

## Local governance: controversy over distributive justice of the commons in early modern England, focusing on Gillingham Royal Forest, 1620s-1650s.

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### 1 Introduction

#### 1-1 Purpose

The purpose of this paper is to explore how local governance was organized for social stability in a 'deforested area', located on the edge of Gillingham royal forest (on the Wiltshire-Dorset border). The focus will be on the distributive-justice issue of enclosed commons divided into inhabitants and the poor, who could not possibly support themselves from agricultural occupations, during times of trade depression, harvest failure or political turmoil, 1620s-1650s<sup>1</sup>.

#### 1-2 Methodology/approach

The linkages or co-operation arrangements between high politics at Westminster (London) and the local politics such as Dorset & Wiltshire (England) politically and economically far from Westminster is perhaps more readily analogized through legal materials than almost any other kind of source. There was a vertical interplay among regimes located at higher and lower level on the jurisdictional scale. These materials included the articulation of the state, the relationship between the community and individuals, and the political attitudes of social groups<sup>2</sup>. This paper is based on legal materials, presentments at quarter-sessions records, pleadings that defendants expressed in the Exchequer interrogations and depositions generated by an investigation of riots in Gillingham in 1626-8 and the decree of Chancery Court charitable land trust disputes in 1653-6<sup>3</sup>.

This article begins from the premise that the increase of governance in early modern England was achieved through the *devolution* of central authority to the men of quite humble status across thousands of parishes, and crucial to this process was the creation of the civil parish under the terms of the Elizabethan Poor Law (1598, 1601)<sup>4</sup>.

#### 1-3 Originality/value...

Most arguments for seigneurial control over forest, fenland and the commons were founded on assumptions about the inherent destructiveness of customary right and land use practices, and tended to make much of class-based readings of the social profile of participation, and characterized the riots of the

<sup>1</sup> Buchanan Sharp, *In contempt of all authority: rural artisans and riot in the west of England 1586-1660* (1980), pp. 159-60; K. Wrightson, *English Society, 1580-1640* (London, 1982), p. 175; N. Blomley, 'Making private property: enclosure, common right and the work of hedges', *Rural History* (2007) 18, 1, 14; P. Slack, *From Reformation to Improvement: Public Welfare in Early Modern England* (Oxford, 1999), p.73. T. Goodwin, *Dorset in the Civil War 1625-1665* (Tiverton, 1996).

<sup>2</sup> C.W. Brooks, *Law, Politics and Society in Early Modern England* (Cambridge, 2008), pp.241-2.

<sup>3</sup> Public Record Office (PRO), E134/3 CHASI/EAST 17 Attorney General vs. tenants of Gillingham; Somerset Archives and Record Service (SARS), DD/HLM box2; Lawsuits in these courts were initiated by discursive 'bills' written in English, and testimonies were collected by appointing commissioners in the country who would administer pre-prepared questions ('interrogations') to witness under oath and record the answers in written depositions. And the decisions were made, not by a jury, but either by the lord keeper or lord chancellor acting in Chancery. Cf. C.W. Brooks, *Law, Politics and Society in Early Modern England* (Cambridge, 2008), p. 12.

<sup>4</sup> Keith Wrightson, *English Society, 1580-1680* (London, 1985), pp.222-8.

1620s and 1630s as artisanal in the west counties and gentrified in the east county<sup>5</sup>, but they paid less attention to the relationship of the complaints/riots against the enclosures to governance at the lower level.

This paper will investigate how the petitions worked as instruments of governance to pursue distributive justice and social stability<sup>6</sup>, and illustrate that the dynamics of governance did not occur automatically, but were driven by the agency of actors that found a way to strengthen their own position and to pursue goals or defend positions that they considered important and legitimate through the 'Legal institutions'.

#### 1-4 Analytical tools/concepts...

##### *Governance*

Before examining, it is necessary to clarify the concepts of governance, petition, and public trust.

The introduction of governance for analytical tools is the most salient and contested form that the 16<sup>th</sup>- and 17<sup>th</sup>- century English historians have confronted with for several decades. As is well known, revisionist historians of 16<sup>th</sup>- and 17<sup>th</sup>-century (G.R. Elton, J.S. Morill, K.E. Sharpe, Conrad Russell and so on) tend to focus on government, since they believe that politics is fundamentally devoid of ideology: they think that issues of faction were much more important than those of principle, and that decision-making was confined to the political elite, especially at the Court. Post-revisionists (Richard Cust and Ann Hughes) stressed the importance of ideology, especially on matters of law and religion, and asked interesting question about the attitudes and values of local governors, especially county magistrates. Steve Hindle extended the post-revisionist approach to the study not only of county officials like magistrates but also to the study of those relatively humble men (yeomen, husbandmen, tradesmen etc.) who ran more than 9000 parishes of England which the Tudor state deliberately transformed the parish from an ecclesiastical to a secular jurisdiction<sup>7</sup>. It suggests that the roots lie much deeper in the English rural past, while major developments in political participation and the formation of public opinion took place and intensified in the late Stuart and Georgian period<sup>8</sup>. In other words, the period when sub-gentry status really began to get involved in national politics is the late 16<sup>th</sup> and early 17<sup>th</sup>-century. Thus the historiography of governance has concluded that the early modern English populace recognized that state authority was manifested not only in initiatives of control by central agencies and a series of institutions in which they could participate in, envisaging 'an imagined national community with the crown in parliament somewhere near its heart' even at highly localized levels<sup>9</sup>.

<sup>5</sup> D.G.C. Allan, 'The rising in the west, 1628-1631', *ECHR*, 2<sup>nd</sup> ser. 5 (1952); E. Keridge, 'The revolts in Wiltshire against Charles I', *Wiltshire Archaeological and Natural History Magazine*, 57 (1957), 66-9; J. H. Betsey, 'The revolts over the enclosure of the royal forest at Gillingham 1626-1630', *Proceedings of the Dorset Natural History and Archaeological Society* 97 (1967) 21-24; Buchanan Sharp, *In contempt of all authority: rural artisans and riot in the west of England 1586-1660* (1980); K. Lindley, *Fenland Riots and the English Revolution* (London 1982).

<sup>6</sup> In this paper, "petitions" is used in a broad sense as an umbrella term, which includes 'complaints' or 'appeals' as well as explicit 'petition'. (B. Kümin and A. Würzler, 'Petitions, gravamina and the early modern state', *Parliaments, Estates & Representation*, vol. 47 (1997), p.42. f.18.)

<sup>7</sup> G.R. Elton, *The Parliament of England* (Cambridge, 1986); G.R. Elton, 'Tudor Government: The Points of Contact', reprinted in Elton, *Studies in Tudor and Stuart Politics and Government, Volume III: Papers and Reviews* (Cambridge, 1983), pp. 3-57; J.S. Morill, *Cheshire, 1630-60: County Government and Society During the 'English Revolution'* (Oxford, 1974); K. Sharpe, *The Personal Rule of Charles I* (New Haven, Conn., 1992); C. Russell, *Parliament and English Politics, 1621-1629* (Oxford, 1979); S. Hindle, *The State and Social Change in Early Modern England, c. 1550-1640* (Palgrave, 2000); B. Kümin, *The Shaping of a Community: the rise and reformation of the English parish, c.1400-1560* (Vermont, 1996).

<sup>8</sup> D. Wahman, 'National Society, Communal Culture: An Argument about the Recent Historiography of Eighteenth-Century Britain', *Social History* 17 (1992), 43-72.

<sup>9</sup> Peter Lake, 'Periodisation, politics and "The Social"', *Journal of British Studies*, 37 (1998), 286; Steve Hindle, *The State and Social Change in Early Modern England, c. 1550-1640* (Palgrave, 2000), pp.16-7.

### *Petition*

The second point that requires clarification is why “petitions” should be focused on in this paper. Under the influence of structuralism and Marxism, populace was conceived rather as objects of economic structures than as subjects of historical processes up to 1970s. In the 1980s, social historians integrated the anthropological category of “experience” into their studies, but they not only assumed that populace had no influence on historical processes, but they also considered that early modern protests remained historically insignificant in compare with the 19<sup>th</sup> century working class movement. During 1990s, studies of social conflict focused on concept of agency and discussed the influence historical actors. In order to study populace as historical actors, petitions not only offer considerable qualitative and quantitative advantages, but they also shed light on ‘social depth of politics’, proceeding in tandem with the politics of those who are regarded as being excluded from the political nation<sup>10</sup>. Several researches, from western countries to Japan, show that all sorts of population used petitions to affect social policy<sup>11</sup>:

As the grain rioters of Lyon, France in 1529 push the city notables into welfare reform<sup>12</sup>. In Japan, the Tokugawa shogunate succeeded in establishing the shogunate and han [domain] system by coping with the threat from great famines, Kanei Great Famine (1641-43), Kyouho Great Famine (1732), Tenmei Great Famine (1782-87) and Tenpo Great Famine (1833-39), of which Kankei Great famine set a new benchmark for strategy of how to handle famines. At that time, the gravamina in the form of anonymous graffiti, which wrote down the corruption of shogunate officers that was the most significant source of advance in rice-price, and the political criticism toward government of the 3<sup>rd</sup> shogun Iemitsu that became very known along Edo’s streets. The policy against cornering and speculative stocking of rice corruption was declared in 1643 by Tokugawa government<sup>13</sup>.

The petitions were submitted not only to local authorities, exempli gratia in early modern England usually county quarter sessions, assizes or directly to the Council, but they also appeared as printings, to affect social policies<sup>14</sup>. And whatever their form or context, the petitioners did not intend to question the established power structure<sup>15</sup>. As Rollison suggests, the contemporaries knew several styles for ‘negotiation of power’, of which the riot was a continuation of litigation by other means<sup>16</sup>.

### *Public trust*

According to Underhill and Hayton, the trust is ‘an equitable obligation, binding a person (called a trustee) to deal with property over which he has control (which is called the trust property) for the benefit of persons (who are called beneficiaries or cestuis que trust) of whom he may himself be one, and any one of

<sup>10</sup> A. Würgler, ‘Petitions and social conflicts in early modern Europe’, in L.H.V.Voss (ed.), *Petitions in Social History, International Review of Social History Supplements* (Cambridge, 2002), 11-12; P. Collinson, ‘De Republica Anglorum: or history with the politics put back,’ in *Elizabethan Essays* (London, 1994), pp.1-29; T. Harris, *The Politics of the Excluded, c.1500-1850* (Basingstoke, 2001); A. Wood, *Riot, Rebellion and Popular Politics in Early Modern England* (Basingstoke, 2002); L. Bowen, ‘Politics’, in G. Warker (ed.), *Writing Early Modern History* (London, 2005), pp.183-204.

<sup>11</sup> L.H.V.Voss (ed.), *Petitions in Social History, International Review of Social History Supplements* (Cambridge, 2002); B. Kümin and A. Würgler, ‘Petitions, Gravamina and the Early Modern State: Local Influence on Central Legislation in England and Germany (Hesse)’, *Parliaments, Estates & Representation*, 17 (1997), pp. 39-60; James W. White, *Ikki: Social Conflict and Political Protest in Early Modern Japan* (Ithaca, NY, 1995).

<sup>12</sup> Natalie Zemon Davis, ‘Writing ‘The rites of violence’ and Afterward’, *Past and Present* (2012), Supplement7, p.9.

<sup>13</sup> Kikuchi Isao, *Kinsei no Kikin* [in Japanese] (Tokyo: Yoshikawakobunkan, 1997).

<sup>14</sup> S. Hindle, ‘Dearth and the English revolution: the harvest crisis of 1647-50’, *Economic History Review* (2007), pp.16-8.

<sup>15</sup> L.H.V.Voss, ‘introduction’, in L.H.V. Voss (ed.), *Petitions in Social History, International Review of Social History Supplements* (Cambridge, 2002), p.2.

<sup>16</sup> D. Rollison, *The Local Origins of Modern Society: Gloucestershire, 1500-1800* (London, 1992), p.202.

whom may enforce the obligation<sup>17</sup>. The creation of trusts was reinforced by the Elizabethan Statute of Charitable use (1601), which defined the proper objectives of charities for the poor. According to Jordan, about eighty percent of charitable funds were in the form of charitable trusts. Slack estimates the increasing numbers of charitable trusts between 1660-1740 doubled<sup>18</sup>. In the decades following the passing of the Statute of Charitable Uses, commissions were appointed to take charge of charitable trusts and investigate cases of their misapplications. However, misapplications occasionally occurred to alleviate the financing of poor rates, and in some cases, parish elites were reluctant to use profits derived from the charity's rent to improve the beneficiaries and embezzled in their capacity as the trustees of charities<sup>19</sup>. The commissioners empowered by the 1601 Charitable Uses Act repeatedly insisted that formal and quasi-formal relief should be separately administered, inasmuch as the trustees had dual identity as parish officers sought to reduce the poor rates, as administer of endowment. Therefore it was very common to stipulate that doles should be given only to those who were not already pensioners of the parish. The criteria of eligibility were quite restricted, so charitable endowments played a very significant role in the political life of the rural community and exerted profound influence over the field of force through which deference and subordination was socially reproduced. By the second half of the seventeenth-century, parish lands were increasingly designed to alleviate the financial burden on the parish created by compulsory poor relief, as Jordan emphasized the ubiquity of parish charities. The commissioners for charitable uses frequently insisted that present and future trustees were to be chosen only from the "better sort" of the community. As Hindle put it, town lands were integral to structure and process of governance in the substantial minority of parishes<sup>20</sup>.

## 2. Socio-economic context

### 2-1 Execution capability

As William Shakespeare's *Coriolanus* aimed at referencing an agrarian protest against the enclosure of the commons, the early modern crowd obviously recognized the illegal market manipulated by human greed<sup>21</sup>, during the years of the harvest crises before 1660, when England became a grain exporter, and from 1673 onwards grain producers 'were paid bounties to encourage them to grow for export.' In a bill proposed to Parliament in 1621, we can find artificial crop hikes in the four counties of Staffordshire, Worcestershire, Shropshire, and Warwickshire by the conspiracies of middlemen, who were monopolizing or engrossing the supplies of corn<sup>22</sup>.

In 1630, the Dorset bench lamented that 'the superfluous number of 'Maulters' who were one 'mayne Cause of the scarcitey of Corne' and likely to be the 'means of a Dearth feared to ensue', whereby ordered

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<sup>17</sup> A. Underhill and D. Hayton, *Law of Trusts and Trustees* (16th ed., Butterworths, 2002).

<sup>18</sup> W. K. Jordan, *Philanthropy in England, 1480-1660: A Study of the Changing Patterns of English Social Aspiration* (London, 1959), pp. 117-25; G. Jones, *History of the Law of Charity, 1532-1827* (Cambridge, 1969), pp. 16-56; P. Slack, *From Reformation to Improvement: Public Welfare in Early Modern England* (Oxford, 1999), p. 129.

<sup>19</sup> I.K. Ben-Amos, *The Culture of Giving: Informal Support and Gift-Exchange in Early Modern England* (Cambridge, 2008), pp.275-305.

<sup>20</sup> S. Hindle, "'Good, godly and charitable uses': Endowed charity and the relief of poverty in rural England, c.1550-1750", in A. Goldgar and R.I. Frost (eds.), *Institutional Culture in Early Modern Society* (Brill, 2004), pp. 164-188.

<sup>21</sup> B. Sharp and M. C. Fissel, *Law and Authority in Early Modern England: Essays presented to Thomas Garden Barnes* (Delaware, 2007).

<sup>22</sup> Joan Thirsk, 'Hom and thorn in Staffordshire: the economy of a pastoral county', *North Staffordshire Journal of Field Studies*, vol.9 (1969), pp.7-8.

‘according to the statute’ that no one could ‘convert any Graine into Mault’<sup>23</sup>. *Informations*, laid by recognized informers, in the quarter session record, accusing persons who broke various statutes mainly to do with trade, were registered at Sessions, and intriguingly the plea was occasionally noted with the nature of the offences. At Blandford session in 1631 (Dorset) twenty persons were respectively charged with engrossing or regrating sheep, grain, butter and cheese, and salt<sup>24</sup>.

In 1647, the inhabitants of Warminster (Wiltshire), which was the greatest corn-market with malting industries and second to Bristol in the west of England, did ‘commiserate the distressed condition of the poor people’ and petitioned the bench to suppress many affluent ‘Maulsters during this time of dearth’. We can find, from a list of maulsters at the end of the manuscript, the fact that such chief-inhabitants living in several regions as a seigneur, wealthy widow having an annual income of £40, a gentry having an annual income £100, bakers, drapers, clothiers, a cordwainer and so on, involved in business of ‘maulsters’, converting barley into malt<sup>25</sup>.

In 1648, the vestry of Mere parish, petitioned that the Justice of the Peaces would have much trouble with poor people because of ‘corne being now so scarce & y<sup>e</sup> price so high’ (‘barley being at viij s. the bushel’), ‘or else beyond y<sup>e</sup> reach of a labouring man’. The vestry urged the bench to arbitrate the dispute between the maulsters and the poor ‘for quieting the County’<sup>26</sup>.

Cumulatively, although the English county government was conducted by the magistracy despite of being devastated for more than ten years of civil war and political turmoil, who were elected from the most influential and eminent landed families, the very same gentlemen who were expected (in their role of magistrates) to protect the poor at the time of food shortage had a vested interest (in their role as farmers and rentiers) in keeping grain prices high in order to secure returns on their investment in agricultural improvements<sup>27</sup>.

## 2-2 Local context

From 1590s, the contemporaries experienced striking rapid population growth, price inflation and almost unrelieved immiseration as opposed to 1690s of demographic stagnation, price deflation and increasing formal poor relief expenditure. In the early seventeenth century formal poor relief of parish cannot have been enough to support the deserving poor, not least because of price inflation<sup>28</sup>. Therefore informal relief has remained very significant to the deserving poor for the first half of the seventeenth century at least<sup>29</sup>. In this section local governance would be discussed in terms of distributive justice of the commons after the deforestation of Gillingham royal forest.

<sup>23</sup> Dorset Record Office (DRO), QSM 1/1, fo.260v 1630.

<sup>24</sup> DRO, QSM 1/1, fos. 9v 1625; 45v 1626, 54r 1626; 300r-302v 1631; 411r 1633.

<sup>25</sup> Wiltshire & Swindon Record Office (SWRO), A1/110/1647I/188; A1/110/1648H/254; Steve Hindle, ‘Dearth and the English revolution: the harvest crisis of 1647-50’, *Economic History Review* (2007).

<sup>26</sup> WSRO, A1/110/1648T/160: Mere

<sup>27</sup> H. Inui, ‘Petitions for constructing and reforming Dorset houses of correction, c.1625-39’, *Proceedings of the Dorset Natural History and Archaeological Society* 131 (2010), 40-1.

<sup>28</sup> S. Hindle, ‘The growth of social stability in Restoration England’, *The European Legacy*, vol.5, no.4 (2000), pp.564-6.

<sup>29</sup> S. Hindle, *On the parish?: The micro-politics of poor relief in rural England 1550-1750* (Oxford, 2004), pp.276-7.

Until the nineteenth-century, Gillingham parish (Dorset), situated in medieval royal forest, covered an area of approximate 15,000 acres<sup>30</sup>, where the population grew very rapidly in the sixteenth century, but only very slowly thereafter: from the peak of 5.28 million in 1656, to 4.86 million over the next thirty years. The cost of foodstuffs rose almost six-fold over the course of sixteenth century<sup>31</sup>. The one hundred sixty-seven households listed in the 1524-5 lay subsidy suggest a population of approximately 793 people in Gillingham region<sup>32</sup>. The hearth taxes of the 1660s suggest a population of around 3194 people, divided among 743 households<sup>33</sup>. The parish register records show that there were 145 burials compared to 117 baptisms in 1560s, 281 burials to 436 baptisms in 1600s, 340 burials to 490 baptisms in 1620s, and 364 burials to 432 baptisms in 1630s: from the peak of 155 souls in 1600s, to 139 in 1610s, to 68 in 1630s, and minus 9 in 1650s<sup>34</sup>. These statics suggest that this parish was open, less manorialized community unable to discourage immigration and had sufficiently productive agriculture to accommodate demographic growth being up almost 4-fold from 1520s to 1660s.

In Gillingham in 1524-5, 154 men and five widows paid a total of £18 12s 6d. in tax. Only five were assessed on land, an indication of the dispersed nature of property-holding in the parish. Of the remainder (including fourteen missing), 154 paid on goods, and only one on wages. Adopting the categories devised by Wrightson and Levine, the distribution of wealth in the parish in the 1520s, it suggests that the about 42 % of population incurred costs in contingency tax (about 28.1% of total costs), suggesting the prominence of a stratum of wealthy property-owners of middling status<sup>35</sup>.

The proportion of householders exempted from payment of tax was 44.7 percent in the hearth taxes of 1674 in Gillingham. By the 1660s, records demonstrate a proliferation of cottagers and small-holders in Gillingham, according to two Hearth Tax returns that the hearth tax returns of 1664 listed no exemptions. But the hearth tax returns of 1674 listed the total chargeable hearths, chargeable entries and exempt households for each parish<sup>36</sup>. Most of the Dorset exempt had only one hearth; gentlemen averaged five hearths, esquires twelve, and knights eighteen. But five or more hearths make up only 10 % of the total. It is likely that over 80 percent of the population lived in houses with one to three hearths. As Machin mentions, 'if the substantial but unknown number of missing exempt could be added, these three categories would probably exceed 90% (pauper was 'a status indicated in exemption from liability to make hearth tax payments')<sup>37</sup>.

<sup>30</sup> The 'forest' means an area over which the King or Queen had hunting rights and which was subject to 'forest laws'. C.D. Drew, 'The forests of Blackmoor and Gillingham' in E. Roscoe (ed.), *The Marn'ill Book* (Gillingham, 1952), p.33; *Historical Monument in the County of Dorset Vol. IV. North*, Royal Commissions on Historical Monuments (1972), 27.

<sup>31</sup> E. A. Wrigley and R. S. Schofield, *The Population History of England, 1541-1871* (Cambridge, 1981); P. J. Bowden, 'Agricultural Prices, Wages, Farm Profits and Rents, 1640-1750,' reprinted in Bowden (ed.), *Economic Change* (Cambridge, 1990).

<sup>32</sup> The multiplier used here is 4.75, as suggested in E. A. Wrigley and R. S. Schofield, *The Population History of England, 1541-1871: a reconstruction* (Cambridge, 1981), pp.567-684.

<sup>33</sup> T. L. Stoate, *Dorset Tudor Subsidies granted in 1523, 1543, 1593* (Bristol, 1982), pp.147-8; The multiplier used here is 4.3, as suggested in Tom Arkell, 'Multiplying factors for estimating population totals from the hearth tax', *Local Population Studies*, 28 (spring, 1982), p.57.

<sup>34</sup> D.R.O., PE/GIL RE1/1, 1564/5.

<sup>35</sup> T. L. Stoate, *Dorset Tudor Subsidies granted in 1523, 1543, 1593* (Bristol, 1982), pp.147-8; K. Wrightson and D. Levine, *Poverty and Piety in an English Village: Terling, 1525-1700* (London, 1979), pp.33-5.

<sup>36</sup> C. A. F. Meekings, *Dorset Hearth Tax Assessments 1662-1664* (Dorchester: DNHAS, 1951).

<sup>37</sup> B. Machin, 'The houses of the Dorset Hearth Tax', in P. S. Bamwell & M. Airs, *Houses and the Hearth Tax: the later Stuart house and society* (York, 2006), p.74.

The numbers of taxpayers in Gillingham parish had grown by only 42.5 percent in the period 1524 to 1664, and the degree of pauperization as suggested by exemption from hearth tax payments in Gillingham parish was 44.7 percent in 1674, suggesting that this level of exemption were significantly higher than in Lancashire and average in Dorset<sup>38</sup>. Also these figures conceal very significant variations from a maximum of 89.6 percent in Motcombe tithing (44.3 percent of Gillingham Fee) to a minimum of 0 percent in Bugley tithing, Longham tithing, Milton tithing and Burton tithing ('tithing' may or may not coterminous with parish). The fact remains that 'variations of this kind mattered a great deal, precisely because the system of formal relief operated on a parish-by-parish basis'<sup>39</sup>.

In Gillingham, there were 202 tenants in 1624: ninety-one of which were cottagers holding less than four acres, half of which held cottages with less than one acre and were fifty new erected cottages. Most had no holdings at all, suggesting that burn full of poor increased and erected new cottages crossing the parish demarcation. The same is true in Mere (Wiltshire), which situated in the border on Gillingham forest, where over half of the ninety-eight tenants hold cottages with less than one acre. Gillingham and Mere situated within 'the main western cloth-making areas', as B. Sharp mentioned, 'there can be little doubt that the presence of a large number of cottagers who could not possibly support themselves from agricultural occupations, in an area with an important cloth industry, was more than coincidental'<sup>40</sup>.

### 3 Petitions and political experience

This section examines the role of petition expressed by defendants in the decree of Exchequer, whereby it illustrates how petitions against the land-readjustment of the commons (leading to the pauperization stemmed largely from haphazard exploitation) worked as instrument of governance to pursue social stability through judicial process.

At Gillingham in 1624, 'all or greatest part of the ffreeholders, Copieholders Tenants and inhabitants' participated in 'publique Court Meetinge', where they were shown a map of the bounds of the forest and given details of the proposals for enclosure<sup>41</sup>. The mnemonic importance is that the map introduced 'space discipline', as a 'medium of appropriation' to preclude customary claims, although private property was not made through maps alone<sup>42</sup>. They agreed and signed the book, which was circulated at the meeting. Next year, another meeting was held at the house of Francis Abbott at Motcombe to discuss their grievances. At this 'publique Court Meetinge', they refused to agree to allotments proposed by the commissioners or to be satisfied with allotments already made. The Attorney General began an action in Exchequer against them.

<sup>38</sup> H.R. French, *The Middling Sort of People in Provincial England 1600-1750* (Oxford, 2007), p.38.

<sup>39</sup> S. Hindle, *On the parish?: The micro-politics of poor relief in rural England 1550-1750* (Oxford, 2004), p.285.

<sup>40</sup> Buchanan Sharp, *In contempt of all authority: rural artisans and riot in the west of England 1586-1660* (1980), pp.159-60.

<sup>41</sup> P.R.O., E134/3 CHASI/EAST 17.

<sup>42</sup> A. McRae, 'To know one's own: Estate Surveying and the representation of land in early modern England', *The Huntington Library Quarterly*, 1993, 56:4, 342; J.B. Harley, 'Maps, knowledge and power', in D. Cosgrove and S. Daniels (eds.), *The Iconography of Landscape: Essays on the Symbolic Representation, Design and Use of Past Environment* (Cambridge, 1988), 285.

Below are some examples of testimonies of both plaintiffs and defendants at the Commission 'directed out of Court of Exchequer in Shaftesbury, Dorset, on March 12, 1627'<sup>43</sup>:

- Sir John Crake knight (41 years old), one of plaintiffs, told to the ninth interrogation that there was a 'publique meetinge' by some Commissioners, freeholders and tenants of Gillingham at the 'house of one Francis Abbott' in Motcombe of Gillingham parish for reformation of grievances and 'inlargem[en]ts of hiwayes', and he also said in deposition that 'Map' was published and subscribed by defendants, which included 'Baylifes walke'.<sup>44</sup>
- John Hyde (31 years old) of the parish of St. Andrews Holborne, London, who was under the direct supervision of Thomas Jenkins, crown surveyor, testified that he laid out the 'Roade wayes to London' left about seventy feets in breadth and also the 'high waye' from Shaftesbury to Gillingham fifty feets in breadth.
- Richard Shepherad of Poridge Hill yeoman, one of defendants, said that if the allotments shall be enclosed, they will not only be hurtful to all travelers by reason of the 'illnesse of the waies to the Market townes', but also very offensive to the 'poore Inhabitants of necessite'.
- Stephen Cradock (74 years old) of Mere (Wiltshire) testified that the allotments for tenants were set out in 'high roade waies', which would lead to be 'very greate inconvenience for all passangers'. Also he said that if the scheme for allotments and high ways carried out, it would be difficult to purvey the materials to make 'the waies passable', and the enclosure would lead to 'a greate impoverishing if not the utter beggeringe' for most inhabitants. He rebuked sharply the enclosure as 'p[re]tended' from an economic perspective, in that the inhabitants could not 'travell to next market townes for the dispatch of their necessarie busuinesses'.
- John Cane of Motcombe, yeoman testified that many of their several allotments laid out in 'high Roade waies' whereby there would be 'verie manie suits to the greate trouble' and 'impoverishing of the said place'.
- George Pergat of Srower Eastower adjacent to Gillingham parish, husbandman, testified that as long as viewing the bounds it would be impossible to make the 'waie leadinge from Shaston (=Shaftesbury) to Sheerebourne (=Sherborne)' passable.
- John Gatehowese of Burton in the Gillingham parish, yeoman, testified that if enclosures shall proceed according to their allotments, it would prove 'verie Noysome to travelers et hurtfull to the Inhabitants of Gillingham'.
- Marks Haskell of Charleton Musgrave (Somerset), testified that if the enclosures should go on, the 'waies leadinge to severall market townes wilbe not passable', for there were 'no stones nere to be had with anie Conveiniene for the makeinge et Repayringe the said waies'.
- John Wolridge, yeoman, gave testimony about the inefficacy of the land readjustment which leads to be 'verie p[re]judicall to the Inhabitants' and 'manie pore men'. More importantly, he sent a petition to Arthur Pyne, a Somerset justice of the peace after he had been fined £200 for his part in the riots at Star Chamber in 1630, and then succeeded in ordering to compensate for the poor of Mere who had received no compensation on deforestation in 1650s<sup>45</sup>.

The petitions consist of testimonies, giving oral reports of their problems to the English state, and playing a

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<sup>43</sup> P.R.O., E134/3 CHASI/EAST 17.

<sup>44</sup> The map of Gillingham Forest (1624) intended to guide inhabitants' attention to 'highways', which lead to the 'well-frequented' market towns. Shaftesbury and Sherborne that Thomas Gerard (1592-1634) commented on. (DRO, D1366/1, Map of Gillingham Forrest (1624); J.H. Bettey, Topographers, antiquarians and travelers in Dorset', in M. Brayshay (ed.), *Topographical Writers in South-West England* (Exeter, 1996), p.80) In this way, the map seems to have captured the growing interest in and necessity of consolidating the infrastructure for stimulating market. In this sense, the map was among media which Rose and Miller called 'inscription devices', and offered a 'technology of governance'. (N. Rose and P. Miller, 'Political Power Beyond the State: Problematics of Government', *British Journal of Sociology*, 43 (2), 1992, 185; M. Crang, 'Space in theory, spaces in history and spatial historiographies', in B. Kumin (ed.), *Political Space in Pre-industrial Europe* (Ashgate, 2009), p.252.)

<sup>45</sup> Buchanan Sharp, *In contempt of all authority: rural artisans and riot in the west of England 1586-1660* (1980), pp.111-2.

role of ‘information gathering’<sup>46</sup>. The petitions expressed concern about the possible emergence of pauperization both of Gillingham and Mere inhabitants due to traffic disturbance of route to markets, the road impediment as most highly correlated factor with ‘poor-relief’. As Thomas Bannister (60 years old, yeoman) mentioned, the each defendant was among ‘Jury’ or ‘twelve’ of Gillingham and Mere parishes<sup>47</sup>. The defendants were arguably chief-inhabitants who were liable to be overwhelmed by the problems visited upon their ‘little commonwealth’ by some hard times and were anxious about the poor-relief policy. The chief-inhabitants both of Gillingham parish (Dorset) and Mere parish (Wiltshire), had dual identity – being officers as well as ratepayers. Petitions displayed clear agency in pursuing their political agendas and induced chief-inhabitants to play a crucial role as arbitrators, who settled disputes and thus set the overall tone of local social policy.

On March 20 in 1627, there were unanimous complaints of the witnesses who appeared before the Commission at Shaftesbury. The announcement of the public court held in August, made by another Commission appointed for settling complaints was read in churches of Gillingham and Motcombe:

...let any tenant compensate to his Majesties Commissioners at the Lyon in Shaston upon Tuesdaye the one and Twentieth day of August 1627 by Tenn of the Clocke that day and then and there make good his complaynt that some remedy may be given...’<sup>48</sup>

The commissioners produced five very long and closely written pages recommending changes in the original scheme, alternations in the allotments of land and new routes of roads and lanes<sup>49</sup>. However Sir James Fullerton (Surveyor general of ‘the landes and land reuenews of the sayd moste worthy Prince Charles’), who was a chairperson of commission and former tutor that Charles I, granted a lease of the Gillingham royal forest at an annual rent of £ 11 for forty-one years, proceeded to carry out the original plan. Immediately afterwards, the insurrections popped out here and there. William Whiteway, Dorchester merchant, noted in his diary that ‘In this moneth (in December, 1628) the inhabitants of the forest of Gillingham rose up against those which went about to inclose it, and afterwards overthrew their works, and misused the Baileys that were sent thither with supponas to serve them, but this stir was soon quieted by the Shrieves’<sup>50</sup>.

Four years later, in 1631, the chief-inhabitants of Gillingham parish were stuck in a bad situation: they were ‘soe much ov[er]charged with multiplicity of poore’, and they could not ‘maintain them’ (notwithstanding they had been ‘very highly rated towards their releife’), so they prayed that some other parishes ‘neere adiacent’ might be taxed for their relief and the bench ordered rates-in-aid for them<sup>51</sup>. Thus

<sup>46</sup> S. Hindle, ‘Dearth and the English revolution: the harvest crisis of 1647-50’, *Economic History Review* (2007), 13.

<sup>47</sup> EI34/3 CHASI/EAST 17 97485.

<sup>48</sup> J. H. Bettey, ‘The revolts over the enclosure of the royal forest at Gillingham 1626-1630’, *Proceedings of the Dorset Natural History and Archaeological Society* 97 (1967), 22.

<sup>49</sup> J. H. Bettey, ‘The revolts over the enclosure of the royal forest at Gillingham 1626-1630’, *Proceedings of the Dorset Natural History and Archaeological Society* 97 (1967), 22; R. Hoyle, ‘Disafforestation and drainage’, in R. W. Hoyle (ed.), *The Estates of the English Crown 1558-1640* (Cambridge, 1992), p. 370.

<sup>50</sup> J. H. Bettey, ‘The revolts over the enclosure of the royal forest at Gillingham 1626-1630’, *Proceedings of the Dorset Natural History and Archaeological Society* 97 (1967), 21; T. D. Murphy, ‘The diary of William Whiteway of Dorchester, County Dorset, from the year 1618 to the year 1635, with notes and introduction’, unpub. Ph. D., University of Cambridge (2002), p. 142.

<sup>51</sup> D.R.O. QSM 1/1, fol. 333r 1631; Hideaki Inui, ‘Petitions for constructing and reforming Dorset houses of correction, c. 1625-39’, *Proceedings of the Dorset Natural History and Archaeological Society* 131 (2010), 39-40.

'petitions' based on the delimitation of poor-relief seemed to have a negative effect on parish tax-abatement policy but a positive effect on political experience at the lower level.

#### 4 Governing the common(s) through community

Therefore the priority after deforestation was 'compensations for the poor-relief'. The attitude of the Protectorate government in the 1650s towards the royal forests, were similar to that in the reign of James I and Charles I. At the deforestation of Gillingham royal forest during 1620s the total compensation provided for the poor was 220 acres except for the cottagers of Mere who instead received one-acre allotments. Although the total compensation for the impotent poor depend on charity to survive were fifteen acres made to the poor of Motcombe, eight acres made to the poor of Burton, and fifty acres made to the poor of Gillingham, it was not until 1652 that eighty acres were set aside for the poor of Mere<sup>52</sup>.

In 1651 John Kirk (son of George Kirk who Charles I let the manor of Gillingham and the two-thirds interest settled on Lord Fullerton for a fine of £3000 and an annual rent of £108.6s.8d, holder of one-third of the forest) and the Earl of Elgin (Fullerton's stepson and executor, a possessor of the other two-thirds) agreed with the thirteen trustees who were John Awbery (Lord of Mere Manor, gent.), Richard Greene (gent., attorney) and William Rogers, Jasper Banister, Henry Clerke, Edmond Hemming, Emanuell Stephens and Richard Fisher, 'Authorized, Constituted and appointed' six yeomen 'of the ablest and of the best quality of Mere Town and Parish, on behalf of all inhabitants and the poor of Mere parish on January 20<sup>th</sup> of 1651. The 'Articles' can be summed up under four headings<sup>53</sup>:

1. To legalize that the thirteen trustees enjoyed the enclosed 80 acres and they or their 'heirs and assigns' shall receive the 'rent issue and profit' from 80 acres 'for the Better relieving the Poor from time to time inhabiting in Mere' 'in their considerations think fit'.
2. On the occurrence of 'eight members dying', the 80 acres of the common shall be to 'convey to the survivors' and eight others of 'the most able and discreetest Inhabitants' of Mere that the survivors 'shall make choice of'.
3. The 100 acres shall be enclosed and enjoyed for the lord of Mere manor and inhabitants of Mere. The common rights of the rest of deforested lands were extinguished.
4. In the case that somebody destroyed the mounds, bunds, gates or fences of enclosed 80 acres, they shall be prosecuted by the mutual aid and assistance.

In 1652 John Kirk and the Earl of Elgin as 'equitable owners' conveyed the eighty acres to the thirteen trustees as 'legal owners' for 'the management of the business' for charitable use and to virtually wipe out the rising that had erupted intermittently during 1640s<sup>54</sup>. Nevertheless, they not only 'took the profits'

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<sup>52</sup> Buchanan Sharp, *In contempt of all authority: rural artisans and riot in the west of England 1586-1660* (1980), pp.146, 251. The Protectorate regarded the deforestation and sale of royal forests as 'financially benefiting both the Commonwealth' but 'undeveloped resources that bred idle, vagrant, pilfering and pemicious persons'.

<sup>53</sup> S.A.R.S., DD/HLM box2.

<sup>54</sup> Buchanan Sharp, *In contempt of all authority: rural artisans and riot in the west of England 1586-1660* (1980), pp. 87, 237-8. Elgin had obtained a grant of the two-thirds in fee simple in January of 1632. John Kirke bought the fee-simple interest from the trustees appointed to sell the late King's estates (the Crown's freehold interest in Kirk's one-third of the forest was among the estates included in the Act for the sale of Crown lands on July 16, 1649). Cf. Buchanan Sharp, *In contempt of*

from the 80 acres, but they also refused the management of the business and unsettled the plaintiffs and their tenants enjoying the rest of commons within the deforested areas. This conflict of interest and governance scandal (camouflaging the controlling intention & the pursuit of self-interest) is surely not irrelevant to the issue of 'Elite capture'<sup>55</sup>.

In 1653, Thomas Earl of Elgin and John Kirk, plaintiffs, executed the bill of complaint in the high court of Chancery against the thirteen trustees of Mere parish land who too often abused their control over endowed funds. The defendants pleaded that they tried to act as business managers 'according to the Articles' but the enclosures of eighty acres 'had been demolished since the Bill expired'(1651), and said that the eighty acres should remain enclosed and be cared for 'Relief of the Poor of Mere', leading to be a great comfort to the meaner sort of the parish and produce 'a general good to the whole inhabitants'<sup>56</sup>.

As a result, in 1656, the Chancery court decreed that the 'Agreement and Articles' were ratified, and this was confirmed and performed by all the parties and all other inhabitants of Mere parish and town. The decree of Chancery Court authorized the thirteen trustees and their heirs in trust to distribute the income from the 80 acres for relieving the poor 'in their discretion' on the behalf of all the rest of the inhabitants of Mere.

This quasi-collusive action on the ground of the elite capture and governance scandal led to the very essence of local governance: That is, "Formation of select vestry"<sup>57</sup>: On the occurrence of 'eight members dying', the 80 acres of the common should be conveyed to 'the survivors' and eight others. These others should be 'the most able and discreet Inhabitants' of Mere that the survivors 'shall choose from', and the members should be augmented by co-option. Just as the select vestry constituted the public identity as a corporation, the trustees were legal guardians of the endowed funds of 80 acres through which parish administration was financed<sup>58</sup>. Although the oligarchy of the trustees exercised financial power in this case where they administered town land on behalf of the Mere inhabitants as a whole, it was not unknown whether or not their annual accounts or audits were made before other parishioners.

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*all authority: rural artisans and riot in the west of England 1586-1660* (1980), p238.

At that time, the common symbolized a soil of sin that did 'increase, not lessen poore'. For instance, a pamphlet written in 1653 by Adam Moor mentioned the 'great Nurseies of Idleness and Beggery' that were 'Ale-houses and Commons' and that the commons were 'Nurseries of Thieves and Horse-stealers'. Also in his pamphlet, Sylvan Taylor argued that the commons should be divided into four parts by enclosure: for cottagers, landlords, freeholders and copyholders, and labourers for providing work (A. Moore, *Bread for the Poor* (London, 1653), pp. 21; H.P.R. Finberg, J. Thirsk, S. Pigott (eds.) *The Agrarian History of England and Wales, Part 2: Agrarian Change, 1640-1750* (Cambridge, 1985), pp.319-21; Taylor, S., *Common Good: or the Improvement of Commons, Forests, and Chases by Inclosure* (1652)).

In most deforestation, land was specifically assigned for the maintenance or support of the poor<sup>54</sup>. The better sort (chief inhabitants) regarded the land as a charity, and the income from the land was to be used to support the poor of Mere who had received no compensation (Buchanan Sharp, *In contempt of all authority: rural artisans and riot in the west of England 1586-1660* (1980), pp. 148-9).

<sup>55</sup> In this paper, 'elite capture' is a phenomenon where the chief inhabitants or local elites, take the lead in decision-making processes, but the vulnerable sections of the community like the poor and women, less political/economically powerful group nominally participate in the arguments, but are actually alienated from the process.

<sup>56</sup> SARS, DD/HLM box2.

<sup>57</sup> The sluggishness progress of welfare provision in the countryside meant that the 'vestries remained relatively rare until the civil war: only the harvest crisis of 1647-50 finally provoked the overwhelming majority of parishes to appoint overseers for the collection of poor rates'. (S. Hindle, 'The political culture of the middling sort, c.1550-1700', in Tim Harris (ed.), *The Politics of the Excluded, c.1500-1850* (Palgrave, 2001), pp.127-9)

<sup>58</sup> Steve Hindle, "'Good, Godly and Charitable uses": Endowed charity and the relief of poverty in rural England, c. 1550-1750', in A. Goldgar and R.I. Frost (eds.), *Institutional Culture in Early Modern Society* (Brill, 2004), 185; Hindle, 'The political culture of the middling sort, c.1550-1700', in Tim Harris (ed.), *The Politics of the Excluded, c.1500-1850* (Palgrave, 2001), pp.125-9.

Consequently, the court ordered that the thirteen trustees were confirmed to be in public trust having responsibility for management of distributing the rent profits for public welfare policy—relieving the poor & reducing the burden of poor-rates on the inhabitants. By this application of the public trust doctrine to local governance, the parish elites were not only accredited to have discretionary power to fulfill the distributive justice of the common, but they were also legitimized to have their multi-generational authority as local governors on the condition that they ensured the beneficiary right for the equitable owners. Thus the petitions functioned as instruments of local governance to reconstruct the set of institutional framework of governing the common through ‘Community’<sup>59</sup>.

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<sup>59</sup> The ‘community’ was mobilized through participatory & institutionalized framework, where ‘values, identities, allegiance, trust and mutual dependence’ became strategies of governance. Cf. N. Rose, ‘Community, citizenship and the third way’, *American Behavioral Scientist* 43 (9), 2000, 1401. In other words, the community was, at the highly localized level, harnessed to the task of governing. Cf. O.J. Sending & I.B. Neumann, ‘Governance to Governmentality: Analyzing NGOs, States, and Power’, *International Studies Quarterly* (2006) 50, 656.

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