

A REMEDY TO THESE EVILS

Tudor Legislation and the Enclosure Riots

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The agricultural policy of enclosure was practiced in England from the 13th century onwards. The removal of a community's common rights to land led to rural poverty. In response, the Tudor governments (1405 to 1603) passed anti-enclosure acts beginning from 1489. While anti-enclosure legislation could have slowed or prevented the negative effects of enclosure, by the 1530s, enclosure riots had broken out over parts of England, culminating in the 1549 Kett's Rebellion. An analysis of Tudor primary sources reveals that legislation enacted from 1489 to 1549 was ineffective. The royal proclamations and Acts of Parliament included anti-enclosure laws, anti-riot laws, and royal pardons. Anti-enclosure laws failed to prevent further enclosure, which was the root cause of the riots. Such laws even encouraged the rioters, who felt that their actions were sanctioned by the government. Neither did the subsequent anti-riot laws stop the outbreak of further riots. Royal pardons for the rioters may also have spurred them to persist in destroying enclosures. Nevertheless, the legislation demonstrates that the government was well-intentioned and attuned to the impacts of enclosure and enclosure laws. These findings bridge the existing gap between the study of Tudor legislation and popular rebellions by social, economic, and legal historians.

“[G]ive order that those who have dispeopled so much soil may either rebuild the villages they have pulled down or let out their grounds to such as will do it; restrain those engrossings of the rich, that are as bad almost as monopolies; leave fewer occasions to idleness; let agriculture be set up again, and the manufacture of the wool be regulated, that so there may be work found for those companies of idle people whom want forces to be thieves, or who now, being idle vagabonds or useless servants, will certainly grow thieves at last. If you do not find a remedy to these evils it is a vain thing to boast of your severity in punishing theft.”¹

Of the laws passed by the governments of Tudor England, few were as unsuccessful as the anti-enclosure laws, anti-riot laws, and royal pardons issued to manage the problem of enclosure. The exploitative economic practice of enclosure, defined in its most general sense, was an act in which a single landowner imposed his exclusive control over arable fields, pastures, and wastes that had been used in common by several villagers.² Enclosers sought to improve the profitability and productivity of their land, especially by turning the enclosed land to pastures for their wool-producing sheep.³ By putting up fences, walls, hedges, and ditches, enclosers evicted

¹ Thomas More, *Utopia* (London, 1684), 25.

² John R. Wordie, "The Chronology of English Enclosure, 1500-1914," *The Economic History Review* 36, no. 4 (November 1983): 484.

³ Joan Thirsk, *Tudor Enclosures* (London: Routledge and Paul, 1959), 4; and 9.

the peasants who were farming on the land and prevented them from feeding their animals there.⁴ The resulting state of agricultural decay, as described by Thomas More in *Utopia* (1516), eventually led the population to raise arms.⁵ During the 1530s and 1540s, the riotous levelling of hedges became prevalent.⁶ The most serious of these riots was the 1549 Kett's Rebellion. The rebellion, which began when a crowd of villagers tore down the hedges of a local landlord, involved 16,000 men blockading the city of Norfolk.⁷

Granted, the Tudor Kings and Parliaments were not idle during this time. As More called upon them to do, they attempted to find a "remedy to these evils" by issuing a series of enclosure-related proclamations and Acts from 1489 to 1549. However, that such riots continued to break out in increasing severity demonstrates that these laws were limited in effectiveness. Firstly, there were the anti-enclosure laws, which intended to stop enclosure and to return enclosed land from pasturage to tillage. These laws failed to prevent further enclosure, which was the root cause of the riots. Such laws even encouraged the rioters, who felt that their actions were sanctioned by the government. Secondly, there were the anti-riot

⁴ Kenneth M. Kines, "The Reaction to Enclosure in Tudor Policy and Thought," (master's thesis, University of Richmond, 1971), UR Scholarship Repository (331), 8-9.

⁵ *Ibid*, 8.

⁶ Roger B. Manning, *Village Revolts: Social Protest and Popular Disturbances in England, 1509 - 1640* (New York: Oxford University Press, 1988), 31.

⁷ Anthony Fletcher and Diarmaid MacCulloch, *Tudor Rebellions* (Harlow, England: Pearson Education, 2008), 70.

laws to penalize and punish the enclosure rioters. As Kett's Rebellion demonstrates, these laws were not effective deterrents. Thirdly, there were the royal pardons. These were remissions of the legal consequences for rioting, and were extended to rioters in the hopes that they would desist. These pardons, often contained in the anti-riot laws, might have emboldened the rioters. Combined, these weaknesses contributed to the recurrence of the enclosure riots. Even then, the legislation still had its strengths. They provide evidence of a government that recognized the problems with enclosure and paid close attention to the impacts of enclosure and enclosure laws, even if this cognizance and attention did not ultimately benefit the agrarian situation in the long run.

As such, there was a significant dissonance between the laws issued from Westminster and the state of enclosure and riots on the ground. Interestingly, this divergence does not seem to have been examined closely by the many historians of enclosure or the smaller number of scholars who have studied the enclosure riots and legislation in particular. A popular approach is quantifying the development of enclosure. For example, in "The Chronology of English Enclosure," John R. Wordie traces the state of enclosure from 1500 to 1760 by drawing upon the data of W. E. Tate, Michael Turner and others.⁸ Similarly, as referenced by W.G. Hoskins in *The Age of Plunder*, L. A. Parker provides a percentage breakdown of enclosure in Leicestershire between the Crown, the monasteries, and the squirearchy

⁸ Wordie, "The Chronology of English Enclosure," 501; and 484.

from 1485 to 1550.⁹ Such studies are most helpful in visualizing the phenomenon of enclosure as it unfolded across the varied terrain of England. However, they do not consider the causal relationships between this phenomenon and the laws that were issued out of Westminster, as well as the riots which broke out all over England.

Encouragingly, there is still a minority of studies which note the simultaneous development of enclosure-related legislation and riots. Ian Blanchard briefly covers the anti-enclosure Acts of 1489 and 1516 in his "Population Change, Enclosure, and the Early Tudor Economy."¹⁰ To his introduction to *The Domesday of Inclosures*, I. S. Leadam supplies a helpful summary of the statutes against enclosure and engrossing.¹¹ Nevertheless, these studies do not attempt to evaluate the curious relationship between the ideation behind the legislation and the practical realities on the ground. For this, one would have to turn to W. H. R. Curtler, Joan Thirsk, R. H. Tawney, Joyce Youings, and Andy Wood. Not only does Curtler examine the peasant revolts and 1549 Rebellions, he also provides one of the earliest surveys of enclosure legislation, from the Statutes of Merton (1236) and Westminster the Second (1289) to the

⁹ W. G. Hoskins, *The Age of Plunder: King Henry's England, 1500-1547* (New York: Longman, 1976), 71.

¹⁰ Ian Blanchard, "Population Change, Enclosure, and the Early Tudor Economy," *The Economic History Review* 23, no. 3 (December 1970): 436-7.

¹¹ The Commissioners of Inclosures and The Royal Historical Society, *The Domesday of Inclosures, 1517 - 1518 Vol. 1*, ed. Isaac S. Leadam (New York: Longmans, Green, and Co., 1897), 6.

Act of 1908.¹² To complement her pamphlet on the enclosure movement and its riots, Joan Thirsk provides a similar survey, only in a more abbreviated form.¹³ Tawney, in his influential *The Agrarian Problem in the Sixteenth Century*, also gives a brief overview of the Acts from 1489 to 1597.¹⁴ Joyce Youings refers to the statutes (such as the 1489 and 1515 Acts) only sporadically throughout her study, without linking these Acts to the armed rebellions and popular commotions she examines.¹⁵ More recently, Andy Wood has discussed the legal definitions of rioting and the role of the law courts.¹⁶ Yet, this discussion is not connected to his analysis of the geography and decline of enclosure riots from 1509 to 1720.¹⁷ It would seem that in the discourse on the enclosure riots, legal developments have not been discussed in great depth. The only exception might perhaps be made for the master's thesis by Kenneth M. Kines. Kines elaborates on individual proclamations and Acts, such as the 1514 proclamation by Henry VIII and 1515 Acte Avoidyng Pullyng Downe of Townes.¹⁸ Even then, like the scholars that have preceded and succeeded

¹² W. H. R. Curtler, *The Enclosure and Redistribution of Our Land* (Oxford: Clarendon Press, 1920), 82; and 298.

¹³ Thirsk, *Tudor Enclosures*, 3-13.

¹⁴ Richard H. Tawney, *The Agrarian Problem in the Sixteenth Century* (New York: Harper and Row, 1967), 353-5.

¹⁵ Joyce Youings, *Sixteenth-century England* (London: Allen Lane, 1984), 51.

¹⁶ Andy Wood, *Riot, Rebellion and Popular Politics in Early Modern England* (New York: Palgrave, 2002), 38-48.

¹⁷ *Ibid.*, 82-95.

¹⁸ Kines, *The Reaction to Enclosure*, 17-8.

him, he does not focus on how these laws may be related to the enclosure riots.

Thus, the links between enclosure, legislation, and riots have not been clarified within this wealth of secondary literature. Instead, it is through a close textual analysis of primary sources that one can develop an analytic framework to disentangle these three factors. Such a method has been used by David Brown and Frank Sharman to evaluate the weaknesses of enclosure agreements in seventeenth and eighteenth century England.¹⁹ The same approach may be used with the Acts and Proclamations from 1489 (when Henry VII put forward the first major Tudor statute against enclosures) to 1549 (when Kett's Rebellion broke out).

The Weaknesses of the Legislation

The Anti Enclosure Laws

Above all, the biggest problem with the anti-enclosure acts and proclamations from 1489 to 1549 was their failure to adapt adequately to the multifaceted and worsening enclosure situation.²⁰ As reiterations and repetitions of one another, they inadequately addressed the sweeping economic and social changes which gave rise to and sustained the enclosure movement. Specifically, these laws relied too heavily on the compliance of the Tudor aristocracy, which did not always cooperate. The laws were poorly-enforced by the courts and were also susceptible to the manipulation of the enclosers. Hence, the laws failed to eliminate the root cause of the enclosure

¹⁹ David Brown and Frank Sharman, "Enclosure: Agreements and Acts," *Legal History* 15, no. 3 (1994): 269.

²⁰ Tawney, *The Agrarian Problem*, 353.

riots – the enclosures themselves.

The legislation shows how the Tudor government repeatedly attempted to solve the enclosure problem with the same types of penalties, without considering the broader circumstances that rendered such sanctions ineffective. At least three acts and four proclamations were passed from the start of Henry VII's reign to Kett's Rebellion in 1549. All are remarkably similar and do not demonstrate any major effort to approach the enclosure issue from different angles. The acts usually forbade land from being appropriated for uses other than tillage, penalizing offenders by confiscating part of their profits. The 1489 "Acte Agaynst Pullyng Doun of Tounes" declared that the owners of houses with twenty or more acres of farmland were "bound to keep, sustain, and maintain housings and buildings upon the said ground and loud, convenient and necessary for maintaining and upholding of the said tillage and husbandry." If these owners did not do so, the King or the owner's lord would confiscate half of the profits of the land. The 1515 "Acte Concnynge Pulling Downe of Townes" likewise asserted that any land which was enclosed for pasture be "put in tillage" again. Once again, if the owner did not comply, his lord or King would "receive yearly half the value of the issues and profit of any such land" By 1536, this penalty had been modified in the "Acte Concnynge Decay of Houses and Inclosures." Firstly, it was applied only to the Midland counties: "Lincoln, Nottingham, Leicester, Warwick, Rutland, Northampton, Bedford, Buckingham, Oxford, Berkshire, the Isle of Wight, Worcester, Hertford, and Cambridge." These counties were possibly targeted because they were seen to be more prone to unrest: the Midlands were where most of the late-medieval and Tudor depopulating enclosures

and conversions to pastoral land had occurred. Secondly, if the lords did not "take the benefit" of the 1515 act, the King would "in default of the said Lords" take the full one-half of the land's profits. These penalties were echoed in the royal proclamations, which may be defined as public ordinances issued by the King (instead of Parliament), by virtue of his royal prerogative. In 1514 and on July 14 1526, Henry VIII proclaimed that all land which had been used in tillage before the reign of Henry VII be returned to that state "by the Feast of St. Michael the Archangel next coming." In addition, the 1526 proclamation also called for enclosers to "take away, destroy, cut, and cast down the hedges, pales and other enclosures" before the 15th of Michaelmas. This was repeated in the February 15 1529 proclamation which demanded that enclosers "break and cast down all and singular the said hedges, ditches, and enclosures so made or enclosed" before the 15th of Easter" and asserted in Edward VI's April 11 1549's proclamation which "put in ure all the said penal laws heretofore made for the repressing of such offenses." In this way, there were no significant changes in the acts and proclamations from 1489 to 1549.

These laws did not adapt to the pressures which compelled landowners to ignore penalties and continue enclosing land. The economic forces were simply too strong for the acts and proclamations: the value of enclosed land increased much more than unenclosed land, such that the former was sometimes eligible for subsidies at a higher rate than the latter.²¹ With the rising profits from raising sheep for the cloth trade, landowners broke the law to seek larger

²¹ Tawney, *The Agrarian Problem*, 169.

fields for pasture, in place of crops, and erected hedges to keep their animals from straying.²² These landowners were also impelled by demographic pressures. In many places, especially the Midlands, landlords resorted to enclosing land wholesale and turning it into pasture because they severely lacked the labor needed sustain the ancient farming economy and its predominance of arable husbandry.²³ William G. Hoskins explains how this came to be the case:

The successive waves of plague during the fifteenth century had reduced many a once populous village to half a dozen small farmers and a few laborers. So when Sir Robert Brudenell evicted thirty people (probably half a dozen households) at Holyoak on the Leicestershire-Rutland border in the autumn of 1496 – and the record says ‘they have departed thence and are either idle or have perished’ – these were but the remnants of a much larger village that had been decaying over a long period ... The tax quotas of the fifteenth century for the Midland counties reveal serious economic decay generations before the early Tudor landlords roused such fury ... for their enclosing activities.²⁴

This population decline continued until the 1520s in the arable areas of southern and midland England.²⁵ In the face of these widespread

economic and social problems, the laws were inadequate for halting the enclosure movement. After the 1520s, England’s population began to increase. As a result of enclosure, there were fewer tenancies and wastes available for the surplus population, which expressed its displeasure with enclosures by levelling hedges.²⁶ Hence, the incidence of anti-enclosure protests increased between 1530 and 1549.²⁷

The inadequacy of these laws was worsened by their overdependence on the cooperation of the Tudor aristocracy, where lawmakers relied heavily on the landowning lords to uphold the anti-enclosure laws. The Acts of 1489 and 1515 relied on the feudal contract as a means of enforcing the law, by empowering superior lords to take half the profits of mesne lords and tenants who infringed it.²⁸ However, these Acts assumed that it was the tenants who were carrying out the enclosure and that the lords were not interested parties in the resultant profits.²⁹ On the contrary, enclosures were often the work of the lords themselves.³⁰ Even if they did not enclose land, these lords compelled their tenants to do so by abusing their privileges, ignoring planted fields or overcharging the grazing resources of arable and waste.³¹ In any case, the 1536 Act blamed the lords for not “putt[ing] the said good act [of 1489] in

²² Wall, *Power and Protest in England*, 151.

²³ Hoskins, *The Age of Plunder*, 71.

²⁴ Ibid.

²⁵ Manning, *Village Revolts*, 27.

²⁶ Ibid, 33.

²⁷ Ibid.

²⁸ Tawney, *The Agrarian Problem*, 354.

²⁹ The Commissioners of Inclosures and The Royal Historical Society, *The Domesday of Inclosures*, 9.

³⁰ Ibid.

³¹ Manning, *Village Revolts*, 40.

due and plain execution.”³² In this manner, the laws were doubly flawed in conception, failing to take into account the conflicting interests of Tudor lords and the rising value of enclosed land and labor shortages which motivated them to participate in enclosure. These deficiencies curtailed the Acts and proclamations’ effectiveness in preventing the enclosure of more land.

Consequently, the Acts and proclamations were poorly-implemented at the local level. These laws may not have been made known to all. Merchants and farmers who were new to the lands they enclosed were often singled out. This was because they were unaware of local agricultural customs or ignorant of the importance of such customs, and were less-respected by their tenants or other members of the gentry than longer-established landholders.³³ For example, John Grymes, a “clothworker” of London, had his stone walls and hedges levelled by 18 husbandmen who disagreed with the 1546 letters patent granted to Grymes for the manors of Wetton and Butterton, Staffordshire.³⁴ It is possible that these outsiders may also have been poorly-informed about the laws. Thus, they may have continued to enclose land, to the increasing dissatisfaction of those whose livelihoods were affected and who subsequently rioted.

Even if these laws were known, they were poorly enforced in the courts. Manorial courts were increasingly unable to resolve disputes over enclosed land, and royal authority, exercised through courts such as Star Chamber or special

local commissions, were not always able to compensate for the decay of manorial courts.³⁵ In 1509, John Mulsho, a landlord of Finedon, Northamptonshire, refused to accede to a King’s Council order for him to remove his enclosures.³⁶ Subsequently, he ignored a Court of Star Chamber compromise where he was to keep part of his closes open during certain times of the year.³⁷ Similarly, by 1544, one Thomas Bowles, the lessee of the demesne and stock of Chippenham in northeast Cambridgeshire, was running two thousand sheep on the common pastures, for all attempts to restrain him had failed and no other villagers could keep sheep.³⁸ In this way, the courts failed to uphold the very laws needed to check the growing enclosure movement and the violent responses to it. In other words, by failing to protect local agricultural customs and to regulate access to the commons, the local manorial courts were inadequate fora for the settlement of enclosure disputes.³⁹

Not only did enclosers ignore court orders, they also tried to manipulate the outcomes of the cases themselves using sophisticated legal maneuvers.⁴⁰ The peasantry was already disadvantaged in many ways. Often, a whole village had to pool its money to bring a case to the Court of Star Chamber or the Court of Requests.⁴¹ Even when the villagers successfully brought a case to London or to an enclosures commission (set up

³² An Acte Concnynng Decay of Houses and Inclosures, 1536, 27 Hen. 8, c. 22.

³³ Manning, *Village Revolts*, 51.

³⁴ Manning, *Village Revolts*, 51.

³⁵ *Ibid.*, 44.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Youings, *Sixteenth-century England*, 51.

³⁹ Wood, *Riot, Rebellion and Popular Politics*, 44.

⁴⁰ Manning, *Village Revolts*, 54.

⁴¹ Hoskins, *The Age of Plunder*, 230-1.

by the government to investigate the state of depopulation), they faced other difficulties. The emergent class of commercially-minded yeomen refused to participate in the cases because they were more in sympathy with the lord of the manor than with the villagers.⁴² Tenants were afraid to give evidence that might lead to their eviction.⁴³ The peasants also had trouble communicating with the London lawyers, whose style of speaking and terminology they did not always understand.⁴⁴ Although the odds were already stacked heavily against the peasants, the landlords pressed their advantage. The enclosers made use of the positions they held in the courts, or their links to those who held them. Hoskins described the following situation in Leicestershire, which occurred despite the intervention of Wolsey's commission of 1517 to 1518:

[O]nly twenty-two cases were brought to court, and only one conviction secured out of fifteen known results. Packed juries made conviction difficult, and many landlords got away with the plea that the enclosed land had been reconverted to tillage. There is little likelihood that this was true; after all, some of the biggest offenders were justices of the peace, unlikely to convict themselves or their friends. They were a closely packed caucus, both by marriage and by financial interest.⁴⁵

Confident of their ability to manipulate the

courts, landlords continued to enclose land, which often led to the outbreak of riots. For example, in 1544, Sir Thomas Cuppeldike, lord of Great Carbrooke manor in Norfolk, assembled seven or eight servants to remove the hedges of John Payne, a tenant who was a newcomer.⁴⁶ Cuppeldike had exhausted his legal options – Payne repeatedly ignored the authority of the manorial court, and had refused to attend its sessions and obey and order to remove his enclosure.⁴⁷ In fact, the petition presented by the rioters in Kett's Rebellion highlighted this need to enforce regulations. The petition requested a royal commission to consider the laws, statutes, and proclamations which had been neglected by the Justices of the Peace and other officials.⁴⁸ Evidently, the legal system was not working at the local level.

The repetition of the enclosure Acts also evinces how each law failed to serve as an effective deterrent. The 1489 Act mentions how “[g]reat inconveniences daily do increase by ... laying to pasture land which customarily have been used in tillage.”⁴⁹ Yet, the same problem and wording still appeared in the 1515 Act: “Great inconveniences be and daily increase by ... laying to pasture land which customarily have been manured and occupied with tillage.”⁵⁰ The 1536 Act is even more explicit in stating many lands “be and remain unto this present day ... converted and employed only

⁴² Ibid, 231.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid, 72.

⁴⁶ Manning, *Village Revolts*, 41.

⁴⁷ Ibid.

⁴⁸ Wall, *Power and Protest*, 165.

⁴⁹ An Acte Agaynst Pullyng Doun of Tounes, 1489, 4 Hen. 7, c. 19.

⁵⁰ Acte Concnynng Pulling Downe of Townes, 1515, 6 Hen. 8, c. 5.

into pasture and to none other purposes.”⁵¹ So too did the proclamations demonstrate that little change had taken place. The July 14 1526 proclamation stated that “very little reformation thereof as yet is had or made” despite the best efforts of the King.⁵² Likewise, the June 1 1548 proclamation noted that although Kings Henry VII and Henry VIII, as well as their parliaments, passed “diverse and sundry laws and acts ... the insatiable covetousness of men do not cease daily to encroach hereupon and more and more to waste the realm.”⁵³ As late as 1549, these problems were still described in the April 11 royal proclamation: “For some still, and willfully, have continued to [convert] the lands from tilling to pasture for sheep, and into parks for deer ... some others have enclosed and taken their tenants’ (and other poor men, their) commons.”⁵⁴ Given that enclosure persisted at a steady rate of increase of 2 per cent from 1455 to 1607, Tudor anti-enclosure laws were clearly ineffective at addressing the root cause of the enclosure riots.⁵⁵

Not only were the anti-enclosure laws largely unsuccessful, they may even have directly encouraged the outbreak of riots. Two proclamations from 1549 described how this happened.

[C]ertain numbers of disobedient and seditious persons, assembling

⁵¹ An Acte Concnynge Decay of Houses and Inclosures, 1536, 27 Hen. 8, c. 22.

⁵² Hughes and Larkin, *Tudor Royal Proclamations*, 155.

⁵³ *Ibid*, 428.

⁵⁴ *Ibid*, 452.

⁵⁵ Wordie, “The Chronology of English Enclosure,” 494.

themselves unlawfully in some parts of the realm, have most arrogantly and disloyally, under pretense of the same proclamation [of 1549, enforcing statutes against enclosures], taken upon them his majesty’s authority ... and so gone about ... plucking down pales, hedges, and ditches at their will and pleasure.⁵⁶

[A] great number of rude and ignorant people, in certain shires of England, hath ... assembled themselves, plucked down men’s hedges, disparked their parks, taken upon the direction of things, the King’s royal power and sword.⁵⁷

Indeed, rioters were either convinced that they were helping to uphold the law, or otherwise used the proclamations and acts to justify their riotous behavior. The leaders of large-scale enclosure riots caused church bells to be rung and had the town bailiff or village constable read proclamations in the king’s name ordering enclosures to be cast down.⁵⁸ During the widespread troubles of the late 1540s in East Anglia and the Midlands, the rioters claimed to be supporting the government’s social policy, and thought that they were representing the King against the local Justices of the Peace who failed to uphold the law.⁵⁹ In particular, the local disturbances of late summer 1549 were popular attempts to enforce the 1549 proclamation that

⁵⁶ Hughes and Larkin, *Tudor Royal Proclamations*, 461.

⁵⁷ *Ibid*, 463.

⁵⁸ Manning, *Village Revolts*, 53-4.

⁵⁹ Wall, *Power and Protest*, 164-5.

statutes against enclosure be observed.⁶⁰ The rioters became even more agitated after the formation of John Hales's commission set up in 1548. The commission, which consisted of Hales and five of his colleagues, was empowered to directly and immediately "reform" any enclosures of commons and highways, particularly in the counties of Oxfordshire, Berkshire, Warwickshire, Leicestershire, Bedfordshire, Buckinghamshire, and Northamptonshire.⁶¹ The peasants felt that the commission was not doing enough about rural depopulation and the conversion of arable to pasture.⁶² Lacking legal recourse, they might have been provoked into taking the law into their hands. Thus, the anti-enclosure laws were counterproductive because they legitimized the actions of the rioters.

The Anti-Riot Laws

While anti-enclosure laws were partially responsible for the outbreak of riots, the enclosure riot laws also failed to deter would-be rioters. This was despite the fact that the enclosure riot laws were much more specific than the anti-enclosure laws. Firstly, the enclosure riot laws clearly delineated what was considered rioting and what penalties offenders would face. The 1549 "Acte For the Punyshment of Unlawfull Assemblies and Rysinge of the Kinges Subjectes" defined as illegal any assembly "above the number of two and under the number of twelve" which "intend, go about, practice, or put in ure with force and arms unlawfully and of their own authority [to]

overthrow, cut, break, cast down, or dig up, the Pales, hedges, ditches, walls, or other closure of any parks, park or other ground enclosed," where the rioters ignored the commands of "any Justice of Peace or the Sheriff of the Count or by any Mayor Bailiffs or Bailiffs or other head officer of any City or Town corporate [to] retire or return to their habitations, places, or houses."⁶³ The Act declared that offenders "shall suffer imprisonment of his or their bodies by the space of one year without bail or mainprise, and shall make fine and ransom at the King's will and pleasure."⁶⁴ They would also have to pay, to any victim of the riot, three times the value of any damage they caused.⁶⁵ Such penalties were reinforced in the June 14 proclamation of the same year, which threatened that "all such offenders shall immediately be apprehended by the next justice or justices of peace ... and suffer such pains of death, loss of lands, goods, and chattels, as by the laws of the realm in such case is provided."⁶⁶ Secondly, the enclosure laws targeted and punished those who instigated the rioting. The 1549 Act also stated that any person who "by open word or deed shall procure, move, or stir any other person or persons to arise or make any traitorous or rebellious assembly, ... shall therefore be deemed and adjudged a Felon, and suffer pains of death and forfeit his goods, cattle, lands, and tents as in cases of felony, and shall also lose the benefit of his

⁶⁰ Youngs, *Sixteenth-century England*, 215.

⁶¹ Fletcher and MacCulloch, *Tudor Rebellions*, 79; and Tawney, *The Agrarian Problem*, 366.

⁶² Tawney, *The Agrarian Problem*, 366.

⁶³ An Acte For the Punyshment of Unlawfull Assemblies and Rysinge of the Kinges Subjectes, 1549, 3 & 4 Edw. 6, c. 5.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Hughes and Larkin, *Tudor Royal Proclamations*, 464.

Clergy and Sanctuary.”⁶⁷ Similarly, the July 16 1549 proclamation made it illegal for any person to:

[B]y drum, taboret, pipe, or any other instrument striking and sounding, bell or bells ringing, open crying, posting, riding, running, or by any news, rumours, and tales inventing, divulging and spreading, or by any other means, device, or tokens, whatsoever the same shall happen to be, call, gather, assemble, congregate, and muster any number of people, whatsoever they be, either to pluck down any hedge, pale, fence, wall, or any manner of enclosure; or to hunt, waste, spoil, desolate, or deface any park, chase, warren, house, lodge, ponds, waters, or any other unlawful act which is forbidden ... upon pain of death presently to be suffered and executed by the authority and order of law martial.⁶⁸

Thirdly, the anti-enclosure laws empowered local officials to act directly against the rioters. The 1549 Act empowered local officials, such as Justices of the Peace, sheriffs, mayors, and bailiffs, “to raise and assemble the King’s loving Subjects in a manner of war to be arrayed in such great number as he or they then shall think meet or able, to the intent by violence and strength to suppress, apprehend, and take the said persons that so shall

be unlawfully assembled.”⁶⁹ These officials would be “free discharged and unpunishable” in the event that any of the rioters were “killed, slain, maimed, or hurt in or about the suppressing or taking of them.”⁷⁰ This delegation of duties was further elaborated in the May 23 and July 16 proclamations of 1549:

[His highness] straightly charging and commanding all mayors, bailiffs, headboroughs, constables, and all other his majesty’s officers, ministers, true and faithful subjects, that they and every of them be aiding and assisting the said sheriffs and justices and to every of them in and about the execution of the premises, as they will avoid his majesty’s indignation and imprisonment during his highness’ pleasure, without bail or mainprize, and make further answer at their uttermost peril.⁷¹

[H]is majesty most straightly chargeth and commandeth all manner his sheriffs, justices, ministers, and officers, upon the knowledge of any offender against the tenor of this proclamation, forthwith, with all expedition and with such power as thereto shall be requisite, to apprehend and attach the same offender, and him commit to a safe jail, and thereupon undelayed to certify the

⁶⁷ An Acte For the Punyshment of Unlawfull Assemblyes and Rysinge of the Kinges Subjectes, 1549, 3 & 4 Edw. 6, c. 5.

⁶⁸ Hughes and Larkin, *Tudor Royal Proclamations*, 476.

⁶⁹ An Acte For the Punyshment of Unlawfull Assemblyes and Rysinge of the Kinges Subjectes, 1549, 3 & 4 Edw. 6, c. 5.

⁷⁰ *Ibid.*

⁷¹ Hughes and Larkin, *Tudor Royal Proclamations*, 462.

Lord Protector and the rest of the council.⁷²

Lastly, the anti-enclosure laws empowered ordinary subjects to apprehend or inform on rioters. The 1549 Act proclaimed that any person who refused to suppress a riot when required to do so by a local official would “suffer imprisonment of his body for one year without bail or mainprise and make fine and ransom at the King’s will and pleasure.”⁷³ If a Lieutenant was appointed by the King to any county to suppress the uprisings there, everyone was expected to stop the rioters: “[A]ll Mayors, Bailiffs, and other such Officers and all inhabitants and subjects of [shall] be bound to give attendance upon the same Lieutenant to suppress any commotion, rebellion, or unlawful assembly ... upon pain of imprisonment for one whole year.”⁷⁴ The May 23 1549 proclamation charged the King’s subjects to “as soon as by any means they shall have any certain knowledge, intelligence, or vehement suspicion of any secret or open conspiracy or unlawful assembly of any multitude, either for the breaking down of hedges, pales, ditches, or enclosures ... fail not with as much speech as he or they possibly may to give notice and information to the next justice of the peace.”⁷⁵ All in all, the enclosure riot laws were comprehensive in addressing the involvement of rioters, officials, and other subjects in the riots.

However, the enclosure riot laws failed to prevent the outbreak of riots. Just as the anti-enclosure laws were over-reliant on the Tudor aristocracy, so too were the enclosure riot laws over-optimistic about the role of Tudor nobility and officials in enforcing the laws. Admittedly, Tudor lawmakers were constrained by the manorial court system which was entrenched in many villages.⁷⁶ This system according much legal authority to the lords, who could select jurors and override inconvenient court rulings.⁷⁷ Tudor lawmakers might have benefited from co-opting these lords into their anti-riot measures. Still, at best, the local officials condoned the rioters’ actions, since the officials themselves disapproved of enclosures and tolerated the riots as a form of popular justice.⁷⁸ At worst, the Tudor gentry and officials instigated riots to discredit their rivals, gain a political advantage, or win support from their opponents’ tenants.⁷⁹ There are numerous examples. A riot which broke out at Lichfield on May 6 1549 was started by a bailiff of the city to harass some of his rivals among the citizens.⁸⁰ Similarly, John Skelton, esquire, procured a number of persons in October and November 1549 to destroy the hedges of John Gryndall and attack Gryndall’s son.⁸¹ John Vicary of Somerset, likewise, countered his tenants’ armed defense by firing on them with arrows and hiring a band of Welsh ruffians to attack them.⁸² This calculated use of violence against rivals or tenants was often

⁷² Ibid, 476.

⁷³ An Acte For the Punishment of Unlawfull Assemblies and Rysinge of the Kinges Subjectes, 1549, 3 & 4 Edw. 6, c. 5.

⁷⁴ Ibid.

⁷⁵ Hughes and Larkin, *Tudor Royal Proclamations*, 461-2.

⁷⁶ Wood, *Riot, Rebellion and Popular Politics*, 44.

⁷⁷ Ibid.

⁷⁸ Manning, *Village Revolts*, 53.

⁷⁹ Wall, *Power and Protest*, 150.

⁸⁰ Manning, *Village Revolts*, 53.

⁸¹ Ibid, 51.

⁸² Wall, *Power and Protest*, 153.

combined with harassment in courts of law.⁸³ In other cases, members of the gentry and local government believed themselves to be upholding the law. In Chepping Wycombe, Buckinghamshire, the mayor and burgesses believed they were implementing an order when they encouraged a midnight riot of hedge-cutting and burning, against a yeoman who had previously been ordered to remove the hedges which hindered common rights.⁸⁴ In this manner, the Tudor gentry and local officials proved themselves to be unreliable in supporting the efforts of the King and government to stop the riots, a fact acknowledged in a 1549 proclamation:

[T]he bailiffs, constables, or headboroughs, whose bounden duty and office it had been to have most earnest travailed and employed themselves for the pacifying and stay of their neighbors ... have nevertheless been the very ringleaders and procurers, by their example and exhortation, to the rest of their neighbors.⁸⁵

Moreover, just as they had interfered with the prosecution of enclosure cases, the gentry also protected themselves when they were caught for rioting. Riots had broken out among the royal tenants of Galtres Forest in East Yorkshire in December 1535 and April 1536.⁸⁶ However, at the Topcliffe sessions the gentry comprised the jury prevented indictments for rioting from being returned against the other participants despite the

evidence presented.⁸⁷ In this case, the gentry thus went unpunished and likely remained undeterred from rioting.

By refusing to uphold the enclosure riot laws, other members of Tudor society exacerbated the situation of the gentry and officials' failure to cooperate. Abbots and priors of monasteries frequently behaved no differently from their gentry neighbors in pursuing violent feuds.⁸⁸ The abbot of Fountains instigated six large enclosure riots from 1497 to 1499 against a neighboring gentleman, who had enclosed part of a disputed waste.⁸⁹ In 1532, the prior of Lytham, Lancashire, also provoked three large enclosure riots, with the help of Dame Margaret Butler and her son, Thomas.⁹⁰ Such behavior was unsurprising, since the clergy had previously violated the anti-enclosure laws. Fifty-one monasteries were brought before the Star Chamber between 1518 and 1529 on charges of having enclosed land since 1485.⁹¹ Hence, the clergy continued to undermine the government's enclosure riot laws, contributing to the recurrence of enclosure riots.

The Royal Pardons

Some of the laws against enclosure riots were part of the pardons extended to enclosure rioters, which may not have contributed effectively to the government's efforts to stop the uprisings. At least three pardons were issued in King Edward VI's name in June and July 1549. The Lord Protector Edward Seymour, Duke of Somerset, who believed that the rioters were goaded into rebellion by

⁸³ Manning, *Village Revolts*, 39.

⁸⁴ Wall, *Power and Protest*, 153.

⁸⁵ Hughes and Larkin, *Tudor Royal Proclamations*, 477.

⁸⁶ Manning, *Village Revolts*, 49.

⁸⁷ *Ibid.*, 50.

⁸⁸ *Ibid.*, 45.

⁸⁹ Manning, *Village Revolts*, 46.

⁹⁰ *Ibid.*

⁹¹ Youings, *Sixteenth-century England*, 59.

intolerable grievances, probably played a role in issuing these pardons.⁹² As the June 14 proclamation shows, the pardons exempted most rioters from further prosecution:

[His majesty is] contented and pleased to remit and pardon all the said outrages, misbehaviors, riots, and conspiracies, to all and singular his said subjects, other than to such as be already apprehended and in prison as heads and stirrers of the said outrages and riots; and therefore willeth and commandeth all justices of peace, mayors, sheriffs, bailiffs, and all other his highness' officers and ministers, not to interrupt, vex, or trouble, for any in his majesty's behalf, any manner person, other than is specified before, or for any offense, injury, contempt, or conspiracy done at the said stir of riots lately made about the breaking of enclosures.⁹³

The July 12 proclamation even protected the rioters from the wrath of the enclosers whose hedges and fences they had torn down.

[H]is majesty willeth and straightly commandeth all manner his other subjects ... having suffered any manner of grief, damage, or loss, by the act of any of the abovesaid the King's subjects whilst they offended and before they received the pardon from his majesty, that they shall not by action, suit, violence, or compulsion, force, punish,

avenge, or correct any manner of offense, trespass, or unlawful act committed by the same offenders, and pardoned by the same act; but shall suffer and permit them to enjoy and take the benefit of the King's majesty's pardon.⁹⁴

The pardons may have had a twofold effect on the enclosure riots. Firstly, it is possible that the pardons allowed some rioters to avoid the imprisonment set out in the 1549 "Acte For the Punyshment of Unlawfull Assemblyes and Rysinge of the Kinges Subjectes," or even the death penalty set out in the June 14 proclamation. The rioters, hence, lived to riot again another day. Secondly, the pardons suggested that the King and his government were somewhat tolerant of the riots and were not going to crack down harshly on the rioters. Rioters may thus have been emboldened to continue tearing down hedges and fences, confident that they could evade punishment again. Either way, the pardons did not appear to have a significant impact on Kett's Rebellion. Throughout August 1549, the rebels continued to violently resist the troops sent to suppress them in Norwich, engaging in backstreet skirmishes in the day and arson at night.⁹⁵ Therefore, the pardons, on a whole, may not have been fully effective in curbing the riots.

The Strengths of the Legislation

As such, the anti-enclosure laws, anti-riot laws, and royal pardons did not prevent or remedy the outbreak of riots. These uprisings occurred most prominently during the 1530s and 1540s,

⁹² Tawney, *The Agrarian Problem*, 370.

⁹³ Hughes and Larkin, *Tudor Royal Proclamations*, 463-4.

⁹⁴ *Ibid*, 474.

⁹⁵ Fletcher and MacCulloch, *Tudor Rebellions*, 75.

when the population had increased and there was insufficient land for the surplus population. Yet, the legislation of the 1480s to 1540s was not entirely flawed. Doubtlessly, Tudor lawmakers were likely well-intentioned. They sought to be equitable, just, and merciful in their laws. The King's subjects could seek redress in the event of any injustice, as seen in the May 23 1549 proclamation which ordered the punishment of enclosure rioters as well as the June 14 1549 proclamation pardoning enclosure rioters:

And yet his majesty doth his highness' good and loving subjects to understand that if any of them do or shall suffer any wrong or injury in any of the said cases, or any like: upon their humble and quiet complaint, his majesty will command such order to be given for redress thereof as his majesty's laws, justice and equity requireth.⁹⁶

But if so be there be any just cause to complain for default of justice, or lack of redress in any such enclosure, or default made against the said acts and statutes before specified in this case provided, or other who find themselves unjustly grieved or injured, may give information, make suit or complaint to the King's majesty, or other his highness' officers deputed to the redress of all such offenses, according to the laws of the realm, and the good and lawful order of the same.⁹⁷

The benign motivations of the Tudor King and his government are also seen in the three pardons which were given to the rioters in 1549, based on the assumption that the rioters had expressed their "humble submission and sorrowful repentance," and had acted out of "folly and of mistaking the said proclamation [against enclosures], and at the instigation and motion of certain lewd and seditious persons, than of malice or any evil will."⁹⁸ Pardons were also given out for enclosers. The April 11 1549 proclamation read as follows:

[H]is majesty [pardons] his loving subjects; not that thereby they should be animated to do evil still, and to hurt the King's majesty's realm, people, and commonwealth; but that men so gently thereunto provoked should obediently again follow so noble, godly, and wholesome laws.⁹⁹

These pardons for enclosers may have been less unhelpful than those extended to the rioters. Although pardons were given to offenders brought before the Hales commission (appointed June 1 1548), their enclosures seem to have been thrown down, arable which had been turned into pasture to have been ploughed up, and farms which had been united to have been separated.¹⁰⁰ Thus, anti-enclosure and anti-riot laws were not unduly severe or malicious.

Moreover, Tudor legislation during this time reveals a government that was somewhat attentive to the impact of its laws. The Acts and

⁹⁶ Hughes and Larkin, *Tudor Royal Proclamations*, 462.

⁹⁷ *Ibid*, 464.

⁹⁸ *Ibid*, 474; and 463.

⁹⁹ *Ibid*, 453.

¹⁰⁰ Tawney, *The Agrarian Problem*, 367.

proclamations, namely the “Acte Concnynge Pulling Downe of Townes,” “Acte Concnynge Decay of Houses and Inclosures,” July 14 1526, June 1 1548 and April 11 1549 proclamations, repeatedly described how enclosers ignored the laws. Yet, these laws show that the government monitored the effects of its legislation.

More generally, the acts and proclamations from the 1480s to 1550s show that the government was cognizant of the state of the enclosure movement. Certainly, this was not always the case – when the first enclosure commission was appointed in 1517, the Crown was not adequately well-informed to recognize regional differences in the geographical pattern of enclosure and to discern the subtle differences between enclosing and engrossing.¹⁰¹ Nevertheless, the agrarian statutes and proclamations of this period reflect a growing understanding of local differences and changing economic conditions governing the motives for enclosure.¹⁰² Joan Thirsk provides a summary of how agrarian-related Acts became increasingly specific:

The first general statute of Henry VII’s reign against the pulling down of towns (1489) aimed at arresting all depopulation and the conversion of arable to pasture irrespective of region and motive. Later statutes, however, attempted to differentiate. In 1536 the Act of 1489 against depopulation and the conversion of ploughland to pasture was re-enacted, but it now applied only to the Isle of Wight and a group of

counties in central England, extending from Lincolnshire and Nottinghamshire south to Berkshire, Buckinghamshire, and Hertfordshire, east to Cambridge and west to Worcestershire, and including Leicestershire, Rutland, Warwickshire, Northamptonshire, Bedfordshire and Oxfordshire. A second statute of 1533 attacked engrossing by prohibiting farmers from occupying more than two farms unless they lived in the parishes in which they were situated, and forbidding them to keep more than two thousand four hundred sheep.¹⁰³

A changing focus was also seen in the proclamations, which moved from targeting enclosures, to the riots, to pardoning the rioters. Although the government could not ultimately address all the enclosures and all the resulting riots, it made a consistent attempt to adapt its laws.

After all, these Acts and proclamations emerged from a period where numerous sources apparently made Tudor lawmakers aware of the enclosure problem. King Henry VIII even took a personal interest in agrarian matters, fearing that they would add fuel to religious discontent.¹⁰⁴ The King may have found out about the enclosure problem through correspondence addressed to him, such as the 1538 letter from a John Bayker, or through the enclosure commissions and Star

¹⁰¹ Thirsk, *Tudor Enclosures*, 10.

¹⁰² *Ibid*, 11.

¹⁰³ *Ibid*, 11-2.

¹⁰⁴ Tawney, *The Agrarian Problem*, 360.

Chamber Proceedings.¹⁰⁵ Otherwise, the King may have found about enclosure from popular culture. In 1496, a series of rhymes against enclosures appeared in Coventry, and the anti-enclosure poems titled “Enclosing Abbots” and “The Pleasaunt Poesye of Princelie Practise” were published in 1527 or 1528 and 1548 respectively.¹⁰⁶ Similarly, the anti-enclosure ballads “Nowe a Dayes” and “Vox Populi Vox Dei” were produced around 1520 and 1547 or 1548 respectively.¹⁰⁷ Almost all the writers of the day, notably Thomas More, vehemently denounced enclosure because they were concerned with its social aspect, especially the loss to the community by driving men from the country.¹⁰⁸ With criticism from all quarters, the King and his government doubtlessly had to act upon enclosure and its resulting riots.

Conclusion

The legislation passed from the beginning of Henry VII’s reign to Kett’s Rebellion had some merits. However, on the whole, the anti-enclosure laws, anti-riot laws, and royal pardons failed to prevent the enclosure riots from occurring. On the contrary, some of the Acts and proclamations even contributed to perpetuating the riots. Despite their best efforts, the Tudor governments from Henry VII to Edward VI attempted, but failed to find,

¹⁰⁵ Richard H. Tawney and Eileen Power, eds., *Tudor Economic Documents: Being Select Documents Illustrating the Economic and Social History of Tudor England* (New York: Longmans, Green and Co., 1924), 2:302-5; 1:44-6; and 1:29-39.

¹⁰⁶ *Ibid.*, 3: 12-3; 20-2; and 39-46.

¹⁰⁷ *Ibid.*, 18-9; and 25-39.

¹⁰⁸ Curtler, *The Enclosure and Redistribution of Our Land*, 88.

what Thomas More demanded: “a remedy to these evils.”

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