

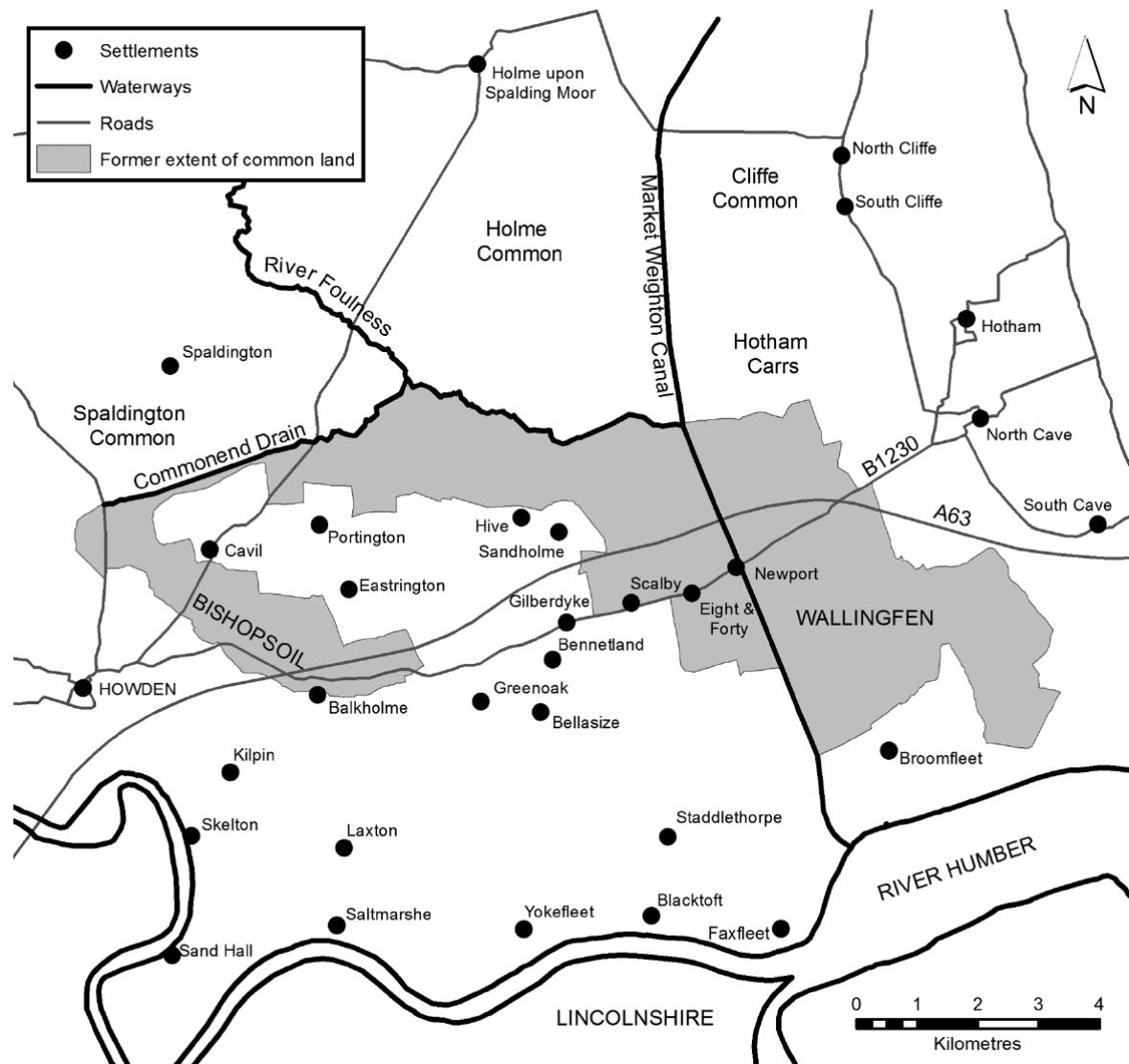
# Turf Wars: conflict and cooperation in medieval Wallingfen

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Map of Wallingfen and the surrounding district on the eve of enclosure by T. Bettley and B. McDonagh.

## INTRODUCTION

Travelling from Hull to Howden in c. 1540, the antiquary John Leland described

Wallingfen as follows:

From North Cave to Scalby three miles, all by low marsh and meadow ground, leaving the arm of the Humber on the left hand in sight. This fen is commonly called *Waullynge Fenne*, and hath many carrs of water in it; and it is so big that fifty-eight villages lie in and abutting on it, whereof the most part be in Howden lordship belonging to the bishop of Durham, and part in Harthill Hundred. The fen is sixteen miles in compass and is all of Howdenshire.<sup>i</sup>

In this short blog, I present explore the management of this 4500-acre wetland common over a period of several hundred years. In some measure, Wallingfen was no different from other marshes and wastes, providing many of the same resources to neighbouring communities including fish, fowl, rushes and turves for fuel. It flooded in winter, but provided grazing to the commoners of neighbouring communities for at least a few months every summer. It was similar in environmental terms to the wetland commons all around the Humber Estuary – in the Humberhead Levels, Hatfield Chase, and the Isle of Axholme, for example – and to a greater and lesser extent to those further afield in Lancashire, Somerset and East Anglia.<sup>ii</sup>

Yet while UK and European wetland commons had been drained and enclosed in the seventeenth century, Wallingfen remained wet, marshy and entirely unsuitable for arable

agriculture long into the eighteenth century. In other ways too, Wallingfen was highly unusual. Not only was a true form of intercommoning practiced here until parliamentary enclosure, there is evidence too of a cooperative system of wetland management which fell outside the direct authority of the neighbouring manors or any higher form of overlordship. Leland was wrong too about Wallingfen lying within Howdenshire – instead it lay outside the bounds both of the neighbouring manorial lordships and of the surrounding ecclesiastical parishes. In this it was highly unusual, an anomaly in the tenurial map of medieval England. The survival of an unusual body of late medieval and early modern documents for Wallingfen provide exciting opportunities to delve into the historical geographies of the fen, its resources and their management.

#### THE COURT OF WALLINGFEN

Much of what we know about Wallingfen emerges from a small, but important collection of documents produced by a body known variously in its records as the court, congregation or commonalty of Wallingfen. It was in existence by 1425 – and probably from the late thirteenth century onwards – and its specific remit was the management of the fen and its resources on behalf of the surrounding parishes and townships. The court of Wallingfen had a two-tier structure which survived until the end of the court's existence in the late eighteenth century: the lords of the manors bordering the fen elected four or five 'surveyors' from among their number, while the townships elected 48 governors known as the Forty-Eight Men, a number which was said in later sources to reflect the number of townships with common rights in the

fen. The surveyors and governors together formed a legal entity. While the surveyors' role was to be overseers of the common and its court, the Forty-Eight Men had a commitment towards management of the fen, notably in making presentments for any trespasses committed by men of their townships and monitoring the marking, branding or ringing of livestock.

There were two annual meetings of the court: the first preceded the opening of the fen to pasture, and the second followed its closure. In the fifteenth and sixteenth centuries, the season seems to have lasted only from mid-May to mid-June or mid-July (depending on the type of animal). By the end of Elizabeth's reign, the second meeting was not being held until late September or early October and the summer grazing season had lengthened considerably. The court met either at 'the hill called Yald [or Yauld] Hill' (unlocated, but possibly in North Cave: dated occurrences in 1425, 1430, 1660 and 1661) or Scalby Chapel (dated occurrences in 1464, possibly 1532, 1584 and 1665).<sup>iii</sup>

Crucially, the court was not a manorial structure: the gentry surveyors did not exercise manorial or proprietorial rights in the fen. Instead they, the local freeholders and the tenant population were all invested with identical common rights, except as far as serving surveyors were rewarded for their office. Thus while there are clear analogies between the Wallingfen court and other wetland courts – including for example the 'Lords of the Level' who oversaw the sea defences in Romney Marsh from as early as 1250 – there are also important

distinctions. The East Anglian Fen Code of 1549 was drawn up under the auspices of the Duchy of Lancaster, for example, and the Romney Marsh court reported to local manorial lords. The Wallingfen court was different in that it represented the commonalty rather than acting on behalf of an overlord, an arrangement that potentially much more akin to 'dike solidarity' seen on the other side of the North Sea in the Dutch Polders or even to the common-property regimes which existed in parts of early modern Sweden.<sup>iv</sup>

#### DRAINS, TURVES AND COMMON RIGHTS



Common Farm, North Cave. The names of several of the post-enclosure farmsteads on the former Wallingfen preserve evidence of their origins.

The medieval and early modern court's principal functions were two-fold. Firstly, it was concerned with the maintenance of the system of ditches and banks which drained the fen and helped mitigate the risks associated with both tidal inundations and terrestrial flood waters. We cannot be sure who cut the various drainage channels, we do know that the court of Wallingfen later assumed responsibility for their maintenance. It had the power to order the scouring of dykes and the repair of banks, the costs of which were spread equally between the various townships commoning in the fen. Drainage works appear in the record with increasing regularity in the sixteenth century, and in the summer of 1532 the townships had to contribute men, carts, tools and materials (earth and sand) for the reconstruction of the causeway running through the fen and the scouring and bridging of certain dykes associated with it.<sup>v</sup> This was then said to be an 'olde custom'. Interestingly, responsibility for the watercourses of Wallingfen appears to have remained with the Wallingfen court even after the Tudor government established Courts of Sewers under a statute of 1532. Medieval Commissions of Sewers were irregular occasions, and the willingness of the Wallingfen commoners to shoulder the burden of drainage in the later Middle Ages almost certainly stemmed from a realisation that if they wanted to avoid flooding and valuable resources being lost, they must manage the sewers themselves.

The Wallingfen court's second key function was controlling access to and use of the wetland and its resources by the local communities. The court's chief concerns in this respect were the grazing rights in the fen and the right to cut turves, but the court also claimed jurisdiction over a number of other wetland resources including fish, wildfowl, rushes and even the wool shed

by sheep grazing on the fen.<sup>vi</sup> The court carefully protected the grazing resource from those who were not commoners and specified the months in which commoners could utilize the common for grazing, but there was apparently no attempt to limit the number of animals legitimate commoners could turn into the fen.<sup>vii</sup> Nor does there seem to have been any attempt to restrict exactly where those animals grazed within the fen – there were no physical or notional boundaries in the fen dividing the area utilized by one township from that utilized by their neighbours. Rather it was as much every man's land as no man's land, even whilst rights were clearly restricted to certain holdings as was the usual practice in managing common resources. We are explicitly told by the record that as far as cutting turves was concerned, it was first come first served.

In the mid fifteenth century, commoners of the 48 townships could thus place their animals on the common in unrestricted numbers, though the animals were presumably marked or branded. The branding helped to identify animals' owners at the late summer drift – when the stock were driven from the fen – as well as to identify cattle, sheep and horses which had no right to graze in the fen. Thus at the mid-June drift of 1466 stray animals were impounded, and individuals who wrongfully put their animals into Wallingfen were amerced.<sup>viii</sup> Branding is first explicitly mentioned in the later sixteenth century, when the beasts were to be branded with both a township mark and an owner's mark.<sup>ix</sup> In 1588, the branding was to be done before the beast entered the common in May and again at midsummer, presumably in order to ensure that the mark did not fade and become illegible.<sup>x</sup>

Forged marks were mentioned in 1635, at a time when the practice of falsely branding animals in order to turn them into the common had seemingly come to the attention of the court.<sup>xi</sup>

Turves or peats were another key wetland resource which the court sought to manage carefully. The early fifteenth-century ordinances specified that commoners could cut turves in the common on St Helen's Eve, when each commoner might send one man (and the surveyors, two men) to claim a place in the turf carr from which he would then cut the turves. Turves, unlike grazing, were thus stinted. No-one was to cut more than one turf deep or within 40 feet of the highways and cartgates, and no turves were to be cut after midsummer or between sunset and sunrise.<sup>xii</sup> The fine for each default was 3s 4d in 1425, a sum which seems still to have been current in 1532.<sup>xiii</sup> Through issuing orders and fining those who acted against them, the court thus sought to manage this resource and safeguard against its long-term degradation.<sup>xiv</sup> The ordinances also carefully distinguished between turves (pale-coloured, dry material from near the surface of the ground) and peats (dark, long-decayed matter) specifying that only the former might be cut. Those that dug peats were to be fined a shilling as well as forfeit the peats.<sup>xv</sup>

The court also worked to police the boundaries of the fen and exclude those from outside the named townships – and thus without rights – from utilizing the common. It issued orders which specified the fines for 'outen men' who put animals on the common – set at between 4d and 12d in 1425 – and regularly presented and

prosecuted those who wrongfully turned their stock into Wallingfen. Thus in 1461 the poor of Ferriby were amerced 14s for pasturing 40 beasts in Wallingfen, as was at least one individual from Hotham in 1466.<sup>xvi</sup> The question of demarcating and policing the boundaries of the common was made difficult by the fact that Wallingfen bordered at least two other large areas of wasteland or common: Bishopsoil to the west and south and the commons of Spaldington, Holme and several other parishes to the north. At least some, but not all, of those with common rights in Wallingfen also had rights in Bishopsoil – and vice versa – a situation which no doubt complicated matters still further. It is unclear whether there was a physical boundary – a fence, bank or ditch – between Wallingfen and Bishopsoil, but beasts which strayed between the two commons were sometimes a problem, as were occasional attempts by the bishops of Durham to claim waifs and strays found in Wallingfen – something which the Forty-Eight Men strongly resisted.<sup>xvii</sup> The court also made efforts in the fifteenth century to reaffirm the boundary between the intercommoned wetland and the commons belonging to the parishes to the north. The area north of the Foulness was probably once been part of a larger waste, but had been separated from Wallingfen by 1425, perhaps much earlier: the ordinance of that year clearly restricted grazing and other common rights in Wallingfen to the 48 townships lying to the south and east of the Foulness, and specifically noted that the owners of any animals straying from the Holme on Spalding Moor, Hotham or Bursea (in Holme parish) into Wallingfen were to pay a penny to the individuals that drove them out.<sup>xviii</sup> It may be that the cutting of Langdyke in the thirteenth century effectively cut off the northern townships' access to the area south of the dyke and that a decision was taken at that point or

soon after to divide the higher, drier common lands north of the Langdyke between the neighbouring townships and parishes, and so split up the original, larger Wallingfen.

## THE END OF THE COURT AND COMMON

The complex process by which Wallingfen was eventually enclosed and drained must necessarily be a story for another outing, but the same year as the Bishopsoil award was published in 1777, the enclosure act for Wallingfen received the royal assent. The subsequent enclosure not only extinguished common rights, but for the first time divided up the fen between the neighbouring townships who had previously intercommoned it. When the end came, then, it was abrupt and the centuries-old institution of the court was quickly dismantled, there no longer being any need for community oversight of the now privately-owned plots of land. Thus ended the complex intercommoning arrangements that governed the common for hundreds of years and even at its termination involved more than 850 recognized commoners – and earlier many more – from almost 50 local communities. It is the size of fen and its large body of commoners, the longevity of the court, its anomalous tenurial and jurisdictional history in relation to the surrounding lordships, and the survival of such a valuable body of material relating to its early management that all make Wallingfen such a compelling case study through which to explore important questions about conflict, cooperation and the management of common-pool resources in the period before the enclosure of the commons.

Rather than being a top-down solution to the problem of the fen, the court seems to have derived its existence and authority from the local communities themselves, with the gentry and yeomen acting in concert to offer a cooperative system of wetland management that fell outside the authority of the neighbouring manors or any higher form of overlordship. The court governed the fen for several hundred years between 1425 (or possibly even as early as c. 1281) and the last quarter of the eighteenth century, managing the resources on behalf of the many neighbouring communities who used the wetland for grazing, fuel and foodstuffs. In a context in which the threat of flooding was ever-present, the court maintained the all-important drainage works and organized levies for repairs, and its success here can be measured by the gradual extension of the commoning season from two to five months between the fifteenth and seventeenth century. The court also monitored the use of the fen for grazing and fuel gathering and imposed sanctions on those who overstocked or otherwise encroached on the common, as well as introducing stints in the seventeenth century to reduce the risks of resource degradation in response to rising populations of humans and animals. And it provided a mechanism for cooperation and collective decision making – by the election of the surveyors and governors as representatives of the townships – as well as a forum for conflict resolution, the latter being crucial in an area in which no identifiable overlordship existed.

## EPILOGUE

By the early years of the nineteenth century, the view from the main road from the Caves to Howden would have been almost unrecognisable to medieval eyes. The landscape was by then one of large arable fields scattered with isolated postenclosure farmsteads, many of which took on names that either signalled their township identities – for example, Laxton Grange and Skelton Grange, both more than 10 kilometres from the township hamlet – or monikers like North America and Nova Scotia which underlined their isolated locations. The new industrial settlement of Newport – initially three groups of houses known as New Gilberdyke, Newport and New Village which were later amalgamated – also quickly grew up in the heart of the former fen on the banks of the Market Weighton Canal. Yet while the landscape was rapidly transformed in the post-enclosure period, the earlier medieval arrangements nevertheless had their legacy. The chapel at Scalby in which the medieval court met which later came to be known as the Forty-Eight House – after the congregation of 48 governors which made up the court – eventually gave its name to the surrounding scatter of cottages, so that the name Eight & Forty was used from the late nineteenth century onwards to refer to part of Newport village.<sup>xix</sup> Moreover, the complexity of intercommoning arrangements and the sheer number of townships and individuals claiming rights in Wallingfen (and to a lesser extent, Bishopsoil) presented the parliamentary enclosure commissioners with the difficult task of allocating the new plots not only to new owners, but also by parish and township. The result was a finegrained patchwork of detached portions of townships so complicated and confusing that it had to rationalized a century later in 1880,

when the new civil parishes of Bishopsoil and Wallingfen were created by uniting the previously detached portions of the neighbouring 40 plus townships.

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<sup>i</sup> L. Toulmin Smith (ed.) *Leland's Itinerary*, (London, 1907-11, 4 vols), 1 pt 1, p. 51.

Leland used the term 'carr' in its earliest sense to refer to a pool or pond, but it is otherwise used here to refer to wetland supporting willows, alders, sedge or low-growing bushes (oed.com). The terms 'seave carr' and 'turf carr' also appear in the Wallingfen records.

<sup>ii</sup> J. Thirsk, 'The Isle of Axholme before Vermuyden', *AgHR* 1 (1953), pp. 16–28; M. Williams, *The drainage of the Somerset Levels* (Cambridge University Press, 1970); K. Lindley, *Fenland riots and the English Revolution* (Heinemann, 1982); Purseglove, *Taming the flood*, pp. 49–

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52; C. Taylor, 'Fenlands', in J. Thirsk (ed.) *The English rural landscape* (Oxford University Press, 2000), pp. 180–81; J. Bowring, 'Between the Corporation and Captain Flood: The Fens and drainage after 1663', in R. W. Hoyle, *Custom, improvement and the landscape in early modern Britain* (Ashgate, 2011), pp. 235-62; W. D. Shannon, 'The survival of true intercommoning in Lancashire in the early-modern period', *Agricultural Hist.* 86.4 (2012), pp. 169-91.

<sup>iii</sup> HHC, U DDBA/10/3. A place name of *Aldhall Garth* is attested in North Cave in 1310 (Bodl. Libr., ms Top. Yorks, b 14, p. 337) and may indeed be Yald Hill. There seems to have been no correlation between the two meeting places and the two principal courts, for they are used indifferently of the two times of the year. Note too that in November 1471 the court met at Broomfleet (Hull HC, U DDBA/10/2, m. 1d).

<sup>iv</sup> On common-property in Sweden, see K. Sunberg, ‘Nordic common lands and common rights: some interpretation of Swedish cases and debates’ in M. De Moor, L. Shaw-Taylor and P. Warde (eds), *The management of common land in north-west Europe 1500-1850* (Brepols, 2002), pp. 173-94; J. Larsson, ‘Boundaries and property rights: the transformation of a common-pool resource’, *Ag.HR* 62.I (2014), pp. 40-60. <sup>v</sup> HHC, U DDBA/10/2, m. 3. <sup>vi</sup> HHC, U DDBA/10/2 and 3.

<sup>vii</sup> HHC, U DDBA/10/3. <sup>viii</sup> HHC, U DDBA/10/2. <sup>ix</sup>

HHC, U DDBA/10/3. Reiterated 1635 (*ibid*). <sup>x</sup>

HHC, U DDBA/10/3 [1588]. <sup>xi</sup> HHC, U

DDBA/10/3. <sup>xii</sup> 1430 Ordnance and Usage (HHC, U

DDBA/10/1). <sup>xiii</sup> HHC, U DDBA/10/2, m. 1 and 3.

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<sup>xiv</sup> For instances of amercements issued for cutting turves ‘against the custom’, see HHC, DDBA/10/2, m. 2.

<sup>xv</sup> HHC, U DDBA/10/1; DDBA10/2, m. 1. See oed.com for the distinction between turves and peats.

<sup>xvi</sup> HHC, U DDBA/10/2.

<sup>xvii</sup> A fence between Bishopsoil and Wallingfen was mentioned in the Wallingfen enclosure award of 1781, but little is known about the period before the late eighteenth century. That there was an obligation on the bishop’s tenants at Eastrington to maintain a fence or hedge with Bishopsoil Common is however known in 1470 (TNA: PRO, SC2/211/61) and there was mention in 1589 to fences between the common and the townships (HHC, U DDBA/10/3 p. 3).

<sup>xviii</sup> HHC, U DDBA/10/1.

<sup>xix</sup> T. Bulmer, *History, topography and directory of East Yorkshire (with Hull)* (T. Bulmer & Co., 1892); Ordnance Survey 1:50,000, sheet 106 (1974).