

Packers Field : Reminds me of another time and another place

'Most of the open spaces – commons, woods, greens – that exist in our cities remain today because they were preserved from development by collective action. Whether by rioting, tearing down fences and reopening enclosed land, or by legal agitation, many of the commons and parks we know and love would have been lost if they hadn't been actively defended' South London Radical History Group (2003)

What link could there be between a 21st Century inner-city campaign to keep a recreation ground open to the public and the struggles of peasants more than 250 years ago to retain their custom and right to common land? On the face of it, none. However the experiences of the fight for access to Packers field in Whitehall, Bristol have produced a strange resonance with the history of enclosure and the struggle for common land in Britain. These echoes relate to ideas of custom and right, ancient legal precedents and the tactics and propaganda of the land enclosers. This essay is an elaboration of some of these strange 'coincidences' and explains why past struggles, in this world of neo-liberalism¹, are not as far away as we may think. The article is split into two parts, separated by several hundred years, so I hope I have been able to illuminate the connections for the reader.

Part 1 : Packers Field

Protestor : 'When you see a hole in a fence and a green space beyond, what do you think ?'

Councillor : 'I think it is vandalism'

Protestor : 'Can you remember being twelve years old ?'

Conversation overheard at a Bristol City Council planning meeting 2005

Packers field, as it is commonly known by the people of east Bristol, is a seven-acre green field site bounded by the inner-city communities of Whitehall, Easton and Greenbank. Its ancient origins are not well known but by the end of the 19th century the expansion of Bristol driven by the industrial revolution meant that this piece of land lay on the boundary of the city. The land became part of the Packers Chocolate factory complex and served as a recreation ground for the workers and the local community. Sports and pastimes abounded with football, cricket and family picnics fondly remembered by local residents.

The economic depression of the 1930's put Packers Chocolate factory in deep financial trouble. As a way of raising capital the owners were forced to put the recreation grounds up for sale. So like many local facilities, the maintenance and upkeep of the recreation ground passed into the hands of local government in the generalized intervention of the state in acquiring and protecting 'public assets' for the benefit of the community. The field was simultaneously used as a sporting resource for local schools, as a venue for sports clubs and as a free green space for local residents to use. As the rate of housing and business development accelerated during the post-war reconstruction, Packers field became one of the few flat green spaces in east Bristol suitable for sport and recreation.

The 1980's marked the rise of neo-liberal policy under the Conservative government of Thatcher. With the ruthless destruction of 'heavy industries' (coal, steel, shipbuilding etc.) completed and the shift of manufacturing industry from the U.K. to economies with cheaper labour underway, there was a need for rejuvenation of inner city districts. Central government introduced programs that created zones in cities

¹ Neo-liberalism is a relatively recent term that refers to the broadening of 'free market' economics into all aspects of our lives with consequent commercialisation, privatisation and introduction of economic competition. It also involves the rolling back of state subsidies, nationalisation and Keynesian economic policies along with the destruction (or suppression) of Trade Unions, state bodies or other organisations impeding the development of 'free' trade and economic competition. Its introduction in Britain can be traced to the end of the Labour government in the 1970's and the rise of 'Thatcherism' in the 1980's.

freed from some planning restrictions, with low rents for business and encouraged the construction of high-value properties for the so-called 'yuppies'². Property speculators seized the initiative in Bristol and significant swathes of the city were ruthlessly developed. This process was halted by the recession of the late 1980's, which was followed by stagnation, and a considerable number of newly constructed but seemingly useless, empty buildings. Packers field seemingly survived these 'boom and bust' years that marked the rise of neo-liberal city development policy.

By the 1990's Easton in particular retained no large sports grounds and the pressure to use spaces for formal or informal sport became intense. The 1997 general election victory for the Labour Party convinced many that the general sell-off of Council facilities and lack of protection for school playing fields, sports grounds and recreation grounds marked by the Thatcher era would end. However it wasn't long before the truth dawned on everyone that Blair was just another neo-liberal wolf in sheep's clothing. Far from stopping the sell off of state assets he seemed to continue the policy, albeit with smile, rather than the Thatcher scowl. Blair's buzzword for his plan for continuing the neo-liberal assault on the public sector would be 'public-private finance initiatives' (PPFI's).

In the early part of the new millennium, the ruling Labour group on the City council, in line with government policy nation-wide, began to draft a plan³ to 'rationalize' school playing fields across Bristol. This basically meant creating a series of high capital investment hub sites for sport. The locations for these sites would be driven in part by the 'strong market interest' in sports facilities by business and they would be partly funded by selling off 'surplus' playing fields⁴ to private property developers.

City Academies

This policy dovetailed nicely with the Blair inspired plan for a new PPFI initiative for education, the construction of 200 City Academy schools across the nation. These 'new' schools would be existing schools seized by the state⁵, taken out of Local Education Authority (LEA) control and handed over to be run by a board of directors involving private businessmen who had invested the required amount of money⁶ to get control⁷ of the school. The benefit to the community was an investment⁸ by the state in new buildings and facilities for these specialized⁹ schools.

St. Georges school in Lawrence Hill was ear marked for Academy status and was designated as a 'Sports' college. This brought benefits and problems. On the plus side, as far as the government and the

² See especially the activities in Bristol of the Urban Development Corporation between 1987-90, water front developments in the old dock areas and attempts by property speculators in the same period to compulsorily purchase land in order to build the proposed Metro system.

³ Playing Pitch Strategy Document : Bristol City Council : Environment, Transport and Leisure Scrutiny Commission : Agenda Item 12 :29-11-04 Appendix A.

⁴ Bristol City Council crowed about their new plan quoting Councillor Simon Cook, Executive Member for health promotion and leisure as saying "Instead of having 400 fairly poor quality pitches we will have a range of facilities serving the whole city that we can be proud of". Of course he failed to mention that this meant selling off a large amount of land that the public already used formally and informally.

⁵ They were to be seized on the basis of being 'failing inner-city schools', though various recent struggles by parents and teachers against their local school becoming an Academy have shown that the Labour Party would often fiddle the figures to achieve the 'failing school' status.

⁶ Up until 2005 this was a minimum of 2.5 million pounds, however recent plans have reduced this to 1.5 million pounds (probably to make it more attractive to private investors).

⁷ This 'control' literally meant control over the education syllabus, as was famously exposed in Sunderland where the Christian fundamentalist Vardy family took over the board of an Academy school after making the requisite investment and began to introduce creationism into science classes !

⁸ Ironically the investment by the state and local government was often far larger than that of the private businesses (a ratio of 9:1, in most cases). As has been pointed out by many parent campaigners against Academy schools, why is it that this finance was not available before ? Why was it only for Academy schools ?

⁹ One of the interesting aspects of the Academy school idea was that each school would specialize in a particular subject, for example sport, business, technology or languages.

new Principal¹⁰ Ray Priest were concerned, private investors were easy to come by. Bristol City Football Club and the University of West of England¹¹ were all eager to get involved. After all, for a relatively modest investment, they got access to new inner city sports facilities, nine tenths of which were probably going to be paid for by the state and local government. But where were these 'state of the art facilities' going to be built ?

After developing the St. Georges school site (including the playing fields there) only part of the remit for Sports Academy status had been achieved. One of the requirements for the Sports status of this new City Academy was the need for an Athletics stadium and facilities. This had to be achieved by a given deadline else there would be no state funding. Where were they going to put the Athletics stadium they needed ? They had already built over their own school playing field. The beady eye of the City Academy Principal and the private investors fell on Packers field.

The City Academy Plan

Initially the Academy plan to develop Packers field had, on paper, a major difficulty to be overcome. The land was controlled and maintained by Bristol City Council and as such was not technically theirs to develop. However the ruling Labour Party hacks¹² were certainly not going to oppose the City Academy School, and defy the pet project of their party leader. This was not exactly the best way to improve one's career prospects. So the process was set in place to hand public land over to a 'private' institution for development.

With the land 'sell off' agreed behind closed doors in the Council House in 2002, all the Academy and their political partners had to do was put together the development plan for Packers Field which tied in with the 'hub sites' proposals of the City Council's Playing Field Strategy document and satisfied the Academy's funding requirement. This entailed a two stage plan of enclosing Packers field, preparing a car park and new entrance and then in the second phase constructing an Athletics stadium. Unfortunately the Academy had made a fatal error with the plan. In all of this process they had ignored the local community.

The Campaign Begins

In 2002, some local residents had attended the so-called 'public consultation' meetings and had challenged the plans for the stadium, car parks and new entrance and as well as questioning the lack of public access to the site. Rumours from the ground staff at Packers field of '*8 foot fences, swipe cards and cameras*' spread to many of the informal users of the facility. A campaign group was swiftly formed which recognized that the struggle for free access to the site was now clearly on.

The City Academy and the Council realized that they had a problem and withdrew their plans. No explanation was given, but local opinion was that they had gone too far, too fast. In August 2003 the Academy returned to the fray with a new plan but with no mention of the Athletics stadium. Now the planned development only entailed enclosing the site, improving the sports pitches and constructing new changing rooms and a car park.

It was obvious to the campaigners that once the first phase had been achieved (i.e. leasing of the land to the Academy and rubber stamped planning permission) then it would leave the way forward to build the

¹⁰ The Academies had dispensed with the 'old-fashioned headmaster' term and had introduced the hardly disguised U.S. term for a school head. Maybe Blair had got too excited about being in the Simpsons.

¹¹ Other investors included the Bristol Chamber of Commerce and Bristol Business West.

¹² By this stage Robin Moss the local Labour Councillor was already sitting on the board of directors of the City Academy in any case.

Athletics stadium in the so far unmentioned second phase. While the Academy were boxing clever, they weren't expecting the big left hook that the community delivered in the second round of the contest.

The Town Green application

Local residents whose questions about public access to Packers field remained unanswered and whose objections had been ignored during the planning applications were now faced with what they regarded as a 'done deal'. At successive planning meetings, it became obvious that the local Councillors were '*in the pocket of the Academy*'¹³ and were not representing the interests of their constituents. The nature of Blair's 'Public-Private' partnership was made clear, it was a Council-Business partnership that excluded the Public.

One local resident came upon a new line of attack, with guidance from the Open Spaces Society¹⁴. This organization promoted the use of the 1965 Commons Registration Act which allowed land used 'as of right' by members of a 'locality' for more than 20 years to be registered as a Town Green. This meant that land could be potentially protected from development by its owners because it was an amenity that was used by the local community *whether the owners intended it to be used as such or not*. The interesting part of this legislation was that it harked back to some old ideas about *customary right* and so was in conflict with more modern legal concepts based on the *absolute right of ownership*.

The Town Green application was submitted to the Councils legal department in July 2004 a couple of days after the last part of Packers field was leased to the City Academy for 100 years by Bristol City Council for a peppercorn rent. The City Council and Academy had seriously underestimated the response of the local community. They thought that, at worst, they would be arguing about details of the planning applications. The irony was that Bristol City Council was now in a fight with their own constituents about *who controlled the public land that was Packers Field*.

Oh No, the public have turned up !

The practical reaction of the City Council and the Academy to the 'affront' of the Town Green application would become clear as the months went on. A 'dirty' propaganda campaign bordering on harassment was unleashed on the campaigners, involving the use of children, sophisticated surveillance techniques, the police and the local press.

As the local residents pooled resources and began to collect evidence for the Town Green application the Academy and the City Council marshalled their superior financial resources for a widely disseminated disinformation campaign. Letters and flyers from the Academy were circulated around Easton, Whitehall, Greenbank and to local sports clubs saying that if the Town Green application was a successful then all sport at Packers field would cease, no improvements or investments could be made, there would be no security at the site and the Academy would not fund its upkeep.

This mixture of lies and blackmail frightened many away from support for the Town Green application. Soon after, a follow-up letter was sent out by the local Labour Councillor Robin Moss which casually asked local residents if they supported the '*£2.5m investment in state of the art sports facilities for our*

¹³ Comment by local resident in 'Infinite Space : The battle for Packers Field' : Video : Space Invader Films : Bristol : 2005.

¹⁴ See <http://www.oss.org.uk>

children at Packers field'¹⁵ or not. Moss's letter not only failed to describe the content of the Town Green application it also neglected to mention that *Moss himself* was on the board of the City Academy¹⁶.



In the local press letters implied that the local residents who supported the Town Green application were vandals or just selfish 'dog walkers'¹⁷. In addition Town Green supporters were bombarded with copies of letters from school children at Whitehall Primary School and the City Academy. These letters claimed that Packers Field must be 'saved' from the campaigners who wanted to stop the children using it. Many bluntly stated that the campaigners were trying to 'make money out of it'. Amongst the letters were lurid drawings of drug dealers, dogs defecating and litter. All the letters had been addressed by the children, showing admirable knowledge of local government organisation, to Stephen McNamara in the legal department of Bristol City Council and most mentioned the Town Green application.

In a bizarre twist, reminiscent of some totalitarian state, Bristol City Council surveillance vehicles mounting periscopes and video cameras began to appear on a regular basis around Packers field. Startled (and somewhat paranoid by now) local residents questioned the security guards inside the vans and were told they were 'watching the field for dog walkers or vandals'. This was getting ridiculous. To cap it all, local sports teams who set up football tournaments on Packers field were reported to the police as trespassers, along with 'ring leader' local residents. Gates were locked, others welded shut and the first signs of an attempt by the Academy to seriously enclose the site began. This all happened *before* the public enquiry date.

Meanwhile the local residents stuck to their guns despite the harassment. The first legal hurdle to overcome was to get a public enquiry so that the Town Green application could be considered independently. Bristol City Council were obviously unhappy to see the application succeed so at a lively (some would say democratic) meeting of the Public Rights of Way and Greens Committee in January 2005 the clearly sulking Councillors were faced with a large number of witnesses who turned up in person, written statements and a petition of more than 500 signatures asking for a public enquiry. After reluctantly agreeing¹⁸ to the request Councillors whined about being 'put over a barrel' and accused those present of 'bullying them into a decision'. Witnesses sarcastically replied with shouts of 'Oh No, the public have turned up'.

¹⁵ R. Moss leaflet to 5000 residents of Easton ward.

¹⁶ It is generally recognised that this kind of deception (amongst others) led to Moss's resounding defeat in the local elections of 2005.

¹⁷ Bristol Evening Post : 07-04, 08-09-04, 14-01-05 et al.

¹⁸ The council knew that if they did not have a public enquiry, they could have left themselves open to Judicial Review Proceedings. However they were relying on an uninformed, disorganised or even non-existent turn out for the meeting.

Vandals and Drug Dealers

One of the most consistent aspects of the propaganda campaign by the City Academy and its allies was the representation of the users of Packers field. Essentially the 'commoners' were categorized by the Academy and Whitehall school governors, head teachers and supporters into the following groups¹⁹ :

- Vandals, joy riders and arsonists
- Thieves and muggers
- Drug dealers and drug abusers
- Suspected paedophiles
- Dog walkers

The impression was given that without the enclosure of the field and the development by the City Academy, Packers field would become some kind of living hell where there would be a 'free for all'²⁰ (though what this actually meant was never quite explained). Many of the letters opposing the Town Green application came from people who did not live in the neighbourhoods of Whitehall, Greenbank or Easton, in fact often they lived much further away in better off parts of the city or in surrounding towns and villages. The Academy had to struggle to find many local residents who openly supported them.

How much of the branding of the 'commoners' was down to a clearly contrived plan by the City Academy is debatable, though many of the letters and statements showed peculiar similarities. What is clear is that there was a common perception by those who lived outside of inner city Bristol and who used the field for 'official' activities that the environs were a jungle inhabited by dangerous 'beasts'. The fact that many of these 'beasts' were probably pupils at the City Academy School or local residents was lost on them and fear was clearly the emotive reaction of the outsider. This is a common perception from the 'outside' of so called 'rough areas' and is of course tied closely with issues of race and class.

The actual facts of incidents of vandalism, joy-riding and drug dealing undoubtedly had some truth as they do in all parts of inner-city Bristol, but at no time did the Academy actually accept that the vast

Field used by dealers and gangs

DRUG dealers, vandals and gangs of youths are hanging around a Whitehall field which is at the centre of a planning row, a public inquiry has heard.

Packer's Field in Johnson's Lane is owned by Bristol City Council and used by both the local community and

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decision should be put to a public inquiry, which started on Monday at the council house in College Green.

The inquiry is expected to last until tomorrow, with Inspector Leslie Blohm

¹⁹ See especially, Bristol City Council : Public Rights of Way and Greens Committee : Public Forum Statements : 10-01-05.

²⁰ Ibid.

majority of the children, youth and adults who used the field informally were law-abiding citizens. Clearly the fear of the 'other' was a useful weapon in achieving their aim of development and enclosure. As they said themselves :

*'Should the Town Green application become successful, there will be no security on the site'*²¹

For the City Academy, fences, CCTV cameras, swipe cards and of course the intended commercialisation of a space were equated with security, safety and progress. Conversely, free space was equated with backwardness, rubbish, dog shit, drugs, violence and sex-crime.

The Public Enquiry

In April 2005 the long-awaited public enquiry into the Town Green application began. Bristol City Council and the City Academy had employed a legal team at some considerable expense to oppose the application. The team was led by barrister Philip Petchey an expert in land law and a veteran of Town Green enquiries. The local residents were represented by Sandra Willavoys the original signatory of the Town Green application. The 'independent' advisor, Leslie Blohm, was chosen by the City Council to adjudicate the evidence and was of course from the outset in a strange position. He was going to be advising the City Council, who were a primary objector to the Town Green application, whether to accept the application!

During the initial cross-examination of the witnesses it became clear that Academy barrister Petchey was following a particular line of questioning regarding the definition of the 'locality' around Packers field. Some hasty research showed that Petchey had won his previous Town Green cases on a loophole in the definition of 'locality' within a city. It seemed that the 1965 Commons Registration Act²², which the application was based on, was aimed at clearly defined communities surrounding a piece of land, much like a 'traditional' view of the village green. Definition of locality was based on the presence of 'recognisable facilities' such as a church, school, scout hut etc.

Packers field lay between three inner city districts and could be accessed by a 12 mile long cycle path running from Bristol to Bath, so its catchment was wide both due to its location and the lack of nearby green spaces. Petchey's initial line of attack was precisely this lack of spatial definition of a 'locality' in a city. Communities in a city (especially the inner-city), unlike the village, are often more defined by social relations than by spatial or property driven boundaries. The spread of the users of Packers field amongst several formally constituted local districts would be a constant thread in the barristers' case against the Town Green application.

As the enquiry continued many witnesses, especially older residents, spoke or wrote of their beliefs that Packers field had been bequeathed to the community as a kind of philanthropic gesture²³. Others spoke of their feelings that it was *'their field'* or even that it was a *'town green already'*²⁴. The head of the enquiry, Blohm stated :

'The Packer business may, like other chocolate businesses, have been philanthropic. I have heard it said on behalf of the Applicants that they understood that the field was given to the City for good local

²¹ Bristol City Academy leaflet.

²² The law actually states 'the applicants must establish the recreational use of the land is by the inhabitants of a defined locality, or neighbourhood within a locality'.

²³ One elderly resident stated that Cole, owner of the Chocolate Factory at the time of the sell off, had clearly stated that they had 'bequeathed Packers Field to the community in perpetuity'.

²⁴ Bristol City Council : Public Rights of Way and Greens Committee : Public Forum Statements : 10-01-05.

*purposes, and that the perception may well have influenced the views of local inhabitants as to the propriety of uses to which the field might be put and their own rights over it, over the years*²⁵,

However, neither the Applicants nor Blohm²⁶ were able to find any specific documents stating that Packers field was bequeathed to the community under any philanthropic conditions or covenants. Interestingly, the documents that could be found which related to its hand over to the City Council seemed to be incomplete. However, the historical legal basis for any kind of 'customary right' was lacking.

The verdict of the enquiry became available in a report in July 2005. Despite of the optimism of some of the local residents, the application for the Town Green was lost. The primary reasons for the defeat were:

- There was supposedly not enough evidence of usage of the field.
- Not enough people who did use it came from Whitehall (the two other neighbouring areas of Easton and Greenbank apparently did not count).
- The 'locality' defined in the 1965 act had not been 'proven'.

One last irony that was to haunt the verdict was the decay of formally constituted communities in general. Part of the reason that the application was lost was the difficulty in contacting all the users of the field and motivating them to write statements or take time off work to attend the public enquiry. Also some of the main groups who used the site informally, children and teenagers were unable or unwilling to represent themselves²⁷. As communities fragment and atomise both socially and physically the capability to protect 'common' green spaces thus becomes more difficult (as was seen in the legal requirements and verdict for this Town Green application). The loss of such spaces, of course lessens the possibility of constructing community and consequently the chance of protecting them. The potential exponential nature of such a process is worrying, though the benefits to the property developer and commercial interests are clear.

²⁵ P. 15 Report to Bristol City Council : Packers Field : L.Blohm.

²⁶ Ibid., P.15-16.

²⁷ The protestors were clear that they would not 'use' minors in the council meetings, public enquiry or letter writing campaigns. The Bristol City Academy as has been noted did not share such reservations (see the letter writing campaign on page 5) and in fact sanctioned one child to take time off school to give 'evidence'.

Part 2 : Time Tunnel

*'There may be rich men,
Both yeomen and gentry
That for their own private gain
Hurt a whole country
By closing free commons,
Yet they'll make as though
'Twere for the common good,
But I know what I know'*

Roxburghe : Ballads 1607

The history of common land in Britain and its subsequent enclosure over a period of 300 years can be characterized by an ideological and physical struggle between the concept of the absolute right of private property and the popular customs of the commoners. This struggle was fought on many levels. The land owning enclosers used propaganda, the courts, fraud, intimidation, evictions, imprisonment, transportation and even deployed armies to achieve their aims. The commoners employed direct appeals to the enclosing land owners, legal means in the courts, songs, stories, public meetings, protests, threats, fence-breaking, occupation, riot and ultimately rebellion to try to protect their livelihoods. This history seems a long way away from us now but some of the similarities between it and the struggle over Packers field are striking.

Cannock Chase

Consider the case of Cannock Chase²⁸, '*a rolling stretch of heath and woodland between the industrial centres of Birmingham and Stoke*'. This 30 mile square stretch of land was the scene of an intense struggle in the 18th century between thousands of commoners (mostly poor cottagers, labourers, colliers and weavers) and the Earl of Uxbridge who in addition to Cannock Chase owned over 100,000 acres of land in Staffordshire, Derbyshire, Dorset, Berkshire, Anglesey, Middlesex and Ireland.

Primarily the commoners used the land to provide game (hares, rabbits, fish, pheasants and deer) to supplement their meagre diets, but it was also a source of fuel, grazing, building materials, fruits and vegetables. It has been estimated that access to common land at that time could double a poor families income²⁹. The Earl of Uxbridge wanted control over the whole of Cannock Chase so he could run it as a game reserve for hunting and as a moneymaking enterprise for, amongst other things, the breeding of rabbits. His motivations for enclosing the land were a sense of pride, aristocratic right, profit and leisure. The Commoners instead were driven by practical needs for food, heat etc. and a belief in their customary rights that were enshrined in the Exchequer survey of 1595.

As the Earl began to encroach on the commons, by building rabbit warrens and enclosing parts of the land he also stepped up his use of private armies of gamekeepers to beat, capture and prosecute 'poachers' as he called them. Poaching is an interesting term. For commoners it was hard enough to understand how someone might try and personally 'own' something that was held in common like a forest, river or meadow but to try to own the animals, birds or fish that lived there seemed just plain crazy! The game that lived on the Cannock Chase were there for everyone and had no 'owner'. So as far

²⁸ Most of the information about this struggle over common land comes from 'Poaching and the Game Laws on Cannock Chase': by Douglas Hay in Albion's Fatal Tree 1988.

²⁹ P. 28 Hill : Liberty Against The Law.

as the commoners were concerned poaching was a new crime created by the landowners. Across Britain communities were resisting the introduction of these new philosophical and legal concepts.

The initial response of the commoners to the attempts at enclosure and repression of 'poaching', was to appeal to the Earl with respectful letters, these were ignored. Instead the Earls representatives confronted the commoners with a copyhold agreement of 1605 showing the Earls supposed right of ownership and explaining he could exercise more severe restrictions if he so chose. The commoners were not cowed by this and decided to follow a legal route, to prove their 'ancient' customary right of access to the Chase.

It should be understood that the recourse to the use of the law in the 18th century was a particularly risky route for commoners. Not only were they often illiterate and/or uneducated and thus had to rely on costly solicitors but also losing was unimaginably expensive and could be a sure way to put yourself in a debtors prison or cause you to lose what little property you owned³⁰. In addition to this JP's were renowned for being in the pockets of the gentry both socially and financially³¹. Finally the law itself was complicated, confusing and fundamentally stacked in favour of the right of private property.

Nevertheless the commoners collected their money together, and believing their case was invincible because of the Exchequer survey of 1595, went to law in June 1751. Two expensive years of legal fees and costs passed before the case finally came to court in August 1753. Hay goes on³²....

*'The (commoners case) was greatly weakened by a serious gap in the evidence : **their solicitors were unable to find the original record in Exchequer of the manorial customs in 1595.** As it happened, however, their case was lost on one of the intricate technicalities which made 18th century pleading the delight of the lawyers and the despair of all but the wealthiest litigants. **The commoners lost because an aged witness defined the boundaries of Cannock Chase incorrectly.**'*

The loss of the 1595 document laying out the manorial customs is a cruel allegory of the change from 'customary right' to 'legal right'. The commoners had been using the common land for as long as they could remember. To them the 'right' to use it was almost natural. It was just what you did. With the rise of 'property rights' and enclosure in Britain commoners were faced with new laws that required some kind of proof of ownership, something which was not only a strange concept but mostly not possible to attain. Even if the commoners had recovered the 1595 manorial document, it probably would have granted them a customary right to the 'use' of Cannock Chase but it did not define them as 'owners'. In a similar vein, the inability of the witnesses to legally define the 'boundaries' of the Chase correctly encapsulates the conflict between the 'common' and the rule of the 'absolute right of private property'. How was it possible to geographically define the common ? It could only be defined in court according to the rules of property which automatically assumes boundary and of course enclosure. Because the common abstractly defied enclosure *it had to be physically enclosed*. The commoners appeared to lose a legal battle but in a wider sense a hegemonic struggle between them and the owners was being waged over how space was to be conceived.

³⁰ Typically this could mean eviction and usually destitution.

³¹ Typically JP's were 'controlled' by the country gentry using social nepotism and bribery (often with game). If these tactics didn't work then less subtle persuasion could be used. The Earl of Uxbridge, like many others of his class, often compelled JP's to make the decisions he wanted by use of the 'misdemeanour in the conduct of his office' charge, which he applied through the King's Bench. Fighting against such charges was extremely expensive for JP's and could be costly in a 'political' sense so they usually backed down.

³² P. 227 Hay : Albion's Fatal Tree.

Direct Action

During the years of the court cases (and before the verdicts) the Earl of Uxbridge asserted his rights of property over Cannock chase by force, enclosure and development of the land. All of this was opposed on a daily basis by the commoners, who continued to hunt and gather on the Chase despite the threats, violence and arrests. After the legal defeat most people had had enough of the courts. Also as Hay explains³³, the commoners had :

'heard of the success of the commoners of Charnwood Forest in Leicestershire, thirty miles away, where rioters successfully defied troops, keepers, constables and three Lords of the Realm to dig up the warrens in the commons'³⁴... (the commoners) decided that shovels might do more than writs.'

They began by sending messengers to the 'famous colliers' of Charnwood forest, paid the town crier of Walsall to announce the 'free company on Cannock Wood' would be digging up the Earl's warrens and spread the news by word of mouth amongst the other communities close to the Chase. On the 28th December 1753 the assault on the fences and warrens began. For two weeks between 200 and 300 labourers, colliers, weavers, masons and shoemakers worked, filling in the burrows and killing the Earl's rabbits. Two troops of Dragoons were marched over from Stafford and an uneasy stand off between the two sides began. To the consternation of the Earl, the Dragoons were then withdrawn, probably to avoid a bloodbath and *'the ryott and destruction went on with more fury than before'³⁵*. Five of the six warrens on the chase were completely destroyed and the financial loss to the Earl was a massive £3000³⁶.

However the Earl now unleashed the full fury of the law on the commoners. He made representations to the House of Lords and 'proved' his 'right' to the Chase in the Stafford Assizes in April 1754. When the commoners refused to accept it, he sued them with the intention that this would cause *'the total ruin of themselves and their families'³⁷*. This is in fact what happened. Over the next two years families were turned out of their homes, cottages were pulled down, many were imprisoned, property seized and others pauperised. His final legal victory came in 1755 after six years of litigation. The judge stated that the commoner could not be allowed to *'destroy the estate of the lord, in order to preserve his own small right of common'³⁸*

As Hay³⁹ concludes :

'The words echo the reality of 18th century property relations : the estates of the aristocracy were paramount, and the rights of the commoners were beginning the last decline to extinction. After 200 years of conflict the Pagets finally established the pre-eminence of game over the rights of their tenants. The new temper of the courts, the inexplicable loss of a document crucial to the commoners' case, and the massive financial resources of the family finally brought the Earl of Uxbridge the victory that had

³³ Ibid., P.227.

³⁴ The three years of riots near Loughborough began in the summer of 1748. Dragoons dispersed crowds of two thousand, but the commoners were victorious in establishing the right of common for 26 towns and villages Ibid., P.227.

³⁵ P.229 Hay : Albion's Fatal Tree.

³⁶ This can be equated today to approximately £300,000 !

³⁷ Ibid., P.231.

³⁸ P.234 Hay : Albion's Fatal Tree.

³⁹ Ibid., P.234.

eluded his ancestors. The case was enshrined in the law reports and given a full page in the reference books of the Justices of the Peace'

Legal process of this kind had a great bearing upon the practical transformation of British law from a connection with older medieval ideas of customary right to the newer absolute property rights required by the enclosers. They became enshrined in the law books and set the precedents for numerous future cases, *till this very day*.

Thieves and Vagabonds : the representation of the commons

The process of enclosure of common land in Britain between the 15th and 19th centuries was paralleled by a propaganda campaign carried out by the spokesmen of the landowners. This characterised the commons variously as *'nurseries and receptacles of thieves, rogues and beggars'*⁴⁰ or as a source of *'laziness and disorder'*⁴¹. The inhabitants of the Forest of Dean near Gloucester for example were labelled *'people of very lewd lives and conversations, leaving their own and other countries and taking the place for shelter as a cloak to their villanies'*⁴². The poor in Northamptonshire were said to *'dwell in woods and deserts and live like drones, devoted to thievery, among whom are bred the very spawn of vagabonds and rogues'*⁴³. The continually repeated 'truth' of the association of commons with criminality was to spearhead the campaign of enclosure for several hundred years. It reappeared numerous times during the disputes over Cannock Chase most notably when the 'commoner' was described by a professor and judge as *'that desperate character, a poacher, he who sleeps by day and prowls for food at night, soon acquires the disposition of a savage or a wild beast – a disposition which must lead to robbery, and every species of nocturnal depredation'*⁴⁴.

A second more subtle theme was also to arise during the periods of enclosure. An Elizabethan surveyor said of the cottagers of Rockingham forest *'so long as they may be permitted to live in such idleness upon their stock of cattle they will bend themselves to no labour. Common of pasture...is...a maintaining of the idlers and beggary of the cottagers'*⁴⁵. The supposed connection of idleness with the commons was noted again in 1649 by Samuel Hartlib who stated *'England had many hundreds of acres of waste and barren lands and many thousands of idle hands; if both these might be improved, England by God's blessing would grow to be a richer nation than it now is by far'*⁴⁶. Silvanus Taylor wrote the seminal work providing the justification for enclosure of common land in 1692⁴⁷. In it he describes the commoners as *'lazing upon a common to attend one cow and a few sheep'*⁴⁸ and *'in unenclosed villages children are nursed up in idleness and become indisposed for labour; then begging is their portion or thieving is their trade'*⁴⁹. The direction of this propaganda was summed up by Adam Moore who said that enclosure *'will give the poor an interest in toiling, whom terror never yet could enure to travail'*⁵⁰.

40 P.123 Silvia Federici : Caliban and the Witch.

41 Ibid., P. 71.

42 P.51 Hill : The World Turned Upside Down

43 Ibid., P50-51

44 P.205 Hay : Albion's Fatal Tree.

45 P.50 Hill : The World Turned Upside Down

46 Ibid., P.51

47 Silvanus Taylor : Common-Good : Or, The Improvement of Commons Forest and Chases, by Inclosure 1692.

48 P.25 Hill : Liberty against the law.

49 Ibid.,P.26.

50 P.52 Hill : The World Turned Upside Down

Throughout the period of enclosure this barrage of disparaging media was unleashed on society by the 'modernizers' to convince the populace that removing the commons was for the good of society. Any opposition was either attacked as treason, sedition or mocked as nostalgia for the past. Huge numbers of commoners dispossessed of the land through this process were now without means to support themselves. Ironically they were then forced into the vagabondage, beggary and thievery they had already been accused of. The propaganda was relentless, with the 'new' poor labelled as being little more than '*vermin and dogs*'⁵¹.

The continual description of the commoner or poor cottager as both 'criminal' and 'idle' was not just a tactic for the landowner to enclose the commons but served a more sinister purpose. With the rise of mercantile capitalism and eventually the factory system there was a huge labour shortage where natural resources were being extracted (mines, quarries, forests), and in the centres of manufacture both in Britain and the 'new' colonies⁵². The enclosures provided this much needed labour as the 'new' poor without land or commons had no other means of survival. Thus an unholy alliance between the landowner and the emerging factory owner was born. The enclosures propaganda (consciously or unconsciously) served the aims of both. The landowner used accusations of 'criminality' to gain control over the commons and the manufacturer (eventually the factory owner) used claims of 'idleness' to gain control over labour.

Enclosure and the collapse of community

The commons not only functioned as a provider of food, fuel and materials but also as a social resource. They encouraged '*collective decision making and work cooperation, the commons were the material foundation upon which peasant solidarity and sociality could thrive*'⁵³. All the festivals, games and gatherings of the peasant community were held on the commons. In addition, '*the social function of the commons was especially important for women, who, having less title to land and less social power, were more dependent on them for subsistence, autonomy, and sociality. We can say that the commons were for women the centre of social life, the place where they convened, exchanged news, took advice and where a women's view point on communal events, autonomous from men, could form*'⁵⁴

The enclosures caused this web of social relations to fall apart. Federici goes on '*Not only did cooperation in agricultural labour die when the land was privatised and individual labour contracts replaced collective ones; economic differences among the rural population deepened, as the number of poor squatters increased who had nothing left but a cot and a cow, and no choice but to get with 'bended knee and cap in hand' to beg for a job. Social cohesion broke down; families disintegrated, the youth left the village to join the increasing number of vagabonds or itinerant workers – soon to become the social problem of the age – while the elderly were left behind to fend for themselves*'⁵⁵. The enclosures not only separated people from the physical space of the common they denied the social space of the community. The echoes of this change are felt to this very day.

⁵¹ P.51 Hill : Liberty against the law.

⁵² Of course once you were turfed off the commons, usually into vagrancy or vagabondage it was only a few steps to being forcibly transported to the colonies. This nice legal arrangement acted as the 'white slave trade'.

⁵³ P.71 Silvia Federici : Caliban and the Witch.

⁵⁴ Ibid., P.72.

⁵⁵ Ibid., P.72.

Conclusion

This essay has tried to show some of the resonance between the struggles against the enclosures in the 16th, 17th and 18th centuries and the campaign to protect Packers field from development. Without wishing to patronise the reader, who I am sure has spotted many of them, I will briefly summarise these connections as I see them.

- Neither the commoners of Cannock Chase nor the residents who used Packers field wanted to 'own' the land. Their 'customary right' was based on their individual and communal 'use' of the spaces. Both sets of commoners were unable to locate the legal documents that defined their 'customary right' but, as far as they were concerned, their right was defined by *their activity, their use* of the land.
- The rise of the 'absolute property' relation does not in any way respect the social use of land or buildings. In its pure legal form it denies 'social use' and *necessarily* leads to enclosure of space. The consequent legal definitions of space (maps, boundaries, deeds) are the only method of fighting enclosure in a legal sense, so the commoners in both cases were already fighting on the terrain of the owners.
- There is an irony that both the commoners of Cannock Chase and the Packers field campaigners lost on a definition of locality. The incorrect definition of the 'indefinable' boundary of the commons of Cannock Chase led to the eventual legal defeat in 1755. The inability to legally define the 'locality' of a community (!) in a city defeated the Town Green application in 2005. Legal definition of boundary applies to land and community with the same purpose, the denial of the social.
- The similarity of the representation of the commoners during the enclosures and the residents of Whitehall, Easton and Greenbank in 2004/5 by the landowners. The use of fear of the 'other' to try to swing public opinion towards enclosure. The idea that 'common' equates to danger and 'enclosure' equates to security.
- The idea propounded by the encloser that the common will be more efficiently used if it is enclosed and developed. That this is 'progress' and the commoners are 'backward looking'. That commercialisation is necessary for security, for well-being and of course, I might add, *for profit*.
- The loss of the commons had profound negative social and economic effects on communities during the time of the enclosures. The current loss of common spaces in cities in particular has and will have profound effects upon the health⁵⁶, community and security of city neighbourhoods. We are already far along with this process and it has accelerated with the rise of neo-liberalism and the consequent central and local government privatisation policies.

⁵⁶ For discussion of this point see article 'Health and Open Spaces' in Bristle No. 20 Autumn 2005.

Epilogue : Common Feelings

Earlier in this essay I remarked upon some of the changes in the philosophical and legal aspects of 'ownership' with regard to the commons and the animals that lived on them that occurred in the periods of enclosure. Related to this is the psychological aspect of how the commons were understood by the people that used them for forage or fun. Sometimes it is hard for us today to imagine the feeling of collective connection to such spaces. In our world almost everything is mapped, enclosed and owned by someone or something. Even spaces that have an emotional connection to us like football stadiums for example, are not places we can freely enter when we want. Almost always they are beyond our control, even collectively. We often feel this whether we are in a so-called 'publicly' owned space or in a 'privately' owned space. In each case we are separated from the space because we do not feel that it is ours. Instead we are offered our houses and the 'back garden' a pitiful parody of the spaces that commoners once had connections to.

To understand the collective and personal relationship between the commoners and the commons of more than 300 years ago we have to think differently. We have to imagine places where boundaries are unclear, maps can fail to explain and use overrules ownership. Places that are vital to sustaining us but are also where we party and play games. Places where we are in control and where we have responsibility.

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