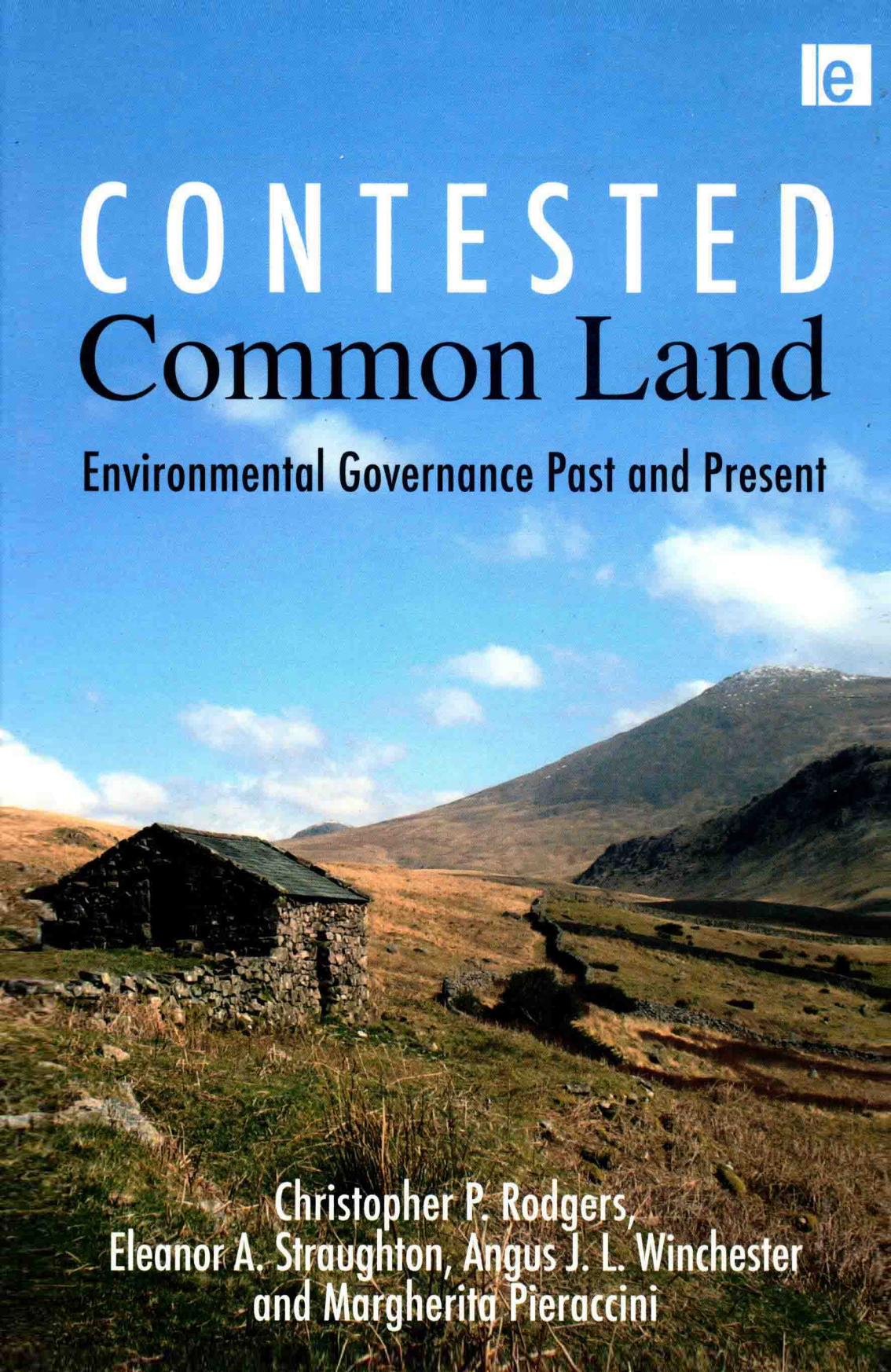


# CONTESTED Common Land

Environmental Governance Past and Present



Christopher P. Rodgers,  
Eleanor A. Straughton, Angus J. L. Winchester  
and Margherita Pieraccini

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## **Contested Common Land**

# Preface

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This book presents research arising from an interdisciplinary research project, 'Contested Common Land: Environmental Governance, Law and Sustainable Land Management c.1600–2006', which was funded by the Arts and Humanities Research Council as part of its Landscape and Environment programme between 2007 and 2010. The research project sought to investigate the sustainable management of common land in historical context, placing contemporary concerns surrounding common land in England and Wales in historical perspective and highlighting the multifaceted social, historical and legal factors relevant to the successful development of an appropriate and effective strategy for the future management of our common lands.

Common land has a distinctive legal identity, and is subjected to multiple and potentially conflicting land uses. In exploring the tensions and contests inherent in the distinctive character of common land, this book offers an interdisciplinary perspective on shifting concepts of 'sustainable' land use and the interplay between these conceptions and the governance and management of common land since circa 1600. It focuses, in particular, on the evolution of property rights and changing instruments of governance, their enforcement, and their role in both creating and protecting the distinctive and unique landscape and environment of common land in England and Wales. The key historical questions addressed in the book thus concern how the concept of 'sustainable' management has been articulated, interpreted and applied to common land since circa 1600, and how instruments of legal governance and notions of 'sustainable' management have both reflected and determined cultural values and property rights. The future of common land is currently under debate following the Commons Act 2006. The 2006 Act provides for new forms of commons governance and places the 'sustainable' management of our commons at the centre of public policy for their future. Questions of immediate contemporary relevance are discussed in the following chapters, including the quest for an understanding of the most appropriate models of self-regulation for the delivery of the 2006 Act's objectives for the future environmental management of common land.

These research questions have been addressed at two levels: first, by studying the evolution of legal and cultural conceptions nationally; and, second, by examining the development of governance mechanisms at the local level. By focusing on four case studies, the research presented here seeks to marry historical understanding drawn from local archive sources with contemporary research data gathered through a complementary and carefully focused qualitative research methodology using semi-structured interviews and focus groups with stakeholders. The research project also developed an iterative

and collaborative approach to the generation of knowledge, complementing its archival and qualitative methodologies. Two research symposia were held under the aegis of the project at which the research findings at different stages of its work were presented and discussed with invited participants – including policy-makers, stakeholder groups and academics from relevant disciplines. And in the concluding phase of the project, the research outcomes were presented at stakeholder workshops in each case study, which provided an opportunity for two-way dialogue with stakeholders on key issues emerging from the historical and contemporary research, and facilitated the further refinement of the project's conclusions.

In Part I, the chapters charting the history of common land (Chapters 2 and 3) were written by Angus Winchester and Eleanor Straughton, and those discussing the modern issues (Chapters 4 and 5) by Christopher Rodgers and Margherita Pieraccini. All four authors have contributed to the writing of the case study chapters in Part II (Chapters 6 to 9). Final editing for publication was undertaken by Christopher Rodgers and Angus Winchester. The law is stated as at 31 March 2010.

*Christopher P. Rodgers  
Angus J. L. Winchester  
September 2010*



# Acknowledgements

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In presenting the findings of the Contested Common Land project, the authors wish to acknowledge the financial support of the Arts and Humanities Research Council, without which this research would not have been possible. We should also like to record particular thanks to the director of the Landscape and Environment programme, Professor Stephen Daniels, for his support and encouragement throughout the three years of the project. Two interdisciplinary research symposia were held as part of the project, at Lancaster University in September 2008 and at Newcastle University in September 2009, bringing together scholars from a wide range of disciplines and representatives of government agencies and other bodies involved in policy relating to common land in England and Wales and crofting in Scotland. Discussion at the symposia contributed to our collective thinking and we should like to record our thanks to all those who participated in them.

In focusing the research to specific commons located in four distinct geographical areas we have incurred debts of gratitude to a large number of people, notably the landowners and commoners who participated in our interviews, in focus group meetings and in stakeholder workshops. The historical research was facilitated by the courtesy and efficiency of staff in specialist libraries and record offices, particularly those of The National Archives at Kew; the Cumbria Record Offices at Whitehaven and Carlisle; West Yorkshire Archive Service at Leeds; the North Yorkshire County Record Office at Northallerton; the National Library of Wales, Aberystwyth; Powys County Archives, Llandrindod Wells; Norfolk Record Office, Norwich; and Gloucestershire Archives, Gloucester. We are particularly grateful to Mark Fox of the Eskdale Commoners' Association; Dr John Farrer of Clapham; John Metcalfe of Ingleton; Michael Rolt and Alec Baker at the Elan Estate Office; and Belinda Holland of Dderw for granting us access to records in their possession. We also gladly record our thanks to the custodians of the respective Common Land Registers for allowing us access to this essential material: Anne Wallace (Cumbria); Linda Wishart (Norfolk); Jenny Griffiths (Powys); and Chris Stanford (North Yorkshire). Others who contributed to the local research presented in this book included members of the Ingleborough Archaeology Group, who carried out archaeological field surveys of common land in Ingleton parish as an adjunct to our archival research; Messrs J. S. Metcalfe (Ingleton) and H. C. Bargh (Chapel-le-Dale), who contributed their knowledge of the management of Scales Moor since the 1930s; Erwyd Howells of Capel Madog, who generously shared his wealth of knowledge on the hill farming culture of mid-Wales; and George Parry of Scolt Head and District Common Rightholders' Association, who facilitated access to copies of records held

by Brancaster Parish Council. We are also conscious that our research stands on the shoulders of previous work and should like to record our debt to the following: Julia Aglionby, Sara Birtles, David Johnson, Robert Silvester, Maurice de Soissons, Richard Suggett and Tom Williamson.

The contemporary research would also have been impossible without the collaboration, support and encouragement of a wide range of stakeholders and organizations. We are grateful to those landowners and commoners who took part in the focus groups and semi-structured interviews. Thanks are also due to the Eskdale Commoners' Association, the Ingleton Commoners Association, the Scales Moor Stinholders, Cwmdeuddwr Commoners Association and the Scolt Head and District Common Rightholders' Association for their cooperation and assistance in organizing meetings and supplying valuable source documentation (including copies of minute books and other unpublished sources). The National Trust provided useful information and assistance with the organization of the research in Eskdale and Norfolk, as did the Elan Trust in the Welsh case study. The heads of common land policy at Natural England (Graham Bathe) and at the Countryside Council for Wales (Buddug Jones) gave access to a wide range of valuable data and policy documentation, and made valuable contributions to the research as it progressed. Thanks are also due to the Natural England staff at Kendal, Leeds and Brancaster, who gave their time for interviews and meetings, and provided source material not otherwise available online. The Countryside Council for Wales staff at Llandrindod Wells also contributed useful policy documentation and data for the Elan Valley case study. Special thanks are also due to Julia Aglionby for providing copies of the draft agricultural management rules adopted by the Shadow Commons Council for Cumbria. These are cited in the text as Defra (2009b) and will be published by Defra in due course with the final report of the Shadow Commons Council Research Project.

We should also like to record particular thanks to Tim Hardwick at Earthscan for his encouragement and patience, and Chris Beacock, who prepared most of the maps for publication. Grateful acknowledgement is made to Natural England and the Countryside Council for Wales for permission to reproduce the maps of common land in England and Wales (Figures 1.1 and 1.2), and to Ben George Photography for the image of Brancaster Marsh (Figure 9.1). The other images were taken by Angus Winchester.



# List of Acronyms and Abbreviations

---

AONB	Area of Outstanding Natural Beauty
CAP	Common Agricultural Policy (of the European Union)
CCW	Countryside Council for Wales
CL	common land unit
CLR	Common Land Register
CPR	common pool resource
CRA	Commons Registration Act 1965
CRO	Cumbria Record Office
d	penny/pence; 12d = 1 shilling; 240d = £1
Defra	Department for the Environment, Food and Rural Affairs
EEO	Elan Estate Office
ELS	Entry Level Stewardship
ESA	Environmentally Sensitive Area
GA	Gloucestershire Archives, Gloucester
GAEC	good agricultural and environmental condition
HLS	Higher Level Stewardship
LU	livestock unit
MAFF	Ministry of Agriculture, Fisheries and Food (now Defra)
NFU	National Farmers Union
NLW	National Library of Wales, Aberystwyth
NRO	Norfolk Record Office, Norwich
NYCRO	North Yorkshire County Record Office, Northallerton
NYRCL	North Yorkshire County Council, Register of Common Land
OELS	Organic Entry Level Stewardship
OLDSI	operation likely to damage the special conservation interest
PCA	Powys County Archives, Llandrindod Wells
s	shilling(s): 20s = £1
PRO	The National Archives, Public Record Office, Kew
SAC	Special Area of Conservation
SDA	Severely Disadvantaged Area
SPA	Special Protection Area
SPS	Single Payment Scheme
SSSI	Site of Special Scientific Interest
SWES	Sheep and Wildlife Enhancement Scheme
WAG	Welsh Assembly Government

WES	Wildlife Enhancement Scheme
WYRO	West Yorkshire Record Office, Leeds
YAS	Yorkshire Archaeological Society

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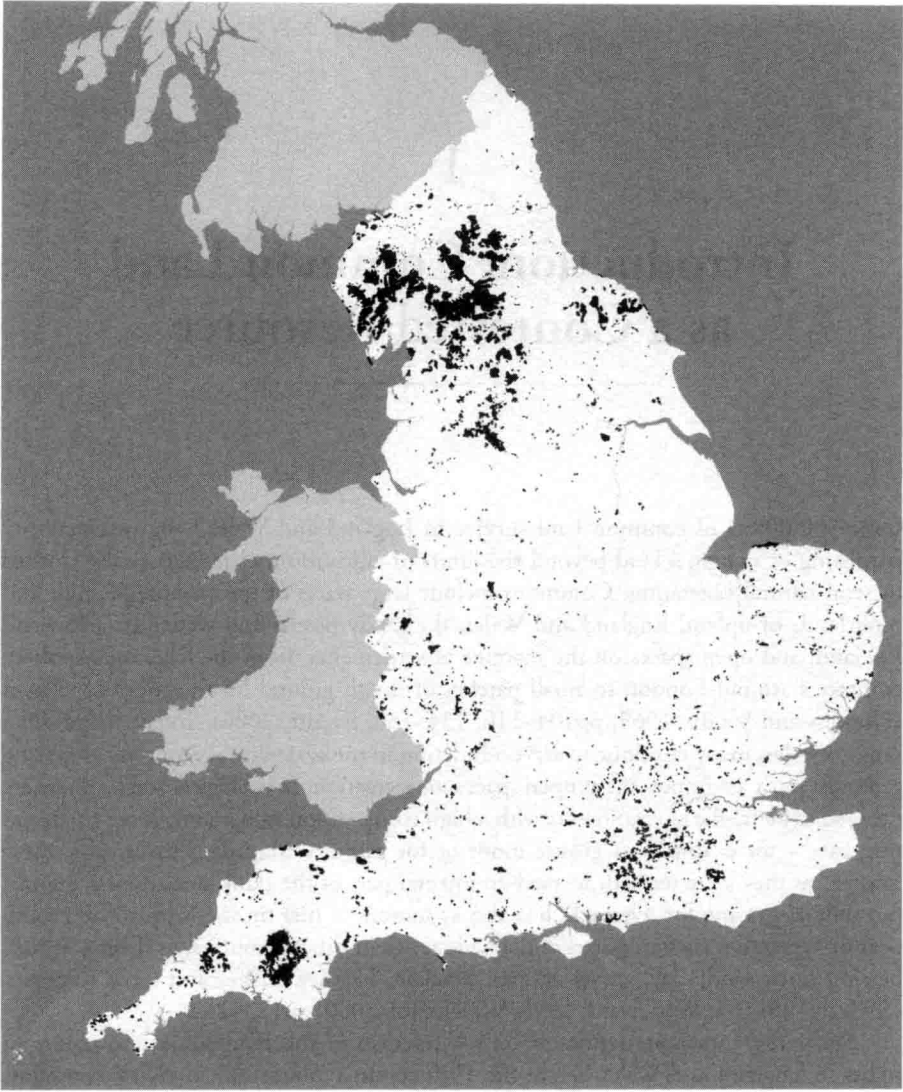
## Introduction: Common Land as a Contested Resource

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Over 500,000ha of common land survive in England and Wales,<sup>1</sup> the vast majority consisting of marginal land beyond the limits of cultivation, characteristically clothed in semi-natural vegetation. Commons include large tracts of the mountains, hills and moorlands of upland England and Wales, the sandy heaths and wetlands of lowland England, and open spaces on the margins of settlements, from the large metropolitan commons around London to small patches of rough ground on the edges of villages (Hoskins and Stamp, 1963, pp104–110, 134–136; Everitt, 2000). Today, they fulfil a range of roles: many continue to serve a function in the agricultural economy as grazing grounds; most are important as open spaces for recreation; in ecological terms, many are deemed to be fragile environments with a high conservation value; some serve particular purposes – for example, as grouse moor or for military training. Historically, these ‘wastes’, as they were termed, formed an integral part of the traditional rural economy, not only as grazing for livestock, but also as sources of fuel (in the forms of firewood, peat or vegetation such as gorse) and a wide range of other resources, as diverse as fish, berries, nuts, sand, clay, gravel, stones, bracken, heather, rushes and reeds (Neeson, 1993, pp158–184; Woodward, 1998; Winchester, 2000, pp123–142).

Surviving commons represent only a fraction of the land subject to common rights in England and Wales before the 19th century. Almost all surviving commons are to be classed as ‘manorial waste’, semi-natural land, usually lying on the margins of a community’s landed resource, but common land in the early modern period also included the open arable fields and meadows, productive farmland held in unenclosed strips in private ownership but subject to common grazing rights after the crop had been taken or when lying fallow. A long process of land reform, culminating in a great surge of enclosure by acts of parliament in the century between circa 1760 and circa 1860, swept away almost all of the open fields and much of the manorial waste, extinguishing common rights over 2.75 million hectares of land – 21 per cent of the total land area of England – and reducing the surviving extent of common land in England and Wales to circa 554,000ha (Turner, 1980, pp178–181; Aitchison, 1990, p273).

Most of the common land which survived the tide of privatization and enclosure may thus be thought of as ‘leftover’ land, incapable of conversion to intensive agricultural

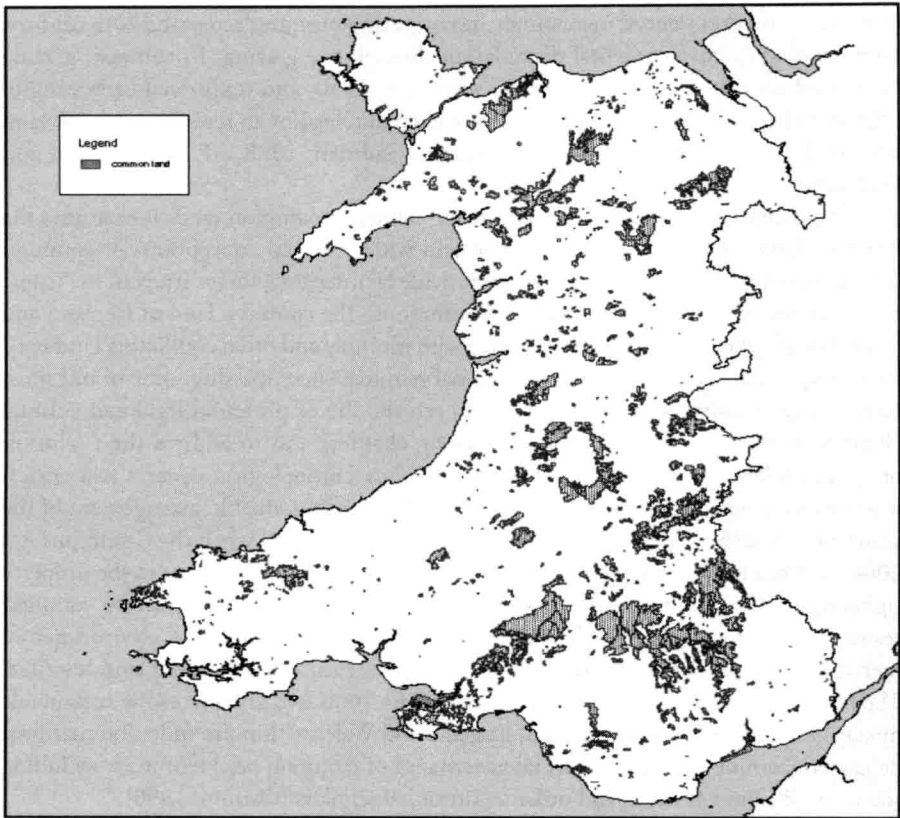


**Figure 1.1** *Registered common land in England*

*Note:* The map excludes commons in the New Forest and Epping Forest (which were exempt from registration) and the Forest of Dean, to which the Commons Registration Act 1965 did not apply.

*Source:* © Natural England (2010). Material is reproduced with the permission of Natural England, <http://www.naturalengland.org.uk>





**Figure 1.2** *Registered common land in Wales*

Source: © Countryside Council for Wales (2010). Reproduced with the permission of the Countryside Council for Wales<sup>2</sup>

use. The distribution of surviving common land (see Figures 1.1 and 1.2) shows a strong geographical pattern and falls into a number of distinctive types of terrain. Most extensive are upland environments in the hills and mountains of northern England and Wales and the moorlands of south-west England, where, in terms of acreage, the bulk of common land lies. Wetlands, including both peat fen and coastal marsh, form a second distinctive environment in lowland England. Others include the mixed woodland and heath of former royal hunting grounds, such as the Forest of Dean (Gloucestershire), the New Forest (Hampshire) and Ashdown Forest (Sussex), and the small settlement-edge 'greens' scattered across East Anglia. Most surviving commons may thus be conceived of as the last fragments of 'wilderness' – wild or untamed land on the margins of settlement, lying beyond the cultivated land and dwelt-in spaces. But human use, especially the grazing of livestock, is central to determining their character. Within the spectrum of British commons, two opposite trajectories of ecological and land-use change have dominated recent history. Most upland commons remain an important resource in pastoral farming

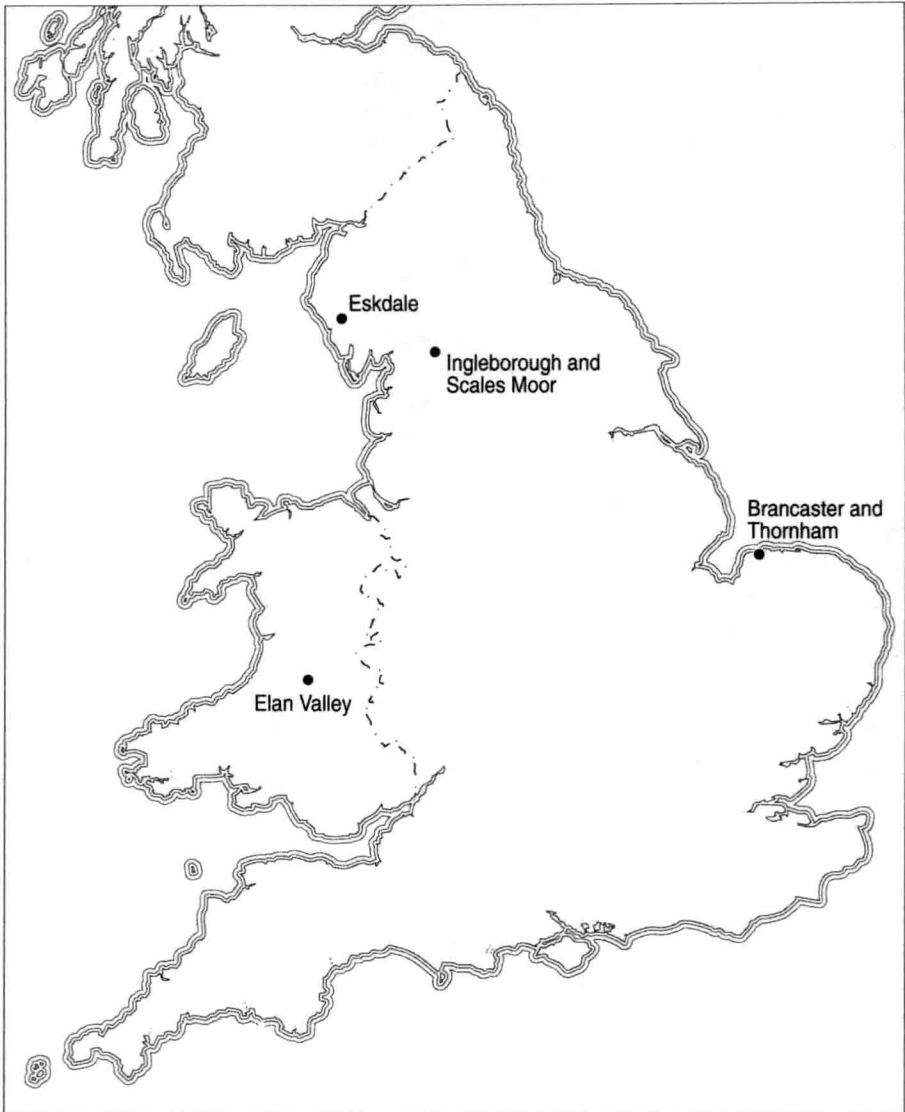
economies and experienced increasingly heavy grazing pressures across the 20th century, often leading to environmental degradation through overgrazing. In contrast, grazing has ceased on many lowland commons since circa 1950, and traditional harvesting of vegetation for fuel and other purposes has petered out, leading to reversion to scrub land and the loss of the open heathland character (Gadsden, 1988, p1.17; Aitchison and Gadsden, 1992, pp166–167).

The theme of this book is the ‘contested’ nature of common land. It examines the interplay between law, land management and wider cultural conceptions of common land across time, and in so doing seeks to provide an interdisciplinary study of the iconic and often controversial landscapes of the commons. The common land of England and Wales has long been an important resource with multiple and often conflicting land uses. As an important agricultural and recreational resource encompassing some of our most ecologically sensitive environments, it has been the site of profound legal and cultural changes over several centuries. The following chapters aim to address the evolution of common land governance since 1600, providing chronological context at a critical moment in its history. The challenges of re-establishing sustainable management of the commons are to be addressed in the next ten years and beyond when the Commons Act 2006 has been fully implemented. The 2006 Act has introduced reforms to the property rights regime for common land and to the management structures applied to common resource governance, that will significantly strengthen sustainable environmental management and provide a more equitable basis for future access to the land resource. The book offers an assessment of the impact of the 2006 Act, and places the sustainable management of the common lands of England and Wales within the wider international debate concerning the environmental governance of common pool resources, including the work of Elinor Ostrom and other institutional scholars (Ostrom, 1990).

This study takes an interdisciplinary approach, linking historical research in archive sources with qualitative research on modern commons governance undertaken with contemporary stakeholders. It employs case studies in four unique landscapes in England and Wales to illustrate changing patterns of land use, and the differing management principles and regulatory mechanisms applied to common land from circa 1600 to the modern day (see Figure 1.3). Three cover upland commons, in the Lake District of Cumbria, the Pennines of North Yorkshire and the hills of Mid-Wales; the fourth, which includes coastal marshes and a lowland heath in Norfolk, has been chosen to represent surviving common land in lowland England (see Chapters 6 to 9). The case studies inform the book’s broader examination of shifting notions of ‘sustainability’ and of the environmental governance of common land.

## The legal framework: Common property rights

Unlike many traditional commons in continental Europe, common land in England and Wales is neither communally owned nor ‘no man’s land’ (*terra nullius*); rather, it is privately owned land over which others possess use rights, giving them legally recognized access to particular resources. Its use was underpinned from the 13th century until the Commons Registration Act 1965 by a firm and stable framework of property rights, which vested ownership of ‘waste’ in the hands of the lord of the manor, while recognizing the use rights of the local community. The legal framework can be traced



**Figure 1.3** *Location of case studies discussed in this book*

Source: Authors

back to the statutes of Merton (1235) and Westminster II (1285), which confirmed the lord of the manor's rights in the soil of the manorial waste (described by Merton as the 'residue' of the manor), but also required lords to respect the use rights of free tenants within the manor.<sup>3</sup> Lords could approve the waste (i.e. enclose sections of it and rent them out for agricultural use), but the statutes restricted their freedom by recognizing the legal validity of the use rights of commoners. As owners of the soil, lords generally