

## ‘Wild, Barren and Frightful’ – Parliamentary Enclosure in an Upland County: Westmorland 1767–1890

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**Abstract** While there has been some research on the parliamentary enclosure of upland waste in England and Wales during the eighteenth and nineteenth centuries, this topic still receives little attention in some recent accounts of parliamentary enclosure. Many aspects of the processes involved, and their impact on the landscape, are also poorly understood. Much research has proceeded either at a very general level or on the basis of detailed individual case studies. This paper adopts an intermediate scale, focusing on the old county of Westmorland to examine the geographical and chronological patterns of enclosure before looking more closely at some of the problems involved in creating a new landscape.

### **Introduction**

Parliamentary enclosure and its landscapes are a familiar element in English agrarian history. Over 7m acres, around 21 per cent of the area of England, was affected, of which some 2.3 million acres were waste rather than open-field arable.<sup>1</sup> Some of this land comprised lowland commons, heathlands and wetlands, but much of it was upland waste. Cumbria had the highest proportion of unenclosed upland waste of any region of England in the later eighteenth century.<sup>2</sup> Between 1760 and 1830 nearly a quarter of the region was enclosed under parliamentary act, only a tiny fraction of which was open field arable.<sup>3</sup> While there has been some research on the parliamentary enclosure of upland waste in England and Wales<sup>4</sup> this topic still receives little attention in some recent accounts of parliamentary enclosure.<sup>5</sup> Many aspects of the processes involved, and their impact on the landscape, are also poorly understood. This paper focuses on the old county of Westmorland to examine the geographical and chronological patterns of enclosure before focusing on some of the problems involved in creating a new landscape.

### **Parliamentary enclosure in Westmorland: general patterns**

Westmorland was described by Defoe as ‘the wildest, most barren and frightful of any (county) that I have passed over in England, or even in Wales’.<sup>6</sup> However, this statement conceals major contrasts in topography and landscape within the county. The uplands of Westmorland range from some of the highest and most rugged fells in the eastern Lake District to the steep scarp face and peaty plateaux of the Cross Fell range. Between them

a curving band of limestone forms a series of plateaux and valleys stretching from Shap to Kirkby Stephen, offering considerable scope for improvement. South of this lay the flat topped but steep sided Howgill Fells. Between the uplands were valleys with more fertile soils, particularly in the Eden valley, while to the south of the county, around Morecambe Bay, were extensive areas of lowland peat moss and salt marsh ripe for reclamation.

In 1800 Westmorland had the highest proportion of its land in waste – 79.7 per cent – of any English county.<sup>7</sup> Over 129,000 acres still remains as upland common pasture but between the late eighteenth and late nineteenth centuries over 101,000 acres, some 21 per cent of its area, was enclosed by parliamentary act. Most of this was upland waste and common pasture. It is impossible to calculate a precise figure for the area enclosed as many awards did not give an accurate total surveyed acreage.<sup>8</sup> With such acts the area of allotments, quarries and public watering places can be totalled to give a fairly accurate figure but the amount of land occupied by public and private roads is rarely given.

The origins of parliamentary enclosure in Westmorland lie in the mid eighteenth century, with evidence of interest from the 1760s.<sup>9</sup> One influence was probably activity in neighbouring Cumberland, where seven acts relating to over 16,000 acres of common pasture had been passed before 1770 and six awards completed, and Lancashire, where thirteen acts covering over 5,500 acres, including some in the north of the county, had been passed and completed by 1770.<sup>10</sup> A more local influence is likely to have been enclosure agreements arranged privately without recourse to Parliament. The amalgamation and enclosure of open field arable strips by private agreement was a long-established process in Westmorland so that by the late eighteenth century there was very little land left in open field.<sup>11</sup> Such agreements were also being used to divide and enclose areas of pasture. At least four instances are recorded in the county before 1770. The earliest known so far, the division of a 130-acre stinted pasture called Low Close in the township of Morland, occurred in 1756.<sup>12</sup> Although this enclosure process is recorded by only a brief and simple document, the task of surveying and dividing the land was undertaken by three local yeomen from other parishes in roles analogous to those of parliamentary enclosure commissioners. It is probable that this and other similar privately-arranged enclosures were developments of earlier less well-documented agreements.<sup>13</sup>

In particular the privately-agreed enclosure in 1769 of the commons in the township of Crackenthorpe near Appleby may have provided the catalyst which precipitated the first burst of parliamentary enclosure in Westmorland during the 1770s.<sup>14</sup> Although the lord of the manor of Crackenthorpe, Richard Machell, was a relatively small landowner, his lands adjoined the estates of the earl of Thanet, an absentee landlord whose land agent in Appleby, Thomas Heelis, was one of the witnesses to the Crackenthorpe agreement. It is unlikely to be a coincidence that the first enclosure under parliamentary act to be completed in north Westmorland, the year after the Crackenthorpe enclosure, was for the adjoining township of Brampton, or that Thomas Heelis was a commissioner.

Parliamentary enclosure in Westmorland involved 97 acts, spread over more than a century from 1767 to 1879. Figures 1 and 2 show their distribution. Table 1 shows the

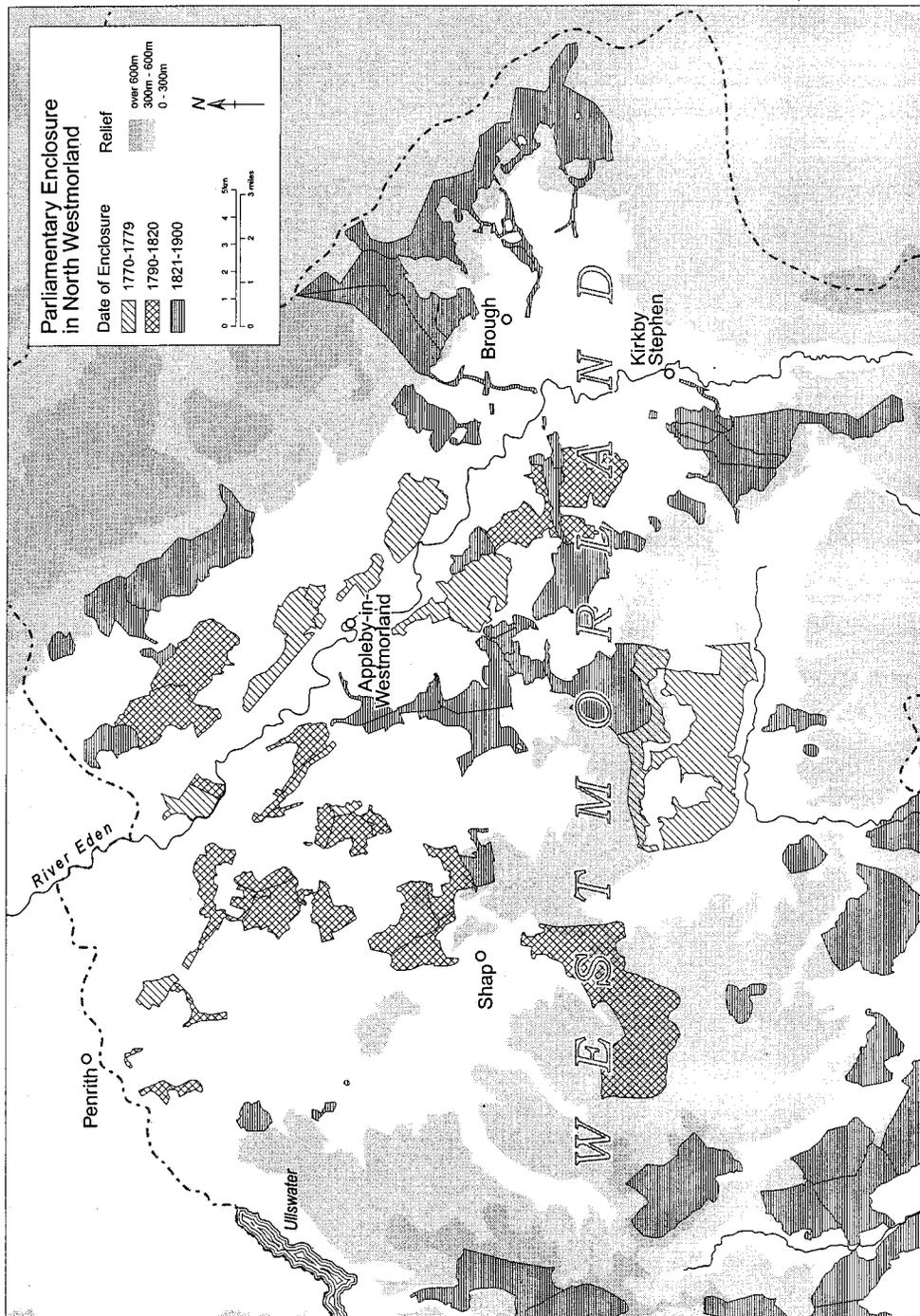


Figure 1.

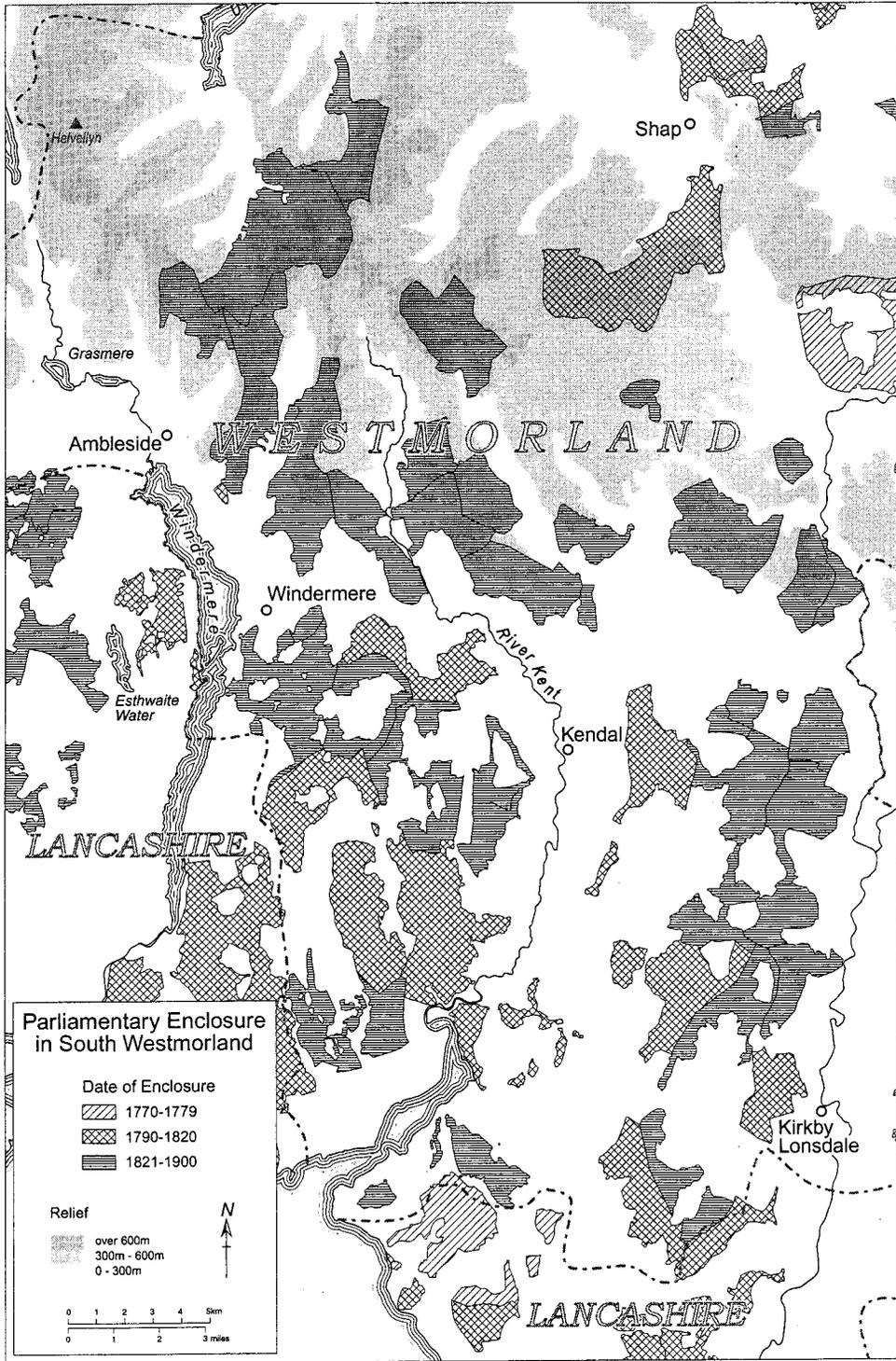


Figure 2.

Table 1  
*Enclosure of waste in Westmorland over time  
 by date of award*

1770s	9,618 acres	9.5%
1780s	0	0
1790s	723	0.7
1800s	1,536	1.5
1810s	14,515	14.4
1820s	25,375	25.2
1830s	4,524	4.5
1840s	10,629	10.5
1850s	20,788	20.6
1860s	6,435	6.4
1870s	2,157	2.1
1880s	641	0.6
1890s	4,075	4.0
Total	101,016	100.0

*Source:* Tate and Turner (1978).

amount of enclosure accomplished by decade. The dates relate to the enclosure awards rather than the passing of the acts as these reflected more closely the date at which the bulk of the work of enclosure actually took place. Enclosure occurred in three main bursts: the first in the 1770s and the second during the Napoleonic Wars, paralleling trends further south though continuing later to a peak in the 1820s.<sup>15</sup> Unlike southern arable areas, however, there was also a third peak in the mid nineteenth century.

The first parliamentary enclosure act in Westmorland, dating from 1767, was for 158 acres of land on Kendal Fell, immediately outside the borough of Kendal. Both the purpose and the procedure involved were unusual. The aim was to enclose the land, which belonged to the town, and rent it out to provide an income which would help finance street improvements and poor relief in the borough. The enclosed land was overseen by a board of twelve trustees, elected by the inhabitants of Kendal.<sup>16</sup> Two other more conventional enclosure acts, for Reagill and Shap, were also passed in 1767 but due to the deaths of the commissioners nothing was done and new acts to enclose the commons in these manors had to be passed in 1803 and 1813 respectively.<sup>17</sup> The earliest enclosure act to be completed for a substantial area, Orton in 1769, took ten years to accomplish and caused major problems because of the way in which it was handled.

Much of the late eighteenth-century burst of enclosure occurred in the Eden Valley, particularly on lowland commons where the quality of the land was relatively high, mainly on soils of the Clifton and Brickfield 3 associations, which needed careful drainage but were inherently fertile.<sup>18</sup> Most of these commons were in manors belonging to the earl of Thanet who was actively building up his estates around Appleby Castle at this period.<sup>19</sup> Searle has suggested that the principal reason behind the enclosure of Cumbrian commons at this time was the damage which was being done to them by overstocking linked to the cattle droving trade, and the inability of manorial courts to

regulate such abuses effectively.<sup>20</sup> However, there is strong evidence that around Appleby, the most important grain market in Westmorland at this time, the primary aim behind the enclosure of this relatively good land was the conversion of pasture to arable.<sup>21</sup> This is hinted at by provisions in the awards themselves. The ban on keeping sheep in the new enclosures for seven or even ten years to prevent damage to young hedges, a clause that featured in most of the 1770s acts from the Eden valley, was also an incentive to use the land for arable, as was the stipulation, in awards like Great Ormside (1773) and Bongate and Burrells Moor (1774) that land within the new enclosures that was sown with cereals should pay only half tithes of grain for the first seven years.

Because tithes were not completely extinguished on some of the earliest enclosures their land use at the time of the tithe surveys in the 1830s and 1840s can be examined. Table 2 shows the high proportion of land under crop at this time on the enclosed lands of Brampton, Brougham and Temple Sowerby with lower, but still significant, figures in less well-drained Crackenthorpe and Sandford. Where enclosure had been undertaken on poorer soils at slightly higher altitudes, as in Bleatarn, Great Ormside and King's Meaburn, where a belt of soil occurred which was described as being a 'cold ungrateful clay, very profitless to the farmer',<sup>22</sup> the percentage of arable was much lower. The proportion of land in cultivation in the cases mentioned above may well have fallen substantially from the early years of enclosure for Webster mentions Bleatarn and Great Ormside among the areas in which crop returns soon declined with much land being left to revert to pasture after 1815.<sup>23</sup> Poor management and overcropping was a feature of at least some of this land. Hutchinson, writing in 1794, described the enclosure of land in areas like Sowerby some twenty six years before. The new fields had borne luxuriant crops for a few years but soon became worn out with too much liming and too many cereal crops.<sup>24</sup>

The lack of enclosure in the south of the county during the 1770s was probably due to the fact that there was much less waste on lower lying good-quality land around Kendal than in the environs of Appleby. The Kendal district, however, shared in the burst of

Table 2

*Use of enclosed land as recorded in tithe surveys of some North Westmorland townships*

	Date enclosed	Date of tithe	% Arable	Arable and pasture	Arable and meadow
Bleatarn	1791	1846	34	16	
Brampton	1772	1841	76		7
Brougham	1776	1839	85		
Burrells	1776	1843	18		
Crackenthorpe	1769	1843	53		
Great Ormside	1773	1845	24	27	
King's Meaburn	1779	1841	13		
Sandford	1773	1844	52		
Temple Sowerby	1774	1840	96		

enclosure during the Napoleonic Wars where a good deal of higher land was taken in with the aim of extending the arable area. There is little doubt that high grain prices were an important influence on this burst of enclosure activity. A price series for wheat and oatmeal sold in Lancaster market from 1801 shows that prices had reached high levels before the Peace of Amiens in February 1802; wheat was selling at 95 shillings and oatmeal 67s. 9d. per load of 4.5 Winchester bushels. Prices dropped to 50 and 24 shillings respectively during the peace but rose steadily from 1808 to reach a peak of 103 shillings for wheat and 97s. 3d. for oatmeal, described as 'famine prices' in the autumn of 1812. Prices remained high until the end of 1813 then began falling slowly though with another peak early in 1817 when oatmeal cost 72 shillings per load.<sup>25</sup> Much of the straight, narrow ridge and furrow which can still be seen on such areas of former waste was probably created at this time. A good deal of this was on soils of the Eardiston 1 association, loamy, well-drained brown earths developed mainly on limestone, easily cultivated but vulnerable to over-cropping.<sup>26</sup>

As in the late eighteenth century the cultivation of newly-enclosed land was often too intensive. The 1801 crop returns for Morland, west of Appleby, stated that high grain prices had encouraged farmers to plough newly enclosed land to a greater degree than was consistent with good husbandry.<sup>27</sup> Around the head of Morecambe Bay a good deal of coastal wetland was also drained and enclosed, giving rise to some of the most regular enclosure landscapes in the county. This burst of enclosure in Westmorland was less prominent than in neighbouring Cumberland, perhaps because of the lack of local urban and industrial markets.<sup>28</sup> Nevertheless, its impact was significant. In July 1815 the Lancaster Gazette recorded that over 8,000 acres of waste had lately been brought in cultivation in Westmorland. The effect of this on Kendal market had been striking. The county had become a net exporter of grain whereas formerly it had been a net importer.<sup>29</sup>

The third burst of enclosure, from the 1820s to the mid nineteenth century, was linked almost entirely with the improvement of pasture, mainly for sheep farming, encouraged by the general enclosure act of 1845 which speeded up the process and reduced costs. The spread of the railway network provided much faster access to the markets of industrial south Lancashire, Yorkshire, the North East and even London for livestock and livestock products. In this area, livestock farming remained fairly prosperous until the very end of the nineteenth century.<sup>30</sup>

Considerable capital was sometimes invested in improving such land. On the large allotment received by the earl of Lonsdale on Shap Fells with the award of 1820, over 1,200 acres were improved by liming and c.1,500 acres by tile draining, converting it into improved pasture.<sup>31</sup> In addition, two large areas of common, Crosby Garret and Stainmore, rather than being enclosed, were subject to regulation under an act of 1876.<sup>32</sup> This provided a cheaper alternative to enclosure on relatively poor-quality land with the introduction of stinting on formerly unregulated waste land and the formalisation of access and peat cutting rights.

Enthusiasm for improvement was tempered by the poor quality of much of the land involved. Some acts deliberately excluded areas of rough pasture which were so high lying that there would have been no profit, and much needless expense, in enclosing them. At Dufton, under the escarpment of Cross Fell, an extensive area was left out of

the act for this reason. At Casterton the highest parts of Casterton Fell were included within the act but with the proviso that allotments in this area did not have to be fenced and that the boundaries of the former common only needed to be established and marked. At Hutton Roof the extensive pastures on areas of limestone pavement were left unenclosed and simply converted from an unregulated common to a stinted pasture. A draft map for the Preston Patrick enclosure, c.1814, marks the higher lying allotments as 'unploughable', probably due as much to poor drainage as to altitude.<sup>33</sup>

There were marked contrasts in the history of enclosure at a local level. The enclosure of Orton, for example, was begun in 1769 while the award for the manor of Asby Winderwath, on the other side of the watershed, was not made until 1874, and the parish of Crosby Ravensworth, adjoining them both, was never enclosed at all. The differences in subsequent land improvement and grazing management between high-quality grassland on the Orton side of the boundary and heather moorland on the Crosby Ravensworth side is striking today. At this scale differences in patterns of land ownership and social structure could produce very different decisions regarding whether or not to enclose, but the identification of such contrasts is difficult.

#### **Advantages of enclosure**

The advantages of the enclosure of upland waste and commons in this area, as already mentioned, have been seen principally as the removal of the problem of deterioration of commons by over-grazing, especially through the agistment of livestock from outside the community.<sup>34</sup> The removal of peat and turf from commons was also damaging. At Bolton in the early nineteenth century it was agreed that, as a result of this, if the common was not enclosed soon it would be ruined.<sup>35</sup> But it has also been shown that, particularly during the 1770s and the Napoleonic Wars, enclosure allowed the conversion of suitable, and sometimes less suitable, land to arable. Where land of reasonable quality was converted to arable the cost of enclosure could be paid off in two or three years.<sup>36</sup> Other advantages included the ability to improve pasture in individual ownership by liming and of livestock by selective breeding.<sup>37</sup>

Another potential use for enclosed land was afforestation. This was undertaken on a large scale in parts of the Lake District, notably by John Christian Curwen at Claife on the west side of Windermere and by the Bishop of Llandaff at Gummers How at the south end of the lake.<sup>38</sup> Where the quality of the soil was relatively low but the degree of exposure moderate a significant proportion of the land on some awards was planted, especially in the low undulating country east of Windermere. Large moorland allotments, in the Pennines rather than the more rugged Lake District, could be turned into grouse moor.<sup>39</sup> Grouse shooting does not appear to have provided a significant incentive for enclosure until after the middle of the nineteenth century.

An additional advantage for those with rights on commons which adjoined the settlements of Bowness and Windermere was that enclosure allowed plots of land to be sold off for the construction of villas and mansions for well-to-do incomers. The higher ground above the east side of Windermere, which was enclosed in 1822, provided a number of ideal viewpoints for such houses.<sup>40</sup>

Enclosure ended the depletion of the resources of commons by unauthorised encroachments, a widespread problem on Cumbrian commons.<sup>41</sup> Enclosure may also have reduced the theft of sheep and it certainly stopped the practice of 'dogging', using dogs to drive off neighbours' sheep from the best parts of commons. This was mentioned by Webster<sup>42</sup> as being a widespread abuse in Westmorland and is supported by cases such as one from Sleagill in 1802 which went to the Quarter Sessions in Appleby where Matthew Ewbank drove off two hundred sheep and two hundred lambs belonging to George Shaw so that fifty animals were lost and fifty killed, the remainder taking a lot of time and trouble to round up.<sup>43</sup> At Casterton dogging was done particularly by the larger farmers who were attempting to monopolise the common.<sup>44</sup> Enclosure also removed other problems relating to commons such as boundary disputes, disagreements over intercommoning between townships, arguments over who had common rights, and the straying back to their original pastures of hefted sheep which had been sold to other local farms.<sup>45</sup>

Another benefit of enclosure was the improvement of transport by turning frequently impassable local tracks into good all-weather roads. The public and private roads laid out by surveyors of highways acting for the enclosure commissioners facilitated the import of lime for agricultural improvement and the marketing of produce, as well as improving communications between neighbouring communities. At a local level they had as great an impact as the turnpikes on a regional scale.<sup>46</sup>

### **Opposition to enclosure**

Who were the promoters of enclosure and how much opposition did they experience? It has been suggested that in Cumbria, in contrast to the Midlands and southern England, there was general accord between major landowners, gentry and farmers over the desirability of enclosure as a result of the deterioration of the commons.<sup>47</sup> In part this was because of the strength of the customary tenants who formed a high proportion of the occupiers of land in Westmorland, with rights effectively equivalent to freeholders. In fact in some cases at least it was the customary tenants who were pushing their lord of the manor to initiate enclosure proceedings. The practice of selling a proportion of a common to pay for the expenses of the enclosure, which occurred in about half the Westmorland awards, also made enclosure less of a financial burden for smaller owner occupiers and customary tenants. Searle has suggested that where opposition did occur in Cumbria it was usually over local, specific issues rather than the general desirability of enclosure.

The evidence for Westmorland bears this out though instances of opposition do occur. *The House of Commons Journal* records a number of counter petitions against enclosure bills. A notable case was in the parish of Ravenstonedale in 1767 when ninety one people, customary tenants and small freeholders, signed a petition opposing an attempt by Sir James Lowther, the lord of the manor, to enclose the commons.<sup>48</sup> Elsewhere opposition was a small minority. At Cliburn in 1803, twenty four landowners were for the bill, seven against. The average rental valuation of the property in the township of those supporting enclosure was £7.58 and for those against only £4.82 indicating that opposition came mainly from smaller landowners.<sup>49</sup> At Reagill in 1802, seventeen

landowners were for the bill, two against and three were deemed incapable (one was in the West Indies, one an idiot and a third simply could not be traced) but here one of the opponents was a more substantial landowner who was against the bill as being 'contrary to the interest' of the township.<sup>50</sup> At Dufton in 1822 out of forty nine owners none were against enclosure and only four were neutral.<sup>51</sup> At Yanwath near Penrith in 1812 the Quaker Thomas Wilkinson produced an anti-enclosure pamphlet arguing that the 150 acres common of Yanwath Moor was not worth the expense of enclosing but he was not supported by the rest of the customary tenants.<sup>52</sup>

Some opposition was more effective. At Asby in 1806–7 those opposed to the bill to enclose the commons of Asby Coatsworth manor – at least thirteen of them – mounted a campaign in London to persuade absentee landowners to sign a petition opposing the bill which was presented to the House of Commons in 20th April 1807 by the MP, Colonel Lowther. For whatever reason, however, the bill was dropped. Another bill was presented to Parliament in 1813. Notwithstanding that the lord of the manor agreed to accept only a 40th share of the land to facilitate enclosure no act was passed for this manor until 1845, although the reasons for the opposition are not clear.<sup>53</sup> In 1824 William Wordsworth successfully spoke out in defence of the rights of the statesmen farmers and against the proposals of agents of Lady de Fleming who planned to enclose the Rydal commons.<sup>54</sup>

### **The process of enclosure**

For most late eighteenth-century enclosures it was normal to appoint three commissioners. From the first decade of the nineteenth century two commissioners became normal and after the general act of 1845 it was normal to have only one 'valuer'. The men who were chosen as enclosure commissioners in Westmorland were, as elsewhere, predominantly local (Table 3). Where their status was recorded over half were styled 'gentleman' and a further 6 per cent 'esquire'. Others were estate stewards and land agents (a category which was dropped after new standing orders for Parliament in 1801 because of potential partiality), land surveyors, clergymen and lawyers. Most of them were only involved in one or two awards, though some may of course have acted in other counties. Most of them were only involved in one (59 per cent) or two (21 per cent) awards but 3 per cent each dealt with 6 and 7; 1 per cent with 9; and 1 per cent with 20 awards. The most active, as mentioned above, were Thomas Heelis and Crayston Webster. Webster, as sole valuer for twenty one enclosures made under the 1845 act, oversaw the re-shaping of nearly a fifth of the total area enclosed in Westmorland.

Little information is available regarding the reasons behind the choice of commissioners. At Shap in 1805 new commissioners were chosen by a majority (by value) of the proprietors but at Bolton in 1803 the lord of the manor, Sir Frederick Vane, was recorded as having said that he expected to have the right to nominate one commissioner, as was then customary.<sup>55</sup> On the other hand, at Reagill in 1802 Thomas Harrison was proposed as 'commissioner for the tenants'.<sup>56</sup> John Beatham was dropped as a possible commissioner for Reagill as he had an interest in the adjoining townships of Sleagill and Newby, the boundaries of whose commons with Reagill were then in dispute.<sup>57</sup>

Table 3  
*Geographical origins of Westmorland enclosure commissioners*

Westmorland	56%
Cumberland	30
Yorkshire	8
Lancashire	1.5
Durham	1.5
Norfolk	1.5
London	1.5
<i>Social origins of Westmorland enclosure commissioners</i>	
Gentlemen	55%
Esquire	6
Estate Stewards and Land Agents	17
Land Surveyors	6
Clergymen	8
Lawyers	4
Miscellaneous	4

Similarly little information is available on how claims to common rights were judged by the commissioners. However, it is clear that customary tenants, even very small ones, were given as much consideration as freeholders. What is less clear is how landless cottagers fared although this class was not numerous in Westmorland. As elsewhere, squatters who had been in occupation for less than twenty years were not usually allowed the right to an allotment.

The process of parliamentary enclosure was expensive but it is difficult to provide meaningful details of just how much money was involved, either in total or per acre. There were two major elements in the cost – items concerned with the official enclosure procedure and the cost of improving individual allotments, mainly incurred after the award was made. Where costs are given in general works as a figure per acre it is rarely clear whether both elements are involved. In the earlier part of the period in particular many of the up-front costs of getting an enclosure bill approved and then an act of Parliament passed were met by loans from the major proprietors. In the longer term costs could be met by a proportional levy on all those receiving allotments. Alternatively, money could be raised by selling off plots to the highest bidders. This was done in roughly half the awards in Westmorland, a figure similar to that for Cumberland.<sup>58</sup> The proportion of the land auctioned in this way was often around 10 per cent but ranged from as low as 4 per cent to over 50 per cent depending on the quality of the land involved. Estimates of costs, as indicated by the amount of land sold off, were not always accurate. At Dufton, where relatively little land was sold off due in part to a dispute over the right to cut turf on the area concerned, a second proportional levy had to be imposed on those entitled to allotments.<sup>59</sup>

Assuming that most commissioners made a reasonable forecast of costs, income from sales of land per acre enclosed could vary widely, even at the same period. There was no marked trend for public costs, measured in this way, to rise over time. This can be

explained in part by the general enclosure acts of 1836 and 1845 streamlining the process and reducing costs. On the other hand there was a clear relationship between the cost of enclosure per acre and the number of years intervening between the dates of the act and award. As lengthy enclosure processes tended to be concentrated during the Napoleonic wars, costs then were often higher than later in the nineteenth century. Among the public costs some expenses, such as making the roads, were relatively fixed but where an award dragged on other expenses such as legal fees and payments to commissioners could rise sharply. The amount of money raised from the sale of land sometimes proved insufficient to cover the final costs, necessitating an additional levy on those awarded allotments. Less commonly too much money was raised and repayments had to be made.<sup>60</sup>

An allotment first had to be surrounded by some kind of stockproof barrier. Drystone walls seem to have cost around 4s. 4d. per rood (7 yards) to construct but this did not include the cost of carrying the stone. Hedging plants were obtainable at around 15 shillings per 1,000 but the cost of planting them was extra, as was the provision of protective post and rail fencing, plus the additional cost of replacing any hawthorn plants that did not survive.<sup>61</sup> Although a few hedging and fencing accounts have survived much of the work is likely to have been undertaken by family labour. Overall, drystone walling seems to have been more convenient, providing a stockproof barrier as soon as it was completed, unlike a hedge which might need to grow for several years in order to achieve this.

During the Napoleonic Wars the cost of improving an allotment so that it could be cultivated, excluding the actual fencing, was rarely less than two to three pounds per acre and could be as much as seven pounds or more. Liming alone might involve 100–160 loads per acre at a shilling per load – between five and eight pounds. Paring and burning the surface vegetation and turf could cost an additional 16 shillings per acre.<sup>62</sup> Enclosure was, theoretically, expensive but the profits, in particular when conversion to arable was involved, allowed costs to be recovered within two or three years. Additionally, in a county characterised by small family farms, much of the labour probably came from family members and living-in farm servants and so was not costed directly.

### **Problems with enclosure**

A notable feature of parliamentary enclosure in Westmorland was the lengthy period intervening between the passage of the act and completion of the award in many processes compared with lowland England where relatively few enclosures took more than four or five years to accomplish. Chapman has suggested that in Wales, where parliamentary enclosure was also predominantly of upland waste, a much higher proportion of acts took a long time to complete compared with lowland England due to the inexperience of the commissioners involved.<sup>63</sup> In Westmorland 54 per cent of enclosures took five years or more to complete and 25 per cent ten years or more (Table 4). Some of this may have been due to the large amount of land involved and the high numbers of claimants but the correlation between the time taken and the area enclosed, while positive, is not a strong one suggesting that other factors were involved.

Table 4  
*Period of time between act and award*

Period of time	Proportion of acts and awards	
	All enclosures	Enclosures where land was sold
Under 5 years	46%	45
6–9	29	26
10–14	16	16
15–19	4	10
20+	6	3
Total	100%	100

Eighty-nine per cent of late-eighteenth-century enclosures were completed quickly, an exception being Orton (see below). It may be that these cases were simply not contentious ones, especially as most of them involved relatively small areas and limited numbers of people. During the war years and the 1820s 65 per cent of enclosures took over five years to complete. From the 1830s onwards the figure was much lower, 38 per cent. It is likely that the provisions of the 1845 general act allowed enclosure to proceed faster and more smoothly while the high agricultural prices which prevailed during the war years may have made enclosures at this time more contentious. It is also possible that the post 1815 slump in prices may have delayed some awards due to allotment holders having more difficulty in raising funds to meet the costs of enclosure. This is suggested by the fact that the average period from act to award for enclosures started and completed between 1800 and 1815 was 6.0 years but for those started before 1815 and completed after, the figure was 9.9 years. However, over a broader time span, lack of capital does not seem to have been a major cause of delay. There was little difference between the pattern of time taken for all enclosures and those where land was sold to cover costs (Table 3).

On the other hand, enclosure activity in Westmorland during the 1770s and after 1845 was dominated by two highly professional commissioners: Thomas Heelis, land agent to the earl of Thanet in the earlier period and Crayston Webster, a land surveyor in Kendal, in the later one. None of Heelis' nine awards and only three out of Webster's twenty one took more than five years to complete. This may indeed imply that a lack of experience by commissioners slowed down progress in other cases. The causes of delays are not always possible to identify where only the award has survived or even where supplementary documentation, including minute books, accounts and correspondence, exists.

One factor which could delay an enclosure was the death of one or more commissioners. The cases of Reagill and Shap, where all the commissioners died without appointing successors and new acts had to be secured, have already been mentioned. The same happened with Sleagill. One or two cases of commissioners resigning and being replaced also occur such as Robert Lumb of Lowther who resigned from two sets of enclosure proceedings, Casterton and Scalthwaiterigg, in 1812. At Warcop,

proceedings were held up by the commissioner decamping to Potosi in South America. The problem of lack of experience on the part of commissioners is difficult to isolate. The Reverend Edward Jackson, vicar of Bolton, who was commissioner for the enclosure of Dufton from 1827, confessed himself to be diffident and unsure of his abilities,<sup>64</sup> but cases of incompetence are hard to spot. A study of the parliamentary enclosure of Saddleworth in the Pennines, where the act was passed in 1810 and the award only made in 1834, indicated that delays were due to a variety of factors including the complex nature of the claims to rights on the common due to the earlier history of enclosure in this area, the time taken to deal with the many encroachments which had been made on the moor, delays due to problems in defining the boundary of the common, the slowness of the surveyors, commitments elsewhere which resulted in the commissioner rarely being in attendance at certain periods and finally the death of the commissioner.<sup>65</sup> The surviving documentation for this enclosure is more detailed than for any of the parliamentary enclosure processes in Westmorland. As a result it provides insights into the kinds of difficulties which may have arisen further north.

A practical difficulty in the later eighteenth century was the relatively poor quality of some early enclosure surveys and award maps. The first upland area with relatively difficult terrain to be surveyed was Orton in the 1770s. Here the poor quality of the maps and the cumbersome system for distinguishing allotments may have added to the difficulties experienced in this enclosure. Elsewhere, however, other enclosures from this period were of relatively small lowland commons which were easier to survey. By the opening of the nineteenth century the quality of surveying had improved significantly to a level at which it was fully able to cope with the rougher topography involved.

Boundary disputes were a common problem. Disagreements over the boundaries of townships and manors in north west England continued, in some cases, to the end of the nineteenth century.<sup>66</sup> The fact that intercommoning between manors or townships, with complex sets of customary rights, continued as late as this helps to account for the problem. From 1801 enclosure commissioners had the power, where the boundaries of a common were uncertain, to examine witnesses, weigh up the evidence and make a ruling. In the event of this being disputed, cases could be referred to the local Quarter Sessions.

In the case of a disputed boundary between the commons of Reagill and Sleagill in 1803, eyewitness evidence given to the commissioners extended back to the 1730s while documentary evidence from the seventeenth century was also cited.<sup>67</sup> This was all to no avail, for agreement could not be reached and the case went to the Quarter Sessions at Appleby. There do not seem to have been any major boundary disputes associated with the late eighteenth-century enclosures. The fact that most of the commons were relatively small and probably intensively-used areas of lowland pasture, whose boundaries should have been well known, may help to account for this. From 1801 until 1806, which is as far as the Westmorland Quarter Sessions rolls have been indexed, a number of cases of boundary disputes prompted by enclosure arose. Such disputes are not necessarily evident from the enclosure awards and are more likely to emerge where other supplementary papers have survived. In other cases the existence of ruler-straight boundaries dividing the commons of adjoining townships indicates readjustment by enclosure commissioners.

A well-recorded boundary dispute arose in 1814 concerning the townships of Preston Patrick and Lupton east of Kendal.<sup>68</sup> Evidently it was the perambulation of the boundary by the commissioners that set off the dispute though the depositions of witnesses suggest that there had been friction in the past over grazing and cutting turves. The issue was not a straightforward one because witnesses revealed cases where farmers with holdings in Preston Patrick had, at various times, owned or leased land in Lupton, giving them rights to the use of both commons. A surviving sketch survey shows that the boundary was disputed over a considerable length but not a great width. The topography of the area encouraged confusion; the line of the watershed was far from clear due to several low hills and marshy saddles. The case went to the Quarter Sessions in Appleby and seems to have been resolved by 1818.

### **The enclosure of Orton**

A complicated dispute arose in connection with the enclosure of Orton. The circumstances were unique and it is hard to judge to what extent inexperience, cupidity or a combination of the two were to blame for the difficulties. Orton and Raisbeck were separate manors within the parish of Orton. The customary tenants of each manor had bought the manorial rights in the early seventeenth century. Following this separate manorial courts continued to be held to prevent encroachments and to regulate the commons. At some time in the early eighteenth century the two courts were amalgamated in order to save money and were held jointly at Orton. In the mid to late eighteenth century the inhabitants of Orton allowed the encroachment of a number of cottages on parts of their common adjoining Raisbeck and a considerable amount of peat cutting also reduced the value of the common. The Raisbeck commons, twice the size of the ones in Orton and of comparable quality, were also starting to come under pressure.

When support for an enclosure bill was being canvassed most of the inhabitants of Orton were in favour and most in Raisbeck against. Of the three commissioners appointed in 1769 to undertake the Orton enclosure one already held land in Orton and another bought land there after the act was passed. Two of the three commissioners thus had a direct interest in the proceedings, an unusual and undesirable situation. The 1769 act made no mention of the manor of Raisbeck but in 1773, when the commissioners started work in earnest, it was soon realised that they were setting out allotments on Raisbeck common as well as Orton. The inhabitants of Raisbeck protested to the commissioners and took legal advice. As a result of the upset this caused, the commissioners seem to have done nothing for five years. In 1779 an award was made which included allotments on Raisbeck common. The advice of legal counsel was that Raisgill did not have a case because, first, they had allowed joint meetings of their manor court with Orton over a long period of time and earlier records of a separate court at Raisbeck had not survived. Second, the inhabitants of Raisbeck had acquiesced in this and, crucially, no protest had been made by any of the Raisbeck landowners when the commissioners had made a perambulation of the boundaries of the area to be enclosed, including their common, and public warning of the date of the meeting had been given. The inhabitants of Raisbeck were nevertheless still resisting the process of enclosure in

1782, three years after the award had been made. They were convinced that the commissioners were biased and that the whole affair was a ploy by the people of Orton to get a share of the Raisbeck commons; they may well have been right.<sup>69</sup>

Relations between Orton and Raisbeck were further complicated by a dispute over the boundary between the two commons. The problems are detailed in a document which is undated but which, by comparison of the people named, was written at around the time of the enclosure proceedings. As well as a disagreement over the line of the boundary there were differences of opinion over who had a right to graze livestock, cut turf and pull ling on Raisbeck common. Some inhabitants of Orton seem to have acquired small amounts of land in Raisbeck manor as a way of trying to gain access to the larger Raisbeck commons. Not surprisingly, the people of Raisbeck objected.<sup>70</sup>

### **Conclusion**

Much research on parliamentary enclosure has been undertaken either at a broad generalised level or as detailed local case studies. By adopting an intermediate scale of focus, the timing and distribution of parliamentary enclosure in the most upland of English counties have been established, and have been related to a range of environmental, economic and social variables. In the process it has been shown that the parliamentary enclosure of upland waste was more complex than has sometimes been supposed. Compared with many lowland areas, parliamentary enclosure started slowly but was more protracted, continuing into the later nineteenth century, due largely to the pastoral nature of the country and the poor quality of much of the land. The earliest phase of enclosure, in the Eden valley during the 1770s, was occasioned by the expansion of cultivation on relatively good soils as well as by the pressures on common pastures created by the droving trade. The enclosure of marginal land for cultivation was also a feature of the Napoleonic War era while enclosure in the mid nineteenth century was largely linked to the improvement of pasture. The advantages of enclosure were varied; some, such as the sale of plots for villa construction, were specific to particular localities while others, such as the development of the earl of Lonsdale's allotments on Shap, were related to patterns of land ownership.

Although opposition to enclosure was not widespread in Westmorland, the process of enclosure sometimes brought to a head long-standing disputes between communities, particularly over boundaries between adjoining commons. In some cases such disputes were lengthy and complex, causing a significant delay in the implementation of enclosure. In a significant proportion of cases, particularly during the Napoleonic Wars, the completion of enclosure awards was delayed for reasons which are not always clear but which may have included a lack of experience on the part of commissioners. Disputes over boundaries, disagreements over claims and delays due to the deaths of commissioners can be discerned from the awards and especially from other enclosure papers, but these only survive for a few enclosure processes.

Space has not permitted an examination of the new landscapes that were created by the enclosure commissioners, while research on the impact of enclosure on the notably traditional and conservative rural society of Westmorland, particularly in relation to

population change and the poor rates, is in progress but it is hoped that something of the complexity of the processes of enclosure in this rugged yet varied area has been conveyed.

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