A French observer said of the August Bank Holiday, "it is a whole week lost, drowned in beer" and Charles Booth too, touched on the negative opinions prevalent at the end of the century:

Very rarely does one hear a good word for the Bank Holidays. The most common view is that they are a curse, and ... the mischievous results from a sexual point of view due to a general abandonment of restraint, are frequently noted in our evidence.<sup>37</sup>

While there was no shortage of critics, Booth's evidence also reflected the popularity of the holiday. A clergyman from Hackney commented: "The district is almost deserted on Bank Holiday. The women go off as well as the men". Another observer reported that the people were going on "excursions of all kinds" instead of to the public house.<sup>38</sup> Commons were often the destination.

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<sup>36</sup>George Gissing, The Nether World (London: J. M. Dent and Sons, 1973; orig. publ. 1889), p. 110.

<sup>37</sup>Cited by Bailey, Leisure and Class, p. 88; Charles Booth, Life and Labour of the People of London (London: Macmillan, 1903), final volume, p. 308.

<sup>38</sup>Booth, pp. 307-8.

Middle-class professionals began to take fortnight holidays from the 1860s and 1870s and holidays with pay existed for some groups of workers (although it was not until the twentieth century that this became common). The nineteenth-century employer came to appreciate that holidays could be a benefit. In the period 1840 to 1870 there is evidence that workers preferred to take increased leisure time rather than higher wages.<sup>39</sup> But whether through higher incomes or more time away from work, the worker became a greater consumer of leisure, and this was particularly true in the cities where facilities were more varied to meet the demand.<sup>40</sup>

In the third quarter of the nineteenth century the majority of workers continued to rely on Sundays for recreation. The National Sunday League had been founded in 1855 to promote acceptable and educational ways of spending Sundays and to counter sabbatarianism. The League promoted music in the parks and sought access to art galleries and museums.<sup>41</sup> The second of these goals was not realized until 1896, ironically because, in addition to sabbatarian resistance, the League had to contend with workers' suspicions of anything that might open the doors to

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<sup>39</sup>John Myerscough, "The Recent History of the Use of Leisure Time" in Leisure Research and Policy, ed. Ian Appleton (Edinburgh and London: Scottish Academic Press, 1975), pp. 8-10.

<sup>40</sup>Sutcliffe, p. 244.

<sup>41</sup>Pimlott, p. 163.



employment on Sundays.<sup>42</sup> Sunday music in the parks was also a contentious issue, but eventually bands began to play, and were generally credited with providing a civilizing influence. Jevons, for one, thought music was essential to bring culture to the people.

One type of recreational activity which greater time off work allowed was the excursion. Excursions of one kind or another were popular from the 1840s and reached a peak in the 1850s, well before Lubbock's Bank Holiday Act. The Manchester Guardian wrote approvingly of the effects of this type of outing:

The advantages of the railway excursions are many; but amongst their principal social benefits ... we may notice that they are greatly conducive to health, by combining pure air with the active exercise of field sports; that they are not less productive of cheerful, sober, and innocent enjoyment; and that they are eminently social and domestic in their character--and in all these respects are infinitely preferable to the tumultuous, disorderly, and intemperate scenes of the racecourse--scenes in which wives and children cannot and ought not to participate.<sup>43</sup>

Here is celebrated, not for the first time and decidedly not the last, the rejuvenating effect of the outdoors and its association

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<sup>42</sup>Ford and Harrison, p. 139; Myerscough, p. 8; Pimlott, p. 41; Brian Harrison "Religion and Recreation in Nineteenth-Century England", Past and Present, No. 38 (1967), p. 98. Opponents of Sunday opening, including the Archbishop of Canterbury, claimed to speak for workers worried that they would lose the sabbath; his arguments helped defeat a resolution in the House of Lords in 1884 favouring the end of the policy. 3 Hansard 286: 419-49, 21 March 1884.

<sup>43</sup>Cited by Pimlott, p. 95.

with wholesome family activity. This was a shibboleth for promoters of open spaces. Excursions were boosted by the 1851 Exhibition as people from all over the country travelled to London, and astonished the upper and middle classes by their good conduct.<sup>44</sup> But although Thomas Cook developed the excursion as a temperance affair, this was no guarantee that subsequent excursions would be restricted to morally sanctioned events. Executions and fairs were two unsavoury destinations. Croydon and Barnett fairs revived as metropolitan excursionists by the thousands took advantage of the railways, to the frequent dismay of locals.<sup>45</sup>

When the longer-term excursion declined, the practice of flocking to areas on the edges of cities for one-day excursions continued. For Londoners, Hampstead Heath, Blackheath and Epping Forest were popular destinations.<sup>46</sup> Nonetheless, late in the century, working-class excursions had acquired a negative connotation which was linked with the disapproval of bank holidays. Percy Fitzgerald, writing in the 1890s about Epping and Hainault Forests, recognized this prejudice:

We are too apt to think cheaply of scenes like this, which are associated with "Bank Holiday" revelry, and appear to be the special property of the "vulgar herd", before allowing

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<sup>44</sup>Frank Huggett, Victorian England as Seen by Punch (London: Sidgwick and Jackson, 1978), p. 58.

<sup>45</sup>Cunningham Leisure, p. 159; "The Metropolitan Fairs: A case study in the social control of leisure", in Social Control in Nineteenth-Century Britain, ed. A. P. Donajrodzki (London: Croom Helm, 1977), pp. 163, 172.

<sup>46</sup>Pimlott, pp. 158, 162; Myerscough, p. 11.

that this cockney appreciation may be accepted as a test of merit.<sup>47</sup>

Among interests working for the preservation of commons no identifiable group carried the torch for excursionists. But the fact that commons were used for this activity gave further credibility to their value as places for recreation and could be cited as another reason to protect them. Despite the negative stereotypes connected with the participants, no one wanted to risk driving them back to the confines of the pub.

Another factor contributing to the desirability of open spaces for recreation was the sheer number of children in Victorian society. During the nineteenth century about one third of the population was aged fourteen and under. They were not regarded by all sections of society as an unalloyed blessing, especially prior to the introduction of compulsory schooling. How were they to be occupied? A study of education in Spitalfields between 1812 and 1824 concludes that middle- and upper-class businessmen gave money to schools and charities out of fear of disorder by the poor and their children.<sup>48</sup> Such people would be susceptible to messages that open spaces provided safe havens for these youthful insurrectionists, but most wanted the reassurance that an element of control was being exercised. Supervision was most complete at school. In 1840, James Kay

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<sup>47</sup>Percy Fitzgerald, London City Suburbs as They Are Today (London: The Leadenhall Press, 1893), p. 143.

<sup>48</sup>McCann, pp. 5, 14-15.

gave orders to his school inspectors "to ascertain whether any ground, and to what extent, is to be appropriated to the recreation of the children, how it will be enclosed, and whether it is intended to furnish it with the means of exercise and recreation." This was a recognition that poor children at schools should be provided with some form of physical education which, it was hoped, would make them more orderly as well as healthier.<sup>49</sup> But, compared to the sports offered at the great public schools, these children received little.

Kay's intentions aside, children's conduct outside of school was harder to contain and continued to evoke censure. Punch commented in 1853 on the dangers presented by their games: "This mania for playing at [tip]cat is no less absurd than dangerous, for it is a game at which nobody seems to win, and which, apparently, has no other aim than the windows of the houses, and heads of the passengers."<sup>50</sup> Children were often disliked by landlords who feared their destructiveness to property.<sup>51</sup>

There was an ambivalence about their use of open spaces which lasted into the next century. When the gardens of the Temple were opened during summer evenings in the 1850s, George Godwin thought it was "worthy of notice that the most orderly

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<sup>49</sup>P.P. 1840 XL, Instructions to Inspectors, 8 August 1840, p. 13. Cited by Hurt, p. 168.

<sup>50</sup>Punch, 23 April 1853, cited by I. and P. Opie, Children's Games in Street and Playground (Oxford 1969), p. 11, n. 1.

<sup>51</sup>David Englander, Landlord and Tenant in Urban Britain, 1836-1918 (Oxford: Clarendon Press, 1983), p. 10.

conduct [had] been observed, and no damage done, although many children have been admitted, to either the grass or flowers". He acknowledged, however, that few children from "pent-up places" used parks because of the fact that the "ill-clad [were] often looked at with suspicion".<sup>52</sup> In the last quarter of the century, when smaller parks, squares and playgrounds were in vogue, children continued to be viewed as potential miscreants. A description of Wilmington Square, Clerkenwell, from George Gissing's The Nether World gives an example of this sentiment:

The open space, grateful in this neighbourhood, is laid out as a garden, with trees, beds, and walks. Near the iron gate, which, for certain hours in the day, gives admission, is a painted notice informing the public that, by the grace of the Marquis of Northampton, they may here take their leave on condition of good behaviour; to children is addressed a distinct warning that "This is a not a playground".<sup>53</sup>

Charles Booth worried that many open spaces encouraged children to get into mischief by "wandering out of sight". They might be influenced by the immoral behaviour of the "low class of middle-aged women and young lads" who congregated on these places. He called for more stringent controls such as patrols, better lighting, and fencing.<sup>54</sup> Lord Brabazon believed that experience

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<sup>52</sup>George Godwin, Town Swamps and Social Bridges (London: Routledge, Warnes, and Routledge, 1859; reprint ed. Leicester University Press, 1972), pp. 92-93.

<sup>53</sup>Gissing, p. 50.

<sup>54</sup>Booth, final volume p. 131.

demonstrated that playgrounds should be closed up at night and supervised during the day.<sup>55</sup>

Canon Samuel A. Barnett, in pressing his case that children needed guidance in leisure, recounted his observation that poor children preferred the excitement of the streets, which they viewed from their front-row seats in the gutter, to the boredom of a grassy open space.<sup>56</sup> Such children were not always so passive. When poor children congregated on urban open spaces they often gave offence to property owners. After the Metropolitan Board of Works had undertaken extensive improvements in London Fields, Hackney, a resident of one of the large houses warned that they would not succeed "when hundreds of dirty children are allowed ... to infest the Fields, to climb the trees and walk on the palings .... the noise and the worry are horrible". Similar complaints were expressed about Shepherd's Bush.<sup>57</sup> The social reformer, Henrietta Barnett, could not admit that excursions consisting of "much noise and the aimless running hither and thither of excited children" were beneficial. She and her husband believed that "children should be prepared for leisure with as much care as they are prepared for work". Early in the new century Canon Barnett suggested dispensing with "monster

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<sup>55</sup>The Right Hon. the Earl of Meath and Countess of Meath, "Public Playgrounds for Children", in Thoughts on Imperial and Social Subjects (London: Wells Gardner, Darton and Company, 1906), p. 124; orig. publ. in Nineteenth Century, August 1893.

<sup>56</sup>Canon Barnett, "Holiday Reform", in Towards Social Reform (London: T. Fisher Unwin, 1909), p. 300.

<sup>57</sup>MBW 983, 17 December 1873, pp. 428-30.

day treats" which he felt "disturbed the children in body and mind" in favour of smaller group outings.<sup>58</sup>

Not all discussion concentrated on the negative. Precisely because children in abundant numbers presented a threatening image of aimlessness their value in open-spaces propaganda was high. Accounts of children deprived of fresh air to breathe or green grass over which to play were used to attract funds. The Commons Preservation Society included the children of the poor among the intended beneficiaries of its program and its plebian rival, the Commons Protection League, couched its plea in similar language.<sup>59</sup> More nationalistic appeals stressed the importance of keeping the country strong by raising a healthy generation. Pre-school children were taken to open spaces by nannies, and indeed these were places where courtship could take place among servants. The suitability of Stoke Newington Green for nannies and their charges was one of the arguments used to support its being put in order.

Epping Forest was frequently used for children's outings, often run by Sunday or ragged schools or by Dr. Barnardo.<sup>60</sup> Various witnesses before the 1863 Select Committee on the Forests of Essex described its sustained popularity for such

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<sup>58</sup>Mrs. S. A. Barnett, "Principles of Recreation", in Towards Social Reform, p. 295; Canon Barnett, pp. 302, 304.

<sup>59</sup>Punch, 50 (17 February 1866), p. 71; 70 (19 February 1876), p. 58.

<sup>60</sup>Alan Delgado, The Annual Outing and Other Excursions (London: George Allen and Unwin, 1977), pp. 86-89, 109.

excursions.<sup>61</sup> The virtue of the Forest was its openness. Many observers felt quite sanguine about the opportunities this provided for letting off excess energy. Others, such as the Barnetts, were less comfortable.

Poor children were appealing victims of the lack of open spaces but when parks and commons became more available they were expected to adhere to conventional middle-class standards of behaviour. As a whole they presented no special difficulties despite the rantings of a few property owners.

Victorians came to accept that some form of recreational activity was desirable for all classes and that society had an obligation to ensure that the opportunities existed both in the sense of having time and facilities available. While attitudes towards working-class recreation and leisure shifted, they never completely relaxed. Peter Bailey designates the time from the 1840s to the 1860s as a "honeymoon" between the middle and working classes, during which the working class was appreciated for its good behaviour. But later the working man began to be viewed as overpaid, or as an 1873 article in the Saturday Review expressed it, as "rather tiresome and exasperating. He not only insists upon high wages, but demands leisure in order to spend his wages and enjoy his prosperity". The honeymoon soured when the middle classes faced economic

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<sup>61</sup>P.P. Report from the Select Committee on Royal Forests (Essex), 1863 (339), VI. 549, qq.1226-27, 1281, 1410-16, 1428-31.



difficulties and resented the gains made by their social inferiors. Only then did resentment of working-class free time grow.<sup>62</sup>

This resentment might fuel condemnations of types of behaviour but the Rubicon of accepting that the working class had a right to recreation had long been crossed. And while some workers displayed evidence of economic success, preservationists had a seemingly inexhaustible supply of undeserving poor to portray as needing open spaces for the sake of their health. But as commons came under protection schemes, middle-class guardians of morality wanted to ensure that standards of decorum were maintained. When their senses were assaulted by activities in parks or commons, they called for the imposition of more control in the form of tighter supervision or fences and gates. Later chapters examine how these reactions influenced the management of metropolitan commons.

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<sup>62</sup>Bailey Leisure and Class, pp. 103-4; Saturday Review, vol. 35 (22 February 1873), p. 244; Bailey, "Middle Class and the Problem of Leisure", p. 14.

## 1.7 Parks

The creation of parks rather than the preservation of commons was the initial Victorian response to the pressure for more open spaces. Critics like Strutt, Cobbett, or the Middlesex magistrate cited earlier might decry enclosures for robbing the people of their playing fields but during the first three or four decades of the century the growing metropolis had still to threaten many commons. When an open space was covered with buildings, the change was more likely to be celebrated as a sign of progress than mourned. There were local defences of particular commons and on occasion a dispute attracted wide attention, as events at Hampstead demonstrated in 1829. But conditions were not yet ripe for official measures to protect commons. All levels of government were wrestling with questions about their role in responding to urban crises and development. While open spaces were an item of growing importance on their agendas they had not become a major concern and there was little mention of commons. A campaign to preserve commons for the public by using common rights would not have been well received in the 1830s and 1840s when it would have been construed as an attack on private property. A call for the outright purchase of commons would have been dismissed as an improper use of government revenues. Furthermore, the greatest need for open spaces was often in areas ill-served by commons. To the extent that reformers and governments addressed the issue, their focus was on parks.

The first parks, however, failed to provide answers to those worried about the disappearance of football and cricket areas. They were not created as playgrounds for the people or as venues for the pursuit of "manly and spirited" exercises. Rather, they were tranquil surroundings for quiet walks and contemplation. In some cases the poor were decidedly unwelcome, and where they were permitted, it was hoped that they would derive moral sustenance from their visits. Indeed, the moral benefits of parks were among the strongest selling points made by their promoters, and Dyos's characterization of Victorian parks as "expressions of good manners" captures this desire.<sup>1</sup> They would never entirely lose this role for the Victorians but, fortunately, the range of morally acceptable behaviour widened over time.

Parks in the 1840s were often donations from philanthropists, but government involvement was already present. In fact, the government occasionally seemed ahead of the demand. The 1833 Select Committee on Public Walks, while expecting that private benefactors supported by voluntary subscriptions would generally be sufficient as a means to create new parks, acknowledged the need for government action if this source proved inadequate.<sup>2</sup> In 1837 Peel indicated that his administration would "not be indisposed to lend its aid" to places where the inhabitants had raised some money towards the

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<sup>1</sup>Dyos, Exploring the Urban Past, p. 61.

<sup>2</sup>Report from the Select Committee on Public Walks, p. 10.

provision of public recreation areas from their rates.<sup>3</sup> Three years later Westminster allocated £10,000 for the creation of parks but there was no rush to take advantage of the sum, £2000 of which remained unspent in 1858. Manchester had received £3000 and Bradford £1500.<sup>4</sup>

The earliest parks, designed as they were for gentle exercise such as walking or riding, were laid out with paths to give the best effect to natural features in arranged landscapes. They were, in some respects, private gardens adapted to larger numbers. This style led to the creation of arboreta or botanical gardens both of which had the added attraction of being educational.<sup>5</sup> Many of these developments took place outside of London, most notably in northern cities. Joseph Strutt (1765-1844), the first mayor of Derby under the Municipal Corporations Act, in one of the first moves of its kind, donated an eleven-acre arboretum to that city in 1840. Reacting against the prevailing sabbatarianism of his day, Strutt ensured that his gift would be open to all on Sundays.<sup>6</sup> This was an important precedent.

Birkenhead led the way in the judicious expenditure of public money. The park there was begun in 1843 when 226 acres were bought by the town's Improvement Commissioners. Of this,

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<sup>3</sup>H.C., 3 Hansard 37: 163-64, 9 March 1837.

<sup>4</sup>Cunningham, Leisure, p. 93; George F. Chadwick, The Park and the Town (London: The Architectural Press, 1966), p. 98.

<sup>5</sup>G. F. Chadwick, pp. 95-96.

<sup>6</sup>J. Allan Patmore, Land and Leisure (Newton Abbot: David and Charles, 1970), p. 34; G. F. Chadwick, p. 100.

125 acres were developed as the park while the rest was sold as building land. The park opened in 1847.<sup>7</sup> The action by the Commissioners was not entirely altruistic. For all the benefits the park brought to the poor, it also protected wealthy householders from an expanding working-class district.<sup>8</sup> This method of financing parks was not uncommon nor limited to governments. In Liverpool a fifty-acre park was created on a ninety-acre site by an individual who planned to recoup his outlay by selling the excess forty acres as building land.<sup>9</sup>

It was a policy pursued by the Metropolitan Board of Works for its Finsbury and Southwark Parks in the 1860s until very determined opposition by area residents compelled it to backtrack and devote the entire acreage to parkland. The Board also proposed it as a means to secure commons. It believed that most commons had areas which could be sold as building sites without seriously damaging their overall value.<sup>10</sup> In an era of cost-conscious government it is not difficult to see the attractions of this approach. Commons often seemed to be larger than necessary and although the costs of acquiring and maintaining them were less than the creation and care of parks, the money had to come from somewhere, usually the rates. Selling portions as building land in order to make schemes self-

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<sup>7</sup>Patmore, p. 34; Myerscough, p. II.

<sup>8</sup>Ashworth, p. 40.

<sup>9</sup>Cunningham, Leisure, p. 94.

<sup>10</sup>Second Report from the Select Committee on Open Spaces (Metropolis), q. 4299.

financing struck many as sensible. But inhabitants had no wish to see their beloved commons diminished and the Board was eventually forced to abandon the policy. The inclusion of the principle in the lord of the manor's plan for Wimbledon Common in 1864 was one of the features which drew the most heat from local residents.

Manchester played a pioneering role in the creation of parks. In his 1842 study, Edwin Chadwick had cited a report which spoke in gloomy terms of that city:

There are no public walks or places of recreation by which the thousands of labourers or families can relieve the tedium of their monotonous employment.... The prospect of obtaining any wide area to be appropriated as a public walk or otherwise for the use of the labouring classes, becomes more remote each year, as the value of land within and in the neighbourhood of the town increases.<sup>11</sup>

By 1846, however, Manchester had three new public parks, at a cost of £30,000 supplied by private donations bolstered by a £3000 grant from the Exchequer.<sup>12</sup> It was very much a case of direct action by the public overcoming government inertia. The following typifies the sort of appeal made:

The advantages of open public walks would to the operative be very great. What a delightful scene for contemplation is the group of the husband with his life's partner leaning on his arm, and his children prattling around, and asking strange and curious questions about every novel object! <sup>13</sup>

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<sup>11</sup>Edwin Chadwick, p. 336.

<sup>12</sup>Myerscough, p. 11; G. F. Chadwick, pp. 97-98.

<sup>13</sup>Cited by G. F. Chadwick, p. 98.

The image is one of sedate wholesomeness yet the parks at Manchester and Birkenhead were significant departures from earlier designs in that they set aside portions for playing games, the Manchester parks trying to accommodate every type. Planners were recognizing that public open spaces could support this type of activity. Paeans to the good results were not long in appearing: "It is certainly something to know that mechanics, glad of recreation, will play at ninepins, under an ungenial sky, in preference to indulging in the more seasonable attractions of the tap". Perhaps another observation that workers managed to combine their visits to the park with their traditional Sunday spell in the pub was closer to the mark.<sup>14</sup> But to the extent that middle-class voters believed that parks drew workers away from the pub, they were more willing to see government money used for their creation. The regularity with which this argument was put forward by open-spaces advocates suggests its sustained credibility.

The public park was thus coming into its own. Acknowledging that working-class enjoyments might to some extent be unique, planners occasionally directed their attention to how parks could satisfy these desires. Thus the provision for games at Manchester and Birkenhead was an example followed elsewhere. But the thinking often remained patronizing, as an 1852 publication by a garden architect from Edinburgh demonstrates:

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<sup>14</sup>Cited by G. F. Chadwick, p. 100; Gaskell, p. 490; Cunningham, Leisure p. 95.

It may be presumed, too, that the average taste of those who frequent suburban parks (we refer more particularly to the working classes) is not highly cultivated and severe, and consequently the expression of these localities need not be so quiet, nor the style so strictly in harmony with the character of the ground, as may be deemed necessary in the secluded retreats of men of much cultivation and refinement. The public park should be gay, though not glaring or obtrusively showy. Accordingly, we would admit into it a variety of terraces, statues, monuments, and water in all its forms of fountain, pond, and lake, wherever these can be introduced without violent and manifest incongruity.

In large parks, the author urged the necessity of a central focus, preferably a museum or gallery.<sup>15</sup> Visitors were not to be denied the opportunity for cultural enrichment.

Edwin Chadwick had praised London for its extensive parks which, he noted, provided wholesome pleasures.<sup>16</sup> But, as valuable as these were, their concentration in the West End provided limited accessibility to those who needed them most. The first important new park in London in the nineteenth century was Regent's Park, begun in 1811. St. James's Park, with its long history as a royal pleasure ground, was redesigned by Nash in 1828 as a public park, probably the first in England.<sup>17</sup>

Nash's original design for Regent's Park had envisaged many villas in a picturesque park-scape, a setting for the wealthy and a centre for the court. Nash expected the scheme to succeed because he knew that open space was a magnet to the upper

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<sup>15</sup>C. H. J. Smith, Parks and Pleasure Grounds, cited by G. F. Chadwick, p. 103.

<sup>16</sup>Edwin Chadwick, p. 336.

<sup>17</sup>Patmore, p. 33.



classes. He was correct: throughout the century the wealthy secured the most desirable locations with respect to parks and commons and it is no accident that the resident gentry of an area often led the movement for the preservation of its common. Before the park was completed, Nash's plans had been scaled down considerably, with most buildings being relegated to the outskirts. The park was surrounded on three sides by terraces, which one modern writer has described as the extremes of architecture conceived as scenery. Success along the lines Nash anticipated was undermined by the development of the area around Buckingham Palace as the centre of court life.<sup>18</sup> But the park was far from a failure. As early as 1827 it was described as the retreat of "happy, free-born sons of commerce, of the wealthy commonality of Britain, who thus enrich and bedeck the heart of their great empire".<sup>19</sup> It had not, however, been designed as a public park, and such a colony might well have expressed muted enthusiasm at best for public entry to their haven. Could the wealthy be persuaded to share their treasure?

It took until 1835 for the public to obtain access to parts of it (paying subscribers retained a monopoly on the remaining portions) and the early 1840s for it to be properly

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<sup>18</sup>John Summerson, The Life and Work of John Nash, Architect (Cambridge: The M.I.T. Press, 1980), pp 66-69, 126; David Watkin, The English Vision: The Picturesque in Architecture, Landscape and Garden Design (London: John Murray, 1982), pp. 181-89.

<sup>19</sup>James Elmes, Municipal Improvements, p. 21, cited by Ann Saunders, Regent's Park (Newton Abbot: David and Charles, 1969), p. 138.

opened to all.<sup>20</sup> An M.P. sponsored a motion to open it in order to "increase the sources of rational amusements" but withdrew it on the understanding that the Government would act. Opposition was expressed on behalf of those who had leased portions and been "guaranteed against the intrusion of the public and similar inconvenience". Additional opposition emanated from those who warned that extra police would be needed.<sup>21</sup> The Times supported the motion and proclaimed itself the "genuine" friend of the working class, pointing out that it had applied "unsparing censure" to the "practice of enclosing public lands in the neighbourhood of large cities". It went on to say that public feeling now accepted that the "operative classes" had the "liberty of taking a walk in the more plebian portions of the parks, provided they have a decent coat on". In April 1841, the Government announced that the contested portions of the park would be opened.<sup>22</sup>

The Report of the 1833 Select Committee on Public Walks had recommended that steps be taken to provide public walks in the east, south and north of the metropolis.<sup>23</sup> In the 1840s London began to see the results of an increasing willingness by government to play a part, generally in response to strong public pressure.

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<sup>20</sup>Saunders, pp. 146-47.

<sup>21</sup>H.C., 3 Hansard 57: 958-62, 20 April 1841.

<sup>22</sup>Times, 22 April 1841; H.C., 3 Hansard 57: 1166-67, 28 April 1841, cited by Bailey, Leisure and Class, p. 51.

<sup>23</sup>Report from the Select Committee on Public Walks, pp. 6-7.

One of the first places to benefit was Primrose Hill, a stretch of open space north of Regent's Park owned by Eton College. A 1797 publication had characterized the Hill as a "very fashionable" Sunday resort where citizens took their children "to eat their cakes and partake of a little country air". The area had also been used by the St. Pancras Volunteers.<sup>24</sup> These constant public activities provided no immunity for the site against designs by others.

Eton College announced plans to build over the Hill in 1829, the successful completion of which would take away "one of the lungs of the metropolis" according to a witness before the 1833 Select Committee. He could personally verify that the "humbler classes" had used the Hill for forty or fifty years.<sup>25</sup> This scheme seems to have been placed in abeyance and the next proposal to draw attention to the precariousness of the Hill's position involved turning part into a cemetery. As one critic wrote, the Hill had been "marked out for enclosure by some of the joint-stock 'suck-em-up' companies, for the purpose of being converted into a second-hand coffin manufactory, or something of that sort".<sup>26</sup>

<sup>24</sup>Modern Sabbath (1797), p. 49, cited by Warwick Wroth, Cremorne and the Later London Gardens (London: Elliot Stock, 1907), p. 39.

<sup>25</sup>Report from the Select Committee on Public Walks, qq. 31, 30; The OED lists an 1808 speech by William Windham against encroachments, in which he states "It was a saying of Lord Chatham, that the parks were the lungs of London", as the first modern use of lungs for open spaces.

<sup>26</sup>Brown, p. 73; [John Fisher Murray], "The Lungs of London", Blackwood, 46 (August 1839), p. 215.

The radical M.P., Joseph Hume, an active campaigner for parks, was instrumental in stopping this scheme and turning the Hill into a public open space in 1842. The Government paid Eton College £20,236 for it in the form of Crown land at Eton worth £15,112 plus cash.<sup>27</sup> This was one of the first infusions of government money into London for public open spaces, a precedent reformers were quick to build upon. In 1848 the Government constructed an open-air gymnasium which was soon "crowded with youths and boys" during the summer.<sup>28</sup>

Hume was also involved in the steps leading to the formation of Victoria Park in the Hackney area of the metropolis. A public meeting was held in June 1840 and, boosted by a petition to the Queen with 30,000 names, plans proceeded.<sup>29</sup> No opposition was offered when the enabling bill went through Parliament in 1842. The original hope of creating an eastern parallel to Regent's Park failed as no fashionable residential area was developed. Like Battersea Park soon after, the site chosen was an undesirable area--in this case Bonner's Fields--which the

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<sup>27</sup>Brown, p. 73; Albert Fein, "Victoria Park: Its Origins and History", East London Papers, 5, 2 (1962), p. 80; P.P. Return of all Parks or Grounds formed or added to, at the Public Expense within the Metropolitan District since the Year 1830 to the present Time, 1854 (408), XVII. 340.

<sup>28</sup>McIntosh, p. 82; Godwin, p. 93.

<sup>29</sup>G. F. Chadwick, p. 112.

park was expected to transform.<sup>30</sup> That the park was needed is evidenced by the fact that some 20,000 people visited it during one day in 1846 although it was still unfinished. Construction, begun in 1844, was designed to alleviate local unemployment.<sup>31</sup>

In the years following the opening of the park, optimistic examples of its role in improving behaviour appeared in the Times:

Now, when it is known that there have been planted in various parts of the park roses and other flowers of various kinds entirely unprotected, and that in only one solitary instance throughout the summer has a rose or flower of any kind been either plucked or injured, this fact alone is sufficient to refute the unjust aspersion that the poorer classes are not to be trusted in public places without the dread of the police before their eyes. The principal good, however, which the formation of the park has effected is in the inducement it holds out to the artisan and labourer to benefit their own health and that of their families by inhaling the fresh air at least once a week, at a distance from their own confined and wretched habitations .... Many a man whom I was accustomed to see passing the Sunday in utter idleness, smoking at his door in his shirt sleeves, unwashed and unshaven, now dresses himself as neatly and cleanly as he is able, and with his wife or children is seen walking in the park on the Sunday evening.

Formerly the whole neighbourhood was terrified in the early part of every week by weavers and others hunting bullocks through the streets, but now that a park has been made for them and rational amusements provided they are much altered for the better.<sup>32</sup>

<sup>30</sup>Fein suggests that Charles Shaw Lefevre, the Speaker of the House of Commons and uncle of George John Shaw Lefevre, profited by the sale of his property in the area for which he received a higher price than any of the other owners. Fein, p. 83.

<sup>31</sup>G. F. Chadwick, pp. 112, 121-22; Fein, pp. 76, 80-83.

<sup>32</sup>Times, 7 September 1847, 11 September 1851.

Slaney called Victoria Park an "inestimable boon to the inhabitants of the east end of London" but he also noted that it was "extremely well managed", perhaps the key to middle-class acceptance.<sup>33</sup> These observations on the benefits of the park were already clichés when uttered but variations on them would be repeated many more times.

Battersea Park was the second major London park which the Government undertook, although some members of the Commons, Disraeli for one, demurred over government activity in this realm.<sup>34</sup> The park was approved with the passage of the Metropolitan Improvement Act of 1846 which provided £104,903 for the purchase of land. Local support came from the vestry of Battersea which wanted Battersea Fields cleaned up.<sup>35</sup> In the end the park cost some £316,000. Much of this went to property owners who had made claims for compensation totalling over £530,000. Eventually they settled for £232,687.<sup>36</sup> It was not until February 1854 that work actually got underway on the 200-acre park which was opened in 1857.<sup>37</sup>

Common rights existed over Battersea Fields but these were extinguished without protest by an Act of Parliament

<sup>33</sup>H.C., 3 Hansard 158: 1289, 15 May 1860.

<sup>34</sup>G. F. Chadwick, p. 111.

<sup>35</sup>Janet Roebuck, Urban Development in Nineteenth Century London: Lambeth, Battersea and Wandsworth, 1838-1888 (London and Chichester: Phillimore and Company Limited, 1979), p. 46.

<sup>36</sup>Times, 24 December 1851, 26 December 1857.

<sup>37</sup>Times, 4 July 1855; G. F. Chadwick, pp. 135-29.

passed in August 1853. A sum of £1500 was deemed sufficient compensation and was paid to the churchwardens of St. Mary's, Battersea, to await the Vestry's decision on how to distribute it.<sup>38</sup>

There seems to have been general agreement that the Fields needed something to redeem them. Reminiscing at the century's close Walter Besant "shivered" when he remembered the Battersea Fields of his youth: they were "low, flat, damp, and ... treeless ... at no time of the year would the Battersea Fields look anything but dreary".<sup>39</sup> But the habitués of the five or six hundred acres, more than the landscape, were responsible for the reputation of the Fields. When the Times looked back from 1857 it noted that the

degraded condition of the inhabitants, the Sunday evening fairs, which outraged every sense of decency, the poisonous trades carried on in all directions, soon pointed out the fields as the future moral and physical plague spot of the metropolis.<sup>40</sup>

A clergyman described the Sunday fairs as surpassing "Sodom and Gomorrah in ungodliness and abomination".<sup>41</sup> They were suppressed in May 1852 as the park began to take shape and the patrons dispersed to other areas.

The park was a success. Later in the century it was dubbed the "great Sunday lounge of various subdivisions in the

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<sup>38</sup>16 & 17 Vict., c. 47; Times, 10 August 1853.

<sup>39</sup>Besant, South London, p. 303.

<sup>40</sup>Times, 26 December 1857.

<sup>41</sup>Wroth, pp. 73-74.

community, from the head clerk down to the junior porter" and Besant called it "the most beautiful of all our Parks". Another observer was less kind, labelling it "trim, tame and monotonous".<sup>42</sup> Overall the park retained respectability; in 1895 it was the place to ride a bicycle.<sup>43</sup>

One of the fundamental differences between commons and parks (before the former came under regulating authorities in the second half of the century) was that parks were more amenable to supervision. M. J. Daunton calls them "moral enclaves" decked out with "railings, keepers and bye-laws" to indicate the boundaries of acceptable behaviour. Indoors and outdoors the Victorian middle class was redefining public and private space with specific areas being set aside for particular activities.<sup>44</sup> Open spaces such as unregulated commons were one of the last areas to succumb to this reordering. They often attracted the type of characters people thought beyond reforming and whom they wished to see disappear. The presence of gypsies, tramps, criminals, dirty children or animals was a major reason why local inhabitants initiated measures to clean up commons or places like Battersea Fields. Preservationists were often as

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<sup>42</sup>T. H. S. Escott, England: Its People, Polity and Pursuits, new and revised edition (London: Chapman and Hall, 1885), p. 540; Besant, South London, p. 304; Fitzgerald, p. 222.

<sup>43</sup>David Rubenstein, "Cycling in the 1890s", Victorian Studies, 21 (1979), p. 49.

<sup>44</sup>M. J. Daunton, House and Home in the Victorian City. Working Class Housing 1850-1914 (London: Edward Arnold, 1983), pp. 13-14; "Experts and the Environment: Approaches to Planning History", Journal of Urban History, 9 (1983), 243.



motivated to rescue their commons from the moral abyss as from encroachers.

Parks were not, of course, impenetrable moral enclaves nor were vast expanses of open lawn sufficient to pacify all who visited them. No sooner had magistrates ended the fairs on Battersea Fields than a correspondent to the Times wrote that the suppression of "Sunday amusements" there was responsible for the appearance of "low blackguards" at Greenwich, making it impossible for any "respectable person [to] pass through the park".<sup>45</sup> The difficulty of patrolling large parks ensured a steady trickle of complaints about the laxity of control. In 1847 a correspondent wrote of Hyde Park:

It is now proved beyond a doubt that any blackguard may insult, attack, and rob you with perfect impunity, unless you can induce him to wait patiently whilst you scour the park in search of a policeman to take possession of him.<sup>46</sup>

In nearby Green Park a man was attacked and wounded in the thigh and again found the lack of police alarming.<sup>47</sup> Ruffians assaulted a woman whose two male companions had momentarily been separated from her on a Sunday evening in Greenwich Park. They "rescued" her only to witness a similar attack on another woman shortly after.<sup>48</sup>

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<sup>45</sup>Times, 24 May 1852.

<sup>46</sup>Times, 7 August 1847.

<sup>47</sup>Times, 22 November 1850.

<sup>48</sup>Times, 17 July 1850; see also 18 February 1851, 15 March 1855.

These types of incidents were never used to refute the desirability of parks but merely to demand tighter regulation of them. Battersea and Victoria were the beginnings--albeit on a grand scale--of park construction in London, not the culmination. In the 1840s and 1850s, parks remained the solution to the lack of open spaces and few people gave much thought to the preservation of commons.

In one rare instance a common changed its status. Kennington Common was made into a twenty-acre park by an Act of Parliament in 1852. The common was part of the Duchy of Cornwall estate and had been the principal site for executions in Surrey until the early nineteenth century. Construction of a new road in 1818, and a church in 1822, had reduced its size somewhat.<sup>49</sup> As was true on other commons, the social graces of some of the people who frequented Kennington left something to be desired. This was one reason why the Builder had suggested that it could become a "great ornament to the southern half of the metropolis, if it were laid out on a similar principle to the enclosure in St. James's Park". A park also had the advantage of being less hospitable to demonstrations on the threatened scale of the Chartists in 1848.<sup>50</sup>

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<sup>49</sup>The London Encyclopaedia, p. 422.

<sup>50</sup>Times, 27 January 1849; Creating a park seemed to shift a problem not solve it. According to witnesses before the 1865 Select Committee on Open Spaces the creation of a park at Kennington had caused the migration of the undesirables who used to congregate there to Clapham Common. Second Report from the Select Committee on Open Spaces (Metropolis), qq. 3610, 3635-36.

As early as 1833 the report of the Select Committee on Public Walks, disturbed by the dearth of open space in Lambeth and Southwark, had suggested creating a public walk around the perimeter of the common (so as not to interfere with pasturage). Although the common was unenclosed and used by the public for walking and playing cricket, there were still recognized commoners who kept livestock on it. It is indicative of the thinking of this period that the Committee thought in terms of a constructed walk that could be used in all types of weather (the grass was too wet in winter for comfortable crossings). There was no suggestion that the commoners be bought out and the area dedicated exclusively to the public.<sup>51</sup> In 1843 plans were drawn up for an Albert Park to encompass the common and surrounding land, but these were abandoned and a smaller plan adopted. George Chadwick characterizes the design of the park that was constructed as quite "undistinguished". However pedestrian in appearance, the park served its purposes in an area not overly endowed with open spaces.<sup>52</sup>

At the same time as Kennington Park was being considered, proposals were put forth for a 300-acre park to be

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<sup>51</sup>Report from the Select Committee on Public Walks, p. 7; qq. 167-81, 254.

<sup>52</sup>Times, 25 June 1852; G. F. Chadwick, p. 132; Victorian, Battersea and Kennington Parks were maintained by the state until 1887 when rumblings from the countryside about money being lavished on London compelled the Government to turn them over to the Metropolitan Board of Works. London Parks and Works Act, 1887, 50 & 51 Vict. c. 34; Report of the Metropolitan Board of Works for 1887, pp. 21-24; Report of the Metropolitan Board of Works for 1888, pp. 36-37.

situated in the fields at Highbury and Islington. One of the arguments made in its favour was that the eastern part of the metropolis had received Victoria Park, the south, Battersea Park (not yet completed), leaving only the north to fulfil the recommendations of the 1833 Select Committee on Public Walks, interesting proof that this Committee's work continued to reverberate. (The West End was redeemed by its Royal Parks.) Slaney, himself, had continued to remind governments of the need for additional parks in the capital.<sup>53</sup> This project, which inherited the appellation Albert Park, was not destined to be one of them. Lack of enthusiasm among officials, plus two changes of government, left promoters unable to proceed and the area was built over.<sup>54</sup>

As partial compensation for the loss of Albert Park, the north was given Finsbury Park, authorized in 1857 and completed by the Metropolitan Board of Works in 1869 at a cost of £95,000. The 120-acre park was not really in the same area at all. (Southwark Park on the other side of the river was opened at the same time at a cost of £97,000.) The delay between the dates of approval and completion was caused by the decision of the Government not to contribute £50,000 it had originally hinted would be forthcoming. The Board, therefore, had to come up with the money from the rates at a time when such uses for local

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<sup>53</sup>Richards, p. 98.

<sup>54</sup>G. F. Chadwick, pp. 132-34; Zwart, p. 139; P.P. Copies of all memorials and correspondence with Her Majesty's Government relative to formation of a public park in the northern portion of the metropolis, from the year 1848 to the present time. 1854 (408), LXVII. 339.

taxation were not widely accepted. Even as the idea was gaining ground that the provision of open spaces was a local responsibility, there was far from unanimity over the best means to achieve this. The decision by the Board to go ahead with Finsbury and Southwark parks had to be made in the face of competing demands for the money, notably from those desiring that the Board purchase Hampstead Heath.

London received more parks in the second half of the century as did many other towns in Britain, when local authorities and industrial employers became more willing to spend money on their acquisition. For residents of Islington who felt that Finsbury Park was somewhat distant, and therefore an inadequate compensation for the failure of Albert Park, relief had to wait until the 1880s when the twenty-seven acres of Highbury Fields were bought for £60,000, the amount being shared by the Metropolitan Board and the Islington Vestry. The final cost came closer to £70,000, but the willingness of Islington to bear half the costs was welcomed by the Times as a useful precedent for the future.<sup>55</sup> As it was impossible to supply every district equally with parks and open spaces, residents of localities with more direct access to them should be willing to shoulder slightly more of the cost.

In the closing decades of the century parks were often established as civic embellishments. This attitudinal change reflected the broader social concerns of local councils after

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<sup>55</sup>Times, 30 January 1886; Zwart, pp. 139-40. In late 1891, the London County Council acquired two additional acres, aided by the Vestry and private donations. Times, 9 December 1891.

basic sanitary reforms had been carried out. It was also linked with increasing civic pride and a competitiveness among towns and cities. Although these trends were most strongly associated with Chamberlain's "Civic Gospel", they influenced councils of all political stripes. Lacking the financial muscle to improve housing significantly or to tackle other capital-intensive projects, municipalities concentrated on providing amenities such as parks, libraries, or swimming baths, hoping thereby to enrich the cultural milieu for all citizens.<sup>56</sup> A newspaper in 1895 recognized this:

The larger provincial towns are ... laying out parks and playgrounds using in fact municipal funds to increase the pleasure and health of the community.... [T]he future of life in large cities may be contemplated with the assurance that it will be brighter, sweeter and more appreciative of the necessities of modern life and more anxious to adopt improvements that will add to the happiness of the communities they represent.<sup>57</sup>

But as Cunningham points out, parks provided by municipalities or from the pockets of philanthropists had some drawbacks. They were liable to be located in the wealthier sections of towns and to be built on a grand scale. He cites the views concerning Victoria Park of a Middlesex magistrate who would have

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<sup>56</sup>H. E. Meller, "Cultural Provisions for the Working Classes in Urban Britain in the Second Half of the Nineteenth Century", Bulletin for the Study of Labour History, 17 (1968), pp. 18-19; Meller, Leisure and the Changing City, 1870-1914 (London: Routledge and Kegan Paul, 1976), pp. 8-10, 112; Joyce, p. 169; Ashworth, p. 110.

<sup>57</sup>Western Daily Press, 11 March 1895, cited by Derek Fraser, Power and Authority in the Victorian City (Oxford: Basil Blackwell, 1979), pp. 169-70.

preferred to see a series of four- or five-acre squares in districts where the need was greatest. A large park could not supply the recreational needs of persons who lived an inconvenient distance from it, particularly children.<sup>58</sup> This perception drove the work of organizations such as the Kyrle Society, led by Octavia Hill's sister Miranda, and the Metropolitan Public Gardens Association which were determined to bring playgrounds and small open spaces to overcrowded neighbourhoods.

The establishment of parks was an important prelude to the preservation of commons. The process helped governments to appreciate their pivotal role in creating amenities in cities; they could not rely solely on individual generosity to fulfil expanding needs and wants. Preservationists used this involvement by government as a double-edged weapon. On one hand, they recognized that authorities now felt some obligation to participate in programs affecting the environment. On the other, they realized that securing money from government was an uphill struggle, with many interests competing. The trump-card of those in the Commons Preservation Society's camp was that commons could be protected very cheaply. Quality open spaces could be had without repeating the large expenditures needed for Battersea and Victoria parks.

Parks also provided opportunities for the relief of middle-class anxieties about working-class behaviour on open spaces. Although there were excessive rules and regulations over

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<sup>58</sup>Cunningham, Leisure, pp. 95-96; Godwin, pp. 92-93.

many parks--a phenomenon that would be repeated to some extent on commons--it was apparent that people could visit these places without causing damage. In fact the rational recreationists, whose programs generally failed to re-shape the working class, can be given much of the credit for the creation of parks during these years.<sup>59</sup> The working class did not emulate its social superiors on these parks but its behaviour was such that by the time preservationism flowered it was not met by alarmist fears that commons would be ruined by the very people they were supposed to help. The experience with parks had proven otherwise.

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<sup>59</sup>Golby and Purdue, p. 103.



## 1.8 Local Government

The preceding chapters have described some of the conditions that contributed to the emergence of preservationism in the nineteenth century. They have indicated that this was a middle-class movement although its goals were seconded by significant sections of the working class. Middle-class participants deliberately masked their aims by making their appeals on behalf of the poor. When the Commons Preservation Society was formed in 1865, one of its express intentions was to save metropolitan commons for the lower classes. In a short time it became the most influential voice on matters respecting commons. Much of its initial energies were devoted to securing legislation that would facilitate the creation of schemes for their management. Its founders expected that their goals could be achieved with little cost to the ratepayers by using common rights to prevent irresponsible actions by lords or others. The public and commoners would then be able to enjoy the commons. But while Westminster might be the source of enabling legislation, and of Acts confirming schemes for particular commons, it would not oversee the management of them. At some point in the process, local government had a part to play.

The term "preservationists" includes the radical and not-so-radical M.Ps, members of the gentry, reformers, and neighbourhood activists who joined the Commons Preservation Society but it also embraces those who were caught up in the issue from other perspectives: the working-class Commons

Protection League; its supporters who joined in demonstrations; people who signed petitions or wrote letters to newspapers but did little else and, not least, those who sat on local government. Much of the remaining part of this thesis is an examination of the response of this level of government to the demands of preservationists. It focuses primarily on the Metropolitan Board of Works and, to a lesser extent, on district boards and vestries.

The structure of local government in metropolitan London was far from simple. In the City itself there was the Corporation; elsewhere there were vestries and district boards of works. For most of the period under discussion the Metropolitan Board of Works provided the closest approximation to a London-wide administration. The Board was one of the villains in the eyes of the Commons Preservation Society and in Shaw Lefevre's account of the movement. It was condemned for its willingness to pay what seemed like excessive amounts to buy up the rights of lords of the manor and others with interests in commons. By and large, Shaw Lefevre ignores the Board, giving virtually no details about its methods of acquiring and managing commons. As a result a very substantial part of the story of these open spaces is missed.

Shaw Lefevre should not be faulted too much; he was fiercely partisan and, from where he stood, the Board easily appeared to be too lethargic and unresponsive. It evinced a more pragmatic approach to the acquisition of commons despite attempts by the Society to sway its thinking, and many of its members were openly suspicious of any strategy which appeared

to infringe upon property rights. A preoccupation with restraining expenditures, an initial unfamiliarity with the complexities of commons, the conflicting viewpoints of its members, and the higher profiles of other projects combined to rob the Board of decisiveness and speed. Yet, as later chapters will make clear, the Society and the Board forged an interdependent relationship: each contributed distinctive features to the process of saving commons and to the final result.

The Board came into existence as a result of the Metropolis Local Management Act of 1855.<sup>1</sup> Its primary purpose was to construct a network of sewers, and for this reason the 74,000 acres of its jurisdiction were determined by the Registrar-General's statistics on mortality. But other duties were included from the beginning, and subsequent legislation continued to extend its mandate. In 1856 an amending Act gave the Board the authority to apply to Parliament "for the purpose of providing parks, pleasure grounds, places of recreation, and open spaces for the improvement of the metropolis or the public benefit of the inhabitants thereof".<sup>2</sup> This Act gave the Board a philosophic interest in commons rather than an active role, but it was the springboard for future action. Members could no longer turn away deputations with the excuse that open spaces were outside of their purview.

The Act establishing the Board was a rebuke to the centralizing philosophy of Edwin Chadwick. The Board was an

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<sup>1</sup>18 & 19 Vict. c. 120.

<sup>2</sup>19 & 20 Vict. c. 112, s. 10.

indirectly elected body of forty-five members chosen by the City of London, and the vestries and district boards. Vestries in the London region, in the absence of superior authorities, had continued to thrive in the nineteenth century, though not always as models of efficiency.<sup>3</sup> The 1855 Act made select vestries standard throughout the metropolis although it did nothing to alter their boundaries. The six largest were entitled to elect two members to the Metropolitan Board while sixteen sent one member. The other vestries were grouped for the purpose of forming district boards which each sent one representative. The constituent vestries of these district boards continued to exist. The City sent three members.<sup>4</sup> Members of the Board served three-year terms, with one-third retiring each year. In fact, the same members were often re-appointed by their districts.

The composition of the Board precluded its generating much in the way of civic spirit as parochial interests tended to dominate. The vestries were often corrupt and could be obstructionist.<sup>5</sup> Members were extremely sensitive to any measure that increased the rates which, in London, were paid by

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<sup>3</sup>J. P. D. Dunbabin, "British Local Government Reform: the Nineteenth Century and After", English Historical Review, 92 (1977), p. 781.

<sup>4</sup>William A. Robson, The Government and Misgovernment of London, second edition (London: George Allen and Unwin, 1948), pp. 57-58; Asa Briggs, Victorian Cities, second edition (Penguin Books, 1968), pp. 30, 321-23; David Owen, The Government of Victorian London, 1855-1889 (Cambridge: Harvard University Press, Belknap Press, 1982), pp. 36-37.

<sup>5</sup>Owen, p. 296; Briggs, Victorian Cities, p. 323; Robson, p. 68; Finer, p. 502.

the occupiers of households. This, as contemporaries noted, made the Board necessarily timid.<sup>6</sup> One critic described the membership of local government councils as largely made up of second- and third-class tradesmen and publicans, types not renowned for their visionary approach to urban issues. Although he thought the Board had marginally more virtue than the City Corporation (often attacked for its opposition to reform), the endless jealousies between the two bodies wasted tens of thousands of pounds.<sup>7</sup> Lack of harmony was particularly manifest during the efforts to secure Epping Forest for the public.

The Board exited from the metropolitan stage in 1889 under a cloud of scandal originating in the Superintending Architect's department. It never achieved much popularity except when certain of its projects, most notably the Victoria Embankment, were completed. As David Owen observed, it handled public relations "abominably".<sup>8</sup> Until recently, historians have generally been slow to revise this negative impression. More balanced studies, like that by Owen, have been more generous with praise.

If its administration of commons and parks contains few moments of glory, equally it reveals few of shame. The Board

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<sup>6</sup>See testimony by the Board's Chairman before the Select Committee on Open Spaces. Second Report from the Select Committee on Open Spaces (Metropolis), qq. 4259-61, 4365-73; Owen, p. 38; "The Government of London", Westminster Review, n.s. 49 (June 1876), p. 109.

<sup>7</sup>"The Corporation of London and Metropolitan Government", New Quarterly Magazine, n.s. 2 (July 1879), pp. 143, 147.

<sup>8</sup>Owen, p. 170.

pursued a plodding middle course. With commons in particular, it was faced with a new situation and, although it managed to balance the competing demands made upon it reasonably well, there were rough seas to cross before port was reached. As a result of ambiguities in the legislation that gave the Board authority over commons, it became embroiled in some lengthy and vexatious disputes over rights. Various interests in a community had conflicting opinions as to how their common should be administered and the Board had to adjudicate upon these. There was never a shortage of critics over any step the Board made. Nonetheless, the final results were impressive. By its demise in 1889, 2603 acres of open spaces were under the Board's management of which just under 1820 acres were commons. In addition, 265 acres of Parliament Hill, the Hampstead Heath Extension, were about to be dedicated to the public.<sup>9</sup>

Not surprisingly, the Board usually had to be pushed into taking action; it rarely led. Even before the 1856 amendment confirmed that parks and commons were its responsibility, pressure was being applied to do something about Hampstead Heath. At the same time, groups in Islington and Bermondsey were calling for the creation of parks in their districts. The Board's response is detailed in subsequent chapters. An expanded role in this regard was heralded by the 1866 Metropolitan Commons Act which made the Board the local authority for schemes for metropolitan commons. Reacting to the growing importance of the issue the Board had, in 1863, already ordered

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<sup>9</sup>Report of the Metropolitan Board of Works for 1888, pp. 36-37.

its Superintending Architect to compile a report showing all the open spaces within its boundaries. That same year the Board had been given a locus standi which enabled it to be heard on railway bills affecting the metropolis.<sup>10</sup> Although primarily intended to minimize interference with drainage works, the move allowed the Board to oppose projects which threatened open spaces. In addition, the Board's chairman, John Thwaites, had testified before the 1865 Select Committee on Open Spaces and had enunciated the policy of selling portions of commons to recover the costs of their acquisition. In some respects the Board was eager to assume a role in this area. It certainly did not want to abdicate in favour of another authority. Yet once granted power, the Board failed to impress some observers that it used it wisely or avidly.

Until 1869 the Board's Works and General Purposes Committee, its committee-of-the-whole, transacted most business dealing with parks and open spaces. But as applications for schemes for commons began to mount, the Board wisely adopted a proposal (by 26 to 5) to establish a Parks, Commons, and Open Spaces Committee of fifteen members. The Committee lasted the remaining twenty years of the Board's existence, met an average of twenty-five times a year (including special meetings and viewings), and had an average attendance of eight per meeting.<sup>11</sup> Its decisions were generally accepted by the full

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<sup>10</sup>David Johnson, "Parliament and the Railways of London in 1863", London Topographical Record, 24 (1980), p. 156.

<sup>11</sup>Owen, p. 42; MBW, *passim*.

Board without debate. Membership of the Committee, like that of the Board itself, was remarkably stable. Three members survived the entire period, including John Runtz from Hackney. Another long-serving member was Philip Hemery Le Breton, from Hampstead, who reaped much of the credit for saving Hampstead Heath. The Committee worked closely with the Solicitor's and Superintending Architect's departments. The legal complexities of common rights made sound legal advice imperative, and by and large, William Wyke Smith provided it. He was described by the Metropolitan after his death in 1878 as a "zealous public servant [whose] most conspicuous quality was caution".<sup>12</sup> This caution was evident in the guidance he offered the Committee but his attitude was not supine. He generally urged the Board to challenge people who seemed to be overstepping their rights or acting without any. Furthermore, he was sympathetic to many of the views held by the Commons Preservation Society even when he believed the Board should pursue an independent course.

When dealing with commons, the Board listened to advice from the relevant district boards and vestries, which, being the level of government closest to an area's residents, had to react to their concerns. But it was not always easy for a member of the Metropolitan Board to persuade his colleagues that a matter of importance in his parish deserved wider attention. When frustrated by the Board's slow progress on specific matters, these local bodies' ability to act was hampered by the statutory limitations they faced with respect to open spaces. Generally

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<sup>12</sup>27 July 1878, p. 478, cited by Owen, p. 374, n. 43.



they had authority over public footpaths across commons but none over the land itself. The 1856 Act giving the Board responsibility in this area gave local boards and vestries the right to accept by agreement or gift any common or any interest over a common for the purpose of keeping it open for the public but they were not to use the rates to acquire these. Once in possession, they could use the rates to maintain and improve the sites.<sup>13</sup> These restrictions loosened over time and local authorities became particularly interested in smaller open spaces. Both the Fulham Vestry and the Hackney District Board of Works became engaged in protracted disputes over lammas lands. A trend developed whereby these authorities cooperated financially with the Metropolitan Board in the acquisition of areas for small parks, or the laying out of greens.

Most district boards created their own open spaces committees during the 1870s but their role in the greater struggle for commons was more consultative than direct. They provided the means by which the Metropolitan Board of Works could apprise itself of community attitudes and they could prod the Board to take specific actions, or refrain from others. But the central Board was the main government player in the matter of commons. The acquisition of a site was only the first step; the Board had to administer the common as well. As this thesis makes clear, the laudable results of the Board's policies were not achieved without considerable difficulty.

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<sup>13</sup>19 & 20 Vict. c. 112, s. 11.

## **Part Two: Commons Under Attack**

## 2.1 Hampstead Heath: An Early Conflict

Although reformers in the first half of the nineteenth century were making cogent arguments for parks and were lamenting the disappearance of open spaces, a metropolitan or national movement to preserve commons did not appear until the 1860s. People might band together to oppose encroachments or enclosures on their local commons and occasionally triumph, but, equally, losses of all or parts of other commons would cause little furore. As yet, it was premature for people to be thinking about a coordinated campaign to protect these. The expanding metropolis was only beginning to lap ominously at some of the more remote commons, particularly those in the south west. It was the perception later in the century that these were in danger that helped spawn organized efforts on their behalf. Thus the realization in 1864 that London's rapid growth would soon alter Wimbledon led the lord of the manor, Earl Spencer, to devise a plan for its common. Enough influential residents objected to his plan and one of the first important battles over metropolitan commons was joined.<sup>1</sup>

While most early struggles remained parochial, there was an important exception. The controversy over Hampstead Heath had a wider impact, spilling into Parliament, and influencing the open-spaces debates of the second half of the century. The dispute began in 1829 when the lord of the manor submitted an estate bill to Parliament that aroused misgivings in some quarters. In relatively short order, these escalated to the

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<sup>1</sup>See chapter 2.4 for an account of Wimbledon.

point where the Heath became a metropolitan issue, a status it retained over the next four decades. Preservationists have viewed this dispute in classic terms: a grasping lord of the manor stymied by their selfless efforts. This interpretation has been challenged by at least one modern historian, F. M. L. Thompson, but it has its supporters too. However one would characterize the two sides in the dispute over the Heath, there is no doubt that their struggle was both intense and bitter.

Not all commons came under protective schemes accompanied by the animosity present at Hampstead. But despite the unique aspects of the Heath struggle, it displayed facets that would be present elsewhere. Defenders of the Heath were not slow to appreciate the advantage of presenting their case as something contributing to the public good. Private interests were best kept in the background. Later preservationists, such as those in the Commons Preservation Society, would adhere to the lessons learned at Hampstead when they framed their message for the public.

The theme of the public good was attractive to politicians who were drawn into the issue. That much of the affair took place in Parliament was most important. There could be no successful preservationist movement without strong support in the legislature and the Heath question provided a rehearsal for later debates. It also revealed Parliament's reluctance to become too involved in something that might require a financial commitment. The cost of acquiring commons was one stumbling block at Hampstead that would reappear

throughout the metropolis; a second and related issue was who should pay. If government largess was favoured over voluntary contributions, from which level would it flow: the parochial, the metropolitan, or the national? Arguments were made for each. In 1871 the Metropolitan Board of Works finally purchased the manorial rights over the 240-acre Heath, the first in a series of steps that would culminate in today's expanse of over 800 acres. The progress of subsequent additions can be viewed on the map on the next page. It is the early history of the struggle that is of interest here.

The 240 acres of the Heath proper were part of a much wider expanse of open land and it was not always clear where the Heath ended and the adjoining land began. In previous centuries, the Heath itself was much larger. Because most freehold land was restricted to agricultural use by the intricacies of family settlements, much of the building in eighteenth- and nineteenth-century Hampstead took place on land carved out of it. Land was also taken to add to individual holdings. A particularly intensive period of enclosures between 1690 and 1734 reduced the Heath by a quarter.<sup>2</sup>

Hampstead itself was a unique London suburb. In the early eighteenth century the waters of Hampstead Wells became the focus for fashionable society; after initial success, the tone declined somewhat. The Heath both gave shelter to criminals and

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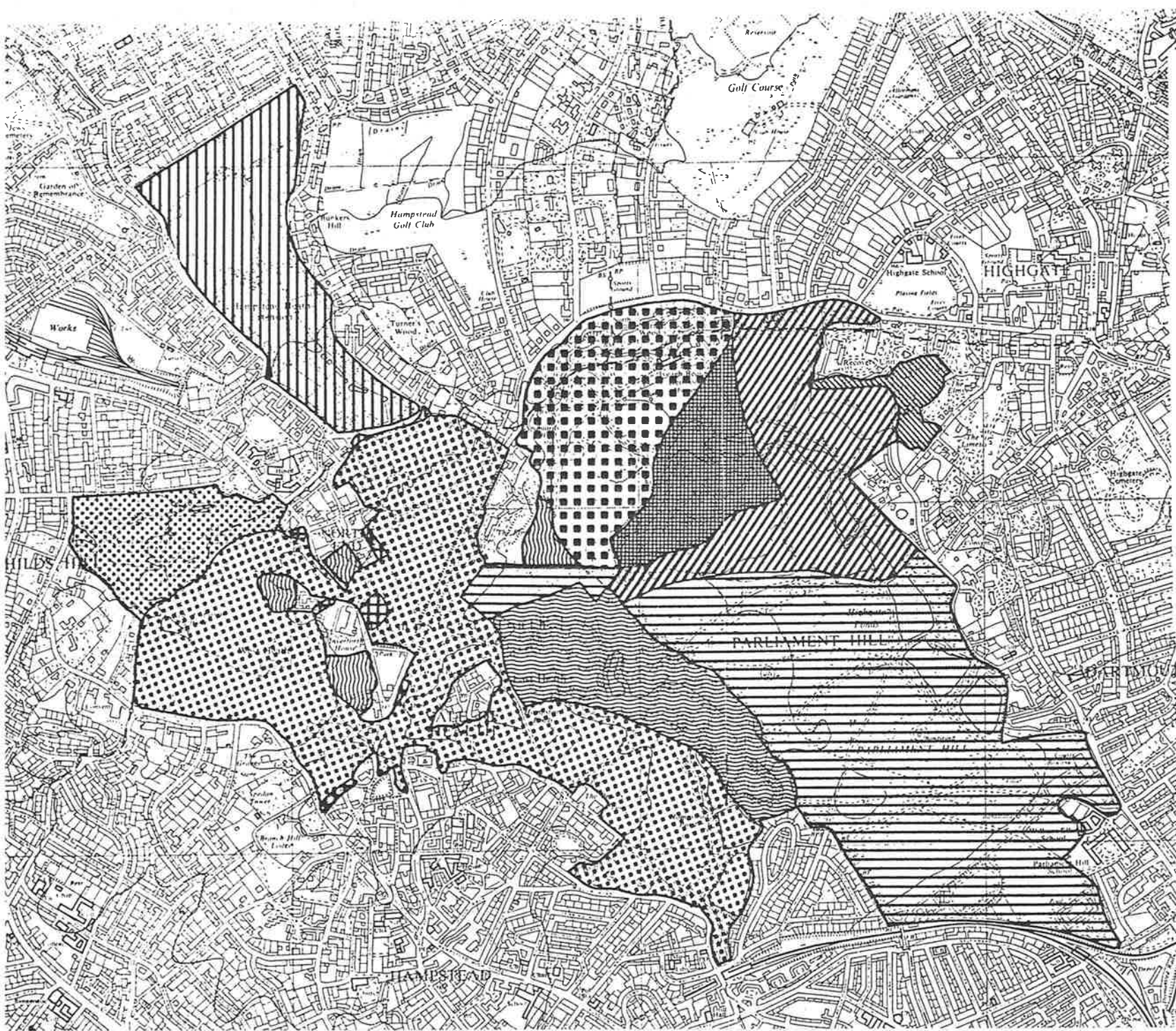
<sup>2</sup>Chambers, "Hampstead Heath Survey, 1680", p. 20; F. M. L. Thompson, Hampstead. Building a Borough, 1650-1964 (London: Routledge and Kegan Paul, 1974), pp. 13-14.

provided the scene for their last moments judging from this grisly verse from 1700:












Often upon Hampstead Heath  
We've seen a felon, long since put to death  
Hang, crackling in the sun his parchment skin,  
Which to his ear had shrivelled up his chin.<sup>3</sup>

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<sup>3</sup>The Handy History of Hampstead Heath and its Worthies (London: H. Haigh Hartley, 1899), p. 5.



# The Heath Expands 1871-1971

- 1871 The Heath 
- 1889 East Park Estate 
- 1889 Parliament Hill  
Parliament Fields  
The Elms Estate } 
- 1895 Golders Hill 
- 1907 The Extension 
- 1923 Kenwood Fields 
- 1924 Kenwood-South Wood 
- 1928 Iveagh Bequest 
- 1871-1945 Small Additions 
- 1945-1971 Small Additions 
- Restrictive Covenants 

Ikin, Hampstead Heath  
Centenary, pp. 12-13.

Hampstead was the home of the professional and mercantile middle class and maintained its high status throughout the nineteenth century. In 1911, for example, Hampstead households employed more servants than any other suburb.<sup>4</sup> Its elevation worked against the introduction of horse-drawn public transport which might have encouraged less wealthy residents. It was no mere coincidence that a very public dispute over a valued open space took place in a relatively affluent district.

The lord of the manor for most of this period was Sir Thomas Maryon Wilson who inherited from his father of the same name in 1821.<sup>5</sup> Under the family settlement the second Sir Thomas was only tenant-for-life of his estates; he could not treat the lands as freehold. The terms were set out in his father's will made in 1806. In addition to Hampstead, the younger

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<sup>4</sup>Read, p. 29.

<sup>5</sup>The manor of Hampstead had been granted to the abbots and monks of Westminster in 986 by King Ethelred. It remained with them until the Dissolution whereupon it was held by the short-lived Bishop of Westminster until it returned to the Crown in 1550. In 1551 Edward VI granted it to Sir Thomas Wroth in whose family it remained until 1620 when it was purchased by Sir Baptist Hicks who became Viscount Campden in 1628. Sir William Langhorne purchased the manor in 1707. After his death in 1714 the estate passed to a distant cousin, Margaret Maryon through whose family it eventually settled on Jane, the wife of General Sir Thomas Spencer Wilson, Bart., M.P. for Sussex. Her husband died in 1758 leaving Jane the lady of the manor until her death in 1816. She was succeeded by her son, the first Sir Thomas Maryon Wilson. Thomas J. Barratt, The Annals of Hampstead (London: Lionel Leventhal in association with the Camden Historical Society, 1972; orig. publ. by Adam and Charles Black, 1912), vol. 3, pp. 64-66.



Sir Thomas received other properties, in Charlton and Woolwich. His brother, John, destined to succeed Thomas as lord of the manor, received a similar portion of the family's estates, also as tenant-for-life. Family settlements existed to prevent the living members alienating property to the detriment of later generations. The will of 1806 allowed the tenants-for-life to grant twenty-one-year agricultural leases, but two codicils were added in 1821 which gave power to grant repairing and building leases of seventy years on the estates in Woolwich and Charlton. These powers were not extended to Hampstead.<sup>6</sup>

In the normal course of events, the younger Sir Thomas would have altered the terms of the will with the cooperation of his heir: the settlement would have been broken and re-made with appropriate alterations reflecting new conditions. Wilson, however, remained unmarried and was thus tied to the restrictions in the will. Even so, there was another avenue open to escape its onerous limitations, namely by a private Act of Parliament. As F. M. L. Thompson notes, most of the private estate bills in the eighteenth and early nineteenth centuries were for this purpose.<sup>7</sup> But emotional feelings about the Heath became entwined with Wilson's estate bills from his first effort in 1829 and remained sufficiently strong to cause Parliament consistently to foil this and every subsequent attempt to break the will.

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<sup>6</sup>HLRO, Main Papers, Ms. no. 634, Finchley Road Estate Act [sic], 30 May 1854; F. M. L. Thompson, pp. 132-33.

<sup>7</sup>F. M. L. Thompson, p. 132.

The Wilson camp argued that the elder Sir Thomas had never intended to exclude Hampstead from the liberalising codicils of 1821. Unfortunately, when Wilson was fighting a bill in 1824 authorizing the construction of the Finchley Road (which would cut through his estate), he maintained that his father had deliberately withheld the power to grant building leases on the Hampstead property because he wanted it left "as it was". When Wilson began submitting his estate bills in 1829, his earlier claim about his father's views was not widely known or the House of Lords would not have looked twice at them. It was not their policy to overturn the wishes of testators.<sup>8</sup>

A person seeking to alter a will often relied on the changes that had taken place since it had been made to justify the need for new powers. In this case, the construction of the Finchley Road had opened up new sites for building. In his 1829 bill, Wilson sought power to grant 99-year building leases over his freehold Hampstead property and to extend the 70-year leasing period in Woolwich and Charlton to 99 years. He also sought power to licence copyholders to enable them to grant 99-year leases on their copyhold land. As well, the bill contained a clause empowering Wilson to grant building leases on

such part of the Heath and other waste land or ground in the manor of Hampstead ... whether occupied or not, and which may hereafter be approved or otherwise exonerated or discharged from the customs of the said manor, by or for the sole use or benefit of the lord or lady thereof for the time being.<sup>9</sup>

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<sup>8</sup>F. M. L. Thompson, p. 135-7.

<sup>9</sup>F. M. L. Thompson, p. 138.

It was this clause that rebounded on Wilson and continued to haunt his efforts to change his father's will. It quickly gained a sinister connotation in the collective minds of Hampstead which lasted a long time. A local historian, for example, writing in 1912, used it to characterize the bill as one for the "enclosure of the Heath".<sup>10</sup> It was hardly that, but neither was it completely benign. In one sense the clause was not asking for radically new powers but was likely inserted to ensure that future leasing powers conformed to past practice which was for copyholders to release their rights over certain lands taken in by other copyholders or nominees of the lord. Wilson's bill sought building leases over these lands.<sup>11</sup> Such leases opened up the possibility of buildings on fresh land taken from the Heath.

According to Thompson, the initial objection to the bill was based on a misconception that it would interfere with traditional rights of copyholders to build on their land without any interference from the lord by requiring them to obtain a licence. A letter in the Times, for example, described the lord as seeking authority

to grant licences to his tenants to improve their own customary estates, and also licences to get material for that purpose from their own copyholds upon payment of 40s. fine to the lord, and £3 5s. fee to the steward for every such licence, thereby assuming that the copyholders have no authority to do those acts without the lord's licence for that purpose, the granting of which is to be a matter of favour, and subject to the payment of the fines and fees.

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<sup>10</sup>Barratt, vol. 2, pp. 204-5.

<sup>11</sup>C. W. Ikin, "The Battle for the Heath", Camden History Review, 4 (1976), pp. 15-16; F. M. L. Thompson, p. 139.

Wilson further sought, according to the letter, power to

grant building leases of the heath ... hereafter approved or appropriated by him ... thereby assuming that he has such a right ... which if exercised ... might destroy the heath by covering the greater part of it with buildings.

Essentially, the copyholders wanted the bill altered to guarantee their rights.<sup>12</sup> The clause on building on the Heath aside, the bill was not so much an attack on their rights as the offering of an alternative. Instead of having to pay the full fines when their lands were sold or when tenancy changed due to death, the licencees would have fixed fines for a 99-year period. But this was easily twisted by Wilson's opponents into something more insidious.<sup>13</sup>

Between the time of the second reading of the bill in the House of Lords on 2 May and its committee stage on 27 May, two public meetings were held in Hampstead. From these came a petition against the clause pertaining to licences which prompted the Lords to add words protecting the existing rights of copyholders. On 1 June, the Lords passed the bill; it should then have passed through the lower House without a murmur.

Although the majority of the copyholders had been placated, others sustained their opposition to the bill, and succeeded in making it a public issue. It picked up the emotive appellation "enclosure bill" and was said to threaten rights to gravel and sand as well as give the lord power to approve the Heath without the consent of the homage. A petition embodying

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<sup>12</sup>Times, 30 May 1829.

<sup>13</sup>F. M. L. Thompson, p. 141.

these points was presented to the House of Commons although not in sufficient time to influence the bill's passage through committee. At a lightly attended public meeting three days before the scheduled third reading, a resolution was passed against the bill.<sup>14</sup> The ingredients of a bitter dispute were beginning to be stirred together. Feelings were high enough that after debate on third reading (unusual in itself) the bill was withdrawn. Opponents of the bill in the House of Commons made some of the earliest references to the public interest over open spaces.<sup>15</sup> Thus the presenter of the copyholders' petition styled the measure an enclosure bill which would be a "great hardship on many of the poor copyholders residing in the manor". A week later, during the debate that concluded with the withdrawal of the bill, he reflected that the House should not do anything which would abridge "the amusements or comforts of the poorer classes of society". Another member claimed to speak on behalf of the inhabitants of London: "no place was so advantageous to them for the restoration of their health as Hampstead".<sup>16</sup>

The Times rejoiced that the bill "for enclosing" Hampstead Heath had been withdrawn and justified its happiness on the grounds that the "rights of private property are always subordinate to the rights of the public".<sup>17</sup> In subsequent decades the paper would maintain a fairly enlightened approach to the

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<sup>14</sup>F. M. L. Thompson, pp. 142-43.

<sup>15</sup>F. M. L. Thompson, pp. 144-45.

<sup>16</sup>H.C., 2 Hansard 21: 1171-72, 12 June; 1814-18, 19 June 1829.

<sup>17</sup>Times, 20 June 1829.

issue of commons preservation. From Hampstead came indications that any further attempts to tamper with the status quo would be resisted. A small meeting of fifteen copyholders, one of whom was out of pocket as a result of the campaign against the bill, passed a resolution inviting inhabitants to subscribe to a fund to oppose any more bills by the lord of the manor. Lord Mansfield, the influential owner of the neighbouring Ken Wood estate, indicated his willingness to subscribe £50.<sup>18</sup> He had a vested interest in keeping Wilson's lands to the east of the Heath open. The value of his property would decline if buildings interrupted the unbroken countryside. Mansfield and others, who wished to retain their property values with the aid of rustic vistas unsullied by buildings, played on the public's inability to distinguish between the Heath proper and the surrounding territory.<sup>19</sup> They knew that they could incite public hostility against any plan by Wilson to build on his own lands if they labelled it an attack on the Heath.

The remarkable aspect of this debate for Thompson is the rapidity with which an issue could be acted upon by a pre-1832 Parliament. That the men of property who opposed Wilson's bill could take refuge behind the public interest and influence Parliament to block a straightforward estate bill was significant. But Thompson also claims that the Heath had only recently acquired a "sentimental attachment for many people who had no

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<sup>18</sup>Times, 6 August 1829; F. M. L. Thompson, pp. 146-47.

<sup>19</sup>F. M. L. Thompson, p. 147.

property at stake".<sup>20</sup> This led to the widespread horror at the idea of its being enclosed. C.W. Ikin, a local Hampstead historian who questions parts of Thompson's interpretation, cites evidence which pushes this concept into the early eighteenth century at least.<sup>21</sup> But whether of recent or distant origin, this romantic way of looking at the Heath certainly made it easier to generate emotional resistance to anything Wilson might try.

When Sir Thomas introduced a similar bill in 1830 to gain building rights to his Hampstead lands but modified to the extent of sacrificing any mention of the Heath or licences to copyholders, it was still opposed by Mansfield.<sup>22</sup> Members of his group seemed less anxious this time to disguise themselves as public benefactors. One of two petitions presented against the bill unabashedly admitted that fear of falling property values, should Wilson achieve his goals, inspired its submission.<sup>23</sup> In an interview with Wilson some years later, Mansfield confessed that his stance was motivated by "private grounds". The bill was easily defeated in the Lords, 23 to 7, and would have had difficulty in the Commons had it passed.<sup>24</sup>

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<sup>20</sup>F. M. L. Thompson, pp. 146, 150, 154.

<sup>21</sup>Ikin, "The Battle for the Heath", p. 13.

<sup>22</sup>H.L., 2 Hansard 24: 423-24, 5 May 1830.

<sup>23</sup>Ikin, Hampstead Heath Centenary, 1871-1971 (Greater London Council, 1971), p. 10.

<sup>24</sup>F. M. L. Thompson, pp. 149-50; H.L., 2 Hansard 24: 424, 5 May 1830.

Thompson sees no reason to doubt Wilson's expressed intention not to build on the Heath. In the first place, it was not the most desirable building site. Secondly, its retention as an open space enhanced the building value of the surrounding 400 acres of freehold. Nor was the market that strong: when Wilson's successors (he died in 1869) began developing the estates, some sixty years elapsed before they were filled. Ikin, however, while agreeing that the 240-acre Heath was not a prime target for building, is less certain that the lands in the East Park Estate would have escaped. Although the speculative builders might have been slow to act, in 1844 Wilson drew up plans to lay out the area in two-acre sites for large villas.<sup>25</sup> But, because the public were led to confuse the sixty acres of East Park, Wilson's freehold property, with the actual Heath, Wilson was stymied. Hence, Thompson's harsh judgment:

Unreason, prejudice, hypocritically disguised self-interest, and unjust persecution of a single individual rode roughshod over all the rules of the property game, and presented to posterity the priceless gift not of the legal mini-Heath surrounded on three sides by rows of houses, but of the greater Heath, wider yet and wider, wide open to Parliament Hill Fields and beyond to the Highgate Road, a continuous open space not of some 80 or 90 acres which was the size of the East Heath de jure, but of over 350 acres.<sup>26</sup>

Ikin sees nothing odd in people defending their property values and he is surely right to doubt if the forces against Wilson were

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<sup>25</sup>Ikin, "The Battle for the Heath", p. 16.

<sup>26</sup>F. M. L. Thompson, p. 155.



quite so machiavellian.<sup>27</sup> While Wilson may not have wished to build directly on the Heath, an attitude that can only be inferred, his 1829 bill would have given him the right to do so and people were wise to be wary. Nonetheless, the opposition to the 1830 legislation appears less noble.

Wilson's defeats in 1829 and 1830 were harbingers of future setbacks, although he failed to read them as such. They were also indicative of the tactical approaches that might be used in future disputes over open spaces, and showed that the side that carried public opinion increased its chances for success. Wilson's opponents clearly had the more attractive arguments to present to various types of people. Wealthy home owners, with little coaxing, were willing to frustrate plans to build on neighbouring fields. Members of the public, who had no expectations of ever living in Hampstead but cherished the Heath as a place to visit, were easily aroused by any suggestions that it was in danger. And the working class and poor, regardless of their real feelings about the Heath, were readily adopted as beneficiaries of the campaign to halt Wilson. If the Heath were destroyed, these people would lose an important recreational area. A pre-reform Parliament had enough paternalistic blood to respond to this argument. By contrast, those who might favour building on Wilson's lands were fewer and unorganized. Some believed he had been treated unfairly and should be granted the powers he sought, but they hardly constituted a visible lobby. Commercial interests, who had everything to gain from increased

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<sup>27</sup>Ikin, "The Battle for the Heath", p. 15.

development, were reticent. Knowing their thinking, Wilson would seek them as allies in the future.

The initial rounds in the battle for the Heath had been marked by strong emotions of the type often present when commons were defended. Similar passions would be unleashed in Wimbledon, Epping Forest, and particularly Hackney in the second half of the century. Although Wilson was ready to continue the fight, his lack of public support was an early indication of the final verdict.

## 2.2 The Heath Heats Up

The dispute over the Heath took place in the community but its most public airings occurred in Parliament and, as the issue widened, in local government councils as well. During the middle decades of the century it often resembled trench warfare with neither side able to deliver a decisive blow. Parliament was forced to react to Wilson's initiatives but it was unable to break the impasse. As the questions raised by the Heath continued to reappear the need for more comprehensive answers to the problem of open spaces became increasingly apparent. Yet M.P.s generally avoided finding precedents in Hampstead that might apply elsewhere, and the Heath was treated in isolation. Not until events in Epping Forest and Wimbledon in the 1860s broadened their perspective did they begin to see more parallels among the various disputes. On the front lines, meanwhile, Wilson continued his holy war but his tactical options grew thinner while his opponents sensed that time would eventually see them triumph.

After his second failure in 1830 the atmosphere was decidedly unfavourable for Wilson and there was a thirteen-year hiatus before he again prepared an estate bill. The lull was due in part to a building slump which reduced the likelihood of profiting from success in Parliament. Renewed building activity on neighbouring estates in the early 1840s spurred the third try.<sup>1</sup>

It was no more successful. Opponents again brought the Heath into the debate although the bill focused on Wilson's own

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<sup>1</sup>F. M. L. Thompson, p. 157.

freehold. He had to admit, however, that it was not impossible that "a single road on some part of the Heath would be required" when plans were put into effect but such a road would not damage manorial rights. Reassurances of this nature did not persuade the other camp. A Copyholders' Committee, guided by the Vestry Clerk, secured over 400 signatures to a petition against the bill whereas Wilson, canvassing support among the local commercial interests, obtained only a "score or so".<sup>2</sup> Many more tradesmen may have favoured building as it promised potential customers, but fear of alienating their gentry patrons probably silenced them. Once again, Ikin wishes to soften the unflattering portrayal of the copyholders given by Thompson. He finds their concern about property values should East Park be built over entirely understandable. Furthermore, Wilson apparently hoped to slip his bill past suspicious eyes by naming it the Maryon Wilson Estate Bill.<sup>3</sup>

In the exchanges that followed, Wilson's adversaries unearthed his earlier opposition to building at the time of the Finchley Road proposal and made much of the undesirability of acting against his father's wishes. Wilson's reply, to the effect that twenty-two years had brought "great alteration" to the "outskirts of the metropolis" such that the conditions of his father's day should no longer govern, was not sufficient to sway opinion. The bill was withdrawn.<sup>4</sup>

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<sup>2</sup>F. M. L. Thompson, pp. 158-60.

<sup>3</sup>Ikin, "The Battle for the Heath", p. 16.

<sup>4</sup>F. M. L. Thompson, p. 162-64; Times, 27 May 1843.

Success was as elusive the following year. At least some of the opposition appeared to believe that Wilson should be prepared to forego the development of his property as a sacrifice to the greater public good.<sup>5</sup>

Defeated, Wilson was not cowed. An obstinate man, he apparently threatened to press his case until Parliament was "tired out".<sup>6</sup> Meanwhile, if Parliament failed to cooperate, he could exercise his rights as lord of the manor more stringently. Wilson did not live in Hampstead but he increased his activity there. A resident agent replaced the simple heath keeper. Payments were collected from those who turned out geese or dried clothes on the Heath. Willow trees were planted, less as a means to beautify the Heath than as an assertion of the lord's right to do so.<sup>7</sup>

Thompson points out that Wilson's chances of succeeding with a bill after 1844 were diminished by the importance with which metropolitan M.P.s came to view the subject.

[T]heir eagerness to take up this cause was not due to old-fashioned patronage politics or personal friendship with the Hampstead gentry; it was rather of necessary political and electioneering tactics, rendered necessary by the growing popularity of the Heath among the general body of their constituents.<sup>8</sup>

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<sup>5</sup>H.L., 3 Hansard 75: 312-18, 6 June 1844; Ikin, Hampstead Heath Centenary, p. 11; F. M. L. Thompson, pp. 164-65.

<sup>6</sup>Barratt, vol. 2, p. 205.

<sup>7</sup>Ikin, Hampstead Heath Centenary, p. 11.

<sup>8</sup>F. M. L. Thompson, p. 169.

Thompson places these M.P.s--and later the Commons Preservation Society--among the preservationists who were somewhat removed from events in Hampstead. He speculates that they

probably did not know that they were having the wool pulled over their eyes, and fought the more strenuously because they remained free to believe that they were engaged in a wholly religious struggle against a wicked and grasping landowner.

The masters of this illusion were the wilfully deceitful gentry who were trying to keep private property off the building market without paying for it. Thompson is unwilling to say whether the deceit was practiced with "honest intentions", that is, with awareness of the deceit as a necessary tactic to secure the Heath for the public, or as part of a calculated plot to use the public interest as a shield for private gain.<sup>9</sup> But surely his worthy effort to remove the mud from the traditional portraits of Wilson is marred by his dumping all the scrapings on the copyholders. Ikin, by contrast, finds it difficult to believe that a local, well-organized group maintained a conspiracy against Wilson over the many years of the struggle.<sup>10</sup> Neither side qualifies for sainthood. The confrontation was bitter and the stakes were high. The Heath was the emotional rallying point, but people were fighting over the future of an important part of Hampstead.

Despite his threat to tire out Parliament, Wilson's next attempt after the losses in 1843 and 1844 was not placed before the House of Lords until May 1853. During the week following its

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<sup>9</sup>F. M. L. Thompson, pp. 168-69.

<sup>10</sup>Ikin, "The Battle for the Heath", p. 15.

introduction, the Times published a number of letters that reflected public perceptions of Wilson's efforts. Although the bill sought power to grant building leases on specifically defined parcels of the estate, it was spoken of by one correspondent as a device to enable "a gentleman, whose father knowingly and intentionally deprived him of the power of building to enclose with buildings Hampstead-heath--the greatest and most important lung to all London".<sup>11</sup> If £200,000 could be spent on a park at Battersea, argued another, surely £20,000 could be used to secure a "far more enjoyable place of resort". A resident of thirty-nine years at least recognized that the bill did not endanger the surface of the Heath itself, but he hoped to rescue the "most accessible and beautiful open ground in the neighbourhood of London, from being surrounded by buildings and thus utterly ruined ... as a place of recreation for the pent-up population of this great city".<sup>12</sup> Yet another claimed that he had moved to Hampstead believing that "the fields (part of the manor) would remain unbuilt upon" and he hoped the opposition would renew itself. A copyholder was scarcely less forthright in fearing the bill would entitle Wilson "to block up with buildings my view, for which I have paid him so dearly". In other words, the large fine paid to the lord when the writer took his house was based on the attractive "open country surrounding it". Nor was this an unreasonable concern. It was not uncommon for

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<sup>11</sup>Times, 26 May 1853.

<sup>12</sup>Times, 27 May 1853.

speculators to build over an open space that they had used as a magnet to attract residents to an area.<sup>13</sup>

For a brief period it appeared that Wilson was not going to pursue the measure, for it was not until early July that the bill was brought in for second reading. In June, meanwhile, inhabitants held a meeting at which resolutions were passed calling upon the Commissioners of Woods and Forests, the appropriate branch of government, to purchase the Heath and certain of the adjoining lands. Speeches dwelt on the beneficial effects of the open ground, both to the public for health and recreation and as a school of art for landscape painters.<sup>14</sup> Advocates of the cause were being quite explicit that they wanted more than just the 240-acre Heath saved.

During debate on second reading Wilson's opponents concentrated on his father's will. The Earl of Shaftesbury claimed that he and his colleagues "were not anxious to interfere with the rights of Sir Thomas Wilson in disposing of his property in whatever way he might think proper". But, "it was quite another thing when he came to Parliament and asked for powers which the will of his father did not confer upon him". The Lords had then to decide if the public would benefit or suffer injury. He concluded that the passing of the bill would be "most detrimental to the public interests". In response, one of Wilson's supporters made the point that it was "unjust ... to consider the convenience or even the health of the people in that locality when debating

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<sup>13</sup>Times, 30 May 1853; Ikin, "The Battle for the Heath", p. 15.

<sup>14</sup>Times, 24 June 1853.



this question". These were not arguments for "refusing to the owner of that land those powers which were necessary to his full enjoyment of it". If this was an attempt to steer the debate back to legal considerations, it only succeeded in returning it to the will, one lord stating that nothing had occurred since the making of the will which would have caused the father to "make a different disposition of his property". Despite further comments by the bill's supporters that it would not give the lord power to enclose the Heath, it was defeated 29 to 21.<sup>15</sup> Thus a forum that traditionally revered private rights proved only too eager to find higher value in the notion of the public good.

During the debate, Shaftesbury had made the point that the inhabitants of Hampstead would have no objection to Wilson's building on either side of the new Finchley Road where it ran through his property.<sup>16</sup> The 1854 Finchley Road Estate Bill, which sought just these limited powers, did, in fact, make it through the House of Lords before being stopped in the Commons.

The judges' report to the Lords admitted that the "provisions of the bill [were] proper for carrying its purposes into effect" but they were reluctant to give it their support believing that Wilson's father might well have declined to grant building powers if faced with identical circumstances. But Wilson persuaded the Lords that his father had not wanted to deny him the powers and demanded that he be able to profit from his lands

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<sup>15</sup>H.L., 3 Hansard 128: 1357-61, 7 July 1853; Times, 9 July 1853.

<sup>16</sup>H.L., 3 Hansard 128: 1358, 7 July 1853.

in a similar fashion to other London landlords.<sup>17</sup> The Lords received petitions against the bill from nearby vestries, from the inhabitants of Hampstead, and from the copyholders of the manor.<sup>18</sup>

When the Times editorialized against the bill on the eve of its second reading, it mentioned an "understanding" to which the elder Sir Thomas was alleged to have been a party promising that he would not "authorize any building speculation at Hampstead". The paper concluded, therefore, that the son's present powers were all that he was intended to have. Although it recognized that this sixth attempt to change the will had a more limited object than its predecessors, the paper nonetheless warned that if it succeeded it would set a precedent that would inevitably lead to a "brick wall round Hampstead-heath". The bill was but a "piratical craft .... Her master showed his real colours in 1829, when he hoisted his proper ensign, and boldly applied for leave to build on and entirely round the heath". The Times found further evidence of Wilson's unscrupulousness in the fact that he had suppressed the relevant codicils from his father's will in his 1853 bill. When they were included in the amended recitals, the judges' report went against the measure.<sup>19</sup>

The Lords, however, approved the bill on second reading, much to the disgust of the Times which at least recognized that

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<sup>17</sup>F. M. L. Thompson, pp. 171-72; Times, 26 June 1854.

<sup>18</sup>HLRO, House of Lords, Journal, vol. 86, 12 June 1854, p. 236; 16 June, p. 253; June 19, p. 257; 22 June, p. 273; June 23, p. 279; 26 June, p. 285.

<sup>19</sup>Times, 26 June 1854.

opposition alone was insufficient and that at some point an "arrangement should be made which should secure the public in full possession of Hampstead-heath without fear of intrusion".<sup>20</sup> After the Lords had given the bill their final approval in July, the "insidious measure" was again attacked in the newspaper's columns. There was no way to interpret it other than as a precedent for future bills to gain building powers over the whole estate:

Hampstead-heath is the place which Sir Thomas Wilson is besieging; he has opened his first trench on the Finchley-road; and the besieged--the public, in other words--resist the first aggression simply because resistance now will be most effectual.

The only manner in which Wilson could allay the fears of the opposition would be to insert a clause specifying that the concession made in approving the bill would not be construed as a precedent. But Wilson had refused previously to be bound by any agreements compelling him to promise not to meddle with the Heath and he similarly refused to be bound by one at this point.<sup>21</sup>

The "Finchley Enclosure Bill" as the Times chose to call it was decisively defeated in the Commons 97 to 43 in late July. Speakers placed great emphasis on the negative report of the judges and felt that the Commons could not vote counter to it. But a speaker also argued that they had to act as "trustees for the public" and put an end to those measures which "would most materially affect the comfort, health, and enjoyment of the tens

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<sup>20</sup>Times 28 June 1854.

<sup>21</sup>Times, 19, 28 July 1854.

of thousands to whom the heath afforded the means of recreation". Attempts by supporters of the bill to establish that the Heath was at least a mile away and in no danger from the bill made little impact. Opponents wanted to know why Wilson refused to agree to leave the Heath untouched. Sir Benjamin Hall advanced the curious argument that denying the building power would not seriously injure the Wilson estates because the land would become more valuable as time passed. Robert Lowe objected to the bill on the grounds that it went against what he perceived to be the clear wishes of Wilson's father. The wrangling over the Heath did not enter into it:

It might be, and no doubt it was, very desirable that Hampstead Heath should be preserved to the public; but, if so, let the public purchase it, and let them not employ the power given them of rejecting this Bill as a means of saving their money, or of making better terms with Sir Thomas Wilson. They were rich enough to be able to afford to be honest, and he therefore entirely disclaimed being influenced by such considerations.<sup>22</sup>

Thompson draws attention to Lowe's contribution to the debate for its early call for the public to pay if they wanted to retain the Heath.<sup>23</sup>

The Times celebrated the defeat of the bill as a reprieve for the Heath, but it was under no illusions that Wilson would accept the verdict:

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<sup>22</sup>H.C., 3 Hansard 135: 806-21, 27 July 1854.

<sup>23</sup>F. M. L. Thompson, p. 172.

The enclosure of Hampstead-heath is with Sir T. Wilson the absorbing idea of his life, as the discovery of a passage to the Indies was with Columbus, or the notion that Queen Victoria was in love with him is with poor Captain Childe.

Yet the paper concluded this somewhat slanderous editorial by echoing Lowe's contention that the public should purchase the Heath, and it suggested that negotiations with the present lord, "who cannot build over the heath" would be more likely to succeed than with a successor "who [could] cover it with terraces at his pleasure".<sup>24</sup>

In 1856 Parliament passed the Leases and Sales of Settled Estates Act.<sup>25</sup> This allowed many alterations to family settlements, which formally required a private estate act, to be secured by an order from the Chancery Court. The measure had first been introduced in 1855 but had run into difficulty after passing through the Lords when it was realized that Wilson would be able to take advantage of its provisions. His opponents argued that the bill would make the Chancery Court a tribunal greater than Parliament. The remedy they suggested was to prohibit those whose cases had been thrown out by Parliament from applying to the Court. To placate this lobby, the Solicitor General announced that a clause would be inserted that would protect the Heath.<sup>26</sup> But after much acrimonious debate over the proposed clause, which the Solicitor General tried to maintain represented

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<sup>24</sup>Times, 28 July 1854.

<sup>25</sup>19 & 20 Vict. c. 120.

<sup>26</sup>Times, 30 June 1855; H.C., 3 Hansard 136: 949-50, 16 July 1855.

a general principle and not a device against a particular individual, it was decided to drop the matter for that session.<sup>27</sup>

In 1856 the bill was introduced again in the Lords who passed it in the same form as they had in 1855, that is, without any clause barring Wilson. In fact much of the debate avoided any mention of Hampstead Heath.<sup>28</sup> But the Lords were reminded that feelings were less than sanguine in some areas. A petition was read from the Vestry of St. Mary's Islington against the bill on the grounds that it endangered the Heath. This led to a short discussion on the desirability of the public's purchasing the land from Wilson.<sup>29</sup>

On second reading in the Commons, an M.P. forewarned that he would introduce a clause "to prevent the owner of Hampstead Heath from building on that property".<sup>30</sup> The Solicitor General was not anxious to include the clause and hoped that it would only be supported on the principle that the Courts should not be granted power to deal with matters that Parliament had ruled on. But Wilson's name could not be divorced from the proceedings. In the end, by a vote of 84 to 42 the House accepted the clause which became section 21 of the Act:

The Court shall not be at liberty to grant any application under this Act in any case where the applicant, or any party entitled, has previously applied to either House of Parliament for a private Act to effect the same or a similar

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<sup>27</sup>H.C., 3 Hansard 139: 2052-60, 9 August 1855.

<sup>28</sup>H.L., 3 Hansard 140: 2096-2109, 10 March 1856.

<sup>29</sup>H.L., 3 Hansard 142: 1571-72, 17 June 1856.

<sup>30</sup>H.C., 3 Hansard 143: 945-46, 15 July 1856.

object, and such application has been rejected on its merits, or reported against by the judges to whom the bill may have been referred.

Thompson argues that the "frantic exertions" of John Gurney Hoare, one of the leading members of the Hampstead gentry, in "lobbying and wire-pulling" were instrumental in securing the clause's inclusion.<sup>31</sup>

Although the House of Commons had incorporated section 21 into the Leases and Sales of Settled Lands Act by a convincing margin, there were attempts in subsequent years to repeal it. They all failed.<sup>32</sup>

The fledgeling Metropolitan Board of Works could date its involvement with the Heath in discussions of the Settled Estates Bill. As the bill, minus the exemption aimed at Wilson, was being introduced in the Lords in February 1856, the Hampstead representative to the Board gave notice of a motion to call attention to the importance of the Board's taking proceedings to secure the Heath and certain adjoining lands for the public.<sup>33</sup>

This first approach at the Board, in common with earlier discussions, hoped to protect more than just the Heath. Support for the policy was provided by a deputation from the Hampstead Vestry, consisting of Hoare and others, bearing a lengthy memorial outlining the reasons why the Board should act.

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<sup>31</sup>F. M. L. Thompson, p. 174.

<sup>32</sup>Times, 22 June 1857; H.C., 3 Hansard 147: 1087-96, 5 August 1857; H.C., 3 Hansard 156: 2286-90, 5 March 1860; Ikin, Hampstead Heath Centenary, p. 14.

<sup>33</sup>Times, 25 February 1856.

Deputations from neighbouring vestries voiced their approval. The memorial estimated that the 200 or so acres of the Heath proper plus four adjacent plots totalling 100 acres could be purchased for about £100,000. It spoke of the increased use that the public were making of the Heath as a result of new railways and then drew attention to the risks from the Settled Estates Bill.

The community had demonstrated that its influential members favoured some initiative by the Board. Such a show of strength from one area, normal enough under the circumstances, backfired to some extent. It reinforced the suspicions of some members of the Board that the Hampstead interests were trying to have the metropolis pay for a local improvement. Others doubted whether the Board had a statutory right to become involved. As one expressed it: "Their first business was to cleanse the Thames--their next to improve the thoroughfares of the metropolis".<sup>34</sup> The Times echoed these sentiments:

[T]he Board of Works has enough to do in the metropolis without driving away to Hampstead to purchase a suburban park. The people of Hampstead ... are a very wealthy community; and if ... they would rate themselves ... they might easily do not a little towards effecting a purchase, and could then, with some show of reason, ask Parliament for a grant.<sup>35</sup>

In mid-March the motion was lost by a large majority primarily because of a belief that the Board had no authority to interfere.<sup>36</sup>

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<sup>34</sup>Times, 8 March 1856.

<sup>35</sup>Times, 10 March 1856.

<sup>36</sup>Times, 17 March 1856.



At the time, this was the correct view; it was not until July of 1856 that Parliament added parks and open spaces to the Board's mandate.

Discouraged by the Metropolitan Board's decision, the vestries took their case to Sir Benjamin Hall, the First Commissioner of Works. To the vestries' suggestion that a compromise be offered to Wilson, allowing him to grant building leases on the manor farm if he would surrender his rights to the Heath "on moderate terms", Hall replied that Wilson had declined such an arrangement. Hall hoped that the Metropolitan Board would reconsider the matter and he indicated a willingness to recommend that the Government make a grant from the Consolidated Fund in aid of a metropolitan rate for the purchase of the Heath.<sup>37</sup> At this stage most serious talk about preserving the Heath assumed that it would have to be bought from Wilson. Contrary approaches, such as that put forth in the mid-1860s by the Commons Preservation Society, which opposed huge payments to lords of the manor, were not yet in evidence.

The Metropolitan Board remained detached, resolving in June that "improvements of much greater necessity and advantage to the public are more urgent and desirable" than the acquisition of the Heath. Therefore it could not "entertain the question of the purchase of the land". Nor did it believe that it was authorized "to tax the ratepayers for such objects".<sup>38</sup> The Board's early statements on open spaces were thus rather inauspicious. Little

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<sup>37</sup>Times, 12 April 1856.

<sup>38</sup>Times, 1 November 1856.

enthusiasm was expressed for an active role and money was revealed to be a major concern. Yet promoters of the purchase clearly favoured a metropolitan rate over a local one to gain their ends and they debated the issue at public meetings in the area. It was calculated that a rate of two pence in the pound levied by the Metropolitan Board would raise £100,000 although some thought that £25,000 was a more realistic sum to offer Wilson at the beginning of negotiations.<sup>39</sup>

That the Government had signalled possible financial assistance towards the purchase was sufficient to keep interest alive at the Metropolitan Board. Some of its members formed a deputation with representatives from most of the northern parishes and met with the Chancellor of the Exchequer in July to determine how much money the central Government would contribute. The discussion ranged over whether revenue from the coal duties could be used, and whether other rights such as pasture would have to be purchased in addition to those of the lord of the manor. The Chancellor remained on the fence at this stage.<sup>40</sup>

Without a strong commitment from Westminster, friends of the Heath on the Board were at a disadvantage. Now that the Board had been given powers with respect to open spaces they introduced a motion to rescind the June resolution against acquiring the Heath. It was defeated by one vote, with most opponents labelling expenditure on parks as an excess the

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<sup>39</sup>Times, 22, 23 April 1856.

<sup>40</sup>Times 3 July 1856.

ratepayers did not want. Even Frederick Doulton, who in 1864 and 1865 would be instrumental in leading the House of Commons to recognize the importance of metropolitan open spaces, declared that the time was not right to carry out such works.<sup>41</sup> The idea of public money for public amenities was still in its infancy despite earlier expenditures on Battersea and Victoria Parks in London and grants to northern cities for park creation. The Heath issue inevitably bogged down over who should pay.

The question of paying for an open space in Hampstead was clouded to some degree by the incipient steps that eventually led to the establishment of Finsbury Park. In November 1856 the Board accepted a memorial from the vestries in Islington, Clerkenwell, Stoke Newington, and Holborn calling for the creation of a park in the northern suburbs. The central Government had, unofficially, promised £50,000 towards the £150,000 estimated cost. When the Board came to vote on the proposal, the Hampstead member successfully introduced an amendment to have the Works Committee consider all applications which had been submitted to the Board for parks and open spaces, and to rate them according to their importance and expense.<sup>42</sup> Members were realizing that this was an issue that would only grow in importance and, as such, would demand some decisions from them. Yet they were a long way from having a clear policy beyond wanting to keep costs to a minimum.

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<sup>41</sup>Times, 1 November 1856.

<sup>42</sup>Times, 27, 29 November 1856.

The Committee, after hearing representations from Islington, Stoke Newington, Bermondsey and Hampstead, issued a report designating Finsbury Park as a first priority. It recommended that the Board be given power to sell up to eighty acres of the proposed site as building land to recoup expenses. This idea became central in the Board's early program for acquiring open spaces. The report concluded that the acquisition of Hampstead Heath would cost between £150,000 and £200,000 if some of the additional land was included. As with Finsbury, it was deemed advisable that portions of the Heath be sold for building.<sup>43</sup> A special meeting of the Board was held in February 1857 to consider the Committee's recommendation that the Board establish two parks, one in the northern, the other in the southeastern part of the metropolis. The Board approved the recommendation by 20 to 8 but defeated an amendment to include the purchase of the Heath. Once again, opponents focused on the unknown costs. (Significantly, two representatives voted for the proposal to establish the parks despite resolutions from their districts against them. In a sense they were prototypical of the kind of local politicians of the next decades who supported open spaces as a motherhood issue.)<sup>44</sup> The Board, however, did not leave the Heath entirely in the cold. Since its Works Committee had reported that it "should be purchased as early as possible", it decided to ask the Government once again how much it would

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<sup>43</sup>B.L. 10349 c. 20(2): MBW, Report of the Committee of Works and Improvements on Applications for Parks and Open Spaces, 16 January 1857.

<sup>44</sup>Times, 5 February 1857.

contribute to a joint purchase of the Heath. This motion was understood to include the surrounding lands.<sup>45</sup>

Any plans for the allocation of money had to be revised after June 1857 when the House of Commons, in debate on the Finsbury Park Bill, withdrew the £50,000 which had earlier been promised. This came as something of a shock to the Board. The burden of financing the park would now fall squarely on the metropolitan ratepayer. The Board decided to proceed with the Finsbury project but postponed any other park expenditure, such as Hampstead, until it had been carried out.<sup>46</sup> The Heath was thus dropped from the Board's agenda for some years.

When district boards and vestries failed to pressure the Metropolitan Board into doing their bidding, they had at least one other option. Frustrated by the apparent procrastination of the Board, the Hampstead Vestry decided to apply directly to Parliament for a bill to purchase the Heath and adjoining lands. The Vestry's bill, which stipulated that the Metropolitan Board should raise the necessary money, was, not surprisingly, opposed by that body. Dissent also came from Clerkenwell, Woolwich, and Wandsworth, all of which resisted any metropolitan rate being used for what they viewed as a local improvement. Wilson, however, did not oppose the Vestry's scheme as he reputedly

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<sup>45</sup>Times, 5 February 1857.

<sup>46</sup>H.C., 3 Hansard 146: 236-50, 23 June 1857; Times, 30 June 1857.

stood to receive £400,000 by it.<sup>47</sup> But Parliament rejected the bill as a side-door attempt to promote a money scheme. Nonetheless, the committee which reported on the bill urged the Metropolitan Board to take measures with a "view to securing Hampstead Heath for the public without any unnecessary delay" as the price of the property would only increase.<sup>48</sup>

But a motion in May 1858 to have the Board take steps to acquire the Heath, as recommended by the Select Committee, was heavily defeated.<sup>49</sup> Despite evidence that increasing numbers of people were taking the issue of open spaces seriously, members of local government assemblies rated its importance below other matters. Their perspective was changing but it would take still greater pressure from the community before they would be willing to re-arrange their priorities.

Wilson, meanwhile, was nearing the end of his patience. Section 21 of the Leases and Sales of Settled Estates Act stood in the way of developing his Hampstead property and the prospects of profiting from the sale of the Heath looked slim as long as governments were unwilling to come up with the money. It was time to raise the stakes. The steward of the manor explained to the copyholders in December 1861 that Wilson would probably start to make grants of the Heath to a nominee for

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<sup>47</sup>F. M. L. Thompson, p. 187; J. J. Sexby, The Municipal Parks, Gardens, and Open Spaces of London: Their History and Associations (London: Elliot Stock, 1898), p. 381; Ikin, Hampstead Heath Centenary, p. 14.

<sup>48</sup>Sexby, p. 381.

<sup>49</sup>Times, 28 May 1858.

purposes of building. Contrary to popular opinion, he was not prohibited from granting building leases but, as the leases could not be for more than twenty-one years, no builder would accept them. He could, however, build on these grants himself. As only a repeal of section 21 could deflect this course of action, the local press began to adopt a more sympathetic line towards Wilson and called upon Hoare and others, whose own lands included grants from the Heath, to aid in the repeal. Even if Wilson proceeded to build upon his land in East Park, it would be in his interest to keep the Heath open to ensure the value of the new buildings.

Hoare, however, was not ready to open the way for Wilson to develop East Park. At a public meeting in April 1862 he proposed:

That if Sir T. M. Wilson should take steps for obtaining a private Act to grant leases over his Finchley Road estate and pledge himself not to seek further building powers, this meeting will not oppose such application.<sup>50</sup>

In refusing to accept this offer, Wilson accused Hoare of deceiving Parliament into retaining section 21 because he knew he would be unable to influence the Chancery Court in the same way. Hoare chose not to respond to pleas in the local press that it was time to correct the wrong he had perpetuated. Once again Thompson puts the preservationists in the worst light. He states that although the evidence against Hoare is circumstantial, and although he may have been campaigning for the eventual extension of the Heath, the

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<sup>50</sup>F. M. L. Thompson, pp. 176-78.

surreptitious and dishonest means used to further such an admirable end ... [were] more like the means by which a householder would use to preserve, by hook or by crook, the privacy and pleasant surroundings of his own residence.<sup>51</sup>

This was the situation in Hampstead in the early 1860s as Parliament began to respond to demands for legislation to deal with commons throughout the metropolis. Parliament had played a role in the Hampstead dispute since 1829 but it was essentially negative, preventing Wilson from pursuing his goals. No significant steps had been taken towards reaching a solution. Both the metropolitan and national governments had balked at spending money for the Heath, while local authorities were similarly afflicted. After many years of sparring the two sides of the dispute, Wilson and his opponents, seemed ready to deploy their heavy artillery. Would the various levels of government watch from the sidelines or would they be drawn into the fray?

In Hampstead both the lord of the manor and the commoners had rights which they claimed gave them considerable room to manoeuvre. Wilson hoped to exercise his in such a way as to force his opponents to come to terms. The commoners expected to be able to use theirs to neutralize Wilson's threats and secure the Heath for public use. But, whereas the Heath was once ahead of its time as a coveted open space, by the 1860s it was one of many sites where conflicts were brewing. Two of those, Wimbledon Common and Epping Forest, stole the spotlight to some degree and forced Parliament to take a harder look at the question of commons preservation.

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<sup>51</sup>F. M. L. Thompson, p. 179.



### 2.3 Epping Forest and Parliament

Parliament had blocked Sir Thomas Maryon Wilson's plans for his Hampstead properties but, in itself, the controversy surrounding the Heath would not have impelled politicians to look for creative solutions to the question of how to protect metropolitan commons. By 1866, however, Parliament had passed the first piece of legislation aimed at the problem, the Metropolitan Commons Act. The Act was a response to pressure from the inhabitants of London as a whole, and from residents of specific areas such as Plumstead, Blackheath, Tooting, Hackney and, of course, Hampstead, where commons were felt to be under threat. But events in two locations at opposite ends of the metropolis, Epping Forest and Wimbledon Common, did more to engage Parliament's initial attention than the disputes unfolding elsewhere.

At first glance, Parliament might seem an unpalatable target for preservationists to direct their energies. Historically it had been a haven for the enemy, the encloser. This was particularly true during the great surge of parliamentary enclosures in the eighteenth century. Landowners seemed to cooperate with each other to run roughshod over objections and get their bills through. True, a Reform Act separated the mid-nineteenth-century House of Commons from its eighteenth-century counterpart but landowners had hardly vacated the chamber, and the House of Lords remained.

Legislators had, however, occasionally behaved in ways which provided glimmers of hope. Their sensitivity to public opinion, even before 1832, was evident in the dispute over Hampstead Heath. In 1833 a few of their number had established a Select Committee on Public Walks which had issued a report calling for more open spaces. Four years later the House of Commons passed a resolution by Joseph Hume calling for "open spaces sufficient for purposes of exercise and recreation for the neighbouring population" to be set aside when an enclosure took place. The effect was less than electric; substantially the same motion was introduced two years later by an M.P. who noted that the first one had been "laxly looked after".<sup>1</sup> Concern that enclosures should treat the poor more fairly led to the clauses in the 1845 General Enclosure Act permitting acres to be set aside for recreation grounds and garden allotments although they, too, were laxly followed. The legislation gave some protection to commons near cities by stipulating that Parliament examine schemes for them individually, thus strengthening an 1836 Act that had made preliminary steps in this direction.<sup>2</sup> At the same time, however, this Act cut politicians off from the enclosure process by giving Commissioners the task of drafting and approving schemes. Parliament was reduced to giving official sanction to their work by passing omnibus bills, usually without debate. Thus, although the topic of open spaces was far from

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<sup>1</sup>H.C., 3 Hansard 37: 162-64, 9 March 1837; 3 Hansard 47: 470, 23 April 1839; cited by Cunningham, Leisure, p. 93.

26 & 7 Will. IV c. 115; 8 & 9 Vict. c. 118, ss. 15, 30, 31.

foreign to M.P.s and they had accomplished such significant steps as voting money for major parks in London and assisting other cities' efforts at park creation, the record of the past was somewhat lacklustre. Parliament had been willing to frustrate Wilson in Hampstead but had rebelled at the idea of purchasing the Heath. Politicians from both parties believed that government had no justification for such actions. Before they would accept a more active role, the issue had to become more visible. In the early 1860s, as the struggles developing around commons in many parts of the metropolis heated up, preservationists perceived that this was happening.

Those who placed their faith in common rights might be expected to eschew government altogether and take their cases to the courts. Litigation was expensive and lengthy yet a satisfactory outcome was permanent and binding. It also provided a precedent for subsequent actions. But there were risks. The decision might be unfavourable and, after appeals had been exhausted, all might be lost. Circumstances varied enough among commons that a victory in one suit held no guarantees for others. A lord might take part of a common and be able to prove that commoners could satisfy their rights from the remainder. Lords of the manor often had more money with which to shore up their defences and the status of commoners' rights was often shaky because of long periods of non use. Furthermore, there were limits to what legal action could accomplish. Commoners and lords of the manor might agree among themselves to enclose a common leaving no cause for a challenge.

Obviously there were attractions to a legislated method of dealing with commons in London and, perhaps, throughout the country. (Nonetheless, even after legislation had facilitated the process of preservation, certain questions demanded the type of definitive answer only obtainable at law. Barristers and solicitors had no reason to resent the movement.) Preservationists realized that the limited powers respecting open spaces given to the Metropolitan Board of Works, local boards, and vestries by the 1856 amendment to the Metropolis Local Management Act were inadequate. But it remained to be seen what type of measure would emerge from the debates touched off by the Epping Forest and Wimbledon Common controversies. Would it be strongly interventionist or passive? Would it reflect the philosophy of the Commons Preservation Society or of more hard-minded interests?

The trouble at Epping Forest started earlier. The forest was an unenclosed part of Waltham Forest, a Royal Forest which had formerly occupied some 60,000 acres in the county of Essex. Appreciation of Epping as a place of recreation was not a new phenomenon in the mid-nineteenth century although its value to East Londoners certainly increased as the East End itself grew. A 1793 report by the Land Revenue Commissioners noted that the "greater Part of the neighbouring Proprietors, and Occupiers of Land" enjoyed the "Pleasure of the Chase" and were, therefore,

opposed to any disafforestation.<sup>3</sup> But there were divisions of opinion. Some owners and occupiers petitioned in favour of disafforestation to get rid of the deer which damaged their hedges and crops. Furthermore, they argued that:

the County in general is greatly injured by the Encouragement and Opportunity given to the lower Class of People to be idle, and to thieve, many of them living chiefly by stealing Deer and Wood, and their Families are thrown on the Parish if they happen to be detected, and imprisoned, or transported for such Offences.<sup>4</sup>

Blaming the ills of the area on the lower classes--or gypsies--became standard in the decades that followed.

At the turn of the century, Epping Forest contained about 9000 acres. Another section of Waltham Forest was Hainault Forest, comprising some 4000 acres. There was a significant difference between the two. Over much of Hainault the Crown was lord of the manor and thus owner of the soil. Over Epping, however, the Crown merely held certain ancient forest rights, called rights of vert and venison, which made it illegal to enclose portions of the forest in such a manner as to interfere with movement of deer. The actual soil of these 9000 acres was vested in the lords of some nineteen separate manors.

The two forests suffered different fates as well. Royal forests were under the management of the Woods and Forests Commissioners but in mid-century, the low net returns from them

<sup>3</sup>Fifteenth Report of the Commissioners appointed to inquire into the State and Condition of the Woods, Forests, and Land Revenues of the Crown, 1793; reprinted in the Report from the Select Committee on Royal Forests (Essex), Appendix I, p. 82.

<sup>4</sup>In Report from the Select Committee on Royal Forests (Essex), p. 119.

occasioned parliamentary inquiries. A Select Committee in 1849 uncovered anomalies and inefficiencies in the administration of many of the forests and made appropriate recommendations to reduce them. But not everyone wanted to extract farthings from the forests. The Times, for one, favoured leaving the hazy administrative machinery over Waltham Forest intact as the best means of securing it for recreation.<sup>5</sup> This attitude was in keeping with the paper's general policy of encouraging the preservation of open spaces.

But the Committee, influenced by economic considerations, had a less sentimental view. Allowing that a part of Epping Forest should be protected for recreational use, it recommended that the Crown rights be sold, thus ending the Crown's anachronistic presence. Lords who purchased these rights would have more freedom to deal with their manors although rights held by commoners would be unchanged. The suggestion for the neighbouring forest was more severe: Hainault should be enclosed. Despite a contrary recommendation by a Royal Commission a year later, in 1851 Parliament passed an Act for the disafforestation and enclosure of Hainault.<sup>6</sup> Opposition was minimal. A letter appeared in the Times from "A Working Man" hoping that he would not be "deprived of the privilege of relaxing for a time from the toils of business and taking a mouthful of fresh air in the beautiful forests of Epping and

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<sup>5</sup>Times, 9, 13 October 1849.

<sup>6</sup>14 & 15 Vict. c. 43.

Hainault".<sup>7</sup> But Hainault was lost. The Crown received 1917 acres as compensation for its rights; the trees on this were cut and sold while the land was cleared for farms. In 1863 a Select Committee on the Forests of Essex estimated that the land earned £4000 per year against the £500 it would have brought in as a forest.<sup>8</sup> Given the dismay raised by tales of forest mismanagement, the continuing need for timber for ships, and the proximity of Hainault to London shipyards, it is not surprising that a measure which appeared to end archaic practices was passed so easily. Indeed, it would have taken a very strong public movement to prevent this. When the public did become interested, the Hainault Forest Act would be viewed with regret and cited as an example not to be followed again. Had the Crown owned the soil in Epping Forest, it might have largely disappeared as well.

That the Act had nothing to do with Epping Forest did not mean that its sylvan acres remained inviolate for the inhabitants of East London. Between 1800 and 1850 approximately a third of the forest was enclosed. In 1855, as if to facilitate further enclosures, the Commissioners of Woods and Forests began selling Crown rights to lords of the manor, a policy recommended by the Select Committee a few years earlier, despite the absence of official sanction for such a move. Commoners were often too

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<sup>7</sup>Times, 25 November 1851.

<sup>8</sup>Report from the Select Committee on Royal Forests (Essex), p. vi.

weak to resist illegal enclosures or cooperated with their lords.<sup>9</sup>  
 A traditional safeguard, the Verderers' Court, was ineffective.<sup>10</sup>

This piecemeal dismemberment of the forest continued for many years with only isolated attempts at opposition. But it could not proceed surreptitiously for too long before people from all classes found favourite haunts closed to them. As their complaints started to coalesce, it was only a matter of time before a political response appeared. Finally, in February 1863, the issue reached the House of Commons where George Peacocke, the member from Maldon, Essex, moved:

That an humble Address be presented to Her Majesty, praying that She will be graciously pleased to give direction that no sales to facilitate Inclosures be made of Crown Lands or Crown Forestal Rights within fifteen miles of the Metropolis.

Peacocke was, unknowingly, firing the first shot in the nascent campaign to bring Parliament onside over the question of

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<sup>9</sup>Eversley, pp. 83-84.

<sup>10</sup>The Verderers were elected by the freeholders to uphold the ancient rights of the forest. At the turn of the century their jurisdiction had been expanded to enable them to examine unlawful enclosures. But their powers depended on the Attorney General's willingness to pursue cases brought to his attention, something that was often lacking. In addition, lords of the manor had ways of avoiding the Verderers. Under an 1829 Act (10 Geo. IV c. 50, s. 100) if an offending lord claimed that the land involved in an enclosure was not within the forest, the Verderers could not issue a judgment. By the early 1860s only one verderer, George Palmer, remained. The Court had not sat since 1854. William R. Fisher, The Forest of Essex (London: Butterworths, 1887), pp. 132-34; Guildhall Library, Fo. pam. 2155, George Palmer, Address to Freeholders of the County of Essex, 11 July 1854; Report from the Select Committee on Royal Forests (Essex), qq. 709, 843-65.



metropolitan open spaces. The motion's applicability might have been limited to areas where the Crown had rights but preservationists would soon broaden the front.

In persuading his colleagues to pass the motion Peacocke touched upon themes designed to induce guilt in the comfortable classes, a tactic which the preservationist movement would employ consistently. He noted that they were often ignorant of enclosure bills and cited the Hainault Forest case as an example of the unfortunate effects of this. He hoped the members of the House at that time had been unaware of the bill's intent and had not been "insensible to the injury which it inflicted upon the poor people up to whose dwellings the forest extended". He speculated that M.P.s would be quick to protest if Richmond Park were threatened and he instanced reaction to proposals to enclose Hampstead Heath, "a recreation ground for the comparatively rich", as a model of what he would like to see for Epping. The Crown rights there were being sold for under £4 per acre, "a most inadequate compensation for the loss which the public experienced in being deprived of the privilege of enjoying themselves on those grounds".<sup>11</sup>

In effect Peacocke was urging that Crown rights, which had arisen in the past to protect deer, be used to keep the forest open for people. It was a line of reasoning that others had difficulty accepting, including some who shared the same goals. Keeping a common unenclosed, they argued, did nothing to legitimize a public right of access. As Frederick Peel, the First

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<sup>11</sup>H.C., 3 Hansard 169: 309-11, 13 February 1863.

Secretary to the Treasury, said when replying to Peacocke: it was impractical to use the Crown rights "as an instrument for converting the property of private persons into a public park".<sup>12</sup> But, regardless of the merits of this as a permanent solution, there was no doubt that it was an attractive stopgap measure. It would preserve the status quo by preventing enclosures and do so at no cost to the public, who would benefit. Nor was it particularly underhanded. The rights that would be asserted were valid ones, eclipsed only because they were impractical or because they had been poorly enforced. Deer still roamed in the forest.

Peacocke's motion passed by a comfortable margin, 113 to 73, but clearly, a closer look at the affairs of the forest was required. The vote revealed fertile soil for preservationists to work, but few members of the House of Commons had more than a surface understanding of the subject. In March a Select Committee was appointed to consider, among other things, whether it was "expedient to take any steps for preserving the open spaces in the said Forests [of Essex]".<sup>13</sup> The Committee heard testimony from officials and users of the forest. One of the Commissioners of Woods and Forests had little sympathy with those advocating the use of Crown rights and found it perplexing that

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<sup>12</sup>H.C., 3 Hansard 169: 313, 13 February 1863.

<sup>13</sup>H.C., 3 Hansard 169: 1039, 3 March 1863.

a body of gentlemen holding ... just and liberal opinions on most public questions should be prepared to ask Parliament, in this 19th century, to perpetuate, for any purpose whatever, those odious and oppressive feudal rights which had their origins in the worst period of our history.<sup>14</sup>

The Commissioner had a point. Unlike most rights of common, which had been won by the commoners from their lords and could thus be linked to the struggles of the little man, Crown forestal rights had come into being to prevent the people interfering in the pleasures of the hunt enjoyed by the monarch. But this was hardly something to cause sleepless nights for preservationists who, as likely as not, appreciated the irony of oppressive rights coming full circle and aiding the people.

Other witnesses, including George Palmer, the sole remaining verderer, believed that long public use--"800 years"--had created a prescriptive right to the forest. This was an appealing argument but not one that courts had received well. While admitting that some objectionable people visited the forest, Palmer played upon the politicians' proclivity for things that benefited the working class by citing a remark made by one of the many "respectable" artisans and tradesmen: "I spend a happy day with my wife and children here; is not that much better than sitting at the public-house?"<sup>15</sup> Who would deny this? Open spaces had been sold as alternatives to the pub since the 1830s and the argument had life in it still.

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<sup>14</sup>Report from the Select Committee on Royal Forests (Essex), q. 71.

<sup>15</sup>Report from the Select Committee on Royal Forests (Essex), qq. 755, 761, 765.

The Committee's report criticized the Woods and Forest Commissioners for selling the Crown rights in the past without authorization. For the future it saw two options, neither of which represented a significant step forward. The Government could either use the Crown rights to preserve the forest in its unenclosed state as Peacocke's motion advocated, or allow enclosures to continue while purchasing an "adequate portion [for the] purposes of recreation". The first alternative seemed a route of "doubtful justice" and one not guaranteed to secure the desired end. Thus, the Committee recommended the second.<sup>16</sup> It offered no guidelines on how large an "adequate portion" should be.

The Woods and Forests Commissioners regarded forests as assets for generating revenue and thus were not the body to oversee the conversion of part of one into a recreation ground. Searching for the best means of implementing the Select Committee's recommendation, the Government wrote to the Metropolitan Board of Works in June 1864 to inquire if it would be "disposed to take any measures for obtaining Parliamentary powers for the inclosure of Epping Forest as a place of recreation".<sup>17</sup> Although the Board's jurisdiction did not extend to the forest, the Government's question was not inappropriate. It was the closest London had to a metropolitan government and residents of the metropolis were expected to be the primary

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<sup>16</sup>Report from the Select Committee on Royal Forests (Essex), p. iv.

<sup>17</sup>P.P. Copy of a letter from the Right Honourable Frederick Peel to the Chairman of the Metropolitan Board of Works, relating to the Crown Forestal Rights over Epping Forest, 1864 (435) XXXII. 333.

users of the forest. But the Board decided not to become involved.<sup>18</sup> That the forest was outside of its boundaries was a convenient reason, but this was something that an enabling Act could have remedied. Essentially the Board got cold feet. It did not want responsibility for this large open space when it had yet to devise a satisfactory policy to deal with the ones in its own bailiwick. In later years, when the Board changed its mind and put forth a scheme for the forest in opposition to one from the City of London, its enemies would use this 1864 decision as evidence that its concern was marginal.

As weak as the Board appeared in this matter, later generations could only feel gratitude for its decision. Had it chose otherwise, most of the forest would have been lost with only a fraction reserved for public use. After the Board turned down the offer, the Government took no immediate steps to resolve the issue. In the interim, enclosures continued. In 1865, M.P.s asked why the Crown rights were not being asserted to halt illegal encroachments but they failed to get satisfactory answers.<sup>19</sup>

Specific Parliamentary attention to Epping Forest waned somewhat after the Select Committee's report but the

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<sup>18</sup>P.P. Correspondence with the Treasury as to the Rights of the Crown in Epping Forest, 1866 (172) LX 467, pp. 7-12; Report of the Metropolitan Board of Works for 1865, Appendix E, Correspondence with the Lords Commissioners of Her Majesty's Treasury with respect to the Inclosure of Epping Forest, pp. 77-80.

<sup>19</sup>H.C., 3 Hansard 179: 706-11, 22 May 1865.

discussions about the forest helped bring the broader issue of open spaces increasingly to the fore. Towards the end of June 1864, Frederick Doulton, the Liberal member from Lambeth, successfully steered a resolution through the House, by 79 to 40 votes, declaring that it was

the duty of Her Majesty's Government to provide for the preservation of open spaces in and around the Metropolis within the limits assigned by the 14th section of the Inclosure Act of 1845.

The area affected was that within a fifteen-mile radius of the Post Office. The Government opposed the motion but was defeated as many metropolitan Liberals supported it. They could not afford to do otherwise. Doulton painted an alarming picture of an expanding metropolis destroying the surrounding open spaces, but, mindful of arguments about the cost of creating parks, he made explicit his desire to see commons retained "in all their wild and uncultivated condition". He hoped that the Metropolitan Board of Works, of which he was a member, would be given appropriate powers of taxation to support an active preservation program.<sup>20</sup>

Despite the number of Liberal members who supported the resolution, the Government felt compelled to defend the past record. A spokesman denied that there had been "any very considerable diminution in the open spaces in and around the metropolis". Commons in the region could not be enclosed without recourse to Parliament, which could insist that recreation grounds be set aside. Battersea and Victoria Parks

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<sup>20</sup>H.C., 3 Hansard 176: 431-34, 28 June 1864.

## 2.4 Wimbledon

Wimbledon Common, like Epping Forest, was outside the jurisdiction of the Metropolitan Board of Works. It was not located in an area suffering from a surfeit of poverty or overcrowding. On the contrary, compared to many districts in London, Wimbledon was relatively wealthy. That such well-off inhabitants decided that their common needed protecting, indicates that they believed their pleasures were linked to it in a way that justified organizing a defence. But, in similar fashion to their peers in Hampstead, they realized that an issue encompassing the public interest was more compelling than one based on private desires. They were fortunate that the question arose at a time when awareness of the open-spaces issue by the public and politicians was growing. Controversy about Hampstead Heath and Epping Forest had prepared the way and now, debates about Wimbledon would push Parliament to make some difficult choices. Events at Wimbledon also served as a catalyst for the formation of the Commons Preservation Society and helped shape its approach. Furthermore, unlike the struggles over most metropolitan commons, the one at Wimbledon was essentially between two sides, the lord of the manor and the commoners. Parliament was often the field of battle but local government was not a participant.

The lord of the manor, Earl Spencer,<sup>1</sup> started the wheels in motion when he unveiled a scheme for Wimbledon Common at a meeting of inhabitants on 11 November 1864. Insufficient publicity resulted in a small turnout, but the churchwardens and clergy from Wimbledon and Putney plus "several copyholders and resident gentry" attended. Spencer proposed to convert 700 of the common's 1000 acres into a park. The costs of creating this park and compensating the commoners' interests would be met by selling portions of the remaining common. Once it was established, Spencer would administer and maintain the park using revenue produced by letting the pasture, the rights to which Spencer would retain.<sup>2</sup>

Prior to this announcement Wimbledon Common had not been a particularly contentious piece of property. What, then, prompted Spencer to draw up the plan? Why not leave the common as it was? Among the reasons was Spencer's observation that Wimbledon was becoming an "integral part of the metropolis". This development would place pressure on the common as a place for recreation and for building. As William Forster, his steward, wrote later, the common's integrity was

threatened every Session by schemes for railroads, hotels, and other undertakings, and it had become no light or easy task for the Lord of the Manor to watch and resist these. The public interest, too, was likely to be overlooked when

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<sup>1</sup>John Poyntz Spencer, fifth Earl Spencer (1835-1910), succeeded to his title in December 1857. A Liberal statesman, he helped found the National Rifle Association in 1859 and was its chairman in 1867-68. D.N.B.

<sup>2</sup>Times, 14 November 1864.



the Lord's personal interest lay directly in encouraging and promoting such projects.<sup>3</sup>

In other words, Spencer, and by implication lords of other manors, had increasing incentives to sell these lands, although the steward was forgetting that their ability to act was circumscribed by commoners' rights. Spencer believed that in its present condition the common was a less than desirable open space. Gypsies had long used it and the neighbouring Putney commons as campsites. They were accused of leaving rubbish strewn about, and in 1860 their alleged refusal to be vaccinated against smallpox was viewed as a threat to public health.<sup>4</sup> Extensive drainage was needed to reclaim parts of the common that became impassable during winter. Furthermore, without some stronger authority to oversee the common, harmful activities such as gravel digging would continue.<sup>5</sup>

Another issue that concerned Spencer was use of the common by the National Rifle Association (N.R.A.) for its annual meetings of marksmen and Volunteers. After the first meeting in 1860 some residents had objected to the presence of rifle butts

<sup>3</sup>B.L. 010347 M 8(1), Further Papers and Proceedings Relating to the Proposed Enclosure of Wimbledon Common, second series, p. 10, letter: Forster to Gore, 4 February 1865; Spencer told the Select Committee in 1865 that one hotel company had actually occupied land it wished to build on forcing him to tear down its notice board. First Report from the Select Committee on Open Spaces (Metropolis), q. 406.

<sup>4</sup>First Report from the Select Committee on Open Spaces (Metropolis), Appendix 3, pp. 82-3.

<sup>5</sup>Alan Phillips, Wimbledon and Putney Commons (London: Wimbledon and Putney Conservators, 1967), p. 21.

on the common and to the behaviour of the crowds who attended. Spencer was a keen supporter of the Volunteers and the N.R.A. and his scheme meant to ensure their continued access. In 1860 the Times had dismissed the dissenters:

What a set of dogs in the manger are those who represent the inhabitants of Wimbledon-common and its neighbourhood! If ... the success of a great movement with which the security of the whole empire is intimately bound up is to be weighed in the balance against the alleged inconvenience of the inhabitants of Wimbledon, the least numerous and important body must go to the wall.... If England were brought well under the gentle pressure of a French Commissary-General the villagers of Wimbledon would suffer with the rest of us. Wimbledon was made for England, not England for Wimbledon. Of course, we all deeply regret that the few hundred persons ... should be put to inconvenience ... but really the empire wants ground for rifle butts; Wimbledon has the ground for rifle butts;--we will not be so discourteous as to draw the inevitable conclusion.<sup>6</sup>

The meets became annual despite some inhabitants' reservations. People who resided around the common--whether commoners or not--usually attended them without charge. The commoners did not regard this as a concession by the lord, but as their right, just as they felt their "tacit consent" allowed the meets to take place.<sup>7</sup>

The meeting which considered Spencer's proposal worried least about the N.R.A. The foremen of the homage juries of Wimbledon and Battersea manors moved a resolution giving

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<sup>6</sup>Times, 14 August 1860.

<sup>7</sup>B.L. 10347 ee 35, Further Papers...Wimbledon Common, first series, pp. 10-11.

qualified support to Spencer, but a four-member committee was appointed to investigate his scheme more fully.

On the surface the plan seemed admirable. At a time when commons were under threat, here was a lord offering to secure a large portion of one for public use. The Times exalted it: "a more handsome proposal has seldom, if ever, been made". Punch expressed gratitude:

Wimbledon, evermore for pilgrims' feet  
Kept sacred, noble Spencer, thanks to thee!  
Thy generous character gives us scope to flee  
Still thither from the hubbub and the heat.

The Times further hoped that other lords would emulate Spencer thus helping to solve the open-spaces problem which, the paper feared, was becoming a party matter. Other publications, however, inclined the other direction. The Daily Telegraph characterized the scheme as a "piece of gratuitous interference on the part of a nobleman imbued with the spirit of a drill-sergeant". The Spectator, Standard, and Saturday Review expressed reservations.<sup>8</sup>

Around Wimbledon itself, the scheme provoked considerable discussion, some of which took a cynical view of Spencer's motives. In the main, however, his public-spiritedness was taken at face value, but certain details of the plan, notably the insistence on fencing, were opposed. Twenty-three members of the "resident gentry" held a meeting on 19 November to formulate a response. They considered a letter from the steward which made it clear that Spencer wished to retain the Common as

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<sup>8</sup>Times, 15 November 1864; Phillips, pp. 22-23.

it was, "doing no more in the way of mere ornamentation than perhaps a little planting, the partial clearing of the gorse and the formation of a pond or lake". But Forster reiterated the necessity of enclosing the new "park" as the only means of bringing the area "properly under control". Further, he ruled out any possibility of the commoners holding onto their rights as such an arrangement would upset Spencer's goal of raising the maintenance costs through his exclusive control of the pasturage. Forster could not imagine commoners having objections to this as the compensation to be paid seemed preferable to retaining a right "which in its present state yields them nothing". The gentlemen at the meeting remained unconvinced that the fence was necessary and proposed that the residents of the area would make up any shortfall that the lack of fence would produce in revenues. Forster replied that Spencer would wait until the committee appointed on 11 November had commented on the plan before he responded to particular issues.<sup>9</sup>

The plan was in the hands of the committee in early December, along with the proposed bill to give it Parliamentary approval. It vested considerable power in the "Protector" as Spencer's position was to be called. He had the authority to make the park available for "any purpose of practical public utility or interest" with the consent of the Home Secretary, a way of perpetuating use by the N.R.A. Any gatherings of a religious or political nature would be prohibited. In addition, the Protector was to have the power of "making regulations as to permitted

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<sup>9</sup>Further Papers ... Wimbledon Common, second series, pp. 5-9.

refreshments to be sold in the park, ... for regulating quarries and pits to be used by the parishes, and for excluding gipsies and tramps". The plan marked out the areas to be sold for building. No land would be sold in excess of the amount required for purposes of implementing the scheme. Critics suggested that this provision gave Spencer absolute title to the land not sold, free of all common rights. Perhaps the most curious feature of the bill was that which allowed Spencer to erect a house for himself on the site of a windmill near the centre of the common.<sup>10</sup>

Overall the proposal was a curious mixture of generosity and paternalism and it was difficult for many to feel unreserved enthusiasm for it. After deliberating, three quarters of the four-member local committee came to conclusions somewhat at odds with Spencer's. In the first place, they continued to question the need for a fence. Other means could be employed to control nuisances such as gypsies. If fencing were needed to turn the pasturage into a profitable venture, the committee believed a more extensive network would be needed than Spencer admitted, and this, along with the clearing of natural vegetation, would detract from the public's use of the common. Nor was a fence required for the purpose of the N.R.A. meeting. In short, the committee wanted all references to fencing expunged. It also disliked the idea of selling up to 300 acres of the common to pay expenses. The problem of compensating commoners disappeared if their rights were left alone. Residents of the area, it was

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<sup>10</sup>Times, 27 December 1864.

confidently asserted, would pay for the upkeep of the common rather than lose these acres to building.

The committee wanted to protect the entire common and it feared that portions would be sold unless the bill was amended to provide an alternative means of meeting expenses for even a modified scheme. One other possibility, in lieu of legal power to rate the inhabitants, was to seek donations from the public. If, on the other hand, the inhabitants were rated to raise money for a scheme, they deserved a voice in its management, a role Spencer was reluctant to grant them. More serious, the bill as framed seemed to put Spencer under no compulsion to manage the common; it merely gave him permission. Though the committee trusted Spencer to maintain the park, subsequent lords of the manor might not be so benevolent and might use the powers in the bill to exact as much profit from the common as possible. The committee recommended adapting a system operating in Bristol which gave the public guaranteed access to commons without abridging the common rights of the freeholders of the affected manors. Spencer could be chairman of such a management structure.

The committee's report was read before a gathering of sixty-five residents at the home of Henry Peek, a wealthy Tory M.P. and ardent preservationist, in January 1865. The meeting authorized the committee to meet with Spencer to explain the objections, and resolved to persuade the locality to pay the management expenses of the common.<sup>11</sup> Thus, in relatively short

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<sup>11</sup>Further Papers ... Wimbledon Common, first series, pp. 3-17.

order, the influential section of Wimbledon society had rejected the scheme. They deemed a 700-acre park a poor cousin to the full common, regardless of the good intentions of Spencer. They clearly wanted no encroaching buildings nor any fences.

This view was not unanimous. The fourth member of the committee submitted a minority report to Spencer in which he declared:

That all the people want is, what the Bill brought in by your Lordship gives them, namely, Seven hundred acres for a Park.

That all minor matters, such as draining, fencing, and levelling the land, building lodges, and making ornamental water, roads, and paths, should be left to your Lordship's judgment and discretion.... that the donor of such a noble gift is the proper person to consider what is best calculated to be done to enable the people thoroughly to enjoy it, and to carry out unmolested all minor details.<sup>12</sup>

Although this dissenter claimed to speak for the "people" it is difficult to gauge how many inhabitants of Wimbledon shared his opinion because the voices that dominate the debate after this are those belonging to Spencer's opponents. His supporters failed to demonstrate strength or unity and their silence suggests their numbers were small. Spencer's steward told the Select Committee on Open Spaces that he knew of petitions in favour of the scheme signed by "3,000 or 4,000 persons" but next to nothing is heard about these people.<sup>13</sup>

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<sup>12</sup>Further Papers ... Wimbledon Common, second series, p. 3.

<sup>13</sup>First Report from the Select Committee on Open Spaces (Metropolis), q. 833.

In addition to the committee's report, Spencer received a long assessment of his plan from one of the Commissioners of Woods and Forests, Charles A. Gore. His professional interest concerned the rights of common allegedly held by the Crown with respect to forty acres in the region. When the land had been enfranchised the rights had been regranted, and Gore wanted to ensure that these Crown rights would be dealt with properly. His opinions were noteworthy because he had had long experience with enclosures and he was not, by any stretch of the imagination, hostile to them.

Gore praised Spencer's liberality and then, politely, found numerous faults with the bill, some technical, some ideological. Wherever he thought the language in it could be interpreted to support an exclusive claim to ownership of the common by the lord of the manor, he advised the addition of words recognizing that commoners had exercised rights. The bill seemed to confirm rights of the lord and create new ones for him, while consigning the rights of commoners to a very doubtful state. Furthermore, like the local committee, he believed the bill lacked sufficient safeguards to prevent an unscrupulous successor to Spencer using the park for profit. As drafted, it gave the lord too much power to work gravel pits and quarries, which a future Protector might exploit. The Protector should share his powers with at least two others, one representing the commoners, the other appointed by the Enclosure Commissioners. He questioned the provision by which the park could be "used for any purpose of practical utility or interest" because of the difficulty in applying the definition.



This had been Spencer's clause for enshrining the N.R.A.'s rifle meet.

More important, Gore disputed the value of a fence, believing that the common would be a greater boon if left unenclosed. Gore's suggestions were not, however, identical with those of the committee. He thought that the lord should retain a right to sell gravel from three pits already in operation; he expected some land would have to be sold to cover the costs of the bill and payment of compensation to the lord, and finally he had no objection to the erection of a house on the two-acre windmill site. Gore explicitly rejected one of the central theses of the committee's report, namely that reserving the rights of the lord and the commoners would be an effective method of dedicating the common to the public.<sup>14</sup> In other words, people were deluding themselves if they thought a common could be turned over to the public and continue to support the rights of commoners or the lord. Gore thus placed himself at odds with the principle that would be central in the strategy of the Commons Preservation Society.

Spencer stood, then, with declared support from one member of the committee formed to examine his scheme, very qualified backing from Gore, and opposition from the rest of the committee, which claimed to speak for the majority of the inhabitants. Although he professed a desire to accommodate himself to the wishes of the area, Spencer gave way on two

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<sup>14</sup>Further Papers ... Wimbledon Common, first series, pp. 20, 23-36; Second Report from the Select Committee on Open Spaces (Metropolis), qq. 1845-51.

points only in his reply to the committee, neither of which addressed the fundamental objections. Acknowledging that a single administrator might not safeguard the park as a public facility, Spencer proposed two additional trustees, one to be appointed by the Crown and the other by the Enclosure Commissioners. There was no mention of a representative of the commoners or local residents. Secondly, Spencer agreed to relinquish his right to cut turves and restrict his right to take gravel if he was compensated for the consequent loss of revenue. Any money left after the management expenses had been met from the proceeds of the right of pasture would go to the lord.

Spencer was well aware that these moves failed to meet the objections of the committee, but he preferred to battle it out in Parliament where all points of view could be heard.<sup>15</sup> After all, the homage juries of Wimbledon and Wandsworth had expressed wholehearted support. As they represented the copyholders of the manors, and as the copyholders were, according to the Spencer, the only party apart from himself who had any legal interest in the common (however vague), Spencer felt that he had been generous. He could legitimately wonder whether the committee spoke for all, or whether it was merely the tool of the wealthy, eager to avoid new buildings. Perhaps the commercial sector of the community would welcome new development.

Spencer and his steward agreed that the use of the word "Park" in the bill should be dropped as it implied something far

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<sup>15</sup>Further Papers ... Wimbledon Common, second series, pp. 5-6; first series, p. 18.

beyond their intended alterations. In addition, they tried to make the enclosure less threatening: no internal barriers of any kind were to be erected. But as a fence would, in their opinion, reduce the cost of maintenance while at the same time increase the revenue to be used for the upkeep, there seemed no reasonable grounds for continuing to reject it. A fence was necessary to protect the common against the increasing "evils" that threatened it. It was the only way to safeguard the animals when the pasture was let. As if to allay residual doubts, the steward stressed that the fence "should be in good taste--not the iron railing first suggested--a plain inexpensive open wooden fence .... [with] frequent openings".<sup>16</sup> Disagreements over the style of fencing around a common would appear elsewhere in the metropolis.

Attempts to negotiate an agreement ended with no resolution of the two important issues, the fence, and the sale of portions of the common. Spencer's sweetener of first offering these portions to adjoining property owners was not judged to alter the situation materially. Public meetings in Wimbledon and Putney during the opening months of 1865 expressed support for the views of the committee.<sup>17</sup>

Meanwhile in Parliament in early February, Frederick Doulton gave notice of his intention to move for the appointment of a Select Committee on metropolitan open spaces. The Epping

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<sup>16</sup>Further Papers ... Wimbledon Common, second series, pp. 23-26.

<sup>17</sup>Further Papers ... Wimbledon Common, first series, p. 19; First Report of the Select Committee on Open Spaces (Metropolis), qq. 1671-79.

Forest question was demanding a Parliamentary solution and other open spaces were crying out for defenders. Tooting Common had been threatened by an enclosure Act in 1863; Streatham and Clapham were thought to be in danger of disappearing as Stockwell and Dulwich commons had already done.<sup>18</sup> In the same year, parts of Wandsworth Common were lost to the railway, provoking a protest to Spencer, who was lord of the manor there as well.<sup>19</sup> The imminent arrival of his Wimbledon Bill seemed an opportune time to investigate the broader situation.

Before the Select Committee was appointed, the types of arguments that it would hear over the extent of Spencer's power received a preliminary airing in the Times courtesy of Spencer's steward and the local committee. Forster underlined that Spencer was

as absolutely owner of the common as he is of any other part of his property, subject only to the existing rights of the commoners. These rights are confined to pasturage; they are practically of little value, and those who possess them are few in number. By common law the lord might enclose for his own benefit all the common, except so much as would suffice to satisfy these rights, and by a special custom of the manor even this residual could be enclosed .... The restriction against the enclosure of open spaces near large towns contained in the General Enclosure Acts applies only to enclosures proposed to be carried out under those Acts.<sup>20</sup>

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<sup>18</sup>Times, 23 May 1863.

<sup>19</sup>Times, 2, 3, 8 September, 10 October 1863.

<sup>20</sup>Times, 20 February 1865.

In reply the letter from the Wimbledon and Putney Committee stated that there were 200 commoners, not merely a few.

It is confidently affirmed that, in addition to the commoners' rights of pasturage, the commoners and two parishes have the right of digging gravel, turf, and loam on the common, and the existence of this latter right is fatal to the lord's right to enclose or (as it is technically called) approve any part of the common. It has also been decided that a special custom for the lord to enclose without limit is bad and therefore void. So much for the lord's rights, if even the public have not acquired rights of enjoyment by immemorial user.

The committee thus challenged the two avenues for unilateral action which Spencer might take. The common law provision (as spelled out in the Statute of Merton) was declared inoperative against rights other than pasture. Forster later told the Select Committee that there was reason for doubt on this point, but, in fact, judicial decisions backed his opponents' interpretation.<sup>21</sup> The committee was on stronger ground when it disputed the validity of a local manorial custom that would destroy the common. No court would sanction such an interpretation although, of course, the common could be enclosed if all commoners assented. The committee also asserted that there was no force to the argument by Forster and Spencer that the public's enjoyment of the common would be undermined if the rights of commoners were not extinguished: they could happily coexist.<sup>22</sup> The committee disagreed with Gore on this matter too.

<sup>21</sup>First Report from the Select Committee on Open Spaces (Metropolis), qq. 877-880; Fawcett v. Strickland, Willes 57; Grant v. Gunner, 1 Taunt. 435.

<sup>22</sup>Times, 21 February 1865.

In fact, events in the next two decades would strain this contention.

The sponsor of Spencer's bill, Lord Bury, agreed that it should be postponed for a month while Doulton's Select Committee looked into the broader question of metropolitan open spaces, but Spencer would not necessarily feel bound by its recommendations. The Committee was appointed in early March 1865.<sup>23</sup>

The opening salvos at Wimbledon had produced a stand-off that resembled the one at Hampstead, although without the same depth of animosity between the parties. Once again wealthy members of a community had banded together to frustrate an individual's plans which they perceived as threatening. They believed that common rights gave them the means to mount their challenge. But their lords in turn had faith in their interpretation of rights and solicitors for both sides began examining the records preparatory to future battles. Many of the divergent views on rights would be presented to the Select Committee.

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<sup>23</sup>H.C., 3 Hansard 177: 498, 515, 21 February 1865.

**Part Three: Parliament and Preservationism**

### 3.1 The Select Committee and Wimbledon

The decision to appoint a Select Committee on Metropolitan Open Spaces was the beginning of efforts to find a uniform policy to deal with these commons. Before this, politicians directed their attention towards whichever one was the scene of the most public dispute. The first session of the twenty-one-member Committee lasted for two weeks at the end of March 1865 and focused on Wimbledon Common. Between early April and late June more hearings were held dealing with the remaining metropolitan commons. A separate report issued from each set of hearings. Overall, the makeup of the Committee, which included many metropolitan M.P.s, was sympathetic to the preservationist cause. Among the members were Peacocke and Doulton (though he missed the Wimbledon hearings due to illness), and two who were both to become active in the Commons Preservation Society, Shaw Lefevre and William Cowper. Nonetheless, a great many witnesses, representing all sides of the question, were examined.

The first witness was George Wingrove Cooke, an Enclosure Commissioner, from whom members of the Committee tried to obtain some insight into the complexities of enclosure law. Questions concentrated on what possible rights the public possessed. This was not only an area filled with general misconceptions but also one in which the law itself was not without some ambiguities. Cooke began with the simple formula describing ownership of a common, namely that the lord was "absolute owner" subject only to the rights of others over it. He



then reaffirmed Merton: a lord could do what he wished with a common as long as left sufficient to satisfy commoners' rights.<sup>1</sup> Cooke distinguished between what the public were recognized to have, namely a right to use a footpath across a common, and what they had never had, a right to wander at will over one.<sup>2</sup> When pressed as to whether the public could not possess a right of recreation, Cooke admitted that some cases had confirmed this, but he doubted if a right to roam over a common could ever have the same status as dancing or playing games, which were specific. Nonetheless, the law was not definite on this matter. In all cases, the standard method of asserting a right was by trespass. An aggrieved party challenged a lord by continuing to exercise a right after an enclosure had occurred or a notice had been erected prohibiting the activity.

Cooke was also asked about the role of the Enclosure Commissioners whom many saw in unflattering terms because of their seeming inability to halt some enclosures. He explained that they had no power to interfere if the lord and commoners agreed amongst themselves to enclose. Only when the parties came to Parliament did the Commissioners act. (This was factual but the Commissioners would be attacked in years to come for the manner in which they had exercised their authority. Critics believed that they had failed to hear the opponents of enclosures or to provide adequate allotments for gardens and recreation as

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<sup>1</sup>First Report from the Select Committee on Open Spaces (Metropolis), qq. 5-15.

<sup>2</sup>First Report from the Select Committee on Open Spaces (Metropolis), q. 23.

the law had stipulated.) Cooke was rather pessimistic about the survival of commons because parties had more to gain by their exploitation:

The value of these commons now for building land is so very great, that many a lord and many a commoner would rather divide between them one third of the common than leave it in its present state; because now they get nothing for it.<sup>3</sup>

Having digested this brief primer on enclosures, the Committee turned its attention to Wimbledon to see if any of the theory could be applied in practice. Earl Spencer appeared and under friendly questioning by Viscount Bury, who, unlike most Liberals on the Committee, was a staunch ally, detailed his scheme. He frankly admitted that his arrangement excluded local representatives from management of the common because he thought they would be hostile to the Volunteers and the N.R.A., although he later softened this to a statement that while few openly disliked the Volunteers there had been some complaints about shooting. For the most part Spencer explained why his scheme offered more advantages than pitfalls despite the obvious feeling in the neighbourhood against the fence. Typically, gypsies were blamed for many nuisances, including bringing "infectious diseases" into the area and allowing their "donkeys to stray into gardens". Tramps, possibly, were responsible for some of these transgressions but, in either case, the fence would assist control. Spencer claimed that the homage juries' endorsements indicated that commoners were willing to have their largely useless rights

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<sup>3</sup>First Report from the Select Committee on Open Spaces (Metropolis), qq. 164-71 208, 317.

converted to cash by way of compensation for their extinguishment. He was quite insistent that he was giving up many of his own rights as a public service. He could, he understood, enclose either by common law if sufficient land were left for the commoners or by custom of the manor, that is, with the consent of the homage jury, in which case the question of sufficiency did not arise.<sup>4</sup> Up to this point Spencer was not denying that there were commoners with rights. Indeed, an important part of his scheme dealt with the means to compensate them when their rights were lost. Although few specifics were mentioned--such as how many commoners existed and what rights they had--Spencer and his steward had obviously worked out some probable figures when they drafted it.

Under questioning by Shaw Lefevre, Spencer professed to be only too willing to abandon the fence if other means to finance the management could be found, though once again, he added the rider that the management must be "in the hands of independent people".<sup>5</sup> Spencer's paranoia about the local residents seems to have grown during his negotiations with them. It is difficult to imagine what damage he envisioned would follow if, on a board of three administrators, one represented the inhabitants. Perhaps he was anticipating that the inhabitants and commoners would challenge his grandiose assessment of his rights as lord.

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<sup>4</sup>First Report from the Select Committee on Open Spaces (Metropolis), qq. 431, 525-26, 592, 630-33.

<sup>5</sup>First Report from the Select Committee on Open Spaces (Metropolis), qq. 675-76.

Whatever inflated views Spencer might have had of his own powers, he had, at least, spoken as if commoners existed. His steward, William Forster, in earlier communications with the local committee studying the plan, had also acknowledged that there might be a few. By the time he appeared before the Select Committee, however, Forster had decided that a few were too many. Why he presented a case slightly at odds with Spencer's is unclear. The two of them might have decided to undermine the commoners by being more aggressive, or Forster himself might have had a change of heart, as he hinted in his testimony. His new stance that there were no commoners had curious implications for the scheme. One of its most contentious parts was the provision to sell land to provide compensation to commoners but, if they were such rare creatures, the justification for this evaporated. The entire common could be retained.

Forster, of course, provided details to support his beliefs and strengthen his employer's position. This he did with sufficient bravado that the chairman of the Committee, John Locke, during subsequent debate in the House of Commons commented that Forster had

          painted a lord of the manor such as a lord of the manor had never before been painted on the face of the earth. He was, according to that gentleman's evidence, the most powerful lord of the manor it was possible to conceive, for he was able to do anything and everything with everybody; ... if he was not allowed by Parliament to do what he liked, he would take the Common and act with it as he pleased.<sup>6</sup>

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<sup>6</sup>H.C., 3 Hansard 178: 776-77, 6 August 1865; spoken during debate on the second reading of Spencer's bill.

What had Forster said to earn Locke's sarcasm? First, he reduced the number of commoners to nought by claiming that there were no copyholders who could claim rights by either of the two necessary criteria, namely by possession of an undivided, unenclosed fifteen acres of copyhold land which had been such from the time of legal memory (that is, from the reign of Richard I) or by possession of a cottage that had existed from this time. By these rules it would be difficult to find a single copyhold commoner in all of England. There were copyholders at Wimbledon, admitted Forster, but they were bereft of common rights. Common rights could also exist if regranted upon enfranchisement of a copyhold, but Forster doubted if any such cases existed at Wimbledon with the possible exception of a grant to the Crown (Crown rights were very durable). To further undermine this avenue, Forster reminded the Committee that a regrant applied to rights existing prior to enfranchisement, and those rights would have to fit one of the aforementioned criteria. Finally, Forster knew of no persons who could legitimately claim a right by prescription. The only rights of any kind that he acknowledged (outside of Spencer's) were certain public rights of way across the common, but these were a far cry from rights of common and he denied that there were any broader public rights over the area.

Second, even if bona fide commoners were to be found, Forster paid scant attention to the necessity of guaranteeing them sufficient common on which to exercise their rights. With the approval of the homage (made up of copyholders without

common rights according to Forster) the lord of the manor could enclose at will. Forster claimed that this method had been used frequently and offered to produce evidence of fifty such enclosures. (Similar claims would be put forth on behalf of the lords of the manor at Hackney and other metropolitan commons.) But Shaw Lefevre disputed Forster's view of this custom; he believed that the consent of the homage could only be given to a grant of land that did not interfere with the rights of commoners. In other words, the homage could not sanction policies that would weaken the common's capacity to support those rights. Forster refused to be drawn further on the issue.

When challenged to explain a report by a 1649 Parliamentary Commission which stated that all copyholders had rights of common, Forster somewhat unconvincingly fell back on his original definition and maintained that this applied only to holders of fifteen acres or ancient cottages. The credulity of the Committee was stretched by Forster's assertion that the 250 copyholders who held more modern cottages were not entitled to common rights. He was being extremely literal in his interpretation of this matter.

A logical question, if Spencer's rights were as comprehensive as Forster claimed, was why there was any need for Parliament to sanction the proposed scheme. It seemed a redundant move. Forster had to reveal that his assessment of Spencer's power had been less exalted when the plans were first

drawn up; nonetheless, he thought the bill would clarify the public's use of the new park.<sup>7</sup>

Spencer and Forster had, indeed, painted an image of a powerful lord of the manor but the tone of Locke's comments quoted above suggests the portrait was less than captivating. Still, it could not be completely dismissed. Could a lord make grants from the common with the aid of the homage jury, and if so, were there restrictions as Shaw Lefevre suggested? Preservationists had a vested interest in puncturing some of the assumptions made by Forster to discourage other lords from becoming too possessive about their commons.

Doubts about Forster's case were not confined to members of the Select Committee. Few of the steward's contentions were left unchallenged by the witnesses from Wimbledon who followed. Joseph Burrell, a barrister with expertise in property law, accused Forster of ignoring the important common rights held by the freehold tenants of the manor. These could not be lost in the same way as copyholders' rights. He also explained why Forster's view of the Statute of Merton was incorrect: Forster seemed unaware that although it allowed the lord to approve against rights of pasture, it had no power to limit other rights such as turbary, estovers or gravel digging. Burrell had a more logical explanation of the link between ancient cottages and common rights than the absurd position outlined by Forster. The site, not the cottage itself, was

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<sup>7</sup>First Report from the Select Committee on Open Spaces (Metropolis), qq. 719, 722, 737, 739-40, 746, 752, 758-60, 762-66, 825-29, 836-44, 306-7, 962-69, 982.

the important thing. A modern cottage on an ancient site could claim the original rights although a larger dwelling could not be used to justify taking greater quantities of anything--turves, estovers--in the exercise of a right. He doubted whether Forster's fifteen-acre stipulation would be upheld in any court. Rights must be divisible with the land. In another departure from Forster, Burrell argued that a court of equity would rule that a lord must regrant common rights after the enfranchisement of copyhold.<sup>8</sup>

Although it was far from certain, Burrell held out the possibility that a court might rule that the inhabitants of London had acquired a right of recreation over Wimbledon Common. In this he differed not only from Cooke but from all legal precedents. He recognized that the ambiguity surrounding the identity of the commoners was a powerful influence in keeping the common unenclosed; should they all be identified, it opened the opportunity for someone to buy up their rights. He was not blind, however, to the unsatisfactory condition of the status quo and expressed hope that an agreement could be reached which would bring advantages to the public.<sup>9</sup>

William Williams, a solicitor and member of the four-man committee appointed to consider Spencer's proposal, expressed surprise at Forster's version of the lord's rights. If there were no commoners, why had Spencer included a provision

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<sup>8</sup>First Report from the Select Committee on Open Spaces (Metropolis), qq. 1307-55, 1411, 1433-36, 1463-76, 1481-83.

<sup>9</sup>First Report from the Select Committee on Open Spaces (Metropolis), qq. 1443-51, 1454-55, 1477-78, 1496.



to sell land in order to compensate them? Why had notices been sent to 287 copyholders seeking their consent to compensation? Williams seemed sceptical of Forster's claim that he had come to different conclusions after the plan had been devised. He indicated that there were many people who claimed rights who had not received the notice.<sup>10</sup>

Viscount Bury subjected Williams to some hostile questioning and implied that the demands of the residents made them ungrateful. Williams responded by giving them an altruistic tone:

Lord Spencer comes to Parliament, and asks on behalf of the public for Parliamentary facilities, therefore the public have a right to say on what terms they should give him those facilities, and in the interest of the public, I should say, Do not give Lord Spencer Parliamentary facilities for the inclosure of such a large tract of land as Wimbledon Common, ... in the interest of the public ... it would not be desirable.<sup>11</sup>

Although somewhat selfish motives undoubtedly explain the involvement of many members of the Wimbledon gentry in the fight to save the common, Williams' emphasis on the public good should not be cynically dismissed. This was a cause from which private and public benefits flowed in roughly parallel streams and

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<sup>10</sup>First Report from the Select Committee on Open Spaces (Metropolis), qq. 1640-44, 1692, 1731-32, 1775. Of the 287 who received notices, 93 agreed to Spencer's offer, 20 opposed it, 48 were neutral, and 126 did not reply, qq. 1704-5.

<sup>11</sup>First Report from the Select Committee on Open Spaces (Metropolis), q. 1801; The Times would later adopt a similar argument when it offered criticism of aspects of Spencer's bill. Times, 11 April 1865.

the participants had convinced themselves that they were acting chiefly on behalf of the public.

Williams suggested a compromise plan which allowed for the sale of some land to compensate Spencer for any lost revenue only after a period of grace (until 1867) had elapsed during which money could be raised from the community. If £5000 were collected, no land would be released. The rights of commoners were to remain unhindered; thus the public's use for recreation would be subject to these rights, but it was not imagined there would be any conflict.<sup>12</sup> This belief in the compatibility of commoners' rights with public recreation was no doubt based in part on Wimbledon's relative isolation from the metropolis, but it also owed much to the fact that many rights were no longer exercised.

The validity of the various interpretations of common rights was not something on which a Select Committee could do more than deliver an opinion. On the whole, members of the Committee inclined towards the views of the commoners and they were quite susceptible to testimony which undermined some of the justifications put forward by Spencer for his scheme. In fact, judging from the words of some witnesses, only minimal measures were needed to protect the common. For example, more than one refused to categorize gypsies as a major nuisance; even those who disliked them argued that one or two keepers could keep control. The need for elaborate drainage was also questioned, some suggesting that a "superficial system ... would

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<sup>12</sup>First Report from the Select Committee on Open Spaces (Metropolis), q. 1819.

be sufficient". It was even suggested that Spencer's "very expensive" drainage would "empty a great part of the wells of the neighbourhood".<sup>13</sup>

The only witness to endorse the need for a fence was Lord Elcho, the chairman of the National Rifle Association, and even he objected to anything more than a simple post and rail structure. The majority of witnesses expected that a fence would alter the character of the common, and Williams feared it would become the instrument which permitted it to be exploited for profit.<sup>14</sup> Thus no part of the scheme, from major proposals to sell land to seemingly benign improvements like improved drainage, escaped criticism.

If there were members of the community who accepted it without reservation (and Spencer and Forster claimed to have substantial support) their voices were not heard before the Committee. Thus, its three recommendations were not really a surprise:

That it is not expedient that the Wimbledon Common should be fenced round or inclosed, or that the existing Common Rights should be extinguished.

That it is not necessary, and would be undesirable, that any part of the Common should be sold.

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<sup>13</sup>First Report from the Select Committee on Open Spaces (Metropolis), qq. 1086, 1209, 1211-12, 1287, 1522, 1542, 1578-82.

<sup>14</sup>First Report from the Select Committee on Open Spaces (Metropolis), qq. 1167, 1806.

That the 20 Hen. 3, c. 4, commonly called the Statute of Merton, by which a lord of the manor can inclose, without either the assent of the commoners or the sanction of Parliament, ought immediately to be repealed.<sup>15</sup>

While not welcoming these findings, Spencer felt no obligation to abandon his bill, but it was a somewhat modified version that was brought before the House of Commons for second reading on 6 April 1865. For one thing, Spencer adopted Williams' suggestion and was willing to permit the residents a period of time to raise the necessary funds (by subscription or a local rate) to pay for the proposed improvements before any land would be sold. The revised bill incorporated the proposal to vest management in a three-person board but local representatives were still excluded. Most important, Spencer agreed to abandon fencing the common if Parliament decided against it.<sup>16</sup> This was a significant reversal and left the question of the alleged rights of commoners as the only substantial issue of disagreement between Spencer and the residents' committee.

Mollified by these concessions, the House read the bill a second time and sent it to committee though not before some of the tensions that had existed in the Select Committee came to the surface. Viscount Bury characterized its recommendations as a program for "confiscation". He believed--perhaps with some justification--that its members had been chosen because they

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<sup>15</sup>First Report from the Select Committee on Open Spaces (Metropolis), p. iii.

<sup>16</sup>Times, 6 April 1865; H.C., 3 Hansard 178: 771-72, 779, 6 April 1865.

supported one view and he accused the chairman, John Locke, M.P. for Southwark, of having "made up his mind upon the question before he went into the Committee". Bury suspected that Spencer's opponents in the neighbourhood were primarily the "villa owners around the Common".<sup>17</sup> Again, he was probably right, although this characterization does not make their cause sinister. As well as being villa owners, these opponents were legitimate commoners and it was to be expected that they would take an interest in the common.

For his part Locke denied the charges and attacked Bury's conduct: "The noble Lord had appeared in the Committee with a large brief and conducted the examination of the witnesses, prompted by Lord Spencer, very much as if he were Lord Spencer's counsel".<sup>18</sup> On a less personal level the fundamental split over the interpretation of rights was aired. William Cox, Liberal M.P. from Finsbury, who wished to kill the bill, believed the testimony from witnesses that "from time immemorial the public had gone over that land when and where they liked, without interruption from anybody" meant that the "land was thereby brought within the description of a village green, and Mr. Wingrove Cooke did not deny that in that case it was out of the power of the lord of the manor to inclose or touch it". Cox was stretching matters turning Wimbledon into a village green but he had his reasons. A public right of recreation could be sustained over a green much more easily than over a common, where the concept was doubtful. He

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<sup>173</sup> Hansard 178: 774, 6 April 1865.

<sup>183</sup> Hansard 178: 776, 6 April 1865.

opposed the scheme "not in the interests of any villa owners, but in [sic] behalf of the three-and-a-half millions of persons living in the metropolis".<sup>19</sup> Preservationists had sufficient wisdom to realize that no movement would succeed while trumpeting the wishes of villa owners.

That the Liberal party was divided on this issue had been evident from Bury's participation on the Committee. Robert Lowe, who as Chancellor of the Exchequer and Home Secretary between 1868 and 1874 would frustrate preservationists, expressed little enthusiasm for the direction events were heading. He delivered a more sober and accurate summation of the situation:

Lord Spencer was the lord of the manor of Wimbledon, and the Common belonged to him in fee simple, subject to the rights of commoners, and subject to certain roads and rights of way. Wimbledon was resorted to by the public for purposes of amusement, but the lord of the manor could by his mere will exclude the public from it.

Lowe was critical of the Select Committee's third resolution pertaining to the Statute of Merton. Not only did the Committee seem to be rejecting Spencer's generous offer of 688 acres of land, but it proposed "to deprive him of the right he had [under the Statute] of enclosing any part of the common without prejudice to the commoners".<sup>20</sup> Lowe's sensitivity to property rights had already been demonstrated during debates on Hampstead Heath when he had insisted that the public should buy the land if they wanted to use it.

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<sup>19</sup> Hansard 178: 775, 6 April 1865.

<sup>20</sup> Hansard 178: 777, 6 April 1865.

The Times, in a pessimistic leader, wrote "Wimbledon Common is doomed, whatever the 'Open Spaces Committee' may say to the contrary" but this was as much a lament for the sparsely populated environs as for the common itself, which it hoped could be preserved to some extent. The newspaper shared Lowe's assessment of the public's legal right over the common, suggesting that they had "no more legal right there than they [had] over Mr. Cox's mignonette boxes". But, there was a broader perspective. The public, the Times maintained,

have a very strong equitable claim to be considered if the aid of the Legislature is asked for in order to change the character of a district like this.... It is the pressure of the population of this ever-swelling Babylon that alone gives the enormous value to this land which it would now bear if brought into the land market.... If the Lord and Commoners who own this tract can divide it between them without the aid of the Legislature, we have nothing to say, unless we are prepared to buy the land. But if they come for special powers, then we hold that we are fully justified in driving a bargain for the population of London, that their accustomed although unauthorized enjoyment shall be reasonably considered and to a fair extent perpetuated.<sup>21</sup>

This was a reasonable view but preservationists wanted to curb the undoubted right of lords of the manor and commoners to enclose by collusion because they regarded it as particularly dangerous.

In the end Spencer decided to drop his bill, and thus withdrew Wimbledon Common from Parliamentary consideration for six years. Although the final arrangements for the Common

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<sup>21</sup>Times, 11 April 1865. The paper had put forth similar arguments when commenting on Doulton's resolution in June 1864. Times, 1 July 1864.

were in harmony with the first two recommendations of the Select Committee, it could only take indirect credit for this. Its deliberations had revealed the depth of opinion against Spencer's plan, both among the local inhabitants and throughout the metropolis. As a result, he was forced to pause and offer concessions. But he was not defeated and the commoners themselves would have to make some compromises before a settlement was reached.

The Wimbledon hearings allowed politicians to get their feet wet on the issue of metropolitan commons. Confronted by widely different interpretations of the law, they staked out their positions. The majority of the Liberal-dominated Committee found favour with the arguments presented by spokesmen for the commoners and the public interest, which was deemed to support the preservation of commons. But words spoken on behalf of the lord of the manor were not to be ignored. Clearly lords had powerful rights even if Spencer and his steward had overstated them. Parliament was not in the frame of mind to overturn these. Both sides of the question treated the Wimbledon hearings seriously and wanted to make effective statements. The hearings made the issue of commons more public as newspapers covered and commented upon them. Participants in the debate could sense that some form of legislation on commons was imminent and it was expected that the recommendations of the Select Committee would shape it. But the hearings made it apparent that in the battle to win the hearts of politicians and members of the public, the lords and their allies were already on the defensive. It



remained to be seen if this imbalance in public support would jeopardize their position.

### 3.2 The Second Report of the Select Committee

Having issued its first report on Wimbledon, the Select Committee turned its attention to open spaces elsewhere in the metropolitan region, listening to detailed testimony about commons in Banstead, Barnes, Blackheath, Epsom, Tooting, Clapham, Hampstead, Hackney, and Epping Forest. Anyone who was under the impression that the troubles at Wimbledon were ephemeral and of marginal interest was soon disabused of this notion as witnesses from near and far told tales of commons at risk. Implicit in much of the testimony was the expectation that Parliament would arrest the danger and provide the means with which to restore peace to divided areas. Members of the Committee, as they sensed the passion beneath people's views of their commons or their alleged rights, could not help but be aware of these hopes. Each location had both its unique characteristics and contributed to an understanding of the whole picture. The task for the Committee was to develop a set of rules that would cover the differences and provide protection both for commons that were battlefields for opposing forces and those about which parties were in substantial agreement. Success was less than complete.

The Committee's witnesses included lords of the manor, their stewards, commoners, local government officials, and members of the public. It was impossible to predict a person's point of view by his status. Lords of the manor ranged from those quite eager to effect a transfer of their commons to the public at

little or no cost, to those who refused to consider anything less than compensation at the building-land price. And while it might be assumed that members of the public would uniformly favour the retention of commons, at Epsom, for example, commercial interests expressed a preference for more houses occupied by rate-paying customers. Similarly, the lord of the manor of Tooting Graveney believed the principal inhabitants favoured some building on that common.<sup>1</sup> Undoubtedly, like-minded people could have been found from most districts. Commoners with recognized rights stood to gain if a common was parcelled out for building and they collected compensation. More frequently, however, they valued their commons as amenities in their own right, or as likely to support high property values. Some continued to turn out animals on them. There was lack of unanimity about most commons. If one witness spoke of many commoners with rights, another would disagree; if a common was described as a playground for the poor by one resident, another found it a gathering place for criminals.

One of the first orders of business was determining the boundaries of the inquiry. Members initially decided that a twenty-five-mile radius from the General Post Office would be appropriate, but this range failed to survive through to the final report. Appreciating that any distance would be "too much in one direction or too little in another", the Committee eventually decided to use a radius of fifteen miles, although some members tried for more. Those who were reluctant to embrace the larger

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<sup>1</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 2547, 3898.

zone worried that valid agricultural uses of some outlying commons would be compromised if they were classified as metropolitan open spaces. They reasoned that special legislation could deal with particular commons if the need arose.<sup>2</sup>

Typical of the evidence presented in cases marked by disputes was that given by witnesses from Hampstead. By the time the Select Committee held its hearings the Heath was the focus of a war of nerves between Sir Thomas Wilson and his opponents. After a twenty-year moratorium, Wilson had made some grants from the waste in 1864.<sup>3</sup> When he testified before the Committee, he was not in an accommodating frame of mind. It was naturally in his interest to make out a strong case for the rights of the lord, but the words he spoke in doing so would be cited later as proof that he had wanted to enclose the Heath all along.<sup>4</sup>

The Committee heard the full spectrum of Hampstead opinion. Most people assumed that the Heath would eventually be purchased from Wilson but the amount to be paid and the source of that money were unclear. Both the former and present Hampstead representatives on the Metropolitan Board argued that the Heath should be acquired with the assistance of the central government because it was a "great ornament" to the capital. It was not just another metropolitan common to be dealt with by

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<sup>2</sup>Second Report from the Select Committee on Open Spaces (Metropolis), pp. iii, xv, xxxviii.

<sup>3</sup>F. M. L. Thompson, pp. 179-80.

<sup>4</sup>See Sexby, p. 379.

general legislation, but a site deserving of special treatment. More to the point, Hampstead residents would likely refuse to shoulder an unequal share of the cost, and many tradesmen would not object to the Heath being "covered with houses". The former representative suggested that a sum of £100 per acre would be adequate compensation to the lord considering that he received about £10 per acre from gravel, sand, and licences for animals. His successor pegged £30 per acre as "ample" compensation, while admitting that Wilson would never accept this amount. The only right that the copyholders and freeholders had was one of pasturage, although it was not widely exercised. As to public rights, it was difficult to state if any existed but there were no notices on the Heath warning against trespassing and the lord had not tried to stop any games being played. On the other hand, legal opinion held that a custom for all the world to recreate itself upon a common was bad in law.

The real danger for the area lay in the ease with which Wilson's heirs could build on the land adjoining the Heath as they would not be bound by the terms of his father's will. Both witnesses would have supported an arrangement whereby Wilson was allowed to develop his Finchley Road frontages on condition that he renounce his rights over the Heath and promise not to build on the adjacent land, but Wilson would refuse such terms. In line with the early policy of the Metropolitan Board for financing open spaces, the present representative, Philip Le Breton, allowed that some portions of the Heath could be built upon without compromising its beauty. It was unlikely that all of

his neighbours shared this view. Committee member Shaw Lefevre raised the strategy that the Commons Preservation Society would favour, namely the maintenance of rights to keep commons open, but Le Breton doubted the efficacy of this, especially at Hampstead where the poor soil conditions meant that common rights were little valued.<sup>5</sup>

The other side of the issue was ably presented by Frederick J. Clark, manager of Wilson's estates for twenty-five years and brother of the steward of Hampstead manor. Echoing Forster, the steward at Wimbledon, he claimed that there were no "commoners" in Hampstead with rights. At the most there were three or four "heriotable copyholders" who held a right to turn out the number of cattle they could support during the winter on their tenements. There were other copyholders but they did not have any rights though they provided the numbers for the homage jury. In fact, although the consent of the homage had traditionally been sought for grants of the waste, Clark doubted whether the lord actually needed their backing as under the Statute of Merton the lord could make grants provided sufficient land was left to satisfy the commoners. As Clark had earlier denied any rights to all but three or four copyholders, he could not see their needs as a major obstacle. That both Forster and Clark referred to the Statute indicates that lords of the manor believed it to be a useful ballast to their power, although few had actually used it.

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<sup>5</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 2052-60, 2066-68, 2070-72, 2084, 2093, 2106, 2113, 2120-2, 2133-36, 2142-46, 2158, 2170-75, 2207-9, 2267-74, 2219-20, 2223-30, 2246-49, 2284, 2289-92, 2303-4, 2309, 2318-23.

Little wonder that preservationists were eager to have it repealed. Instances of grants made without the consent of the homage were unknown to Clark. If the steward was faced with a recalcitrant homage which refused to make a grant, he would find twelve others who would approve it. This description of the power of the lord to make grants was not given as proof that this was the course Wilson wished to pursue. Most of the requests for grants stemmed from copyholders wishing to enlarge their holdings. These early grants had been made with a prohibition against building. Enfranchisements made after the 1853 Copyhold Act, however, had no such restriction. As Clark noted, after enfranchisement the new freeholders could "build over the whole of the Heath without the consent of Parliament, or in spite of Sir Thomas Wilson and everybody else". The most dramatic example of this had been the erection of an hotel and houses on enfranchised land in the Vale of Heath, near the centre of the Heath.<sup>6</sup>

Freeholders had no rights over the Heath. Nor were some of the quasi-rights hinted at by Le Breton and his colleague given much credence by Clark. The use of the Heath by others could be regulated if the lord chose: as it was, visiting schools were required to pay small amounts for vans and carts brought over the surface. Cricket clubs were assessed ten shillings per year. When holiday crowds swarmed over the Heath the lord would assert his rights by collecting fees from one or two people who

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<sup>6</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 3052, 3058, 3110, 3163-69, 3174, 3205-9.

had vans or were playing games. All those without a recognized right who wished to turn out animals had to pay.<sup>7</sup>

The Heath enclosed by buildings was not a vision of the future that Clark wished to see. Recognizing its value as an open space and the greater accessibility to it provided by railways, he believed that the Heath and some adjoining lands should be acquired by the public. The costs of this could be recouped by selling portions of the adjoining lands for building. It was beyond Wilson's power to donate the Heath to the public because, as tenant-for-life, he could not diminish the estate. At most, he could make an agreement not to interfere with the Heath for the term of his own life. Clark was, perhaps, being optimistic in stating that Wilson would probably agree to this if he was permitted to develop his Finchley Road frontages.<sup>8</sup>

When Wilson appeared before the Committee, he was asked about a proposal it was understood he wanted to make by which he would dedicate some of his lands to the public in return for an untrammelled right to build on another part. But Wilson had nothing to offer:

I make no compromise and no promise. In the year 1829, my intention was to have laid out Hampstead Heath with ornamental walks; but I lost my Bill for building on other parts of my property, and having always been thwarted, I must now see what I can do to turn the heath to account, and get what I can. By the outcry that has been made against me, I am deprived of about £50,000 a year. My

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<sup>7</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 3052-53, 3062, 3116, 3160-61, 3190-98.

<sup>8</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 3063, 3069, 3096, 3129-35.



property would have produced me that without the slightest injury to the public, if any of my Bills had passed. There were other parties who wanted to possess my property. Mr. Samuel Hoare wanted it, and offered a price for it; and Lord Mansfield was also anxious to have it, and so they wanted to come poor Poland over me.<sup>9</sup>

Wilson clarified his position on building. If further rebuffed over his Finchley Road plans, he foreshadowed profiting from the Heath by building an Agar Town, an instant slum erected on land held on short leases.<sup>10</sup> He dismissed the need for leaving sufficient pasture in quite absolute terms: even the three copyholders to whom Clark had ascribed rights were ruled out by the lord of the manor who claimed that no one had any right of pasture over the Heath.<sup>11</sup> Whereas Spencer's steward had topped his employer's description of the powers of a lord of the manor, Wilson exceeded that of his employee.

It followed that the public had no rights whatsoever. Wilson insisted that users were there by his leave and that they paid for the privileges they enjoyed. If the public at large wanted

<sup>9</sup>Second Report from the Select Committee on Open Spaces (Metropolis), q. 6068.

<sup>10</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 6070, 6075, 6097-99, 6107, 6123-25. Agar Town, named after William Agar, was a development in St. Pancras in the late 1830s and early 1840s built on short-term leases. It became synonymous with slums and bad landlordism. The town was the site of many obnoxious trades. After 1866, it was taken over by the Midland Railway Company which used the area for the approaches to St. Pancras Station. The London Encyclopaedia, pp. 8-9; Tindall, pp. 143-45.

<sup>11</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 6072-73.

to guarantee access to the Heath, the public would have to purchase it. The catch was that Wilson regarded the Heath as private property and placed the same value on it as had been realized when portions of the adjoining lands had been sold. He estimated that he could get £700 per acre and noted that a railway company had paid £5000 for land on the other side of the Heath.<sup>12</sup> These were not prices to comfort those who maintained that commons could be preserved without large outlays of cash.

The answers given by witnesses from Hampstead confirmed how far apart the two sides were and provided little hope of compromise to the members of the Committee. The same could be said about the evidence from other localities. For example, parties demonstrated their differences about Epping Forest and the Hackney commons. The testimony also underlined the importance placed on interpretations of rights. When forced to choose between the arguments offered by lords of the manor and those of their opponents, the Committee invariably listed towards the latter. Of course not every lord was trying to profit from his common. Some, such as Thomas Alcock at Banstead, wanted to donate their interests to the public. Others joined their commoners in making helpful suggestions. But lords in Wilson's camp were not winning converts to their points of view through their testimony.

The Committee also heard from representatives of local government. John Thwaites, Chairman of the Metropolitan Board, believed that that body should administer open spaces within the

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<sup>12</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 6100-1. 6126, 6181-83, 6185.

Metropolitan Police district. The primary obstacle was cost. The power to sell portions was needed if an unwelcome increase in the rates was to be avoided. The Board was already committed to creating expensive parks at Finsbury and Southwark, although at this stage it expected to sell parts of the allotted land for building. If, in the process of taking over a common, the Board were given the means to acquire the interests of the lord of the manor, enabling legislation should specify that compensation would not be calculated on the potential value of the land for building.<sup>13</sup> This was a contentious point. Preservationists held that any compensation should be based on the agricultural value of the land because a lord was unable to build over a common as long as commoners objected. But many lords viewed the preservation of a common as the loss of potential building land and expected to be compensated accordingly. When the Committee drew up its final report, Doulton tried to have the Metropolitan Board enshrined as the body which would have responsibility for open spaces under the terms outlined by Thwaites, but he was defeated.<sup>14</sup>

The second report of the Select Committee, issued in June, recognized that the issue of public rights over commons was "vague and unsatisfactory" and that the law was unlikely to substantiate a general right of exercise and recreation.

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<sup>13</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 4245-47, 4251-52, 4259-63, 4266-71, 4329-31, 4398, 4424-25.

<sup>14</sup>Second Report from the Select Committee on Open Spaces (Metropolis), pp. xxix-xxxii.

Nevertheless, recent legislation and developing social trends provided a basis on which to build a case for the public. Thus the Committee interpreted the sections in the 1845 Enclosure Act that prohibited enclosures within fifteen miles of the metropolis unless sanctioned by Parliament as an acknowledgement of the "existence of some rights possessed by the inhabitants". As enclosures were, at least theoretically, supposed to benefit the commonweal--in earlier times they allowed more food to be grown--the current need for air and exercise was a fit rationale for the preservation of commons and the end of enclosures. Use of these commons by the public had caused many commoners to stop exercising their rights, a fact that led the Committee to indulge in this minor sophism:

In such cases it might be fairly argued that the commoners, by their acquiescence in the public enjoyment, had virtually transferred their right to the public, and it might not be unjust that the Legislature should sanction and confirm such transfer rather than that the lord should reap the benefit of the lapse of commoners' rights.

Thus the first recommendation called for the complete cessation of enclosures under the provisions of the 1845 Enclosure Act within the metropolitan area.<sup>15</sup>

But how were commons to be protected from encroachments or enclosures by collusive action? Could lords of the manor be prevented from buying out commoners' rights and thereby converting the land to their own freehold and ending its existence as a common? Commoners, too, could initiate harmful

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<sup>15</sup>Second Report from the Select Committee on Open Spaces (Metropolis), pp. iv-vi.

changes. Surely these were fundamental property rights. Here the Committee's recommendations reflected the influence of Shaw Lefevre and some of his like-minded colleagues. Rather than directly interfere with a party's right to act, they would try to frustrate such attempts. Rights of common should be registered, not extinguished, as they were often the lever needed to prevent enclosures. If the lords' or commoners' rights could be acquired by some authority, protection of commons would be enhanced as the authority could block any encroachments. To facilitate this, a "Board of Trustees" was proposed which would be a repository of rights donated by lords of the manor and commoners. This Board would then be responsible for framing and implementing schemes for management. In addition, it might also manage commons where rights remained with the lords if requested to do so. Assuming that a prohibition of enclosures was enacted halting the immediate risk to metropolitan commons, the Committee saw no need for a campaign involving their outright purchase. (But, ironically, the threatened ban persuaded some lords of the manor that immediate action was necessary if they were to beat legislative interference and it is no coincidence that confrontations occurred at Hampstead, Berkhamstead, and Epping Forest at this time.) The new Board of Trustees should also be given the right to voice an opinion on any railway or other bill which affected a metropolitan common. The Committee made no definite suggestions as to how the Board should finance its operations beyond a clear expression that selling portions of commons should not be used. A local rate was

the likely expedient.<sup>16</sup> The weakness of this proposal was its voluntary basis, but any suggestion that rights be forcibly turned over to this Board would smell of confiscation. As such, enclosures by collusion could still take place, although it was hoped that more roadblocks would appear as time went on. For all that, the idea was not without merit. The Board of Trustees would not need a majority of the commoners' interests to block hostile measures against a common, and once interests had been donated, they would presumably reside with the Board in perpetuity.

Finally the Committee addressed itself to the ambiguities surrounding the policing of commons. Testimony had been heard describing the reluctance of the police to enter private property; the Committee urged that they be given the necessary authority.<sup>17</sup>

In essence the Committee recommended retaining the status quo, albeit with a few important adjustments. Enclosures would be banned, the police would be permitted on commons, and schemes for their management would be encouraged. But the rights held by lords or commoners would be left with their owners or donated to a Board of Trustees. This obviated the need to buy out these rights and made preserving commons a very inexpensive process. But was this fair? The Committee had heard from more than one source that the public had few if any

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<sup>16</sup>Second Report from the Select Committee on Open Spaces (Metropolis), pp. viii, xi.

<sup>17</sup>Second Report from the Select Committee on Open Spaces (Metropolis), pp. xii-xiii.

rights over commons, despite the fact that people were rarely blocked from using them in practice. If increasing numbers of Londoners made it impossible for a common to support certain rights there seemed no means of redress for the injured commoners. A lord had obligations to his commoners but not to members of the public. A report designed to demonstrate how commons could be preserved for the public had not really explained why the public should be allowed on them if the rights of the owners remained intact. The report seemed to be aware of this weakness but the best solution it could offer was the fiction that commoners had "transferred" their rights to the public. While many commoners might adhere to this notion, it hardly provided the legal foundation for legislation.

This weakness was not something to deter preservationists who believed that the evidence collected by the Select Committee more than demonstrated the need for Parliament to act quickly. The fate of London's commons was becoming an issue of greater importance, earning more space in newspapers, occupying more time in meetings of vestries and district boards, giving increasing employment to solicitors, and demanding more attention from M.P.s.

### 3.3 The Metropolitan Commons Act

After publication of the Select Committee's report, it remained to be seen how swiftly the Liberal Government would act on its recommendations. That the First Commissioner of Works was William Cowper, an original member of the Commons Preservation Society formed in July, augured well for preservationists. The decade after 1866 would witness the ascendancy of their message. Not only were the crucial steps taken with respect to metropolitan commons, but the enclosure process throughout the country was overhauled to bring it in line with new attitudes. While never a party issue, preservationism in the early 1860s was largely the property of radical and metropolitan Liberals. Ten years later it had been adopted by mainstream politicians in both parties.

Pressure on the Government to do something about the report came quickly from two sources. The Commons Society was ready with a bill by November 1865.<sup>1</sup> In January, Doulton urged a willing Metropolitan Board of Works to study the report and to press the Government to reveal its intentions. Naturally he favoured the resurrection of the minority viewpoint which gave the Board authority over these open spaces. He did not share the expectations of some members of the Select Committee that lords of other manors would adopt the precedent set by Thomas

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<sup>1</sup>Times, 20 November 1865.



Alcock at Banstead and dedicate their interests to the public.<sup>2</sup> Events over the next two decades would bear out his scepticism. He took issue with the blanket condemnation by the Committee of the Board's scheme for raising money by selling portions of commons and insisted that areas could be enclosed "without any detriment to the public". He cited Hackney Downs as one area where this could be done but his exemption of Clapham Common was an unconscious example, perhaps, of a tendency to view open spaces in the east end of the metropolis as less inviolate than those elsewhere.<sup>3</sup> The fifty acres of Hackney Downs was not a particularly appropriate choice when many commons in the south-west were well over one hundred acres.

The Commons Preservation Society sustained its pressure by holding an "exceedingly influential" public meeting at the Mansion House in January 1866. Chaired by the Lord Mayor, it was attended by many luminaries of the open-spaces movement, including the the M.P.s, Shaw Lefevre, Henry Fawcett, Thomas Hughes, and John Locke. They were driven by a sense that something must be done soon lest landlords take advantage of the delay and inflict damages on unprotected commons.

The speeches provided a dress-rehearsal for the types of arguments that would become standard in the unfolding campaign; many of them had seen service earlier in the century. The Chancellor of the City of London painted a picture of London's

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<sup>2</sup>Alcock's death in 1866 prevented this coming to fruition. It would take a long and tortuous legal battle before a scheme for the Banstead commons would be in place.

<sup>3</sup>Times, 20 January 1866.

continuing growth to justify his contention that legislation should deal with open spaces within a twenty-mile radius of Charing Cross rather than fifteen. Shaw Lefevre attacked the general enclosure law for having regard "for the great interests of cattle and sheep, but little or none for grown people and children in respect to commons". The law recognized the rights of a village to recreation on the local green but not the right of Londoners to the commons over which they had roamed for years. The outlook was not entirely bleak as long as disagreements between commoners and lords left commons in their current state. Shaw Lefevre predicted that commoners would willingly turn their rights over to a body of trustees if they were assured that their common would remain open. The weakness of the plan put forward by the Metropolitan Board of Works was that it would involve the expense of compensating every unimportant right. This attack on the Board by a member of the Commons Preservation Society was typical of the strained relationship between the two bodies that appeared almost from the Society's inception and prevailed until the Board's demise. (Earlier criticism of the Board at the meeting had prompted its Hampstead representative to disclaim any intentions of "aggrandizement" on its part.)<sup>4</sup>

The urgency surrounding the issue was evident in the Globe's approving comment on the eve of the meeting:

It would be difficult to name any question on which the public interest more imperatively demands legislation, and must succumb more shamefully, if legislation is not

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<sup>4</sup>Times, 25 January 1866.

obtained, to private interests, diametrically opposed to that of the public.

But it hastened to point out that lords of the manor were not the only private interests who opposed the public. Declaring that "the unlimited preservation of open spaces can no more reasonably be contended for than unlimited rights of inclosure", the Globe concluded with optimistic neutrality:

There must be a fair compromise between the claims of air and space, and surrounding habitation, and there is indeed no necessary antagonism between them, seeing that residence will be most attractive where open spaces are best preserved for the enjoyment of residents and public, and open spaces will be best preserved where watched over by a large and wealthy body of surrounding residents.<sup>5</sup>

This emphasis on wealthy custodians was not a prominent feature of the propaganda put forth by the open-spaces movement. Appeals were usually made to the wealthy for funds to secure spaces for the poor. But clearly the paper thought it would be irresponsible of the Government not to intervene. A laissez-faire attitude would work against the public.

The bill that William Cowper introduced in the House of Commons on 20 March 1866 was patterned on the recommendations of the Select Committee. A five-member Board of Commissioners (comprising the First Commissioner of Works, the Chairman of the Metropolitan Board of Works, one of the Enclosure Commissioners, and two members nominated by the Crown) was contemplated to put into effect management schemes

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<sup>5</sup>reprinted in the Times, 23 January 1866.

for commons within the Metropolitan Police District.<sup>6</sup> It would also be the recipient of rights donated by lords or commoners. The initiative for a scheme was to come from the lord of the manor or the commoners, but not from the inhabitants of a district, a curious omission in legislation designed to secure public open spaces. The procedure would be similar to that for an enclosure but with the different aim of placing the common under local control. The inhabitants of an area could consent to be rated to meet the expenses and the Metropolitan Board could assist.

In his speech, Cowper, like preservationists generally, somewhat romanticized the commons in and around London which he claimed numbered 180, comprising 10,500 acres. He emphasized their long history as well as their continuing importance. Without them, he doubted whether the Volunteer movement would have spread so assuredly. He continued:

It must be remembered, too, that as in London are found the rulers of the Empire, the representatives of the people and the guides of the nation in science, art, and literature, whatever conduces to its salubrity and enjoyment is of national concern.

But, as things stood, commons were "ill-drained, boggy, cut up into gravel pits, frequented by tramps and disreputable persons, so that respectable persons wishing to resort to them were

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<sup>6</sup>The Select Committee had said nothing about the makeup of the board but had suggested it be new so that it would have "no views, interests, or traditions which might possibly clash with the paramount object of preserving for the public use ... the forests, commons, and open spaces in and around the metropolitan area". Second Report from the Select Committee on Open Spaces (Metropolis), p. xiv.

debarred from their enjoyment".<sup>7</sup> Cowper was explaining why London deserved special treatment, although in later years he would push to have this type of legislation apply throughout England and Wales. In fact the Select Committee that examined this bill amended it to include other towns and cities but the House of Lords declined to follow suit, fearing increased government expenditure.<sup>8</sup> The bill provided no basis for such anxiety as money was to come from local rates. Cowper would have had great difficulty persuading many non-metropolitan M.P.s that the country should be taxed to save London's commons; people in the provinces were wary of measures which seemed to coddle the capital.

Some of the disagreements present in the Select Committee on Open Spaces were reflected in the House of Commons' debate on the bill. The Metropolitan Board's Frederick Doulton dismissed it as failing to "add one tittle" to the protection of commons because nothing in it would stop lords and commoners reaching agreements for their demise. No outright ban was made on metropolitan enclosures. It was naive to wait for offers from benevolent lords and commoners; there needed to be a more active policy of purchasing rights.<sup>9</sup> John Locke replied that a policy of purchasing rights would lead to exaggerated claims from those who held them, a perpetual anxiety of the

<sup>7</sup>H.C., 3 Hansard 182: 623-29, 20 March 1866.

<sup>8</sup>P.P. Commons (Metropolis) Bill [as amended by Select Committee], 1866 (211), II. 189; H.L., 3 Hansard 184: 1703-4, 31 July 1866.

<sup>9</sup>H.C., 3 Hansard 182: 631-36, 20 March 1866.

Commons Preservation Society. It was precisely because lords of the manor and commoners had been at loggerheads that many commons remained.<sup>10</sup>

Worries by some about the legality of the bill were addressed by Shaw Lefevre. He toned down the power of the lords of the manor by pointing out that in most cases around London "the interests of the commoners were opposed to the lords of the manor" such that there was little risk of successful unilateral action by the latter. Shaw Lefevre was in no hurry to enrich lords by compensating them for rights which were ill-defined. The public's rights were similarly untested in law. Yet steps had to be taken "to prevent the deterioration of these commons by nuisances of all kinds", and given that the Metropolitan Board had no jurisdiction where many of the commons lay, Cowper's bill was to be welcomed.<sup>11</sup>

In May the bill was read a second time and sent to a Select Committee. Cowper insisted that no lord of the manor nor any commoner would suffer any loss of rights. This meant that a decision by lords and commoners to enclose by agreement would not be threatened. Surprisingly, Cowper narrowed the focus of the bill. It was not designed to deal with cases like Hampstead Heath where a private bill to authorize compulsory purchase by the Metropolitan Board would be more suitable. At this stage it was expected to apply primarily to commons "beyond the jurisdiction of the Metropolitan Board ... which neither the lord of

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<sup>10</sup>H.C., 3 Hansard 182: 635-37, 20 March 1866.

<sup>11</sup>H.C., 3 Hansard 182: 637-38, 20 March 1866.

the manor nor the commoners desired to inclose for building purposes".<sup>12</sup> Cowper was painting it in very tame colours. No vested interests would be touched; it was essentially an enabling bill to come into effect when roughly the same end was desired by all parties. Or, by allowing a board to hold rights, it would secure the status quo and prevent illegal exploitation of commons.

Cowper failed to reassure everyone that the bill was as benign as he claimed. A. S. Ayrton, a parsimonious Liberal who would later frustrate preservationists as a member of Gladstone's government, found the guarantee that rights would not be affected perplexing:

Any scheme recommended by the Commissioners would probably in some way or other affect such rights or interests, and on the petition of the person aggrieved it would be the duty of the House of Commons to reject the plan.

Thus, although a scheme might have support from enough interests to reach Parliament, disaffected commoners or a lord could scuttle it if they believed their rights were injured. Only a person with blinkers could imagine that a scheme encouraging public use of a common would not in any manner interfere with some rights. To promise otherwise seemed hollow. Ayrton had put his finger on a future trouble spot: the question of how to deal with rights was to prove the source of bitter controversy, particularly in Hackney.

Ayrton also expressed reservations over the proposed creation of a new body to administer the legislation when the

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<sup>12</sup>H.C., 3 Hansard 183: 1279-80, 24 May 1866.

existing Enclosure Commissioners could be used (he noted that they cost the country about £20,100 per year).<sup>13</sup> In harmony with this preoccupation about money he further criticized the bill because he saw it as the thin edge of the wedge for government expenditure. If the central government could help defray costs in schemes around London, towns elsewhere would inevitably request their share. "It was by such bad precedents that our civil charges had grown to their present height." Ayrton had no romantic notions that would incline him to favour the retention of whole commons. The solution was to allow local authorities the right to appear before the Enclosure Commissioners with offers to purchase portions for recreation. In the metropolis, the Metropolitan Board should be allowed to purchase rights. The people who benefited would thereby be the people who paid.<sup>14</sup>

The Select Committee followed Ayrton and substituted the Enclosure Commissioners for Cowper's new board.<sup>15</sup> This made some preservationists nervous as assuredly the Commissioners had a tradition somewhat at odds with their new duties. Could they be trusted to oversee the implementation of schemes that protected metropolitan commons with one hand

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<sup>13</sup>The Enclosure Commissioners were created by the 1845 Enclosure Act. They were amalgamated with the Copyhold and Tithe Commissioners by the Inclosure Commissioner Act, 1851. They became the Land Commissioners for England under the Settled Land Act, 1882 and then passed to the Board of Agriculture under the Board of Agriculture Act, 1889.

<sup>14</sup>H.C., 3 Hansard 183: 1278-88, 24 May 1866.

<sup>15</sup>Commons (Metropolis) Bill [as amended by Select Committee].



while promoting enclosures in the rest of the country with the other?

The Metropolitan Commons Act received Royal Assent in August 1866.<sup>16</sup> It applied to any common wholly or partially within the Metropolitan Police District and established the procedure by which schemes for the management of such commons would be implemented. The schemes would involve drainage, landscaping, other improvements, and the making of bylaws. The first step was the presentation of a memorial by the "Lord of the Manor or by the Commoners, or by the Local Authority". (In 1869 this provision was extended to include "any twelve or more ratepayers, inhabitants of the parish in which the Metropolitan Common is situate".<sup>17</sup>) Subsequent steps were similar to the proceedings in an enclosure. The Commissioners would prepare a draft scheme to be circulated for comment. After two months, an Assistant Commissioner might hold an inquiry to hear further objections or suggestions before submitting a report to the Enclosure Commissioners. This report would include an assessment of the existing common rights. A final scheme would be certified by the Commissioners and submitted in an annual report to Parliament where it would be confirmed, either as proposed or with alterations.

The Metropolitan Board of Works was designated the local authority for any common wholly or partially within its jurisdiction as set out in 1855. Local boards and vestries were

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<sup>16</sup>29 & 30 Vict. c. 122.

<sup>17</sup>32 & 33 Vict. c. 107, s. 3.

the local authorities for other commons. For example, the Banstead and Epsom commons fell within the Police District but beyond the boundaries of the Metropolis Management Act. The local authorities were permitted to raise money by the local rates to cover expenses; depending on the authority this would entail the metropolitan rate, the general district rate, or the poor rate.

But what on the surface appeared to be a simple enabling Act had its more complex side. The House of Lords had added a compensation clause (section 15) which went some way towards altering its nature. According to P. H. Lawrence, the solicitor to the Commons Preservation Society, who helped draft the bill, this section and the one following (which allowed dissatisfied holders of rights to take their cases to court) were put in by a Lord for his own protection. Lawrence believed that the clauses had the effect of making people expect compensation. While it was incumbent on the Enclosure Commissioners to ascertain what rights people believed they had, because such information would be useful in assessing whether planned improvements affected them, Cowper and Lawrence did not intend that the Commissioners should preoccupy themselves with discovering everyone's rights nor delay a scheme if parties chose litigation to know their full extent. Yet this was the result. Lawrence thought compensation was a dead letter as the Act was not intended to interfere with rights. A simple clause stating that no right could be taken without consent was all that was required.<sup>18</sup> But it is

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<sup>18</sup>Report from the Select Committee on the Metropolitan Commons Act (1866) Amendment Bill, qq. 656-57, 688, 832, 845, 850, 851.

not surprising that sceptics were dubious that rights would be protected in schemes brought in under the Act, and sought to make the process more secure. The two sections pertaining to rights read as follows:

14. Every scheme shall state what rights (if any) claimed by any person or class of persons are affected by the scheme, and in what manner and to what extent they are affected thereby, and whether or not the scheme has been in relation thereto consented to by that person or class of persons, or any of them.

15. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting a common shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any scheme, without compensation being made or provided for the same, and such compensation shall, in case of difference, be ascertained and provided in the same manner as if the same compensation were for the compulsory purchase and taking or the injurious affecting of lands under the provisions of The Lands Clauses Consolidation Act, 1845, and The Lands Clauses Consolidation Acts Amendment Act, 1860.

A dissatisfied party was allowed to seek redress in the courts.<sup>19</sup>

The clauses posed two problems. One was the thorny issue of ascertaining whose rights were legitimate, an invitation to litigation. If that was resolved, or where it did not exist, there remained the difficulty of deciding whether or not a scheme interfered with them. Naturally, if the Act specified that compensation was to be paid for injured rights, more people could be expected to conclude that their rights had been so damaged. The Metropolitan Board and other local authorities were understandably reluctant to pay compensation unless an aggrieved

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<sup>19</sup>29 & 30 Vict. c. 122.

party could make a solid case. They wanted to avoid setting careless precedents and to keep expectations low. But it was also true that many members of the Metropolitan Board of Works were of the opinion that compensation was due to owners of rights when a common was taken over. The notion that these rights should continue to have force while the Board tried to manage commons made them uneasy. Hence their faith in the efficacy of selling portions of acquired commons to cover the costs of paying compensation. But neither the 1865 Select Committee nor Parliament as a whole was persuaded of the value of this approach and the Act contained no provision for selling parts of commons. Money to pay compensation would have to come from the rates.

The shortcomings of the Act would be made manifest soon enough but in the immediate aftermath of its passing preservationists congratulated themselves on establishing an important beachhead. Parliament had recognized commons as an important issue. Although the legislation marking that recognition was somewhat passive, it was not likely to be overthrown and future efforts could be dedicated to strengthening it. By the same token, those on the other side of the question had little reason to mourn. The compensation clause allayed fears that schemes would, in effect, confiscate their rights. The involvement of the Enclosure Commissioners in the approval of schemes raised hopes of a sympathetic hearing for the lords' point of view. The Act represented a compromise. It did not protect all metropolitan commons from enclosures or

encroachments nor did it provide the means to purchase them to guarantee their preservation. It enabled parties who were essentially in agreement to implement schemes that would allow the public to use specific commons. Its success would depend on how people made use of it.

If preservationists expected that the opportunities presented by the passage of this Act would be eagerly exploited to end the uncertainty surrounding so many commons, they were soon disappointed. Although the consent of all parties was not required to set a scheme in motion, in practice the Enclosure Commissioners refused to proceed in areas where conflicts existed. Their strict interpretation of the compensation clause convinced them that it was necessary to ascertain the extent of the rights held by various parties before a scheme could be implemented. If the parties were battling amongst themselves, the Commissioners stood back. When a Select Committee studied the Act in 1869, P. H. Lawrence, solicitor to the Commons Preservation Society, indicated that he had presented five or six schemes that had all been turned down and that he knew of others which might have been submitted if the Commissioners had read the Act differently. His attempts to persuade them to ignore any litigation failed.<sup>20</sup> Undoubtedly preservationists found this attitude by the Commissioners frustrating. Had Parliament adopted the recommendation of the 1865 Select Committee and appointed a new body for this task, one with no tradition of dealing with rights, the results might have been different. But

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<sup>20</sup>Report from the Select Committee on the Metropolitan Commons Act Amendment Bill, q. 680.

approving schemes without assessing people's rights would not have nullified disputes and there was value in trying to decipher the various claims beforehand. Even so, the Commissioners could not rule on their validity and the Metropolitan Board would encounter many people who were willing to resort to litigation to assert theirs.

The first scheme to be certified under the terms of the new Act dealt with the 200-acre Hayes Common in Kent, where the lord of the manor was in complete agreement with the commoners and inhabitants on the need for it. Application to the Enclosure Commissioners was made in 1867 and, with the assistance of Lawrence, a memorial incorporating a draft scheme was submitted in May 1868. The Commissioners' reasons for approving the scheme concentrated on the need for order, a justification that would reappear many times. Among the users of the common were persons of a "rough class" whose conduct was "occasionally of a disorderly character". More serious were the "numerous tramps and vagrants" who camped on the common and injured the surface. The nuisances would be controlled for a "small annual expense".<sup>21</sup> Minor objections from those worried about the effect of the scheme on the rates were soon cleared and it was confirmed by Parliament in 1869. The Metropolitan Board was not involved; rather, six conservators (the lord of the manor plus five elected annually by the vestry) undertook responsibility

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<sup>21</sup>P.P. Second Report of the Enclosure Commissioners under the Metropolitan Commons Act, 1866, 1868-69 [4106], XVII. 353, p. 1.

for care of the common with funds from the poor rate.<sup>22</sup> This was a model scheme and not the least of its attractions was its low cost. Preservationists would exploit the ubiquitous concern over rates by stressing how cheaply such schemes could be undertaken. Unfortunately the ones that followed did not adopt Hayes as a precedent.

After Hayes, no schemes were confirmed until Blackheath and Shepherd's Bush Common in 1871. One scheme in close to five years hardly marked the Act a success. Nevertheless, the years immediately after 1866 had not been fallow as the Act served to encourage activity in many parts of the metropolis, often under the auspices of the Commons Preservation Society. A public meeting was held in Blackheath in 1868 from which a committee was formed that made contact with the Metropolitan Board. Committees also appeared in Hackney, Mitcham, Chislehurst, Staines and Wanstead. More action was taking place in the courts where suits relating to Hampstead Heath, Wimbledon and Wandsworth Commons, Tooting Graveney, the Plumstead commons, and Epping Forest were in various stages.<sup>23</sup>

But clearly there were frustrations and many felt that the terms of the Metropolitan Commons Act contributed to the bottlenecks and should, therefore, be amended. In April 1869,

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<sup>22</sup>Commons Preservation Society, Report of Proceedings, 1868-69, pp. 5-7; P.P. First Report of the Enclosure Commissioners under the Metropolitan Commons Act, 1866, 1867-68 [3978-1], XXI. 121, pp. 1-2.

<sup>23</sup>Commons Preservation Society, Report of Proceedings, 1868-69, pp. 8-12.

Thomas Chambers, a member of the Commons Preservation Society, introduced a bill in the House of Commons to extend the area controlled by the Act to that within a twenty-five-mile radius from Charing Cross and to include under its terms "any open space which [had] been enjoyed or frequented by the public for not less than twenty years" prior to its passage.<sup>24</sup>

Chambers' bill was sent to a Select Committee which heard a number of witnesses on the drawbacks of the 1866 Act. One of the Enclosure Commissioners gave evidence that tended to confirm the suspicions of some preservationists that they were not suited for the role demanded of them by the legislation. He demonstrated little enthusiasm for the Act, believing there were better means to secure open spaces. He would prefer to identify a few select grounds and have an authority, such as the Metropolitan Board, purchase them. Otherwise he feared too much valuable waste land would lie idle, at a cost to the community. He was against extending the area of the Act as he thought the original zone too large.<sup>25</sup> The Commissioner's sympathies seemed to flow towards lords of the manor.

Other witnesses favoured broadening the scope of the bill. The Chamberlain of the City of London wanted a definition of commons that would include open spaces that were "not commons

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<sup>24</sup>H.C., 3 Hansard 195: 759, 13 April 1869; P.P. Metropolitan Commons Act (1866) Amendment Bill, 1868-69 (77), IV. 51.

<sup>25</sup>Report from the Select Committee on the Metropolitan Commons Act Amendment Bill, qq. 50-53, 74, 177-78.



in law, but [were] commons in fact".<sup>26</sup> The Committee was not enamoured by something so imprecise, but it had to respond to the pressure for some alterations. The solicitor to the Metropolitan Board seems to have given it the idea of including lammas lands in the Act. Early moves to memorialize the Enclosure Commissioners for a scheme for the Hackney commons had been stymied by doubts as to whether the 1866 Act included these. This ambiguity was now removed.<sup>27</sup>

The solicitor, like the Chamberlain of London, supported an extension of the boundaries over which the Act would apply, but his chief complaint was the manner in which lawsuits halted schemes. He wondered if a more expeditious tribunal than Chancery could be devised.<sup>28</sup> Similarly, P. H. Lawrence disagreed with the way the Enclosure Commissioners refused to become involved in areas where litigation was pending. The Committee declined to recommend changes to this procedure. It did adopt, however, Lawrence's suggestion that ratepayers and inhabitants

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<sup>26</sup>Report from the Select Committee on the Metropolitan Commons Act Amendment Bill, q. 260.

<sup>27</sup>The Act was amended by extending the definition of a common from "land subject ... to any right of common" to any land that would fall within terms of the 1845 General Enclosure Act, namely all lands "subject to any rights of common whatsoever, ... whether such rights may be exercised or enjoyed at all times, or may be exercised or enjoyed only during limited times, seasons, or periods". 8 & 9 Vict. c. 118, s. 11; 32 & 33 Vict. c. 107, s. 2.

<sup>28</sup>Report from the Select Committee on the Metropolitan Commons Act Amendment Bill, qq. 544, 560-65, 573, 623.

be given the power to memorialize for a scheme.<sup>29</sup> This was important in cases where the lord and many of the commoners might not reside near the common, or be uninterested in its fate for other reasons. The bill, bearing little resemblance to the one introduced by Chambers, became the Metropolitan Commons Act Amendment Act of 1869.<sup>30</sup> No rush of schemes appeared in its wake, but it provided the means to proceed with the one for Hackney.

Chambers had hoped that his proposal to extend the radius to twenty-five miles would prevent a repetition of the Wisley Common affair. That common, located to the south just beyond the limits of the 1866 Act, was included in the Enclosure Commissioners' 1869 Omnibus Bill, which, if it followed tradition, would pass through Parliament with little or no scrutiny. But because there was considerable opposition to the enclosure of Wisley, the Government agreed to detach it from the general bill in order to avoid blocking the remaining approved schemes.<sup>31</sup> Later, the House decided that a Select Committee should consider the merits of enclosing the common despite the contention by Henry Fawcett and his allies that merely dropping it from the bill was sufficient. Others, such as Ayrton and Gladstone, displayed more sensitivity to the promoters of the

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<sup>29</sup>Report from the Select Committee on the Metropolitan Commons Act Amendment Bill, qq. 652-53, 658, 755-56.

<sup>30</sup>32 & 33 Vict. c. 107.

<sup>31</sup>H.C., 3 Hansard 194: 1905, 22 March 1869.

enclosure, who, since they had adhered to the established conventions, deserved to have their scheme fully investigated.<sup>32</sup>

The Wisley Select Committee, which included Fawcett, coincided with the Select Committee on the Metropolitan Commons Act. It therefore advised deferring the decision on Wisley until the House had decided whether to extend the provisions of the 1866 Act to include all commons within twenty-five miles of London, a move which would embrace the common. Failing this, the Committee recommended that the area for garden allotments and recreation be increased before an enclosure was permitted.<sup>33</sup> This is what happened. Had the radius been extended, many other commons would have been eligible for schemes. That Wisley was made the focus of a Select Committee demonstrates the growing strength of the preservationist movement, although its inability to halt the enclosure reveals the limits of its influence. The evidence presented to the Committee reflected the aggressive partisanship displayed by adversaries in the battles for open spaces: where one side saw white, their opponents saw black. The steward of the manor stated that no people from London visited the common and the land steward confirmed that it was not used for games, nor by pleasure-seekers.<sup>34</sup> But a person who resided nearby drew on his

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<sup>32</sup>H.C., 3 Hansard 195: 125-30, 2 April 1869.

<sup>33</sup>P.P. Report from the Select Committee on Wisley Common, 1868-69 (169), X. 877, pp. iii-iv.

<sup>34</sup>Report from the Select Committee on Wisley Common, qq. 160, 221-22, 283.

thirty-three-year acquaintanceship with the common to assert that it was

a source of very great recreation and health to the people of the neighbourhood.... It is increasingly used.... The humbler class of persons use it walking and picnicing; it is very greatly resorted to by persons who take an interest in natural history.

Another witness reported that the gentry made extensive use of it too.<sup>35</sup>

Wisley Common would have benefited had it appeared in the Enclosure Commissioners' omnibus bill for 1870 rather than 1869. Parliament blocked the 1870 bill while it reassessed enclosures. Under the new rules that evolved, Wisley might well have been spared.

Members of the Commons Preservation Society had never intended that their energies should be directed solely towards metropolitan commons. In 1869 Cowper introduced a bill that would reinstate the provision deleted by the House of Lords from the Metropolitan Commons Act extending its terms to commons in other towns and cities. The bill would apply to commons within a five-mile radius of towns with a population of 5000 and a ten-mile radius of towns over 30,000. It was sent to the Select Committee studying Chambers' amendments to the Metropolitan Commons Act but the Committee decided that time did not allow adequate investigation of it.<sup>36</sup>

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<sup>35</sup>Report from the Select Committee on Wisley Common, qq. 363-65, 465.

<sup>36</sup>H.C., 3 Hansard 197: 470, 22 June 1869; Report from the Select Committee on the Metropolitan Commons Act Amendment Bill, p. iii.

In the next Session, Cowper-Temple<sup>37</sup> tried a second time to pilot a bill through Parliament for the preservation of commons around large towns.<sup>38</sup> Whereas his 1869 bill had merely extended the provisions of the Metropolitan Commons Act, this new Suburban Commons Bill sought to avoid some of the pitfalls which had been brought to the attention of the Select Committee on the 1866 Act. The bill directed that schemes contain a saving clause protecting all existing rights. If no rights were to be interfered with, there would be no need for compensation. Any disputes between the managing body and the lord or commoners were to be settled by the Enclosure Commissioners. The bill also contained a clause which seemed to answer Lawrence's frustration with the Enclosure Commissioners' interpretation of the Act. On the grounds that a scheme would not interfere with rights, the Commissioners were to ignore any disputes or lawsuits that might be raging over a common for which they had received a memorial.<sup>39</sup> The bill was read a second time but subsequently withdrawn.

Subsequent attempts to secure legislation for suburban commons were equally unsuccessful, whether as solo bills, or as

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<sup>37</sup>William Cowper became Cowper-Temple by royal licence in November 1869 and was created Baron Mount Temple of Mount Temple, co. Sligo, in May 1880.

<sup>38</sup>It would affect commons within a mile radius of towns of 5000 up to those within six miles of towns over 100,000.

<sup>39</sup>P.P. Suburban Commons Bill, 1870 (41), IV. 569; H.C., 3 Hansard 199: 707-8, 22 February 1870; Times, 23 March 1870.

parts of larger measures. Not until the 1876 Commons Act were some of Cowper's objectives met.

As the 1870s began, however, preservationists were preparing to take advantage of the powers Parliament had granted. The 1866 Metropolitan Commons Act had been improved in 1869 and schemes for various commons were at least being discussed. Local committees were forming to champion individual commons. The Metropolitan Board of Works had appointed a permanent committee to handle open spaces. It was exploring the range of its authority under the Act.

The spirit of preservationism did not desert Parliament after the measures for London's commons were in place. It now beckoned members to address the question of enclosures generally. Their response is the subject of the next chapter.

### 3.4 The Reform of the Enclosure Act

Although preservationists had concentrated on metropolitan commons, Henry Fawcett, perhaps the most independent of the M.P.s in the Commons Preservation Society, was determined to have the entire enclosure procedure investigated. His pertinacity on this issue was well remembered years later.<sup>1</sup> He succeeded, despite attempts by the Government to sneak the 1869 Enclosure Bill through Parliament, in having a Select Committee appointed to review past enclosures to see whether sufficient areas had been set aside for garden allotments and recreation grounds as stipulated in the 1845 General Enclosure Act. The Committee included Fawcett, Cowper, Chambers, Vernon Harcourt, and Henry Peek among its sympathetic members.<sup>2</sup> Its deliberations rode the gathering wave of preservationism and marked the first step in a six-year debate that led to the Conservative Government's 1876 Commons Act, the first major adjustment to enclosure legislation since 1845.

The Committee issued its report in July 1869. Although it had little to do with metropolitan commons, it testified to the general disenchantment with the manner in which enclosures were taking place. Its emphasis on recreational space reflected the influence of urban-based preservationists on the whole issue. Recommendations were made to facilitate the transfer of more

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<sup>1</sup>[C. L. Lewes], "The Need of Open Spaces", Blackwood's Magazine, 141 (March 1887), p. 446.

<sup>2</sup>H.C., 3 Hansard 195: 679-80, 13 April 1869.

complete information about the locality in which an enclosure was scheduled to the Commissioners in London as it was felt that their isolation made them vulnerable to biased viewpoints. The structure of the Assistant Commissioner's inquiry favoured the stronger parties. In future the Enclosure Commissioners should provide Parliament with more information so that it could make a decision on the adequacy of proposed allotments. The regulation stipulating maximum acreages for recreation grounds should be dispensed with. In particular, the report called upon Parliament to be more vigilant when dealing with enclosures.<sup>3</sup> Shortly thereafter the 1869 Bill confirming the Enclosure Commissioners' recommendations passed through Parliament, the last such bill to do so.

The Commissioners, as unaware as everyone of this, continued to perform their duties and submitted a report in March 1870 recommending that twenty-one enclosure schemes,

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<sup>3</sup>The Committee published figures which reinforced Fawcett's point about the poor. Since 1845, 614,800 acres had been enclosed; of those 368,000 had been part of schemes allowing for allotments, but only 1742 were set aside for recreation and 2223 for gardens. P.P. Report from the Select Committee on Inclosure Act, 1868-69 (304), X. 327, p. iii. A year later, in response to a question in Parliament, the Enclosure Commissioners returned similar, but probably more accurate figures. The total number of acres enclosed was 540,358 of which 370,848 were subject to public allotments.. The labouring poor received 2113 acres, 1033 were devoted to recreation grounds. P.P. Return of all Inclosures since the Inclosure Act of 1845, 1870 (326), LV. 151, p. 21; Winifred Holt, A Beacon for the Blind Being a Life of Henry Fawcett, the Blind Postmaster-General (London: Constable and Company, 1915), pp. 188-91.



affecting over 12,500 acres, be confirmed.<sup>4</sup> The Government, however, was under pressure to modify the enclosure process in light of the 1869 Select Committee's Report. It therefore brought in a bill which would amend the 1845 Enclosure Act by increasing the amount of land to be set aside for garden allotments for the poor and recreation grounds for the public. The bill stipulated that one-tenth of the area to be enclosed should be devoted to these purposes. During previous debate on one of Cowper-Temple's suburban commons bills, a Government speaker had warned against any measure that would completely ban all enclosures around towns. He cited the case of Nottingham where the poor had been hemmed in by the inability of the town to expand over fiercely guarded commons.<sup>5</sup> This new bill would provide flexibility by prohibiting enclosures in towns only if the local authority disapproved. It was not, however, a bill of sufficient scope to win wide support and in July it was withdrawn.<sup>6</sup>

The failure to arrive at a solution ensured that the enclosure issue remained heated. No sooner had the amending bill disappeared than the Government tried to introduce an Omnibus

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<sup>4</sup>Times, 14 March 1870.

<sup>5</sup>He was referring to the 1100 acres of common fields which surrounded three-quarters of the city and which were used by the burgesses--a "Cowocracy"--to graze their animals. The fields were enclosed in 1845, too late to affect the overcrowding. See W. G. Hoskins, The Making of the English Landscape (London: Hodder and Stoughton, 1977; orig. publ., 1955), pp. 280-86.

<sup>6</sup>P.P. Inclosure Act Amendment Bill, 1870 (119), II. 213; H.C., 3 Hansard 201: 562-67, 11 May; 1911-17, 10 June 1870.

Bill confirming the Enclosure Commissioners' Report. Fawcett foreshadowed a motion opposing it. After a few sessions of cat and mouse during which Fawcett accused the Government of trying to bring in the bill at inconvenient hours, the Government acknowledged the strength of opposition and withdrew it.<sup>7</sup> The Commons Preservation Society, in a letter to the Times, pointed out that the bill had been lost because it was a betrayal of the Government's promise to delay enclosures until the law had been revised, and because, in itself, the bill threatened important areas and made wholly inadequate provisions for public recreation.<sup>8</sup>

Ironically, one of the leading figures in the Commons Preservation Society, Shaw Lefevre, was responsible for the next Government bill during his short period as Under-Secretary of State for the Home Office in early 1871. It was an undisguised attempt to refloat the bill from the previous Session, as well as to satisfy Cowper-Temple's goal of protecting suburban commons by bringing them under the terms of the Metropolitan Commons Act. Whereas the previous amending bill had stipulated ten percent as the amount of land that should be set aside for recreation grounds and garden allotments, Shaw Lefevre accepted that a maximum of fifty acres would be appropriate given that many of the largest commons, such as those in Wales, were remote from habitation. In some respects, however, the bill was

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<sup>7</sup>Times, 12 July, 3 August 1870; H.C., 3 Hansard 203: 1285-86, 1 August; 1557-58, 4 August 1870.

<sup>8</sup>Times, 8 August 1870.

weaker than earlier ones. Gone was any instruction to the Commissioners to disregard disputes and litigation when framing schemes.<sup>9</sup>

Shaw Lefevre received a rough ride from his iconoclastic colleague, Fawcett, who decried the shortcomings of the bill.<sup>10</sup> Because it failed to stop enclosures by common law or by special Acts of Parliament "every common in the country would be in imminent peril". Thomas Hughes criticized the bill on the grounds that it would add another level of complexity to the enclosure laws of the country without providing the overall reform needed. The bill was sent to a Select Committee, where it was hoped more precise information could be gathered on the extent of commons around large towns. The Committee added some significant new clauses: local authorities were to be given authority to purchase rights of common if such a move would expedite the completion of a scheme. The consent of a tenant-for-life under a family settlement to a scheme was to be binding on his successors. This was opposed by members concerned about property rights for it seemed to undermine one of the primary purposes of the family settlement, namely to prevent any

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<sup>9</sup>H.C., 3 Hansard 204: 275-79, 14 February 1871; P.P. Inclosure Law Amendment Bill, 1871 (32), II. 377.

<sup>10</sup>He absolved Shaw Lefevre from complete responsibility because as a "subordinate Member of the Government" he had "sacrificed his individuality".

diminution of the estate.<sup>11</sup> In mid July, the Government sensed the bill was in difficulty and withdrew it.

The Enclosure Commissioners' Annual Report for 1872 contained a prefatory statement reflecting their impatience with the two-year-old deadlock which, they claimed, was directly holding up twenty enclosures affecting 29,000 acres. They had had to discourage fresh applications because of the uncertainty over Parliament's intentions. Nonetheless they felt compelled to mention that some eight million acres of common and commonable land remained in England and Wales, or more than one-fifth of the two countries' area. Although much of this was in Wales or relatively inaccessible parts of England, over three million acres was in the lowland counties. Of this, the Commissioners estimated that one million acres could be turned to productive cultivation, thus placing more land on the market, and providing more opportunities for employment. Anticipating the likelihood that the Metropolitan Commons Act would soon be extended to other towns, the Commissioners cautioned that an unrestricted ban on enclosures would have the effect of causing urban crowding by depriving towns of areas over which to expand. Of course, they were not adverse to appropriate amounts of land being dedicated to the public for recreation, but on balance, the social and economic benefits to the country would be greater if

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<sup>11</sup>Inclosure Law Amendment Bill; H.C., 3 Hansard 205: 1148-73, 4 April 1871; P.P. Report and Special Report from the Select Committee on the Inclosure Law Amendment Bill, 1871 (314), VII. 591, p. xii.

"every acre of its cultivable soil" was made productive.<sup>12</sup> These opinions clearly demonstrated where the Commissioners' sympathies lay and their lukewarm enthusiasm for the preservation of urban commons.

But their report was also fuel for those who felt that anti-enclosure sentiments were becoming a nuisance and a threat to private property. As a writer to the Times expressed it:

The statements which have for some time passed current regarding the small extent of land still unenclosed, and the rapid and early extinction of the pleasant open "commons," so dear to us all, are quite upset by the Report .... Instead of any apprehension of too speedy an enclosure of the waste lands, the course of reclamation and improvement has hitherto been far less rapid than the interests of the country might reasonably demand.<sup>13</sup>

This was not, however, the viewpoint of the majority.

The Enclosure Commissioners' figures had been greeted with some scepticism and in 1873 a lengthier investigation into the amount of commons and commonable lands in England and Wales, and their suitability for cultivation, was asked of them. The revised figures were quite unlike the earlier estimates. It now appeared that there were just over two and a half million acres of common and commonable land remaining in England and Wales, not eight million.<sup>14</sup> The statistical edge now shifted to the other side. The argument that every acre of cultivable soil

<sup>12</sup>P.P. Twenty-seventh Annual Report of the Enclosure Commissioners, 1872 [C. 492], XVIII. 219, pp. 3-5.

<sup>13</sup>Times, 18 March 1872.

<sup>14</sup>P.P. Twenty-ninth Annual Report of the Enclosure Commissioners, 1874 [C. 926], XV. 201, p. 3.

ought to be made productive had little force at a time of increasing food imports. Nonetheless, the market for enclosures was not dead and the pressure grew from a small minority to change the rules and make them politically acceptable again.

After the Conservatives came to power in February 1874, it remained to be seen if their traditional sensitivity to landowners would inspire a speedy resolution to the long impasse. The new Government attempted to push a confirming bill through that year, but withdrew it when it became obvious that the mood of the House had not shifted significantly.<sup>15</sup> The issue transcended party allegiances and plainly no enclosure would be sanctioned until the Enclosure Act itself had been substantially redrawn. Enclosure enthusiasts had been reduced to rearguard actions. They were outnumbered as the Times recognized when commenting on the

change which has occurred during the last quarter of a century in the popular way of looking at rights of common and commonable lands.... These convictions ... are by no means the exclusive property of democratic agitators, nor do they derive their origin from a filtration of loose Communistic notions into the common thought of the country. They are held by the most sober-minded and Conservative public men, and the obligations they involve have been accepted by the present no less than by the late Government.<sup>16</sup>

In February 1876 R. A. Cross, the Home Secretary, introduced his Commons Bill. It had been the 1869 Select Committee's findings on the paucity of recreational and garden

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<sup>15</sup>H.C., 3 Hansard 220: 1080, 6 July 1874.

<sup>16</sup>Times, 26 July 1875.

allotments that had helped stop the enclosure process cold; any bill aiming to break the deadlock would have to demonstrate greater sensitivity to the public interest. At the same time, it would have to placate the ever-vigilant guardians of property rights, both in the Commons and particularly in the Lords. The views of both sides of the question were put forth with vigour during debate on the bill. On the day it was introduced Cross was reminded of the frustrations felt by lords of the manor whose planned enclosures had been in limbo since 1870. A deputation informed him that they had taken all the necessary steps and awaited only the confirming Act of Parliament. Cross expressed sympathy but told the deputation that the mood of Parliament was such that no enclosures of any kind would get through until a new Act was in place.<sup>17</sup>

Cross, introducing the bill, spoke of the changing attitudes towards enclosures over the century. He acknowledged that food production had ceased to be a domestic imperative. The 883,000 acres which the latest report of the Enclosure Commissioners suggested were suitable for cultivation would provide but a "drop in the ocean compared with the supplies that now came from abroad". The Metropolitan Commons Act reflected this shift in emphasis. His bill, while recognizing that enclosures should still take place, gave equal weight to schemes for regulation. In fact applicants were to be required to demonstrate what advantages enclosure offered that could not be gained by regulation, not only for themselves, but for the

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<sup>17</sup>Times, 11 February 1876; Commons Preservation Society, Report of Proceedings, 1876-80, p. 5.

neighbourhood. The interests of the neighbourhood were to be attended to throughout, the Enclosure Commissioners being given power to direct that "particular trees or objects of historical interest" be preserved and to safeguard recreational privileges on commons where no specific allotments were to be made.

For suburban commons within six miles of a "populous place", the relevant urban authority was to be permitted to appear before the Assistant Commissioner to make a case when any such common was scheduled to be enclosed. Local authorities would also have the power to hold or purchase common rights. Providing they had the backing of persons representing one-third of the interests in the common, they could apply to the Commissioners themselves. Village greens were to have added protection in that any encroachment on them was to be deemed a public nuisance, thereby opening the way for anyone to challenge it. But this protection did not embrace commons. Nor did the bill remove the problem of an obstinate lord of the manor. Regardless of what percentage of commoners approved of a scheme (and it had to be at least two-thirds), the lord could still veto it. The final level of protection for all commons was that a Standing Committee of the House of Commons would consider each proposal.<sup>18</sup>

Cross's bill was the most comprehensive and ambitious approach to enclosures since 1845 but it failed to elicit enthusiasm from all quarters. Shaw Lefevre (and his colleagues from the Commons Preservation Society) argued that the bill

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<sup>18</sup>P.P. Commons Bill, 1876 (51), I. 395; H.C., 3 Hansard 227: 186-95, 10 February 1876.



would be used mainly by those seeking to enclose.<sup>19</sup> Their attack was launched on second reading when Shaw Lefevre moved an amendment that would require all enclosures to be sanctioned by Parliament. This was aimed at filling the lacuna in Cross's bill, namely the lack of any control over enclosures by agreement between lords and commoners, or enclosures ostensibly carried out under the Statute of Merton.<sup>20</sup> While some lords had been thwarted in attempts to use Merton to justify enclosures, the statute was still legal, as were enclosures by agreement. Shaw Lefevre's amendment represented an important change in the law. He had other reservations. By stipulating that a scheme for regulation must have the consent of two-thirds of persons with interests in the common, plus the lord of the manor, the bill put unacceptable hurdles in the path of persons wishing to protect commons, especially those near towns and cities. Cross might profess a greater concern for regulation and his bill was "artfully drawn" to reinforce this impression, but the reality was likely to be the reverse.

Cross believed his bill provided that every situation would be acted upon according to its merits, and that this was superior to a system which laid down rigid criteria. In the end, Shaw Lefevre withdrew his amendment in the expectation that alterations to the bill would be made in Committee.<sup>21</sup>

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<sup>19</sup>H.C., 3 Hansard 227: 195-98, 10 February 1876.

<sup>20</sup>H.C., 3 Hansard 227: 525, 18 February 1876.

<sup>21</sup>H.C., 3 Hansard 227: 525-43, 18 February 1876.

But when the House went into Committee, Fawcett brought in a motion condemning the bill in much the same terms as Shaw Lefevre had. He pointed an accusing finger at the Enclosure Commissioners, citing the various estimates of remaining common land which they had produced over the years as an example of their untrustworthiness. Their reports "brought forward every fact and circumstance that could justify inclosure while--whether by accident or design he would not say--every fact that could induce them not to sanction [an] inclosure was omitted".<sup>22</sup>

Defences of lords of the manor were offered, usually by Conservatives. One maintained that more often than not it was the commoners who favoured enclosures. The lords often had sporting rights which were an incentive to leave an area open. But when he cited the lords of the manors of Wimbledon, Blackheath, and Hampstead as paragons of selflessness and public spiritedness, he was greeted with cries of "No".<sup>23</sup> Another dismissed sentimental images of poor commoners being disadvantaged by enclosures, pointing out that persons were commoners by virtue of the fact that they held land. The poor had no such rights and any compulsory dedication would amount to confiscation. Shaw Lefevre, he said, "advocated the confiscation of the property of one set of men, who were so unfortunate as to have incurred his displeasure in order to give it without compensation to another class, of whom he constituted himself

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<sup>22</sup>H.C., 3 Hansard 229: 1219-27, 25 May 1876.

<sup>23</sup>H.C., 3 Hansard 229: 1227-30, 25 May 1876.

the champion". He went on to link Shaw Lefevre with the spirit of the French Revolution for his unwillingness to grant compensation, a dangerous precedent which would imperil property. The titles he attacked were "at least as old as the Anglo-Saxon race".<sup>24</sup> Despite the hyperbole, this member was speaking for those who believed the preservationists were part of a radical attack on the sacred institution of property.

Whether lords or commoners were the primary agents of enclosure was not the critical point for Cowper-Temple who argued that schemes for regulation should be given a fair chance while enclosures were suspended. "If this failed, it would be time enough to legislate on the question of inclosures." Shaw Lefevre agreed.<sup>25</sup>

But Cross rejected the idea of delaying enclosures, a tactic which would have the unwelcome effect of encouraging lords of the manor to enclose without recourse to Parliament. Defending himself against the oft-repeated charge that the bill failed to deal with illegal enclosures, Cross could only note that bills brought in under the previous Government were similarly bereft of such measures. He aimed to alter the enclosure law, not deprive lords and commoners of their right to treat their property as they wished. His measure advanced the 1845 Act by requiring those who wished to enclose to demonstrate that the enclosure was of some "benefit to the neighbourhood" and that it was preferable to a regulatory scheme.

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<sup>24</sup>H.C., 3 Hansard 229: 1237-40, 25 May 1876.

<sup>25</sup>H.C., 3 Hansard 229: 1230-31, 1241-43, 25 May 1876.

The vote went against Fawcett's amendment, 234 to 98.<sup>26</sup>

This was the first of a series of setbacks for preservationists as they attempted to modify Cross's bill. A Conservative House of Commons, while expressing little nostalgia for the former enclosure method, was unwilling to tip the scales too far in the other direction. An attempt by Shaw Lefevre to permit one-third of commoners to apply for a regulation scheme was lost. He followed this with an amendment aimed at making any enclosure not carried out under the new legislation illegal. This was an attack on enclosures by agreement or under the Statute of Merton. But the predictable responses that this would interfere with rights of property won the day.<sup>27</sup>

Cowper-Temple sought to strengthen the protection of suburban commons by introducing an amendment prohibiting their enclosure. As it stood, the bill allowed local authorities to be represented at enclosure proceedings and to become involved in the management of regulated commons but this left things too much to chance. As long as enclosures were permitted, Cowper-Temple declared, their "pecuniary profit ... to individuals would outweigh the advantages to the public of regulation". In reply Cross and others deprecated the utility of erecting a uniform ban on all towns. The amendment lost as did one giving rural authorities the same right to be heard at enclosure hearings.<sup>28</sup>

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<sup>26</sup>H.C., 3 Hansard 229: 1243-50, 25 May 1876.

<sup>27</sup>H.C., 3 Hansard 229: 1387-97, 29 May 1876.

<sup>28</sup>H.C., 3 Hansard 229: 1525-30, 1 June 1876.

Cross had, perhaps, a legitimate point that banning all enclosures in towns was unwise but that did not alter the fact that his bill offered inadequate protection for urban commons.

Another new clause was put forth by Sir William Vernon Harcourt to the effect that the "unlawful inclosures of any Common or part of a Common shall, after the passing of this Act, be deemed a public nuisance". This was a last-ditch attempt to re-introduce points which had been defeated earlier. Because the bill labelled illegal encroachments on village greens as public nuisances, Harcourt declared it was logical to extend the provision to commons. There would be no threat to property rights as the amendment was aimed solely at illegal encroachments. If these were made public nuisances they could be challenged by anyone, not only by commoners as at present. Harcourt admitted that the clause would, in effect, legitimize a public right, but he defended this as an idea whose time had come, for "if they were not prepared to make that admission, then the Bill would be of no use at all". Cross thought the measure would impinge on property rights. If lords of the manor and commoners had a right to enclose by agreement, this amendment would open the way for any member of the public to bring a charge of illegal enclosure against them. Furthermore, he described village greens as quite distinct from commons as people clearly recognized their boundaries. This was a weak reply, especially the spectre of persons being indicted for enclosures that were subsequently proven to be lawful. If such happened, the person still emerged as innocent. The main purpose of the amendment was to widen the

number of people who could object to an enclosure. It would have made promoters think twice before attempting one knowing that any member of the public might take them to court. Nonetheless the Government easily defeated the proposal and thus rescued courts from the difficult task of deciding when an enclosure constituted a public nuisance.<sup>29</sup>

There were some successes to counter these setbacks. For example, Cross indicated that schemes which had been approved by the Enclosure Commissioners under the old Act, but had not been confirmed by Parliament, would be sent back to the Commissioners to be reassessed under the terms of the new bill.<sup>30</sup> An initiative by Sir Henry Peek, a Conservative, led to the incorporation of a section which put an end to a practice which had long irritated preservationists, namely the right held by surveyors of highways to take gravel from commons and wastes regardless of management schemes. This was an issue at

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<sup>29</sup>H.C., 3 Hansard 229: 1571-75, 8 June 1876. As Punch observed, the clause "would have strengthened the back bone of the Bill". Punch, 70 (17 June 1876), p. 243.

<sup>30</sup>H.C., 3 Hansard 229: 1563-64, 8 June 1876. After the Act passed, the Enclosure Commissioners refused to sanction the completion of eighteen pre-1869 schemes and suggested that regulation would be more appropriate. The rejected schemes failed to show sufficient benefit to the neighbourhood. By 1878 only one regulation scheme had been applied for. P.P. Thirty-third Annual Report of the Enclosure Commissioners, 1878 [C. 1944], XXV. 79, p. 10; Commons Preservation Society, Report of Proceedings, 1876-1880, pp.5-6.

Plumstead, Tooting, and Wimbledon. Under the Act digging would now be permitted only in restricted circumstances.<sup>31</sup>

The bill was read a third time in the Commons in late June. On second reading in the Lords, a duke struck a note of solemnity by declaring that "few measures have been brought under the consideration of this House which affect more closely the interests of so large a proportion of the people of this country".<sup>32</sup> Appropriately, in selling the bill to the House of Lords, he noted that the first principle on which it was based was that of maintaining all existing rights:

We preserve the rights of lords of manors, we preserve all the rights of commoners, and we set up no new rights. We do not propose by the Bill in any way to prevent inclosures being made.

But if Parliament's aid was sought,

we do not think it unreasonable that in the interests of the public; the health of the people, and on general sanitary grounds, some arrangements should be made ... for the comfort and enjoyment of the poorer classes.<sup>33</sup>

The sensitivity of the Lords to property rights was amply demonstrated by some of the replies. One duke thought that the provision whereby local residents could interfere with enclosures within six miles of towns was excessive, but nonetheless he

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<sup>31</sup>Commons Preservation Society, Report of Proceedings, 1870-76, second edition, p. 37; H.C., 3 Hansard 230: 137, 20 June 1876. See chapter on Landscaping for more on gravel digging.

<sup>32</sup>H.L., 3 Hansard 230: 1029, 6 July 1876.

<sup>33</sup>H.L., 3 Hansard 230: 1033, 6 July 1876.

"agreed with the principles of the Bill".<sup>34</sup> Another speaker found it perplexing that a bill which maintained all existing rights and created no new ones, could nevertheless require allotments to be made, a case of taking "property from those to whom it undoubtedly belonged in order to give it to those who had not the shadow of a title to it".<sup>35</sup> Despite these misgivings, there was no concerted effort to turn back the clock. The Lords, like their colleagues in the other house, were aware that the public demanded more concessions from enclosures than they had received in the past.

In the end, the major amendment made by the Lords was to alter the means of determining when suburban commons came under the provisions of the bill; commons had to fall within six miles of the town hall, or other landmark, regardless of the size of the town. Originally the distance was to be measured from the outer boundaries.<sup>36</sup>

On 11 August the Commons Act received Royal Assent.<sup>37</sup> While disappointed with many aspects of it, the Commons Preservation Society took credit for at least modifying Cross's original bill. For the first time protection was offered to suburban commons, although not as much as the Society would have liked. The Act provided that urban sanitary authorities could appear before the Enclosure Commissioners and present an

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<sup>34</sup>H.L., 3 Hansard 230: 1035-36, 6 July 1876.

<sup>35</sup>H.L., 3 Hansard 230: 1036-37, 6 July 1876.

<sup>36</sup>H.L., 3 Hansard 230: 1518, 18 July 1876.

<sup>37</sup>39 & 40 Vict. c. 56.



opinion as to the desirability of any proposal. They could contribute out of their funds to make any arrangements in connection with commons for the benefit of the town, or to pay compensation to commoners. In addition they could acquire by gift and hold commons or rights. Authorities were finally permitted to apply to the Commissioners for a scheme of regulation provided they had the consent of persons representing at least one-third in value of the interests in a common. The Society disliked this requirement, fearing it would allow lords or commoners subtly to blackmail authorities. Lastly, powers of management could be conferred on the authorities. What was absent was a blanket ban on enclosures around towns. The Society was apprehensive lest the Act open the floodgates and encourage the enclosures which had been in abeyance during the six years of Parliamentary inactivity.<sup>38</sup> The Act was considerably less than ideal for preservationists, but they would have to live with it, perhaps attempting amendments in the future.

Numerous attempts to protect all commons from enclosure except by Acts of Parliament had failed. The Government would not give on this but allowed two alterations which made it more difficult to enclose against the public interest. Injunctions against illegal enclosures could be issued by the County Courts and advertisements of intentions to enclose had to be published in at least two local newspapers three months

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<sup>38</sup>39 & 40 Vict. c. 56, s. 8; Commons Preservation Society, Report of Proceedings, 1870-76, second edition, pp. 35-36, 39.

in advance.<sup>39</sup> Nonetheless, nothing prevented an enclosure by agreement between a lord and commoners in the face of fervent opposition by the local inhabitants.

The Times, which regularly proclaimed itself a supporter of open spaces, thought the Commons Preservation Society tended to be overly sentimental in its expectations that commons could be preserved with a minimum of effort. In a leader filled with assumptions about class that would not have been out of place forty years earlier, it noted that many commons were victims of neglect and worse:

It is the weak side of the low-class Englishman that he cannot find himself in the presence of Nature without insulting and outraging her. We doubt whether the very distinguished President and Committee of the Commons' Preservation Society would like to live on the borders of a Common within reach of the Metropolis or a large town with no other protection than the genius loci. They whose lot is cast in rural life are painfully aware that the Waste is the fruitful source of nuisances, usurpations, and complications of all sorts .... The continual and rapid increase of the population round our Commons is always bringing forward the evils incident to their neglect and abuse .... The "roughs" assert their ownership and dictate the use. Many a fair spot is forbidden to the respectable, the decorous, or the common-place, and monopolized by that lower type which refuses any admixture with its sullen joys or any check on its brutal pastimes.<sup>40</sup>

As crude as this piece was about the lower classes, it nonetheless touched upon a constant ambiguity for middle-class preservationists. They wanted commons controlled with

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<sup>39</sup>Commons Preservation Society, Report of Proceedings, 1870-76, second edition, p. 39; 39 & 40 Vict. c. 56, ss. 30, 31.

<sup>40</sup>Times, 29 May 1876.

minimum cost and with as little interference as possible. At the same time they wished to rid them of dangers and nuisances. The article somewhat slandered the Society by making its policies appear too permissive. It desired schemes to clean up commons and bring order to them but it believed that these could be instigated without purchasing rights. The experiences on many metropolitan commons were already casting doubts on the efficacy of this method.

The Commons Act did not apply to the metropolis for the simple reason that it was incompatible with the Metropolitan Commons Act. In mid-1878, however, an Act was passed on the initiative of Shaw Lefevre which gave the Metropolitan Board of Works "the same power to purchase and hold, with a view to prevent the extinction of the rights of common, any saleable rights in common, or any tenement of a commoner having annexed thereto rights of common" as was conferred by the Commons Act upon sanitary authorities in respect of suburban commons. The sections of the Act which provided for injunctions against illegal enclosures and the necessity of advertising intended enclosures were also made applicable to metropolitan commons.<sup>41</sup>

The stated aim of the 1876 Act was to encourage regulation schemes over ones for enclosure. But this was not the result. In point of fact it gave enclosers a means to achieve their goals while dangling few incentives to attract those who wished to regulate. As the Commons Preservation Society told its members in 1880:

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<sup>41</sup>41 & 42 Vict. c. 71, ss. 2, 3.

The Regulation clauses have proved to be unworkable and all but useless. Not a single scheme for the Regulation of a whole Common has yet been sanctioned.... In respect of lowland Commons, the veto conceded in the Act to the Lord of the Manor, and the necessity of consent of two-thirds of the Commoners, and the expense of proceedings generally, have prevented, and will continue to prevent, any action in this direction.<sup>42</sup>

The first two schemes solely concerned with regulation were not confirmed until 1880.<sup>43</sup>

The Commons Preservation Society continued to monitor enclosures after the Commons Act but the number of applications was on the decline. Nevertheless, the Society's determination to protect the public interest over commons provided constant challenges, and it remains active today. By 1876 metropolitan and suburban commons faced reduced chances of being enclosed although many still awaited schemes ensuring their survival. Encroachments were still a threat. They had been one source of conflict as management schemes had been introduced in the 1870s but there were others. Lords and commoners engaged in disputes about rights, both with each other and with administering authorities. Members of the public had to learn that there would be rules governing their behaviour. Acquiring and controlling metropolitan commons proved to be a complicated and often vexing process, as the following parts of the thesis detail.

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<sup>42</sup>Commons Preservation Society, Report of Proceedings. 1876-80, pp. 4-5.

<sup>43</sup>Commons Preservation Society, Report of Proceedings. 1880-81, pp. 1-2.

**Part Four: Taking Control**

#### 4.1 Settlements at Wimbledon and Epping Forest

The passing of the Metropolitan Commons Act was an important milestone in the advance of preservationism but it was not a panacea for those on the front lines. The impreciseness of the Act, particularly on the matter of common rights, made it an awkward tool with which to diffuse disputes. Over most of the major commons that the Metropolitan Board gained control, schemes under the Act left many loose ends that were difficult and occasionally expensive to resolve. The Board was compelled, nonetheless, to use the Act and only became aware of its shortcomings through trial and error. Ironically, solutions to the disputes at Epping and Wimbledon, which had done so much to shake Parliament out of its complacent attitude towards commons, were arrived at independently of the Act.

Wimbledon was settled first and with comparative ease. Spencer's scheme had done much to unite those who felt strongly that action of some kind was needed to ensure continued access for the public. They disliked the proposed exclusion of local residents from the management of the common and were uneasy that Spencer had failed to follow the recommendations of the first report of the Select Committee on Open Spaces. When Spencer escalated his gravel digging and began erecting a brickworks, his opponents seized the initiative. After preliminary talks collapsed without an agreement, Sir Henry Peek, one of the wealthiest landowners, brought a suit in Chancery against Spencer in December 1866 to confirm the rights of commoners. Application was also made to the Enclosure

Commissioners for a scheme under the new Metropolitan Commons Act but they refused to proceed while the parties were so far apart.<sup>1</sup>

It took until August 1868 for Spencer to lodge his reply which was, in essence, a re-statement of the position downplaying all common rights taken by Forster before the Select Committee. Nor was this an easy target for the commoners to attack; the best case they could assemble was far from unassailable. There were obstacles to proving that copyholders had not lost rights through non use or that freeholders had the rights they claimed. But luck was on the side of the commoners. Conveyances were found for certain lands, once part of the demesne, which explicitly included rights of common. With this trump card, the commoners were able to persuade Spencer that negotiations were preferable to protracted litigation and terms for a settlement were worked out.<sup>2</sup>

The agreement was confirmed by the Wimbledon and Putney Commons Act of 1871. By this the commons came under the control of a body of eight conservators, five elected by the ratepayers, plus one each to be appointed by the Home Secretary, the Secretary of State for War (reflecting the use of the commons by the Volunteers), and the First Commissioner of Works. Spencer, perhaps wearied by the struggle, bowed out of any further involvement, but his exit was sweetened by an annuity of

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<sup>1</sup>First Report of the Enclosure Commissioners under the Metropolitan Commons Act, 1866 (1867-68), p. 1; Second Report (1868-69), p. 2.

<sup>2</sup>Eversley, pp. 67-68; Phillips, pp. 24-25.

£1200 which was to compensate for the lost revenue from the common.<sup>3</sup> A special local rate, mooted years previously by the residents' committee appointed to consider Spencer's original plan, was adopted with those living closest to the common paying a higher amount. The National Rifle Association was allowed to continue its annual rifle meet. (By 1889 the event had outgrown the area, both in terms of rifle technology and its capacity to annoy residents, and moved away.) The Conservators were to draft bylaws which the First Commissioner of Works was to confirm. The Act also gave the police authority to preserve order on the common. Thus most of the aims of the anti-Spencer forces were realized; some may have objected to the annuity but, compared to the cash payments that some lords of the manor would receive in the following period, it was not a major outlay.<sup>4</sup>

Nevertheless, the bill confirming the agreement met with some legitimate opposition. Residents of Putney, who were within the rateable area of the Metropolitan Board of Works, favoured that body assuming control and rating the entire metropolis. As their rates had aided the provision of open spaces elsewhere (notably Finsbury and Southwark Parks), it seemed unfair that metropolitan residents should gain access to Wimbledon at no cost to their purses. Others objected to the

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<sup>3</sup>In 1958 it was decided to raise £22,500 as a lump sum payment to discharge the annuity. Phillips, p. 25.

<sup>4</sup>Eversley, pp. 68-69; Times, 5 April, 22 September 1871. The special rate was assessed as follows: those within one quarter mile of the common paid 6d. in the pound; those within one half a mile, 4d., and those beyond, 2d. No houses assessed below £35 per annum contributed.



continued presence of the N.R.A. The Metropolitan Board unsuccessfully opposed the bill before the Select Committee of the House of Commons and prudently decided not to renew its case before the House of Lords.<sup>5</sup> There were by that time many commons wholly within its boundaries that were demanding attention.

The two sides in the Wimbledon dispute had been divided by radically different views on the nature of common rights. Each side's vision of the future was constructed with a touch of romanticism. Spencer was wrong to dismiss all claims by commoners and to contemplate building a palatial residence in the middle of the common. His original plan, with himself as Protector, was much too paternalistic. On the other side, the commoners were generally more practical. They recognized that selling portions of the common was unnecessary because residents would pay the expenses of a scheme from their own pockets. The Wimbledon scheme seemed to validate the Commons Preservation Society's belief that commons could be dedicated to the public without extinguishing commoners' rights. It was not, however, a model that could be applied throughout the metropolis. It worked at Wimbledon because rights of common were not exercised regularly and commoners were, by and large, preservationists. For all the differences between Spencer and the community--and they escalated after the matter went to court--the two camps were not divided on the basic issue. Both wanted the common preserved as a public open space. Spencer proposed a

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<sup>5</sup>Report of the Metropolitan Board of Works for 1870-71, pp. 30, 96; Times, 22 February, 5 April, 20 May 1871.

park but was willing to modify aspects of his scheme. It was not his primary purpose to exploit the common for his own profit. Had the two sides been further apart, the fate of the common might have resided with the courts. As it was, Wimbledon became the first metropolitan common to be managed by local conservators, a pattern that was imitated at Barnes, Mitcham, Epsom, and Banstead. The Wimbledon Conservators are still active today.

Across London at Epping, not only did the parties not share the same unanimity of purpose, there were more parties, beginning with nineteen lords of the manor. Opposed to them were commoners and users of the forest. The rescue of Epping is justly celebrated by the Commons Preservation Society as a struggle in which it played a noble role. Its belief in the benevolent exploitation of common rights was shown to be a masterful tactic. The City of London was drawn into the affair and emerged in glory while the Metropolitan Board revealed its pettier side.

After the 1863 Select Committee failed to come up with a satisfactory solution to halt forest enclosures, viewpoints were next expressed to Parliament by witnesses appearing before the Select Committee on Open Spaces in 1865. That Committee returned to Peacocke's resolution and recommended that Crown rights be maintained for the "purpose of preventing all future inclosures".<sup>6</sup> Such language only confirmed the worst suspicions

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<sup>6</sup>Second Report from the Select Committee on Open Spaces (Metropolis), p. x.

of those intent on enclosing and made them act quickly, hoping to beat any legislation.

Towards the end of 1866 hopes for the forest brightened when its management was transferred from the revenue-conscious Woods and Forests Commissioners to the Commissioners of Public Works and Buildings.<sup>7</sup> But though this body might be less eager to sell Crown rights, not much would change unless it actually pressed the rights to block illegal enclosures. Evidence of this was sadly lacking.

Questions about the future of Epping had helped force Parliament to look more closely at the subject of metropolitan commons, but Parliament itself was not proposing answers for the forest. In centuries past it had been commoners rather than governments who had led the battle to preserve common rights, and this pattern was about to repeat in Epping. In 1866 the lord of the manor of Loughton, one of the nineteen forest manors, enclosed 1300 acres. This was a sizable enclosure but, as the forest had been suffering losses for decades, not a radical move. The inhabitants of Loughton, however, claimed an ancient right of lopping trees between 11 November and 23 April. The tradition went back at least as far as Elizabeth, and observance of the custom decreed that the lopping should begin at midnight on the eve of the eleventh. On that date in 1866, after the enclosure, a labourer named Willingale, assisted by two sons, carried out the custom, breaking a fence in the process. The lord, who was also the rector of the parish, prosecuted for trespass and won, despite

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<sup>7</sup>Times, 12 September 1866.

attempts by the defence to show that the three were vindicating a right. They received two-month sentences.<sup>8</sup>

Willingale's case was precisely the sort that the new Commons Preservation Society felt it should back. Not only did the case have merit in itself, but the fact that Willingale was a labourer made it an attractive vehicle to use when eliciting public support. The Society could portray itself as fighting for the rights of the working class while pursuing ends that would benefit all. It launched a suit in Chancery to establish the right of lopping and to declare the enclosure unlawful. The arguments touched upon some of the finer points of the law dealing with rights. The lord of the manor argued that the inhabitants of an area were not a body capable of receiving a grant and could not, therefore, prescribe for a right or enjoy a custom. This was true. A right or custom exercised by an unrestricted number of people would likely destroy the common. But the Master of the Rolls, Lord Romilly, agreed with Willingale's counsel that a grant by the Crown in effect created a corporation (a corporation could receive a grant). Another possible objection to the grant was that it represented a derogation of the forest rights and was therefore bad. Willingale's counsel argued that the Crown could properly make such a grant because the severity of the forest laws made such a move reasonable. Romilly agreed.<sup>9</sup>

These preliminary findings augured well for the success of the suit but Willingale's death in 1870 forced its termination

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<sup>8</sup>Eversley, pp. 87-88.

<sup>9</sup>Willingale v. Maitland (1866) L R 3 Eq 103.

before a final ruling. Nonetheless, the effort put into the case was not wasted. In addition to buoying the hopes of the Society that its approach could be effective, the holding action the suit had put on the Loughton lord for four years was not without importance. The Society's investigations of the relevant records during those years convinced it that a case could be won if adequate funds could be found to back it. Willingale had been an inspiring symbol but he was poor and the Society itself was not overly wealthy. It had given Willingale a pound per week as he resisted attempts to buy him out.<sup>10</sup> One of the reasons the Society was so eager to have legislation to protect commons was the high cost of going to law. Only reasonably well-off commoners could be expected to challenge actions by lords.

The four years were also important for mobilizing public opinion, without which Parliament would be unlikely to act. Public meetings were held in early 1867 at Mile End and at Loughton. At the first, the speeches gave pride of place to the forest as a playground for the inhabitants of the East End.<sup>11</sup> Perhaps more so at Epping Forest than any other metropolitan open space preservationists promoted the philanthropic message. At Loughton, the East London Committee of the Commons Preservation Society came perilously close to urging supporters to tear down the fences, but cooler heads prevailed, and the

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<sup>10</sup>Eversley, pp. 90-91. The founders of the Society contributed £1,400 to get it started. Its annual subscription income after that was around £500. Williams, p. 1.

<sup>11</sup>Times, 1 February 1867.

necessity of first taking proper legal steps was accepted.<sup>12</sup> Nonetheless, mass action was a weapon the preservationists had that their opponents did not, and it was one that was used a number of times.<sup>13</sup>

By 1869 the Society was applying further pressure on the Government. In particular, members wanted the First Commissioner of Works to use the Crown rights to challenge enclosures. At Chingford St. Paul's, 300 acres had been enclosed by a lord who had not bothered to buy the rights. Surely this was illegal. The Society also wanted a permanent scheme for the protection and management of the forest under the Metropolitan Commons Act.<sup>14</sup> Robert Lowe, the Chancellor of Exchequer and the minister with the decisive power in this matter, demonstrated little sympathy to the cause when visited by a deputation from the Society, evidence that the Liberal party contained strong men who distrusted its aims. Lowe saw no logic behind the proposal to use Crown rights, "the last relics of the old Norman tyranny", to pave the way for the public. They originally protected deer and were now valueless. When the deputation reminded Lowe that Gladstone had indicated in 1866 that the forestal rights would be dealt with in a "manner that will be satisfactory to all

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<sup>12</sup>Times, 23 April 1867.

<sup>13</sup>The Commons Preservation Society organized a hired band to break the fences at Berkhamstead in 1866. A working-class group, the Commons Protection League, took direct action in Hackney, Plumstead, and elsewhere.

<sup>14</sup>Guildhall Library, Fo. pam. 2028(i), Commons Preservation Society, Memorial to the Right Hon. A. H. Layard, M.P., First Commissioner of Her Majesty's Works, 1 May 1869.

concerned", he replied: "I cannot tell what it means: it is all very oracular".<sup>15</sup> Lowe had no doubts about the rectitude of his unpopular stand. He was suspicious of M.P.s who seemed to be using the issue to advance their own standing. His adversaries came away from the meeting convinced he had "treated the whole subject with contempt and sarcasm".<sup>16</sup>

The Metropolitan Board of Works, whose efforts in this issue one historian has described as "unheroic", had let an early invitation by the Government to become involved pass by.<sup>17</sup> But by 1869 the atmosphere had changed, and with its new Parks, Commons, and Open Spaces Committee in place, the Board could hardly continue to turn its back, although the fact that the forest was beyond its jurisdiction reduced the sense of urgency. A deputation from the Parks Committee met with the First Commissioner of Works, A. H. Layard, and suggested using the Crown rights as a bargaining tool with the various lords of the manor. If the rights were ceded over much of the forest, perhaps the lords would, in return, permit public access to the other parts.<sup>18</sup>

<sup>15</sup>Times, 3 August 1869; Henry Fawcett, "The Enclosure of Commons", in Pauperism: Its Causes and Remedies (London: Macmillan and Company, 1871), pp. 262-63; Holt, p. 196.

<sup>16</sup>Arthur Patchett Martin, Life and Letters of the Right Honourable Robert Lowe, Viscount Sherbrooke, G.C.B., D.C.L. (London: Longmans, Green and Company, 1893), pp. 377-78; Eversley, p. 96.

<sup>17</sup>Owen, p. 151.

<sup>18</sup>MBW 977, 4 May 1869, pp. 164-66; Report of the Metropolitan Board of Works for 1868-69, pp. 23-23.

Layard had the background and attitudes that could have made him a valuable ally to the preservationists. A political radical, he was an archaeologist of repute and under his administration the Office of Works had begun to take an active interest in historical monuments and tombs. He was not adverse to government money being spent for worthy public schemes and he took a particular interest in improving London. In October 1869, however, he was made ambassador to Spain (somewhat reluctantly) and replaced by A. S. Ayrton. As the M.P. for Tower Hamlets, Ayrton should have been the preservationists' fifth columnist in the Government. But, though he had voted for Peacocke's motion in 1863, and though his record in the House showed a sympathy for working-class interests, Ayrton was against any expenditures which hinted of extravagance. He promised to consult with the Treasury about the Board's proposals after the Board indicated if it would be willing to assist in the financing of any scheme.<sup>19</sup>

The rude reception that Lowe had given the deputation from the Commons Preservation Society (the two Liberal M.P.s from Hackney had been present as well) could not stand as the Government's response to pressure to do something about the forest. In February 1870 Fawcett moved an address to the Queen,

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<sup>19</sup>Roy MacLeod, "The Ayrton Incident: A Commentary on the Relations of Science and Government in England, 1870-1873", in Science and Values, eds. Arnold Thackray and Everett Mendelsohn (New York: Humanities Press, 1974), pp. 48-51; M. H. Port, "A Contrast in Styles at the Office of Works: Layard and Ayrton: Aesthete and Economist", The Historical Journal, 27, 1 (1984), pp. 153, 159; MBW 978, 16 December 1869, pp. 83-86; Times, 20 December 1869.



reminiscent of Peacocke's seven years earlier, asking that Crown rights be asserted so that the forest might remain an open space for recreation. Although the "shadowy" nature of the rights was used to throw doubt on their effectiveness, the House passed the motion.<sup>20</sup>

Unable to delay the matter further, the Government introduced a bill in July 1870, but it was hardly the measure desired by preservationists. In some respects it followed the plan outlined by the Metropolitan Board. Forestal rights over 2000 acres would be offered to the lords of the various manors. Of the remaining 1000 acres of forest, 400 were to be sold to compensate commoners for the loss of their rights, while only 600 acres were to be made into a public recreation area under the administration of the Board.<sup>21</sup>

For preservationists the bill presented a real dilemma. By 1870 only one common, Hayes in Kent, had been "saved" by a scheme under the terms of the Metropolitan Commons Act. Disputes over other metropolitan commons--Hackney, Plumstead, Berkhamstead, Tooting--were in various holding positions, many in Chancery. Although Parliament itself had shown hostility to enclosures, and though public support was growing for preservationism, the successes thus far were not such as to instil confidence. More important, the movement had not yet won enough legal victories to prove the validity of common rights.

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<sup>20</sup>H.C., 3 Hansard 199: 246-66, 14 February 1870; Times, 15 February 1870; Eversley, pp.96-97.

<sup>21</sup>Eversley, p. 97.

Now, at Epping, they were being offered a plan which was patently unsatisfactory. But should they accept it as something at least guaranteeing 600 acres for the public? Or should they fight it and pursue their case in the courts? If that disintegrated, they risked losing the whole forest. Members of the Commons Preservation Society split over the question. One who opposed any compromise was Fawcett who, in late July, indicated his intention to vote against the bill on second reading. Shortly thereafter the Society met, and by one vote, supported a resolution against the bill moved by John Stuart Mill.<sup>22</sup> Whether the M.P.s in the Society had the strength to sway their Parliamentary colleagues was not tested that Session as the bill was withdrawn for technical reasons. But the Government announced that it would be reintroduced the following year.

Alarmed over the continued enclosures, the Society decided to take the initiative rather than wait for the Government to reintroduce the bill. Cowper-Temple moved a resolution

that it is expedient that measures be adopted, in accordance with the humble Address presented to her Majesty in February 1870, for preserving as an open space accessible to Her Majesty's subjects for purposes of health and recreation, those parts of Epping Forest which had not been enclosed with the assent of the Crown or by legal authority.

The Government opposed the motion but was defeated handily, 197 to 96. As the Times pointed out, the numbers reflected frustrations over other issues as well as the popularity of the forest. Gladstone had lobbied Cowper-Temple to withdraw the

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<sup>22</sup>Eversley, pp. 97-98; Edward North Buxton, Epping Forest, ninth edition (London: Edward Stanford, 1923; orig. publ., 1884), pp. 21-22.

motion, and the results indicated his inability to control his party.<sup>23</sup> Preservationists were also upset about the cutting of timber at High Beech, one of the most scenic parts of the forest, and were angered to learn that the Crown rights had been sold over the affected areas. Cowper-Temple's resolution was, in essence, a stopgap measure to try to protect the unenclosed portions of the forest.<sup>24</sup> In the end the Government decided not to reintroduce its bill.

But 1871 turned out to be important on many fronts. The death of Willingale had left preservationists in search of another commoner willing to challenge an enclosure in the forest, preferably one with deep enough pockets to carry it through. That commoner turned out to be the Corporation of the City of London, owners of a 200-acre estate at Little Ilford in the manor of Wanstead. When the lord of the manor, Earl Cowley, enclosed thirty acres of Wanstead Flats and Lowe revealed that the Government would not be instituting legal proceedings, it was left to the City to act.<sup>25</sup> In June it served notice on Cowley's trustees ordering the removal of all "hurdles, railings, gates, woodwork, and fences", and when this had no effect the

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<sup>23</sup>H.C., 3 Hansard 205: 1852-71, 28 April 1871; Times, 29 April 1871; Agatha Ramm, "The Parliamentary Context of Cabinet Government, 1868-1874", English Historical Review, 99 (1984), pp. 739-40.

<sup>24</sup>H.C., 3 Hansard 204: 1875-76, 13 March 1871; Times, 18 March 1871; Holt, p. 200.

<sup>25</sup>H.C., 3 Hansard 207: 397-98, 22 June 1871.

Corporation decided to press its suit.<sup>26</sup> It was launched in Chancery in August by the Commissioners of Sewers, who actually owned the relevant plot of land, and was filed on behalf of all owners and occupiers of lands within the forest (except those owners who were defendants) for rights of common of pasture over the entire forest irrespective of manorial or parochial boundaries. It sought a declaration of these rights plus an injunction against enclosures.

The Government, meanwhile, decided to advance cautiously and introduced a bill to establish a commission of inquiry into the various rights in the forest. This was all very well and seemed a sensible way of clarifying where the various parties stood, but critics wanted a clause that would suspend all encroachments during the inquiry because they feared avaricious lords would try to grab as much as they possibly could before the inevitable legislation arrived. But Ayrton, Gladstone, and Lowe refused to countenance this, Lowe claiming that they could not interfere with private rights by a public bill.<sup>27</sup> When the Commissioners were appointed, preservationists were suspicious that they would have a predisposition towards enclosures. The chairman was one of the Enclosure Commissioners and the two other members were known to be hostile to the movement.

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<sup>26</sup>Guildhall Library, B'side 29-42, To the Right Honorable Earl Cowley, and to his Trustees, Solicitors, Steward, and Agents, or whom else it may concern, June 1871; Times, 1 July 1871.

<sup>27</sup>Times, 8, 13, 21 July 1871.

Fawcett and a colleague succeeded in having John Locke, who had chaired the Open Spaces Select Committee, added.<sup>28</sup>

In addition to the Chancery proceedings and the Government inquiry a third forum devoted to Epping Forest revived in September. The election of three new verderers permitted the first Court of Attachment to be held in a long time. Presentments detailing enclosures in many of the manors were heard. A representative of the lords of the manor had the courage to state that the enclosures were "actuated by honest motives" but this failed to explain why so many had occurred in such a brief span of time.<sup>29</sup> For all their capacity to record encroachments, the verderers possessed insufficient powers to halt them.

Throughout the year there was much evidence of public support for saving the forest. The Times upbraided the Government for its procrastinations and contrasted the "sullen debauchery of the public-house" with the happy scenes of "holyday making cockneys" in the forest, even if some of the merry-making was "coarse and noisy".<sup>30</sup> Public meetings in various parts of the East End passed resolutions thanking the City for taking steps to protect the forest.<sup>31</sup> One passed an address to the Queen which made the point that the East End's mortality rate was double that

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<sup>28</sup>Times, 4 August 1871; Anon., Epping Forest (London, 1878), p. 36.

<sup>29</sup>Times, 18 September 1871.

<sup>30</sup>Times, 4 August 1871.

<sup>31</sup>Times, 27 October 1871.

of other metropolitan regions.<sup>32</sup> The inhabitants needed the open space provided by the forest. More than one organization formed to assist the cause. A Forest Fund was opened in July and meetings were held to swell its coffers.<sup>33</sup> An East London Committee for the Preservation of Epping Forest materialized. At a meeting criticisms were levelled at Lowe and Ayrton, one speaker dubbing the Government's proposals "The Absurd Scheme, The Very Absurd Scheme and the Most Absurd Scheme".<sup>34</sup>

Although the general drift of things seemed to be flowing in a direction favourable to preservationists there were a few clouds on the horizon. Towards the end of the year the Government announced plans to introduce a bill which would suspend legal proceedings during the Commissioners' inquiry.<sup>35</sup> This seemed a particularly obtuse idea in light of the Government's refusal to halt encroachments during the same period. In effect it would permit these encroachments to continue while preventing legal challenges to them. The City's suit was especially vulnerable. Fortunately, the bill was

<sup>32</sup>Guildhall Library, B'side, 29-46, Petition to the Right Hon. the Lord Mayor, the Aldermen, and Commoners of the City of London, in Common Council Assembled, 27 July 1871.

<sup>33</sup>Guildhall Library, Pam. 11857, The Forest Fund, 14 July 1871; Times, 4 October 1871

<sup>34</sup>Guildhall Library, A.2.4. No.2 in 9, East London Committee for the Preservation of Epping Forest, Report of Meeting, November 1871.

<sup>35</sup>Guildhall Library, Common Council Reports, 1871, No.24, Report to the Court of Common Council from the Coal and Corn and Finance Committee, 16 November 1871.

remedied to permit it to continue and to allow the Commissioners to halt any further enclosures during the course of their inquiry.<sup>36</sup>

Another cloud was the rivalry between the City and the Metropolitan Board of Works, which intensified towards the end of 1871. The Board instructed counsel to appear before the Commissioners to make them aware of its willingness to take whatever steps it could to secure the forest for the public.<sup>37</sup> The Corporation, meanwhile, planned to introduce two bills in the next session of Parliament, one to acquire the forest by purchasing outstanding rights, the other to finance this by altering the grain duty collected by the City.<sup>38</sup> This was not to the liking of the Board at all. Its Parliamentary Committee thought it ungracious that the City, with its limited jurisdiction,

should interpose in the middle of an inquiry ordered by Parliament and propose to take the matter out of the hands of Parliament, the Government, and the Board, by acquiring possession of the Forest, and this by means of a tax on the trade of the Metropolis.<sup>39</sup>

But the City was unmoved by what seemed to be sour grapes by the Board over its more imaginative initiative. In the end, the

<sup>36</sup>H.C., 3 Hansard 210: 1674-75, 22 April 1872; 35 & 36 Vict. c. 95, ss. 2, 5.

<sup>37</sup>Times, 21 October 1871.

<sup>38</sup>Times, 23, 25 December 1871.

<sup>39</sup>Guildhall Library, MBW Misc. Reports, No. 23 in 6, Report by the Parliamentary Committee to the Works and General Purposes Committee on Proposals of the Corporation of the City of London with Regard to Epping Forest and the Duty on Grain, 31 January 1872.

bill to acquire the forest was unsuccessful but the metage of grain bill passed.<sup>40</sup>

The suit in Chancery and the Commission were both seeking to clear up the question of rights in Epping Forest. Because of this overlap, the City toyed with the idea of dropping its case and accepting the findings of the Commissioners, rather than risk considerable sums of money for an uncertain verdict. The defendants, however, no doubt expecting a vindication of their actions, wanted to see the suit to its finish. In July 1874 the City learned that the Commissioners would likely delay issuing their report until the court had made its ruling.<sup>41</sup>

The judgment, delivered in November by Sir George Jessel, the Master of the Rolls, was a magnificent victory for the preservationists. Jessel found no evidence to support the defendants' claim that the waste was divisible into portions for each of the various manors. It was, rather, one large common, over which the plaintiffs had an ordinary right of common of pasture appurtenant. That various parishes used distinctive marks to identify their cattle was not evidence of separate manorial wastes. Any mark was good throughout the whole forest. Nor could any rights of the lords of the manors to enclose according to the custom of their manors be sustained. Jessel had no doubts that the defendants should pay costs, especially as they

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<sup>40</sup>Times, 5 March, 15 April 1872. The Act converted the grain tax to a simple payment of one farthing per hundredweight (which lowered the income from this source from £10,000 or £15,000 to £7000), the proceeds to be used primarily to purchase rights in the forest.

<sup>41</sup>Eversley, pp. 100-1; Times, 31 July 1874.



had "endeavoured to support their title by a vast bulk of false evidence". He declared the enclosures that had taken place illegal although he recognized that under the terms of the case, enclosures which had taken place before August 1851 were not in question. Nor could lands covered with buildings be recovered. But all other enclosures since 1851--encompassing some 3000 acres--were deemed to be illegal and no further enclosures were to be permitted.<sup>42</sup>

That the judgment fell on the eve of the annual lopping ceremony at Loughton lent a festive atmosphere to that year's observance. Both the Times and the Examiner rejoiced at the decision while finding some irony in the fact that the forest was being preserved for the public by rights for cattle. The Examiner wondered if it would be possible to compel the "chief plunderers to disgorge their booty".<sup>43</sup>

The Epping Forest Commissioners' first report to Parliament was submitted in March 1875. Its conclusions were similar to Jessel's judgment. Some 3000 acres of the 6000-acre forest had been illegally enclosed. The forestal rights had been sold over 3556 acres. Where lords of the manor had purchased them, they were still prevented from enclosing by the rights belonging to commoners.<sup>44</sup> But the Commissioners were far from

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<sup>42</sup>Commissioners of Sewers v. Glass (1874) L R 19 Eq 134; Joshua Williams, Rights of Common and other Prescriptive Rights (London: H. Sweet, 1880), pp. 53-55.

<sup>43</sup>Times, 12, 13 November; Examiner, 14 November 1874, pp. 1233-34.

<sup>44</sup>Eversley, p. 102; Times, 29 May 1875.

completing their task and now hinted that it might take many years. Those who had supported the City's suit were unhappy about this and over reports that the Commissioners were hatching a scheme for disafforestation; they resolved to remain vigilant.<sup>45</sup>

Having defined the area to be saved, the Commissioners held hearings throughout the second half of 1875 to consider which of twenty-one suggested management schemes would best serve the public. The Metropolitan Board of Works and the City submitted proposals both of which planned to raise some money by making owners of buildings on illegally enclosed lands pay rent.<sup>46</sup> Not surprisingly, neither had a good word for the other and the Examiner rued the ratepayers' money that was being spent maintaining the feud.<sup>47</sup> In addition to these two schemes, which would obviously be leading contenders, one was received giving overall responsibility for management to the verderers, who would be expanded to include representatives from the City, the Metropolitan Board, and Hackney. Another from some lords of the manor called for the Crown to refund with interest the money that they had paid to purchase the Crown rights. This scheme was essentially a copy of the discredited Government plan of 1870 which would have given 600 acres to the public. The lords made this appear as a generous gift although some expected to receive

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<sup>45</sup>Times, 31 May 1875.

<sup>46</sup>Times, 2 August, 17 September 1875; Guildhall Library, Fo. pam. 9. Memorandum explanatory of the Scheme for the future management of Epping Forest proposed by the Corporation of the City of London, 29 July 1875.

<sup>47</sup>Times, 11 November; Examiner, 20 November 1875, p. 1299.

compensation.<sup>48</sup> Nor was the lords' scheme the only one at odds with the cause of saving the forest. That sent by the parish of Loughton declared the recent enclosures to be "highly beneficial to the parish by enlarging the area of assessment, by providing labour for the industrious poor, and by conducing to the general health by drainage and cultivation".<sup>49</sup> Local governments, especially those dominated by commercial interests, were often less inclined to see the romantic side of commons and to focus on the economic factors, but their voices were not in harmony with the prevailing sentiments against enclosures.

Finally, at the end of March 1877, the Commissioners issued their final report, designating the City, not the Metropolitan Board, as the conservators of the forest. A twelve-member committee would be appointed, to be augmented by the four verderers, to supervise its administration.<sup>50</sup>

The bill to secure Epping Forest as a place for the public passed through Parliament with relative ease. During third reading Fawcett and Charles Dilke, both members of the Commons Preservation Society, tried to have four members of the Metropolitan Board added to the management committee. This was not so much an expression of faith in the Board as a call for some metropolitan voice. But the short debate revealed little but the animosity between the City and the Board, with speakers raking the latter over the coals for its previous inaction. Nor did

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<sup>48</sup>Times, 17 September, 4, 5 November 1875.

<sup>49</sup>Times, 13 November 1875.

<sup>50</sup>Times, 4 April 1877.

other members of the Society support the motion which was defeated overwhelmingly.<sup>51</sup> The bill received Royal Assent in early August 1878.

The Act appointed an arbitrator to settle all outstanding claims with respect to the forest. The process took longer than expected and it was not until 1882 that the final decisions were made. One of his most important rulings was made in May 1880 when he established £25 per acre as the price that the Corporation was to pay for some 2510 acres that it was to acquire. The owners had asked for £380 while the City had offered £20, the average price it had paid for some earlier acquisitions in 1876.<sup>52</sup>

The City calculated that its total expenditure on the forest was £256,275, of which £33,000 went towards legal expenses for the Corporation's suit and for appearances before the Commissioners and the arbitrator. The lion's share was used to buy up the rights of lords and of others. The City's solicitor could not resist pointing out that the total came to about £50 an acre, a figure that undercut the amount per acre spent by the Metropolitan Board on most of its commons.<sup>53</sup>

The Queen officially dedicated the forest to the people on Saturday, 6 May 1882.<sup>54</sup> Its rescue had been a long struggle and participants such as the Commons Preservation Society and the

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<sup>51</sup>H.C., 3 Hansard 241: 766-76, 4 July 1878.

<sup>52</sup>Times, 27 May 1880, 17 June, 29 July 1876; Eversley, p. 104.

<sup>53</sup>Eversley, p. 109; Times, 25, 26 July 1882.

<sup>54</sup>Times, 8 May 1882.

City of London could take pride in their contributions. The Society had demonstrated in convincing fashion that rights held by commoners could block enclosures by hostile lords. The City had displayed good judgment by backing a measure that had wide support. Without its willingness to finance the scheme, the forest might not have fared so well. That public opinion throughout the metropolis grew in its appreciation of the forest was most important. The Government's halting early attempts to produce a solution were stillborn because they failed to meet public expectations. Although the Metropolitan Board had not conducted itself in the most inspiring manner, its failure at Epping was a boon for future generations.

Even Robert Lowe, who as Chancellor of the Exchequer during Gladstone's Government had been vilified for his part in the events, found satisfaction in the result. Speaking in Glasgow (where London-baiting was fair game) he related his side of the story:

[The preservationists] obtained a vote from the House of Commons that they were to obtain--obtain, I think, was the word--3,000 acres of this land, which was worth about £50 an acre, for the benefit of the City of London; the only way to obtain which, that I knew of, would be to take out of your pockets--out of the pockets of the taxpayers of this country--£150,000 to buy this ground, to make a present of it to the City of London. To my sorrow and shame be it said, the House of Commons confirmed this resolution; but we did not evince the slightest intention of giving any particular effort to it (loud laughter), and the consequence was that the City of London, much indignant at our conduct, was at last reduced to that which they might have thought of at first--they announced their intention of buying the Forest--so that the account stands thus: you are plus £150,000; I am minus a great deal of reputation that I lost then; and the people of London get the Forest after all.<sup>55</sup>

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<sup>55</sup>Martin, vol. 3, p. 378.

Lowe was, perhaps, being somewhat selective in his account. The Government might have used the Crown rights more effectively in the early stages of the struggle without spending large amounts of money. But he touched on a sensitive point. How much should the central government contribute to metropolitan improvements? By and large, metropolitan ratepayers absorbed the greater cost of acquiring commons because Westminster rejected arguments that London deserved special treatment. While governments provided large sums for public parks, especially in the 1840s, where possible they were content to pass enabling legislation and let local governments wrestle with the financing of schemes for commons.

The City's success at Epping generated envious glances from frustrated preservationists in other parts of the metropolis some of whom petitioned it to help their causes. It turned down these requests despite the fact that in 1878 it had been given the authority to become involved with open spaces within a twenty-five-mile radius of London that were not within the Metropolitan Board's jurisdiction.<sup>56</sup> Unfortunately the trouble spots were generally in the Board's territory and any moves by the City would have been hotly contested.

The success of the Epping Forest struggle seemed to turn on the result of the City's suit, but had the verdict gone against

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<sup>56</sup>Corporation of London (Open Spaces) Act, 41 & 42 Vict. c.cxxvii. By the end of 1886 it had acquired the 492 acres of Burnham Beeches, the 392 acres of the Couldson Commons, West Ham Park, 77 acres, Highgate Wood, 69 acres, Spring Park, 51 acres, and Queen's Park and West Wickham Common, 25 acres. Robson, p. 33.

the commoners the forest would not necessarily have disappeared. By the mid-1870s preservationism had a firm enough grip on the public that no government could have allowed this. The lords of the manors would have been in an enviable bargaining position and the final costs would have been greater, but at least part of the forest would have been saved for the public. A verdict for the lords, however, might have created difficulties elsewhere. Demoralized preservationists might have shied away from similar confrontations over less visible commons. In fact, the positive result in the suit seemed to confirm the persuasiveness of their arguments and perhaps helped some develop an intolerance towards other methods of protecting commons, especially if they involved purchasing rights. The settlements at Wimbledon and Epping were triumphs for the type of beliefs found in the Commons Preservation Society. Over many of the commons that the Metropolitan Board gained control, these tenets produced problems. When the Master of the Rolls handed down his decision in the Epping Forest case, the Board was already a veteran of disputes caused by them.

#### 4.2 The Metropolitan Board and Tooting

The Metropolitan Commons Act was supposed to provide an efficient method of protecting commons. It was designed as an enabling Act that would rely on initiatives in the community to give it effect. During the early stages of the disputes at Wimbledon and Epping Forest preservationists had indicated their desire to secure schemes under the Act but the settlements in both cases relied on tailor-made pieces of legislation. For commons within the jurisdiction of the Metropolitan Board of Works, however, the Act was anything but a dead letter. Most would be governed by its terms. By making the Board the local government authority over these commons, the Act ensured a degree of coordination in their acquisition and management. But the Board soon came to appreciate that each area had its unique characteristics, and this was particularly evident in the initial process of taking control. In very few cases was the Board able to assert its presence without encountering some form of opposition. It might come from commoners, lords of the manor, ordinary residents, or people with special interests. They could not all be dismissed, and often the Board had to modify its policies after successful challenges.

Opposition might also come from the Commons Preservation Society, which had helped shape the Metropolitan Commons Act. Although the Society was the established voice of preservationism, many members of the Board had their own independent views on the subject. Frederick Doulton had



expressed his during the 1865 Select Committee on Open Spaces and during debate on the Metropolitan Commons Bill. The Board unanimously passed a motion by him condemning the bill as inadequate.<sup>1</sup> It became law, however, thus forcing the Board to acquire commons under rules supported by the Society. While many of the Board's members distrusted the Act, they were, at least, in a position to guide its implementation. The Society, meanwhile, was not planning to take a bystander's seat but was determined that its policies not fade from sight. Lacking any statutory role, it watched and tried to influence the Board. The result was an uneasy alliance between the two.

At the root of the Board's most vexatious difficulties was the question of rights. Had a prescient gypsy, before being thrown off one of these commons, been able to describe how the 1866 Act would contribute to these problems, its framers would have altered it. The intention of the legislation was to guard common rights and award compensation only when they were interfered with. But what constituted interference? Indeed, how were rights to be validated in the first place? The courts were the only forum capable of ruling on these and, over time, the Metropolitan Board appeared as both plaintiff and defendant in litigation surrounding rights. This was an issue about which the Board and Society disagreed. The Board was more inclined to buy rights while the Society came close to worshipping them.

The Board had one its most bitter and protracted disputes over the Hackney commons, the details of which will be

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<sup>1</sup>Times, 14 April 1866.

examined in later chapters. But Hackney was far from the only area where the acquisition of commons was attended by conflict. The experiences at Tooting and Plumstead were instructive. The unsatisfactory situations in both locations before 1866 underscored the need for legislation. But when the Board attempted to apply the Metropolitan Commons Act it ran into obstacles caused by the Act itself and the way in which it was interpreted by the Enclosure Commissioners. The Commons Preservation Society played a part in these struggles and its use of the courts bore important dividends.

There were two contiguous commons in Tooting in south-west London, the 144-acre Tooting Bec Common and the the 63-acre Tooting Graveney Common (see map on next page). They came under the Board's control separately and through quite different circumstances. A lawsuit during the acquisition of Tooting Bec forced the Board to re-examine its plans to finance schemes by selling portions of commons. The Board's takeover of Tooting Graveney Common was comparatively painless but the struggle underway beforehand pointed to the shortcomings of existing legislation to deal with metropolitan commons. It also provided the Society with one its earliest legal cases based on common rights.

In 1861 a local man, William J. Thompson, paid £3650 for Tooting Graveney Common and seven copyhold messuages (which brought in an annual rental of £100).<sup>2</sup> There was already interest

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<sup>2</sup>Eversley, pp. 59-60; Second Report from the Select Committee on Open Spaces (Metropolis), qq. 3828-30.

in the community in preserving the common but, according to some people, Thompson had led inhabitants to believe that he also had this object in mind. As a result, others dropped their efforts. Before the 1865 Select Committee on Open Spaces, however, Thompson denied that he had told people that he was buying the common on behalf of the neighbourhood. On



being recalled, the man who had made the charge, Henry Doulton, admitted that Thompson had not made any such promises.<sup>3</sup>

In April 1863--three years before the Metropolitan Commons Act--Thompson applied to the Enclosure Commissioners to have the common turned into a regulated pasture and to settle any rights of common. Such an arrangement would have permitted some recreation while allowing him to collect revenue from the grazing. Unfortunately, the Commissioners were only equipped to handle applications to enclose.<sup>4</sup> Accordingly, Thompson asked for an enclosure.

To threaten enclosure was to wave a red flag in an area where influential people had expressed their desire to preserve the common. Local government was aroused. In June the Wandsworth District Board of Works appointed a ten-member committee to investigate whether it had any power with respect to commons. A fortnight later the committee reported, using language that was already standard in the preservationists' lexicon. The Board should oppose the enclosure on the grounds that the common was of the "greatest importance" from a sanitary view to the "health of the neighbourhood". It approached Thompson to see if he would be willing to have it take over the

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<sup>3</sup>Eversley, p. 60; Second Report from the Select Committee on Open Spaces (Metropolis), qq. 3898, 3924-35, 3939-45, 3992-95, 4008-14. Sir Henry Doulton (1820-1897), of the Woodlands, Tooting Common, was "the greatest potter of the nineteenth century". He was the older brother of Frederick Doulton, the M.P. D.N.B.

<sup>4</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 4099-4121.

common under the terms of the 1856 Act that allowed district boards and vestries to accept commons or common rights as gifts. It also decided to have the recently appointed committee examine all the commons within the district with a view to their being preserved, one of the earliest surveys of this kind conducted by a local authority.<sup>5</sup>

Thompson did not respond to the proposal from the Wandsworth Board. But, neither did his application before the Enclosure Commissioners succeed. Sensitive to opposition in the locality, and to Parliament's growing reluctance to sanction enclosures, they believed some other solution would have to be tried. They suggested that Thompson might keep twenty-five acres of the common and leave the rest open, but he rejected this. He also turned down an offer from some residents to purchase the common and turn it over to the public.<sup>6</sup>

Thompson had not made his intentions with respect to the common clear but, after his failure to secure an enclosure, he took a more aggressive approach to it. A copyholder and five parishioners were charged with trespass for turning out animals. A committee, which had formed earlier to protect the common, prepared to assist the defendants, who believed they had a right

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<sup>5</sup>Battersea Local History Library. Wandsworth District Board of Works (hereafter, WDBW), Minutes, 3 June, 17 June 1863; 19 & 20 Vict. c. 112, s. 11.

<sup>6</sup>Second Report from the Select Committee on Open Spaces (Metropolis), q. 3843; Eversley, p. 60.

to graze their animals.<sup>7</sup> Had the cases continued, they might have been among the first to provide judicial decisions on common rights over metropolitan commons. But the actions were terminated when further efforts to reach an agreement with Thompson bore fruit at a Tooting inn in June 1865. The tentative settlement divided the common: half was to be dedicated to the public and be used to satisfy any common rights; the other half, to the north, was to become Thompson's freehold, but he was not to build on it for twenty-one years. This left open the possibility that it might be purchased in the future and added to the public half.<sup>8</sup>

The attempt to convert the terms agreed to at the inn into a legally binding agreement stumbled over the definition of powers Thompson was to have over his part of the common. Would he be able to prevent persons walking on it? Some commoners refused to accept a covenant in the agreement that would permit him "to hold and maintain for his own exclusive enjoyment" this thirty-seven acres. They demanded that persons with rights of common, and residents, be granted access. Both sides refused to back down over this issue.<sup>9</sup>

The matter was complicated by the fact that Thompson had already erected a fence around his portion, at a cost of £500.

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<sup>7</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 3852, 4153-58.

<sup>8</sup>WDBW, Minutes, 14 June 1865; Second Report from the Select Committee on Open Spaces (Metropolis), q. 3853; Times, 22 July 1870.

<sup>9</sup>Times, 22 July 1870; 31 May 1871.

This fence proved to be his undoing. It remained standing until June 1868 when it was broken down by a group of commoners. They had doubted the legality of the fence from the beginning but were constrained from acting by the expense and uncertainty of engaging in a major lawsuit. But when Thompson filed actions of trespass against the fence-breakers, he was met by a suit in the name of Thomas Betts and two other commoners to determine their rights and obtain an injunction against his enclosure.<sup>10</sup>

When the case was heard in July 1870, the Master of the Rolls, Lord Romilly, ruled in favour of Betts. Thompson was forbidden to retain the fence in such a way that the rights of the plaintiffs to turn out cattle or take gorse, turf, and gravel were interfered with, and he was ordered to pay costs. Thompson had tried to argue that, as a party to the agreement made at the inn in 1865, Betts could not sue but Romilly ruled that the agreement was not binding as it had not been formally ratified.<sup>11</sup> On appeal a year later, the Lord Chancellor, Lord Hatherley, affirmed Romilly's decision but with one significant alteration. He disallowed the awarding of costs; each side would have to pay its own. The suit had also asked the court to recognize a right of recreation over the common but this question was not addressed. Had the court made a ruling on this matter, it would have been an important precedent.<sup>12</sup> Before the 1865 Select Committee Doulton had argued that the inhabitants of the parish, and not just

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<sup>10</sup>Eversley, p. 60.

<sup>11</sup>Times, 22 July 1870.

<sup>12</sup>Betts v. Thompson (1871) L R 6 Ch 732.



the freeholders, had a right to turn out animals, but the suit was not framed to determine this. That hardly mattered to the local preservationists. It was not their intention to sponsor a resurgence in the exercising of common rights. The desire was simply to have enough commoners in their camp with proven rights in order to foil any unfriendly moves by the lord of the manor or others.

Having stopped Thompson, however, Betts and his colleagues preferred to pass control of Tooting Graveney to the Metropolitan Board of Works, rather than mount watch over it. That the Board was, by this time, a presence on Tooting Bec Common made it appear relatively easy to have its jurisdiction extended to the other, and such a request was made in November 1873. The Board was also asked to reimburse the plaintiffs for the costs incurred in saving the common, an amount the local preservation committee put at just under £2370.

The Board was willing to acquire the common but expressed the view that £1154 was a more reasonable contribution to make towards the legal costs of Betts' suit. The Enclosure Commissioners were requested to confirm a scheme under the Metropolitan Commons Act giving the Board the authority to make this payment. As a result of trouble encountered on other commons over the question of compensation and rights, the Board also asked for the power to purchase outright any interests in the common.<sup>13</sup> This additional power was unusual and the Commissioners were reluctant to include it.

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<sup>13</sup>PRO MAF 25/59, B4075/1910, letter: W. W. Smith to Enclosure Commissioners enclosing Memorial and Plan, 13 June 1874.

The normal formula was for compensation to be paid only when the Board's actions affected an interest or right. The Commissioners also rejected the request to incorporate the proposed payment in aid of legal costs into the scheme.<sup>14</sup>

The Board argued that the powers to compensate and to purchase were very similar but when the Board was restricted to paying compensation, it ran into difficulties because "the damage must have been actually sustained" before payment could be made. Time would be saved if the Board could simply purchase rights and interests.<sup>15</sup> Although the difficulties already experienced by the Board on other commons gave these words force, and future problems would bear them out, the Commissioners were probably right when they insisted that they had no authority under the 1866 Act to give the Board the power to purchase the common or the rights over it. The fault lay in the Act, which, because it was drafted by those in league with the Commons Preservation Society, intended to avoid such purchases and retain rights and interests. Faced with obstinate Commissioners, the Board decided to apply for a separate Act and to abandon a scheme under the Metropolitan Commons Act.<sup>16</sup>

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<sup>14</sup>PRO MAF 25/59, B4075/1910, letter: J. R. Moore to W. W. Smith, 24 June 1874.

<sup>15</sup>PRO MAF 25/59, B4075/1910, letter: W. W. Smith to Enclosure Commissioners, 29 June 1874.

<sup>16</sup>PRO MAF 25/59, B4075/1910, letter: Enclosure Commissioners to W. W. Smith, 14 July; report by Moore on meeting between Smith and Commissioners, 29 October; letter: Smith to Moore, 11 November 1874.

The Metropolitan Board's Various Powers Act of 1875 extended the appropriate sections of the Tooting Bec scheme to its sister common. The Board was authorized to contribute up to £1155 towards Betts' legal costs. Ironically, after all the debate over purchasing rights, the Act duplicated the provisions in the Metropolitan Commons Act, and made compensation payable only when rights were interfered with.<sup>17</sup> This change of heart was largely the work of the Commons Preservation Society which wanted to avoid the setting of a precedent it believed would be disastrous. It foresaw a host of spurious claims being made as a prelude to every new scheme if the expectation was that all interests would be bought out. Furthermore, such a policy would make each scheme more expensive and likely cause a decrease in the overall number of commons that could be saved. These points were not to be dismissed, but they failed to solve the ambiguities over the compensation provisions in the 1866 Act. In more schemes than not, the Board would be compelled to buy out at least some of the interests.

Tooting Graveney Common came into the Board's possession with little trauma. Much of the work with respect to rights had been done by the commoners through their suit. It was a textbook example of the manner in which these still-active rights for cattle could be exploited to save a common from enclosure. But while rights could help protect commons, they failed as a means to guarantee public access to them. That was to be the role of schemes under the Metropolitan Commons Act,

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<sup>17</sup>38 & 39 Vict. ch. clxxix; Commons Preservation Society, Report of Proceedings, 1870-76, second edition, p. 24.

but as the Board discovered in Tooting that Act had limited flexibility.

Tooting Bec Common came under the Board's control before Tooting Graveney, but the efforts to secure it began later. Although a scheme was certified under the Metropolitan Commons Act, it veered somewhat from the ideal model and the process of securing it forced the Board to abandon its policy of selling portions of commons as building land to raise money for their upkeep.

Initially it appeared that the acquisition of the common would be straightforward. Two gentlemen, Beriah Drew and Philip W. Flower, acting with the support of the inhabitants of Streatham (Tooting Bec was in this parish; Tooting Graveney was in Tooting), proposed to purchase the manor for £10,000, and then sell it to the Metropolitan Board at the same price. The Board would then turn the common into a public open space. The plan was presented to the Board in November 1866, and received an encouraging response. The Board intended to sell some of the outlying portions of the common to recover its costs.<sup>18</sup>

It was not until April 1868 that the Board, with expressions of gratitude towards Drew and Flower, decided to acquire their interests and to prepare a scheme under the

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<sup>18</sup>Times, 24 May 1866; Report of the Metropolitan Board of Works for 1866-67, p. 26; Telford v. Metropolitan Board of Works (1872) L R 13 Eq 574 at pp. 575-76.

Metropolitan Commons Act.<sup>19</sup> Drew and Flower had yet to acquire the manor from the two current owners but a purchase agreement was concluded with them in July. That agreement included a stipulation that the entire common had to be dedicated to the public and that no building could take place, aside from any needed for maintenance, without permission from one Charles Telford and others who had interests in half of it. If the common was not turned over to the public within five years, these people were entitled to buy portions of it for a fixed price. The reason for this clause was that Telford owned, and had partially laid out for building, land adjoining the common. He feared depreciation of his property if the Board sold that section of the common for building.<sup>20</sup>

Meanwhile, the Metropolitan Board began preparing its submission to the Enclosure Commissioners. The Board still assumed that it would sell portions of the common. But its solicitor cautioned that the Metropolitan Commons Act might preclude any such sale and advised the use of a private act when such powers were required in the future. In February 1869 the Board approved a draft memorial to the Enclosure Commissioners and a draft contract to purchase the interests of Drew and Flower. Neither document mentioned the sale of land.<sup>21</sup>

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<sup>19</sup>Times, 6 April 1868; Report of the Metropolitan Board of Works for 1867-68, p. 28.

<sup>20</sup>PRO MAF 25/59, B387/1914, Telford v. Metropolitan Board of Works, Bill of Complaint, pp. 1-9.

<sup>21</sup>Telford v. Metropolitan Board of Works at pp. 578-80.

But the actual memorial submitted to the Commissioners deviated from the earlier draft and now asked that the scheme include powers to sell:

There is a small piece of the common separated from the remainder thereof by the West London and Crystal Palace Railway which might be advantageously sold or let by the Board provided certain rights of pre-emption in case of the common not being wholly devoted to public purposes should not be an obstacle to their so doing and it may be desirable to deal with this in any scheme under the said Act.<sup>22</sup>

The "certain rights of pre-emption" referred to the agreement that gave Telford the right to buy portions of the common should it not be entirely dedicated to the public. The memorial recognized very few common rights and those that it did were expected to be compensated under the terms spelled out in section fifteen of the Metropolitan Commons Act.

Upon receipt of the memorial, the Enclosure Commissioners asked the Board to submit a draft scheme and forwarded the one used for Hayes Common, Kent, the first and thus far the only common to be brought under the Act, in case it could be adapted for Tooting. As this was the first application by the Board under the Act, the Commissioners were interested in it as a precedent for future schemes.<sup>23</sup> Yet, as the Board recognized, the step of purchasing the interests of the lords of the manor was somewhat unique and not one which it expected to follow in every case. Generally, the expectation was that

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<sup>22</sup>PRO MAF 25/59, B387/1914, Memorial of the Metropolitan Board of Works, 30 July 1869.

<sup>23</sup>PRO MAF 25/59, B387/1914, Telford v. Metropolitan Board of Works, Answer, p. 7.

existing rights would coexist with public use of commons. Nonetheless, at Tooting Bec, the Board believed that public access would be compromised unless the lords' rights were purchased according to the agreement with Drew and Flower. The Board was less concerned about rights held by commoners which were not expected to present any obstacles to a scheme.<sup>24</sup>

The Enclosure Commissioners released the Tooting Bec scheme for consideration in May 1870. It duly noted the agreement with Telford and the others before suggesting that the Board should "purchase and acquire such rights of pre-emption, first making compensation for the same".<sup>25</sup> But Telford struck first. In June he launched a suit in Chancery against the Board, naming Drew and Flower as co-defendants, to restrain the Board from pursuing any scheme that involved selling any part of the common. The Board seemed not unduly perturbed. On the advice of counsel it was agreed to request the Commissioners to proceed with the scheme thus forcing Telford to seek an injunction "which he would have moved for before if he had not had misgivings as to his case".<sup>26</sup>

The Board, in answer to the Bill of Complaint, maintained that it was obliged by its public duties to proceed with a scheme even if its memorial contravened the agreements made with Telford. It was up to the court to decide if it did. It was alleged

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<sup>24</sup>PRO MAF 25/59, B387/1914, 16 December 1869, Reply to questions.

<sup>25</sup>Telford v. Metropolitan Board of Works at p. 582.

<sup>26</sup>PRO MAF 25/59, B387/1914, Telford v Metropolitan Board of Works, Bill of Complaint; MBW 979, 3 August 1870, pp. 6-8.

that Telford, during the early part of 1870, when the Commissioners were considering the scheme, "frequently" supported the sale of the piece of land in question. The Board believed that Telford had instituted the proceedings in Chancery because it had failed to sell him the land. His delay and acquiescence over the matter were sufficient grounds for dismissing his Bill.<sup>27</sup>

Meanwhile, the Board resisted separate attempts by the Enclosure Commissioners and Drew and Flower to omit the power to sell from the scheme. It preferred to wait for the decision in Telford's suit.<sup>28</sup> That judgment left the Board little choice. The Court found that as the Board was stepping into the shoes of Drew and Flower as owners of the common, the agreement with Telford was still valid. Nor could the Court find any justification in the Metropolitan Commons Act for the Board's approach which, it claimed, was a naked attempt "to make money" by asking the Enclosure Commissioners to give it power to break the bargain with Telford.<sup>29</sup> Telford secured his injunction with costs assessed against the Board. No scheme could now be brought in that involved selling portions of the common unless Telford gave his consent, or unless his right to re-purchase was guaranteed. The Board could promote a scheme for the entire common or, if it still wished to sell, negotiate with Telford for the sale of the

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<sup>27</sup>PRO MAF 25/59, B387/1914, Telford v. Metropolitan Board of Works, Answer, pp. 7-10.

<sup>28</sup>MBW 979, 23 November 1870, pp. 101-04; 9 August 1871, pp. 498-501; MBW 980, 13 March 1872, pp. 472-75;

<sup>29</sup>Telford v Metropolitan Board of Works at p. 592.



section he desired. Or, as a third option, it could appeal the decision, an avenue counsel believed stood a good chance of success. The Board decided to pursue an amended scheme without any reference to selling.<sup>30</sup>

Thus one lawsuit had stymied the Board's plans for Tooting Bec Common but the decision was important. It represented the demise of the untried tactic of selling portions of commons to finance their preservation. Although appealing to those watching shillings and pence, the policy was repulsive to diehard preservationists who maintained that commons were too valuable to be sectioned off for building. The message spread and the Board abandoned the idea on the other commons it acquired. The new scheme for Tooting passed into law in July 1873.

In itself the Act did not give the Metropolitan Board control of the common. It merely authorized the completion of the agreement made with Drew and Flower in 1869 for the purchase of the manor. By November the purchase was completed and the way was open for the preparation of bylaws, the appointment of a keeper, and the planning and execution of improvements.<sup>31</sup> There would be trouble ahead from commoners and those who claimed to be commoners, but none from any obstreperous lord of the manor. However contrary to the intentions of the Metropolitan Commons Act, the Board had eliminated that possibility by, in effect, assuming the lord's role. It would not be the last time that the lord's interests over a

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<sup>30</sup>MBW 980, 13 March 1872, pp.472-75.

<sup>31</sup>MBW 983, 6 August, pp.29-37; 5 November 1873, pp.304-5.

common were purchased. Under different circumstances a similar result occurred in Plumstead.

#### 4.3 Plumstead: Conflicts with a Determined Lord

The manor of Plumstead had three commons: the 110-acre Plumstead Common, the 55-acre Bostall Heath, and the tiny 5-acre Shoulder of Mutton Green. The lord of the manor was Queen's College, Oxford, an absentee corporate body, which was a different structure than that usually faced by the Metropolitan Board. Here was demonstrated the power of an agent to set the tone of events, a situation the Board would also face when agents acted for individuals, as Hackney showed only too clearly. There were no copyhold tenants in Plumstead but the freehold tenants could derive from the manorial rolls evidence to support the existence of rights of pasture, to estovers, and to gravel, loam and turf.<sup>1</sup>

Plumstead was one area where action by the Commons Preservation Society eased the Metropolitan Board's acquisition of commons. A major legal victory undermined the claims of the lord of the manor and made the financial cost of the scheme much lighter. But Plumstead was not all clear sailing for preservationists and the Board. Persistence paid dividends for the College in the settlement at one of the commons. On another, the military seemed to present a threat.

Plumstead had expanded considerably during the first half of the nineteenth century as a consequence of its proximity to the Woolwich Arsenal and to the advent of rail service in 1849. Between 1801 and 1861 the population grew from 1160 to

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<sup>1</sup>Eversley, pp. 55-56.

24,500.<sup>2</sup> The increased production at the Arsenal during and after the Crimean War led to an influx of skilled artisans to new housing developments. As well, many military men resided in Plumstead and often became involved in local issues and administration.<sup>3</sup>

The appointment of a new steward, John Meadows White, in 1859 brought an increased aggressiveness in the administration of the commons. He held that the lord of the manor, as owner of the soil, had virtual freedom of action. But enclosures and encroachments had taken place in the years before White's appointment. Portions of Plumstead Common were enclosed by the College between 1834 and 1855. Nor was it the only instigator of such action. In 1849 a few freeholders, albeit with the support of the College, attempted an enclosure. Opponents were quick to mobilize. At the Assistant Enclosure Commissioner's hearings it was stated that the enclosure would deprive 50,000 people of their only recreational site. As the ground was not suitable for agriculture, the only possible motive for the action was to convert the common to building land. In fact, much of the common had already been built upon.<sup>4</sup>

The increasing population of Plumstead ensured that the commons would continue to be used for recreation, even as their areas were being whittled away. But they were used as well for

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<sup>2</sup>The London Encyclopaedia, p. 605.

<sup>3</sup>Geoffrey Crossick, An Artisan Elite in Victorian Society: Kentish London, 1840-1880 (London: Croom Helm, 1971), pp. 35-36, 98.

<sup>4</sup>Times, 28 December 1849, 4 July 1876.

turning out animals, for their turf, and for their gravel. As early as 1834 the College had placed a notice on Shoulder of Mutton Green prohibiting the removal of turf and gravel without permission. White extended this ban to the two other commons and demanded that those who turned out cattle cease unless they paid a yearly sum to the College. He bluntly denied that they had any rights.<sup>5</sup> Most of those doing so apparently agreed, for only one person claimed a prescriptive right and the College chose not to proceed against him. There was more resistance to the attempt to halt the gravel digging, one person in particular announcing his intention to fight any action by the College. None was taken at this time.<sup>6</sup>

The success of the College in halting digging and grazing was somewhat illusory. While many of the people pursuing these activities undoubtedly stopped because they had no rights, not all who possessed rights had been exercising them. They did not believe that this invalidated their claims. As well, some may have stopped to avoid the costs that might be incurred in defending a right. The Plumstead situation called out for an opportunity to settle the question of common rights, and in 1866, the call was answered. Although encroachments by the College had persisted on Plumstead Common during the first half of the decade, they were often less than dramatic, shaving bits off here and there. Resistance was, therefore, somewhat sporadic. The enclosure of Bostall Heath and Shoulder of Mutton Green, however,

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<sup>5</sup>Warrick v. Queen's College (1870) L R 10 Eq 105 at p. 109.

<sup>6</sup>Warrick v. Queen's College at pp. 110, 128.

proved a catalyst for action in the community. A committee was formed which oversaw the removal of the fence that had been put around the Green. The newly formed Commons Preservation Society became interested. Shaw Lefevre urged a fellow M.P., who was a freeholder of the manor, "to take the lead in a movement to preserve the Common", and the Society's solicitor gave legal advice to the group. When the M.P. died suddenly, his son stepped in.

Queen's College, however, took no steps against the destroyers of its fence, thus removing the traditional manner of proving rights by fighting an action of trespass. The committee, therefore, decided to take the College to court and seek a declaration of rights. The action was taken in the name of John Warrick and three others. Specifically, they sought recognition of a right of pasture upon all three commons; a right of estovers, turbary and gravel upon Plumstead Common, and a right to use the commons for walking, riding and other recreation.<sup>7</sup> This last item was the most unusual. A right of recreation was not a profitable right of common; it was an easement. Thus far, the courts had recognized it in very limited ways. Warrick's suit, in 1866, was an early test of rights over metropolitan commons, and thus an important step for the Commons Preservation Society which hoped to show that these rights could be used to prevent commons falling prey to the schemes of lords of the manor and other profit-seekers. The College, meanwhile, although thwarted in its intentions to enclose, was trying to sell the Green and

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<sup>7</sup>Warrick v. Queen's College at p. 106.

portions of the Heath. It succeeded in selling a section of Plumstead Common to a building company.<sup>8</sup>

These continuing assaults on the integrity of the three commons meant it was only a matter of time before the Metropolitan Board of Works was called upon to intervene, especially after the passage of the Metropolitan Commons Act. In fact, the first appeal from the inhabitants of Plumstead was heard by the Board in April 1866 before the bill had cleared Parliament.<sup>9</sup> Three months later the Plumstead Board of Works presented a second memorial from the inhabitants asking for help in securing the commons for the people. The local Board was optimistic that the College would negotiate with it, and hoped the Metropolitan Board would act in concert with the district. Fears were also expressed that the War Office had been in contact with Queen's College with the intention of acquiring Plumstead Common. Troops had used the common for many years but control by the War Office sounded ominous to local interests. The Metropolitan Board referred the matter to a committee.<sup>10</sup>

Not until January 1869 did the Board submit its first request to the Enclosure Commissioners for a scheme for the Plumstead commons. But any hopes for a speedy resolution were dashed by the Commissioners' policy of not proceeding where parties were engaged in litigation. Warrick's case against the

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<sup>8</sup>Eversley, pp. 56-57.

<sup>9</sup>Times, 14 April 1866; Report of the Metropolitan Board of Works for 1865-66, p. 34.

<sup>10</sup>Times, 14 July 1866; Report of the Metropolitan Board of Works for 1866-67, p. 26.

College was still outstanding.<sup>11</sup> Despite a further appeal from the Plumstead Board to push ahead with a scheme, the Metropolitan Board adjourned the subject until a more propitious opportunity might arise.<sup>12</sup>

It would only appear after Warrick's action had been settled and, in April 1870, the Master of the Rolls, Lord Romilly, delivered his judgment. The preservationists had presented a persuasive case. The rights to pasture, turbary, and gravel were affirmed and an injunction was granted to prevent enclosures. Costs were assessed against the College.

The judgment addressed some important matters with respect to the form of such actions. Warrick and his three co-plaintiffs were suing on behalf of themselves and all other tenants of the manor. As there were no copyhold tenants, this in effect meant all other freeholders. The main evidence to support the plaintiffs' case was derived from the court rolls which dated from 1685. The defence argued that only copyholders could support a case from the manorial rolls, because only they could have rights that applied equally to all according to the manorial customs. Freeholders' rights, on the other hand, depended on grants (whether actual or presumed), and what was granted to one freeholder was not necessarily the same as that granted to another. Therefore, it was improper for freeholders to claim by

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<sup>11</sup>P.P. Third Report of the Enclosure Commissioners under the Metropolitan Commons Act 1870 [C. 41], XVII. 333; Times, 28 October 1876.

<sup>12</sup>MBW 997, 22 February, pp. 30-31; 29 June pp. 316-21; 14 July, pp. 399-401; MBW 978, 8 December 1869, pp. 37-38.



custom, and it was wrong for one to claim on behalf of all others. But the plaintiffs maintained that the distinction between the manner in which copyholders and freeholders claimed rights was not one that a Court of Equity should stumble over. Freeholders had a community of interests and were affected by the customs of the manor.

Romilly agreed. Freeholds and copyholds had originated in the same way but copyholders had been forced to rely on custom because they could not prescribe against their lord, who owned the land on which their claim would have to be based. Freeholders' rights derived from grants "the nature of which is inferred from usage". More pointedly, Romilly turned the case for the defence around:

if the rights of freehold tenants against the lord's waste be not a matter of custom, or of common right, it is difficult to understand how, on the other hand, the lord's right against the freehold tenants should be a customary right.

In other words, removing the customary basis of the freeholders' rights would undermine the lord's claim that his rights were supported by the custom of the manor. Because it was possible to assume that a hundred grants of a similar nature had been made, the Court was bound to presume the existence of a grant to support the rights which immemorial usage demonstrated.

One part of Warrick's original claim was not argued before the Master of the Rolls: the question of a right of recreation. This was not crucial to the matter of keeping the commons open, but it affected the preservationists' arguments about public rights. They were still prevented from maintaining

that the inhabitants of London had a right of recreation over the city's commons, despite the fervent belief of many that such a right existed. Romilly closed with some pessimistic words which indirectly blamed White, the steward, for much of the trouble:

I regret much that the good understanding which seems to have prevailed between the college and the freehold tenants of the manor for centuries up to 1859 should ever have been disturbed, but the increased value for building purposes of the soil in these suburban commons has of late years created much litigation, stirring up antiquated questions of black-letter law--unfortunately at a great expense to the parties concerned, and with little profit to any one who is not a member of the legal profession.<sup>13</sup>

Any hopes that this decision might clear the way for the Metropolitan Board to bring in a scheme were dashed when it was learned that the College intended to appeal. The Enclosure Commissioners would not move until the skies were clear of litigation.<sup>14</sup>

Nonetheless, the College indicated it would be willing to part with its interests in the commons for £20,000. Although White called Romilly's decision "contrary to reason and inconsistent with itself" he realized that the College's presence in Plumstead was on the wane. He complained that residents were acting as if the commons had been declared open and that gravel and sand were being carried away. The Parks Committee of the Metropolitan Board were not keen to pay the amount asked by the College. Its members also wanted to know if they would have

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<sup>13</sup>Warrick v. Queen's College at pp. 105-30.

<sup>14</sup>MBW 978, 25 May, p. 419, 13 June, pp. 448-49; 25 June 1870, pp. 491-96.

to acquire other rights in order to manage the commons effectively.<sup>15</sup>

Talks continued between the College and the Board. It was envisaged that the rights of commoners could remain. The difficulty was assessing the value of the interests of the College. At present it received income from letting portions of the commons and from occasional sales. If Romilly's decision stood, and freeholders' rights were entered into the equation, the College's case was weakened. It wanted to pursue an appeal because it expected to win and enhance the value of its interests. Various attempts to reach an agreement failed, and the Board decided to wait for the appeal before renewing negotiations.<sup>16</sup> The delay did nothing for the commons, which continued to suffer. The Plumstead Board reported that Bostall Heath was being defaced by people removing turf and peat from its surface.<sup>17</sup>

The outcome of the appeal was a disappointment for the College. In August 1871 the Lord Chancellor, Lord Hatherley, endorsed the decree of the Master of the Rolls. The College put forth many of the same arguments against the use of custom to determine freeholders' rights. The fact that the freeholders' lands were not anciently arable or had been built over was adduced to undermine the right of pasture. But counsel for the plaintiffs cited a recent case to support the contention that the

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<sup>15</sup>MBW 978, 25 June 1870, pp. 491-96.

<sup>16</sup>MBW 979, 3 August, pp. 3-6; 20 October, pp. 52-58; 8 November 1870, pp. 72-74.

<sup>17</sup>MBW 979, 16 March 1871, pp. 248-49.

modern condition of the land was not relevant and the Lord Chancellor ruled that the rights claimed in this case were more than appendant, and were dependent on grants from the lord. The state of the land was largely irrelevant. He affirmed that when faced with the type of evidence of rights being exercised as had been presented, the Court was bound to find a legal origin for them. (This point would be brought up by commoners in other cases around the metropolis.) Nor did he have any difficulty with the idea of one freeholder claiming rights on behalf of others. It was not unreasonable to assume that the same rights had been granted to all. The evidence did nothing to contradict such an assumption. Faced with a threat to these rights, it was logical for freeholders to combine. In Hatherley's words, "all persons having a common right, which is invaded by a common enemy, although they may have different rights inter se, are entitled to join in attacking that common enemy in respect of that common right". Hatherley finished with a severe rebuke to the College:

The litigation had been occasioned by a high-handed assertion of rights of the part of the college, who really seem to have said in effect to those who have been exercising their rights for 200 years: "You will be in a difficulty to prove how you have exercised them; we will put you to that proof by inclosing and taking possession of your property." I think, therefore, the whole expense ought to fall on those who have occasioned it, namely, those who have brought into question rights which have had so long a duration, and to which I am thankful to be able to discover (because it is the duty of the Court to discover, if it can) a legal origin.<sup>18</sup>

As in the initial case, the question of a right to recreation over the commons was not addressed.

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<sup>18</sup>Warrick v. Queen's College (1871) L R 6 Ch 716-32.

In the wake of this decision, the Metropolitan Board of Works decided to re-open negotiations. By November it appeared that the College might sell its interests in Plumstead Common and Bostall Heath for the reduced amount of £18,000, although it was still considering various options.<sup>19</sup> But the Board's Superintending Architect valued the College's interests at £4000 to £5000 given the restrictions on building and enclosing imposed by the Lord Chancellor's ruling.<sup>20</sup> Another impasse looked possible. In April 1872 the Board sent the representatives of the College a copy of a draft memorial to the Enclosure Commissioners for a scheme for the three commons. Their response characterized it as an attempt to appropriate the lands and effect a virtual "transfer of the freehold to the Board". Then, to stall proceedings once again, they raised the possibility of a further appeal to the House of Lords, a step which would compel the Enclosure Commissioners to suspend any consideration of the scheme.<sup>21</sup>

Sporadic attempts to reach a settlement with the College continued to end in failure but the threat to appeal to the House of Lords had a legal limit of two years, after which the Lord Chancellor's decree would be enrolled. Finally, after this period had elapsed, the Commissioners indicated their willingness to entertain the Board's memorial. During the delay,

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<sup>19</sup>MBW 980, 1 November, pp. 79-82; 17 November, 1871, pp. 102-3.

<sup>20</sup>MBW 980, 20 March 1872, pp. 501-3; Times, 5 April 1872.

<sup>21</sup>MBW 981, 24 April 1872, pp. 6-8.

the Board had continued to receive petitions against encroachments taking place on the commons. The contents of these were summarized in the memorial which also made the point that the commons were important as the only open space for some 70,000 inhabitants. The Plumstead Board of Works had drawn attention to the disastrous effects of troops exercising on Plumstead Common.<sup>22</sup>

Things were far from the point where a memorial to the Enclosure Commissioners could lead straightforwardly to a scheme for the Plumstead commons. Towards the end of 1873 came the unexpected news that the War Office had signed a ninety-nine-year lease with Queen's College for seventy-seven acres of Plumstead Common. The agreement included an option to purchase within five years for £10,000. All rights of common were reserved.<sup>23</sup> That negotiations between the two parties were taking place was known as early as 1866, when they were cited as a reason to ensure the common was preserved for public use. The issue had subsequently dropped from sight.

Upon learning about this new development the Metropolitan Board noted the terms of the lease in its memorial to the Enclosure Commissioners. But it saw no reason to abandon its scheme because the College could only lease or sell what the

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<sup>22</sup>MBW 981, 18 December 1872, pp. 625-26; MBW 982, 15 January, pp. 53-55; MBW 983, 5 November 1873, pp. 306-09.

<sup>23</sup>MBW 983, 19 November, pp. 352-53; 17 December 1873, pp. 461-64.

Lord Chancellor's decree had given it.<sup>24</sup> The freeholders' rights over the affected acres were not in danger. The War Office, who maintained that it had no intention of threatening the public interest in the common, were not the source of delay as much as the Enclosure Commissioners. They informed the Board that the long usage of the common by the troops stationed at the Woolwich Garrison should not be sabotaged by any scheme.<sup>25</sup> They seemed to be close to recognizing a right by the military to use the common. This theme was explored in Parliament by the Commons Preservation Society's Sir Charles Dilke who asked why, if the military's use of Plumstead Common was "defended on grounds of prescriptive use, the War Office [had], since the date of the determination of the suits against the lords of the manor, taken a lease of the manorial rights from the Lords"? But the Government denied that the military based its claim on a prescriptive title. Although the common had been used since 1745 (because Woolwich Common was not, in itself, sufficient), it was thought necessary to take the lease.<sup>26</sup> Whatever the justifications made by the Government, the War Office was clearly taking pre-emptive action against a dedication of the entire common to the public. However occasional military exercises might be, while they were taking place members of the public were not welcome.

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<sup>24</sup>Times, 20 December 1873; Report of the Metropolitan Board of Works for 1873, p. 24.

<sup>25</sup>MBW 983, 14 January, pp. 543-44; MBW 984, 25 February 1874, pp. 106-8.

<sup>26</sup>H.C., 3 Hansard 221: 1144-45, 3 August; 221: 1410, 6 August 1874.

Nor could exercises help but interfere with some common rights. That the War Office reserved such rights in its lease was out of necessity. The College had no authority over them, and the freeholders, having just won a legal victory, were not about to sign their rights away. They wished to preserve the common as a public open space.

The confusion surrounding the lease compelled the Board to adopt a new tactic, that of pursuing a separate scheme for Bostall Heath. In November 1874 a memorial was sent to the Enclosure Commissioners asking that this be done. Almost instantly, the constant bugbear of proposals under the Metropolitan Commons Act arose, namely the question of compensation for interests. Although Queen's College had failed to overturn the recognition of freeholders' rights, it still possessed rights as lord of the manor. Furthermore, as it liked to remind the Board, no public right of recreation had been won in Warrick's suit. The draft scheme drawn up by the Board was objectionable because it turned Bostall Heath into a place of public recreation without providing any compensation to the College, whose rights and interests would, inevitably, be infringed upon. The College wanted the scheme to specify that the Board should purchase these interests outright. But the Commissioners refused to accept the logic of this demand and adhered to the principles laid out in the Metropolitan Commons Act by which rights would be compensated only when a scheme



could be shown to have injured them. They certified the scheme in December 1876.<sup>27</sup>

The distaste the College felt over this method of ascertaining compensation was evident in its determined pursuit of some form of before-the-fact payment for its interests. Having failed to alter the views of the Commissioners, it lobbied the House of Commons' Select Committee on the bill in the spring of 1877. Success here was less than complete, but the bill was amended with a clause compelling the Board to draw up a detailed plan within twelve months of the Act showing what rights or interests would be interfered with and paying the College before any alterations began.<sup>28</sup> Not satisfied, the College carried the struggle to the more sympathetic House of Lords where it triumphed. The clause was dropped in favour of a stronger measure ordering the Board to pay £5500 for the "whole of the manorial estates and interests in the Heath".<sup>29</sup> Here was a test for the Board. Many of its members had not been happy with the compensation provisions in the Metropolitan Commons Act, although a majority on the Parks Committee recognized that, in theory at least, they kept the costs of acquiring commons down. But should they accept this reversal of the policy? Would it set a precedent that other lords would use? For all these misgivings,

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<sup>27</sup>P.P. Tenth Report of the Enclosure Commissioners under the Metropolitan Commons Acts 1877 (107), XXVI. 705, pp. 2-3.

<sup>28</sup>P.P. Metropolitan Commons Provisional Order Bill [as amended by the Select Committee], 1877 (180), IV. 181, s. 16.

<sup>29</sup>P.P. Lords' amendment of the Metropolitan Commons Provisional Order Bill, 1877 (261), IV. 197.

it seemed pointless to abandon the scheme now, and the Board, "bearing in mind the difficulties it had met in dealing with other commons where the lords of the manor had been adverse" decided that it would be better "to agree with the College authorities ... before the Act ... was passed, than to leave the matter open with the probability of future litigation".<sup>30</sup> By July the Act bringing Bostall Heath into the Board's possession had passed. It remained only to execute the conveyance for the College's interests and this was done by the end of the year.<sup>31</sup>

The Metropolitan Board had thus secured one of the three Plumstead open spaces. But the years spent obtaining Bostall Heath had not been uneventful for Plumstead Common. There, the lease the War Office had signed with Queen's College proved one of the obstacles to a scheme. The Board wanted it cancelled to remove doubts by the Enclosure Commissioners about the military's intentions. Lease or no lease, the frequent exercising by troops and cavalry was having a detrimental effect on the surface of the common. Knowing it was unrealistic to expect the military to move its operations elsewhere, the Board hoped to persuade them to confine their activities to half of the common. But by the summer of 1876 no substantial progress had been made in talks between the parties.<sup>32</sup>

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<sup>30</sup>Report of the Metropolitan Board of Works for 1877, p. 31; Times, 16 July 1877.

<sup>31</sup>MBW 988, 12 December 1877, pp. 435-37.

<sup>32</sup>Times, 3 August 1875; 4 July 1876.

Nonetheless, the steps for acquiring the other two commons gathered momentum, although some members of the Metropolitan Board believed that the process would have been easier had the Commons Preservation Society not been so strenuously opposed to purchase.<sup>33</sup> Negotiations with the College continued into the autumn of 1877 and by November terms had been arranged and preparations for a bill were ready to begin. Attention turned to the War Office to seek agreement on the shared use of Plumstead Common.<sup>34</sup>

The Plumstead Common Act passed into law in July 1878 but legal problems with Queen's College delayed the conveyance of its rights until January 1879. The legislation reserved seventy acres of the common for the War Office who were asked to ensure that troops restrict their manoeuvres to this portion. The War Office paid £4000 to secure future use of the exercise ground on the common and surrendered its lease with the College.<sup>35</sup> Shoulder of Mutton Green also came under the Board's control.

At Plumstead, the lord of the manor's main interest was to sustain revenues, a task aided since 1859 by an ambitious steward. The growing population of the area had the twin effects of making the commons more valuable as building land and more appreciated as open spaces for recreation. A blatant attempt by the College to turn the land to profit was met by determined

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<sup>33</sup>Times, 7 July 1877.

<sup>34</sup>Times, 12 November 1877.

<sup>35</sup>MBW 989, 22 January, pp. 501-2; 5 February, pp. 551-52; 5 March 1879, pp. 620-22.

resistance from the community. Foes of the College were able to link up with the preservationist movement that had organized in response to the crises at Wimbledon and Epping Forest. This cooperation strengthened the Plumstead commoners' suit against the College, and helped publicize the struggle in the rest of London. The Metropolitan Board found itself hampered by the refusal of the Enclosure Commissioners to ignore the suit and proceed with a scheme. It was out manoeuvred by the College at Bostall Heath and to some extent by the military on Plumstead Common. Nonetheless, it was able to capitalize on the commoners' victory in court and secure the three commons for a relatively small cost.

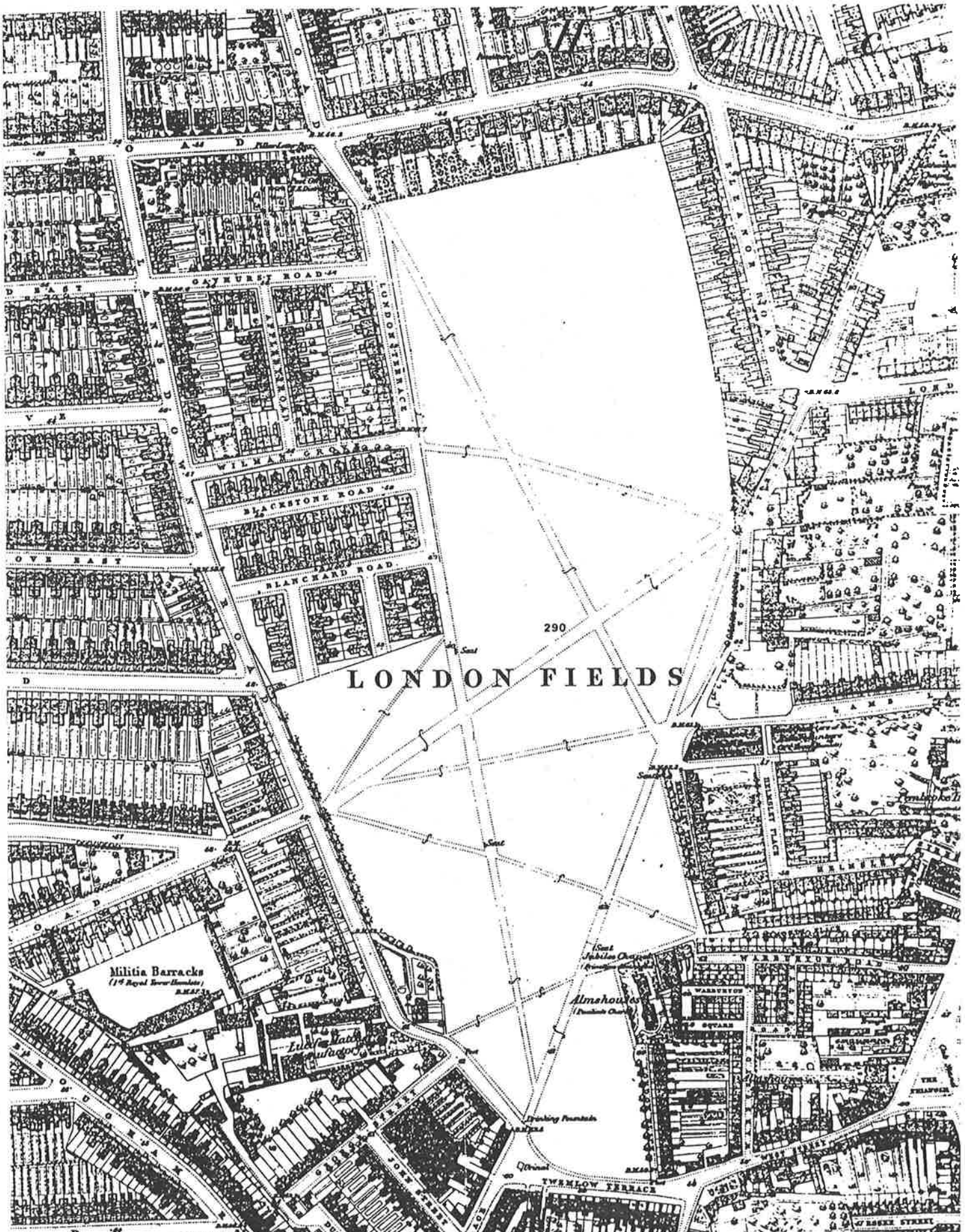
The College's assertion that schemes that failed to provide compensation in advance were akin to confiscation was not without merit. Public use of the commons would inevitably reduce the value of the College's interests, perhaps in ways difficult to assess. When its original offers for the sale of its rights were rejected, the College wrestled Parliament for money for Bostall Heath and came to an agreement with the Board for the other two commons. It then exited from Plumstead. In a sense the Board was only too happy to buy the College's rights and remove a player from the scene. Many of its members were convinced that the means provided in the Metropolitan Commons Act for dealing with rights were a source of more trouble than benefit. During these same years the Board's epic battle over the matter of damaged rights and compensation was unfolding in Hackney.

#### 4.4 Hackney: The Beginnings of the Conflict

The struggle to secure the Hackney commons will be examined in detail because it is illustrative of many of the themes that appeared elsewhere in the metropolis as well as being unique in itself. There was a classic confrontation between a lord of the manor on one side, and commoners, inhabitants, and local government on the other. But the opposition did not speak with one voice. There was friction between holders of large interests in the lammas lands and those whose rights were less substantial. The middle-class Commons Preservation Society was active but competition from a working-class Commons Protection League shook its complacency. There were always many residents who were indifferent to the issue and some who were hostile. The range of opinions found expression in local government at the vestry, district, and metropolitan level. Legislation made the Metropolitan Board of Works the principal player, but the Hackney District Board of Works had an important advisory role. It could also be a persistent critic of the central body and in some matters had a freer hand. Extensive litigation was also a feature of the Hackney struggle and its outcome tested key features of the Metropolitan Commons Act, as well as the practicality of the methods advocated by the Commons Preservation Society.

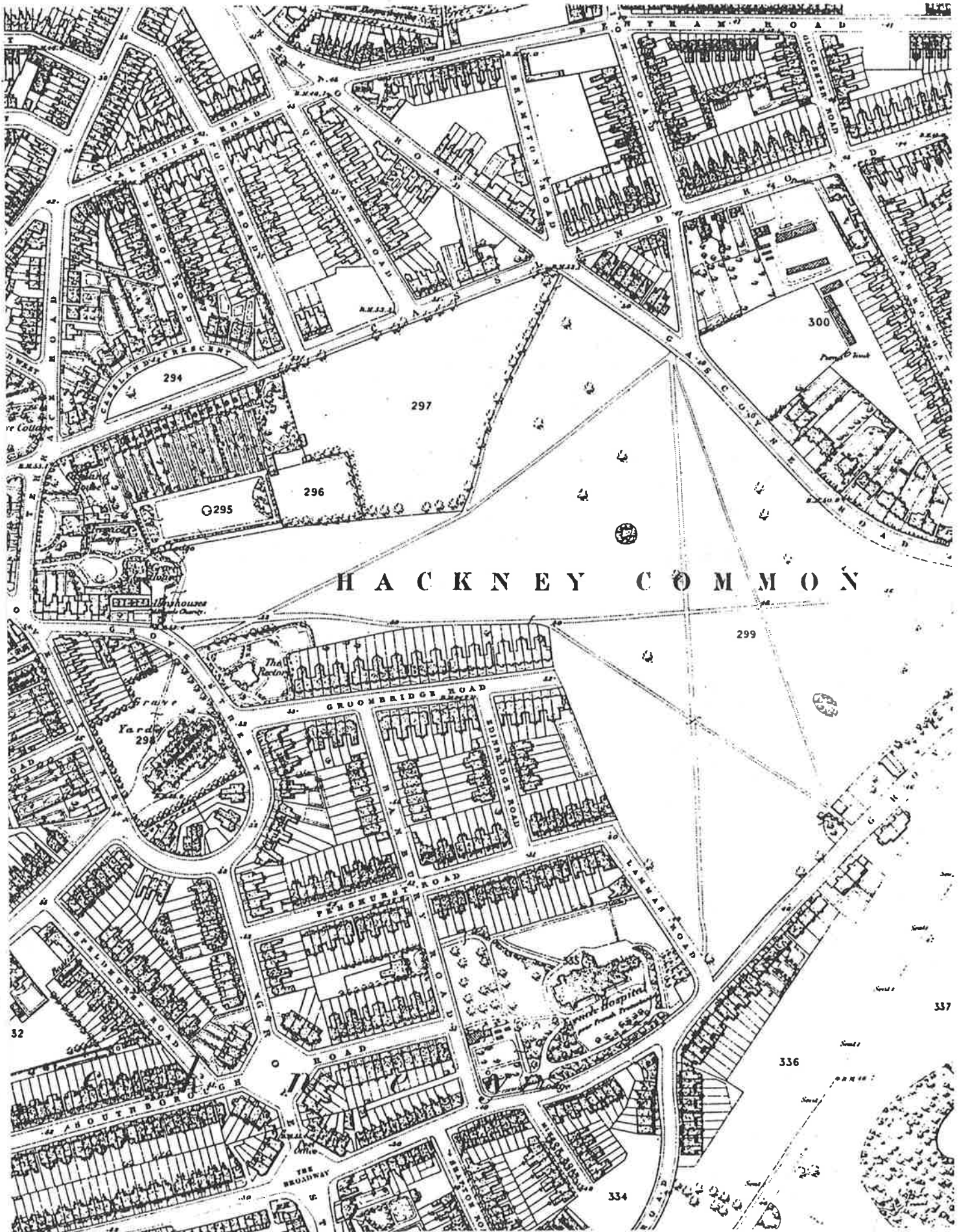
The open spaces included in early discussions at Hackney were the lammas lands, London Fields (27 acres), Hackney Downs

London Fields (O.S. map, 1870)





Well Street or Hackney Common (O.S. map, 1870)





(50 acres), Well Street Common (30 acres), North Mill Field (29 acres) and South Mill Field (28 acres) and the common wastes, Clapton Common (9 acres) and Stoke Newington Common (5.5 acres). Maps of the first three sites will be found on the following pages. Some of these areas still operated as traditional lammas lands but London Fields and Hackney Downs were extensively and increasingly used for recreation, much to the detriment of the herbage. London Fields was particularly patronized by the inhabitants of neighbouring Shoreditch and Bethnal Green.<sup>1</sup> Because it was no longer suitable for pasture and was poorly drained, it had become a gathering place for "roughs" and other undesirable people. According to one official it was the scene of "the most dissolute practices imaginable; ... on Sundays the scenes are something very dreadful: there are itinerant lecturers, not the ordinary itinerant respectable preachers, but people who get up discussions".<sup>2</sup> It was generally acknowledged to be the most disgraceful of the Hackney open spaces.

Deteriorating conditions like these led Hackney residents to demand measures to clean up the Fields and other open spaces, just as similar black spots had motivated their counterparts elsewhere. In the early 1860s the Hackney Board of Works received some of this pressure but it was discovering the limits of its power to act. Although a survey of metropolitan open

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<sup>1</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 3697, 3703-4, 3792, 3802; Report of the Metropolitan Board of Works for 1873, p. 21.

<sup>2</sup>Report from the Select Committee on the Metropolitan Commons Act (1866) Amendment Bill, q. 1309.

spaces by the Metropolitan Board in October 1863 had credited the Hackney Board with protecting many of the area's commons, the most accurate part of the survey noted that it had done this by maintaining the footpaths over them.<sup>3</sup> The local Board's authority did not extend beyond the footpaths, whereas the activities that people found objectionable took place primarily on the commons' surfaces. The commons were not public property.

Possessed of insufficient power to effect substantial changes itself, a local authority might turn its attention to Parliament. Concern over the Hackney commons coincided with similar thinking throughout the metropolis, particularly at Wimbledon, Epping Forest, Plumstead, Tooting, and Hampstead. As the profile of the issue rose, local bodies placed their faith in Parliament to come up with needed legislation for metropolitan commons in general. A deputation from the Hackney Board drew Frederick Doulton's attention to the dilemma it faced over London Fields, shortly before his successful motion in June 1864 proclaiming that the Government had a duty to preserve open spaces.<sup>4</sup>

More decisive action was also possible. The parishes of Hackney and Shoreditch sent representatives to sit on a joint

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<sup>3</sup>Hackney Downs, for example, was supposedly protected under the terms of the eleventh section of the Metropolis Local Management Act Amendment Act [19 & 20 Vict. c. 112]. B.L., Metropolitan Board of Works, Report on the Preservation of Open Spaces in the Metropolis for the use of the public by the Superintending Architect, 23 October 1863, p. 8.

<sup>4</sup>Hackney Archives. Hackney Board of Works (hereafter HBW), Minutes, J/BW/5, 9 June 1864, p. 338.

committee with the Hackney Board to attempt to draft a bill for Parliament that would vest London Fields in some regulatory body.<sup>5</sup> As the Hackney Clerk later explained, it was intended to turn the area into a park, as had been done with Kennington Common, so as to attract a "more respectable class of society". In their current state, the Fields represented a liability to landlords of houses around its border instead of the asset open spaces usually provided.<sup>6</sup> Quite simply, many people wanted to remove a threat to their property values.

But, while most residents in the neighbourhood of the Fields above vagrants, gypsies, and prostitutes might agree that something should be done about the disturbing patch of open space in their midst, opinions differed as to the best means to achieve this. The questions raised in Hackney would be faced by other districts and by the Metropolitan Board. The immediate source of dissent was over the funding of a bill and the attendant expenses after its passage. The joint committee agreed that those with interests of a profitable nature would have to be compensated before the Fields could be turned into a recreation or pleasure ground with its hoped for "moralizing tendencies". No estimate of the cost of compensation was possible as no one knew how many

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<sup>5</sup>HBW, Minutes, J/BW/5, 27 October 1864, pp. 409-10. This was not the first time that local government had turned to Parliament to protect a metropolitan common. In 1858 the Hampstead Vestry, frustrated by the lack of initiative by the Metropolitan Board, had unsuccessfully sponsored a bill to have that board purchase the Heath.

<sup>6</sup>Report from the Select Committee on the Metropolitan Commons Act (1866) Amendment Bill, qq. 1315, 1412.

interests were involved, a situation repeated frequently in the metropolis where many people had ceased to exercise their common rights. In a singular piece of bad prophecy, the committee expected the lord of the manor to relinquish his interests with the same "public spirited liberality" he had demonstrated when he had donated the site of the New Town Hall. That still left the problem of compensating others.

From the start the joint committee ruled out raising money by an increase in the rates as their burden was deemed sufficiently onerous as it stood. This reluctance to use the rates, a sentiment found in many parishes, was one reason why the soon-to-be-born Commons Preservation Society thought its method of protecting commons by guarding rights instead of buying them out would be appreciated. But such a plan would have seemed too tame for London Fields. The Hackney committee concluded that the most expedient method of raising money would be to let part of the Fields on building leases or to sell its valuable brick earth. In addition, a sum of money (£1033) that was lying in a fund paid by the East London Water Works Company as compensation for lammas lands taken by it might also be tapped. The District Board accepted this and began preparing a bill. Nothing further was done. The Hackney Vestry, responding to strong local pressure, opposed the committee's recommendations to sell portions of the common or to tear it up for brick earth. As the Clerk told a Select Committee in 1869, "such a very great clamour was raised by the inhabitants with regard to this scheme that we were forced to drop it". No other

means to raise money won acceptance.<sup>7</sup> Financing the scheme proved to be the fundamental obstacle which proponents failed to clear. Pecuniary issues were never far from the surface in commons' questions. But the inhabitants' refusal to countenance the exploitation of their open space in order to preserve it was in harmony with opinions elsewhere. Within days of the Hackney decision, Lord Spencer would unveil his proposal for Wimbledon Common only to have residents criticize his plan to finance the scheme by selling portions of the common. The Metropolitan Board would not abandon this type of thinking until after it lost Telford's suit over Tooting Bec.

Had the desire been stronger, some compromise could undoubtedly have been reached by the Hackney parties over London Fields, but the issue at this stage was more of an annoyance--albeit a growing one--than a crisis. In the absence of any comprehensive scheme, and with little immediate prospect of one, the local Board could, at best, try to stem the tide threatening all the Hackney commons. To this end, its officials testified before the 1865 Select Committee on Open Spaces (as did representatives of the lord of the manor), and the Board's Railway Committee recommended opposing a bill which contained a proposal for a line across the western edge of Hackney Downs.<sup>8</sup>

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<sup>7</sup>Report from the Select Committee on the Metropolitan Commons Act (1866) Amendment Bill, q. 1304; HBW, Minutes, J/BW/5, 10 November, pp. 419-22; 27 November, pp. 427-34; 8 December 1864, pp. 445-48.

<sup>8</sup>HBW, Minutes, J/BW/6, 1 February, p. 51; 15 February 1866, pp. 69-70.

A district board, hampered by statutory restrictions and a divided community, had failed to provide a solution at one open space. After 1866, attention turned to the Metropolitan Board of Works which was now the local authority for commons such as Hackney's. Would its new powers make it a more effective agent of change? The early indications were not promising. In the first place, the central Board had to familiarize itself with the open spaces in the various metropolitan districts. Thus in October 1867 a report prepared by its solicitor on the "Hackney Fields" was sent to the Hackney Board seeking comments and cooperation. The imprecise nomenclature was indicative of ignorance about the area. The Metropolitan Board wanted to know if all of the commons should come under a scheme or only some. The solicitor had garnered from testimony given before the Select Committee in 1865 that various parties claimed rights in the commons and he recognized the necessity of providing compensation should those rights be injured. He was unwittingly identifying the area from which most of the Metropolitan Board's problems in Hackney would arise. The Hackney Board established a committee of its own to assist the central body but the issue seems to have submerged for a time and the committee disappeared without anything to show for its existence.<sup>9</sup> When a deputation attended the local Board in March 1868 with a memorial calling attention to encroachments on Hackney Downs, motions to form another committee or to hold a special meeting were defeated.<sup>10</sup> Such a

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<sup>9</sup>HBW, Minutes, J/BW/6, 31 October 1867, pp. 544-48.

<sup>10</sup>HBW, Minutes, J/BW/6, 26 March 1868, pp. 680-81.

committee was finally formed in July in response to a request from the Metropolitan Board for more information about London Fields. Early moves by the two boards were thus exploratory, undertaken without much momentum.

Given the lack of urgency infecting the official bodies it is not surprising that the initiative moved into the community. A local chapter of the Commons Preservation Society formed and began working on a memorial to be submitted to the Enclosure Commissioners. An investigation of the court rolls was undertaken as part of the preparation.<sup>11</sup> Members were fervently opposed to buying out rights and paying compensation to lords of the manor, a policy they condemned as an unnecessary extravagance. They favoured fostering commoners' rights as a bulwark against interference from lords of the manor bent on enclosing or selling commons and they believed that maintaining the status quo would ensure public access. In Hackney they faced the task of persuading some local politicians that exploiting the open spaces for brick earth or building sites was a retrograde method of preserving them.

The Society knew that it might be able to push a scheme that established a body of conservators to manage the Hackney commons past the Enclosure Commissioners but it was aware that the Metropolitan Commons Act made the Metropolitan Board the strongest candidate for that role. The Society, therefore, had to ensure that any scheme the Board submitted to the Commissioners was one that it could support. As things turned

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<sup>11</sup>Commons Preservation Society, Report of Proceedings, 1868-69, p. 7.

out, the Society was able to influence the Board's plans to a significant degree but whether the net effect was positive was later questioned.

When the Metropolitan Board established its Parks Committee at the beginning of 1869 matters began to move more expeditiously. Its officials met those of the Hackney Board to assess the immediate needs vis-à-vis the commons. The process of taking control of the commons had begun in earnest. Many steps were involved. The Metropolitan Board had to decide which of the Hackney commons it should acquire. What would be the attitude of the lord of the manor? Would other people with interests seek compensation? What powers did the Board want over the commons? What sorts of regulations and restrictions should be applied to members of the public?

The Board's preliminary inquiry focused on London Fields and Hackney Downs. Its Superintending Architect reported that it would cost an estimated £20,000 to acquire the Fields and carry out improvements. Buying up the rights of pasture would not be prohibitive, nor did the lord of the manor's claim to the brick earth seem to be worth much as long as other interests existed that prevented his digging it. London Fields was lammas land (as were the Downs, Well Street Common, and North and South Mill Fields): commoners had the right to turn out cattle during the open season from August to April, but during the remaining four months certain owners had the land as freehold. One person, a William Corbett, had purchased the interests for the closed



season. This seemed to restrict further the lord's claim to the brick earth.<sup>12</sup>

On the strength of this report the Metropolitan Board forwarded a memorial to the Enclosure Commissioners in early 1869 asking them to prepare a scheme giving the Board certain powers over London Fields and Hackney Downs, although as the Commissioners themselves were to note, the memorial was poorly drafted in terms of defining what lands it wanted to affect. Most of the text of the memorial dealt with London Fields. It explained the meaning of lammas lands and noted that although the right to pasture must have originally belonged to the freeholders and copyholders, the manorial court had decided in 1835 to allow all inhabitants of the manor rated at £10 and upwards the same right. The memorial pointed out that public use had worn the pasture down to a point where it was useless for grazing. It then added that Hackney also contained Stoke Newington Common, Well Street Common, Hackney Downs and Clapton Common. When, however, the memorial asked for certain powers, it limited them to London Fields and Hackney Downs. It asked for power to protect them against encroachment, trespass and improper use; to fence them for short periods in order to revive the turf; to make and maintain paths; to drain, plant, and beautify areas as needed; to maintain all rights of grazing; and to make bylaws and employ officials to maintain them.<sup>13</sup> These were the standard responsibilities for the Board to seek. The

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<sup>12</sup>MBW 997, 23 February 1869, pp. 19-22.

<sup>13</sup>MBW 999, Papers, 13 April 1869.

provision to retain grazing rights reflects the belief enshrined in the Metropolitan Commons Act that commons could support traditional functions while hosting increased public traffic.

The memorial was soon being scrutinized by those with interests in the commons. The solicitors representing the trustees of Corbett, now apparently deceased, wished to correct some of the statements in it about London Fields. They did not oppose the Board's scheme wholesale but preferred that it might be amended to allow for the exploration of the brick earth and the building value of the land.<sup>14</sup> Most other claimants waited until the Enclosure Commissioners released their draft scheme before presenting their cases; there was little to be done officially in reaction to Corbett's notice at this time.

Interested parties and parties with interests had to pay attention to a rival memorial from the Hackney Commons Preservation Society which at this stage believed success could be achieved by presenting a more attractive alternative to the Board's proposals. The memorial spelled out the Society's basic approach that the maintenance of rights would be sufficient to guarantee public access to the commons. The lord of the manor was powerless to enclose if he could not secure the commoners' consent. More important, this memorial included many of the areas omitted in the Board's, including North and South Mill Fields. It suggested that a separate body be created to manage the commons. The Society's solicitor had guided the scheme for Hayes Common through its stages and the precedent established

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<sup>14</sup>MBW 977, 14 June 1869, pp. 300-4.

there of a body of conservators seemed applicable elsewhere. But the Enclosure Commissioners chose not to favour one side over its rival and announced that they could not entertain two incompatible memorials for the same area. They recommended that the two sides seek a compromise.<sup>15</sup> As a way of trying to promote future harmony on the issue this decision was commendable but there was no legal reason why the Commissioners could not have cast their lot with one plan.

Before a compromise could be reached, further clarification of positions was needed. The District Board wanted the Metropolitan Board to resist any scheme which established an autonomous regulatory body over the commons. It was quite sufficient that the Metropolitan Board should act as the local authority as provided by the 1866 Act.<sup>16</sup> The Metropolitan Board agreed. But it was not inflexible about other points and was amenable to expanding the terms of its memorial. After receiving a deputation from the Hackney Commons Preservation Society, it incorporated North and South Mill Fields into its proposal.<sup>17</sup>

When a new scheme had been drafted the Hackney Commons Preservation Society wrote a long letter to the Metropolitan Board outlining its position more fully. The positing of independent managers had been based on a fear that the Hackney District Board, which the Society distrusted, might have

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<sup>15</sup>PRO MAF 25/33, B2485/1913, letter from Enclosure Commissioners to Fawcett, Horne and Hunter, 17 September 1869.

<sup>16</sup>HBW, Minutes, J/BW/7, 14 October 1869, pp. 171-72; MBW 977, 27 October 1869, pp. 562-65.

<sup>17</sup>MBW 978, 9 November 1869, pp. 4-7.

been designated the local authority. Although still favouring its original proposal, it recognized that the Metropolitan Board would likely be chosen over a new body. The Society wholeheartedly seconded the exclusion from the Board's scheme of any idea of compensation: "the mere introduction of such a clause would have given birth to a host of adventurous claimants".<sup>18</sup> By late March 1870, the Board's solicitor agreed that some of the Society's points were worth incorporating into its scheme and towards the end of April the Board learned that the Society had withdrawn its memorial.<sup>19</sup>

Through determined lobbying the Society had persuaded the Metropolitan Board to accept its key points. There was little reason why the Board should resist these suggestions. The Society had apparently done its homework and was viewed as holding expertise in the area. The Board, on the other hand, was relatively new to the field. It possessed no accumulated wisdom on the subject of managing commons. In fact, in mid-1870 not one common was fully under its authority although schemes for other areas were advancing.

By May, after a meeting between the Board's solicitor and the Enclosure Commissioners, it was agreed that a fresh memorial altogether should be submitted. The Commissioners cautioned against the inclusion of any clauses that might prejudice the rights of owners of rent charges, that is, interfere

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<sup>18</sup>MBW 978, 21 December 1869, pp. 92-104.

<sup>19</sup>MBW 978, 9 February, pp. 162-64; 23 March, pp. 239-43; 27 April 1870, pp. 296-301; PRO MAF 25/33, B2488/1913, letter from A. Ogan to Enclosure Commissioners, 21 April 1870.

with a right to let parts of the commons for pasture or digging. They suggested that the records of compensation payments made by railway companies when they had appropriated common land might be one method of identifying those with common rights.<sup>20</sup>

In early July the Parks Committee visited the Hackney commons and by August a memorial and scheme were sent to the Commissioners. (This was not quick enough for some: the District Board accused its parent body of doing nothing about the commons.<sup>21</sup>) At the end of December--some twenty months after the Board's clumsy first memorial had been submitted--the Commissioners issued their draft scheme, the document which would be the basis for future discussion before a final scheme was submitted to Parliament. Its last section invited all who had interests in the commons to submit information about them.<sup>22</sup>

Responses were not long in coming. Most of the claims came from owners of plots in the lammas lands, that is, land which was their freehold during the closed season between April and August of each year, but which was subject to common rights during the other months. A frequent theme in these communications was a demand that owners be compensated for these rights with which, it was assumed, the scheme would interfere. One such claim was from the Trustees of Sir John Cass's Charity who asked for £800 if the Metropolitan Board took

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<sup>20</sup>PRO MAF 25/35, B2485/1913, letter from Enclosure Commissioners to W. W. Smith, 16 May 1870.

<sup>21</sup>HBW, Minutes, J/BW/7, 25 November 1870, p. 506.

<sup>22</sup>MBW 979, 21 December 1870, pp. 121-22; MBW 1000, Papers.

over Well Street Common where they owned two pieces of land amounting to thirteen acres.<sup>23</sup> A second claim concerning land in the same common was submitted on behalf of a resident of Oxfordshire who objected to any tampering with his rights without compensation.<sup>24</sup> No specific amount was mentioned. Several members of one family sent details of their lands in the Downs and in North and South Mill Fields.

Copyholders were heard as well. A letter was received on behalf of a gentleman from Essex, who, in respect of a copyhold tenancy on the Downs, claimed a right of pasturage for himself and all other copyholders over Hackney Downs from Lammas to Candlemas.<sup>25</sup> It is not difficult to see that these people were expressing a legitimate fear that increased activity by the public would hurt this right. The quality of the turf would likely suffer and the animals be harassed. In short, users of the lammas lands during both the closed and open seasons were giving notice that their rights would have to be taken into consideration.

The most detailed submission came, appropriately enough, from the lord of the manor, William Amhurst Tyssen Amherst of Norfolk. Even before this, his solicitor, Chester Cheston, had written to the District Board asking for an account of all gravel taken by it in order that required royalties could be

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<sup>23</sup>PRO MAF 25/33, B2485/1913, letter from Sir John Cass's Charity to Enclosure Commissioners, 20 February 1871.

<sup>24</sup>MBW 1001, Papers, 8 March 1871, letter to Enclosure Commissioners, 18 February 1871.

<sup>25</sup>PRO MAF 25/33, B2485/1913, letter from Howard, Inglis and Keeling to Enclosure Commissioners, 4 February 1871.

paid. It was a matter of principle that this be done, said the letter, but it is hard to escape the conclusion that Cheston was thinking ahead to the time when he would have to substantiate the lord's rights and would want evidence that he had diligently upheld them.<sup>26</sup> The claim to the Enclosure Commissioners was, in fact, a double-barrelled one on behalf of the lord of the manor in his own right, and on behalf of the trustees of his family's estate. Amherst, as lord of the manor, claimed ownership in fee simple of the commons in Hackney such as Clapton and Stoke Newington, and of some smaller waste lands. He claimed the right of digging clay, sand, and other minerals from the lammas lands, and the right of granting licences to the severalty owners of those lands or to other persons to take these products. He would receive rents or royalties for what was taken.<sup>27</sup> He also claimed the right to the soil and all other manorial rights in the whole of the lands comprised in the scheme. Cheston closed with the somewhat redundant statement that the lord of the manor did not consent to the scheme.

The second part of the claim was on behalf of Amherst as tenant-in-life of a settlement made on the date of his marriage and on behalf of the trustees of that settlement. This claim was for specific pieces of freehold in the lands to be included in the scheme--about 32 acres in Hackney Downs, 9 acres in North Mill

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<sup>26</sup>HBW, Minutes, J/BW/7, 28 October 1869, p. 460.

<sup>27</sup>Before the 1865 Select Committee, Cheston estimated the brick earth in London Fields to be worth between £15,000 and £20,000. Second Report from the Select Committee on Open Spaces (Metropolis), q. 3700.

Field, and 6 in South Mill Field--as well as smaller pieces of land elsewhere in the manor.<sup>28</sup>

The man who had donated land for the new Hackney Town Hall presented a less conciliatory face here. He appeared to be putting forth a position of maximum strength, not only to challenge the Metropolitan Board but other claimants as well, particularly Corbett's trustees over London Fields. Both wanted the brick earth. Amherst's agent, Cheston, was responsible for the tone of his claim.

Cheston's rejection of the Metropolitan Board's scheme was sweetened with a proposal of his own which he held would satisfy all parties. In short, he favoured the inclusion of Hackney Marshes, the largest stretch of waste land in the area, as a kind of land fund out of which people whose rights in the other commons had been injured could receive compensation, either by direct grants of land or through money raised by selling off portions. The Marshes were badly in need of drainage but once done, and after compensation was made, Cheston expected there would still be a significant portion of the Marshes left which could be dedicated to the public.<sup>29</sup> But as both the Enclosure Commissioners and the Metropolitan Board recognized, Cheston's alternative, by advocating the enclosure and allotment of metropolitan common land, went beyond the powers of any

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<sup>28</sup>MBW 1001, Papers, 8 March 1871; PRO MAF 25/33, B2485/1913, letter, 28 February 1871.

<sup>29</sup>MBW 1001, Papers, 8 March 1871.



existing legislation. The Board informed Cheston of this and expressed a determination to proceed with its own scheme.<sup>30</sup>

Among other communications received was a protest from the Marsh Drivers, the officials responsible for marking cattle to be turned out during the open season on the lammas lands, allegedly on behalf of all copyholders, that the scheme was nothing less than a "confiscation" of rights.<sup>31</sup> But responses were not entirely negative. The Governors of St. Thomas's Hospital forwarded a conditional acceptance of the scheme as long as they were compensated for their land in Hackney Downs and North and South Mill Fields. Like other owners, they could not envisage a scheme that simultaneously promoted public use of the lammas lands and protected their rights.

The presence of lammas lands in the Hackney scheme was a complication not faced by the Board elsewhere in the metropolis. The owners of property in the lammas lands were unhappy with the proposed plan. Even those who gave qualified support believed they deserved compensation before the scheme was put into operation. People with common rights during the open season indicated their apprehensiveness as well. As yet it was impossible to know how large a group this was. Did communications claiming to speak on their behalf truly represent them? The rumblings of discontent did not make the Board back

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<sup>30</sup>PRO MAF 25/35, B2485/1913, letter from Cheston, 28 February; MBW 979, 8 March, pp. 222-24; 16 March 1871, p. 249.

<sup>31</sup>PRO MAF 25/25, B2485/1913, letters: 1 March, 13 July, 1 August 1871.

away from its scheme which it believed provided remedies for the complaints.

In retrospect, the Board's confidence at this stage appears naive. The signs of future trouble were already in evidence. The Board had entered Hackney with good intentions but mired in ignorance and with few clear ideas. Persuaded by the sincerity of the Hackney Commons Preservation Society, it was about to saddle itself with a scheme that made no provisions for compensation. In varying degrees, the lord of the manor, the owners of lammas lands, and some commoners expressed reservations about it, but the Board's response was to retreat behind the scheme, hoping it could accommodate the problems.

In the locality itself, the open-spaces question was drawing increasing comment. The local Liberal newspaper, the Hackney and Kingsland Gazette, in a retrospective at the end of 1870, dubbed it one of the two questions of great importance which had recently attracted the area's attention (the other was the Hackney Charities). The paper was optimistic that before long the Hackney open spaces would cease to be a disgrace to the parish. Letters to the editor brought frequent reminders of the low nature of these places: one complaining of roughs throwing stones at trains and people on Hackney Downs was not untypical.<sup>32</sup>

These letters were more than the ravings of a curmudgeonly few; they reflected widespread dissatisfaction with the state of these lands. Occasionally, frustration with the

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<sup>32</sup>Hackney and Kingsland Gazette, 7 January, 18 March 1871.

pace of official channels led to local action. Around Well Street (or Hackney) Common, for example, inhabitants decided to arrest the deterioration of their "lung" and formed the Hackney Common Improvement Association. Subscriptions were canvassed from which a keeper was hired to patrol and protect the common. The goals of the Association were well described by a supporter:

[O]ur common restored as it is intended it should be will enhance the value of property, give to families a safe and pleasant resort for the children and promote the health of the neighbourhood, especially by the planting of trees and shrubs which absorb for their growth just those ingredients in the air which are deleterious to the human constitution.<sup>33</sup>

This statement is a précis of the aims of the entire preservationist movement, and it seems appropriate that enhanced property values are cited as the first benefit of an improved common. This was, perhaps, the least voiced justification for preservation yet one of the major motivating forces in recruiting middle-class supporters to the cause.

Despite such initiatives and the newspaper's assessment of the question, public interest wavered at times and preservationists had to battle apathy. One of the founders of the Association lamented the declining numbers of enthusiasts over recent years, lost, he feared, because of "hard work and uncertain returns".<sup>34</sup> Yet public interest ebbed and flowed and this comment was made during a lull in the proceedings. The struggles for open spaces were often long, unpredictable, and not

<sup>33</sup>Hackney and Kingsland Gazette, 18 March, 8 April 1871.

<sup>34</sup>Hackney and Kingsland Gazette, 27 May 1871.

without a share of tedium, all of which made it hard to attract large numbers of committed activists. Yet long before the issue was resolved in Hackney, residents would take advantage of opportunities to express their feelings in dramatic fashion. Those opportunities generally came in the form of provocative actions by some party on the commons themselves. But in the summer of 1871 these were some years off. Nonetheless, the battle lines in the Hackney dispute had formed early in response to the Board's scheme. Clearly the major confrontation would be between the Board and Amherst, but tensions accompanied other participants as they tried to carry their points.

#### 4.5 The Hackney Scheme

Over three days in the summer of 1871 the Assistant Enclosure Commissioner held his inquiry, an important step in the evolution of a scheme. Short of going to law, this was the forum where claimants had to win recognition for their cases. The arguments were complex and counsel were often engaged to give them an edge. These hearings were not immune to the vicissitudes of public opinion. Afterwards, the Assistant Commissioner submitted a report that weighed the merits and weaknesses of the scheme against the opinions expressed. The central issue was whether the scheme sponsored by the Metropolitan Board would have an adverse affect on the various rights and interests held in Hackney, particularly those of the lord of the manor and the owners of lammas lands. A subordinate issue was whether the public qua public had any definable rights over the commons. Popular sentiment assumed so, but legal judgments had never sanctioned such a claim.

Counsel for the Metropolitan Board stressed the value of the scheme as a means of rescuing London Fields and Hackney Downs from their current sorry state. He explained the Board's willingness to pay compensation to those who could prove that their rights had been injured by the implementation of the scheme but he anticipated that most rights would be unaffected. Shifting ground somewhat, he called witnesses who testified to the public's long use of the areas for recreation and leisure. One of these, a member of the committee that managed Well Street

Common, buttressed the case for a public right by recalling that a plank was placed over a certain ditch by London Fields every August (that is, when the open season began) in order that the public could cross onto the Fields. Having lived in the area for thirty-five years he was convinced that the public had a right to walk and exercise on the Fields and other open spaces except during the closed season. A cricket club to which he belonged had played regularly on the Fields. The scheme was needed to protect the public in another sense: the commons had become the haunts of women of loose character. As proof of the long tradition of concern over rights, he cited a riot on Hackney Downs in 1837 when commoners had raided corn left standing after Lammas Day. In short order this testimony had touched upon most of the themes preservationists would stress. The inhabitants not only valued the commons for recreation, they believed they had a right to use them for such. More established rights had not faded in importance. As well, the commons needed a moral cleansing.

Richard Ellis, Clerk of the Hackney District Board (and of the Vestry), also testified in favour of the scheme. The public, averred Ellis, had never been denied use of the Fields: although owners had dug a trench in 1860 and had erected fences along the pathways, such measures were not directed against the public.<sup>1</sup> Ellis worried that Hackney's rapidly growing population was placing open spaces increasingly in danger from speculative builders. But his local Board had very limited involvement with the commons beyond a responsibility for the maintenance of

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<sup>1</sup>Hackney and Kingsland Gazette, 15 July 1871.

footpaths. It had a right to dig gravel for road repair but this was rarely exercised. (The lord of the manor would claim that this was not a right but an activity carried out under licence.)

The case presented by the lord of the manor's counsel gave as little recognition as possible to any alleged commoners' rights while seeking to present the lord as the prime injured party. Reaching far into history, he held that the matter of common rights had been defined in the reign of James I by a deed between the then lord of the manor and certain copyholders. This deed was later incorporated into an Act of Parliament and the lord of the manor was granted Royal Letters Patent to dispose of his lands as he wished. The copyholders who signed the deed gained limited rights to dig gravel, sand, clay and loam upon the waste ground but only for the purpose of repairing their tenements. Their interest in the soil was regulated--as elsewhere--by the manorial court. By custom the lord of the manor could enclose and grant land with the approval of any seven or more copyholders.<sup>2</sup> Amherst's counsel referred the Assistant Commissioner to the manorial rolls for evidence of an "infinite" number of cases where this had been done. The Board's proposed bylaws would stop the lord exercising his rights to the soil. He had the right to "dig holes and trenches for the public to tumble into" if he so desired. But the scheme attempted to turn the

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<sup>2</sup>Hackney Archives, D/F/TYS/35/10, A Survey of the Manor of Hackney in 1652.

entire area into public property. If this was the intent and wish, then the property must first be paid for.<sup>3</sup>

On the second day of the inquiry Amherst's case against the scheme was expanded. Details of the revenues that accrued from the letting of lands during the closed season were given. But this agriculturally based income failed to mirror the real value of the property. The lord had received £200 per acre from the Great Eastern Railway for land taken at Stoke Newington Common; other land had been sold at £100 per acre when needed by public companies.<sup>4</sup> If the scheme restricted Amherst's freedom to deal with these lands, it would be a gross interference with his rights. It was alleged that he had the right to exclude any person from the commons who tried to execute works of levelling, drainage, planting, or any other improvements and he threatened to take action against the Board if necessary.<sup>5</sup>

Following the presentation of the lord's case, the Board's counsel drew from one of the marsh-drivers the information that Amherst's steward had drafted the protest that they had submitted to the Enclosure Commissioners. The driver had to admit, in fact, that it would be an improvement if the Board repaired the turf on London Fields.<sup>6</sup> This was one of the points the Board wanted to make. Far from interfering with

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<sup>3</sup>Hackney and Kingsland Gazette, 19 July 1871.

<sup>4</sup>Hackney and Kingland Gazette, 25 July 1871; PRO MAF 25/33, B2485/1913, Wetherell's Report, pp. 31-32, 35.

<sup>5</sup>Hackney and Kingsland Gazette, 2 August 1871.

<sup>6</sup>Hackney and Kingsland Gazette, 9 August 1871.



grazing and other rights, a scheme for management would make them more valuable by ensuring a healthy turf and regulating people's behaviour. This argument, however, was less convincing with respect to the lord's rights.

The Assistant Commissioner recommended that the Board's scheme proceed with only minor changes. He dismissed the argument made by the lord and owners of lammas lands that compensation should be paid prior to its implementation. This would have introduced a new principle that was not envisaged by the fifteenth section of the Metropolitan Commons Act of 1866. Rather, he accepted that the general saving clause, which left all rights in the same position as if no scheme had been implemented, dealt with any objections. A clause, which as originally drafted allowed the Board to grant permission to persons to turn out animals, was altered to restrict the right to "persons who now by law are entitled to do so". This avoided the possibility that non-commoners might be licenced to graze cattle to the prejudice of the commoners.

The arguments adduced by Amherst and others against a public right to the commons were declared irrelevant: the existence or nonexistence of public rights had nothing to do with whether or not commons should be placed under a scheme. The scheme would primarily benefit the public but the extent to which increased public use might damage a particular interest was not calculable beforehand.<sup>7</sup> On the surface this seemed a reasonable approach. All rights were to be treated as if the

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<sup>7</sup>PRO MAF 25/33, B2485/1913, Wetherell's Report.

scheme did not exist but, if any were damaged, compensation would be paid. But was it fair to shift the burden of proof onto the possessors of rights? The ways in which the public could infringe upon a right were difficult to quantify. Was it not a fiction to assume that rights would not be injured by the scheme? The Assistant Commissioner failed to appreciate the incompatibility of the scheme and the lord's rights. This oversight would lead to years of bitter conflict.

The Enclosure Commissioners certified the Hackney scheme in February 1872. Their report eschewed any subtlety in depicting London Fields:

The place has become a desert, a wilderness, and a nuisance, of no use to anyone in its present state.... Evidence was given to show that the Fields are in the worse possible state as regards nuisances and immoralities ... they are the common resort of "roughs" and thieves, and other idle and dissolute persons; intimidation is practised on passers by with the view of extorting money; lads are in the practice of playing at dangerous games; assaults and robberies are frequent; any person would be in danger of being molested and pelted in passing through the Fields at night, and no lady would venture to do so; even in the day-time people are insulted especially on Sundays, so that additional policemen are then set to keep watch. Not long ago a child was found dead in one of the dark spots. The police have not sufficient power to deal with the evils complained of, as they exercise their duties only in public places, and, in consequence of the number of spies who are on the look-out, it is found difficult to arrest gamblers, and persons in the commission of immoral acts. Fences are pulled down, and rubbish of all sorts is deposited in the Fields.<sup>8</sup>

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<sup>8</sup>P.P. Fifth Report of the Enclosure Commissioners under the Metropolitan Commons Acts 1872 (115), XVIII. 251, pp. 1-2.

Were only a fraction of this true, it would be easy to sympathize with those who were impatient to see reforms brought about. But it looked as if they might have to wait a little longer. The scheme was certified too late to be included in the Commissioners' annual report to Parliament. Local opinion was quick to see the omission as another example of the Government's "utter disregard for the moral welfare, social elevation and general health" of the inhabitants of eastern London. Calling London Fields the "blackest plague-spot" in the metropolis where scenes that were a "disgrace to civilization" took place, the Gazette marvelled that £48,000 could be spent on the South Kensington Museum (in addition to thousands already spent) while the commons remained neglected.<sup>9</sup> This refrain of the slighted east end was unabashedly repeated whenever it was felt that guilt among the privileged would loosen purse strings.

This animosity was not directly solely at Westminster. The Metropolitan Board was a favourite target for outraged Hackneyites as, indeed, it was for angry residents of other districts. Hackney's representative on the Board, John Runtz, faced scepticism from the District Board about the sincerity of its efforts. He expressed confidence that it would be a relatively simple procedure to secure a supplementary bill for the Hackney scheme. Nevertheless, he concurred with the local body's decision to write to the Metropolitan Board and the Enclosure Commissioners asking for prompt attention to the commons.<sup>10</sup>

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<sup>9</sup>Hackney and Kingsland Gazette, 13 March 1872.

<sup>10</sup>Hackney and Kingsland Gazette, 13 March 1872.

The Hackney scheme was, in fact, dealt with fairly smoothly. By mid-April the plan and scheme were in the hands of the Home Secretary; a bill was introduced during the first week in May, and the Act received Royal Assent in June 1872.<sup>11</sup>

As a general rule Parliament did not modify measures presented to it by the Commissioners; they were confirmed as a matter of routine. Indeed, alarm over this legislative blind spot in enclosure proceedings had been one of the first things raised by early preservationists. But the structure put in place by the Metropolitan Commons Act seemed to obviate the need for Parliamentary scrutiny. To some extent this was true. Interested parties were provided with opportunities to make their points of view known. Furthermore, the stated aim of most schemes was to leave existing rights untouched. Nonetheless, the Hackney commons might have had a less tumultuous history if Parliament had examined this scheme in more detail.

There were the beginnings of such a probe at the Home Office which touched upon the future trouble spot. Officials queried the wisdom of having a clause (13) that protected all rights standing alongside another clause (14) which listed those who claimed such rights and indicated whether or not they favoured the scheme. The saving clause (13), which read

Saving always to all persons and bodies politic and corporate, and their respective heirs, successors, executors, and administrators, all such estates, interests or rights of a profitable or beneficial nature in, over, or affecting the commons, or any part thereof, as they or any of them had before the confirmation of this scheme by Act

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<sup>11</sup>MBW 980, 17 April 1872, pp. 556-58; 35 & 36 Vict. c. xliii.

of Parliament, or would or might have enjoyed if this scheme had not been confirmed by Act of Parliament,

made it redundant whether there was opposition to the scheme because the clause ruled out any change in an individual's or body's ability to exercise a right. It was an absolute saving clause, providing no possibility that a right might be injured, and detailing no method of compensation should this happen. The Home Office believed omission of this would bring the scheme closer in spirit to sections fourteen and fifteen of the Metropolitan Commons Act which specified the manner in which injured interests would be compensated. But that Act merely spelled out what was expected. It had no independent force if its provisions were not included in a particular scheme, and they were clearly not in the one for Hackney.<sup>12</sup> Despite these reservations, clause thirteen remained. Clause fourteen contained the mild note that the rights claimed would be affected "only so far as is absolutely necessary" in carrying out the scheme. To the seemingly ironclad saving clause the scheme wedded this imprecise teaser. It was hardly a recipe for harmony in an area where holders of rights had already demonstrated acute nervousness about the implications of the Metropolitan Board's plans. They were now faced with a scheme that stated both that their rights would continue to exist as if it were not in effect and that these rights might be mildly affected by its implementation. No provision for compensation was included should this happen.

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<sup>12</sup>MBW 981, 1 May 1872, pp. 47-49.

For the present, these people had little choice but to await the Board's moves. Regardless of its perceived flaws, the scheme had passed and the Board was compelled to carry it out. It remained to be seen how often it would be "absolutely necessary" to interfere with somebody's interest. But not every party was waiting for the Board to stumble so that he or she could rush in with a lawsuit. Clearly many realized that its projects would improve the commons. Unfortunately, the scheme's weaknesses and the Board's attitude dictated that more energy would be devoted to dealing with the dissenters.

For the Parks Committee of the Metropolitan Board one of the first steps to be carried out after a common came under its management was to post bylaws. A few weeks before the Hackney scheme received Royal Assent it began framing them, a procedure that involved consultation with the locality. The Hackney Board indicated that it was in general agreement with them but wanted the language made more specific in clauses that dealt with what substances could be dug or removed from the commons and what types of unsavoury characters, such as squatters and gypsies, could be barred. It was, in fact, impossible to frame a bylaw that would discriminate against a person merely because he or she was a gypsy, but not a few of the inhabitants of Hackney strongly believed that improvements would only begin when such people were cleared away. The local Board also urged that inhabitants be invited to submit suggestions as to the laying out of the new acquisitions.<sup>13</sup> This

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<sup>13</sup>HBW, Minutes, J/BW/8, 14 June, p. 352; 12 July 1872, pp. 397-98.

was done to some extent but any plans had to preserve the commons as commons. Some suggestions seemed to lose sight of this.

While most interested parties--the owners of freehold plots in the lammas lands or copyholders with grazing rights--had to wait for the Board to act before they could assess whether a right had been abridged, the Board's principal opponent, the lord of the manor, was under no such restraint. Amherst believed the scheme itself represented an infringement on his rights, regardless of how it was pursued. As the Parks Committee was considering landscaping recommendations from its gardener, it received a letter from Amherst's solicitor, Cheston, demanding that the Board purchase all of the lord's and the trustees' interests in the commons. The Board's bylaws, it was argued, blocked Amherst's power to exercise his rights and thus, he warranted compensation.<sup>14</sup>

In response to the letter, the Board's solicitor, W. Wyke Smith, met with Cheston and heard in greater detail the basis for the lord's complaint. The scheme, Cheston alleged, interfered with the right to take gravel and sand, or to enclose the commons; it also interfered with the land during the period in which the lord was absolute owner. Cheston seemed on solid ground here. Although he accepted Smith's argument that the bylaws were essentially preservative in function, and that the Board's regime would improve the condition of the land, he vigorously adhered to his central theme, namely that the scheme interfered with

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<sup>14</sup>MBW 981, 2 October 1872, pp. 404-5.

valuable rights which must, perforce, be bought out. The Parks Committee decided that Cheston would have to give a more accurate account of the manner in which he believed the Board's scheme would harm Amherst before it would give the matter further attention.<sup>15</sup> The Board, in its eagerness to avoid paying compensation, seemed to develop a blind spot with respect to how its operations might interfere with the lord's interests. But its position was not unsupportable. The rights that Cheston claimed for Amherst, while forcibly presented to the Assistant Commissioner, had not been tested. Cheston argued that many of them were customs of the manor, but there were preservationists who doubted their validity. It would have been a foolish precedent to make large compensation payments for such unverified rights. The Commons Preservation Society frequently warned that such a move would unleash a flood of frivolous claims.

Faced with an implacable lord of the manor and members of the public who were unable to understand the reasons for delays and inaction, the Metropolitan Board had a tentative first year on the Hackney commons. On no other open spaces was the Board's authority so muted. Supposedly it was to bring order by regulating activity, planting and beautifying. Some projects were begun, but every step had to be gauged against the likelihood of its arousing opposition. The source of most of the early difficulties was Amherst.

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<sup>15</sup>MBW 981, 9 October 1872, pp. 429-31.



At the end of May 1873 Cheston submitted a claim for £45,000 compensation for the loss of the lord's and trustees' rights and interests. The two sides began another round of sparring. The novelty of quoting an amount did not, according to the Board, obviate the need for Cheston to supply a detailed breakdown of the rights claimed, showing how each was interfered with.<sup>16</sup> Cheston, however, averred that the desired particulars had been supplied to the Enclosure Commissioners earlier. He accused the Board of frustrating his attempts to deal with the matter in an "amicable spirit". When he sent what he labelled as an itemized claim, the Board judged it to be simply a re-wording of the one sent to the Commissioners and no better as a guide to the value of any rights; the figure of £45,000 appeared to have been plucked from the air.<sup>17</sup>

After more correspondence, Cheston finally sent a letter which linked specific bylaws to particular rights. The first bylaw forbade removing or injuring fences, yet fences were his clients' absolute property. Similarly, trees were their absolute property but the second prohibited cutting them down. The third forbade enclosures, although by common law and by the provisions of the Act of James I, the lord of the manor, with the consent of seven copyholders, had the right to enclose lammas and waste lands. The subsequent two bylaws against erecting posts or drying or bleaching clothes, interfered with further rights. The eighth prevented the removal of gravel but inasmuch as London

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<sup>16</sup>MBW 982, 18 June 1873, pp. 508-9, MBW 1003, Papers.

<sup>17</sup>MBW 983, 6 August 1873, pp. 34-40.

Fields was "one thick mass of brick earth" and Hackney Downs "one huge gravel bed" this alone proved their rights had been injured. The harmful effect of the remaining bylaws was similarly cited. Cheston reiterated his clients' desire to serve the public by arriving at a satisfactory agreement. But he threatened to exercise some rights that might inconvenience the public as a means of prodding the Board into fair bargaining. If gravel digging were commenced on the Downs, it would be ruined for recreation. Cheston's persistence persuaded the Parks Committee to have the Superintending Architect try to estimate the value of the rights spelled out in the letter.<sup>18</sup> This was certainly wiser than ignoring his claims, but the two sides remained far apart.

Amherst was the Board's most significant adversary but he was not the only one finding flaws in its scheme. The Parks Committee was less conciliatory towards the trustees of Sir John Cass's Charity, owners of thirteen acres in Well Street Common, who alleged in the summer of 1873 that the bylaws prevented them from letting their land during the closed season as they had customarily done. Increased use by the public was rendering it unfit for grazing. The Committee argued that the scheme had not "deprived" anyone, much less the Charity, of any rights.<sup>19</sup>

A year later a similar complaint came from the Governors of St. Thomas's Hospital who noted that their tenant in

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<sup>18</sup>MBW 983, 1 October 1873, pp. 114-33.

<sup>19</sup>MBW 983, 6 August 1873, pp. 70-73.

Hackney Downs and the Mill Fields found that since the Board had erected its bylaws, the public failed to respect his exclusive right to the property during the closed season. This lack of public awareness about lammas lands was not surprising given that the closed season occurred during spring and early summer when open spaces were most appreciated. If there was nothing that the Board could do, the Hospital suggested that it purchase its rights.<sup>20</sup> But the Board declined to accept responsibility for the public's actions during the part of the year its authority was blunted.

Meanwhile talks between Cheston and the Board were failing to reach an agreement on whether the scheme injured Amherst's interests in some quantifiable way. Negotiations carried on in private with no pressing deadlines might have produced a compromise but the participants did not have, nor perhaps want, this luxury. Amherst was becoming impatient. The Board learned that the same emotion was running through the public. The depth of public involvement in the open spaces movement is difficult to measure: the same names often recur as members of committees and deputations or as signatories to petitions, memorials, and letters to newspapers. That these men and women could claim to be the legitimate voice of a popular movement became apparent on occasions when events brought the "people" to the fore.

One such event occurred in April 1874 when Amherst employed men to dig gravel on Hackney Downs, a step which

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<sup>20</sup>MBW 986, 4 August 1875, pp. 142-43.

Cheston had warned might be taken. This was one of the lord's rights which the bylaws checked. Residents were not slow to respond, as a newspaper chronicled: "A storm of indignation is now sweeping over Hackney such as had not been felt for years .... THE DOWNS ARE IN THE HANDS OF THE SPOILER."<sup>21</sup> A meeting was held at a chapel in Clapton and, amidst a good deal of speechifying and scolding of the Metropolitan Board for its laxity over the commons, a seven-member deputation--including a local M.P.--was appointed to take the matter to Spring Gardens.<sup>22</sup> Ironically, this had been one occasion when the Metropolitan Board had reacted with commendable swiftness. It had issued a writ against the trespass within forty-eight hours and Cheston had agreed to stop the digging if the writ was withdrawn.<sup>23</sup>

Cheston felt obligated to "correct" certain misapprehensions about public rights that had emanated from the meeting in the chapel by reminding people that such things did not exist. He admitted that the digging had been started to compel the Metropolitan Board to come to terms with him after the failure of friendlier overtures to produce a result. It was hoped that the Board would respond to this display of resoluteness.<sup>24</sup>

The excitement generated by the gravel digging in spring gave way to a comparatively uneventful summer. At the end of

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<sup>21</sup>Hackney and Kingsland Gazette, 15 April 1874.

<sup>22</sup>Hackney and Kingsland Gazette, 18 April 1874; Times, 20 April 1874.

<sup>23</sup>Hackney and Kingsland Gazette, 22 April 1874.

<sup>24</sup>Hackney and Kingsland Gazette, 25 April 1874.

the summer, however, passions were once more aroused when Amherst's agents fenced in a portion of the Downs. Once again feelings ran as much against the Metropolitan Board for its "sluggish" attitude as against the lord for encroaching. The Metropolitan member for Hackney, John Runtz, explained that negotiations were delayed while the Board waited for the lord to prove his title to the Downs, a necessary prerequisite before spending public money.<sup>25</sup> By the time the issue was discussed at the Hackney District Board, Runtz, perhaps a little testy over the criticisms being levelled at the Metropolitan Board and his role as its apologist, shifted blame for the current impasse onto the Hackney branch of the Commons Preservation Society. Its scheme--to take only limited control of the commons without paying compensation to owners--had, according to Runtz, "ousted" the Metropolitan Board's original scheme to the Enclosure Commissioners. He had never supported the Society's principles, believing that private rights should have been purchased at the outset. The Board was now locked into a scheme which prohibited it from purchasing any rights and allowed it to make compensation only after a right had been injured. The lord had made enclosures but the Board was ill-equipped to deal with him.<sup>26</sup>

With some justification, Runtz was lashing out at the architects of a scheme that was proving impractical. But many

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<sup>25</sup>Hackney and Kingsland Gazette, 7 November 1874.

<sup>26</sup>HBW, Minutes, J/BW/9, 13 November, pp. 314-15; Hackney and Kingsland Gazette, 18 November 1874.

members of the Board had been attracted by the low-cost nature of the scheme and had agreed to it. It was unfair to make the Society a scapegoat. To some extent this was merely a round in a battle to win public opinion. Which method of securing commons for the public was more effective? Buying rights at the outset, or using them to prevent encroachments? The answer was far from clear at this stage in Hackney. Believers in the Society's methods were not about to surrender after Runtz's comments.

Cheston did not believe it was proper to excuse the Board by blaming the Hackney Society. He was eager to present the facts as he saw them. Negotiations with the Board had begun immediately after the passing of the Act for the Hackney commons in 1872. He had made a careful estimate of the value of Amherst's interests and had submitted this to the Board. The correspondence between the two parties filled eighty-two sheets of foolscap. As the negotiations had proved frustrating, two eminent counsel were invited to read this. They concluded that the Board was "trifling" with the question and had advised the lord to exercise his rights. Only then did the Board's solicitor call for a meeting of surveyors to investigate further, but Cheston preferred direct action to the resumption of fruitless meetings and letters. The rights had been demonstrated before the Assistant Commissioner's inquiry. It was not for Cheston to worry about the deficiencies in the Board's scheme with respect to purchasing interests, but the Board should not delude itself into believing that Amherst had no rights.<sup>27</sup>

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<sup>27</sup>Hackney and Kingsland Gazette, 21 November 1874.

The Board's scheme had received a rough reception. The lord of the manor had dismissed it by undertaking offensive activities on the Downs. Owners of lammas lands demanded compensation and residents expected the Board to act more decisively. In frustration, its members tried to blame other parties for the scheme's failings, but for all its flaws, the Board was stuck with it. Now it had to decide how to counter the challenges to its authority.

#### 4.6 Hackney: The Positions Harden

Amherst's strategy of challenging the Board by exercising an alleged right succeeded in one sense. The Board was prodded into action although not, perhaps, of the type Cheston would have preferred. The Board filed a Bill in Chancery to restrain the lord or his agents from continuing with the present or making future enclosures and to restrain them from digging gravel, brick earth, and clay. They were also to desist from opposing the Board in the exercise of its powers. The Bill further asked for damages sustained by the Board as a result of acts committed by the defendants.<sup>1</sup> Essentially the lord of the manor was being forced to prove his rights in court after failing to make the case for them in negotiations with the Board. If he failed again, the Board would have a much freer hand in pursuing its scheme. But, if these rights were validated, the Board would be very much on the defensive. The legislation empowering it to act on the Hackney commons would be revealed as inadequate and new measures would have to be adopted.

The questions raised in the suit were thus fundamental, but Chancery proceedings were not the means to secure quick answers. The case would be a long, drawn-out affair and it is hardly surprising that many Hackney residents perceived this only dimly. Their direct experience was of delays and inactivity by

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<sup>1</sup>Hackney and Kingsland Gazette, 13 January 1875.



the Board and amongst many the suspicion prevailed that had this been a West-End affair, it would have been promptly resolved.<sup>2</sup>

Meanwhile, the Board was determined--indeed, compelled by legislation assumed to be valid--to sustain its activities while the proceedings in Chancery moved along. It avoided areas likely to heighten tension but many steps could not be put off indefinitely without leading to further deterioration of the commons.

The suit between the Metropolitan Board and Amherst was not the only one in the continuing process of defining rights in Hackney. In 1875 the first of two court cases that would decide how the Lammas Land Fund would be distributed was settled. The fund, which stood at £4000, represented compensation money paid by companies for lammas lands taken in the course of executing their projects. The cases were more than internecine squabbles between commoners for the money in the fund. The decisions would provide precedents for the distribution of compensation should the Board someday have to buy out people's interests. The historical background to the case, *Fox v. Amherst*, stretched back to an agreement made during the reign of James I by which certain copyhold tenants of the manor gained rights of common of pasture, which were to be regulated by drivers appointed by the homage. In 1835 the homage accepted a proposal from the drivers for a bylaw that gave copyholders and freeholders rights of pasture according to the annual value of their holdings. Each copyholder or freeholder had to claim the

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<sup>2</sup>Hackney and Kingsland Gazette, 12 December 1874.

right by 12 August, the first day of the open season, or it passed to the occupier or tenant. The occupiers were entitled to turn out animals according to a higher scale.<sup>3</sup>

The suit was brought by owners of smaller holdings who wanted the fund divided according to the 1835 bylaw regulating the stint. The larger owners, notably Amherst and Sir John Cass's Charity, wanted the distribution governed by the respective values of claimants' holdings, a method which would have allowed them the lion's share. The 1875 judgment, however, found for the plaintiffs and directed that each claimant receive one share for every £10 annual value of his or her property, with those over £300 receiving only thirty shares.

The ruling adhered to the the 1835 bylaw only so far. It did not make any provision for the occupiers.<sup>4</sup> Under the guidance of John De Morgan, leader of the more radical Commons Protection League, they launched a suit, *Austin v. Amherst*, to have their interests considered. On 6 July 1876, the court ordered the money frozen until the case could be heard although it expressed an opinion that the matter should have been raised the previous year.<sup>5</sup>

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<sup>3</sup>Copyholders or freeholders could turn out one head of cattle for every £10 annual value with a maximum per person of thirty head. Their tenants could turn out three head of cattle if their rent or annual value was £10 or less; six if £15, and continuing at a rate of three head for every £5 up to £50, and one head for every £5 over £50.

<sup>4</sup>*Fox v. Amherst* (1875) L R 20 Eq 403.

<sup>5</sup>*Times*, 7 July 1876.

Not until December 1877 was the decision in this case handed down. The plaintiffs' claim was based upon their alleged right to pasture over the lands taken by the companies according to the bylaws of the manor. The defendants were the trustees of the fund and the copyholders and freeholders. One peculiarity of the case was that the plaintiffs were suing in respect of the same lands held by their copyhold and freehold landlords while alleging that their right was distinct. But the court could not admit that this right could be sustained by custom, by grant, or by prescription. A claim for a profit à prendre could not be claimed by custom (except in the special case of copyholders). No grant had been produced. Nor were occupiers able to claim by prescription. They were too vague a body to receive a grant as a corporation, nor could they claim in respect of an estate because an occupier had no estate besides that of his landlord who belonged to the class being sued. The action was dismissed with costs.<sup>6</sup>

The plaintiffs' lawyer announced his intention of appealing to the House of Lords if necessary on behalf of the "poor men" who had supported the action. But a request to the Hackney Vestry for £300 to launch his appeal against the "glaring injustice" of the judgment, received a frosty reception.<sup>7</sup>

The Commons Protection League had entered the Hackney struggle before they lost this ruling. In fact, they had already

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<sup>6</sup>Austin v. Amherst (1877) L R 7 Ch D 689.

<sup>7</sup>Hackney and Kingsland Gazette, 31 December 1877; 7 January 1878.

gained a certain amount of notoriety. Until 1875 most significant events with respect to these commons had taken place in local government council offices, middle-class drawing rooms, and in the courts. This was about to change. In July 1875, while the Board's case in Chancery was still pending, the alarm was again raised that sand was being removed from a part of Hackney Downs near Downs Park Road.<sup>8</sup> Curiously, the digging produced little response from official bodies. The Metropolitan Board assumed that it could take no further legal action. Nor were any public meetings called. Perhaps the closed season provided sanction for the action. It was not until November that a demonstration was organized on the Downs itself by John De Morgan and his more "proletarian" League. Over 500 people (De Morgan claimed 3000) attended a Sunday-afternoon protest. A resolution was passed calling upon the lord of the manor to remove the fencing and to stop the digging and urging the Metropolitan Board to put into effect the terms of the Act giving it authority over the commons. De Morgan announced that another meeting would be held in a fortnight to which he would invite the Liberal M.P.s for Hackney, John Holms and Henry Fawcett.<sup>9</sup> Fawcett was one of the strongest promoters of preservationism but it remained to be seen if he would wish to identify himself with De Morgan's crusade.

De Morgan's demonstration, although dismissed by a member of the Hackney Board as "idle and mischevious agitation",

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<sup>8</sup>Hackney and Kingsland Gazette, 24 July 1875.

<sup>9</sup>Hackney and Kingsland Gazette, 8 November 1875.

seemed to shake many others out of their heretofore lethargic attitude towards the issue. They were worried lest De Morgan's demagogic style led to a perception by the public that he was the only true advocate of the cause. A member of the Hackney Vestry, dismayed at the apparent abrogation of responsibility by the Metropolitan Board, gave notice of a motion to have a Vestry committee inquire into particulars relating to all the open spaces over which the parishioners had any interest. The committee would assess whether these interests or rights had been encroached upon and what could be done to protect them in the future. But the sponsor of the motion misjudged his fellow vestrymen: the motion was defeated with only four supporting it. The majority decided there was little to be done while the question was sub judice, while others were eager to distance themselves from any measure which might be interpreted as lending support to De Morgan.<sup>10</sup> The fact that De Morgan attracted this type of antipathy from local politicians hindered wider acceptance of the cause of open spaces at this level of government.

Despite the Vestry's decision and lack of enthusiasm, the Hackney Board of Works (on which sat many vestrymen) tried to keep the issue alive. John Runtz was called upon to explain the invisibility of the Metropolitan Board. He lamely asserted that its law officers were examining the title deeds of the lord of the manor before taking the next step. This was much the same defence he had used a year previously in response to the fencing

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<sup>10</sup>Hackney and Kingsland Gazette, 10 November, 6 December 1875.

on the Downs. The Hackney Board, hopeful of perhaps placing its own barrier around Amherst's activities, wondered if it could require the gravel diggers to obtain permission before crossing the footpaths with their heavy loads. Paths were under its jurisdiction. The Board's Clerk, however, concluded that the Highways Act had not been infringed upon by the removal of the gravel and the matter was dropped.<sup>11</sup> Regardless of intentions, district boards were seriously handicapped by statutory limitations when dealing with open spaces.

A further sign of disaffection with the Metropolitan Board was an appeal made by a large Hackney deputation to the City of London in November 1875. It was hoped that the Corporation might duplicate the success of its Epping Forest case in Hackney. That judgment, a resounding victory for the commoners, had been delivered in November the previous year, and though a final settlement was not yet in sight, encroaching lords had been stopped. That the parallels between Epping Forest and the Hackney commons were slender did not dash the hopes of the deputation. But the Court of Common Council turned its back on the request by a vote of 90 to 33.<sup>12</sup> This may have reflected an awareness of the legal barriers to the City's intervention combined with a distrust of an issue linked with De Morgan.

In Hackney the excitement continued to build, centred primarily outside of town halls and committee rooms. Cheston

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<sup>11</sup>HBW, Minutes, J/BW/9, 12 November; Hackney and Kingsland Gazette, 15, 29 November 1875.

<sup>12</sup>Times, 19 November 1875.

and Sons printed a "Dreadful Threat" in the Hackney Gazette warning that they intended to "collect evidence" during the speeches scheduled to be made at the next demonstration by De Morgan on the Downs. They would "move in the usual way to commit any person who may be guilty of contempt of court". De Morgan was resolute: if anyone were in contempt of court it was Amherst for digging and destroying the surface of the Downs.<sup>13</sup>

The more genteel preservationists, concerned that De Morgan would bring disrepute upon the movement as a whole while stealing their thunder, met to discuss their response to Amherst's provocation. Robert Hunter, solicitor to the Commons Preservation Society, and colleagues from the Society and other open-spaces organizations decided that an action in Chancery should be initiated by them against Amherst seeking a different declaration than the action being conducted by the Metropolitan Board. That suit tested Amherst's rights and the validity of the legislation under which the Board operated. It would not settle anything about commoners' rights yet, if it faltered, those rights would present the best means to protect the commons.<sup>14</sup>

De Morgan, meanwhile, drew 3000 people to his 21 November meeting on the Downs. The crowd was well behaved but a resolution pledging to use every means necessary to preserve the Downs clearly implied a willingness to pull down fences. De Morgan criticized John Holms, the M.P. for Hackney, for declining to attend and urged supporters to question him at an

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<sup>13</sup>Hackney and Kingsland Gazette, 15, 19 November 1875.

<sup>14</sup>Hackney and Kingsland Gazette, 19 November 1875.

upcoming function in Shoreditch.<sup>15</sup> A week later De Morgan conducted another open-air gathering before a "large and enthusiastic" crowd. Condemnation of the courts for permitting the digging while the Board's case was pending was coupled with another threat to pull the railings down, although De Morgan was careful not to appear to be sanctioning violence.<sup>16</sup>

Holms, when confronted by De Morgan at a political meeting in the Shoreditch Town Hall, was unapologetic about his absence from the meeting and defended his long espousal of the necessity for open spaces. He expressed himself satisfied with the legal measures being taken and only wished that De Morgan was as genuinely interested in the question as he was.<sup>17</sup> This mutual taunting only underscored the distance between the two types of preservationists. Despite De Morgan's apparent ability to antagonize most "respectable" opinion, he received support from an unexpected quarter. The Liberal Gazette admired the forthrightness of his agitation which, if it "cut the Gordian knot that evidently ties 230 tongues, hands, or legs at Spring Gardens" would earn the people's gratitude.<sup>18</sup> The Metropolitan Board was rapidly overtaking Amherst as the prime villain in the affair. Amherst's activities as lord of the manor were, in a sense, those that might be expected from an adversary. The Board, on the other hand, was supposed to be protecting the commons from the

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<sup>15</sup>Hackney and Kingsland Gazette, 22 November 1875.

<sup>16</sup>Hackney and Kingsland Gazette, 29 November 1875.

<sup>17</sup>Hackney and Kingsland Gazette, 1 December 1875.

<sup>18</sup>Hackney and Kingsland Gazette, 8 December 1875.



type of abuse meted out by Amherst. To all appearances, it was failing miserably. The Gazette's endorsement of De Morgan's tactics was a reflection of local frustration.

Thus far the meetings on the Downs were merely preliminary skirmishes to the real battle which took place on the afternoon of Saturday 11 December 1875. The commander, De Morgan, arrived late, but some 3000 followers, urged on by "four or five working men" broke the iron railings, pulled up the posts (which had been covered with tar as a deterrent) and set them ablaze. Thirty to forty policemen witnessed the onslaught but, on orders from their superintendent, did not interfere. The following day many of the participants returned for a celebratory gathering.<sup>19</sup> Speeches had now given way to action. It remained to be seen what effect the incident would have.

If nothing else, it brought the issue to a wider audience. Punch responded with a poetic account, "A Fytte of Hackney Downs", part of which read:

Then went the Commoners to their work,  
 With many an hundred mo,  
 They seized the fences on Hackney Downs,  
 And laid the enclosures low.

They tore up and twisted the iron railles  
 Into whatso shape they wolde:  
 And eke uprooted the postes of oak  
 That the iron railles did holde.

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<sup>19</sup>Hackney and Kingsland Gazette, 13 December 1875; Times, 13 December 1875; MBW 986, 15 December 1875, pp. 338-39. In a pamphlet published after the event, De Morgan wrote that there were 50,000 people when the commoners asserted their right. Punch, 70 (19 February 1876), p. 58.

The posts had been tarred but just that morn,  
 From seizing their hands to stay,  
 All the better therefore dyd the bonfire burn,  
 Which they made of the wood straighaway.<sup>20</sup>

Punch was kind to the commoners, casting them in an heroic role as they overturned the enclosures.

In Hackney itself, opinions varied, but the one impossible position was complacency. The Gazette, for one, continued to find merit in De Morgan's tactics and penned a sympathetic leader agreeing that the people's patience had been exhausted over the years and that they were right to reply to the lord's violent use of pick and shovel with fire and the axe. It was believed that Amherst took £90,000 a year out of Hackney; how much found its way back? The paper hoped that the results of Saturday's action would encourage the more genteel Hackney Commons Defence Committee to press ahead with legal proceedings on behalf of the parishioners. Recourse to the law was threatened from the other side as well: Cheston and Sons expressed regret that efforts by the lord of the manor to assert his rights should have led to a public disturbance but those responsible for the "riot" would be charged.<sup>21</sup> Shortly thereafter, De Morgan was.

The Commons Defence Committee, which included representatives of the Commons Preservation Society, wished to dissociate its case from the "riotous proceedings" on the Downs, and its members announced an intention to act independently of De Morgan whenever possible. One of their first tasks was to

<sup>20</sup>Punch, 69 (25 December 1875), p. 271.

<sup>21</sup>Hackney and Kingsland Gazette, 15, 20 December 1875.

revive the Metropolitan Board's interest in the area. Faced with competition from the populist De Morgan, the Commons Preservation Society was more inclined to work with the Board to produce results more quickly. It was agreed that some members of the Society would offer assistance to the Board in its pursuit of the Hackney issue. Perhaps the most appealing feature of the Board for many preservationists was its wealth. The Hackney group wanted it to use part of that to indemnify some commoners in whose name they would conduct their case against Amherst for an interim injunction against the digging.<sup>22</sup> If the commoners won, the Board would benefit as the destruction of the common would cease. They believed the commoners had a stronger case than any the Board could mount on its own behalf. For the moment, the Board deferred making a decision.

De Morgan was unperturbed that Amherst had laid charges against him and seemed to welcome the coming orgy of court cases as he addressed another crowd of 3000 or so on the Saturday following the fence burning. Amherst's case, he believed, presented an opportunity to vindicate the people's action of the previous week, and he poured scorn on the attempt to "crush him with riches" by resorting to the expensive machinery of Chancery. He sneered at the Commons Defence Committee for remaining aloof until his activity had set things in motion. Referring to a comment in the Sunday Times that the military should have been used against him, De Morgan doubted whether Disraeli or Gladstone would have sanctioned such an

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<sup>22</sup>Hackney and Kingsland Gazette, 20, 27 December 1875; Times, 25 December 1875.

extreme measure. In his peroration he announced the establishment of defence committees of his own in the district and was then paraded off the Downs on the shoulders of his supporters.<sup>23</sup>

That there was little love lost for De Morgan by the respectable element in Hackney is evidenced by debates in the local government assemblies. A request by the Commons Preservation Society's solicitors to examine the Minute Books of the Hackney Vestry was accepted only when it was established that they were not representing De Morgan. Those who did not closely follow the open-spaces movement obviously failed to distinguish its various factions, one of the ways in which the negative feelings engendered by De Morgan hurt the overall cause. While one speaker acknowledged that De Morgan's motives might be worthy, he could find little to praise in his tactics.<sup>24</sup>

The local Board's animosity and suspicion were more nakedly displayed by its refusal to permit De Morgan to use the Town Hall for a public meeting although his request to do so was accompanied by a requisition to the Churchwardens signed by 250 inhabitants (plus a letter in which De Morgan claimed he could obtain thousands more). Runtz's motion to refuse the hall passed overwhelmingly with two dissentients. One believed that the people deserved a better spokesman than De Morgan, but that it

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<sup>23</sup>Times, 20 December 1875.

<sup>24</sup>Hackney and Kingsland Gazette, 10 January 1876.

was wrong to bar them from the hall. His colleagues were unimpressed.<sup>25</sup>

The decision provided De Morgan with more ammunition against the local authorities at a time when his influence was growing. He condemned the District Board at a torchlight procession held on the Downs in mid-January 1876. He also drew his followers' attention to a new enclosure at Lea Bridge on Hackney Marshes and invited his forces to assemble there in a fortnight to remove it. The rally at which De Morgan spoke was the terminus for three separate marches originating from different spots in Hackney. As many as 7000 to 8000 gathered on the Downs, entertained by bands which had led the processions.<sup>26</sup> For all the serious intentions behind these demonstrations, they were not without entertainment value.

De Morgan, whose luck in the courts was almost uniformly bad, achieved a partial victory in January 1876 which again upstaged his middle-class rivals. Under his guidance a case was brought against Amherst by seven commoners (*Austen v. Amherst*) claiming a right to pasture, and seeking to restrain him from erecting fences or digging gravel. Before the Master of the Rolls the plaintiffs secured an undertaking from Cheston that the gravel digging would cease until the case was heard. This was short of the official injunction asked for and was coupled with an agreement by De Morgan in response to a counter suit, *Amherst v.*

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<sup>25</sup>Hackney and Kingsland Gazette, 17 January, HBW, Minutes, J/BW/10, 14 January 1876.

<sup>26</sup>MBW 1006, Papers, MBW 986, 26 January 1876, p. 338; Times, 17 January 1876.

De Morgan, not to pursue his intention to pull down more fences. Although many supporters turned up at a scheduled meeting one Saturday to do just that, De Morgan had to ask them to refrain from "forcibly asserting the people's rights". He also made a plea for funds to fight his case and condemned the local Board once again. By the first week in February the gravel digging had ceased.<sup>27</sup>

In a further effort to attract money De Morgan circulated a pamphlet in which he appealed for help "for the sake of preserving the natural powers of your children, by providing for them a playground". In support, Punch elevated the struggle to a high moral plane:

What fight short of battle against a foreign invader concerns a nation more than warfare against a domestic enemy, who, for his private aggrandisement, is invading public land? Success to the resolute combatants and their determined Leader in their fight for the defence and rescue of Hackney Downs.<sup>28</sup>

With De Morgan receiving press coverage like this, the Commons Preservation Society must have wondered how it could regain some of its former influence.

Meanwhile, in early February, the Master of the Rolls ordered that the Metropolitan Board's case against Amherst and Austen's (sponsored by De Morgan) should be consolidated, thus compelling a certain amount of cooperation between the two camps. The lord's action against De Morgan would be heard after

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<sup>27</sup>Times, 28 January; Hackney and Kingsland Gazette, 28, 31 January 1876; MBW 986, 9 February 1876, p. 410.

<sup>28</sup>Punch, 70 (19 February 1876), p. 58.

the judgment on the first two. De Morgan was still to desist from inciting crowds.<sup>29</sup>

In a rather sophisticated leading article, the Gazette tried to shed some light on the whole question of lammas rights which was increasingly before its readers as a consequence of the legal proceedings. The account was somewhat different to the one supplied by Amherst before the Enclosure Commissioners. The paper recalled that in 1809 the parishioners had established a committee to report on the lammas tenure many of them held. This effort was unable to advance much beyond a folklore tradition that King Alfred had granted all the marshes he had drained that were capable of being grazed as common to adjoining parishes. Somehow the present system by which the lands were subject to a quasi-right of common for eight months of the year had arisen, often as a result of an uneasy truce between the commoners and the owners of freehold. This tradition affirmed the greater antiquity of common rights over individual property rights, a theme preservationists liked to stress. The Gazette expressed confidence that the people would vanquish the spoliators in due course but it would take a "pull, a long pull and a pull altogether" to secure the privileges alleged to have originated 1100 years past.<sup>30</sup>

Pulling together would not be possible while the issue continued to divide. In fact, as time went on, the tone of the

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<sup>29</sup>Times, 4 February; Hackney and Kingsland Gazette, 7 February 1876.

<sup>30</sup>Hackney and Kingsland Gazette, 9 February 1876.

dispute deteriorated. An attempt to rescind the District Board's resolution against the use of the Town Hall by De Morgan failed by twenty-three votes to six. In the acrimonious debate on the motion, Runtz accused De Morgan of employing "lynch law" tactics and insinuated that those supporting him were pandering to public applause. In return, proponents of the motion attacked the Metropolitan Board as a waste of ratepayers' money.<sup>31</sup>

Denied the Town Hall, De Morgan carried on using the Downs as his forum. Another torchlight meeting assembled in February and responded "liberally" to an appeal to support the Chancery action. De Morgan brought some good news to his followers: as a consequence of their agitation, the Queen's speech to Parliament had included the open-spaces question. This was a very egocentric interpretation of Cross's Commons Bill which owed its appearance to many other factors. The mandatory resolution condemning the Hackney Board for its antics over the letting of the Town Hall concluded the evening.<sup>32</sup> Shortly thereafter the itinerant activist netted a one-month gaol sentence for exhorting the inhabitants of Plumstead to protect their common against a graveldigger there.<sup>33</sup> This setback did not herald his permanent exile from Hackney.

The summer of 1876 passed comparatively quietly. Whatever might be said about De Morgan's methods, they had

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<sup>31</sup>Hackney and Kingsland Gazette, 28 February; HBW, Minutes, J/BW/10, 25 February 1876, p. 25.

<sup>32</sup>Hackney and Kingsland Gazette, 14 February 1876.

<sup>33</sup>Hackney and Kingsland Gazette, 23 October 1876.



succeeded in stopping the digging for the time being. But halting the destruction of the surface and improving it were two different things. In the new year Cheston and Sons brought further pressure on the Board not to plant any more trees on Hackney Downs or the other lammas lands. Over one hundred trees had already been planted and the solicitor was of the opinion that such activity fell within the bounds of the 1872 Act that specified that the Board should beautify the commons. Cheston and Sons sought an Order in Chancery to restrain the Board. At the hearing before the Master of the Rolls, however, a procedural technicality resulted in the matter being ordered to stand over for a fortnight during which the Board was not to plant any trees. The ban stretched for considerably longer.<sup>34</sup>

To this point, the lord of the manor was facing two suits, one from the Metropolitan Board of Works, the other, in the name of Austen, from De Morgan's group. The Commons Preservation Society had not succeeded in having the Metropolitan Board provide the backing for its case in the name of the commoners. In spring 1877 the Society decided to go ahead without this support and thus the final litigants entered their claim against Amherst. The suit of Nathaniel Baylis and George Harding Field sought, on behalf of themselves and all other owners and occupiers of lands and tenements in the parish (except the lord and other owners of lammas lands), a declaration of their common rights and an injunction against the lord. Although the emphasis in this case

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<sup>34</sup>MBW 987, 7 February, pp. 503-5; 21 February, pp. 528-29; 7 March 1877, pp. 553-54; Hackney and Kingsland Gazette, 5 March 1877.

was somewhat different from that of the other two, it was ordered to be consolidated with them.<sup>35</sup>

The cases before Chancery caused a ripple effect on the hearings of summonses issued by the Metropolitan Board for offences under the bylaws. As long as the whole question of rights remained unsettled, it was difficult to deny any reasonable claim. Thus the solicitor connected with De Morgan's crusade defended a group of inhabitants charged with grazing cattle on Stoke Newington Common by calling a number of elderly witnesses who testified to the longevity of the practice. The police court magistrate ruled that the claim was sufficient to oust his jurisdiction.<sup>36</sup>

Despite these setbacks, and in the face of severe criticism, the Board had inched forward in a number of areas. But, overall, its accomplishments were not of sufficient merit to silence the critics, and patience with the Board was wearing thin. The Hackney Vestry unanimously passed a motion in July 1877 urging it to ascertain the value of all rights reserved by the 1872 Act as a prelude to purchasing them. It was pointed out that since 1872 the Board had spent only £3024 on Hackney's commons. Runtz was called upon to explain the Board's record. While admitting that appearances might suggest there had been negligence, he insisted that much work had indeed been done. The Board still adhered to the principle it had begun with respecting

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<sup>35</sup>MBW 987, 30 May 1877, pp. 719-22.

<sup>36</sup>Hackney and Kingsland Gazette, 4 July; MBW 988, 11 July 1877, pp. 112-13.

injured rights, and now faced the difficulty of discovering what Amherst's rights were. For various reasons little progress had been made in the suit in Chancery but he reminded supporters of the Commons Preservation Society that it too had recently discovered how complex these cases could be. Although he sympathized with their frustrations, Runtz reminded his colleagues that the central Board had no power to purchase and was therefore forced to let the lord prove that his rights had been injured. He failed to consider the possibility of going to Parliament to gain the authority to purchase these rights.

Subsequent debate highlighted the different attitudes held on this issue. From one side came a warning against excessive liberality when calculating compensation. A spokesman for this view warned that lords of the manor had one propelling motive, namely to "fleece the public" by parting with their rights at inflated sums. The other side was more sympathetic to Amherst and hoped that he would receive a fair amount for his property, a member characterizing his behaviour as normal under the circumstances.<sup>37</sup>

The Vestry's resolution earned the support of the Gazette which hoped the "sleepy" Metropolitan Board would be moved to act and would cease attributing the situation to the tardiness of the courts. It was inexcusable that it had taken the Board this long to clarify its position with respect to the power of purchase

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<sup>37</sup>Hackney and Kingsland Gazette, 9 July 1877.

and compensation. "It appears the ABC of the thing has even now to be learned and thus more valuable time wasted."<sup>38</sup>

The legal side of the issue drew attention away from the Metropolitan Board, if only briefly. In July 1877, the Master of the Rolls allowed a demurrer filed by Amherst to the statement of claim by the plaintiffs in *Baylis v. Amherst*, the suit sponsored by the Commons Preservation Society. The plaintiffs, on behalf of owners and occupiers of certain lands, claimed an ancient right of pasture over the lammas lands as appurtenant to their lands and tenements for all their commonable cattle according to the bylaws of the manor. The number of cattle each owner or occupier was entitled to turn out depended on the annual value of his tenement and was last fixed in 1835. In addition to validating this right the plaintiffs sought to restrain Amherst from fencing or digging which interfered with their rights and destroyed the herbage. Amherst, as the lord of the manor, claimed the right to enclose with the consent of seven or more copyholders of the lammas lands. The demurrer was filed on the grounds that the prescriptive right claimed by the plaintiffs was uncertain and unreasonable. The Master of the Rolls, Sir George Jessel, agreed saying he knew of no such right. In the first place the plaintiffs had failed to show that there was any connection between the right of pasture and the lands through which they made their claim. Jessel also had difficulty reconciling the fixed open season with the notion of a presumed grant. No grant would be made giving the holders of the right of pasture such a degree of

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<sup>38</sup>Hackney and Kingsland Gazette, 9 July 1877.

control. If the right embraced the period between harvest and sowing, it would be more reasonable. More fatal to the case was the use of the annual value to determine the number of cattle according to a scale set by the manorial court. This could not logically be pushed back to the time of ancient memory, that is, to the reign of Richard I. The plaintiffs had used the judgment in Warrick v. Queen's College to suggest that the Court was obliged to find a legal origin for the rights claimed. But Jessel could find insufficient parallels. He allowed the demurrer with costs against the plaintiffs but gave them leave to amend their claim.<sup>39</sup>

The Commons Preservation Society still hoped to persuade the Metropolitan Board that it should give financial support to the Society's case in Chancery. In May 1878, it sent a high-powered deputation to the Parks Committee to explain the wisdom of this step. Baylis's action was launched in an attempt to prove that the parishioners of Hackney had rights that the manorial customs could not abrogate. Thus, although Amherst might assert a right to enclose with the approval of seven copyholders, this would interfere with the rights to the lammas lands held by the inhabitants of the parish. The deputation maintained that opinion of counsel backed the soundness of the Baylis case but, without the Metropolitan Board's agreeing to indemnify the commoners' action, it would have to be abandoned. The Society believed that both the Board's and Austen's actions would fail to resolve the central dilemma which was whether the lord could enclose independently of the 1872 Act.

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<sup>39</sup>Baylis v. Amherst (1877) L R 6 Ch D 500.

The Parks Committee postponed consideration of the question but the deputation's chances for success were hurt by the death of Smith; the Board's solicitor, who had been sympathetic to the Society's viewpoint.<sup>40</sup> His replacement, Reginald Ward, doubted whether the legal authority existed to indemnify Baylis. Clause four of the 1872 scheme read:

The Board shall maintain the Commons respectively as delineated in the plan deposited with the Enclosure Commissioners free of all encroachment, and shall permit no trespass on or partial or other enclosures of any part thereof...

This fell short of power to support a third party in litigation. Nor did the provision in the Metropolitan Commons Act of 1878 that allowed the Board to purchase and hold any saleable rights of commons in order to prevent their extinction seem to permit the acquisition of the property of a commoner in order to challenge the lord of the manor in court.<sup>41</sup> Even without these legal impediments, the Board was not eager to risk backing the Society's case, the outcome of which was far from certain. It had enough to worry about with its own suit against Amherst.

A subsidiary court case had added to the Metropolitan Board's sense of helplessness. In July 1877 the Board had decided not to appeal against the decision of a police-court magistrate that a case dealing with grazing on Stoke Newington Common was outside his jurisdiction because the defendants claimed a right to

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<sup>40</sup>Commons Preservation Society, Report of Proceedings, 1876-1880, p. 32.

<sup>41</sup>41 & 42 Vict. c. 71 s. 2; MBW 989, 30 October 1878, pp. 275-88.

turn their beasts upon it. But when reports that nine men were turning horses on the common were received, the solicitor issued summonses with the intention of forcing the defendants to prove their rights.<sup>42</sup> After several adjournments the case was finally heard at the police court in October with Edmund Kimber, the solicitor for the Commons Protection League, again acting for the defence. As in the preceding year, he based the defence upon long usage. The Board argued that the decision in the Lammas Land Fund action, which Kimber had lost on behalf of the occupiers, was fatal to any defence based on a mere occupier gaining a prescriptive right as such a right would go against the owner or owners of the land. It would also go against the interests of all freeholders and copyholders. This was not persuasive enough for the magistrate who ruled that his jurisdiction had been ousted although he refused to award costs against the Board as Kimber had wished.<sup>43</sup> Had it chose, the Board could have brought an act of trespass against the defendants but after the solicitor warned of the risks and the likely expense, and having suffered through a similar case at Tooting Bec, the Parks Committee dropped the matter.

Towards the end of 1878, Ward presented the Parks Committee with a summary of the state of litigation. The difference between the declarations sought by Austen and Baylis was that the former was on behalf of the occupiers of the parish, those with no copyhold or freehold rights, while Baylis

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<sup>42</sup>MBW 989, 29 May 1878, pp. 11-13.

<sup>43</sup>MBW 989, 16 October 1878, pp. 251-53.

represented the copyholders and freeholders who claimed that the enclosures injured their lammas rights. Austen's claim had been undermined by the ruling in the Lammas Land Fund case. In many respects, the Board's case was the most precarious, based as it was solely on the scheme confirmed by Parliament in 1872. Nonetheless, Ward advised, and the Parks Committee accepted, that the Board proceed with it.<sup>44</sup>

Criticized from every flank during its six years on the Hackney commons, the Board could only hope that the judicial decision would resolve the confusion concerning its precise authority and open the way to a more productive period. There were many residents of Hackney with parallel wishes.

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<sup>44</sup>MBW 989, 30 October 1878, pp. 275-88.



#### 4.7 The Board Consolidates its Power

The decision by the Board to proceed was made with an awareness of the thinness of the case. Its fears were realized in April 1879 when the Master of the Rolls, Sir George Jessel, ruled in favour of Amherst on most points.

The judgment addressed some preliminary points before ruling on the main suit. The first was whether the information filed by the plaintiffs could be maintained. In its initial form, the information held that Amherst's actions had interfered with a public right of recreation and exercise over the Hackney Commons, vested not only in the inhabitants of the parish but in the public at large. This had been objected to by the defendant and the plaintiffs had been given leave to amend. The information finally lodged admitted that the public had no rights independently of the scheme certified by Parliament in 1872, but held that the defendant's actions and threatened actions were inconsistent with that scheme. The Master of the Rolls, however, could not find anywhere in the scheme words that would give the public any rights whatsoever over the Hackney Commons.

In searching for these alleged public rights, Jessel considered the relationship between the 1866 Metropolitan Commons Act and the 1872 Act confirming the scheme for Hackney. The former provided the procedure for framing a scheme but had no force over a scheme once it was certified. The operation of a scheme, therefore, was entirely governed by the Act of Parliament putting it into effect and not by the 1866 Act.

The 1872 confirming Act gave the Metropolitan Board certain powers of management with respect to the Hackney Commons, but the Master of the Rolls, through all its sections, could find "no rights conferred either on the public at large or on the inhabitants of Hackney, or on the inhabitants of the metropolis". Since it was admitted that the public had no rights outside of the scheme, it followed "that the public have no rights at all as far as this matter is concerned, and therefore the Attorney-General has no right to inform the Court on behalf of the public, and the information must be dismissed".<sup>1</sup> In other words, the Board, by assuming that the 1872 Act gave the public certain rights over the commons, was led to the incorrect conclusion that the Act could be used against Amherst when his actions seemed to interfere with those rights.

On the second point, whether the Metropolitan Board could sue with respect to the Hackney Commons, Jessel ruled in the affirmative. He interpreted the 1872 Act as conferring a modified right of possession on the Board in that it required the Board to manage the commons. As owner of sorts, the Board must be able to seek recourse against those interfering with its ability to put the scheme into effect. He ruled that the Board had a statutory power and duty to carry out improvements regardless of objections by either the lord of the manor or the commoners. In short, the Board, according to the Master of the Rolls, had a

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<sup>1</sup>The suit was filed in the name of the Attorney-General, a way of challenging an encroachment in which the Attorney-General files information showing how the defendant's act is injurious to rights.

"possession for certain purposes, but not a general possession for all purposes".<sup>2</sup> Such possession carried with it the right to sue people interfering with the powers imposed on the Board by the scheme.

The third preliminary point dealt with the thorny issue of compensation. Could the rights claimed by the lord of the manor be taken away for nothing? Although, as Jessel noted, Parliament did not as a rule legislate to deprive people of rights, the question remained whether the 1872 Act adequately provided for compensation. The plaintiffs maintained that parties were entitled to compensation when a specific right was injured or taken away. The defendant held that the legislation lacked the means to ensure this.

The Master of the Rolls, in assessing this issue, began by examining the relevant sections of the 1866 Metropolitan Commons Act. The fifteenth section referred to rights, estates, and interests of a "profitable or beneficial nature" which were not to be taken except by consent or with compensation being made or provided. But this compensation must be provided for in the scheme. The 1872 scheme, however, contained no clauses on compensation. Furthermore, it escaped the intention of section fourteen by an "illusory compliance" to its requirement to state in what manner rights would be affected. It stated that they would be affected "only so far as is absolutely necessary for the purposes contemplated by this scheme". Thus, the 1872 scheme, as confirmed by Parliament, not only failed to specify what

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<sup>2</sup>That is, for carrying out parts of the scheme that did not interfere with profitable rights held by others.

rights and interests would be injuriously affected or taken away, it also made no provision for compensation. It had not been framed in compliance with the 1866 Act.

Jessel then looked at the saving clause in the 1872 Act. This saved all rights and interests of a profitable and beneficial nature that existed before the passing of the Act. He emphasized the distinction between these and abstract rights (such as preventing people walking on the commons) from which no profit or benefit accrued. Thus neither the lord of the manor nor the commoners could sustain legal action against the Board for keeping order on the commons by excluding certain types of undesirable characters. Nor could the lord object to measures which improved the turf "merely because he had the right of ownership". Jessel dissented from the opinion that the saving clause rendered the whole scheme nugatory. The Board could "enclose the common"; it could "preserve it ... level it ... and neither the commoners nor the lord [could] interfere unless and until [it] interfere[d] with some beneficial ownership".

The snare was that a beneficial right could be of a "very limited nature", and Jessel judged the saving clause to be absolute and not qualified by any of the other clauses in the scheme. Any limitations on it would, in effect, legitimize a confiscation of some right. The question that the final judgment had to decide was whether the lord of the manor had the rights he claimed to have. The Board was to protect against illegal encroachments and enclosures. If the lord had the right to

enclose or to dig gravel before the passing of the Act then, by the saving clause, he continued to possess it afterwards.

In his final judgment, the Master of the Rolls dismissed the plaintiff's bill because he could find no grounds for supporting the contention that the lord's actions were interfering with the Board's scheme. The case had not been framed to decide if these actions interfered with the rights of the commoners. (This was the intention behind the action by Baylis and why its supporters wanted the Board to back it.) The lord had only enclosed part of his own lammas lands on which he could do whatever he wished subject to the rights of the commoners during eight months of the year. The lord had dug gravel on his lammas lands, but Jessel asked "who had ever heard that he could not lower the surface a little by taking away the gravel" providing he did not prevent the herbage from growing? The Board had also opposed the lord of the manor for enclosing part of the waste. But Jessel ruled that the 160 or so cases cited from the manorial rolls of this being done were sufficient to show a prima facie right to enclose. In summary, he stated: "It appears to me that there is nothing which I ought to restrain on this Bill, and that the proper order is to dismiss the Bill, as well as the information." It was dismissed with costs against the Board.<sup>3</sup>

The decision was a strong indictment of the 1872 Act which was shown to be sloppily drafted and unworkable. But it produced little immediate reaction in Hackney. The Board itself

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<sup>3</sup>PRO MAF 25/33, B2485/1913. The case was not reported. The above is from a printed transcript taken from shorthand notes.

put forth the best interpretation it could. Runtz underlined that the judgment supported the Board's right to carry out the scheme:

Our Solicitor thinks the declaration of the Court that the Board has a clear right to execute the scheme is a decision decidedly in favour of the Board, although as the right is one in the Board, and not in the public generally, technically the Attorney General was not properly made an informant: hence the suit was dismissed.

Runtz's stance provoked general incredulity among members of the District Board who could not reconcile the idea of winning with the penalty of having to pay the costs. Notice was given of a motion to memorialize the Metropolitan Board to purchase Amherst's interests, a step which now looked inevitable.<sup>4</sup>

The Board's suit had not addressed the question of whether the commoners or parishioners had rights that prevented the lord from enclosing. That had been the purpose of the Society's action but it had been abandoned when it became clear that the Board would not indemnify the plaintiffs.<sup>5</sup> The validity of the lord's rights would determine the amount of compensation he received should the Board decide to purchase his interests. Clearly, the judgment left the Board no option and in July 1879 it voted to begin negotiating with Amherst.<sup>6</sup>

By June 1880 the Board announced that an agreement had been reached by which the Board would pay Amherst £33,000 for all his interests in the lands affected by the 1872 scheme. This

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<sup>4</sup>Hackney and Kingsland Gazette, 11 April 1879.

<sup>5</sup>Hackney and Kingsland Gazette, 28 April 1879; Commons Preservation Society, Report of Proceedings, 1876-1880, p. 32.

<sup>6</sup>Hackney and Kingsland Gazette, 7 July 1879.

was described as an advantageous price for the Board to pay and was certainly less than the £45,000 Cheston had sought in 1873. It was not, however, until November that the Board indicated its intention to bring in a bill to confirm the agreement.<sup>7</sup> A thoroughly cynical Gazette observed that the question was

dragging its slow length by infinitesimal movements that give the baby now 'puking in his nurse's arms' hopes that Hackney will rejoice in its places of recreation by the time he has become the 'lean and slippered pantaloon' when--perhaps!--he may be permitted to enjoy them as his own.<sup>8</sup>

The Commons Preservation Society somewhat sourly suggested that the "excessive sum ... might have been most materially reduced had the Board carried to an issue the litigation recommended by the Society".<sup>9</sup> It was not pleased that economic considerations had sidelined what it regarded as a promising case. The payment to Amherst threatened to whet the appetites of others for compensation.

It was not until March 1882 that the Parks Committee were informed that the purchase had been completed and that Amherst's connection with the commons had been severed.<sup>10</sup> The settlement affected only his considerable interests and not those

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<sup>7</sup>PRO MAF 25/33, B2486/1913, April 1880; Hackney and Kingsland Gazette, 21 June, 17 November 1880.

<sup>8</sup>Hackney and Kingsland Gazette, 31 December 1880.

<sup>9</sup>Commons Preservation Society, Report of Proceedings, 1880-81, p. 6.

<sup>10</sup>MBW 993, 15 March 1882, p. 15.

of owners of other freehold land in the commons or those of the commoners.

That this purchase would prove insufficient became evident during the years following as other owners demonstrated their ability to force the Board to deal with them. During a visit to Hackney by the Parks Committee in May 1882 questions arose over what power the copyholders and Sir John Cass's Charity still had, members of the Committee revealing their own confusion as to what exactly the Amherst purchase had accomplished. Could the Board, for example, place seats on Well Street Common? Did the trustees of Sir John Cass's Charity still let their land for grazing during the closed season? In fact, as the solicitor pointed out, the rights that existed for everyone except the lord of the manor remained unchanged. He advised placing cheap seats on Well Street Common to determine whether the Charity's trustees were as zealous about maintaining their rights as they had previously been. They had not, recently, let their land for grazing and it appeared that their interest in the Common was declining.<sup>11</sup>

On Stoke Newington Common the Parks Committee similarly tried to understand the extent of the regulatory power it wielded. The Board's keeper forwarded a list of persons who had turned out animals since the open season began. The Clerk was to contact the local Board to determine whether or not they were ratepayers. It transpired that all were not, but, the solicitor explained, the question was irrelevant. All occupiers of

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<sup>11</sup>MBW 992, 4 June 1881, pp. 406-7; MBW 993, 17 May, pp. 119-23; 24 May 1882, pp. 132-33; MBW 1014, Papers, 24 May 1882.



any copyhold or freehold lands or tenements within the manor were entitled to turn out, whether ratepayers or not. Each case would have to be judged on its own merits; that is, it would have to be determined what lands the person held, the annual value of the lands or tenements, the name of the copyholder or freeholder from whom he held, and the number of cattle he was permitted to turn out.<sup>12</sup>

By mid-1883 the Board had begun to think in terms of acquiring the freehold to Hackney commons in order that its operations could be carried out unimpeded. It took about a year to accomplish this during which some owners made more challenges. Finally the Metropolitan Board of Works (Various Powers) Act of 1884 vested the Hackney commons absolutely in the Board. The Board would, as its solicitor warned, have to satisfy "considerable claims for compensation" which would be determined by an arbitrator, but it was free to carry out its scheme without fear of harassment.<sup>13</sup>

The Parks Committee was not slow to realize the implications of the Act, and it must have been with a strong sense of relief that its members planned their next moves. Notices were posted on the commons announcing that from 1 January 1885 grazing would be permitted only by licence of the Board. An initial request by a former commoner, who also

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<sup>12</sup>MBW 993, 11 October, pp. 305-6, 25 October, pp. 340-41; 6 December 1882, pp. 399-402.

<sup>13</sup>MBW 995, 8 October, p. 13; MBW 1021, Papers, 8 October 1884.

protested against the new order of things, was turned down.<sup>14</sup> In July 1885 the Metropolitan Board convened a meeting of all commoners to instigate the process of settling compensation.<sup>15</sup> Final settlement took a couple of years.

From 1872 to 1884 the Metropolitan Board had attempted to manage the Hackney commons while handicapped by an impractical scheme. The years had not been entirely lost and many significant improvements were made to the sites. But projects carried out from 1885 were free from threats by suspicious or hostile owners. The Board was now administering the open spaces solely for the public and the ease of this compared to the former regime strengthened the argument that common rights should be extinguished prior to the implementation of schemes.

Such an argument should not be taken too far for there was merit in the Commons Preservation Society's belief that rights should be bought out only when they were incompatible with schemes. The Hackney scheme turned out to be a nightmare for the Board because it contained no provision to do this. Had it adhered to the Metropolitan Commons Act, many of the problems in Hackney might have been avoided. The Board could have purchased Amherst's rights if it was satisfied that they had been injured. One flaw in the Society's point of view was a tendency to ignore or discount rights held by lords. The legal action it

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<sup>14</sup>MBW 995, 5 November, pp. 69-70; 17 December 1884, pp. 173-74.

<sup>15</sup>HBW, Minutes, J/BW/16, 8 July, pp. 292-93; 22 July 1885, pp. 303-4.

supported might have stopped Amherst from digging gravel and enclosing portions of the commons, but it was far from certain that this would be the result. The judgment in the Board's case acknowledged that the evidence introduced by Amherst seemed to demonstrate the validity of the rights he claimed. The Society had to realize that permitting existing rights over a common to continue opened the way for the exercise of destructive ones. The best method of dealing with those was to buy them out but the Society had a severe reaction whenever a lord received any money by way of compensation. Nonetheless, its program was far less expensive than paying compensation to the owners of all rights, most of whom would suffer no interference.

The Society also had difficulty accepting that the public could interfere with common rights. Both the lammas land owners and the commoners complained that increased public use damaged areas for grazing. Their expectations for compensation seem reasonable. The Society had demonstrated that common rights could stop enclosures and encroachments but this was hardly the point at which to rest. The Hackney commons needed improvements and some of these clearly interfered with the rights held by the others.

Richard Ellis, the Hackney Clerk, spoke of the dilemma when he appeared before the Select Committee on the Metropolitan Commons Act Amendment Bill in 1869. To preserve common rights was illogical:

I have heard it said that it would be an advisable course to take possession of these fields subject to these rights, and to let them remain as they are; I must confess that I cannot see how you could deal with the ground without compensating the rights.<sup>16</sup>

He was right; it could not be easily done. The Society's approach worked best for common rights that were not in use. Where there were commoners willing to let their rights lie moribund, to be resurrected only to challenge an encroachment or enclosure, the method was valid. In some areas this was the case. Then it would be relatively easy to compensate the few whose rights were actually injured by a scheme. The lammas lands in Hackney brought with them a host of owners. It was unreasonable to maintain that their rights were unaffected by the scheme, yet this is precisely what the scheme stated. Buying their rights at the outset would have given the Board year-round jurisdiction and reduced the bitterness.

The Metropolitan Board, too, should have paid more attention to the rights of the lord of the manor. The avaricious nature of Amherst's solicitor leaves an unsympathetic lord in the records. The views of lords of the manor are not as prevalent in the sources as those of their opponents. A relative of the lord of the manor of Hackney, Alicia Amherst, in a book on London's parks published in 1907, made some pointed comments about those who "took the extreme view and wished to transform commons into parks without giving compensation to the freeholders and copyhold tenants who thereby would lose considerable benefits".

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<sup>16</sup>Report from the Select Committee on the Metropolitan Commons Act (1866) Amendment Bill, q. 1323.

She added that some lords, on behalf of all freeholders, contested the "right" of the Metropolitan Board of Works to take land without compensation. This stance "was considered unreasonable by some of the agitators" but it was a fight for "all the smallowners".<sup>17</sup>

This view creates an artificial alliance between the lord of Hackney manor and the smaller owners that barely existed. The small owners and occupiers often found themselves against Amherst. His battles were largely his own. Nonetheless, as his victory in the courts demonstrated, Amherst possessed legitimate rights that the scheme in effect appropriated. The Board could probably have settled with him at the outset for less money than it paid later, and the result would have been the more efficient management of the commons.

The Hackney struggle was a hard-fought lesson for the Board on the folly of ignoring rights and failing to recognize the inadequacy of a scheme. The events in Hackney also demonstrated the intense attachment people had for their open spaces. The Metropolitan Board's enthusiasm for the fight needed to be sustained by constant reminders from local opinion. The Vestry and District Board became largely sympathetic to the cause of open spaces--while mindful of their attendant costs--and applied pressure to the central Board when they felt its attention was wandering. These local bodies were responding to public pressure which grew increasingly strident about the inviolability of the

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<sup>17</sup>Evelyn Cecil (Alicia Amherst), London Parks and Gardens (London: Archibald Constable and Company, 1907), p. 186.

commons as the struggles intensified. A healthy majority of the population supported the need for open spaces.

The most dedicated people joined the local preservation societies, both the genteel group and De Morgan's troops, which were, in a sense, the vanguard of public opinion. Despite the latter's lack of success in the courts, his ability to mobilize his supporters provided the most dramatic events of the struggle. Those unsympathetic to his style had to respond to his presence or lose their own credibility.

Of all parties, the Metropolitan Board emerges from the fray with the least glory. It rarely controlled events in a decisive fashion, being forced more often than not, to react to others. The entanglement over the Hackney commons was messier than situations that developed elsewhere but the types of criticisms levelled at the Board were often similar regardless of where they emanated. When it took control of commons the Board operated with a certain bureaucratic lethargy, which local people, convinced that their common was in imminent peril, failed to understand or find sympathy for. Nor did they perceive the problems inherent in the Metropolitan Commons Act. When their expectations were not met, the Board was the obvious target for their frustrations.

#### 4.8 The Hackney Board of Works and the Grocers' School

District boards and vestries tended to assume a subordinate position to the Metropolitan Board in matters relating to commons. The Metropolitan Commons Act solidified this relationship by giving the Metropolitan Board the major responsibilities in this area. But the role of these local arms of government was not insignificant. As the Hackney story demonstrates, the central board relied on the district for much of its information. More important, the local board, pushed on by the concerns of inhabitants and special interest groups, kept issues alive at Spring Gardens. In addition, there were opportunities for more independent action. Most district boards and vestries had formed open spaces committees by the 1880s. In the second half of the century many areas promoted parks or smaller open spaces as part of a program of civic improvement. Local government could also become involved in struggles over commons and common rights. The Hackney District Board of Works tested its powers in a conflict on Hackney Downs.

In 1877, while the Metropolitan Board was waiting for its case against Amherst for activities on the Downs to proceed through Chancery, a separate dispute over lammas rights was beginning. The lord of the manor was not involved in this affair. The new villain, in the eyes of preservationists, was a corporate body, the Grocers' Company of the City of London. Arrayed against it were the Commons Preservation Society, John De Morgan's Commons Protection League and the Hackney Board. As time went

on, and the ranks of participants thinned, the conflict became more of a two-party battle between the Board and the Grocers. The Metropolitan Board played a rather ignoble secondary role.

The dispute originated in 1873 when the Grocers' Company decided to spend £30,000 to establish a school in Hackney. It was opened on a site just south of Hackney Downs in September 1876. There was no disagreement over the site upon which the building itself was erected, but the adjoining land, which the school claimed to have bought, was alleged to be lammas land and part of the Downs. When the school put up a post and rail fence that encroached upon this, and then added insult to injury by posting notice boards against trespassing, reaction was not long in coming. John De Morgan mobilized some one thousand people who turned out on a Monday in June 1877 to tear down the notice boards and some of the railings. De Morgan, under a cloud of litigation from the battle against Amherst, acted through a deputy.

The protesters accepted that the school had authority over the land, especially during the four months of the year when lammas rights did not apply, and they did not object to a fence as long as sufficient access was permitted during the open season. But there was no indication that the school intended to allow this. Although De Morgan had been the quickest to react, the issue caught the attention of others, including the Commons Preservation Society which expressed a hope that a cooperative



effort might remove the Grocers' threat.<sup>1</sup> The two organizations had not thus far forged a record of mutual assistance and prospects for a changed attitude were not particularly favourable.

Those whom De Morgan had challenged in other parts of the country had learned that the legal underpinnings of his actions were more often than not flawed. The lesson was not lost on the headmaster of the school who quickly brought before the Master of the Rolls a motion to restrain De Morgan and his followers. He argued that even if the school had overstepped its title--which he denied--De Morgan himself was not a commoner with any rights during the open season. He was the wrong man to be leading the fight. The interim injunction sought by the headmaster was granted, the Master of the Rolls finding that De Morgan had resorted to "mischevious" means to assert his

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<sup>1</sup>F. E. Medcalf, ed., Hackney Downs School (formerly the Grocers' Company's School) 1876-1926 (London, 1926), pp. 7-10; Hackney and Kingsland Gazette, 6 June 1877.

viewpoint.<sup>2</sup> In the wake of this defeat De Morgan bowed out of the struggle.

The headmaster's successful injunction quelled the issue until the School itself provoked further trouble in the autumn. The Grocers' Company began replacing the light fence on the lammas lands with a seven-foot high wall.<sup>3</sup> This brought the Hackney Board into the picture. It had understood that the Grocers planned to erect a dwarf wall and palisade fence, which the Board had characterized as likely to be a "great improvement to the locality".<sup>4</sup> After construction began, it was found that the dwarf wall was planned for part of the length only, while the rest was to be a very high structure. The Hackney Clerk wrote to the Grocers asking that, for aesthetic reasons, the high wall not be built. This would be especially appropriate in light of the steps

<sup>2</sup>Hackney and Kingsland Gazette, 18 June, 2 July 1877; Times, 30 June 1877; Medcalf, pp. 9-10; De Morgan's "victories" on various commons take on a somewhat Pyrrhic quality when measured against his lack of success in court. In addition to the unfavourable verdicts received in Hackney and Plumstead, he failed in an attempt to plead bankruptcy to avoid having to pay damages of £8.12.6 awarded in another case, and Earl Cowper secured an injunction restraining him from pulling down fences on Selston Common in Nottinghamshire. Hackney and Kingsland Gazette, 2, 11 July 1877; Times, 9 July 1877. He subsequently broke the terms of the injunction by holding a meeting on Selston and speaking in language which encouraged his followers to tear down a fence. Although he was absent when the event took place, De Morgan served eight weeks in Holloway Prison as a result. Times, 21 January, 11 February 1878.

<sup>3</sup>HBW, Minutes, J/BW/11, 28 September 1877, p. 73.

<sup>4</sup>Hackney Archives, Report of Open Spaces Committee re Land in Front of Grocers' Company's Schools, Hackney Downs, 11 December 1889 (hereafter OSC Report), p. 7.

being taken by the Metropolitan Board to put the rest of the Downs in order. At this stage, the Hackney Board was concerned primarily with the detrimental effects a large barrier would have on the overall appearance of the Downs; it expressed no support for lammas rights. The Clerk's letter admitted that the Board was aware that the wall was being "erected on the Company's own land".<sup>5</sup>

It was left to a person with links to the Commons Preservation Society to mount a legal challenge to the construction of the wall. Nathaniel Baylis, who was one of the named commoners in the Society's suit against Amherst, filed a motion in the Chancery Divisional Court to restrain the Grocers on the grounds that the two acres of fenced land were subject to lammas rights. The Company countered that the wall was being constructed to shield the school from the noise of costermongers who gathered nearby and that it was located where a smaller wall had previously stood. They would leave access for cattle during the open season until the question of lammas rights had been settled. Furthermore, they would undertake to remove the wall completely if legal proceedings went against them. At this stage of the pleadings Baylis was successful: an order was made restraining the company from continuing with the wall.<sup>6</sup>

It was a short-lived triumph. In November, less than a month later, the Court of Appeal dissolved the injunction, opening

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<sup>5</sup>OSC Report, pp. 8-9, letter: Ellis to Ruck, 19 October 1877.

<sup>6</sup>Times, 25 October; Hackney and Kingsland Gazette, 26 October 1877.

the way for the completion of the wall. The argument that the wall was primarily directed against roughs and not against commoners won the day. Nonetheless, the Grocers were held to their agreement to allow sufficient access for cattle to graze during the open season and to pull down the wall if a court so ordered in the future.<sup>7</sup>

As the Metropolitan Board of Works had been given authority over Hackney Downs, it should surely have become involved in these events. But the Board soon discovered that it had managed to leave the land south of Downs Park Road, where the alleged encroachment had taken place, out of the 1872 scheme, despite the fact that it had appeared in an earlier submission to the Enclosure Commissioners in 1870.<sup>8</sup> This omission, more likely the result of a drafting error than deliberate policy, removed the legal right of the Board to intervene, although it had no bearing on the status of lammas rights. In November, to correct this situation, the Board unanimously decided to ask the Enclosure Commissioners to draft a supplemental scheme for the land.<sup>9</sup> From a preservationist's view, the initial response of the Board provided optimism.

Meanwhile, the Hackney Board began its own investigation to determine whether or not the land claimed by the

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<sup>7</sup>PRO MAF 25/33, B2486/1913, letter from William Ruck to Enclosure Commissioners, 22 November; Times, 22 November; Hackney and Kingsland Gazette, 23 November 1877.

<sup>8</sup>PRO MAF 25/33, B2486/1913, report by J. Moore, 12 November 1877.

<sup>9</sup>Times, 12 November 1877.

Grocers was even part of the Downs. Examination of documents relating to the formation of the Downs Park Road in the early 1840s left no doubt that it was, though the road had divided it from the main part. No agreement had been made with the lord of the manor at that time which alienated the land.<sup>10</sup> Regardless of the outcome of the Metropolitan Board's efforts to gain control over the area, the Hackney Board now had a legal basis on which to take up the question of lammas rights.

In February 1878 it appointed a special committee of seven to investigate what measures it could take to secure the removal of the wall.<sup>11</sup> This committee turned out to be the precursor of a permanent open spaces committee established later. From their deliberations members of this committee decided that action by the Metropolitan Board offered the best hope of a solution and that the land should be incorporated into an amended scheme. The committee noted that the clerk and solicitor to the Grocers' Company had said that it had been purchased "subject to any rights of common". This was a significant admission but it remained to be seen whom the Grocers would recognize as commoners or whether their position had hardened.<sup>12</sup>

For all the seeming urgency of the question, it virtually disappeared for the next two years or so. The Hackney Board failed to persuade the Metropolitan Board to include the omitted

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<sup>10</sup>HBW, Minutes, J/BW/11, 14 December 1877, p. 135.

<sup>11</sup>HBW, Minutes, J/BW/11, 22 February 1878, pp. 203-4.

<sup>12</sup>HBW, Minutes, J/BW/11, 10 May 1878, pp. 284-91.

piece of land in its bill to purchase the lord of the manor's interests in the commons.<sup>13</sup> Whatever had impelled the unanimous vote to acquire control in November 1877 was absent now. The Board did not want to burden a straightforward bill with clauses that would raise objections from the Grocers. It was content to keep its distance from the developing controversy.

Next the Hackney Board asked whether the Grocers would be willing to sell any rights they had acquired from the lord of the manor, but the Grocers refused.<sup>14</sup> A straight sale of their interests would represent a loss to the school. In the face of these setbacks, the District Board made a further offer to the Company. If the Metropolitan Board could be induced to arrange for adequate policing of the area such that the noises and disturbances would be curbed, would the Grocers substitute a dwarf wall for the brick wall, lay out the land ornamentally, and allow the public entry at certain times?<sup>15</sup> The reply in July 1881 seemed to offer a basis for agreement. The Company's clerk admitted the existence of lammas rights although he regarded them as little more than a nuisance that prevented the Company's making improvements to the land. If the Metropolitan Board would, through an Act of Parliament, extinguish the lammas rights, the Grocers would not only assume part of the expense, but would acquiesce to the other requests.<sup>16</sup>

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<sup>13</sup>HOSC, Minutes, J/BW/KP/1, 12 November 1880.

<sup>14</sup>HOSC, Minutes, J/BW/KP/1, 19 April 1881; OSC Report, p. 12.

<sup>15</sup>HOSC, Minutes, J/BW/KP/1, 24 May 1881.

<sup>16</sup>OSC Report, p. 21.

The Metropolitan Board proved to be the major obstacle to the success of this proposal. The District Board again urged it to include the land in its bill dealing with the lord of the manor's interests, but without success.<sup>17</sup> Later in the new year, another attempt was made to move the Metropolitan Board to action. A deputation travelled to Spring Gardens asking that the clauses drafted by the Grocers putting into effect their July offer be incorporated into that Session's Various Powers Bill. (The lord of the manor's interests had been settled by then.) The Metropolitan Board once again demurred on the grounds that this might inhibit smooth passage of the bill especially if the Grocers objected.<sup>18</sup> It was feared that the Grocers might be having second thoughts about their proposal.

In the spring of 1883 the Grocers began to carry out improvements to the disputed land, ignoring any detrimental effect these might have on lammas rights. The District Board wrote to ask whether the Grocers were, in effect, altering their terms. They replied that the works being carried out were designed to render the land less unsightly. They had been executed on the apprehension that the Metropolitan Board had no intention of extinguishing the lammas rights, a reasonable conclusion given that Board's inaction. As this answer seemed to offer the possibility of salvaging the settlement if the Metropolitan Board's interest could be revived, Runtz, the Hackney member, was enlisted to make another appeal. But his efforts

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<sup>17</sup>HOSC, Minutes, J/BW/KP/1, 12 December 1882.

<sup>18</sup>OSC Report, pp. 12-13.

failed to induce a change of heart; the local Board was informed that no steps would be taken to extinguish the lammas right over the property in front of the school.<sup>19</sup>

In December 1883, with admirable pertinacity, the Hackney Board's Open Spaces Committee passed a resolution recommending that the Metropolitan Board be memorialized once again to extinguish the rights over the area south of Downs Park Road.<sup>20</sup> The memorial was finally presented by a deputation in May 1884. It stressed that the Grocers' proposition could still be put into effect and that it would be expedient to include the clauses in the Board's bill to vest the freehold of the Hackney commons in the Metropolitan Board. The memorial was referred to the Parks Committee, an encouraging sign in itself given the reception previous efforts had met.

The Parks Committee took the matter under serious consideration but the time consumed in obtaining information meant that the opportunity to include the clauses in the Board's 1884 bill slipped away. The parties adjusted their sights with the aim of concluding an agreement for the 1885 bill.

As part of its investigation of the issue, the Metropolitan Board sought answers to a series of questions from the Grocers' Company. The Grocers' responses, however, effectively torpedoed chances of a settlement as far as the Hackney Board was concerned. One of the most contentious points

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<sup>19</sup>HOSC, Minutes, J/BW/KP/1, 8 May, 12 June 1883; OSC Report, p. 13.

<sup>20</sup>HOSC, Minutes, J/BW/KP/1, 11 December 1883.



was the hours of public access. The Grocers were proposing to open the grounds only on Sundays and after 7 p.m. on other days. But, as the Open Spaces Committee reported,

the advantages which the Company will gain by the extinction of the Lammas rights should be an inducement to them to give greater facilities for the uses of the land to the public; and inasmuch as Wednesdays and Saturdays are half-holidays, the ground should be thrown open to the public on these days from and after one o'clock, the other weekdays from and after six p.m. and all day on Sundays.

The Grocers claimed that generosity on that scale could only be purchased at the cost of considerable harm to the boys in the school. Thus, as the Metropolitan Board and the Grocers were beginning to reach agreement, the local Board decided to dig in its heels over this item.

When questioned further the Grocers' clerk explained that in view of the School's success, the Governors felt they could not improve on the conditions spelled out in the answers to the questions submitted by the Metropolitan Board. He went on to underline the "voluntary" nature of the Grocers' involvement with the school. They had paid the "full price of freehold land ... the Lammas rights ... being considered obsolete". The school was expensive to run and to spend over £2000 to modify the front wall seemed an almost "culpable waste of money". The Governors believed that considering the non-public nature of lammas rights and their applicability for part of the year only, the offer to open an ornamental ground all day Sunday and on holidays was a "most

ample public consideration for the extinguishment of these rights".<sup>21</sup>

The Board did not accept the figures quoted by the clerk with respect to the cost of altering the wall. Despite this difference in perspective, the Board indicated its willingness to continue seeking an arrangement by which the proposals made in 1881 could be implemented.<sup>22</sup>

The Grocers steadfastly adhered to their later proposal and found an ally in the Metropolitan Board which arranged with the Company that the necessary clauses for extinguishing the lammas rights should be inserted in the Board's bill for 1885 with the understanding that they would be struck out if the Company requested. The Metropolitan Board explained that without the Grocers' consent, no plan could be operative.<sup>23</sup> The clauses incorporated the terms of the offer made in July 1881 but the Grocers were now insisting that they have the power to restrict the hours of public access. The Hackney Open Spaces Committee were adamant that these alterations should be opposed. The Commons Preservation Society similarly expressed reservations about any measure that would result in the land in front of the school being enclosed and lost to the public.<sup>24</sup>

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<sup>21</sup>OSC Report, pp. 21-23, letter: Ruck to Ellis, 29 January 1885.

<sup>22</sup>OSC Report, p. 24, letter: HBW to Ruck, 12 February 1885.

<sup>23</sup>Hackney Archives, HBW, Thirty-fourth Annual Report, 1890, J/BW/33, pp. 16-18.

<sup>24</sup>MBW 995, 11 March 1885, p. 297.

When the Grocers became aware of the implacably hostile attitude adopted by the Hackney Board, they threatened to ask the Metropolitan Board to withdraw the relevant clauses from the bill which had already passed the House of Commons intact. A flurry of activity ensued between March and May when the House of Lords would consider it. An exasperated Hackney Board put its case once more before the Company. In the first place, the present wall was "an eyesore and a disfigurement to the neighbourhood, a source of danger and a cover for vice". Second, the lammas rights ought not to be dismissed. If they were enforced the Company would be obligated to "restore the surface of the land to its original state, and for eight months of each year to keep open the gates night and day". Surely a rich City Company would not desire to "inflict a permanent injury on the district". If the clauses were withdrawn, the Grocers' Company would still have to recognize the lammas rights.<sup>25</sup>

Having little faith that the Grocers would change their mind, the District Board made a simultaneous plea to the Metropolitan Board to retain the clauses before the Lords despite the Grocers' opposition. Although aware of the agreement between the Grocers and the Metropolitan Board, the Hackney Board argued that the Grocers had broken faith by gravelling the land and ignoring the lammas rights. But the Metropolitan Board

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<sup>25</sup>OSC Report, pp. 25-26, letter: Ellis to Ruck, 10 April 1885.

refused to accept this viewpoint and the clauses were removed at the insistence of the Company.<sup>26</sup>

The collapse of the long-sought after plans to extinguish the lammas rights meant, as far as the Hackney Board was concerned, that those rights remained alive. A letter was directed to the Grocers in August 1885 asking them how they intended to honour them, especially as the herbage had been destroyed by the gravelling carried out earlier.<sup>27</sup> Until 1885, the Company had generally left the gates unlocked during the open season but, after the demise of Parliamentary initiatives for a solution, the Grocers became more possessive. The Hackney Board's Annual Report for 1890 noted that they were locking the gates on Sundays and in the evenings.<sup>28</sup>

The Board revived its interest in the question in late 1889 and early 1890 by urging the London County Council to bring a satisfactory solution to the issue through its next General Powers Bill. Some members of the L.C.C. were sceptical as to why the matter had been allowed to "sleep" for five years and there was reluctance to introduce any proposal into the bill which would engender opposition. The best the L.C.C. could offer was a

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<sup>26</sup>OSC Report, pp. 27-28, Memorial; HOSC, Minutes, J/BW/KP/1, 17 June 1885.

<sup>27</sup>HOSC, Minutes, J/BW/KP/1, 4 August 1885; OSC Report, p. 28.

<sup>28</sup>HBW, Thirty-fourth Annual Report, 1890, J/BW/33, pp. 18-19.

suggestion that the Hackney Board re-establish contact with the Grocers.<sup>29</sup>

The resumed communications differed little in tone from that of the earlier correspondence. The Board informed the Grocers of the recent steps it had taken to ascertain its legal position; they disputed the Board's authority to act on behalf of any commoners; the Board replied that it could do so by virtue of ownership of several pieces of freehold, but the Grocers refused to accept this.<sup>30</sup> The clerk to the Grocers described the behaviour of the Hackney Board as "ungracious". His Company had erected, on the only suitable site in Hackney, a school that had gained impressive results in the Oxford and Cambridge local examinations and was thus a credit to the district. Although "part of the site [was] no doubt Lammas Land" it was, when bought, "covered with building material and rubbish". They were bound to keep the gates open for part of the year but to allow further public access "would be detrimental to the interests of the school".<sup>31</sup> In reply, the Hackney Board disagreed that the site was the only possible choice, explained that the rubbish was a temporary accumulation by the Great Eastern Railway Company

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<sup>29</sup>HBW, Minutes, J/BW/20, 11 December 1889, pp. 81-82; HOSC, Minutes, J/BW/KP/2, 10 December 1889, 11 February, 29 April 1890; HBW, Thirty-fourth Annual Report, 1890, J/BW/33, p. 19.

<sup>30</sup>Report of Open Spaces Committee, letters: 2, 5 May, 11 September 1890; HBW, Minutes, J/BW/21, 24 February 1892, p. 125.

<sup>31</sup>HBW, Minutes, J/BW/21, 24 February 1892, p. 125; Report of Open Spaces Committee, letter: Somers Smith to Ellis, 18 December 1890.

during construction of its line, and emphasized again that the lammas rights had not been properly extinguished and therefore, the land could not be legally enclosed.<sup>32</sup>

The Board's sense of isolation over this issue was intensified by the news that the L.C.C. had concluded that it had no power "to enforce the opening of the gates" and had effectively dropped the matter. But it did not give up. A case was prepared for the opinion of counsel who believed that the Hackney Board would succeed if it took the Grocers to court.<sup>33</sup> The demand that the Grocers honour the lammas rights was not without strong legal foundations. But for all the enthusiasm of the moment, the Board failed to carry through and risk a suit against the Grocers. There was little pressure from the community to take this course. The case soon disappeared from the minutes of the Board and the land south of the road was never restored to the Downs.

Despite attempts to keep the issue alive over many years, the Hackney Board never had the resources to win this struggle by itself. The reluctance of the Metropolitan Board to take a more aggressive role stalled matters at the outset. The sloppy drafting of the Board's plan to the Enclosure Commissioners provided it with a convenient excuse to stay a generous arm's length away. Its failure to support Baylis forced him to drop his suit, and De Morgan faded from the scene. A well

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<sup>32</sup>Report of Open Spaces Committee, letter: Ellis to Somers Smith, 24 January 1891.

<sup>33</sup>HOSC, Minutes, J/BW/KP/2, 24 April, 7 July, 15 September 1891; HBW, Minutes, J/BW/21, 24 February 1892, pp. 125-27; Report of the Open Spaces Committee.

supported lawsuit might have won recognition of lammas rights over this small patch of land but its isolation from the rest of the Downs diminished its importance. After the Metropolitan Board had purchased all interests in the Hackney commons, there was little chance that people would try to sustain rights over two unusable acres.

Had the area under dispute been larger, the Metropolitan Board would probably have been compelled to adopt a more active role in the struggle. All parties might have participated with more intensity and the result might have been different. That such strong feelings were occasionally unleashed in a dispute over a relatively small patch of ground gives an indication of the importance of the open-spaces issue for a significant proportion of the population.

Although the Hackney Board's efforts failed to recover the lammas lands, its activities with respect to open spaces were not all of this nature. Like other local boards it took control of smaller sites and by 1883 it had acquired four such pieces of land from Amherst, as well as some strips from other parties.<sup>34</sup>

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<sup>34</sup>HBW, Minutes, J/BW/13, 22 December 1880, p. 227; J/BW/14, 31 May 1882, p. 230; J/BW/15, 14 November 1883, pp. 223-34.

## **Part Five: Managing Commons**



## 5.1 Common Rights

The "taming" of London's commons was a two-step process. In the first, preservationists worked to stave off enclosers, encroachers, and other threats to the commons' survival until schemes that placed them under some authority could be secured. These legislated safeguards provided the outlines for the second step, the actual management of these commons. The decisions of conservators or local government officials would determine how commons would be absorbed into their communities and how residents used and perceived them. In turn, inhabitants realized that the success of their wishes depended on their ability to influence those in charge. As a result authorities often found themselves having to arbitrate among fiercely competing interests on a wide range of questions. What types of activities should be permitted on commons? To what extent should they be regulated? What alterations should be made to the appearance of commons? The responses of authorities to these problems will be examined in the following chapters.

One of the guiding principles behind schemes was that rights should be protected. The intention was to preserve the uniqueness of commons and to prevent their transformation into ersatz parks. At the same time, these schemes did more than buttress the status quo. They introduced a new element, the public, and required the managers to take measures to facilitate its enjoyment of these sites. To do this while leaving rights untouched proved to be a delicate balancing act, and it is not

surprising that, over time, the largest authority, the Metropolitan Board, chose to purchase many rights in order to give itself a freer hand. As events in Hackney demonstrated, lords of the manor were able to persuade the Board--often by litigation--that it was desirable to buy their interests outright rather than dispute whether specific actions affected certain rights. Well before the situation in Hackney was resolved, the Board had purchased the lords' interests in other commons.<sup>1</sup>

The Board was less inclined to purchase rights held by commoners, especially at the outset. For one thing, many commoners were ardent preservationists who had no intention of exercising their rights in a manner hostile to the public. It was also cheaper to leave things as they were, a strong incentive for local government officials. This was a point the Commons Preservation Society repeatedly made. The Society disparaged payments made to the lords: they were unnecessary and set bad precedents. More practically, it was difficult to assess the range of rights held by commoners and determine by whom they were held. Fulham was unusually easy because the copyholders' court accepted payment for rights over Wormwood Scrubs and three smaller commons but, elsewhere in the metropolis, manorial courts were less representative or non-existent. The inquiry held by the Assistant Commissioner during the preparation of schemes helped identify those who claimed rights but it passed no judgment on their legality. Where commoners and lords

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<sup>1</sup>Included among them were Hampstead Heath, Plumstead Common, Bostall Heath, the Tooting commons, Clapham Common, Shepherd's Bush, Eel Brook Common, Brook Green and Parsons Green.

disagreed, it was left to the courts to rule on the validity of rights. The freeholders of Plumstead sought such a declaration in their suit against Queen's College, and were largely successful. The copyholders at Hampstead launched a suit against their lord hoping to prove that they were entitled

as a right, to commonage of pasture upon Hampstead Heath; to cut heath, fodder, and fuel; to dig gravel and loam, and to use the heath and waste land appendant and appurtenant thereto for enjoyment and recreation by walking, driving, and riding on horseback, and for carrying on and indulging in all lawful and innocent sports, games, and pastimes thereon at all reasonable times.<sup>2</sup>

The death of the lord of the manor in 1869 terminated the suit, much to the later regret of preservationists who believed that a victory by the copyholders would have made the Heath much cheaper to acquire.

Thus, after the Board took control of a common, it had to wait to see whether commoners would hinder the execution of its duties. Generally it was prepared to foster a spirit of cooperation with them and, as many of the Board's policies brought improvements, commoners were ready to respond in kind. If they proved too troublesome, the Board might be tempted to buy them out, although this option was considered more often than it was carried out. The Board was aware that many claims for rights were spurious, and it usually challenged these. Often, enforcing the bylaws proved an effective method of weeding out weak claimants while more recalcitrant cases ended up in the higher courts.

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<sup>2</sup>Times, 25 June 1868.

The basic common right, that of depasturing animals, was the one most frequently claimed on the Board's commons. It raised two questions, one legal, the other practical. Were those who turned out animals exercising a legitimate right? If so, did the animals interfere with public enjoyment?

One of the primary reasons the Board wanted to settle the matter of grazing at any location was to make it more suitable for recreation. That the public had a low tolerance for too many animals was apparent from submissions to the Board. In 1871, after it had taken control of Hampstead Heath, a resident cited the 100 to 150 cows found there daily as a major impediment to its enjoyment by children and the elderly.<sup>3</sup> According to one Tooting resident, children were "totally debarred from using the common" because of the animals there. The Wandsworth District Board had also received complaints of this nature, which it forwarded to the central body.<sup>4</sup> Similar stories were heard elsewhere.

On some commons, such as Wormwood Scrubs, Eel Brook Common, and the Hackney lammas lands, grazing was carefully regulated. For example, a notice similar to the following appeared annually in Hackney at the end of July:

The Drivers appointed at a General Court Baron will attend at the MARSH GATE, HOMERTON, on WEDNESDAY, the 12th day of AUGUST, 1874, at Ten o'clock in the morning till six o'clock in the evening, as usually, for the purpose of superintending the

#### MARKING OF CATTLE

<sup>3</sup>MBW 981, 29 May 1872, pp. 137-38.

<sup>4</sup>MBW 984, 29 July, pp. 500-1; 7 October 1874, pp. 571-72.

belonging to such persons who are entitled to turn the same into the Marshes, on Hackney Downs, London Fields, and Common Lands within the Manor of Hackney.

Attendance will also be given for Marking, at the same place, every Wednesday, in the afternoon, between the hours of Three and Four o'clock.

CAUTION---Any person turning cattle, not their own, into such Marshes or Common Lands, will be prosecuted according to Law.

The Marshes will be driven on the 6th day of April, 1875, when all Cattle found thereon will be impounded.

The Board ordered its keepers not to interfere with this activity.<sup>5</sup>

As it was bound by schemes to protect existing rights, the Board could at least diminish the problem of too many animals by moving against people who turned them out illegally. There was little doubt that many non-commoners often used the commons in this way. In 1860 the inhabitants of Shepherd's Bush complained to the Bishop of London, the lord of the manor, about the overgrazing of cattle and donkeys on the common by persons with no right to do so.<sup>6</sup> A freeholder from Clapham told the 1865 Select Committee on Open Spaces that most of the animals on that common belonged to cartmen and others, who used it on Sundays when the animals were not needed.<sup>7</sup> Some of these people had done this for many years prior to the Board's appearance and were loath to abandon the practice. The Board not only had to distinguish between legitimate and bogus commoners, but had to ensure that the former exercised their rights within limits. At times, it was a difficult task. When the Board

<sup>5</sup>MBW 1004, Papers; MBW 984, 7 October 1874, pp. 586-88.

<sup>6</sup>Hammersmith Archives, DD/14/1125/2, Petition.

<sup>7</sup>Second Report from the Select Committee on Open Spaces (Metropolis), qq. 3619-20.

tolerated horses on Shepherd's Bush while trying to discover whether they had a right to be there, costermongers argued that they should be allowed to turn out their donkeys, a non-commonable animal. But, where persons were clearly in breach of the bylaws, summonses were issued.<sup>8</sup>

Some situations were less straightforward and demonstrated the murky nature of common rights. At Hampstead Heath and Tooting Bec Common, for example, the Board needed persistence to clarify claims made for rights of pasture.

At Hampstead, the lord of the manor had argued that there were no commoners, although animals certainly appeared on the Heath. It was this narrow interpretation of rights that the suit launched by the copyholders, *Hoare v. Wilson*, had hoped to overturn. But as the suit had been interrupted before any determination had been made, the Metropolitan Board had no basis on which to decide what rights might be legitimate. Hoare, himself, shortly after the passage of the Act vesting the Heath in the Board, noted the number of animals being turned out by persons without any rights.<sup>9</sup>

Nonetheless, two of those responsible for placing animals on the Heath defended their actions on the grounds of alleged copyhold rights. One expressed doubts about his ability to protect them:

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<sup>8</sup>MBW 982, 16 July, pp. 607-8; MBW 983, 23 July 1873, pp. 8-10.

<sup>9</sup>MBW 980, 17 April 1872, pp. 544-46.

I have had the right of self or tenants feeding cows on Hampstead Heath ever since I took possession of my copyhold, which is now full 40 years .... I understand the rights of the copyholders remain as they were. I do not know by what authority ... they can now be destroyed. However Acts of Parliament and Acts of Vestry do play such fantastic trickery, that the whole of Hampstead may one day be impounded.

The other, who had only one pony, maintained that the copyholders would exercise their rights until they received compensation. Apparently a belief had taken hold of many of them that the Board would pay considerable money for their rights.<sup>10</sup>

In the autumn of 1872, a Charles Tupman made a claim to turn out cows based on the fact that the previous tenant of the land he held had done so. The Board's solicitor thought that, although Tupman was not a copyholder, he might have a right if he was the tenant of a copyholder. As inconclusive as *Hoare v. Wilson* had been, the lord had virtually admitted that there were rights associated with ancient copyhold tenements.<sup>11</sup> When Tupman failed to supply more information about his claim, the Board issued a summons under the bylaws only to have it dismissed by the magistrate on the grounds that a prima facie right had been established. The Parks Committee thought that the Board should take the issue to a superior court. But, at least for a period, Tupman stopped grazing his animals on the Heath.<sup>12</sup>

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<sup>10</sup>MBW 1002, Papers; MBW 981, 12 June, pp. 157-59; 26 June 1872, pp. 189-90; MBW 982, 18 June 1873, pp. 537-43.

<sup>11</sup>MBW 981, 2 October 1872, pp. 402-3.

<sup>12</sup>MBW 981, 9 October, pp. 427-28; 23 October 1872, pp. 468-69; MBW 982, 15 January 1873, pp. 50-51.

While Tupman and others based their actions on an assumed right, many non-copyholders who turned out animals did so because it was convenient and they were not harassed. At various times during the closing months of 1872, the keeper cited people for turning out horses, donkeys, or pigs. The Board could not allow these practices to continue and issued summonses for infringing the bylaws. These were successful although the magistrate initially fined the offenders costs only, as it was a "new offence", while issuing a warning that subsequent appearances would warrant stiffer penalties. One of the defendants, Thomas Tooley, a dairyman and cow-keeper, claimed that he was a tenant of a copyholder with a right of pasture and that his father and grandfather had turned out on the Heath. He requested that his case be adjourned in order that he might retain a solicitor.<sup>13</sup> When the case was heard, the magistrate dismissed the summons as it appeared that Tooley's landlord was a large copyholder. The Parks Committee, however, was informed by another resident that Tooley's father rented a cottage from the landlord but that Tooley himself probably had no rights. The informant claimed that the father and son played "fast and loose with everything to try and avoid responsibility".<sup>14</sup> The solicitor doubted if any perjury charge would succeed against Tooley who

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<sup>13</sup>MBW 981, 4 December 1872, p. 561; MBW 982, 5 February, 1873, pp. 107-9; Times, 23 January 1873.

<sup>14</sup>MBW 982, 26 February 1873, pp. 149-51; MBW 1003, Papers.



had obviously turned out for years. Nonetheless, it was decided to issue further summonses if he persisted.<sup>15</sup>

Not all copyholders wished to turn out animals, but many banded together with the aim of collecting compensation from the Board under the relevant section of the Hampstead Heath Act. Although they claimed the same rights that Hoare's suit had sought to establish, it was not clear to the Board's solicitor why they were pressing a claim as there had been no interference with them. If they were expecting a lump-sum payment, they misunderstood the compensation clauses in the Act. The Board resolved to wait to see if copyholders would be persuaded to surrender their rights voluntarily at a public meeting. The copyholders might also decide to pursue their aims in the courts, but the expense would likely act as a deterrent.<sup>16</sup>

The copyholders, however, were very reticent about making their case. It only reappeared as an issue when the Parks Committee had to consider what action to take in response to a new challenge from Charles Tupman who, in October 1873, turned out twenty cows on the Heath.<sup>17</sup> Tupman, who had become the bailiff of the manor, now supported his claim with leases he held to property other than that involved in the original litigation. He was confident that the manorial rolls would substantiate his

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<sup>15</sup>MBW 982, 7 May 1873, pp. 361-63.

<sup>16</sup>MBW 981, 4 December, pp. 578-80; 18 December 1872, pp. 597-99; MBW 982, 15 January 1873, pp. 50-51; Times, 17 March 1873.

<sup>17</sup>MBW 983, 22 October 1873, pp. 249-50.

claim.<sup>18</sup> The preliminary investigation by the Board's solicitor concluded that Tupman was a tenant of a copyholder; a search of the rolls was authorized to discover if tenants could claim rights of common.<sup>19</sup>

The rolls were of no assistance to Tupman; they contained, in fact, a presentment from 1759 stating that there were no common rights attached to tenements carved out of the waste. Common rights were only recognized in connection with ancient copyhold. Because the rolls prior to 1573 had been destroyed by fire, it was difficult to identify positively the ancient tenements, but the solicitor assumed that Tupman probably had no rights. Indeed, much of the property in private hands had been taken from the waste and would not support common rights. The Board, by virtue of some copyhold property it held at Hampstead, could take action as a copyholder against Tupman for surcharging the Heath, but this avenue might force it to recognize the common rights of other copyholders and thus strengthen the claim of those seeking compensation. Counsel for the Board believed, however, that it could successfully take action against Tupman for surcharging the Heath and not worry about the other copyholders unless they took the initiative.<sup>20</sup>

Meanwhile, in early spring 1874, Thomas Tooley turned out two cows and Tupman consistently turned out twenty or so.<sup>21</sup>

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<sup>18</sup>MBW 983, 5 November 1873, pp. 294-95.

<sup>19</sup>MBW 983, 19 November 1873, pp. 332-34.

<sup>20</sup>MBW 984, 14 January, pp. 492-500; 25 March 1874, pp. 180-96.

<sup>21</sup>MBW 984, 11 March 1874, pp. 130-31.

But the Board's extensive preparations for taking legal action turned out to be more than was needed. Perhaps realizing that the full weight of the Board was about to be turned upon them, both men recanted and acknowledged that they had no right to graze. Tooley, however, insisted that his forefathers had exercised a right for some 150 years.<sup>22</sup> Although spared the effort of taking these men to court, the Board had, nonetheless, spent considerable time assessing their claims. It did not view this as superfluous. To avoid such challenges because of their possible expense or for other reasons would have rendered the commons more unmanageable.

Another man's claim was investigated and shown to be genuine. The solicitor consulted the manorial rolls and concluded that the property of which he was a tenant gave him a right to turn out cattle as it was ancient copyhold. The Parks Committee wisely took no further action.<sup>23</sup> In 1881, however, the man's son was summoned for having ten horses on the Heath. Supported by members of the homage, he persuaded the magistrate that the case was beyond his jurisdiction.<sup>24</sup> This led to talks between the Board's solicitor and the father, by now foreman of the homage jury, in which the latter intimated that the copyholders would part with their common rights for about £1600.<sup>25</sup> The solicitor initially backed this proposal. After all, the Board would have

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<sup>22</sup>MBW 984, 22 April 1874, pp. 242-44.

<sup>23</sup>MBW 984, 29 July 1874, pp. 514-16; 7 October, pp. 575-76.

<sup>24</sup>MBW 992, 25 May 1881, p. 397; MBW 1012, Papers.

<sup>25</sup>MBW 992, 6 July 1881, pp. 446-47; MBW 1013, Papers.

complete freedom of action if it no longer had to consider commoners' reactions to its moves. But, given that the copyholders were a comparatively weak group, the solicitor advised turning down the offer. To accept it, he realized, would likely open a floodgate of hitherto insignificant claims.<sup>26</sup> In the end, nothing further was heard from the copyholders.

Thus the Board neither voluntarily offered nor was legally compelled to settle the Hampstead copyholders' claim. The few head of cattle turned out by legitimate commoners presented little danger. The longer the Heath was under the Board's management, the less suited it became as a source of feed for livestock. Time quite forcibly extinguished the right of common of pasture, aided by the fact that most copyholders had little interest in exercising it.

Strong claims for grazing came from some with dubious credentials as commoners at Tooting. The Tooting Bec scheme of 1873 listed a number of people who claimed to have rights and indicated which of them consented to the scheme, and which of them opposed it.<sup>27</sup> When it came into effect, the Board's keeper was ordered not to interfere with cattle belonging to those whose claims appeared to be genuine. By the spring of 1874, however, it appeared that more animals were grazing than should have been. Not only were those without rights turning them out but

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<sup>26</sup>MBW 992, 12 October 1881, pp. 526-27.

<sup>27</sup>36 & 37 Vict. c. lxxxvi.

legitimate commoners were exceeding their limits.<sup>28</sup> The Board's solicitor reported on the difficulty of obtaining information about common rights at Tooting which, like other commons, suffered from a paucity of hard evidence.<sup>29</sup> Some of those turning out animals were tenants of persons or estates acknowledged in the scheme to have claims, but it was far from clear that the landlords' rights applied to them. The Hampstead court rolls had given a negative answer in a parallel situation, but that hardly established a precedent for Tooting.

Despite the difficulty of arriving at definite conclusions about rights, the Board's solicitor, upon further investigation, was able to speculate on the validity of various claims at Tooting. It appeared that only three parties could support a right. But, until the bylaws were approved and posted, summonses could not be issued against those presumed to be offenders. The Board had the option of bringing actions of trespass against them, but this was expensive, and not pursued.<sup>30</sup> Unfortunately, the erection of the bylaws in March 1875--with their prohibition of turning out on the Common "any Cattle, sheep, swine, horse, ass, mule, turkeys, geese, fowls, ducks or other animals"--failed to deter the counterfeit commoners. One man claimed that his right

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<sup>28</sup>MBW 984, 22 April, pp. 246-47; 6 May, pp. 290-91; 20 May 1874, pp. 317-23.

<sup>29</sup>MBW 985, 21 October 1874, p. 15.

<sup>30</sup>MBW 985, 21 October 1874, pp. 13-28.

to turn out animals had been exercised for one hundred years. The Board decided to issue summonses to those breaking the bylaws.<sup>31</sup>

The results were largely successful when the hearings took place at the Lambeth Police Court. A defence of long usage going back over forty years was insufficient to avoid conviction for a man accused of turning out donkeys. The magistrate, like his Hampstead colleague two years earlier, was lenient. The fine of forty shillings was reduced to two and a half shillings if the offender promised to obey the bylaws in the future. Further convictions with low fines were secured against three others for turning out cows.<sup>32</sup> Shortly after this, two of the most frequent transgressors admitted that they had no right to graze their animals. The Board, however, granted them permission to place their sheep on the common.<sup>33</sup> Sheep, as well as being less of a public nuisance than cattle, helped keep the turf down.

As effective as the bylaws were in curbing some abuses, the Board's victories were not complete. In October 1875, summonses against two men for turning out animals were dismissed at the Wandsworth Police Court. The magistrate ruled that the defendants had acted under a belief of a bona fide claim and therefore his jurisdiction was ousted.<sup>34</sup> In the aftermath of this setback, counsel suggested that the Board take the offensive

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<sup>31</sup>MBW 985, 10 March, pp. 356-58; 21 April, pp. 432-35; 5 May 1875, pp. 460-65.

<sup>32</sup>MBW 985, 5 May, p. 462-63; 16 June 1875, pp. 557-61; MBW 986, 30 June, pp. 41-43; 29 July 1875, pp. 114-15.

<sup>33</sup>MBW 986, 6 October 1875, pp. 185-86.

<sup>34</sup>MBW 986, 20 October 1875, pp. 227-34.

and commence proceedings for trespass against those placing cattle on the common. This strategy would place the onus of proof on the defendants. A necessary prelude to the action would be the translation of the court rolls, but this would be a valuable step for the defence against a threatened action by another commoner.<sup>35</sup>

The trespass action was taken against a William Stoner, a corn chandler, who was a tenant of one of the people the scheme identified as claiming rights over the common. The parties agreed to submit a special case to the Court.<sup>36</sup> The initial judgment was a blow to the Board. The Court affirmed the claim by Stoner to pasture cattle and sheep by virtue of his tenancy. Stoner's arguments rested on an alleged use for thirty and even sixty years. The Board's contention that there was a gap of twenty-five years during which the right had not been exercised was deemed irrelevant by Stoner's counsel as the interruption had not been adverse or hostile, the necessary characteristics to defeat the right.<sup>37</sup> The Board did not entirely oppose Stoner's claim: about two and half acres of his land could support a right of pasture for not more than three or four cows.

The Board appealed this decision, believing that it failed to read the facts pertaining to usage correctly. The special case acknowledged only a "limited user for intermittent periods" which counsel for the Board deemed "insufficient to support the

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<sup>35</sup>MBW 986, 1 December 1875, pp. 321-24.

<sup>36</sup>MBW 988, 8 August 1877, pp. 175-76.

<sup>37</sup>Times, 27 November, 21 December 1878.

right claimed under the Prescriptive Act". Yet the judgment recognized a practice of turning out without interruption for a period of years.<sup>38</sup> The appeal was successful. Stoner was left with rights associated with two and a half acres of land, not the twenty-two acres he sought. He could legally turn out three animals.<sup>39</sup> Notwithstanding the decision, he continued to pasture his animals. In the end, an agreement was concluded in the autumn of 1879 whereby he was permitted to pasture about 100 sheep at the pleasure of the Board.<sup>40</sup> Despite complaints that animals scared children and generally bothered people, Tooting common was still among the less visited of the Board's open spaces. It made sense, therefore, to allow more grazing there than would be tolerated at a place like Clapham. Nonetheless, the Board wanted those without rights to acknowledge its authority.

Another opportunity to assert that authority came in a confrontation with a William Chichester that began around the time of the dispute with Stoner and dragged into the late 1880s. As eager as the Board was to curtail illegal grazing, it tended to tread cautiously when faced with people claiming rights as a means of avoiding costly litigation. Chichester claimed a right of pasture as tenant of land owned by Emmanuel College, Cambridge, one of the parties that did not consent to the Board's scheme. As such, his status was similar to Stoner's. He had been fined as a result of summonses issued in the mid-1870s. The Board was

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<sup>38</sup>MBW 989, 22 January 1879, pp. 486-90.

<sup>39</sup>MBW 990, 9 July, pp. 252-55; 23 July 1879, p. 300.

<sup>40</sup>MBW 990, 1 October 1879, pp. 403-4.



willing to recognize a right to pasture on a small piece of land included in its scheme but claimed by the College, but it would not accept an appurtenant right acquired by long usage over the whole common.<sup>41</sup> After suffering a number of defeats in the Lambeth Police Court, Chichester finally beat a summons in 1877 by calling a witness who testified that cattle had been turned out since 1838 without interruption. The magistrate ruled that his jurisdiction had been ousted and dismissed the summons with costs against the Board.<sup>42</sup>

The Board's eventual success against Stoner--he and Chichester were represented by the same solicitors--strengthened its hand in dealings with Chichester. It was estimated that the most he could properly turn out, by stint of the manor, were six head of cattle, three horses, and sixty sheep. Mules belonging to a tramway company were definitely on the common illegally, as were pigs. The Board was determined to pursue the matter in the higher courts despite the expense of such proceedings and the wealth of Emmanuel College.<sup>43</sup> It looked as if it might have to. A magistrate fined Chichester for turning out pigs--a clear breach of the bylaws--but refused to rule on summonses for turning out in excess of his stint on both Tooting commons (Chichester claimed there was no division between the two).<sup>44</sup> During this dispute, little support was provided by his

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<sup>41</sup>Times, 3 March; MBW 987, 7 March 1877, pp. 560-63.

<sup>42</sup>Times, 24 March 1877.

<sup>43</sup>MBW 992, 10 November 1880, pp. 68-70.

<sup>44</sup>MBW 992, 19 January 1881, pp. 192-97.

landlord, Emmanuel College. It and the Board were negotiating an exchange of land and the surrender of grazing rights threatened to be part of any agreement.

But Chichester's own financial difficulties saved the Board from a lengthy court battle. He filed for bankruptcy in early 1881.<sup>45</sup> Nonetheless, three years later the Board was still grappling with the question of his rights. A seven-year lease that Chichester had signed in 1880 with the College included all rights, easements and appurtenances. He understood that grazing rights were included in these terms. Much would depend on whether the trustees of his estate backed the claim or not.<sup>46</sup> When they failed to notify the Board of their intentions, the keeper was ordered to impound Chichester's cattle. Chichester responded with an offer to surrender his claim to turn out cattle if the Board would recognize a right to turn out sheep. The Parks Committee insisted that this be acknowledged as being by leave of the Board.<sup>47</sup> This wording was not welcomed by Chichester. He made a second request to have the Board drop any reference to its sanctioning his sheep on the common, in effect recognizing his right for the duration of his lease. He also asked that the sheep not be restricted to his own. As the lease expired in 1887, the Board agreed.<sup>48</sup> It was not a risky decision. By this point there was no lineup of potential commoners seeking similar

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<sup>45</sup>MBW 992, 30 March 1881, p. 315.

<sup>46</sup>MBW 1019, Papers, 16 January 1884.

<sup>47</sup>MBW 994, 30 January, p. 371; 26 March 1884, pp. 492-93.

<sup>48</sup>MBW 994, 7 May, p. 555; 2 July 1884, pp. 633-34.

recognition. Furthermore, Chichester's claims had not been defeated in court and might have some basis in fact.

As at Hampstead the Board saw no need to buy out the rights held by Tooting's commoners. Agreements were reached with those turning out more than their legal limit, while summonses stopped those with no rights in the first place. The major difficulties came from Stoner and Chichester, tenants of bona fide commoners, who tried to extend slender rights too far. Had the Board not appealed the initial decision in the Stoner case, they might have succeeded. Suburban development probably undermined the usefulness of common rights as much as anything. As farms gave way to houses, fewer animals needed to graze. Increasingly the recreational needs of the inhabitants took precedence.

Similar developments around other commons heralded the demise of this particular common right, but it outlasted the Board itself in some areas. The Board and its successor, the L.C.C., had to respect it or risk being met by determined commoners. In 1882, the Board was faced with an example of this at Hackney Downs. It had permitted a butcher to turn out sheep on the Downs but the marsh driver had impounded the animals on the grounds that sheep were not commonable animals and the butcher had no right to turn out any beasts during the open season. The Board's solicitor took issue with the first point but agreed that the Board had no power to create a right for the

butcher.<sup>49</sup> In fact, one of the changes that had been made by the Assistant Enclosure Commissioner in the Board's original scheme for Hackney was to remove a clause that allowed the Board to grant permission to turn out animals and replace it by one restricting the right to "persons who now by law are entitled to do so". This had been done to prevent non-commoners being licenced to graze cattle to the prejudice of the commoners.<sup>50</sup> The overlooking of this in the butcher's case brought a sharp reminder from the local guardians of rights.

Would it have been more efficient for the Board to purchase commoners' rights at the outset, as it frequently did the lords'? In point of fact common rights could not thrive on surfaces frequented by the public and the Board's Parks Committee spent many hours trying to sort out claims and conflicts. Its record of success against fraudulent claims was impressive and, by and large, legitimate commoners declined to seek compensation for damages caused by the public. The lammas land owners in Hackney were an exception and their presence made it sensible to buy out all interests. The commoners at Fulham, who earned money from their carefully regulated commons, had their interests purchased. The Board often revelled in the new freedom it had to pursue its programs after such transactions. But a general policy to purchase would have been expensive and would likely have encouraged many mischievous claims. On many commons rights disappeared quietly, victims of

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<sup>49</sup>MBW 993, 11 October, p. 307; 25 October 1882, p. 339.

<sup>50</sup>PRO MAF 25/33, B2485/1913, Wetherell's Report.

changing customs. The amount of money the Board spent worrying about these rights was probably less than it would have cost to buy them. Furthermore, holders of rights were a useful check on the Board's powers; their presence restrained those who were eager to implement radical schemes and helped preserve the character of commons. More than once the Board hesitated before beginning a project while it determined if common rights might be damaged; sometimes they decided to abandon something rather than risk a confrontation.

## 5.2 Managing the Public: Nuisances, Equestrians, and Games

Dealing with common rights was one administrative duty the Board faced when it took over commons, but its primary role was to oversee public use of them. To this end, it drafted bylaws and hired keepers to enforce them. But members of the public did not form a single constituency; they had opposing views which had to be reconciled. Tensions arose in many areas. For example, while there was general agreement that games belonged on open spaces, it was not self-evident that every type should be encouraged on all commons. Non-participants preferred to keep a distance between themselves and the players. An activity such as donkey riding, which was essentially working class, annoyed middle-class residents. Yet the same people who objected to a donkey stand might demand that an entire common be available for horse riding. Not a few "free-born" Englishmen believed that commons were time-honoured places for public meetings, either of a political or religious nature. People living within earshot of such gatherings possessed an equally strong belief that they should be banned. Carpet beating and clothes drying were traditional practices that offended the aesthetic sensibilities of the very class that purchased the services. Volunteers found commons useful for their drills but when rifle shooting took place, residents complained. The military itself wanted access to commons and the Board had to devise rules to accommodate it. Those who dwelt on the circumferences of commons found numerous things to complain about: indecent bathers, poor turf,

donkeys, and children. Gypsies and vagrants inevitably produced calls for their banishment. At times the keepers hired by the Board to enforce the bylaws compounded its managerial woes. Most disputes found people who believed that the Board was being too restrictive facing those who wanted the imposition of further controls.

People were not slow to blame the Board when conditions on their common dropped below expectations. Because of delays caused by complications over the final payment to the lord of the manor of Hampstead, the Board was branded as tardy in its duties towards the Heath. The Times expressed the widespread impatience:

No constables have been appointed, and the month's notice which must precede the confirmation of bylaws has not been given. The inhabitants of the neighbourhood are angry and excited about an apparent encroachment now in actual progress; to wit, the erection of a brick wall by which a householder appropriates to his private use a portion of what is alleged to be the public property. Gipsies and idlers still cook their meals at the expense of the fences of the adjacent fields and gardens. Bird trapping and shooting are unchecked. Trees and shrubs are damaged without hindrance or restraint. In a word, nothing whatever has been done, although the whole of the necessary regulations and improvements should be completed within six months time, if the terms of the Act are to be complied with.<sup>1</sup>

Two days later a letter reinforced the paper's suggestion that it was time things got underway. As it was, the Heath was a "disgrace to the community". Tramps destroyed some fences for firewood while others had bullet holes in them, the result of

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<sup>1</sup>Times, 12 December 1871.

"allowing any idle vagabond to carry firearms and practice in public highways".<sup>2</sup>

These public recitals of wrongs were made to shame the Board into action. Setbacks in the plans to acquire Clapham Common in the mid-1870s led one man to hope that the Board would soon assume control in order to curb the "objectionable practices" that occurred there, particularly on Sundays. These included the use of obscene language, donkey racing, and other things injurious to the "morals of the young" and annoying to the "respectable inhabitants".<sup>3</sup> Whether the Board could effect a complete moral transformation in an area was open to doubt but any advances over the status quo would be welcomed by most residents.

The powers given to the Board to deal with the public were extensive and seemed to provide the means to deal with many of the conditions that had made local people demand schemes in the first place. They were slanted towards middle-class concepts of order but they could not, by themselves, solve all conflicts between competing interests. On some issues, the Board had to make difficult decisions, which inevitably disappointed some. A sense of the powers bestowed on the Board can be gained from the following section of the scheme for Shepherd's Bush:

The Board shall frame byelaws and regulations against encroachments, for the preservation of order on the common, for the prevention of nuisances, and the deposit of road-sand, rubbish, or other matter on, and the illegal

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<sup>2</sup>Times, 14 December 1871.

<sup>3</sup>Times, 20 May 1876.



taking, cutting, digging, and selling the turf, sods, gravel, sand, and the like from the common; also for the prevention of vehicles being driven, or horses being exercised by grooms and others on or across the common, and to remove and apprehend, if necessary, gamblers, cardsharps, gipsies, squatters, vagrants, sellers and exhibitors of infamous books, prints, photographs, or pictures, or persons guilty of brawling, fighting, or quarrelling, or using indecent and improper language, or any idle or disorderly person, or any person erecting any booth or place of any kind without the consent of the Board, so that all such persons may be dealt with according to law...

There was no shortage of things deemed necessary to prohibit. The Board had originally proposed making shouting an offence.<sup>4</sup>

Controlling nuisances using the bylaws was often effective, if not always rapid. Carpet beating and the drying of laundry were traditional practices that fell well short of being rights. They also irritated many people. According to one Clapham resident, carpet beating enveloped "some of the prettiest parts of the Common in a cloud of dust" and rendered "many of the most convenient seats temporarily useless".<sup>5</sup> Most inhabitants' vision of a traditional common was complete without beaters or laundresses and aesthetic considerations triumphed over the minority interest that desired the services. At Clapham the problem was dispatched with few problems. The Board's bylaws prohibited the common being used as a drying or bleaching ground, or for beating or brushing carpets.<sup>6</sup> People who persisted in doing

<sup>4</sup>MBW 1000, Papers, 8 November 1870; P.P. Metropolitan Commons Second Supplemental Bill, 1871 (163), IV.201. Ten years later the bylaws for Eel Brook Common, Brook Green, and Parsons Green contained measures against the playing of musical instruments. MBW 992, 6 July, pp. 453-54; 20 July, pp. 477-78; 26 October 1881, p. 555.

<sup>5</sup>Clapham Observer, 4 July 1874.

<sup>6</sup>Times, 7 February 1878.

so were issued with summonses. A few laundresses, however, attempted to persuade the Board that they had a right to carry out their trade. Three who occupied old cottages claimed that their families had used the trees on the common for fastening their lines for 65 to 85 years. But the Board was not in a mood to give credence to any rights on this sort of evidence. It issued summonses against the three after they ignored an order to desist. One woman left the area before her case was heard; the other two were found guilty of breaking the bylaw. Of these, one elected to spend three days in prison rather than pay the two-shillings fine, but the drying clothes disappeared from the common.<sup>7</sup>

No doubt the Board wished to avoid a repeat of the situation at Hampstead Heath and Blackheath where laundresses had fared better. Hampstead Heath had had an association with clothes drying going back at least to the Tudor period. The practice slackened only as the nineteenth century progressed.<sup>8</sup> In 1839 the Heath's keeper recorded 204 clothes posts on the Heath, concentrated in three areas. Nonetheless the lord appears to have been vigilant in preventing the women--and men--from gaining any kind of prescriptive right: they had to acknowledge that they were using the Heath by his permission.<sup>9</sup>

The Board decided that it would not recognize clothes drying as a right and its bylaws prohibited any part of the Heath

<sup>7</sup>MBW 989, 24 July, p. 123; 7 August, pp. 175-76; 2 October, pp. 219-21; 16 October 1878, pp. 257-58.

<sup>8</sup>Sexby, pp. 385-86; Barratt, vol. 2, p. 217.

<sup>9</sup>Barratt, vol. 2, p. 269.

being used for such. There was some public support for this decision: a letter to the Times had complained that the laundresses appropriated some of the most attractive sections of the Heath.<sup>10</sup>

But the relevant bylaw was laxly enforced and in 1877 the Board decided to apply stricter controls. The fourteen people who still used posts on the Heath for drying clothes were required to sign agreements acknowledging that they were there at the pleasure of the Board.<sup>11</sup> Two years later licences were issued to the laundresses and laundrymen, a measure first adopted at Blackheath. As the licences were not transferable, this was a device to end the practice by attrition.<sup>12</sup> The licencees displayed some tenacity. Twelve annual licences were issued at the beginning of 1880; by the cessation of the Board's period of control, this had been reduced to seven. One laundryman had lost his residence when the cottages on a charity estate were torn down and another went to the workhouse.<sup>13</sup>

For all its antiquity, a practice like clothes drying had no status in law as a right, and could be dealt with relatively easily with the bylaws. Despite pockets of support, most people viewed it as a nuisance. Petitioners to the Board pointed out other

<sup>10</sup>MBW 981, 29 May 1872, pp. 131-32; Times, 24 May 1872.

<sup>11</sup>MBW 987, 2 May 1877, pp. 661-63.

<sup>12</sup>MBW 989, 10 July 1878, p. 83; 19 February, pp. 569-71; 5 March, pp. 607-8; MBW 990, 30 April 1879, pp. 29-30.

<sup>13</sup>MBW 991, 18 February 1880, pp. 164-66; MBW 997, 13 July 1887, p. 170; MBW 998, 6 February 1889, pp. 664-65.

nuisances which they wanted stopped but the bylaws were not always flexible enough to oblige or even designed to do so.

As often as not elements in the local population incited middle-class indignation, not merely itinerant gypsies or tramps. It was this anger that had fueled the movements to protect and clean up commons. In 1865 the Fulham Board of Works had made a blanket condemnation of the "disgraceful purposes to which the Commons and open spaces of the Manor of Fulham are subjected".<sup>14</sup> A Blackheath deputation had waited upon the Metropolitan Board in 1869 with a claim that the heath was "rapidly being destroyed by the number of costermongers and others who almost constantly took possession of it". Furthermore, "there was no adequate police control over the rough characters ... whose language was of the most foul and disgusting character".<sup>15</sup> The reports that accompanied the Enclosure Commissioners' recommendations employed similar dark imagery to describe particular commons.

Those upset by such conditions hoped and expected that control by the Metropolitan Board would curtail these unpleasant scenes. To this end, many residents of Shepherd's Bush had wanted their common converted into a proper park (contrary to the sentiments in most places) and continued to lobby the Board to adopt this suggestion after it acquired the common in 1871. Although the bylaws prohibited a great variety of activities, these people believed that a park would be more decorous. One

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<sup>14</sup>Hammersmith Archives, FBW/4, para. 11, 5 April 1875.

<sup>15</sup>Times, 19 April 1869.

resident wrote that the situation was so bad that "houses fronting the Common have been obliged to keep the blinds down".<sup>16</sup> Many things could offend. Property values were perceived to be at risk if commons were allowed to get out of hand. The Board's administration failed to provide quick solutions. A businessman at Shepherd's Bush, writing seven years after the scheme came into effect, described the type of behaviour that his class disliked:

I am required by the owners and tenants of houses in Park Villas, Shepherd's Bush Green, to draw your attention to the abuse of the use of the portion of the Common recently reopened to the public, the abuse consisting in the accumulation of paper lying about, the congregation of dirty unshod children, men bringing cans of beer on to the Green and there drinking it and lying about sprawling in a state of more than semi-drunkenness. Girls turning heels up over the railings of the common and exposing their persons thereby indecently, and tramps actually lousing themselves on the seats.

As I write there are now men lying about full length asleep, and dirty ragged boys with scarcely an article of clothing kicking their heels up within 13 yards of the drawing room windows of houses occupied by tenants paying £75 per annum rental. These are sights in no way calculated to keep the place as a resort for respectable people or to save property in the immediate neighbourhood from the natural result of such sights: namely to drive away a good tenantry.<sup>17</sup>

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<sup>16</sup>MBW 982, 21 May 1873, pp. 439-42.

<sup>17</sup>MBW 1008 (Papers), 26 July 1878.

The Board, to its credit, did not scurry to rectify all such complaints. In this case, it merely replied that it was unable to prevent the free use of the common.<sup>18</sup>

Another black spot was London Fields, Hackney. A letter to the local newspaper in 1868 declared that the disgraceful scenes there "were enough to make any one believe they were living amongst Goths and Vandals, rather than in the midst of a civilized community".<sup>19</sup> Hysterical outbursts like this continued for many years after the Metropolitan Board appeared.

People were not the only source of annoyance. Ten signatures were appended to the following complaint about Shepherd's Bush which exemplifies the increasing discomfort of rustic survivals in the face of urban sensibilities:

We the undersigned ... beg to lay before you the following facts:--During the week Donkeys of both sexes--varying in number from 12 to 16 assemble ... for the purpose of grazing and for hire; during the day acts of a truly disgusting character are committed by these animals under our windows in sight of our wives and daughters. We beg also to state that this is a great public thoroughfare--... Ladies in carriages, Mothers accompanied by their daughters--ladies, schools, nursery maids--all are to be seen in vast numbers ... within a few feet of where these truly disgusting exhibitions occur.

This letter was sent shortly after the Board assumed control. As donkeys had no right to be on the common, it was expected that

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<sup>18</sup>MBW 989, 26 July 1878, pp. 120-21.

<sup>19</sup>Hackney and Kingsland Gazette. 14 August 1869.

the bylaws would deal with the nuisance once they were approved.<sup>20</sup>

Another activity for which the Board was soon made aware of the need for rules was bathing in ponds on commons. The pressure for greater supervision came mainly from outraged moralists. Although not a festering problem, nor one of major importance, the bathing question nevertheless emerged unexpectedly in rather public form and was capable of embarrassing the Board.

The most sensational incidents occurred on Hampstead Heath. A letter in the Times in July 1872 related the shock and disgust of a gentleman who, while crossing the Heath, came upon a muddy pond where, in addition to the strolling members of the public, "some 50 perfectly naked men and boys" were bathing and running around the bank. The focus of attention was the body of a young man who had drowned. It would, the letter continued,

be left for some "busybody who writes to The Times" to ask what the Board of Works are about--why they allow naked people to run about the Heath on a Sunday; why they make no regulations to restrict bathing within decent bounds of time and place; why they leave dangerous ponds open without caution and without any means of preventing accidents or rescuing drowning people ... [A]ll the ... duties left to them by the Act of Parliament are either shamefully neglected, or performed in a manner which would be ludicrous if it were not so painfully bad.<sup>21</sup>

Sensitive to criticism this early in its suzerainty, the Board adopted a report from its Parks Committee recommending

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<sup>20</sup>MBW 1003, Papers; MBW 982, 18 June 1873, pp. 528-29.

<sup>21</sup>Times, 24 July 1872.

that the level of this particular pond on West Heath be reduced and swimming prohibited. Other ponds on the Lower Heath were more difficult to control because their eastern banks were outside of the Board's jurisdiction. The unusual display of nakedness was attributed to efforts to recover the body of the drowned man.<sup>22</sup>

No censorious letters or complaints appear in the records for the next four years but in June 1876 a resident of a housing development to the east of the ponds on Lower Heath wrote to the local newspaper about the scandalous situation nearby. Not only were servants and children faced with "men perfectly nude quietly drying themselves" but on Sundays "men and boys were bathing the whole day, running about the Heath naked". Short of prohibiting bathing altogether, the Board could only instruct the keeper to be more vigilant in summoning offenders and request the police to give support.<sup>23</sup> Critics, however, were not slow to affix responsibility for these types of incidents to the Board.

On commons where the Board controlled all banks of ponds it was able to be more decisive than at Hampstead. At Clapham, for example, a simple expedient was used to curtail complaints about indecent bathing on Sunday evenings. Sunday bathing was prohibited, and during the rest of the week bathers were restricted to before seven in the morning and after eight in the evening.<sup>24</sup> This arrangement seemed to satisfy all parties.

<sup>22</sup>MBW 981, 31 July 1872, pp. 300-3; Times, 3 August 1872.

<sup>23</sup>MBW 987, 28 June 1876, pp. 104-5; MBW 1006, Papers.

<sup>24</sup>MBW 989, 29 May, p. 21; 26 June 1878, pp. 56-58; Times, 8 June 1878.



Stories about indecent bathing on commons played well in the press but they tended to be short-term items. The Board preferred to diffuse them as quickly as possible because they provided a beacon for those dissatisfied with other aspects of its administration. Given its penchant for generating unfavourable publicity in many areas of its operations, the Board had no wish to compound its woes.

But some issues were not so easily resolved. The power of the local gentry to influence events was demonstrated at Tooting over the question of horse riding. Clearly these people wished to preserve commons for reasons other than their property values; they wanted opportunities to indulge in favourite pastimes, one of which was riding. The Board's new keeper, in his initial report in December 1873, commented on this:

Tooting Beck Common appears to have been a favourite resort of the Gentry for their morning and evening rides, as well as for the exercise of their horses by the Grooms, and also for running and practice ground for dogs.

I have checked these matters as much as laid in my power. The Gentlemen have asked me for notices, &c., and my not being in uniform, they appear doubtful in the matter although I have met no opposition from them.<sup>25</sup>

This acceptance of the keeper's authority was not sustained. Shortly thereafter he described the "very ill feeling" expressed by some riders when he tried to enforce the rules.<sup>26</sup> The spokesman for the equestrians, Henry Doulton, explained to the Board that riding had taken place over the Tooting commons for a great many

<sup>25</sup>MBW 983, 17 December 1873, pp. 428-30.

<sup>26</sup>MBW 983, 14 January 1874, pp. 502-4.

years, though he stopped short of claiming it as an actual right. A colleague admitted that the breaking in of horses might be banned but insisted that recreational riding continue. But the Board's Parks Committee wanted to prohibit unrestricted riding because it undermined efforts to restore the turf. As a compromise it proposed to designate a section of the common for use by equestrians.<sup>27</sup>

Meanwhile, the keeper found it hard to control riding because the posting of the bylaws had been delayed by a dispute with the War Office over use of the common by the military. Riders continued to challenge him and to put pressure on the Board. A barrister pleaded as follows:

I am working all day and to me it is a matter of health and I cannot see the justice of excluding old or middle-aged men who ride in favour of young ones who play cricket. All I ask is that we old and middle-aged men may have our fair share of the common.<sup>28</sup>

When the difficulty with the military had been resolved and the bylaws were sent to the First Commissioner of Works for approval, the equestrians lobbied hard. Despite the best efforts of the Board, the First Commissioner agreed with them and ordered the bylaw against riding dropped. In its report for 1875 the Board did not hesitate to blame the poor condition of the surface of the common on the riding.<sup>29</sup>

<sup>27</sup>MBW 983, 28 January 1874, pp. 560-61.

<sup>28</sup>MBW 984, 6 May 1874, p. 291.

<sup>29</sup>MBW 984, 1 July, pp. 436-37; MBW 985, 21 October, pp. 24-27; 16 December 1874, p. 173; 10 February 1875, pp. 274-75; Report of the Metropolitan Board of Works for 1875, p. 24.

The decision failed to end the bad feelings. Two years later the Board tried to enforce regulations keeping riders off footpaths. When Doulton was accused of breaking these, he denied the charge in the strongest possible terms adding that "every possible obstruction and annoyance has been given to riders since the Board has had charge of the Common". Posts had been placed in such a manner as to force riders to cross a ditch to get onto the common. According to Doulton, one result of this was that "fewer ladies ride". He maintained that the area was ideal for equestrians because it was "little frequented". The Board repeated its admonition against riding on footpaths, but generally kept silent on the matter for another two years.<sup>30</sup>

A brief flurry of activity occurred in 1877 when the Board tried to formulate a general set of bylaws for all the commons it had acquired. Included in these was a prohibition against riding. But the equestrians, aided by their M.P., succeeded in having the Tooting commons exempted from this provision.<sup>31</sup>

Demographic trends, as much as anything else, brought down the curtain on unrestricted riding over the Tooting commons. A taste of the future was provided at nearby Clapham Common. In 1878 an area for horse riding had been set aside and a stand for letting animals had also been built.<sup>32</sup> Two years later, when equestrians pressed for an expansion of their facilities, they were met by strong opposition. When the Board

<sup>30</sup>MBW 987, 30 May 1877, pp. 723-27.

<sup>31</sup>MBW 989, 5 February, pp. 528-32; 19 February, pp. 564-65; MBW 990, 14 May 1879, pp. 62-66.

<sup>32</sup>MBW 988, 6 March, pp. 635-37; 20 March 1878, pp. 662-63.

decided not to bow to the equestrians' wishes, one of their opponents wrote that it was welcome news to "thousands".<sup>33</sup> A majority of visitors to Clapham found the horses irritating, and similar sentiments were spreading southerly. By 1884, as the number of non-equestrians continued to increase, the Parks Committee made another assault on the privilege at Tooting. This time the Home Secretary, W. Vernon Harcourt, a long-time member of the Commons Preservation Society, indicated that he was not adverse to altering the bylaws as the Board wished. A deputation was quick to appear before the Board protesting against any changes.<sup>34</sup> It left a memorial signed by Doulton and eighty-one others. But the equestrians' influence was waning and the Board decided to ban riding over the commons except on a designated site.<sup>35</sup> The regulations for riding at Tooting fell in with those at other commons. The pleasures of the resident gentry, the group that had spearheaded the original preservationist drives, no longer dominated.

While some members of the gentry viewed riding as a quasi-right, most would not have extended the same status to the practice of letting donkeys and ponies. Yet the Board believed that this type of activity deserved its support--provided it was controlled--and proceeded to erect donkey stands on many of its commons. This policy was occasionally sabotaged by other

<sup>33</sup>Times, 10 May 1880.

<sup>34</sup>MBW 994, 12 March, p. 455; 23 April 1884, pp. 524-25; Times, 28 April 1884.

<sup>35</sup>MBW 994, 7 May, pp. 546-48; 18 June, pp. 602-3; MBW 995, 5 November, pp. 81-83; 3 December 1884, pp. 126-27.

concerns. Plans to build a donkey stand at Tooting Bec Common were shelved because it was feared that commoners would complain that their rights of pasture had been diminished.<sup>36</sup> Not all members of the public welcomed the donkey stands. Their unpopularity with well-to-do inhabitants was demonstrated by a petition from thirty-four residents of Blackheath against a proposed stand near their corner of the common. It was self-evident to them that the disgraceful conduct and frightful language would lead to a "serious depreciation in the value of [their] property".<sup>37</sup>

Property values were not the sole concern of critics of donkey riding. It was also a sabbatarian issue that broadened to encompass the cruel treatment of the animals. Both these points of view were present at Hampstead. As the Board was grappling with the bylaws for the Heath, it received a request from the local vestry suggesting that the hiring of donkeys and ponies be banned on Sundays on the grounds of "humanity and decency".<sup>38</sup> This was hardly a new complaint: in 1853, for example, attention had been called to this "serious evil" using much the same language.<sup>39</sup> The Vestry's objection was followed by a petition from the vicar and 432 others which specified the evils that inevitably accompanied the donkey riding. The activity attracted large numbers of men and boys who thus worked on the Sabbath.

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<sup>36</sup>MBW 986, 6 October, pp. 187-88; 3 November 1875, pp. 256-67.

<sup>37</sup>MBW 1002, Papers, 29 May 1872.

<sup>38</sup>MBW 980, 24 January 1872, pp. 288-303.

<sup>39</sup>Times, 13 April 1853.

Much profanity attended the "cruel beating" of the dumb animals, disrupting the peace of the inhabitants. Finally, "females falling off the donkeys" were a frequent cause of "disgusting scenes". But, after consulting the Home Office, the Board decided that it had no authority to frame a bylaw curtailing the letting of animals on one day.<sup>40</sup>

Nonetheless, recognizing that the donkeys were a nuisance that cried for some form of control, the Board decided to licence the operators. One reason for the chaos at Hampstead was the anomaly that had existed for some time that required those with horses and ponies for hire to pay ten and a half shillings to the lord, while those with donkeys went completely unregulated. In April 1872 the Board picked two sites for donkey stands and construction began.<sup>41</sup> It took about a year to put the licencing system into effect, but its debut in 1873 was credited by the RSPCA with greatly reducing the level of cruelty. Non-compliance with the bylaws could result in the suspension or loss of a licence.<sup>42</sup> The licences did not, of course, lead to luxurious conditions for the animals; they were renewed with few questions asked. Some dozen years after their introduction, the treatment of ponies and donkeys over the Easter holidays still drew disapprobation.<sup>43</sup> Despite the Board's doubts in 1872 over

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<sup>40</sup>MBW 980, 31 January 1872, pp. 348-49; 28 February, pp. 463-64; 13 March, pp. 463-64.

<sup>41</sup>MBW 980, 13 March 1872, pp. 464-65; 17 April, pp. 535-41; 20 April, p. 561; MBW 981, 8 May, pp. 78-79.

<sup>42</sup>Times, 14 April 1873; MBW 982, 7 May 1873, pp. 365-67.

<sup>43</sup>Times, 9 April 1885.

the legality of banning the activity on Sundays, it did just that in 1878 by licencing the animals on weekdays only.<sup>44</sup> As the largest number of potential riders visited the Heath on Sundays, this was somewhat mean-spirited, but sabbatarian influence was still strong. The licencing of people letting animals was extended to other commons, such as Clapham.<sup>45</sup>

Riding animals, whether horses or donkeys, was an activity that benefited from the presence of commons but it was not the most popular recreational pursuit. One of the most prominent themes in preservationist propaganda was the need for commons as places for play. Games, especially cricket, were viewed as character-building pastimes, necessary to the country's continued prosperity. The Metropolitan Board believed that its management of commons should facilitate their use for games, but there were problems. Would all games be permitted on all the Board's commons? Could the Board set aside areas for games without raising cries of protest from commoners convinced that their grazing rights had been injured? How could the interests of players and other members of the public be reconciled?

It soon became clear that not all types of games would be countenanced. Any with links to gambling were banned. The appointment of keepers was reported to have curbed the playing of cockshy on Clapham Common. Tip cat was prohibited at

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<sup>44</sup>Report of the Metropolitan Board of Works for 1878, pp. 26-27.

<sup>45</sup>MBW 989, 5 March 1879, pp.617-18.

Hackney and elsewhere.<sup>46</sup> In 1877 the keeper at Clapton Common reported that gypsies had divided into two groups to play cockshy on the Mill Fields. One would warn the other when he appeared. The Board directed him to visit the Fields in plain clothes to try to surprise the players, but during the next year a separate keeper was assigned to the Mill Fields because of the inability of the man at Clapton to control this and other disorders there.<sup>47</sup>

For many preservationists cricket was the most desirable game to be played on these commons. A contributor to the Hackney Gazette waxed lyrical on the delights of the game during the summer. He characterized Hackney Downs as a village green in the city. The first occupants of the day were the early risers taking their morning constitutionals before breakfast; they were followed later in the morning by children and their nurses who, being women, "must talk". Around noon, juvenile cricketers appeared to play their "games of manliness" followed by the grown men and their cricket clubs. On a Saturday there was no time for children and youngsters. The whole Downs was filled with cricket, providing the author with an almost transcendent experience:

O cricket! In every one of thy phases we must apostrophize thee. Within thy spheres no vice can be engendered, and not even gambling find a place .... Ennobling cricket; England may be proud of thee.<sup>48</sup>

<sup>46</sup>MBW 988, 3 October 1877, pp. 240-41; MBW 982, 5 February 1873, pp. 90-92.

<sup>47</sup>MBW 987, 16 May 1877, pp. 691-92; MBW 989, 16 October, pp. 248-49; 30 October 1878, pp. 268-75.

<sup>48</sup>Hackney and Kingsland Gazette, 24 July 1872.



Perhaps finding such a vision irresistible, the local paper responded to the invitation to submit suggestions for the laying out of the Hackney commons by issuing a plan abundant with cricket grounds. London Fields, for one, should have a pitch occupying the main portion; the southern side could then accommodate the devotees of "croquet, gymnastics and similar pursuits in which both sexes take part". The Downs' devotion to cricket was to remain after the turf was replaced, although a small part might benefit by the construction of a gymnasium. South Mill Field should be levelled for cricket and it was only with restraint that the editors allowed that Clapton Common should be made into a park. With a touch of defensiveness, they justified their emphasis on cricket facilities. Cricket was, after all, only played during the summer months. In winter the grounds would be used for football:

From early youth--nay, almost from childhood up to manhood, both these games are thoroughly enjoyed .... They are indigenous to England and lift the mind above pernicious influences .... [they] keep our open spaces pure from the inroads of vice.<sup>49</sup>

The Metropolitan Board chose not to adopt these suggestions. Rather it permitted most games--except tipcat and cockshy--to be played on the Hackney commons. The keeper on Hackney Downs was to prevent goal posts being continually erected on the same spot or too near to footpaths. Some years later the rules at Clapham were more specific: wickets and goal posts were

<sup>49</sup>Hackney and Kingsland Gazette, 18 September 1872.

prohibited within forty yards of any roadway or footpath.<sup>50</sup> Because the Board's authority over the lammas lands at Hackney was for part of the year only, it could do nothing to assuage the fears of the Hackney Common Improvement Association whose members feared that games would tear up the turf they had spent three years nurturing. It was up to the freehold owners to try to control cricket and rounders between April and August.<sup>51</sup> The Board refused requests from football clubs for exclusive rights to parts of Hackney Downs. Similar requests at other commons were handled the same way. The Board believed it should provide facilities for the public in general, not for particular clubs or organizations. They could devise systems among themselves to ensure access.<sup>52</sup>

The difficulties inherent in the pursuit of this policy on games were well illustrated by the Board's attempt to regulate cricket on Hampstead Heath. The topography of the Heath did not, in fact, provide many natural sites for the game, although it had long been played at West Heath.<sup>53</sup> A wealthy resident, W. Strickland Cookson, believing that facilities should be improved for this "manly and truly English recreation", offered £1000 to prepare a pitch on the lower Heath near his property. Cookson was one of the early members and major financial

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<sup>50</sup>MBW 982, 5 February 1873, pp.95-97; MBW 988, 12 December 1877, pp. 444-45.

<sup>51</sup>MBW 982, 21 May, pp. 424-26; 18 June 1873, pp. 503-4.

<sup>52</sup>MBW 984, 7 October 1874, pp. 583-85.

<sup>53</sup>Barratt, vol. 2, p. 218.

backers of the Hampstead Heath Protection Committee. Unfortunately he complicated his offer by insisting that a local committee manage the ground. The Parks Committee of the Metropolitan Board initially declined the scheme on the grounds that the Hampstead Heath Act required it to keep the Heath for purposes of "unrestricted exercise and recreation" and thus prevented any designation of a part to the control of others. The Committee hoped, nevertheless, that Cookson would still make his donation and told him that past experience at Blackheath and other locations led to the conclusion that all parties wishing to play cricket could be accommodated.<sup>54</sup>

This led to a lengthy correspondence in which Cookson tried to persuade the Board that the Act in fact allowed the regulation of a cricket ground. But the closest the Board would come to his position was a suggestion that the inhabitants form a local advisory committee. Cookson balked at putting up the entire amount for a facility over which he would have little influence, but he still held out hope that a pitch might be made if his neighbours and the Board also contributed.<sup>55</sup> The cricket club to which Cookson belonged was willing to contribute £500 but wanted some guarantee of local control. The Board, however, remained adamant that it would be ill-advised for it to encourage

<sup>54</sup>MBW 980, 24 January 1872, pp. 310-12; 14 February, pp. 380-81; F. E. Baines, ed., Records of the Manor, Parish and Borough of Hampstead (London: Richard Clay & Sons, 1890), pp. 149-50.

<sup>55</sup>MBW 980, 13 March 1872, pp. 466-69; 20 March, pp. 497-98; 17 April, pp. 543-44; MBW 981, 15 May 1872, pp. 98-99; 29 May, pp. 135-37.

use of the Heath by one group. Further efforts to overcome difficulties failed and the scheme came to nought.<sup>56</sup>

This decision by the Board in 1873 to decline Cookson's offer to contribute towards the formation of a cricket ground did not, of course, solve the problem of whether any part of the Heath would be used for the game. The issue lay dormant for some seven years before the Parks Committee received memorials from ratepayers and cricketers asking that a site, preferably on the East Heath, be set aside.<sup>57</sup> The Committee approached the issue gingerly. It recommended that fifteen acres of East Heath be drained, but failed to follow through the following year and lay out the ground for cricket.<sup>58</sup> Members were concerned lest legal challenges arise from commoners if a portion of the Heath was dedicated to a specific use, although their solicitor advised that there should be no difficulties if a space "not unreasonably large" was devoted to cricket. The Committee finally approved the setting aside of three one-and-a-half-acre sites. A further year passed before the pitches were ready. It was decided not to make any special regulations for the allocation and use of the sites beyond measures already in the bylaws.<sup>59</sup>

<sup>56</sup>MBW 981, 31 July 1872, pp. 303-6; 6 November, pp. 502-6; MBW 982, 2 July 1873, pp. 572-73.

<sup>57</sup>MBW 991, 7 July 1880, pp. 517-20.

<sup>58</sup>MBW 991, 4 August, p. 678; 13 October 1880, p. 731; MBW 992, 8 November 1881, pp. 582-83.

<sup>59</sup>MBW 992, 21 December 1882, pp. 632-33; 18 January, p. 664; 15 February 1883, pp. 708-9; MBW 993, 11 April, pp. 559-60; 23 May 1883, p. 629.

The legal difficulties arose not from protests by commoners over the setting aside of the three pitches, but from the attendant banning of the game on West Heath where it had long been played. In 1882 the solicitor was instructed to investigate whether the fact that games had been played for sixty years would be sufficient to create a right. If so, other activities that the Board sought to control might be defended on the same grounds.<sup>60</sup> The Parks Committee received a request from the Hampstead Vestry and a deputation to rescind the order banning games, but another deputation presented a petition supporting the move, proof that cricketers were not universally loved. The Committee made a minor retreat and approved the playing of games on a small detached portion of the Heath.<sup>61</sup>

This failed to pacify the cricketers. In July 1882, in deliberate violation of the Board's bylaw, they played a game on West Heath.<sup>62</sup> The Board, accordingly, issued a summons which was heard in November. The defendants claimed a right to play based on sixty years of uninterrupted usage. The right, they alleged, was vested in the general public. Here was a new challenge for the Board which normally faced claims by commoners for traditional rights of common. On this occasion, a non-profitable right--or easement--was being sought by the public.

<sup>60</sup>MBW 993, 17 May 1882, pp. 121-22.

<sup>61</sup>MBW 993, 24 May 1882, pp. 145-47.

<sup>62</sup>Barratt, vol. 2, pp. 217-18.

The Hampstead Magistrates set a case for the High Court. In December, the Court of Queen's Bench, confirmed the ruling of the lower court to the effect that the people of Hampstead had a right to play cricket on the portion of West Heath traditionally used for that purpose, and that this right had not been affected by the Hampstead Heath Act of 1871.<sup>63</sup> In fact the ruling was that the custom to play games anywhere on the Heath was protected by the section of the 1871 Act that prevented interference with any right. Although the Board claimed to have a legislative right to regulate games, the Court could not find any justification for interfering with the right claimed, which they ruled was bona fide. The victors lost no time in publicly asserting their right by playing a game of rounders, in effect extending the ruling to all games, an interpretation with which the Board's solicitor concurred.<sup>64</sup>

This was a rare affirmation by the courts of a right of recreation over a common. Previously, specific pastimes, such as dancing, had been recognized for inhabitants of villages over their greens. But the courts shied away from recognizing rights in the general public because the exercise of such rights could easily destroy a common. The Hampstead Heath decision did not, however, open the floodgates for similar claims on other commons. The freeholders at Plumstead had claimed a right of recreation over the commons there in their suit against Queen's

<sup>63</sup>MBW 994, 18 July 1883, p. 63; 19 December, pp. 317-8; Barratt, vol. 2, p. 218.

<sup>64</sup>Times, 12 December 1883; MBW 994, 12 December 1883, pp. 298-99.

College, but the point was neither argued nor ruled upon. The defendants in the Heath case had evidence of cricket being played at a specific location for over sixty years. Similar evidence was not necessarily available elsewhere. Furthermore, the Board was generally amenable to the playing of games and its regulations were not particularly restrictive, nor widely opposed. But the decision in this case was a reminder that rights could appear in unexpected places, and, as most schemes guaranteed existing rights, administrators were wise to be cautious.

One restriction that many non-cricketers welcomed was the removal of games from some of the smaller commons, and the attempt to keep them away from footpaths on the larger ones. The Board banned games on Shepherd's Bush Common in the spring of 1879 because it wanted to give freshly sown grass a chance to take. The temporary cessation won such support from local residents that it was made permanent.<sup>65</sup> Later that year a suggestion from the Hackney Board of Works that cricket and football be restricted on some commons in order to protect nurse girls, children, and other members of the public from accidental injury was adopted by the Metropolitan Board.<sup>66</sup>

Critics found less to complain about in the Board's policies on games than in its attempts to regulate many other areas. Unlike riding, where opinion tended to be sharply divided between those who supported it and those who wanted it banned,

<sup>65</sup>MBW 989, 5 March 1879, pp. 613-14; MBW 993, 15 March 1882, pp. 25-26.

<sup>66</sup>Hackney and Kingsland Gazette, 16 June 1879; MBW 990, 25 June, pp. 186-88; 9 July, pp. 272-73; MBW 1009, Papers, 9 July 1879.

there was a consensus that games belonged on most commons. Conflict tended to arise over comparatively minor points, such as protecting non-players from accidental injury or refusing requests from sports clubs for exclusive use of portions of commons. At Hampstead, where the Board tried to become dictatorial, it received a setback. But generally, if players of games adhered to the bylaws of the commons they used, they found little to fault in the Board's administration.

The Board's handling of these issues helped tame commons along middle-class lines. Disruptive or outrageous behaviour was banned, discouraged, or restricted to specific times or locations. Approved activities such as games were generally assisted, although they, too, were regulated to prevent their annoying other visitors. On some questions, such as riding at Tooting, the Board had to wait for the population to shift before it could secure its end. Although people continued to express displeasure over the Board's decisions they generally learned to live peacefully with the results.



### 5.3 For Whom Were Commons Saved?

Authorities occasionally confronted questions relating to access to commons. Generally all law-abiding members of the public were welcome but there was debate over the validity of certain bylaws, particularly those dealing with public meetings. The Metropolitan Board denied requests from sporting organizations for exclusive use of playing fields because to sanction them would be contrary to the principle on which schemes were based, namely that commons were there for every one. But did this principle have limits? Could the Board restrict the use of these open spaces for public meetings? Some thought not. Schemes attempted, with mixed results, to forge arrangements whereby commoners and the public could coexist on commons but on another issue administrators were compelled to recognize that the public might have to share further. When faced by the army, for example, the Metropolitan Board was in a comparatively weak position to influence government and had to accommodate certain military demands. Those involved in the Epping Forest struggle had to consider for whom they had fought when a railway company's plans raised questions about access. Was it wise to lose part of the forest if the project for which it was sacrificed made it possible for more people to visit a beautiful area?

On the question of public meetings the Metropolitan Board of Works met some spirited challenges. Commons had an

association in the popular imagination as meeting places. Whether political or religious, gatherings had long been held on them, from Wat Tyler on Blackheath to the Chartists at Kennington, to the point where many people believed that a right existed to do so. The Board, as it tried to find a middle ground between advocates of unfettered freedom and those wishing to ban all such activity, never resolved this issue to its complete satisfaction.

The initial ripples of the debate were innocuous enough. In Hackney, the North London Open Air Temperance Mission had held summer meetings on London Fields for many years. Shortly after the Hackney scheme was enacted, the Mission applied to the Board for permission to continue these meetings and were told that the Board had neither the power to licence nor to refuse them, but would prevent any annoyance to the public or breach of the bylaws. The meetings continued. Although the new keeper on London Fields recorded complaints about religious gatherings, no action was taken provided order was kept. A large temperance meeting in August 1873, presided over by the Archbishop of Westminster, passed without incident.<sup>1</sup>

Two years later the Board toughened its stance somewhat. It used a bylaw against piercing the surface of the commons to prohibit speakers erecting platforms. A member of the Hackney Commons Preservation Society took umbrage at this denial of an "Englishman's birthright" but residents of houses fronting the Fields welcomed the restriction and petitioned the

<sup>1</sup>MBW 983, 1 August, pp. 25-26; 6 August 1873, pp. 28-29.

Board to rid the area altogether of noisy crowds whether assembled for religious, political, or other causes. They were dismayed by the language used which they characterized as a type that "very few persons would care to allow their children or servants" to hear. Outside of ordering the keepers to be more conscientious in their application of the bylaws against foul language, the Board concluded that there was little it could do to govern the behaviour of participants.<sup>2</sup> Generally those who resided within earshot of the meetings encouraged their banishment while speakers and their followers wished to continue them. They were joined to some extent by non-participants who believed a fundamental right was at stake.

At Shepherd's Bush Common in the mid-1870s the Board was content to adopt a laissez-faire attitude: insofar as meetings remained within the limits of the bylaws, it would not interfere with them. Like the Hackney commons, Shepherd's Bush had its share of itinerant preachers and speakers who invariably offended the sensibilities of nearby householders. The presence of a uniformed keeper had curbed some of the excesses, but not enough to end calls for harsher measures.<sup>3</sup>

The issue received its fullest airing at Clapham where the Board decided to introduce more stringent rules. The original

<sup>2</sup>Hackney and Kingsland Gazette, 9 June 1875; MBW 986, 14 July, p. 70; 29 July 1875, pp. 111-13.

<sup>3</sup>MBW 984, 6 May 1874, p. 293; Report of the Metropolitan Board of Works for 1874, p. 21. Two "teetotalling demagogues" who had been fined for breaking the bylaws tried to get even with the Board's keeper for testifying against them by accusing him of rudeness and drunkenness. The countervailing testimony of local residents convinced the Board of his trustworthiness. MBW 985, 10 February 1875, pp. 285-90.

bylaws for that common contained no serious restrictions on public meetings although they demanded adherence to certain codes of "decent" behaviour and banned them within 150 yards of residences.<sup>4</sup> Trouble arose as a result of preachers trying to hold meetings in the face of insults and harassment from youths. The resulting altercations were noisy and annoying. The police, in response to a request that they assist the Board's keeper, maintained that banning preaching was the only effective way to stop the disorders.<sup>5</sup> Further troubles during the early summer of 1878 led the Parks Committee to ask the solicitor if the Board could frame a bylaw to control preaching.<sup>6</sup>

The solicitor reminded the Committee that people were "touchy" about this issue, but by January 1879 the bylaws had been amended by the addition of a clause prohibiting the delivery of

any public speech, lecture, sermon, or address of any kind or description whatsoever except with the written permission of the Board first obtained and upon such portions of the Common and at such times as may by such written permission be directed and sanctioned by the Board.

The first three applications for permission to speak were refused.<sup>7</sup>

It was John De Morgan who provided the legal test for the new bylaw. He spoke without securing authorization and invited

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<sup>4</sup>MBW 988, 12 December 1877, pp. 449-50.

<sup>5</sup>MBW 989, 26 June, pp. 61-62; 10 July, p. 92; MBW 1008, Papers, 10 July 1878.

<sup>6</sup>MBW 989, 24 July 1878, pp. 124-26.

<sup>7</sup>MBW 989, 7 August, pp. 137-41; 2 October 1878, pp. 175-82; 8 January, pp. 467-68; 19 March 1879, pp. 656-57.

the Board to issue a summons, promising to accept the verdict.<sup>8</sup> This was done. At the hearing, counsel for the Board stated that the bylaw had been drafted in accordance with terms set forth in the Clapham Common Act which directed the Board to prevent nuisances and preserve order. De Morgan, conducting his own defence, accused the Board of using the bylaw to prohibit all meetings. In response to the magistrate's suggestion that evidence of fifty years of public meetings held without opposition from the commoners would go a long way to giving credibility to his case, De Morgan produced witnesses able to show eighteen years. But the main question for the magistrate was not whether the Board used the bylaw to refuse all meetings, but whether the bylaw was within the Board's power to construct. He concluded that it was. Commons were subject to regulation; they were not "open to the world". The magistrate ruled that the bylaw was a "reasonable one for the preservation of order" and that an unlimited right to hold public meetings would interfere with the general public's use for "quiet recreation". He fined De Morgan twenty shillings but agreed to set a test case for a higher court.<sup>9</sup>

Before that was heard, the Board lost an embarrassing case over the same bylaw at London Fields. A person was charged with delivering a speech without first obtaining permission. But, although some 200 people had gathered to listen and turf was pulled up, witnesses supported the speaker's assertion that he

<sup>8</sup>MBW 990, 9 July 1879, pp. 264-65.

<sup>9</sup>Times, 4 September 1879.

had merely explained to the crowd the reasons why he was unable to address it. The magistrate dismissed the summons.<sup>10</sup>

When the test case came before the Queen's Bench Division in February 1880, De Morgan based his defence on two points. The first was that the public had acquired a right to hold meetings prior to the passing of the Act giving control of the common to the Metropolitan Board. Because the Act preserved existing rights, the Board could not interfere with the one to hold meetings. But this was disallowed. The court ruled that the meetings that had been held had not established a right. The only rights of common were rights of pasture and other commonable rights. "No such right as that claimed by the appellant on behalf of the public is known to the law."

De Morgan's second point was that as the common had been dedicated to the use of the public, the Board had no right to interfere with public assemblies. But this argument was also rejected on the grounds that it would allow unlimited meetings which could cover the whole common and exclude members of the public wishing to use it for recreation. The common was "necessarily placed under regulation"; public meetings, similarly, should properly be subject to regulation. The lower court's verdict was affirmed with costs against De Morgan.<sup>11</sup>

Thus the law supported the right to regulate public meetings, an important victory for the Board. The Times wondered how the Board would decide who was to be allowed to

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<sup>10</sup>Times, 27 September, Hackney and Kingsland Gazette, 27 September 1879.

<sup>11</sup>De Morgan v. Metropolitan Board of Works (1880) 5 Q B D 155.

use the common for preaching or speaking. If De Morgan applied for permission and was refused, he might have another case for the courts.<sup>12</sup> The ruling had not overturned the twin convictions of many Englishmen that they had a right to meet and a right to do so in places open to the public.<sup>13</sup>

In fact the Conservative Government had faced the question in 1867 when it tried to outlaw meetings in Hyde Park, site of the Reform League demonstrations. Many supporters of the League, such as Thomas Hughes, disliked the proposed ban but shied away from blatant support of the right to demonstrate.<sup>14</sup> In 1871 the Liberals introduced a bill banning meetings in the Royal Parks. It was withdrawn, but in the less congested 1872 Session a similar bill passed. The operative clause read: "No person shall deliver, or invite any person to deliver, any public address in a park except in accordance with the rules of the park".<sup>15</sup> Legislators did not see an immediate need for this type of restriction on commons, and it was only when meetings became an intolerable nuisance that the Board acted. The Commons Preservation Society, of which Hughes was a member, seemed quite content with the Board's policy.

After the victory at Clapham, the Board was satisfied with its powers to regulate meetings until events at Peckham Rye

<sup>12</sup>Times, 4 March 1880.

<sup>13</sup>A. V. Dicey, "On the Right of Public Meeting", Contemporary Review, 55 (April, 1889), p. 511.

<sup>14</sup>Edward C. Mack and W. H. G. Armytage, Thomas Hughes: The Life of the Author of 'Tom Brown's Schooldays' (London: Ernest Benn, 1952), pp. 149-50.

<sup>15</sup>Times 25 July 1871; 14 February 1872; Ramm, pp. 762-63.

forced further examination of the issue. During the high unemployment of the 1880s, radicals and socialists were demanding the right to make their views known. Discontent was expressed at large meetings which occasionally turned into riots, as happened in Trafalgar Square in 1886 and 1887. Temperance groups also lobbied the Board for access to its open spaces.<sup>16</sup>

Earlier in the decade agitation focused on Peckham Rye Common, where radicals under the Democratic Federation League's Henry Hyndman formed the Peckham Rye-common Defence League to press for the the removal of restrictions against meetings. But radicals were hardly the ones to force changes to a regulation that many supported, and the Board received a deputation from local inhabitants urging it to retain the status quo. Members of the deputation claimed that the meetings were treasonous, and cited as proof the remark of a speaker who said "you will never be free until one of you takes a pistol and shoots that woman the Queen".<sup>17</sup> In the House of Commons, the Chairman of the Metropolitan Board defended the policy in "the interests of the public, who desire orderly proceedings on the Common".<sup>18</sup> A few meetings were held by the Defence League in defiance of the bylaw and the London Trades' Council pressed the Board to change the policy on all its open spaces.<sup>19</sup> Thorold Rogers accused it of "systematically" refusing

<sup>16</sup>Briggs, Victorian Cities, pp. 328-29; Owen, p. 153; Times, 23 April 1883.

<sup>17</sup>Times, 28 April 1883.

<sup>18</sup>H.C., 3 Hansard 278: 891-92, 23 April 1883.

<sup>19</sup>Times, 14, 21 May, 4 June 1883.



to allow public meetings on any of its open spaces. Harcourt, the Home Secretary, indicated that it was never the intention to ban them altogether. He advised the Board to loosen its policy somewhat and permit more meetings. Opponents of change continued to press the Board to stand firm, labelling those who attended the gatherings as "Communists, Fenians, Tichbornites, and Republicans".<sup>20</sup>

Although radical groups were the noisy vanguard of the opposition to the Board's policy, they were joined by many others who thought it was too narrow. Finally, the Board acquiesced to those demanding more freedom to speak. Rather than act as censor by licencing some and refusing others, it chose to place geographical limits around the activity. On commons deemed large enough, it set aside areas where meetings could be held. At Clapham a site in the north-east corner of the common was selected.<sup>21</sup> It was never a policy that could satisfy everyone. Complaints again surfaced about the disruptive nature of religious gatherings on Sundays but the Board now left these for the police to handle.<sup>22</sup> Where space was inadequate to provide areas safely distant from householders and other visitors to a common, meetings were banned. This was done at Shepherd's

<sup>20</sup>H.C., 3 Hansard 280: 213-15, 11 June 1883; Times, 23, 30 June 1883.

<sup>21</sup>MBW 994, 16 January, pp. 346-48; 30 January, pp. 386-87; 13 February 1884, pp. 416-17.

<sup>22</sup>MBW 994, 2 July 1884, pp. 635-36.

Bush, for example, and a preacher was successfully summoned and fined forty shillings for breaking the rule.<sup>23</sup>

Judging from the strong words used by opponents of meetings, the Board would have had widespread support if it had chosen to abolish them altogether. But the proponents of meetings were not insignificant and the Board wisely decided to effect a compromise. This was possible because many commons were large enough to permit meetings to take place without disturbing householders or other users. Had the Board achieved its original goal of selling portions of commons to finance their schemes, fewer such places might have been available.

Among the groups that believed that they had special interests over commons were the Volunteers and the military. In 1865 the Select Committee on Metropolitan Open Spaces had reported that it had

received the testimony of distinguished officers, both of the volunteer and militia services, that the existence of these bodies depends on their having ready and convenient access to their training grounds, and that the preservation of the commons adjoining the Metropolis is absolutely necessary to the maintenance of those corps in a state of discipline and efficiency.<sup>24</sup>

Volunteers were an issue at Wimbledon where many residents found them disruptive but the 1871 Act for the common protected the National Rifle Association's annual meeting. Because they were, in many respects, another form of recreation, Volunteers

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<sup>23</sup>MBW 994, 2 July, pp. 636-39; MBW 995, 3 December 1884, p. 136.

<sup>24</sup>Second Report from the Select Committee on Open Spaces (Metropolis), p. 10.

were tolerated on most commons. They practiced regularly on Clapham Common before the Metropolitan Board assumed control in 1877.<sup>25</sup> At Hampstead they received permission from the Board to use the East Heath and soon frequented it for drills.<sup>26</sup> There were infrequent lapses from grace. In 1860, four Volunteer corps had leased a site on Wormwood Scrubs for three rifle butts. Eleven years later the manorial court was disturbed to learn that the corps appeared to be making up to £600 a year by sub-letting the butts to others. It ordered a stop to the practice and negotiated new leases with higher rentals.<sup>27</sup> Rifle butts were more acceptable on commons like the Scrubs which were large and comparatively remote from residential areas. The public's willingness to share commons with Volunteers was also aided by patriotism.

The military was also interested in the fate of metropolitan commons. At Wormwood Scrubs and Plumstead Common this interest was sufficiently strong that special provisions defining military access had to be incorporated into their schemes. Troops had been users of the two areas for some decades before the Metropolitan Board became active and they were not willing to abandon such choice grounds. But the War

<sup>25</sup>Second Report from the Select Committee on Open Spaces (Metropolis), q. 3551.

<sup>26</sup>Report of the Metropolitan Board of Works for 1873, p. 23; Report of the Metropolitan Board of Works for 1875, p. 23.

<sup>27</sup>Hammersmith Archives, DD/15/3, Court Minutes, 5 December, p. 161; 9 January, p. 166; 9 April 1860, pp. 177-78; 4 December 1871, p. 314; 6 May, pp. 319-20; 9 December 1872, pp. 327-28; DD/14/1763, draft letter to Corps, 27 December 1871.

Office wanted occasional access to all commons under the Board's control. The bylaws for Tooting Bec Common were delayed while the Board and the War Office worked out a compromise. Initially the War Office wanted the generous conditions that existed at Wimbledon to become standard but the Board maintained that that common had had a long association with the military that most other commons did not share. The War Office backed down somewhat and the Board was able to bar access by cavalry or artillery units.<sup>28</sup> By 1878 the following clauses became standard in the bylaws for the Board's commons:

Nothing in these bylaws shall be constituted as prohibiting on the Common

- (a) Infantry military drill
- (b) Encampment of troops for a single night for a halt on a march to or from the metropolis
- (c) A review (with the previous assent of the Board) of Her Majesty's Troops and auxillary forces, such assent to be subject to the following conditions:

When an adequate area for such drill encampments and reviews respectively has been fixed by the Board, that area only shall be used for such purposes;

All damages done by Her Majesty's Troops and auxillary forces to the surface of the Common which shall be capable of immediate reparation shall be made good by the Troops and forces encamped before they leave the Common and any damage to the Common which can be compensated only by pecuniary payment shall be so compensated by the Secretary of State for War;

Any difficulty which may arise between the Secretary of State for War and the Board concerning adequacy of the area fixed by the Board for the respective purposes aforesaid or concerning compensation for damage done to the Common shall be determined by the first Commissioner of Works.<sup>29</sup>

The inclusion of these clauses was needed to check occasional excesses by the military. Many residents of Clapham

<sup>28</sup>MBW 984, 25 March, pp. 187-200; 3 June, pp. 350-52; 15 July, pp. 467-70; 29 July 1874, pp. 503-5.

<sup>29</sup>MBW 988, 23 January 1878, pp. 537-39.

opposed drills on their common and were particularly upset that shots had been fired across public roads during a military exercise.<sup>30</sup> At Bostall Heath, an officer and seven men paraded three horses and a loaded wagon over the surface shortly before the new regulations came into effect. The officer claimed that the military was entitled to exercise on any of the Plumstead commons. But the Board's solicitor failed to find any evidence to substantiate such a right and the keeper was instructed to take the name of any officer leading troops across the Heath.<sup>31</sup> The passage of the Act giving the military access to part of Plumstead Common ended the interference at Bostall. Another reason authorities wished to have regulations governing military use of commons was to limit damage. Before the Plumstead scheme became law the subject was debated in the House of Commons. One of the local M.P.s argued that the new types of equipment used by the army invalidated the time-honoured arrangement by which troops and the public shared the common. Now it was a "sea of mud" in winter and a "waste of dust and sand" in summer.<sup>32</sup>

The Plumstead Common Act reserved seventy acres for military use, and the War Office was asked to ensure that troops restricted their manoeuvres to this area. The bylaws for Plumstead noted that this section of the common was to be used as a "parade, camping, training, or exercising ground" as often as

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<sup>30</sup>MBW 988, 6 February, pp. 563-64; 6 March 1878, pp. 637-39.

<sup>31</sup>MBW 988, 9 January, pp. 490-92; 23 January 1878, pp. 509-10.

<sup>32</sup>Times, 2 July 1877; H.C., 3 Hansard 235: 600-1, 2 July 1877.

needed.<sup>33</sup> The arrangement worked well. From the Board's point of view, it allowed the rest of the common to be revived after years of abuse and by 1879 it proudly trumpeted the results of its management. A "fine green sward" carpeted the once bare surface.<sup>34</sup>

The only other common under the Board's authority where the military negotiated special arrangements was Wormwood Scrubs. The military had been a presence on the western common since 1812, when the Bishop of London and manorial court had granted it a twenty-one-year lease for £100 per annum. Under the lease, certain lands were to be reserved for the commoners' cattle (the Scrubs was a carefully regulated common) on days when the military exercised; otherwise, all common rights over the leased part were reserved.<sup>35</sup> Overall, the lease worked to the advantage of both parties.

A new lease was signed in 1832 but when it ran out in 1852, it was not immediately renewed. One reason for the delay was that the manorial court was conducting an inquiry into the extent of copyholders' rights. In the interim period, it allowed the troops to use the common for a pro rated rent. The Government asked for a five-year absolute lease but the homage

<sup>33</sup>MBW 989, 22 January, pp. 501-2; 5 February, pp. 551-52; 5 March 1879, pp. 620-22; Times, 23 April 1879.

<sup>34</sup>Report of the Metropolitan Board of Works for 1879, p. 31.

<sup>35</sup>Hammersmith Archives, DD/15/7. The Report of Messrs. Alley-Jones and Co. on the Various Rights, Privileges, &c. of the Lord of the Manor, of the Commoners and of the Parishioners of Hammersmith and Fulham, in the Commonable Lands known as Wormholt Scrubs, 19 March 1872, p. 16; DD/15/1, Court Minutes, 30 March 1812, folios 9-12.

jury refused to enter into any arrangement that could not be terminated by either party on suitable notice, and called for a twenty-one-year lease with a six-months' warning period of intent to withdraw. The jury also wished to increase the rent to £150 per year.<sup>36</sup> The Government accepted the revised rent rather than look for another location for military manoeuvres; as in early leases, all rights of common were protected.<sup>37</sup>

The lease governed use by the military for a number of years. In 1869 the Metropolitan Board of Works made preliminary inquiries about the Scrubs. The Fulham Board of Works replied that information was "limited" but it appeared that the copyholders and the military had certain rights over the common, as did the Ecclesiastical Commissioners, the lords of the manor. Because the common was fenced and regulated by the manor court, the Fulham Board incorrectly believed that it deviated somewhat from being a common in the true sense. The local board thought that the most advantageous use of the Scrubs would be as a park surrounded by buildings.<sup>38</sup>

Various plans for the Scrubs were put forth without success until the War Office approached the Metropolitan Board in 1876 and suggested that it take control of the area by means of a scheme under the Metropolitan Commons Act, such a scheme to

<sup>36</sup>Hammersmith Archives, DD/15/3, Court Minutes, 6 December 1852, pp. 22-23; 1 February, p. 27; 28 March 1853, pp. 31-33.

<sup>37</sup>Hammersmith Archives, DD/14/1666, letter: Q.M.G. to William Bird, 24 July 1854; DD/15/3, Court Minutes, 4 December 1854, pp. 77-82.

<sup>38</sup>MBW 978, 8 December 1869, pp. 42-44.

reserve the rights of the military to exercise troops. The Board was amenable to this.<sup>39</sup>

Under the initiative of the War Office a bill was launched in Parliament that vested the Scrubs in the Board in return for certain guarantees respecting use by the military.<sup>40</sup> The bill was withdrawn from the 1878 Session but passed in the next. The Metropolitan Board became owners in fee simple of the common plus fifty-nine acres of adjoining land, a total of 194 acres. The military paid £27,000 for the manorial rights of the Scrubs and £25,615 for the additional acres. The Board received the land from the War Department free of charge. Under the Act the military was to have certain rights over a large portion of the Scrubs. Aside from the military uses, the common was to be held for the perpetual use of the inhabitants of the metropolis. On public holidays it could not be used by the military without special permission from the Board.<sup>41</sup>

After the Act came into effect, it became apparent that public access over the military portion would be less generous than expected. The army's greater than anticipated use of the rifle butts meant that large areas were out of bounds for much of the time. But the military turned a deaf ear to suggestions that would have curtailed the shooting, and there was little that the

<sup>39</sup>Hammersmith Archives, DD/15/3, Court Minutes, 14 May 1877, p. 411; Report of the Metropolitan Board of Works for 1876, p. 24.

<sup>40</sup>PRO MAF 25/223, B4191/1911, letters: Enclosure Commissioners to Smith, 23 January; Smith to Enclosure Commissioners, 26 January 1878.

<sup>41</sup>P.P. Wormwood Scrubs Regulation Bill [as amended by the Select Committee], 1878-79 (205), VII. 805; 42 & 43 Vict. c. cix; MBW 990, 6 August 1879, pp. 369-74.



Board could do. It hesitated before approving drainage plans for the common but eventually did so because the surface would be too swampy without some action.<sup>42</sup>

The Metropolitan Board would not have been adverse to removing the military completely from its commons but the War Office was too powerful a force for it to challenge. Some benefits fell to the Board. At both Plumstead and Wormwood Scrubs the military paid to secure its position, thus reducing the costs of acquisition. The public seems to have been disadvantaged more at the Scrubs than at Plumstead. Indeed, the arrangement restricting the army to one section of Plumstead Common was a decided improvement over the days when exercises tore up the entire common and Bostall Heath as well. As with other activities on commons, time spelled change. Newer forms of military hardware outgrew these increasingly suburban open spaces.

The question of access to most metropolitan commons was not a particularly troublesome one. They were not fenced and anyone who could get to them was welcome as long as he or she obeyed the bylaws. Epping Forest was somewhat different. Most of its visitors travelled some distance from their homes. Railways were one popular means of transport and a proposal to construct a line at Epping Forest managed to bring the issue of

<sup>42</sup>Report of the Metropolitan Board of Works for 1880, p. 31; Report of the Metropolitan Board of Works for 1881, pp. 32, 108.

who was benefiting from schemes into the open. It split preservationists.

The forest, as numerous public pronouncements pointed out, had been saved for the "people". But who were the various users and what did they want from the forest? The working-class poor from the East End certainly used it. Day excursionists from farther afield came. Solitary naturalists found it a haven. Could the diverse types of users enjoy the many acres without infringing on their neighbours? In early 1881 an interesting dilemma arose when the Great Eastern Railway wanted to extend one of its lines from Chingford to High Beech, a scheme which would not only require the appropriation of nine acres of the newly preserved forest but would cut 200 acres from the main part.

The proposal was supported by the City of London's Epping Forest Committee as likely to promote greater access to the forest. As E. N. Buxton, a verderer, Conservator, and member of the Commons Preservation Society, argued, many members of the working class rarely strolled more than a few hundred yards from the rail station. As High Beech was one of the most beautiful spots, it was only proper to make it more accessible. But other preservationists believed the extension was unnecessary. The station at Loughton, on another of the Great Eastern's lines, was close enough. The Examiner viewed these claims with suspicion, pointing out that the forest was not meant to be a place of seclusion for the "aesthetic nobility that chooses to regard the best bits of Epping as a sort of private pleasure

ground". It also wondered whether opposition to the line stemmed in part from a hotel interest in Chingford which would lose business if more people travelled to High Beech.<sup>43</sup> The County of Essex Naturalists' Field Club, whose members no doubt met the criteria for the Examiner's "aesthetic nobility", condemned the extension because it would "prejudicially affect the advantages secured by the Epping Forest Act, which directs that the forest is to be preserved as far as possible in its natural aspect". There were already some dozen railway stations serving the forest.<sup>44</sup>

Within the Corporation itself there was some opposition to the railway but it remained weak. That many clergymen and Sunday School officials in the East End endorsed the scheme helped overcome doubts.<sup>45</sup> But the Metropolitan Board of Works sensed an issue over which to lock horns with the City and decided to oppose the Railway's bill.<sup>46</sup> Having made the initial moves in this direction, however, the Board came close to bowing out. A committee recommended dropping the opposition because the railway had received such strong support from residents in the East End and because it was outside of the Board's jurisdiction. But the Hackney representative to the Board persuaded it to present a petition against the bill.<sup>47</sup>

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<sup>43</sup>Examiner, 8 January 1881, pp. 31-32.

<sup>44</sup>Times, 10 January, 22 February 1881.

<sup>45</sup>Times, 4 February 1881.

<sup>46</sup>Times, 8 January 1881.

<sup>47</sup>Times, 12 February 1881.

The Metropolitan Board was not alone in its stance. The Times thought proceeding with the line would be a "precedent of evil and ominous of more to come". The Commons Preservation Society decided that this was a rather drastic way of improving access to the forest and gave notice of opposition.<sup>48</sup> The Hackney Vestry demonstrated its split over the question by passing a motion supporting the railway but only if improved access to High Beech could be gained without sacrificing any of the forest.<sup>49</sup> In the end, opponents of the line impressed Great Eastern officials sufficiently that they withdrew the High Beech proposal from their bill (which had other purposes as well) in order to get it through Parliament.<sup>50</sup>

The Company revived the plan in 1883. The various sides repeated their arguments and, once again, preservationists were unable to form a solid block. Some members of the Commons Preservation Society thought the benefits outweighed the hazards. But in the House of Commons, an amendment to the bill by the Society's James Bryce, which guaranteed the forest's inalienability, passed by a convincing 230 to 82, despite gibes by one of the bill's sponsors that opposition was confined to several "learned professors, a great many butterfly fanciers, and a considerable number of gentlemen who used the Forest to a large

<sup>48</sup>Times, 12 February 1881; Commons Preservation Society, Report of Proceedings, 1880-81, p. 9.

<sup>49</sup>Hackney and Kingsland Gazette, 7, 16 February 1881.

<sup>50</sup>Times, 16 March 1881; Report of the Metropolitan Board of Works for 1881, p. 39.

extent, in the pursuit of the insect tribe".<sup>51</sup> Twice bitten, the Railway stayed forever shy of High Beech.

The attacks that were made on the uncompromising preservationists suggest that they were vulnerable to the charge that they were protecting areas for their own pleasure while taking refuge behind the public interest. Yet, the proposed railway would have been a rude intrusion into the newly rescued forest, and the Times was surely correct in warning that it would set an unfortunate precedent. There were other stations within the forest already and it was certainly open to anyone to walk the extra distance to High Beech. Nonetheless many in the East End refused to see the issue in that light. They supported the proposal as giving more people access to a greater part of the forest. From their perspective the line's opponents were being selfish.

The divisions found among preservationists on this issue were not major. Losing the line certainly did no harm to the forest. On the matter of public meetings it might be expected that groups like the Commons Preservation Society, with their romantic attachment to ancient liberties, would have much to say in their support. But the middle-class idea of a common was not one populated by radicals and preachers. The Society favoured the setting aside of specific locations for speeches over having the

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<sup>51</sup>H.C., 3 Hansard 277: 159-88, 12 March 1883; Commons Preservation Society, Report of Proceedings, 1882-83, p.7; Leslie Stephen, Life of Henry Fawcett (London: Smith Elder and Company, 1885), p. 335.

Board licence them, but it was not a significant participant in the controversy. That John De Morgan led the attack on the Board probably silenced potential middle-class allies. Most preservationists were not avid supporters of the Volunteers or the military both of which damaged commons by their use. But if sharing some sites with the military was the price for their preservation, they were willing to second the arrangements. There remained the task of making certain that the military adhered to the conditions governing its use of commons, not just Plumstead and Wormwood Scrubs, but those visited on marches. Middle-class preservationists could live happily with the results achieved on all these questions for they essentially continued a process of funnelling activity into acceptable places. Even the railway decision ensured that working-class crowds would be absent from High Beech, which would remain a haven for the "aesthetic nobility".

#### 5.4 Keepers

By the 1880s preservationists had essentially achieved their goals with respect to people's use of commons. Most commons had become pleasant places to visit. One was less likely to be hit by a cricket ball, assaulted by a drunk, frightened by an animal, run down by an equestrian, pestered by a gypsy, or robbed by a thief than two decades earlier. Those in control of commons continued to face criticism for their policies which were inevitably found wanting by some. But apart from specific protests such as the challenge to the Metropolitan Board's cricket restrictions on Hampstead Heath, or the attempt to defeat the Board's decision on public meetings, users of commons were content to follow the rules they could find printed on signs. For most members of the public, the keepers employed by the Metropolitan Board were the clearest evidence of its presence on a common. They were the ones who decided if an action was an offence under the bylaws. More important, they were a reassuring sign that a common was under some form of authority.

The men hired for these positions had generally served in the army. They worked long hours, especially during the early 1870s when the Board was first becoming involved with commons. Some form of shelter was provided, either a small hut or, on more remote commons such as Tooting, Wormwood Scrubs and Bostall Heath, a residence. The keepers' presence on these isolated locations helped cement the Board's authority. In some cases they merely replaced keepers who had been maintained by

the previous lord or the manorial court. Working conditions gradually improved over the years, with regular days off and other benefits becoming standard, causing many men to remain with the Board for extended periods.

The keepers' primary responsibility was to enforce the bylaws. While they were not expected to eradicate all abuses, patrolling anywhere from a few to two-hundred or more acres, their presence often produced quick and impressive results. Even before the bylaws had been put up on Clapham Common, the presence of two keepers was credited with reducing the playing of cockshy, the exercising of horses, and indecent bathing.<sup>1</sup>

The keepers filed reports to the Board's Parks Committee which then had to decide what action to take against those breaking the bylaws. At times the keepers' information was inaccurate but this was preferable to their taking no interest in their duties. The men appointed in 1872 to three of the Hackney commons reported suspected infractions almost immediately. But when the solicitor investigated three people named for turning out animals on Well Street Common, he discovered that they were parishioners who had had their beasts marked as required. No further action was taken.<sup>2</sup>

When the Board asked its keepers to report on what games were played on their areas, the man at Hackney Downs complied with a very literal interpretation of the bylaws:

<sup>1</sup>MBW 988, 3 October 1877, pp. 240-41.

<sup>2</sup>MBW 981, 6 November, pp. 514-15; 20 November, pp. 524-25; 4 December, p. 580; 18 December 1872, pp. 603-4. Marking was the process by which the marsh drivers identified the cattle permitted to graze during the open season.



football is daily and extensively played by a number of Clubs and schools who erect ... a number of poles from 16 to 18 feet in length, which is a breach of the 4th rule in the byelaws, breaking the surface and making large holes in the ground... [Throwing cricket balls] would be throwing a missile which is a breach of the 16th rule of the byelaws.<sup>3</sup>

Reports from other keepers indicated a conscientious desire to carry out their duties and a genuine interest in furthering the Board's program. The man at Well Street Common felt sufficiently alarmed by the destruction of the turf that he submitted a proposal to have the common divided into three sections with each section freed from games for a year or two. Although the chief gardener ruled this arrangement too difficult, it demonstrated initiative by the keeper. Nor did locals fail to appreciate the keepers' role in improving the character of their commons. Forty-five residents of the area surrounding London Fields presented the man there with a testimonial for his "constant and assiduous attention" to his duties along with a cash reward exceeding four pounds. The Parks Committee allowed him to accept this Christmas gift but were wary of keepers soliciting gratuities in return for favours.<sup>4</sup> Local sentiments could also be protective towards the keepers. The Hackney Gazette all but accused the Board of murder after the death of the first keeper at London Fields from symptoms not inconsistent with long days on the site without adequate shelter.<sup>5</sup>

<sup>3</sup>MBW 982, 5 February 1873, pp. 90-92.

<sup>4</sup>MBW 985, 21 April, pp. 407-8; 5 May 1875, pp. 456-57; MBW 986, 12 January 1876, pp. 363-64.

<sup>5</sup>Hackney and Kingsland Gazette, 30 August, 18 October 1873.

The keepers at popular commons had their greatest work on bank holidays. The first August Bank Holiday in 1871 was more an occasion for City workers, and places such as Hampstead Heath witnessed none of the "popular celebrations" normally found on Easter and Whitsun. But wider participation by the public was not long in coming.<sup>6</sup>

The keeper at Hampstead regularly reported daily crowds of 20,000 or more over Easter and Whitsun. On Easter Monday 1874 he wrote that "there were more people on the Heath than ever was known before on any holiday, I should think about eighty thousand".<sup>7</sup> The North London Railway despoised crowds of excursionists on bank holidays and Sundays.<sup>8</sup> When such large numbers visited an area like Hampstead, their activities would inevitably find disfavour with the resident gentry. But as preservationists had stressed the need of the people for these commons, they could hardly complain when the people came to use them. Generally the crowds were well behaved and the keepers were instructed to relax the bylaws somewhat on bank holidays. When 20,000 visited Hampstead on an August Bank Holiday in 1874 the only serious offence was gambling, for which a man received a six-week prison term. Three years later, thirteen were charged with the same offence.<sup>9</sup> Serious trouble was rare.

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<sup>6</sup>Pimlott, p. 148.

<sup>7</sup>MBW 984, 22 April 1874, pp. 239-40.

<sup>8</sup>Olsen, p. 314.

<sup>9</sup>Sexby, p. 375; MBW 984, 3 June, pp. 344-45; 7 October 1874, p. 573; MBW 987, 18 April 1879, p. 634.

The Metropolitan Board employed keepers at both its parks and commons. Those at the latter had to acquire some appreciation of common rights in order to know when cattle grazed or gravel was dug legally. Occasionally a keeper's perceptions approached the bizarre, as in this report from a man transferred from Southwark Park to Plumstead Common. He wanted to be sure that his actions did not compromise the Board:

I beg to inform you that there is a moveable bar placed by the side of the parish road ... and that there is a man lying dead in one of the houses by the side of the common. The people have made application to me for the bar to be open on Saturdays to allow the corpse to pass through. I did not sanction it as I understood if a corpse passed through the people would claim a right of way after that time and I wish your instructions before I act.

The Board allowed the corpse to be carried through.<sup>10</sup>

The keepers, for all their loyalty and attention to their work, did present the Board with some problems, however. Corruption and drunkenness were two constant dangers and the offences ranged from petty to major. Four months after the keeper on Clapton Common was provided with a box shelter, he had to be reprimanded for selling ginger beer from it.<sup>11</sup>

On large commons, where assistant keepers were employed, the opportunities for corruption appear to have been greater. The worst situation seems to have developed at Hampstead Heath. After the death of the first head keeper there in 1879, the job went to the person at Shepherd's Bush, a "powerful man of vigorous constitution" whose testimonials,

<sup>10</sup>MBW 990, 12 November 1879, pp. 578-81; MBW 991, 21 January 1880, pp. 71-72.

<sup>11</sup>MBW 985, 13 January, pp. 200-1; 5 May 1875, p. 459.

reported the Board's Clerk, were the "best of any ever submitted to the [Parks] Committee".<sup>12</sup> But by 1886 there was need for a clean sweep of the Hampstead staff (which numbered five by this time) when it was discovered that all of them had accepted gratuities from local costermongers. The nature of the offence was not such that dismissals were demanded, especially as many of the men had served for eight or nine years. Instead, they were separated and transferred to other commons.<sup>13</sup> These transfers were intended to break up what was evidently a long-established pattern of bribery at Hampstead.

The Board had already been embarrassed by their first keeper at Hampstead Heath, who, shortly after his appointment in 1872, became involved in an unpleasant incident. As the Board had received considerable criticism for its handling of the Heath acquisition, it did not welcome the additional bad publicity. Nevertheless, to its credit, it stood behind the keeper. The man, Absolam Durrant, while still serving a probationary period, was fined five shillings for assaulting a "well-known authoress", whom he had apprehended picking ferns. She was deaf and had been unable to hear his admonitions. Durrant, however, denied that he had used violence of any sort.<sup>14</sup> The woman was of a different opinion. She wrote a letter to the Times in which she accused Durrant of being intoxicated as well as using violence. She added that he had held her "for at least a minute with a

<sup>12</sup>MBW 989, 19 March 1879, pp. 643-46.

<sup>13</sup>MBW 996, 6 October, pp. 392-93; 20 October 1886, pp. 420-21.

<sup>14</sup>MBW 981, 26 June 1872, pp. 186-89.

ruffianly vicious force ... which ... I shall remember to my dying hour". She was upset at the five-shilling fine and the characterization of Durrant's action as merely an "excess of zeal".<sup>15</sup>

The Board asked for a full report from the Parks Committee. That Committee heard from the woman's solicitor who expressed "surprise" at the way in which the Board was handling the affair. He was particularly annoyed that its Hampstead representative had supported Durrant when the matter was discussed at a Vestry meeting. But, faced with the woman's reluctance to press the case further, the Committee exonerated Durrant, only warning him to be more careful in the future. The Committee recommended that he be reappointed as keeper.<sup>16</sup> The full Board, however, refrained from endorsing this while the matter was still being investigated and settled for a temporary extension. The decision produced an angry letter from the woman's solicitor questioning the justice of accepting Durrant's story over that of a "small, frail, deaf lady, about 50 years of age". The Parks Committee was unmoved and in the end the full Board confirmed Durrant's reappointment.<sup>17</sup> An assistant keeper was also appointed.

An assistant keeper at Tooting Bec Common had to be dismissed after one and a half years because of drunkenness. His replacement was made to serve a four-month probation before

<sup>15</sup>Times, 27 June 1872.

<sup>16</sup>Times, 28 June; MBW 981, 17 July 1872, pp. 221-24.

<sup>17</sup>MBW 981, 31 July 1872, pp. 296-300; Times, 3 August 1872.

settled for a temporary extension. The decision produced an angry letter from the woman's solicitor questioning the justice of accepting Durrant's story over that of a "small, frail, deaf lady, about 50 years of age". The Parks Committee was unmoved and in the end the full Board confirmed Durrant's reappointment.<sup>17</sup> An assistant keeper was also appointed.

An assistant keeper at Tooting Bec Common had to be dismissed after one and a half years because of drunkenness. His replacement was made to serve a four-month probation before being confirmed.<sup>18</sup> Drunkenness was not necessarily grounds for dismissal. A man at Stoke Newington Common was reprimanded for the offence but retained because his work had contributed to the maintenance of order.<sup>19</sup> At Clapham, an assistant accused the senior keeper of selling wood belonging to the Board and stealing a jackfish. This assistant had already caused problems for his superior at his previous posting in Southwark Park. He accused him of carrying on an adulterous relationship in the lodge at the Park and accepting bribes to guarantee use of the cricket ground. The charges led to a major re-organization of that park's management. But at Clapham, the assistant's charges were successfully rebutted by the

<sup>17</sup>MBW 981, 31 July 1872, pp. 296-300; Times, 3 August 1872.

<sup>18</sup>MBW 989, 30 October 1878, p. 274; MBW 991, 17 March, pp. 235-38; MBW 991, 4 August 1880, pp. 675-76.

<sup>19</sup>MBW 989, 16 October, pp. 248-49; 30 October 1878, pp. 268-75.

the honour, presumably because their jurisdictions were smaller and deemed less onerous to maintain.<sup>22</sup>

The repetitive nature of the keepers' jobs made corruption and drink constant dangers but overall, the men employed by the Board avoided these pitfalls. That so many stayed for long periods suggests that conditions were quite tolerable and the public seem to have accepted their authority with few reservations. No one suggested that they were redundant and that commons might play host to members of the public without their supervision. It was self-evident that if the Board invested its energies in the task of drafting and posting sets of bylaws, it should also ensure that they were enforced. Given the variety of activities that the Board decided to restrict or regulate, this assumption was valid. Commons would not have been divested of their objectionable characteristics without the aid of keepers. Critics occasionally judged that the Board had become too zealous in its attempts to set rules but they aimed their barbs at the Board itself, not at its on-site representatives, who generally received support from the community.

The petty offences of some keepers suggest the difficulties that a few of these working-class officials had in enforcing middle-class rules. But most adapted smoothly to the role. Their task was made easier by the fact that working-class visitors to the commons were, on the whole, as intent on adhering to the bylaws as their social superiors. Middle-class observers might continue to find their behaviour less than pleasing and

<sup>22</sup>MBW 994, 21 May, pp. 576-77; 18 June, p. 611; MBW 995, 8 October 1884, p. 22; 14 January 1885.

perhaps coarse, but it was clearly not a threat to public order. The keepers were employed more to apprehend those breaking the bylaws than to watch over an entire class, but their presence undoubtedly contributed to the peace of mind of middle-class residents.



## 5.5 Landscaping

In addition to banning illegal animals, restricting noisy meetings, ensuring decency among bathers, and regulating behaviour on commons, the Metropolitan Board also devoted attention to their appearance. It had to decide what alterations to make to the landscape. Many areas needed drainage and measures to improve the turf. Paths were in serious disrepair. Trees would be welcome in some cases. Yet, the landscaping efforts of the Board were not to be overly intrusive. By and large people did not want their commons transformed into parks with solid fences, carefully laid-out flower beds or trimmed hedges. More often than not, the Board was content to follow these precepts, but it had to attend to other considerations as well. Because rights continued to exist over the commons, the possibility that commoners or lords of the manor would claim that these had been injured by the Board's projects was ever present.

Preservationists liked to emphasize the distinction between parks and commons and, generally, members of the wider community followed suit. But their visions of what a common should be were somewhat hazy and it was not always easy for them to draw the line between improvements that enhanced a common and those that seemed to render it too formal. The romantic impulse might favour an area of wilderness while the practical suburbanite leaned towards a safe site, useful for games and inhospitable to the vagrant. In a sense, the ideal

layout for a common was one that fostered an illusion of unbounded nature while containing enough cues to suggest the appropriate limits of behaviour to users.

Local residents served as judge and jury as they watched developments on their common, some finding them too far-reaching, others too tame. When displeased, they made their views known. The Act for Hampstead Heath required the Metropolitan Board to preserve its natural features as much as possible, while at the same time, draining and levelling where necessary. These actions hardly threatened its status as a heath but the stipulation that two ornamental gardens be planted at selected sites within a year of the Act's passage was more ambiguous. Nonetheless, two gardens were overwhelmed by the Heath's 240 acres and this type of provision was not typical of the Board's schemes for commons. Nor did it generate opposition. In fact, many inhabitants of Hampstead clearly expected the Board to make major alterations and they grew impatient when complications over the final payment to the lord delayed execution of the Hampstead scheme.

The Times seemed to speak for those who hoped for substantial changes when it cautioned that the laying out of the Heath required the greatest skill in landscaping so as to make the area the "pride and glory of the metropolis".<sup>1</sup> Such language conjured up images of grand projects, but these were not the types of expectations the Board wished to encourage. Its Hampstead representative, who was also the chairman of its

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<sup>1</sup>Times, 12 December 1871.

Parks Committee, felt called upon to refute charges that the Board had neglected its duties at Hampstead. He explained that the Board's mandate was to preserve and restore the Heath to the "beautiful and wild condition" of its former days. It was not to be converted into a park, a step he believed few in the community would sanction. Indeed, the Vestry itself had earlier recorded its wish to see the Heath retained as it was.<sup>2</sup>

While the majority of inhabitants undoubtedly wanted the Heath to keep its character, this attitude served as a convenient rationalization for the Board's own lack of vision. Reports from its Superintending Architect and landscape gardener had started the momentum for various improvements, but much of their early plan was eventually jettisoned.<sup>3</sup> F. M. L. Thompson claims that stinginess more than anything sustained the policy of maintaining the Heath in its wild state, and as a result "posterity gained the most convincing illusion ever created of real country brought into the heart of a vast city".<sup>4</sup>

Whatever the reasons for the policy, there were few calls for more drastic measures. The minor nature of the Board's activities on the Heath is depicted in its report for 1873 which details "trimming the banks, filling up pits, sowing grass, furze, and broom seed, and making new paths". During the following year an area for equestrians was constructed, seats were placed in

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<sup>2</sup>Times, 16, 18 December 1871; 7 November 1870; Sexby, pp. 382-83.

<sup>3</sup>MBW 980, 21 December 1871, pp. 216-22; 10 January 1872, pp. 247-51.

<sup>4</sup>F. M. L. Thompson, pp. 333-34.

convenient locations, and trees were planted.<sup>5</sup> These were steps designed to make the Heath less dangerous and more attractive to visitors. The Board's administration inevitably shaved away some of the wilder features of the Heath but it would never be mistaken for a park.

For many people, commons were distinguished from parks by a lack of fencing. Although this was an oversimplification--regulated commons like Wormwood Scrubs and Eel Brook Common required fencing to ensure control of the animals--the comparison was largely valid. Earl Spencer's plan for Wimbledon Common ignited opposition because it proposed to turn the common into a park. After Spencer backed away from his original concept, much of the dispute focused on his desire to erect fencing, which critics found incompatible with the idea of a common. Once again, Spencer had to back down in the face of public pressure. A milder version of the debate over fencing occurred at Tooting Bec. When the Enclosure Commissioners were considering the Metropolitan Board's scheme for that common in 1870, they received letters from villa owners urging that alterations be kept to a minimum. One said that any approximation of a park, or the erection of fences, would be destructive of the beauty that could best be protected by leaving the common in its "wild and natural" state. Another hoped that fences would not be used to destroy the "rural aspect" of the common. The Board indicated that it expected to use the power to

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<sup>5</sup>Report of the Metropolitan Board of Works for 1873, p. 23; Report of the Metropolitan Board of Works for 1874, p. 21.

fence sparingly to provide "protection against trespassers".<sup>6</sup> This was too vague for many. Two years later, opponents of fencing were persuasive enough before the Assistant Commissioner that his report advised limiting the power to short periods. To press the point, forty-two of these people petitioned the Enclosure Commissioners to omit extensive fencing from the scheme. They were suspicious of the terms "park" and "recreation ground" in the Board's plans, fearing the conversion of the common into something that the locality did not need. Others worried that fencing would diminish equestrians' enjoyment of the common.<sup>7</sup>

In the end the wishes of the inhabitants were partially granted. All references to converting the common into a "park" were deleted from the scheme. The Board was now to "ornament" the common rather than "beautify" it, a term suggesting less interference. The Enclosure Commissioners recognized, however, that the Board had some need of fences to control cattle. They recommended that post and chain fences be constructed such that access by pedestrians and equestrians would be unimpeded. The Act for Tooting Bec contained the following clause respecting fencing:

[F]or the purpose of preserving the turf and grass [the Board] may inclose by fences for short periods such portions as may require rest to revive the same, and for the further protection of the common may put up a post and chain defence against the straying of cattle.

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<sup>6</sup>MBW 1000, Papers, MBW 979, 3 August 1870, pp. 8-9.

<sup>7</sup>PRO MAF 25/59, B387/1914, Memorial from the Inhabitants to the Enclosure Commissioners; letters from Winter, Williams and Company, 21 December; from George Treherne, 24 December 1872.

A few years later equestrians would express unhappiness over the positioning of posts at entrances to the common which they claimed forced riders to cross a ditch, but pressure from inhabitants had successfully modified the Board's initial plans.<sup>8</sup> Around other places, like Clapton Common and Shoulder of Mutton Green, fencing was erected specifically to keep horses from damaging the turf.<sup>9</sup>

When the Metropolitan Board of Works took control of Tooting Graveney in the mid-1870s, similar worries arose about its fate as a common. The Wandsworth District Board expressed the hope that it would "retain its present rural appearance and character and that pedestrians should always have free access to all parts thereof".<sup>10</sup>

The sentiments against fencing and allowing commons to lose their distinctive features were widespread but not universal. The inhabitants around Shepherd's Bush Common held a contrary view: they wanted their common converted into a park. As it was, the Bush had too many drawbacks. In 1860 they addressed a large petition to the lord of the manor calling attention to, among other things, the poor drainage which made the common impassable for most of the year. Conditions were so deplorable that tenants had

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<sup>8</sup>PRO MAF 25/59, B387/1914, letter: Enclosure Commissioners to W. W. Smith, 21 January 1873; 36 & 37 Vict. c.lxxxvi, The Metropolitan Commons Supplemental Act, 1873; MBW 987, 30 May 1877, pp. 723-27.

<sup>9</sup>MBW 981, 2 October 1872, pp. 380-85; MBW 989, 5 March 1879, pp. 630-31.

<sup>10</sup>MBW 985, 27 January 1875, pp. 255-56.

"sought every opportunity of leaving their houses".<sup>11</sup> Although the petition was accompanied by a plan of a proposed park, this initiative faded. Not until 1870, when the climate had improved for discussions about open spaces, was action taken again. The Fulham Board of Works asked the Metropolitan Board for a scheme that would turn the common into an enclosed park, much as Kennington Common had been converted in 1852.<sup>12</sup>

Public opinion would probably not have countenanced the transformation of Kennington had it been proposed in 1870 and the Metropolitan Board did not believe it had the authority to carry out something similar for the Bush. Instead, it proceeded to draft a scheme to preserve it as a common under the Metropolitan Commons Act. Nor did the Fulham Board express any objections to this. The solicitor to the Metropolitan Board explained that the intention was to do little more than improve the surface of the common and regulate behaviour on it; there was no plan to turn it into a formal park.<sup>13</sup>

The scheme passed through Parliament without difficulty and was law by June 1871.<sup>14</sup> No substantial opposition had been voiced at the hearings by the Assistant Enclosure Commissioner. But when the Board's supervising gardener visited the area to

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<sup>11</sup>Hammersmith Archives, DD/14/1125/2, Petition.

<sup>12</sup>Hammersmith Archives, FBW/4, 13 April 1870, para. 3034.

<sup>13</sup>Hammersmith Archives, FBW/5, 23 November, para. 309-10; 7 December 1870, para. 330; 1 February 1871, para. 421; FBW/24, para. 897.

<sup>14</sup>34 & 35 Vict. c. lxiii.

assess the types of improvements that would have to be undertaken, he encountered the injured feelings of those who had been working for a more formal park. They claimed that, prior to the Board's involvement in the proceedings, they had been negotiating with the Ecclesiastical Commissioners with the aim of acquiring the lords' rights. They had ended these talks on the understanding that the intentions of the Board were similar to theirs. Now they wanted the Board to turn the manorial rights over to them, or to promise that a certain amount of money would be spent ornamenting the common. But the Board did not have this flexibility. Under the Act it was to regulate and preserve Shepherd's Bush as a common.<sup>15</sup>

Disappointment with the Board's approach to the Bush was also expressed by an influential deputation which included local magistrates. They were upset that

notwithstanding the increasing nuisances of the vacant space known as Shepherd's Bush-green, that it was only proposed to put up mere post and rails, which would not meet the urgent requirements of the case or the long-entertained desire for a substantial enclosure for a safe and healthy promenade and give an impetus to a superior class of houses. If that were done, it would tend to increase the value of property generally, and consequently aid the rates of overburdened parishes.<sup>16</sup>

In their eyes a park was a better guarantee against deteriorating property values than a carefully supervised common. If the Bush could not be labelled a park, they at least wanted it fenced like one.

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<sup>15</sup>MBW 980, 13 December 1871, pp. 181-85; 20 March 1872, pp. 499-501.

<sup>16</sup>Times, 8 June 1872.



They refused to give up. The Fulham Board of Works, which represented their views, approached the copyholders with a proposal to buy and extinguish their rights, thereby ending the Bush's status as a common and paving the way for its rebirth as a park. Faced with this, the Metropolitan Board suspended plans to erect fencing of any kind until the outcome was known.<sup>17</sup> For a short period, the new plan looked as if it might succeed. The copyholders agreed in July 1872 to part with their interests for £200 if certain conditions were met. Among other things, they demanded that the common be "surrounded by a proper enclosure and laid out as a Park and forever maintained as a recreation ground for the public and for no other purpose." The Metropolitan Board was to pay all costs and expenses.<sup>18</sup>

That Board appeared willing to accept these terms if the copyholders could prove their rights. To that end, there was no objection to the Board examining the manorial rolls.<sup>19</sup> The prognosis for the plan began to look pessimistic when the Board's solicitor expressed doubts that Parliament would approve anything that hinted of enclosure. The Fulham Board failed to see the problem. It suggested that a clause in the Metropolitan Board's next Various Powers Bill could easily extinguish the copyholders' rights. But the solicitor did not think Parliament

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<sup>17</sup>MBW 981, 17 July 1872, pp.232-33; Report of the Metropolitan Board of Works for 1873, p.23.

<sup>18</sup>Hammersmith Archives, FBW/5, 31 July 1872, para.1579.

<sup>19</sup>Hammersmith Archives, DD/15/3, Court Minutes, 26 May 1873, pp. 339-40.

would overturn a scheme it had so recently enacted by means of a clause in a private bill.<sup>20</sup>

Although the Board thus withdrew from active support of the plan for a park, it again postponed erecting a fence around the common while the copyholders considered their next move.<sup>21</sup> But after two or three months of waiting, the decision was made to proceed. Here the wishes of the inhabitants made an impact. Although the solicitor advised building a post and chain fence with sufficient openings to retain the sense of a common, the Parks Committee, by a three to two vote, chose a more solid oak post and iron rail style.<sup>22</sup> A warning from the Fulham Board that legal action might be instigated by a copyholder if a fence was erected caused only a moment's hesitation. There was little danger of this. Rights had been left intact by the Shepherd's Bush scheme and copyholders looked on the fencing as an improvement to the common, not as a challenge to their interests. By the end of 1874 the fence was in place.<sup>23</sup>

The contrasting attitudes towards fencing of the inhabitants of Tooting and Shepherd's Bush are not difficult to

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<sup>20</sup>MBW 983, 5 November, pp.290-93; FBW/5, 19 November, para. 2416; 17 December 1873, para. 2474.

<sup>21</sup>Hammersmith Archives, DD/15/3, Court Minutes, 1 December 1873, p. 352; DD/14/1129, letter from Richardson and Sadler, 8 October 1873.

<sup>22</sup>MBW 983, 17 December 1873, pp.447-54.

<sup>23</sup>MBW 983, 3 December 1873, pp.377-78; Hammersmith Archives, DD/15/3, Court Minutes, 18 May, pp.355-56; 7 December 1874, pp.363-64; Report of the Metropolitan Board of Works for 1874, p.21.

understand. Tooting was a large common in a relatively unpopulated area. Many of the preservationists there were members of the gentry who, though wanting nuisances removed from their common, were more concerned that it retain its aesthetic value and be hospitable to such activities as horse riding. The Bush, on the other hand, was a few acres around which increasing numbers of people were establishing residences and businesses. They saw it not so much as a place to appreciate nature as one on which dissolute behaviour thrived. A trim park offered an appealing alternative.

Whether wanting commons to be more like parks or as different from them as possible, most people realized that some basic improvements such as drainage or reviving the turf were required on virtually all of them. The Board generally faced less public anxiety about preserving a common's qualities when it pursued these. But controversy erupted several times nevertheless. Residents often found the Board careless or slow in the carrying out of its plans. In some areas, notably Hackney, disputes with the lord of the manor or other parties with rights caused delays.

A backlash caused by the sloppy execution of a project occurred in Shepherd's Bush. In early 1877 the Board turned its attention to putting the surface of the common in order. Because the clay soil inhibited natural drainage, the first step was to raise its level. The intention was to put down a layer of ash and brick rubbish over which the original top soil would be spread.

But at some stage in the proceedings mistakes were made, providing critics of the Board with convenient ammunition:

It would be as well before you condemn this neighbourhood to lose its business for some months by the continuance of such a foul nuisance for you to view the specimen of "ashes" which consists of decomposing cabbage stumps, foul rags, broken shreds of pottery, paper of various degrees of filthiness, trade refuse and the numerous items of infectious diseases to be found in dust bins.

Despite explanations by officials that the garbage was supposed to have been filtered out of the ash, such incidents did nothing to enhance the reputation of the Board among local residents and businessmen. The author of the above letter, an auctioneer, wrote a subsequent one a fortnight later in which he complained that the situation was unchanged.<sup>24</sup> Like other communications from Shepherd's Bush, these letters returned to the theme that the Board's operations were failing to provide sufficient protection for the inhabitants' property values.

Nonetheless, the Board had to hope that residents would tolerate such setbacks in the interests of permanent benefits and by the summer of 1878 it was able to re-open the improved portion of the common. Freshly sown grass awaited visitors to Shepherd's Bush in the spring of 1879.<sup>25</sup> The grass thrived--partly because games were prohibited--such that the gardener requested sheep be allowed to graze to keep the length down. Cowkeepers were notified that they could have cut grass for free

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<sup>24</sup>MBW 987, 2 May, pp. 647-77; 16 May 1877, p. 708.

<sup>25</sup>Report of the Metropolitan Board of Works for 1878, pp. 27, 100; MBW 989, 5 March 1879, pp. 613-14.

if they removed it.<sup>26</sup> By the 1880s, the efforts of the Board had produced a reasonably park-like common. This result owed much to the small size of the Bush. There were no spare acres on which to encourage wilderness.

The turf on London Fields presented one of the biggest landscaping challenges for the Metropolitan Board. Its memorial to the Enclosure Commissioners in 1869 noted that the public had worn the pasture of the Fields down to the point where grazing was next to impossible.<sup>27</sup> When the head gardener visited the area after the Hackney scheme came into effect, he marked London Fields as the space requiring the most improvement. There were "scarcely two yards of consecutive verdure from side to side" he reported, largely because the footpaths were not used. These would have to be repaired and sections of the Fields temporarily enclosed to permit the turf a chance to establish itself after sowing.<sup>28</sup>

Would such enclosures be opposed by the commoners, the owners of lammas lands, or the lord of the manor? Or, would the prospect of restored turf make temporary inconveniences seem worthwhile? Certainly the general public thought this way. Although the Metropolitan Board's representative warned the Hackney Board of Works in September 1872 that improvements might be delayed because of the unsettled questions over property ownership and rights, one month later he was able to inform the

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<sup>26</sup>MBW 990, 11 June 1879, p. 166.

<sup>27</sup>MBW 999, Papers, 13 April 1869.

<sup>28</sup>MBW 981, 2 October 1872, pp. 375-83.

same Board that operations would soon begin to put London Fields as well as Hackney Downs in order.<sup>29</sup>

Drainage was the first priority for the Fields but the Parks Committee's recommendation that £275 be spent on this was blocked by the full Board in early October 1873. This decision was bitterly resented by Hackney residents. A columnist in the local paper noted that the amendment withholding the money had been sponsored by the member for Kensington who was free to roam at will over the secure acres of Kensington Gardens and Hyde Park.<sup>30</sup> The Hackney Vestry sent a memorial to the central Board detailing the disgraceful state of the Fields. The District marshalled the opinion of its Medical Officer of Health, who warned of the increased risk of epidemics if the stagnant water on the Fields remained. Under pressure, The Board finally sanctioned the work in November. The Hackney Gazette thought it had displayed "unparalleled negligence" in the matter. The drainage was completed in the spring of 1875.<sup>31</sup>

In the opening months of 1874 the Parks Committee continued to direct its attention to the Fields and recommended that £432 be spent on ploughing and sowing, one half to be done at a time. The full Board approved the proposal but action was postponed when the lord of the manor's agent sent a warning that

<sup>29</sup>Hackney and Kingsland Gazette, 5 October 1872; Hackney Archives, HBW, Minutes, J/BW/8, 8 November 1872, pp. 469-70.

<sup>30</sup>Hackney and Kingsland Gazette, 15 October 1873.

<sup>31</sup>Hackney and Kingsland Gazette, 10 September; 17 September; 18 October; 12 November; 19 November 1873; Report of the Metropolitan Board of Works for 1874, p. 21.

it would be preferable if no digging took place during negotiations over the Board's alleged interference with his rights.<sup>32</sup> By October, despite the fact that there had been no advance in the negotiations, the Parks Committee decided to proceed with the northern half of the Fields. No protests were heard and the work was carried out. The second half was begun in March 1876.<sup>33</sup>

No further obstructions came from the lord of the manor or the commoners. Rather, the Board's plans to create a verdant London Fields were sabotaged from an unexpected quarter, namely a ground pest called the tipula grub. That the grub had caused a disaster was apparent in the spring of 1877 but no remedy was available. The Institute of Horticulture suggested four possible approaches from encouraging starlings to applications of gas lime, nitrate of soda, or ammoniacal liquor. Unfortunately, these cures threatened to destroy the grass as well. The Board's gardener, after being given leave to experiment, chose the ammoniacal liquor as the least offensive. The Parks Committee allocated £104 for re-sowing the Fields of which an estimated eighteen acres had been "entirely destroyed".<sup>34</sup> The grub seems not to have returned in such force again, but the grass on the Fields required care to re-establish itself. Worn sections were

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<sup>32</sup>Hackney and Kingsland Gazette, 25 March 1874; MBW 984, 6 May 1874, pp. 300-2.

<sup>33</sup>MBW 1004, Papers; MBW 984, 7 October 1874, pp. 586-89; HBW, Minutes, J/BW/10, 25 February, p. 58; 10 March, p. 86; MBW 987, 13 May 1876, p. 1.

<sup>34</sup>MBW 987, 2 May, pp. 659-61; 16 May, pp. 681-84; MBW 988, 13 June 1877, pp. 4-5.

re-sown in the early 1880s, and hurdles were purchased to protect them. Well Street Common was also ravaged by the grub, necessitating similar remedial measures.<sup>35</sup>

Although work on the Fields was able to proceed without major interference from those with interests, the same was not true of all the Hackney commons. On North and South Mill Fields, as the Board's report for 1876 noted, relations with the lord of the manor and the authorities of St. Thomas's Hospital, who claimed the freehold, were strained to the point where it was deemed better to do nothing.<sup>36</sup> Fortunately there was less urgency there. On his initial inspection of the Hackney open spaces, the gardener had found the Mill Fields in "excellent" condition. Improvements, such as fencing to prevent encroachments, cleaning up a pond, and drainage, were able to proceed in the 1880s.<sup>37</sup>

The lord of the manor was most effective on Hackney Downs. He obtained an injunction which prevented the Board from planting without permission. His steward refused to allow the replacement of dead trees until the lord's claims had been settled. The Board's solicitor speculated that it could probably

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<sup>35</sup>Report of the Metropolitan Board of Works for 1877, pp. 29, 101; Report of the Metropolitan Board of Works for 1880, p. 107; Report of the Metropolitan Board of Works for 1881, p. 106; Report of the Metropolitan Board of Works for 1885, p. 119.

<sup>36</sup>Report of the Metropolitan Board of Works for 1876, p. 23.

<sup>37</sup>MBW 981, 2 October 1872, pp. 375-83; Report of the Metropolitan Board of Works for 1880, p. 107; Report of the Metropolitan Board of Works for 1882, p. 114; Report of the Metropolitan Board of Works for 1883, p. 120.



obtain a Court order to carry out the planting, but the consequence would likely be that the lord would secure similar leave to resume digging.<sup>38</sup> The trees, courtesy of the local paper, expressed their grievances:

There were seventeen of us, there are now but three alive. If, through your kind announcement of this, the other fourteen would now be restored to us, it would be a great comfort to the remaining.<sup>39</sup>

But, given the public outrage sparked by the earlier digging, the Board preferred to preserve the peace until the conflict with the lord of the manor was resolved. Not until the mid-1880s were major drainage and planting projects begun on the Downs.<sup>40</sup>

Fencing or hurdles were used to protect freshly sown grass but another method of saving wear on the turf was to make footpaths more attractive. In some cases old paths were repaired; in others, new ones were constructed. As a general rule, new paths were maintained by the Metropolitan Board whereas paths that had traditionally belonged to the local parish were kept up by the district board of works even if the central body repaired them.

Gravel digging was an activity that had an adverse effect on the appearance of commons and preservationists tried to halt

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<sup>38</sup>MBW 988, 28 November 1877, pp. 377-79; 6 February 1878, pp. 551-53.

<sup>39</sup>Hackney and Kingsland Gazette, 16 September 1878.

<sup>40</sup>Report of the Metropolitan Board of Works for 1883, p. 120; Report of the Metropolitan Board of Works for 1884, p. 117; Report of the Metropolitan Board of Works for 1885, p. 119; Report of the Metropolitan Board of Works for 1886, pp. 21, 116.

it wherever they could. The threat came not only from individuals, who might have licences from a lord to dig, but also from parishes who had a right to take gravel for road repairs. The Metropolitan Board took steps to reintegrate gravel sites into the landscape of commons it controlled. This was done at Bostall Heath, for example, where disused gravel and sand pits were sloped.<sup>41</sup> The primary reason the Board bought out the interests of the lord of the manor of Tooting Graveney was to halt his gravel digging.

Perhaps the most bitter dispute over digging by an individual occurred on Plumstead Common before the Board assumed control. A man named Jacobs operated sand pits there and it was these that John De Morgan's popular crusade chose to attack. On Saturday, 1 July 1876, a group of protesters, headed by a brass band, marched to the common where they broke down a fence surrounding the pits. Two days later, "thousands of persons" gathered, "fences were torn down in all directions" and bonfires lit.<sup>42</sup> The demonstration got out of control and charges were laid against some of the participants.

The emotions unleashed on the sand pit were remarkably intense, partially because it provided an outlet for frustrations over the slow progress of steps to secure the common. As in Hackney, De Morgan's activities divided respectable opinion. The Commons Preservation Society, eager to prevent any confusion in the public's mind between it and De Morgan's League, disclaimed

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<sup>41</sup>MBW 988, 23 January 1878, pp. 511-15.

<sup>42</sup>Times, 4 July 1876.

any knowledge of the Plumstead proceedings. But within the area, many prominent men gave support to the demonstrators, particularly when legal proceedings were taken against them.<sup>43</sup> They felt that their hearts were in the right place, however misguided some of their actions had been.

In October De Morgan was found guilty of riot and malicious damage with respect to the demonstration on the common on 1 July and sentenced to one month in prison.<sup>44</sup> He served only part of this but his release from Maidstone Gaol in early November was a festive occasion with 20,000 supporters showing up, more evidence that popular sentiments ran high on this issue. He promised to sustain his agitation until the common was saved or he was defeated in the courts.<sup>45</sup>

Fortunately Plumstead Common was brought under the protection of a scheme but not before De Morgan lost his legal battles. December 1876 and the following January were marked by a series of confrontations between him and his followers trying to fill the pit, and Jacobs and his men trying to continue their operations. De Morgan failed to secure an injunction against the digging. He was, however, quite successful in attracting attention to the issue and the crowds that turned out to do his bidding ranged from two to four thousand people.<sup>46</sup>

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<sup>43</sup>Times, 7 July 1876; Crossick, p. 102.

<sup>44</sup>Times, 21, 23 October 1876.

<sup>45</sup>Times, 7 November 1876.

<sup>46</sup>Times, 2, 22 December 1876; 1, 8, 15, 16, 22 January 1877.

Jacobs had better results in the courts and De Morgan's string of judicial defeats continued. The Master of the Rolls granted an injunction restraining him from tampering with the sand pit or inciting others to interfere. He expressed a dim view of the tactics employed by the demonstrators: "they had revived the practice of private war, which he thought had ceased to exist for centuries".<sup>47</sup> De Morgan's usefulness to a particular cause diminished the longer he persisted. His initial actions often provided a useful spark and prevented complacency among middle-class preservationists. But his excesses gave opponents of preservationism an easy target which they could use to besmirch the movement as a whole. When the Metropolitan Board finally gained control of Jacobs' sand pit, labourers were hired to smooth its banks.<sup>48</sup>

The Board's problems with gravel digging on Plumstead Common were not, however, over with the disappearance of Jacobs' pit. The 1876 Commons Act, as a result of efforts by a member of the Commons Preservation Society, had provided needed restrictions to the rights of parishes to take gravel from commons. Digging was only to be permitted in places set apart for the purpose by Parliament; with the consent of the managing body of a common; or under an order of justices in petty sessions.<sup>49</sup>

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<sup>47</sup>Times, 27 January 1877

<sup>48</sup>MBW 993, 26 April 1882, p. 92.

<sup>49</sup>Commons Preservation Society, Report of Proceedings, 1870-76, second edition, p. 37; H.C., 3 Hansard 230: 137; 20 June 1876; 39 & 40 Vict. c. 56, s. 20.

But the new Act met some resistance. Both the Plumstead Board of Works and the Woolwich Board of Health continued to dig from the common in the years after its passage.<sup>50</sup> The Woolwich case was more complicated as that board believed that a private Act by which it dug was unaffected by the 1876 Commons Act. The Metropolitan Board disputed this, but decided not to pursue the matter in court if the digging was carried out in such a way as to inflict minimum damage on the common.<sup>51</sup> The Plumstead Board, which ceased digging in response to pressure from the Metropolitan Board, thought it should be allowed to resume in the interests of fair play, but the Metropolitan Board insisted that it did not condone the operations of the Woolwich body.<sup>52</sup> Nonetheless, the Plumstead Board began limited digging. Some of the sites were deemed dangerous to public safety and, in the end, the only way to stop the digging was to buy out the Woolwich Board's interests. It asked for £1000; the Metropolitan Board offered half that much. By November 1884, the smaller amount was accepted.<sup>53</sup> The Metropolitan Board might have been able to halt the Woolwich Board by taking it to court and demonstrating that the Commons Act supplanted the earlier legislation. But, as no other parishes were making

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<sup>50</sup>MBW 989, 19 March, pp.673-74; 2 April 1879, pp.714-19.

<sup>51</sup>47 Geo. III, c. cxi, s. 52; MBW 990, 29 October, pp. 554-55; 10 December 1879, pp. 701-2.

<sup>52</sup>MBW 991, 12 May 1880, pp. 365-67.

<sup>53</sup>MBW 992, 16 February 1881, pp.272-73; MBW 994, 2 July, pp. 634-35; MBW 1020, Papers; MBW 994, 30 July, pp. 711-12; MBW 995, 19 November 1884, pp. 115-16.

similar claims, the need for a precedent-setting victory was absent. As well, success was far from assured. It was much less troublesome to purchase the right. By the time of the settlement, gravel digging had ceased to be a major irritant. The Board's resolution of this issue, like its handling of others, was not rapid and helped cement its low image with a public who were not fully abreast of the technical reasons for delays.

Although furze was characteristic of commons, it was not welcome if overgrown to the point where it became a fire risk. The Board believed that fires in the furze on Tooting Bec Common were started by sparks from train engines but it had no success when it sought payment from the railway company, who blamed "mischievous persons".<sup>54</sup> In an effort to control the fires, the Board hired two plain-clothes constables to work on Sundays and holidays. Fires remained a problem. They destroyed over eleven acres of furze in the first seven months of 1876. Possible suspects were people who had formerly hunted over the common.<sup>55</sup> A sixteen-year-old boy caught deliberately setting a fire on Tooting Graveney Common was sentenced at the Old Bailey to twelve strokes with a birch rod.<sup>56</sup>

To lessen the risk of fires at Bostall Heath the furze was thinned. The cleared areas were sown with grass after which

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<sup>54</sup>MBW 986, 22 March, pp. 503-4; MBW 987, 17 May 1876, pp. 27-28.

<sup>55</sup>MBW 986, 23 February, pp. 447-49; MBW 987, 1 November 1876, pp. 295-97; Report of the Metropolitan Board of Works for 1876, p. 23.

<sup>56</sup>MBW 992, 11 May 1881, pp. 372-73.

winding paths were constructed through them.<sup>57</sup> Over on Clapham Common the furze was cut for moral reasons. A witness before the 1865 Select Committee cited the nuisance of female prisoners from Wandsworth Gaol changing in the furze.<sup>58</sup> While at least one resident asked the Metropolitan Board to leave the furze so that the common could retain some of its earlier charm, the Board authorized the removal of a necessary amount to curb its use as cover for people committing nuisances "arising from the want of closets and urinals".<sup>59</sup> Once again practical considerations overruled the sentimental.

The Board's activities inevitably brought changes to commons, but they did not necessarily eradicate the features that distinguished them from parks. Because the Board did not want to spend large sums of money on its commons, it was content to concentrate on fundamental improvements such as drainage, levelling, and planting grass. But many trees were planted as well. Ponds were cleaned. The Board provided numerous seats for visitors. Freshly painted notice boards displayed the bylaws. People occasionally thought the Board had gone overboard with regulations, as on Hampstead Heath for example. A Clapham antiquary captured some of the gains and losses brought by the Metropolitan Board in an 1885 lecture:

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<sup>57</sup>Report of the Metropolitan Board of Works for 1878, p. 101; Report of the Metropolitan Board of Works for 1879, p. 106; Report of the Metropolitan Board of Works for 1881, p. 107.

<sup>58</sup>Second Report from the Select Committee on Open Spaces (Metropolis), q. 3624.

<sup>59</sup>MBW 990, 30 April 1879, pp. 36-46.

The goose is gone, and the gorse is going too--the turf is worn away, and looks brown and thread-bare; yet it is a noble expanse, rescued from the invading army of bricks and mortar which surround it.

The ditches are filled up, and their line can no longer be traced, although [they] once formed frontiers of contending parishes. The ponds are circumscribed with posts and rails. The many notice-boards, threatening pains and penalties against offenders, somewhat repress the free spirit of the place; but the life-giving air cannot be confined, and as it blows fresh and free it fills the lungs of the many youthful athletes, who gain new life in their healthy pastime.<sup>60</sup>

The resemblance to parks was strongest among smaller commons where there was neither the space nor usually the desire to leave things to chance. But even the largest commons were transformed to ease their acceptance into the city; nature was guided and assisted to create safe pockets of rustic splendour.

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<sup>60</sup>J. W. Grover, Old Clapham (London: A. Bachhoffner, 1887), p. 8.



## Conclusion

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By the end of the nineteenth century, the appearance of metropolitan commons had been considerably altered from that of 1800. This was not surprising given that London itself had undergone a radical metamorphosis. It had been largely rebuilt; its boundaries had expanded, and its population had mushroomed. Why should one of its components not be transformed as well? But though there was little chance of commons remaining undisturbed over these years, their fate might well have been different. At worst, they might have disappeared, their acres covered with buildings. Or a few might have been turned into parks. But, in fact, they were preserved distinctively as commons. This occurred because, as such, they found a role in an urban middle-class vision of the city.

Commons were needed to help balance the bricks and mortar, to bring nature into the environment. The predominantly middle-class preservationists were determined that commons should be preserved in their natural state to sharpen the contrast with the surrounding city; they should, if possible, have a touch of wilderness and not become parks. Members of this class, and particularly the professionals, the intellectuals, and the artists, all of whom subscribed more heavily to romanticized views of nature than their more commercially minded brethren, generally resided nearer commons than the working class and were in a position to delight in their appearance or to use them for recreation.<sup>1</sup> As well, they were more likely to derive comfort

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<sup>1</sup>Newby, p. 18.

from the historical legacy commons represented. Even the unsentimental businessman understood that property in the region of an attractive, well-managed common was more valuable than that in the proximity of an area frequented by gypsies and dirty children, or strewn with rubbish.

A movement to preserve London's commons, while it had roots in previous centuries, came into full force only when enough commons were threatened by urban development, and when sufficient numbers of people believed they had a stake in their continued existence. These conditions were met in the second half of the nineteenth century. London's geographical expansion accelerated, characterized by the growth of class-segregated suburbs. Areas around open spaces had often acquired a certain premium well before this new exodus to the perimeters. New residents now valued these commons both for their visual beauty and, more practically, for their recreational possibilities. It was often the older resident gentries, wishing to protect their commons from the dangers of unrestricted development, who initiated the first preservationist struggles. This was the pattern at Hampstead, Clapham, Wimbledon, Plumstead, and Tooting.

These gentry-run efforts did not work at cross-purposes to the interests of the middle class. In fact the growing strength of the middle class gave the movement its momentum. This coalition was responsible for defining the rules of the game. The most important rule was that preservationism should be presented as a public good, not as something seeking to gratify

middle-class desires for secure property values or recreational space. Under this structure the poor became the declared beneficiaries of the movement. This was not necessarily a machiavellian step taken by all preservationists. Many were, undoubtedly, motivated by genuine philanthropy. For others, philanthropic and selfish motives overlapped perfectly; there was no conflict between the two. In this light preservationism had something in common with many other middle-class efforts to reform the poor. A rescued class brought benefits to itself and presented fewer risks to others. It was hardly worthwhile to save a common for the lower classes if they would merely get drunk and run riot over it. Fortunately, by the mid-century mark, the working classes appeared to be well on their way towards behaving themselves in an acceptable manner.

In a sense, commons were the natural world's equivalent to the working class. Both had to be divested of unruly and threatening elements before they could be welcomed into a middle-class urban society. This taming need not abolish every distinguishing characteristic. Indeed, that was not the desire. The working class would not meld into one class with its social superiors; its members would, however, adopt certain middle-class values: respect for property and law, a degree of temperance, and an appreciation of the worthiness of work. For all the talk by preservationists of commons retaining their wild features, there were limits. The elements of surprise and mystery that properly belongs in a wilderness environment were to be absent in the city. Commons were not to look like parks but,

in many other respects, they were to be like them. Visitors would obey bylaws; keepers would watch over them; order would prevail.

The struggle to proclaim the preservationist message was waged in Parliament, in the courts, in local government, and in newspapers and periodicals. That the influential men in a community were often the first to take up the issue when a particular site was at risk facilitated Parliamentary attention. The early controversy over Hampstead Heath was an example of their power. The initial debates about open spaces and their importance took place in Parliament for the simple reason that it was the body with the means to address the issue, metropolitan London having no unified government. As the capital London was deemed worthy of attention.

Efforts in Parliament were directed towards securing legislation that would halt the danger to commons and enable schemes to be drafted for their management. This opened the door for the active participation of local government, particularly the Metropolitan Board of Works. The Board never had the field to itself. As one would expect, it had to consult with the various localities that contained commons, and try to balance the conflicting points of view that it met. A constant, if not always welcome, companion was the Commons Preservation Society.

The Board and Society each had an important influence on the final outcome of the preservationist struggles. Neither saw its initial vision realized. The Society and its like-minded allies in the various communities sustained the romantic image of

commons. They wanted them to continue to host cattle and sheep, and to be left unfenced and they opposed any business-like arrangements whereby portions would be sold to raise money for the protection of the remainder. On a more practical level, the Society steered the Board away from automatic payments to parties for their interests, although it was unable to prevent all such deals. It mounted a number of important legal cases, the results of which eased the Board's acquisition of specific commons.

Unlike the Society, the Metropolitan Board, of course, had more on its plate than the preservation of commons. Nonetheless, from the 1870s on, open spaces were an important part of the Board's mandate. Having been forced to abandon its original strategy of selling portions of commons to help finance schemes, the Board sought to find its own policy by which to control them. Hobbled by parochialism and a persistent concern about money, the Board managed to do a credible job. It took over and managed most metropolitan commons, an accomplishment for which it has received little recognition. Contemporaries viewed the Board with suspicion, and it often seemed to react to events rather than initiate steps. But in bureaucratic fashion, it achieved results. Part of the difficulty was that it was forced to act under legislation many of its members disliked. The Metropolitan Commons Act directed the Board to maintain common rights. Perhaps no issue divided the Board and Society more than rights. The Society wanted to let them be; the Board was more inclined

to purchase and eliminate them. The policy eventually pursued was an ad hoc amalgam of these two approaches.

Although its administration of commons was in keeping with middle-class notions of what they should be like, to some degree the Board undercut an implicit élitism in the approach of the Society. For all the Society's rhetoric about preserving commons for the people, it showed itself to be uncomfortable when groups with working-class members, such as De Morgan's Commons Protection League, joined the fray. Nor is it clear that commons run by members of the Society would have set aside areas for donkey riding and other less savoury activities. The Board's bylaws reveal its narrow views on appropriate conduct over commons, but occasional decisions seem also to indicate a somewhat more egalitarian perspective. For example, the Board was not willing to throw children off London Fields or Shepherd's Bush merely because their behaviour offended middle-class householders. It relaxed the bylaws on bank holidays to avoid dealing with petty breaches of them.

Preservationism was strongest during the 1870s and 1880s as metropolitan commons both within and beyond the jurisdiction of the Metropolitan Board of Works came under schemes. The Times devoted an increasing number of columns to the open-spaces issues of the day, and editorialized in support of the preservationists' goals. Despite the widespread acceptance of this message, however, individuals continued to find it necessary to organize in order to rescue particular areas. One of the longest struggles took place over the four Banstead commons

to the south of London. Not until 1893 were these 1300 acres secured, after a bitter lawsuit.<sup>2</sup> Resistance was offered to schemes at Mitcham and Epsom.

Commons closer to the centre of the metropolis were in little danger of being enclosed by this time but preservationists were ever on the watch for encroachments or damage from railways. In 1888 Octavia Hill, the housing reformer who was also a member of the Commons Preservation Society, wrote that the "need of open spaces for the inhabitants of our large towns has been so often brought before the public, that it is difficult ... to use any arguments that are new".<sup>3</sup> She had earlier commented to her sister Miranda on the public's changing attitudes:

When I first began the work, people would say, 'I will give money for necessaries for the poor; but I do not see what they want with recreation.' Then after a few years, they said, 'I can understand poor people needing amusement; but what good will open spaces do them?' And now everybody recognizes the importance of open spaces.<sup>4</sup>

Although most major metropolitan commons had now been brought under schemes, Hill and her colleagues believed much work remained to be done in the provision of open spaces. They calculated that within a four-mile radius of Charing Cross the eastern half of the metropolis had secured 223 acres of open

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<sup>2</sup>56 & 57 Vict. c. cvii; Surrey Record Office, P23 4515/1, M. Wilmshurst, The Struggle for Banstead Commons, 1864-1894, n.d.; P23 5453, Raymond Steele, Common Knowledge for Banstead (1950).

<sup>3</sup>Octavia Hill, "More Air for London", Nineteenth Century, 23 (February 1888), p. 181.

<sup>4</sup>Charles E. Maurice, ed., Life of Octavia Hill as Told in Her Letters (London: Macmillan and Company, 1913), pp. 317-18.



space compared to the western half's 1701 or, put another way, there was one acre for every 7481 inhabitants in the east and one for every 682 in the west. In the absence of available commons, new spaces would have to be created.<sup>5</sup>

For this reason organizations working in the metropolis in the late century tended to concentrate on smaller open spaces. These were the focus of Brabazon's Metropolitan Public Gardens Association and Miranda Hill's Kyrle Society. Disused burial grounds were given new roles as small parks or recreational grounds. London squares, threatened by rising land values, generated activity. A society was formed in 1874 with the aim of rescuing neglected ones, and this concern carried into the next century, leading to a Royal Commission in 1928.<sup>6</sup> The success of the Commons Preservation Society's earlier efforts was an inspiring precedent for these later groups. Memberships often overlapped.

Within London there was one common which continued to grow. Hampstead Heath expanded by almost fourfold between 1871 and 1971. Most of the major additions occurred before 1914 and they demonstrated that as successful as the open-spaces movement had been, it remained a struggle to secure money for the cause. A five-year campaign to acquire Parliament Hill and the East Park Estate began in January 1884. It was

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<sup>5</sup>Hill, "More Air for London", pp. 182-83, 186-87.

<sup>6</sup>Percy A. Harris, London and Its Government (London and Toronto: J. M. Dent and Sons, 1931), pp. 194-96; John Nelson Tarn, Five Per Cent Philanthropy (Cambridge University Press, 1973), p. 73; Gaskell, p. 494.

guided by a Hampstead Heath Extension Fund Committee comprised of members of the Commons Preservation and Kyrle Societies.<sup>7</sup> The major obstacle would be the expense of the land which would have to be acquired at its market value. The initial strategy was to approach the Metropolitan Board. Shaw Lefevre argued that the land under discussion provided much of the charm of the Heath, which would be compromised if it became filled with houses. Although it would be expensive to secure, he calculated that the Board owed it to the public to pay. He credited his Society with puncturing the lord's original demand for £400,000 for the Heath proper and paving the way for the lower £45,000 selling price; he thought, therefore, that the Board should spend some of the money saved on acquiring the neighbouring land. Furthermore, North London had a special claim to the enlargement of the Heath as it lacked the band of commons and open spaces found in the south and west.<sup>8</sup>

The Metropolitan Board made it clear that money was the crux of the matter and managed to remain fairly non-committal in the first stages of the discussion.<sup>9</sup> It then decided that it could not afford the £350,000 or so needed to buy the 260 acres.<sup>10</sup> Shaw Lefevre expressed his disappointment at the result: he

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<sup>7</sup>Barratt, vol. 2, p. 219; Sexby, p. 414; Eversley, p. 39; Ikin, Hampstead Heath Centenary, p. 17; F. M. L. Thompson, p. 325; Times, 2, 5 February 1884.

<sup>8</sup>Times, 17, 18 July 1885.

<sup>9</sup>Times, 30 July 1885.

<sup>10</sup>Report of the Metropolitan Board for 1885, pp. 20-21; Sexby, p. 414; Times, 3 November 1885.

calculated that London lagged behind other British cities such as Liverpool and Birmingham in the amount spent per head on acquiring open spaces. Much of the common land in the metropolis had been acquired and was maintained by the Board at little cost. Although Parliament Hill would be an expensive proposition, a similar demand on the rates was very unlikely. The Times did not see the cost as being the decisive factor; the extension was of sufficient benefit to the metropolis and to the country that "whatever others can afford to offer for it, London can afford to overbid them".<sup>11</sup>

In November 1885 the Hampstead Heath Extension Committee decided to introduce a bill in Parliament that would enable the Metropolitan Board to purchase the land with financial assistance from vestries, district boards and others.<sup>12</sup> It passed in autumn 1886 and went a long way towards easing the Board's objection to paying the entire cost of the acquisition. It followed the principle gaining acceptance in metropolitan government that a locality which benefited from an improvement should pay a greater share.

The Extension Committee also secured £50,000 from the City Parochial Charities under provisions in the City Parochial Charities Act of 1883 that designated the promotion of open spaces as something to be supported. The Commons Preservation Society's James Bryce had been instrumental in promoting the Act which recognized that the charities, as a result of the decreasing

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<sup>11</sup>Times, 3 November 1885.

<sup>12</sup>Times, 7, 8, 25 November 1885.

population of the City, should be allowed to expend their monies beyond its borders.<sup>13</sup>

In July 1887 the Hampstead Vestry agreed to contribute £20,000 and the St. Pancras Vestry, £30,000. It was influenced by a petition containing 3000 signatures favouring the expenditure.<sup>14</sup> Finally, in October the Metropolitan Board consented to provide half the purchase price or £152,500. Public donations eventually amounted to £46,000. In March 1889 the landowners and the Board exchanged contracts. It was the last major accomplishment of the Board before it gave way to the London County Council.<sup>15</sup>

The next major addition to the Heath was the thirty-six-acre Golders Hill estate in 1898. Some 700 persons contributed £15,000 of the £38,000 cost while local governments picked up the rest.<sup>16</sup> These precedents did not mean that they would eagerly contribute to further acquisitions. In 1907, eighty more acres were added to the Heath at a cost of £44,000. A local committee, the Hampstead Heath Extension Council, had formed in 1903. The Borough Council voted £5000, but the L.C.C., responding

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<sup>13</sup>Times, 21 September, 13 November 1886; 46 & 47 Vict. c. 36; David Owen, English Philanthropy, 1660-1960 (Cambridge: Harvard University Press, Belknap Press, 1964), p.493.

<sup>14</sup>Times, 15, 21 July 1887; Maurice, p. 477.

<sup>15</sup>Report of the Metropolitan Board of Works for 1887, pp. 26-27; Sexby, p.415; Eversley, p. 40; Barratt, vol. 2, 218-19.

<sup>16</sup>Barratt, vol. 2, pp. 223-25; Ikin, Hampstead Heath Centenary, p.18; F. M. L. Thompson, p.336; Sir Arthur Crosfield, Reminiscences of Kenwood and the Northern Heights (London: Country Life, 1932), p.7.

to recent charges of overspending, was slow to contribute its £10,000. By 1904 the acquisition fund was still £5000 shy. This sum was guaranteed by supporters, who ended up having to pay about three quarters of the amounts promised. Eventually, in 1907 the land was conveyed to the L.C.C.<sup>17</sup>

The twentieth century has seen numerous small and not so small additions made to the Heath such that by the centenary of the Metropolitan Board's purchase of some 240 acres, the Heath stood at 802 acres.<sup>18</sup> Perhaps the major addition was the remainder of Lord Mansfield's Kenwood estate. The sixth earl was prepared in 1914 to dispose of the estate to building interests. The threat activated the various open-spaces organizations who won a reprieve which was extended by the war. In the postwar period, the Kenwood Preservation Council was formed. In 1922 it arranged for the purchase of 100 acres of meadowland between Kenwood and Highgate. Two years later they raised £32,000 towards the purchase of a further 32 acres. Of the £152,124 which was needed for the two purchases, local authorities paid about one-sixth, charities one-twentieth, and private subscriptions the rest, with seven contributors providing the bulk.<sup>19</sup> Meanwhile the mansion was purchased by Lord Iveagh, formerly Edward Guinness, along with 74 acres for £107,900 in

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<sup>17</sup>B.L. 10349. 9. 43: Hampstead Heath Extension Council, Report (1908); The London Encyclopaedia, p. 973; Ikin, Hampstead Heath Centenary, p. 18; Barratt, vol. 2, pp. 226-28; N. Taylor, pp. 71-72.

<sup>18</sup>Ikin, Hampstead Heath Centenary, p. 24.

<sup>19</sup>Ikin, Hampstead Heath Centenary, pp. 19-2; Crosfield, p. 7.

1925. He died in 1927 and left the house to trustees who were to administer it for the public; the land he bequeathed to the L.C.C. By 1949 the L.C.C. was obliged to assume responsibility for the mansion as operating costs had outstripped his endowment.<sup>20</sup>

The Heath's expansion was unusual. Much of the work of the Commons Preservation Society was directed at the countryside although urban matters continued their importance. In a report issued in 1893, it took pride in the fact that few applications for enclosures were being made. The Land Commissioners in their report of 1888-89 had stated that two-thirds of the seventy-four applications they had received since the 1876 Commons Act came into effect had been rejected. Some 26,600 acres had been enclosed and 30,630 acres regulated. The public had secured a right of walking and exercise on about 4800 of the enclosed acres.<sup>21</sup>

The Metropolitan Commons Acts were slightly amended in 1898 by an Act making borough councils the local authorities for all commons wholly or partly within their boundaries providing no part was in the L.C.C.'s jurisdiction.<sup>22</sup> By the Commons Act of 1899 district and rural councils were authorized to make schemes for the regulation of rural commons although they had to abandon them if either the lord of the manor or

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<sup>20</sup>Ian Norrie and Dorothy Bohm, Hampstead: London Hill Town (London: Wildwood House and High Hill Press, 1981), pp. 66-67; Ikin, Hampstead Heath Centenary, p. 20.

<sup>21</sup>Commons Preservation Society, Report of Proceedings, 1888-92, pp. 28-29.

<sup>22</sup>61 & 62 Vict. c. 43.

persons representing one-third of the interests in the common objected.<sup>23</sup>

Despite these nineteenth-century enactments, it was not until the 1925 Law of Property Act that the public received a statutory right over certain commons. Section 193 read in part:

Members of the public shall, subject as hereinafter provided, have rights of access for air and exercise to any land which is a metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1898, or manorial waste, or a common which is wholly or partly situated within a borough or urban district, and to any land which at the commencement of this Act is subject to rights of commons and to which this section may from time to time be applied in manner hereinafter provided.

Access was to be governed by any bylaws or other regulations which existed. Sir Lawrence Chubb, the Secretary of the Commons Preservation Society, was instrumental in having this inserted into the Act.<sup>24</sup> By extending its provisions to commons "partly within a borough or urban district" the Act ensnared for the public many predominantly rural commons. Despite this, in 1978 the Society was still calling for legal public access to be granted to all commons.<sup>25</sup>

The general success of preservationism can be measured by the occasional reactions that appeared against it. To some, it

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<sup>23</sup>62 & 63 Vict. c. 30.

<sup>24</sup>15 Geo. V c. 20, s. 193; Commons, Open Spaces, and Footpaths Preservation Society, Proposed Memorial to Sir Lawrence Chubb (London, 1950); W. H. Williams, p. 21.

<sup>25</sup>Patmore, p. 227; Commons, Open Spaces, and Footpaths Preservation Society, Our Common Heritage (London, 1978), p. 1.

had clearly overstepped the limits of its usefulness. Examples of this attitude were present in Hackney during the controversy that erupted over the saving of Clissold Park in the late 1880s. The prospect of some £95,000 being spent to purchase the site sat ill with residents of the district who were too far from the park to benefit. The most succinct expression of this discontent was voiced by the chairman of a Ratepayers' Association who disparaged the people in the area who had "open spaces on the brain". What was once a useful idea had become an abuse. He was supported in this view by another member of the Association, who also sat on the Hackney Board's Open Spaces Committee. He spoke of his zealous colleagues taking "every inch of land" to turn into an open space. The Association passed a resolution condemning any scheme to purchase the site at ratepayers' expense, one speaker going so far as to hope that it would soon be covered with houses.<sup>26</sup>

The pithy phrase, "open spaces on the brain" provided a focal point for some lively correspondence, which also indicated a political dimension in the dispute. A resident speculated that

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<sup>26</sup>Hackney Archives, De Beauvoir Residents' Association, Minutes, D/S/5/1, 5 August 1886. The Association had been formed to combat excessive expenditure by too many levels of government. A few years previously it had opposed proposals by parochial authorities to build baths and washhouses. It was not very fond of public libraries either. Minutes, 13 June 1882. David Englander notes that property associations arose to combat "municipal socialism" although their success in London was not as pronounced as in other areas. Nonetheless another Hackney group, the North London Property Owners Association proclaimed victory near the end of the century over the "late and unlamented Hackney Vestry", a body "ruled by a bitter and avowed hatred towards landlords". Englander, p. 77.



the chairman may have been "gazing at a few bald-headed gentlemen" when he made the remark. He lamented the possible loss of the park to a builder but presumed that the Tory chairman would be happy only when the "mad, insane, idiotic, selfish, extravagant, wasteful, and wicked people who have 'open spaces on the brain'" could be banished from positions of influence.<sup>27</sup> Representatives of the Ratepayers' Association replied that they were not opposed to open spaces per se, but to the expenditure of excessive money to provide a park where one was scarcely needed. Finsbury Park was nearby, and Hackney in general was not lacking in "lungs".<sup>28</sup> Nevertheless, the park was acquired.

The content of these comments echoed remarks that were made in the 1860s by those worried that preservationism would have the effect of making every acre of waste untouchable, thus preventing useful developments and interfering with owners' rights to profit from their lands. There were always people who tended to view commons in much less sentimental images than the stalwarts of the movement. In 1872, for example, when suggestions were being canvassed for the laying out of the Hackney commons, one ratepayers' association favoured building a road across London Fields to facilitate "free and easy communication" of vehicles. It also wanted a road through South Mill Field.<sup>29</sup> But plans such as this were decidedly out of vogue

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<sup>27</sup>Hackney and Kingsland Gazette, 27 August 1886.

<sup>28</sup>Hackney and Kingsland Gazette, 1 December 1886.

<sup>29</sup>Hackney and Kingsland Gazette, 28 September 1872.

as preservationism continued to make inroads into local communities.

Undoubtedly more Conservatives opposed the movement than Liberals although it was not strictly a party issue. Tories were more apt to bring up the matter of property rights and to see preservationist measures as a threat to these. When Cross brought in his 1876 Commons Bill he was quick to point out that it did not attack property rights. Lords of the manor made much of this theme as well, perhaps with some justification. They saw schemes that gave the public a right over commons as confiscatory. Amherst at Hackney successfully argued his case that the attempt by the Metropolitan Board to prevent his gravel digging was an unwarranted interference with a valid right. Preservationists often failed to appreciate that the public's presence on a common would inevitably affect its suitability for other things. Nonetheless, the popularity of their message so far outstripped that of the lords that such blind spots hardly mattered. Publications like the Times and Punch expressed little sympathy for the lords' view.

Middle-class preservationism was also challenged by the more radical and more ephemeral working-class Commons Protection League. De Morgan's group favoured action over fruitless negotiations and on more than one occasion provided a much needed stimulus to dying struggles. But whether he had any lasting impact is doubtful. The size of the crowds that turned out for his actions confirm his popularity. They supported him wherever he appeared. He was briefly in Banstead as well. But he

faded quickly too, as did the more radical strains of preservationism. One of the last gasps came in 1884 from the M.P., Jesse Collings, who proposed an ambitious measure to redress the injustices of the past, namely the "restitution of all common lands, wastes, and roadsides, and other enclosures and encroachments which have been made illegally and without the sanction of Parliament since the Inclosure Act of 1836". The aim was to place these lands in trust so that local authorities could use them for the benefit of the labouring classes. The Kent and Sussex Labourers' Union called for a Royal Commission to determine how labourers had fared under enclosures since 1836.<sup>30</sup> Parliament, however, was not inclined to lend support to these radical programs.

In an increasingly middle-class society, it was a middle-class preservationism that triumphed. It did so because it was able to disguise its goals behind the public good, a pattern that its successors would emulate in this century. For example, environmentalists from the National Trust, acting as public beneficiaries, designate portions of the countryside as worthy of protection. (Two of its founders were Octavia Hill and Robert Hunter, both of the Commons Preservation Society.) But there is a degree of ambivalence about what they are protecting these sites from. Access to some areas seems best suited to middle-class means as if to keep the masses out. It is based on a particularly middle-class, individualistic way of appreciating the

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<sup>30</sup>Times, 30 December 1884.

countryside.<sup>31</sup> The arguments are successful because they appeal to the romantic side of the urban-dwelling population, most of whom might never visit such places. Critics of preservationist policies usually get the worse of disputes; they are made to look greedy, rapacious, and insensitive to public needs. Nineteenth-century preservationists won their battles in much the same fashion. By championing the urban poor, they made their critics appear heartless. Yet most commons were in middle-class areas. The working-class crowds might appear on weekends and on bank holidays but, for many, the comparative solitude of other times was what they had fought to retain. The Commons Preservation Society later expanded to include the maintenance of rights of way along footpaths as part of its mandate. The solitary middle-class rambler was the beneficiary of this campaign but it touched atavistic sensibilities in a wider group who then lent their support.

The taming of London's commons was part of a middle-class tendency to reconstruct nature along romantically inspired lines, making nature adapt to one's own preconceptions rather than adapting oneself to nature's unpredictability. Preservationists' insistence on the value of rural patches--however modified--in urban environments struck a resonating chord. Much early town planning of the garden-city variety was an attempt to soften traditional urban features and emphasize nature.<sup>32</sup> Perhaps it was no coincidence that an early example of

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<sup>31</sup>Newby, pp. 19-20, 202, 222-25, 255-58.

<sup>32</sup>Ashworth, p. 187.

this, the Hampstead Garden Suburb, was next to the Heath. Even the more traditional London suburbs continued to value the ground-level home with its private garden. Preservationism capitalized on these desires for nature by providing stimulating yet safe landscapes. That these areas were more than museums of nature but prime recreational sites as well ensured that they would be accepted and valued by a population of urban dwellers.

## Appendix: The Statute of Merton

Also because many magnates of England who had enfeoffed their knights and freeholders with small tenements in their large manors have complained that they could not profit from what remained of the manors, such as wastes, woods and pastures, although those feoffees have sufficient pasture as belongs to their tenements, it is thus provided and granted that whenever such feoffees bring an assize of novel disseisin for their common pasture and it is acknowledged before justices that they have as much pasture as suffices for their tenements and that they have free access and egress from their tenements to their pasture, then they are to be content with it and they of whom they have complained may go quit for having profited from the lands, wastes, woods and pastures. If, however, they say that they have not sufficient pasture or sufficient access and egress as belongs to their tenements, then the truth is to be enquired into by the assize. And if it is found by the assize that their access or egress is by the same deforcers in some respect impeded or that they have not sufficient pasture and sufficient access and egress as aforesaid, then they are to recover their seisin by view of the jurors, so that by their discretion and oath the plaintiffs may have sufficient access and egress in the way aforesaid. And the disseisors are to be in the lord king's mercy and pay damages as they were wont to be paid before this provision. If, however, it is recognised by the assize that the plaintiffs have sufficient pasture with free and sufficient access and egress as said before then the others may lawfully make their profits from the remainder and go quit from that assize.<sup>1</sup>

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<sup>1</sup>Harry Rothwell ed., English Historical Documents, Volume III, 1189-1327 (London: Eyre and Spottiswoode, 1975), p.352.

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