The management of common land in north west Europe, c. 1500–1850

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I. Introduction

The task of providing a broad overview of the management of common lands in the north-west of Germany is beset with considerable difficulties. A fascination with tracing the origins of historical phenomena to which scholars of the nineteenth and early twentieth centuries succumbed, can account for numerous impressive studies on the emergence and the constitution of the commons (Markenverfassung) in Germany as a whole (Grimm, 1840–1878; Maurer, 1856; Gierke, 1868) and in Westphalia and Lower Saxony in particular (Freudenstein, 1879; Philippi, 1907; Schotte, 1908; Lappe, 1912; Floer, 1914). Beginning with Jacob Grimm, August von Haxthausen, Friedrich Carl von Savigny and Paul Wigand, romantic erudition was eager to collect juridical antiquities (Rechtsaltermümer), which were said to reflect the 'popular spirit' (Volksgeist) in the German and even the Germanic past. Jacob Grimm himself launched a major investigation of the so-called Weistümer, the product of which is an edition of sources, indispensable till the present to understanding the relationship between lords and peasants in the Late Middle Ages and in the early modern period. Most subsequent research is based upon this edition.

Even if we do no longer share this essentialist perspective which dominated historical research on this subject until 1945, we depend on these early works. Current editions of source material and analytical studies are confined to the south and west of Germany (Kollnig, 1968, 1979, 1985; Schumm and Schumm, 1985; Krämer and Spiess, 1986; Schmitt 1992; 1996; Hartinger, 1998), Thuringia in central Germany (Schildt, 1996) and Schleswig on the Danish border (Rheinheimer, 1999). For north-west Germany we have to rely on an edition of Frisian sources (Ebel, 1964) and a brief study of the Oldenburg Bauernbriefe (Seeber, 1975), both of which are devoted to an investigation of very particularly structured sub-regions. Strangely enough, most of the in-depth information about the management of the commons in Westphalia and Lower Saxony dates from the late eighteenth and early nineteenth centuries, when jurists and bureaucrats who dealt with actual problems arising from the privatization of the remaining commons, wrote about this subject (Piper, 1763; Möser, 1768; Lodtmann, 1770; Klöntrup and Schledehaus, 1782; Klöntrup, 1783; Klöntrup, 1798–1800; Löw, 1829; Behnes, 1830; Stüve, 1872). The dissolution of the commons themselves has been a subject of recent historiography (Brakensiek, 1991; Prass, 1997; Gudermann, 2000a). These reasons explain the paucity of studies providing more than a simple description of the institutional framework of the commons. Above all, we have no actual research that takes into account the dynamics of change in the use and organisation of collective resources. Bearing this in mind, the present article can only give some impressions.
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Why do we require two articles on the German commons, one on the south and another presenting findings about the north-west? Apart from the usual variations occurring from place to place, social and agrarian structures differed fundamentally in these two regions. While the practice of equal inheritance was more prevalent in south-western and central Germany, the north was characterized by indivisible inheritance. Most southern peasants were obliged to pay tithes and rents to lords or princes without being subject to personal subordination. Feudal bondage was more deep-rooted in the north-west. Though peasants here also achieved, in the early modern period, hereditary ownership of their farms, with corvée playing a relatively minor role, they were not only obliged to pay rents and to deliver grain or livestock in kind, but were bound to their lords for permission to marry, to sell parts of their farm or to obtain a loan. The relationship between lords and peasants in the Hanoverian territories was governed by the so-called Meierrecht which left peasants personally free (Wittich, 1896; Achilles, 1998; Saalfeld, 1998). In Westphalia most peasants were subject to even stricter feudal bondage (Eigenbehörigkeit), which meant more intense control and higher obligatory payments upon marriage and inheritance (Schotte, 1912; Hanschmidt, 1983; Mooser, 1984).

While nucleated villages prevailed in southern and central Germany, the northern lowlands were characterized by scattered settlement. This coincided with a completely different form of agriculture. As with other European countries, regions with nucleated villages were characterised by varieties of open field systems with common arable, while in the north-western plains, the peasants, living on isolated farms, in hamlets or comparatively small villages (Drübbel), tilled the soil individually. Many variations of these general patterns can be detected and geographers have investigated them in detail (Hömberg, 1938; Herzog, 1938; Riepenhausen, 1938/1986; Müller-Wille, 1938; Hücke, 1939; Garben, 1951; Schwab, 1953; Pohlendt, 1954; Linden, 1958; Knöke, 1968; Martin, 1969; Fliedner, 1970; Born, 1974; Balzer, 1983).

Taking natural conditions, settlement structures, the organization and the utilization of land into consideration, north-western Germany can be divided into seven major regions: the Frisian lowlands (Marschen), the areas of scattered settlement in the lowlands of Lower Saxony (Niedersächsische Geest), the Münster Basin (Münsterland), the uplands of the Weserbergland, the village settlement areas in the south-eastern uplands of Lower Saxony, several small black-earth regions (Börden), and the southern highlands (Sauerland) (Hambloch, 1981; Müller-Wille, 1955, 1966, 1940/1983).

Beginning at the coast of the North Sea and following the rivers upstream, there is a strip of marshland (Marschen) where soils are very fertile if provided with effective drainage. These densely populated regions had been fully cultivated since the Middle Ages, so that common waste could rarely be found. On the heavy soil individualized production of grain, vegetable oils and dairy-products for the market prevailed. The farmers, mainly Frisian, had never experienced feudal bondage, and instead a class-society developed early. Prior to 1800 the main obligations of the rural population were the building and maintenance of dikes, organized through parish-wide Deichbauverbände. Lords and princes had introduced similar conditions to small inland regions through the recruitment of Frisian settlers for the cultivation of the Flußmarschen next to the rivers Elbe, Weser and Ems since the eleventh century (Nitz, 1984; Wunder, 1986: 35–37).
Conditions in the neighbouring regions of the Geest differed sharply. In the north-western plains of Lower Saxony an alternating pattern of huge moors and sandy soiled districts existed. The dryer areas are thought to have originally been wooded, but were degraded to heath in the course of human settlement. Enormous efforts were necessary in order to obtain yields from the predominantly poor soils, and even then the output
fluctuated from year to year. The arable was confined to relatively small fields called *Esch*, cultivated without rotation. The continuous cultivation of rye depended on the exploitation of the surrounding wastelands; this was carried out by cutting the upper-most humus layer of the heath (*Plaggen*), composting it together with manure and bringing this mixture out onto the tillage. Crop production of the *Plaggen-Esch* type presupposes a ratio of about one to ten between cultivated land and waste (Thöle 1987). Accordingly, wastelands stretched over between 60 and 90% of the surface area of the *Geest*. Fens and heaths were collectively used and these commons persisted in the main until the late-eighteenth century. It is not surprising that the region was relatively sparsely populated; only those areas where the proximity to the Netherlands offered the possibility of seasonal work registered a rapid growth of the rural proletariat.

Only in the most remote regions with barren grounds did agriculture remain archaic and social structures stable. Wherever cultivable soils could be found, as in wider parts of Lower Saxony, the Münster Basin (*Münsterland*) and the Westphalian *Weserbergland*, common land was transferred to private hands as a result of the so-called *Zuschlagsausweisungen*, a piecemeal enclosure that continued throughout the Late Middle Ages and the early modern period. Such allotments were made to long-established peasants as well as to settlers and they resulted in an extension of the arable and a partial dissolution of the commons in wider parts of the north-west. These newly cultivated plots of arable (*Kamp*), scattered like an archipelago in a sea of common woods, heaths and fens, were used individually. In the course of the early modern period, settlement became denser and in some regions isolated farms grew into hamlets. Simultaneously, the stratification of rural society became more sharply differentiated, since only a minority of substantial peasants (*Erben, Hufner, Vollbauern*) owned one of the long-established farmsteads which was sufficient in itself to support them. They were joined by an increasing number of cottage-owners (*Kötter*) who had to make their living by a mixture of gardening, livestock-rearing, linen-weaving and day-labouring. This differed according to local circumstances, depending on whether and the extent to which the cottage-owners were allowed to use the commons. These differences will be dealt with later.

The area of the nucleated village settlements stands out as being of particular interest. It covers the south-eastern part of Lower Saxony and Westphalia. This area is in fact an extension of the large village settlement areas of southern and central Germany, where open field farming was usual with rotations, subjecting agriculture to strict regulations. Even within the areas of village settlement there were further gradations in the extent of co-operative ties: cultivation was less regulated the further north and west one travelled. In the south-eastern uplands of Westphalia and Lower Saxony, the old established order of open fields continued until the nineteenth century, while in some black-earth regions like the *Hellwegbörde* and the *Hildesheimer Börde* near Brunswick, ample possibilities of access existed for the proprietors of singular strips inside the fields, or else such pathways were created in the course of the ordnance surveys carried out in the eighteenth century (Pohlendt, 1954; Linden, 1958). In all the village areas the common pastures, meadows and wastes accounted for not more than 20% of the land belonging to the village. The woodlands must be examined separately. These were not to be found at all in the open black-earth regions. On the other hand, in the upland and highland parts of north-western Germany, woodlands were the most important area used in common.
Figure 9.2  Territories of north-western Germany
II. Types of common land in north-western Germany

Common arable fields could be found in north-western Germany in three different forms: as open fields (Zeigen, Felder) in combination with nucleated village settlements in the south-eastern uplands, as so-called Vöhden in the Münster-Basin, and as fields of the Esch type. Leaving aside the open field system, which was customary in wider parts of Europe and is well known to agrarian historians, Vöhden were fairly specific to those parts of central Westphalia where humid clay soils, which naturally tended to get covered with grass, prevailed. In this region the arable was divided up into parcels called Kamp, enclosed by hedges and tilled individually. But some of the larger plots were used by communities of farms and estates, which lay scattered in the flat landscape. Such a Vöhde came under the plough for four or six years, and was then used as common pasture for another four- or six-year period. Tillage was done individually, with every owner knowing the whereabouts of his strips precisely. Following the last harvest, the field lay open to common pasture without being cared for. Normally the proprietors of a Vöhde had privileged rights of grazing, but other inhabitants of the community (Bauerschaft) or the parish (Kirchspiel) were also allowed to put out some cattle, sheep or geese to pasture. Agrarian experts of the late-eighteenth century passionately criticised this economy since the owners tended only to fertilize their strips at the beginning of the period of individual tillage, neglecting them during the rest of the time (Schwerz, 1836: 22–26, 249–251; Kraft, 1941: 55, 61–62; Lülff, 1956: 55–56), the Vöhden only being used as grazing for geese because of their poor quality.

In contrast to Vöhden, which were confined to a narrow area, fields of the Esch type existed across wide parts of Lower Saxony and Westphalia, in the sandy Geest regions as well as in other areas with more fertile soils. Such fields represented that part of the arable which had been cultivated very early. Correspondingly, strips inside of the Esch belonged only to those farmsteads which had been founded in the Middle Ages and cottagers normally did not share any part of these fields. Again, tillage was done individually here and common use was restricted to short periods of pasture; what is more, it was confined to the owners of a strip inside of the Esch fields. All the others had to content themselves with wastes and woodlands where a majority of the rural households exercised common-use rights. What was true of the arable could also be said about the meadows: common use was not the norm. If it occurred, it was limited to a number of entitled households for short seasonal periods. Contemporary observers have frequently stated that the rural population of Westphalia and Lower Saxony was inclined to a restrained individualism. Climate, scattered settlements, a secluded way of life, the limited scope of local politics and the small scale of the common economy are held to have been responsible for this mentality. Certain circumstances, however, are not consistent with this judgement: the common use of pastures and woods, above all, was predicated upon close co-operation (Bölsker-Schlicht, 1994: 10–22).

By far the most extensive category of common land in the north-western lowlands was the waste (Gemeinheit, Ödland), be it fen (Moor) or heath (Heide). Before human settlement the landscape had been covered by sparse deciduous woodlands, but since the Middle Ages it had been downgraded to heath by pasture and deforestation. The extent of wasteland depended on the nature of the soil and the ground-water level. In
most parts of the lowlands wastes covered about 40–60% of the surface area in the late eighteenth century, reaching peak-values of 90% in regions like the *Bourtanger Moor*, bordering the Netherlands, and in central parts of the *Lüneburger Heide*. In their driest parts, fens were used as pastures; in areas bordering cultivated land, people exercised the common right of turbary to win peat for fuel and turf as straw-material, though the centres of the fens remained untouched (Schwalb, 1953). The heaths were of greater value for the residential population: Here people grazed their cattle and sheep, gathered some firewood from isolated shrubs, picked berries and mushrooms, dug sods (*Heideplaggen*) to store straw-material and kept beehives (Cordes, 1981). Geographers have described a specific peasant economy as one which depended on these huge stretches of common heaths, condemned to vanish in the late eighteenth and early nineteenth century when population grew and enclosure abolished common-use rights. Today most of the former heath has been converted to arable, meadow and pasture, while its most infertile parts are forested with coniferous trees.

Common pasture was extremely valuable in the Münster Basin and in the hilly uplands of the German north-west, even if it was of a more moderate size there. Originally wooded with oak, beech, horn-beam and other deciduous trees, the common wastes suffered deforestation during the Late Middle Ages and especially the early modern period. In the late eighteenth century the hilly grounds and the most damp areas were covered only with grass or isolated trees, bushes and heather. Often, grazing-ground and bush-land were also called *Heide*, or in their damper parts *Bruch*. Their size differed from place to place, so that the average extent can hardly be given. In the *Osnabrücker Land*, a part of the north-western uplands, approximately one half of the country was open to common pasture of different kinds at the close of the early modern period (Herzog, 1938), while in the neighbouring *Ravensberger Land* a ratio of 40–50% has been calculated (Riepenhausen, 1938). In the district of Lüdinghausen, which belongs to the loamy part of the Münster Basin, the commons covered only a quarter of the surface area, with grazing, heath and woodlands being their most important components (Kraft, 1941: 33, 55). In the district of Steinfurt, situated in the western part of the Münster Basin, 60% of the dry and sandy areas were covered by commons, while values reached only 30% in the communities on loamy and more fertile soils (Lülff, 1956: 226).

During the early Middle Ages large areas of north-western Germany had been wooded. Since then, until 1800, nearly complete deforestation overtook the lowlands, while in the uplands tiny woods and even some forests still remained. Only some remote parts of the southern highlands (*Hochsauerland*) remained covered with woodlands, unless neighbouring industries or avaricious princes had devastated them. Here, medieval institutions survived, regulating the use of the commons which remained common woodlands. Extensive forests belonging to a large number of lords and peasant communities provided opportunities for lumbering, gathering fire-wood, producing charcoal, grazing cattle and fattening swine. Again, we can recognize a special economy adapted to ecological conditions, in which the cultivation of grain was of minor significance whereas pastoral agriculture and industry complemented each other (Bernhardt, 1872/1966; Liedhegener, 1933; Müller-Wille, 1980; Selter, 1995).
III. The legal basis of common right

A central concern of German historiography during the nineteenth century was to ascertain who the ‘original proprietors’ of the commons had been. While constructing a past characterised by ‘Germanic freedom’, most historians maintained that during the ‘dark centuries’, in the absence of written records, all land was held in common by free men. The settlers of the fifth century who were said to have been the ancestors of the German people as a whole, allegedly owned the Marken communally and made decisions in a basically democratic way. According to this view, the subsequent right of lords and peasants to use the commons as joint property, during later centuries, was a lingering trace of that archaic equality and freedom (Möser, 1768: 63–66; Grimm, 1840; Thudichum, 1860: ix; Gierke, 1868). This opinion had been challenged by an opposing interpretation: only members of the nobility, descended from those freemen of the past, owned the land (Piper, 1763; Maurer, 1856: 63–70; Dopsch, 1933: 9, 37).

Either way, the concept of a single and absolute property right is inadequate to explain the complex ownership and use of common land in Germany in the Middle Ages. The manorial system (Grundherrschaft), followed by a network of rural communes (Gemeinde, Bauerschaft) and finally princely dominions (Landesherrschaft), developed and came to be engaged in a struggle for local power. Who would prevail over the others and what kinds of arrangements were arrived at, depended on how strong these institutions were in crucial situations. As long as grazing and wood were in abundant supply there was no need for property rights at all. Each person took what they wanted. It was only during the High Middle Ages—owing to population pressure—that resources grew increasingly scarce in north-western Germany, so that institutional regulation became inevitable. The creation of so-called Markgenossenschaften was the usual solution (Schotte, 1908). The earliest indication of this can be found in traditions dating from the twelfth century, though it is only from the fourteenth century that information becomes more detailed. Most source material, whether normative regulations (Weistümer, Bauerbriefe, Beliebungen), court-records (Markenregister, Höltingsprotokolle) or registers of fines (Brüchtenregister), dates from the sixteenth century onwards, a period when the co-operatives were weakened and had begun to disappear.

In late-medieval sources the problem of property was of no real significance: all regulations revolve around questions of what area the commons embraced, who was allowed to use the resources, how far individual use-rights reached, the organisation of jurisdiction and the sanctioning of deviant practices, and who was entitled to change the rules. Within the framework of Markgenossenschaften lords and peasants co-operated, owning the commons in a way that jurists later tried to grasp in terms of Roman law as universitas. Areas governed by these communities were not necessarily congruent with political units. Their boundaries were at times defined by the area of a parish or a manorial court, though more often they were in accordance with the landscape and agricultural conditions. Originally Marken were thought to be woodland, so that the rules of the Markgenossenschaften above all concerned clearances, lumbering and mast. When the huge forests disappeared the sub-division of the Marken began, leaving manageable commons to village communities or other neighbourhoods. This process started in the Middle Ages and continued during the early modern period.
It seems as if the *Markgenossenschaften*, together with similar self-governing institutions, owned the commons through wide parts of Westphalia and Lower Saxony in the Middle Ages. In the late-eighteenth century, however, it was only in the bishoprics that a greater number of *Marken* had survived, while in the lay principalities most of them had vanished. They had been replaced here by village-communities, state-ownership or private property (Hauptmeyer, 1988). Beginning in the sixteenth century, the princes tried to gain property rights over wastes and forests. They staked their claims to a general over-lordship (*Oberholzgrafschaft*), appointed supervisory authorities (*Forstbehörden, Ämter*), enacted general regulations (*Forstordnungen, Dorfördnungen*) and downgraded the entitlement of commoners to mere rights of usufruct. In general, princely efforts concentrated on the most valuable forests and the huge fen-districts. They were less successful in case of pasture or common wastelands, and left common arable aside (Piper, 1763; Maurer, 1856: 63–70; Bernhard, 1872: 88–96, 162–169, 208–214; Stüve, 1872: 628–649, 781–829; Freudenstein, 1879; Schotte, 1908: 1–15; Rihn, 1920; Lülff, 1956: 35–42; Timm, 1960: 7–38; Knöke, 1968: 38–90; Wobst, 1971: 17–38; Hasel, 1974; Mooser, 1979; Hasel, 1985: 89–97; Günther, 1994; Selter, 1995: 82–105; Below, 1998).

**IV. Institutions: Markgenossenschaften and Gemeinheiten**

Common wastelands, pastures and woodlands owned by a co-operative were known as *Marken*. The *Markgenossenschaften* were complex, self-governing organizations which prevailed in wide parts of north-western Germany in the Late Middle Ages and were particularly common in the ecclesiastical principalities during the seventeenth and eighteenth centuries. How the institutions of the *Marken* were shaped depended on local customs which varied from one place to another even within a small radius. Consequently the following passages can only give an impression of some major regulations. Owners of farmsteads with full rights of usufruct were known as *Erben* (literally ‘inheritors’). A full use-right was called *Echtwort* or *Ware* and its holders were entitled to receive building timber in case of need, to collect fire wood for their households, to graze a certain number of cattle and sheep on the wastes and to fatten pigs in the woodlands, depending on the yield of acorns and beechnuts. These rights pertained to a farmstead, not to an individual. Therefore, common-use rights could only be inherited as an integral part of a farmstead, and they could not be sold or sub-divided. The use-rights conformed to the needs of local households, to the exclusion of the market economy. Originally, in most *Marken* it was forbidden to sell wood to non-commoners, and to graze cattle and sheep or fatten pigs which belonged to strangers. But with the rise of a market economy since the Late Middle Ages influential members of the co-operatives and powerful outsiders were tempted to circumvent these bans (Timm, 1960).

Local courts (*Höltinge* or *Markengerichte*) were held regularly and attended by lords and peasants. Lay judges (*Markenrichter* or *Holzgrafen*) and persons entitled to use the commons in a privileged manner (*Erbexen*) normally came from the nobility, but in some co-operatives even a wealthy peasant (*Schulze*) could be the judge. In most regions this office was hereditary, but in some *Marken* the lay judge was elected by all commoners. The assembly of the *Erbexen* and *Erben* made decisions of general importance.
which were binding on nobles and peasants entitled to use the commons and on all others entering the common ground. The Markengerichte examined infringements of regulations of the co-operative and controlled the usufruct which was carefully graduated. In some Marken the jury was comprised of all fully entitled commoners. This body arrived at a verdict, while the judge merely had to pronounce it. In other Marken membership of the jury was confined to the Erbexen, who stemmed from the nobility or the privileged group of the Schulzen.

The Markengerichte or Höltinge normally met once or twice a year to reiterate the old order by restating and acknowledging its rules, and to punish offences by imposing fines. These were levied in the form of either money or natural produce. In most cases the judge received a third of the fines (tertia marcalis), while the rest of the money was used to improve the commons or was shared out among the members of the co-operative after the lower officials were paid. Food and beer were consumed by all commoners at the end of the session to demonstrate that unanimity and peace had been reinstated. The co-operatives maintained a number of lower officials, i.e. shepherds and herdsmen for cattle or swine. Supervisors (Schütteleute, Malleute) appointed annually from the ranks of ordinary commoners, were charged with reporting those who sought to alter the shape of the commons or use them without permission, and were obliged to confiscate livestock found grazing at prohibited places or in forbidden periods of the year. Most of the time they were rewarded for their efforts through the grant of exclusive use-rights, i.e. fattening of additional swine or collecting of fallen branches (Windbruch) (cf. Mager-Möller, 1997: 130. The ‘constitution’ of different Marken is well documented in Lodtmann, 1770; Klöntrup, 1782, 1783; Löw, 1829: 70–143, 191–276; Behnes, 1830: 90–117; Grimm, 1842: Vol. 3: 1–321; Grimm, 1863, Vol. 4: 648–737; Stüve, 1872, Vol. 2: 628–649, 781–829; Freudenstein, 1879: 42–77; Schotte, 1908: 32–145; Floer, 1914; Middendorff, 1927: 12–28; Liedhegener, 1933: 77–110; Lülff, 1956: 42–52; Kölling, 1962; Knoke, 1968: 38–90; Hasel, 1985: 89–97; Saalfeld, 1998: 664–670; Lachenicht, s.d.: 24–68).

It seems as if co-operatives of the Marken type never covered all of north-western Germany, not even during the peak period of the spread of this institution during the Late Middle Ages. They dominated wide parts of Westphalia and the south of Lower Saxony, and were quite frequently found in all wooded areas. On the one hand, less complex managerial forms together with ownership of the princes prevailed from the beginning in the northern plains, that is in the extensive fens and the immense heaths. In the southern uplands, on the other hand, especially the highlands, forests were owned by lords or princes (Sundern, Bannforsten) interspersed with the huge Marken districts from the Middle Ages onwards (Timm, 1960: 27–38, 134; Hesmer-Schroeder, 1963: 114–118; Günther, 1994).

During the sixteenth century centrally controlled bureaucracies came into being in most lay principalities and successfully did away with the medieval co-operatives, replacing them with ordinary commons (Gemeinheiten). Such a development can be observed in the territories of Hanover, Brunswick, Oldenburg or the lay principalities of Westphalia, and it was pushed to the extremes in case of the small counties of Lippe and Schaumburg-Lippe, where the ruling prince was also the largest seigneur (Freudenstein, 1879). It has been argued that counts and dukes specifically acquired the Holzgrafschaft
to exercise a right of ownership over the *Marken* as a measure to establish and to safeguard their territorial sovereignty (*Landeshoheit*) (Timm, 1960: 27–38; Knoke, 1968: 53–56, for regional detail on how local administration was penetrated by princely rule cf. Herberhold, 1960; Burghardt, 1995; Mager-Möller, 1997). In some regions the noble *Erbexen* and the peasants withstood this strategy, but in most regions they were not strong enough and resistance was tamed by a mixture of military threat and promise that the former members of co-operatives would be further granted rights of use over most of the common land.

Therefore, after the early seventeenth century most commons in the lay principalities of Lower Saxony were owned by territorial princes. Full use of the commons was open to members of the rural communes, which consisted of hereditary tenants (*Meier*) with substantial farms and a number of privileged cottage-owners (*Kötter*). These members of the commune were called *Reiheleute* (literally: ‘people forming a row’), because they held communal offices in succession and were obliged to regularly perform duties, such as transporting official letters, clearing ditches, maintaining paths and roads etc. The daily management of the common wastes lay in the hands of the municipal assemblies, while offences against rules and regulations, designated as being part of ‘good policing’ (*gute Polizey*), were punished by the local official of the territorial state. Thus ordinary sessions of the state authorities replaced the ancient *Markengerichte* (Achilles, 1998: 667–670). We do not know very much about the daily management of common pasture and common arable, but it seems as if this was practised by the peasantry quite autonomously. Yet the scope for political action available to rural communes in Lower Saxony was not comparable with that which was usual in Württemberg (Wittich, 1896: 117–146; Hauptmeyer, 1988: 224–235; Warde in this volume). Only the larger woodlands were put under direct governmental control. Unlike the less productive moors and heaths of the plains, the forests in the uplands yielded considerable profits. So it is not surprising to observe that the forest authorities were particularly tenacious adversaries of peasant use-rights.

In contrast to Lower Saxony, the use of the ordinary commons (*Gemeinheiten*) in the lay-principalities of Westphalia was not connected to membership of the commune. Instead, rights of usufruct were attached to long-established farmsteads in a hamlet, village or parish (Löw, 1829: 83–116). The owner of a ‘younger’ dwelling had to be content with minor entitlements or was excluded completely. But after some decades, when the peasant-community had accepted the settler as a member, he was permitted to graze a cow, to gather some wood and to cut the sods he needed against payment of a reasonable yearly sum (Löw, 1829: 116–123). In the towns the right to graze cattle and collect firewood was normally confined to full members of the borough (*Stadtbürger*) (Haff, 1910; Lappe, 1912).

If the sub-division of self-governing co-operatives and their downgrading to ordinary commons (*Gemeinheiten*) was the ‘normal’ development in the course of the early modern period, how can the survival of a number of ancient *Markgenossenschaften* in the ecclesiastical principalities be explained? These were to be found mainly in Westphalia, namely the bishoprics of Münster, Paderborn and Osnabrück, the princely abbey of Corvey, the Vest Recklinghausen and the Duchy of Westphalia, both belonging
to the archbishop of Cologne. In these territories the estates held strong political positions
and were able to prevent the elected princes from abolishing their prerogatives. Therefore
noble Holzrichter and Erbexen succeeded in preserving the Marken as strongholds of
The question arises whether the fully-fledged Markgenossenschaft found in the ecclesiastic-
ical principalities during the eighteenth century was not in fact an integral part of the
prevailing rent system which guaranteed regular payments in money or produce flowing
from the peasantry to the nobility. The main benefits of the co-operative also accrued to
the corporate aristocracy: prestige, sovereign authority and revenue.

But even there societal dynamics required, for some, a change in the management of
the commons. With an increase in the number of users since about 1450, all unlimited
use-rights ceased and were replaced by neatly defined rights of usufruct. These limitations
called for scrutiny so that nearly everywhere the mechanisms of monitoring the common
land came to be refined: the duties and obligations of the members of the co-operatives
were multiplied, and sanctions intensified. For example, in the so-called Letter Mark,
one of those extensive and solidly based co-operatives of the Münster Basin, the unlimited
lumbering of some privileged users was restricted in 1505, and in 1609 all use-rights
were ‘rectified’ by introducing stints. In this way the pasture of cattle and sheep
dramatically diminished. Furthermore, in 1688 felling firewood was confined to certain
areas which had been designated by officials (Malleute), and in 1723 lumbering was
completely forbidden until enough trees had grown to a sufficient height (Schotte, 1908:
89–116; Lachenicht, s.d.: 56–64). Cattle, sheep and pigs were branded to discriminate
those entitled from the livestock of those who only claimed use (Lülff, 1956: 56–58).

It seems that these local findings were typical for the development of the commons’
management in the north-west as a whole. From the late-fifteenth century a trend can be
observed towards smaller spatial units, which could be controlled in a stricter manner
by institutions newly installed in a process characterized by conflicts between commoners
and authorities. During this process the number of persons concerned with the manage-
ment of the commons, the control of use-rights and the punishment of infringements
against good order grew. From the sixteenth century in some Marken, regularly paid
Unterholzrichter or Holzförster can be found as agents of their noble masters or princes
and had to fulfill the same duties as their traditional counterparts, the Scharleute or
Malleute. Since the former were appointed by the lord, and the latter elected by the
assembly of commoners, their loyalty differed and conflicts necessarily arose. Sometimes
these conflicts were ‘productive’ in that they sharpened the consciousness of all partici-
pants about the limitations of common goods, leading to carefully obeyed regulations.
But often enough these conflicts resulted in a competition for the exploitation of the
remaining resources. Unfortunately there is not enough empirical work done to decide
what factors were responsible for the preservation or the destruction of a common
(Maurer, 1856: 255–269; Seidensticker, 1896, vol. 1: 65–66; Stüve, 1872: 623, 644,
117, wording of the oath of a ‘Selhauer’

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V. Resources and access to the common land

Common resources were of essential importance for the entire rural population of north-west Germany. To be without access to the commons meant having to pay heavily for some indispensable needs. Above all fuel, grazing and fertilizer could only be gained on common ground. On the other hand, common arable did not play a decisive role in this region.

Access to common resources depended on membership of a co-operative or on the ownership of a farmstead (Stätte). Nowhere was residence alone sufficient. Instead, common-use rights were imagined as being an integral part of a certain farmstead or a noble estate which could not be acquired separately. One could gain use-rights in different ways, normally by undivided inheritance of an entitled farmstead, in some cases by purchase of such a Stätte, or by the clearing and founding of a new farm somewhere on common ground, which could only succeed if the proprietors and/or all users agreed. At first sight property rights and the constitution of the commons would appear to have favoured economic and social stability. But an entitled user could let a small tenant have a part of his use-rights. This form of leasehold came to be of increasing importance for the labouring poor (Heuerlinge) in the seventeenth and eighteenth centuries.

In principle access to common resources was unequal. As a rule, the older a farmstead, the larger its cultivated area and the more substantial its common-use rights appeared. Whether under the aegis of the territorial authority or of a Markengericht appointed by the feudal lord, or even within the scope of self-government, it was the substantial peasants (Vollbauern, Erben) who owned the most firmly entrenched use-rights. It appears that the common woodlands were exploited more by the seigneurs while the common pastures were often used only by the estates and demesnes to graze flocks of sheep. The peasants largely retained the right to use cattle pasture, to cut sods and turf, to gather leaves and to collect firewood.

When the rural population grew, as was the case before the Black Death in the Middle Ages, or in the late-fifteenth and the sixteenth centuries, and again following recovery from the Thirty Years' War in the eighteenth century, a growing section of the people made their living without having a fully established farmstead, and consequently it was difficult for them to gain access to the commons. But although use of common pastures and woodlands had never been a legal right, it was ultimately impossible to exclude the small man from this privilege. Where strong collective traditions prevailed, as, for example, in the Markgenossenschaften of the Münster Basin, the owners of long-established farmsteads could perhaps foil new settlement, so that population growth came to a standstill locally. But the territorial princes were inclined to permit new settlements on common ground, as that would increase their rents and taxes.

If the territorial princes were also Markenherren, as was the case in large parts of north-western Germany, the peasants had to acknowledge the fact that their commons had to serve the political interests of the sovereign. The commons which belonged to the ruling prince were not only jeopardized by the daily exploitation carried out by many Markenrichtern and Erbexen, but could also be disposed of at an early stage: in

Thus in most regions more and more cottages came into being and from the sixteenth century onwards their owners were in the majority. Cottage-owners (Kötter) took the old-established farmsteads (Erben) as a model for their agricultural practices; many of them tried to achieve the status of a Bauer by breeding more cattle and gradually enlarging their farms. In fact their holdings proliferated until the middle of the eighteenth century. Yet land for settlement was limited, so that the foundation of new cottages could not expand further, even if population growth continued. During the early modern period, above all since the end of the seventeenth century, rural industries opened up new economic opportunities for the laboring poor. Young couples could marry and make their living without having inherited a farmstead, relying instead just on spinning and weaving. State-authorities compelled the municipalities to accept these newly founded households because they looked upon them as potential tax-payers and the home of future soldiers. But most owners of a farmstead also willingly leased dwellings and garden-plots to these so-called Heuerlinge, because the small tenants were obliged to do seasonal work at reduced wages and because they brought in cash. They had to pay for nearly everything they needed: living space, plots of land, tillage, fodder-crops, grain, fire-wood and common pasture. Most of them owned a cow, so commons supplied an important contribution to the subsistence of poor households. Therefore, the impoverished rural proletariat were the most steadfast advocates of the commons. In their eyes the use of the Marken and Gemeinheiten was indispensable and they feared for their survival should they be abolished. Nevertheless in the period between 1770 and 1850 enclosure forced the Heuerlinge to do away with their cattle.

VI. Sustainability

The answer to the question as to whether sustainability was guaranteed by cooperatives and other institutions managing the commons in the Middle Ages and the early modern period comes from two different perspectives. According to one view, there are good reasons to speak of a ‘tragedy of the commons’ in north-western Germany. At the end of the eighteenth century contemporaries lamented that common woodlands were being widely devastated, that the heaths were expanding and that some commons were losing their vegetation completely because of over-exploitation. On the other hand, closer examination raises doubts whether these complaints were justified and whether common use was responsible for the evils attributed to it. It could moreover be argued that an ecological and economic system which had survived for nearly one thousand years should not thoughtlessly be condemned for an alleged lack of sustainability (Radkau, 1983; Mantel, 1990: 89–111; Radkau, 2000: 90–98). What is more, in the late eighteenth and early nineteenth centuries, widespread aversion among the rural population to the dissolution of the Marken and Gemeinheiten demonstrates that the commons in north-western Germany could not have lost their value completely (Prass, 1997).
The management of common land in north-western Germany

In the case of the woodlands, all depended on the question of what a forest should look like. If the object was to obtain building timber, the focus of German forestry since the late eighteenth-century, and for which mature coniferous trees were preferable, then common woodlands, which normally were used for diverse purposes, could be designated as ‘devastated’ (Selter, 1995: 118–200). But common use by the rural population was not normally responsible for the real devastation of woodlands and forests in north-western Germany. Instead, it was certain industries that exercised destructive power. It is well known that as early as the Middle Ages, the salt-works of Lüneburg were responsible for the disappearance of all woodlands in the surrounding areas (Timm, 1960: 43–44). And in some parts of the southern highlands, such as the Harz-mountains, princely silver-mining demanded such huge amounts of charcoal and wood to maintain the tunnels, that in the fifteenth and sixteenth centuries the forests completely vanished and had to be restocked under the surveillance of territorial forest authorities (Steinsiek, 1999).

The famous example of the Hauberge in the southern Westphalian highlands demonstrates that common use could even guarantee a sustainable form of economy, which harmonized the needs of industry and agriculture. In this particular region dominated by the iron industry, the mountainous ground was parcelled out in 16, 18 or 20 ‘fields’ which were used in a long term rotation. Commoners planted oaks and after about fifteen years felled them in order to produce bark for tanning and charcoal. The next summer they burned branches and the remaining vegetation to fertilize the poor soil, and sowed rye in autumn. After the harvest the remaining rootstocks started to bud, so that a period of grazing could soon follow: pigs were put out to pasture in the second year, which was said to clear the ground, sheep-grazing started after four years and cattle was put out to grass after five years. This economy came into being in the Late Middle Ages and did not perish before the late nineteenth century when economic conditions rapidly changed. Hauberge originally were confined to a narrow area near the city of Siegen, spreading to neighbouring regions during the seventeenth, eighteenth and even nineteenth centuries; but although viewed favourably by the enlightened public, they were never adopted in other parts of Germany (Radjkau-Schäfer, 1987: 107–110; Selter, 1995: 93–94).

If it was not the communal use of resources proper that caused the ecological decline of the Marken and Gemeinheiten in the early modern period, what factors were responsible for the obvious symptoms of crisis? Contemporaries agreed that war had a devastating effect on the woodlands: armies ruthlessly felled wood, so that especially during the Thirty Years’ and the Seven Years’ Wars private forests and common woodlands suffered severely. But these uncontrolled actions of bands by soldiers were accompanied by a systematic selling of wood by the commoners themselves, who were forced to do so in order to raise the enormous compulsory levies (Stüve, 1872: 628; Hesmer-Schroeder, 1963: 133–139; Lachenicht, n.d.: 64, 75). In times of peace communal regulations provided that a felled tree was replaced by several seedlings (Telgen, Potten, Heister) protected by fences or walls against grazing animals. In the face of huge plundered areas these traditional measures of re-forestation failed in wartime and the continuing pasture of sheep and cattle ensured that woodland was changed into mere heath permanently (Stüve, 1872: 646; Freudenstein, 1879: 29; Floer, 1914: 102–103; Kraft, 1941: 58; Timm, 1960: 70–71, Hesmer-Schroeder, 1963: 157–160, 274).
Population growth was the other factor which in the long run was responsible for an over-exploitation of common pasture and the environmental downgrading of the common grounds as a whole (Radkau, 2000). Evidence for this opinion can be found by comparing regions characterized by a rapidly growing population which coincided with an emerging rural industry to other areas more stable in population where agriculture remained the leading economic sector. It is clear that from the sixteenth century onwards, the most alarming information came from those regions where an expanding textile industry created the preconditions for a rapid growth of the labouring poor, i.e. in the uplands of Lower Saxony, in the counties of Ravensberg and Lippe, in the Osnabrücker Land, and in western Westphalia at the border with the Netherlands. Here the management of common lands more and more failed, because the number of users exceeded all economic and ecological limitations (Middendorff, 1927: 35-84; Brakensiek, 1994).

Several reasons for this development could be mentioned without any certainty about their specific significance. It seems as if it was all too tempting for most territorial princes, for the nobility and even for the old-established Vollbauern (substantial farmers) to allow new settlements. Princes gained new tax-payers, landlords made a profit by selling allotments from the commons, and the owners of a farmstead won cheap farmhands as well as leaseholders who had to pay rents regularly. Therefore, for all decisive actors actual profits seemed to outweigh long-term disadvantages. But the great difference between regions where a large-scale dissolution of the commons occurred in the early modern period and other neighbouring areas where the process was much slower or did not even happen reminds us of the need for caution. Only close analysis of by-laws and court-rolls could give us a clear picture of decision-making on a local or a regional scale. Comparative case studies of that kind are urgently required.

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