

**COMMONS AND THE COMMON FIELDS;  
OR, THE HISTORY AND POLICY OF THE  
LAWS RELATING TO COMMONS AND  
ENCLOSURES IN ENGLAND, BEING THE  
YORKE PRIZE ESSAY OF THE UNIVERSITY  
OF CAMBRIDGE FOR THE YEAR 1886**

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Commons and the Common Fields; Or, The History and Policy of the Laws Relating to Commons and Enclosures in England, Being the Yorke Prize Essay of the University of Cambridge for the Year 1886 by Thomas Edward Scrutton

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BEING THE YORKE PRIZE ESSAY OF THE UNIVERSITY  
OF CAMBRIDGE FOR THE YEAR 1886.

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## PREFACE.

THE Yorke Prize of the University of Cambridge, to the establishment of which this work owes its existence, was founded about fourteen years ago by Edmund Yorke, late Fellow of St Catharine's College, Cambridge, and, under a scheme of the Court of Chancery, is given annually to that graduate of the University, of not more than seven years' standing from his first degree, who shall be the author of the best essay on some subject relating to the "Law of Property, its Principles, and History in various ages and Countries." The subject proscribed for the year 1886 by the Adjudicators (R. Romer, Q.C., and C. S. Kenny, M.P.), was "The History and Policy of the Laws relating to Commons and Enclosures in the United Kingdom." The Prize was awarded to the Essay bearing the motto: "Enclosures make fat beasts and lean poor people", which is now published in accordance with the conditions of the Award.

The subject originally proscribed for the Yorke Prize being so wide, the following pages have been intentionally limited to England, and in that country to two aspects of the subject proposed; (1):—an examination of the accuracy of the legal theory of the origin of rights of common, as compared with the early history of those rights as depicted by historians, a discussion which, as historical students do not agree among themselves on the matter, must necessarily include some investigation and criticism of the evidence available; (2):—a historical sketch of the policy of the legislature and the practice of landowners with regard to the distribution of common lands into several ownership, and the enclosure of open fields and wastes. This in its turn must include both the agricultural and economical question

of the common fields, and the social and economical question of commons as open spaces.

The mixed question of law and history is dealt with in the first three chapters of the essay; it is one of great difficulty, and great importance. The recent work of Mr Seebohm, whatever be its merits and faults in other respects, has certainly compelled those who assert the existence of a Free Village Community in England to carefully restate their position, which had become through premature popularisation and the crude generalisation and parrot-like repetition of crammers and their victims indefensible in some of its doctrines. Especially the attack on the legal theory of rights of common, (which is that they originate in law from the grant of a lord,) commenced by Mr Joshua Williams and Mr Digby, appears to overlook the state of the historical evidence as to the condition of things at the time when the lord's grant must have been made or implied. The following pages advocate the view that the legal theory is historically accurate, if stated with proper limitations; that except in the Eastern and Danish counties, the existence of Free Village Communities in England for some centuries before the Conquest, is, as Kemble recognised, historically very doubtful; and that Common Appendant, which is usually put forward as the direct survival of the Free Community, can be clearly shown to have no such origin in the vast majority of the manors of England.

This discussion also involves an examination of the very difficult question of the relation of the Statute of Merton to earlier law; and an attempt to prove that the distinction between Commons Appendant and Appurtenant only originates in the 15th century. The subject matter of the first two chapters has already appeared in the *Law Quarterly Review* for October, 1887.

The question of the origin of Manors and Manorial Courts, and the early relations of the lord to his tenants, are still far from settled. Now that copyhold tenures are rapidly dying out, when Manorial Courts have become almost obsolete, and in

most cases the lord of the manor no longer derives more than a nominal profit therefrom, it is much to be desired that each lord of a manor would regard it as a duty of his position to provide for at any rate the safety, if not for the publicity, of his Court-rolls. Large as is the mass of materials now made public, it is only by a careful and minute examination of the history of each manor, and comparison of contemporaneous rolls, that any conclusions of value as to the early history of the English Village Community can be reached. Such publications as the *Domesday of St Paul's*, edited by Archdeacon Hale, or the *Custumals of Battle Abbey*, just edited by Mr Scargill Bird for the Camden Society, are worth in the light they throw on early English history, whole libraries of imaginative descriptions of the Mark in England, based on institutions alleged to exist in some other country and at some other time.

While this part of the discussion from its technicality loses its full meaning to all but specialists, the subject treated of in the second part of the essay is of interest to every English citizen and is becoming of more and more importance every day. The growth of population and the adulteration of the chief means of living, pure air, for which our ever-increasing factories are responsible, bring more and more to the front the need of open spaces, accessible from our great towns. The speculative builder and the wealthy landowner alike prey upon roadside wastes, and neighbouring Commons. Both the poor, who are deprived of any interest in the land, and the public, more and more restricted to the hard high road, are affected by the Policy of Enclosure and Individualism.

The following pages give the history of Commons and Common Fields in this country. After explaining what is known of their early condition, the great change from arable land to pasture in the 15th and 16th centuries, with its results; the reclamation of the fens, and the disorders of the Civil War, in the 17th century; the great movement towards enclosures in the 18th century, based on a policy of agricultural advantage,