Urban Commons and Public Space in the Medieval and Early Modern City

As I said in my introduction to last week's talk – the first in a series of four events to mark the 800th anniversary of the Charter of the Forest – the purpose of the series is to use the opportunity of the anniversary to address a range of issues that are at once historical and contemporary and of both academic and (hopefully) public interest: the depletion of the commons and conflicts about natural resources; the privatisation of land use; the relationship between landscape, memory, and identity. My own interest in remembering the charter lies in what I think of as the symbiotic relationship between landscape and ideas and practices of citizenship.

With this in mind, my paper tonight has three parts. First, I am going to talk about the Charter of the Forest to draw out what I think are its most salient points and to explain, briefly, its historical significance. Secondly, I will turn my focus to the medieval and early modern city. The connection to the Charter of the Forest is this: that the underlying issues that gave rise to the writing of the charter were also, and perhaps most keenly, contested within an urban landscape. And thirdly, I want to show how there are echoes of these past conflicts in current debates within many contemporary cities about the boundaries of the public and the private.

The product of political conflict, the Charter of the Forest had several aims:

First, it aimed to limit the king's rights, in two senses: i. through closer regulation of the power of the forest officials, who exercised the much-hated forest law, which was essentially an expression of the arbitrary will of the king. And ii. through a reduction in the size of the royal forest, which in the late 12th century included perhaps as much as 1/3 of land in England.

Secondly, the Charter of the Forest tried to protect the private property rights of landholders within the forest. They were pardoned encroachments on the forest, allowed to clear and cultivate land under royal licence, and to do with their land what they wished (ditches, ponds, hedges, hunting), so long as they did not damage the property of their neighbours.

Thirdly, in order to achieve these other aims, the Charter of the Forest was careful also to acknowledge the existence of rights of common, which were not to be reduced, compromised, or surrendered.

According to clause 1 of the charter, woodland that belonged to the crown in its private capacity and that had been made subject to forest law was to remain forest 'saving common of pasture and other things in that forest to those who were accustomed to have these rights'. 'Pasturage' (also known as 'herbage') was the right to graze animals on woodland and meadow.

Clause 9: every free man was to have his right of 'pannage' in the forest (the right to feed and fatten pigs on fallen acorns and beech-mast – nuts of beech trees).

Clause 14: a levy known as 'chiminage' (payable to forest officers for passage through the forest) was to be paid only by those described as 'merchants', who came into the forest to

buy wood, timber, bark, and charcoal for sale elsewhere. Local inhabitants, who had a right to collect wood for subsistence (building, fencing, fuel) did not have to pay it. This was a reference to the common right of 'estovers': gathering of wood.

In trying to reconcile, in a pragmatic and concise way, the interests of many individuals and groups who had a stake in the countryside and who valued it for different things (recreation, subsistence, property), the Charter of the Forest made two important interventions. The first concerns the relationship between landscape and power. The second relates to the relationship between land ownership and land usage.

On the one hand, the natural landscape, which up until then had been the space within which royal government had projected its power, was now to be somewhere that royal authority could be negotiated and even resisted. While Magna Carta promised, in a rather abstract way, the rule of law, the Charter of the Forest tried to restrict royal authority through its delineation on the ground. It made it necessary to hold perambulations of the forest, in order to mark out boundaries, to define and therefore limit the power of the crown. The boundaries between what was or was not permissible needed to be written into the landscape. In demarcating territory, through human agency, the power of government was made visible, real, and tangible, yet also containable. Government might be projected in space, but it was also in space that it was most effectively resisted. Space was not only the place in which politics happened; it was the object of contestation in its own right. Space – the landscape – was one of the stakes of politics.

On the other hand, the property rights of landholders within the area of the royal forest were to be extended and safeguarded, but not at the expense of rights of common that they, but also a wider group of people, enjoyed. The Charter of the Forest did not codify in law all commoning rights; it did not establish the concept of the commons, the origins of which in fact, in a British context, lay in the pre-Conquest period and perhaps earlier. But it made clear that the exercise of commoning rights was predicated on the essential difference between land ownership and land usage. Rights of common were – and are – rights of access to and use of another's land, in which individuals and groups other than the owner of that land claim certain entitlements.

What is the connection between the Charter of the Forest and the medieval and early modern city? Disputes about boundaries and about rights, about the politics of space, which lay at the heart of the Charter of the Forest, were especially fierce and frequent within the urban landscape. The issue of space may have been more acute in towns than in villages because they were places in which large numbers of people lived in close proximity. But there was another reason: it was linked closely to an urban-based concept of citizenship, which was defined inherently by a language of rights, liberties, and privileges. This was a language that could also be mapped territorially and that gave citizens an extraordinary spatial awareness of the world that they inhabited.

My way into this world is through a discussion of the practices of urban commoning, which may be surprising given that rights to cut turf or peat for fuel, fishing rights in ponds or

streams, or the right to take sand, gravel, clay, stone, or minerals from the earth, seem more appropriate in the countryside than in the city. Yet commoning rights were important in towns and cities. Some urban centres had their own pasture lands, which were owned by the town corporations, but many others had claims to land that belonged to neighbouring landowners and that townspeople might use to graze cattle, sheep, and horses, from which they might draw a supplementary income. Agriculture was not divorced from the urban economy. But commoning rights, I want to suggest, had a wider significance.

The boundaries of the areas over which townspeople claimed commoning rights were frequently the same as the town boundaries (York, Southampton, Coventry). They often included the areas of archery butts, necessary for the training of the training of the civic militia, whose function was to safeguard the urban community. I don't think that the shared boundary was a coincidence: it expressed the idea of the town as an economically self-sufficient and politically self-governing, autonomous community. These same boundaries were perambulated or ridden each year on an occasion generally known as 'riding the bounds', which was led by the mayor and governing elite, but who were often accompanied by members of a city's trade guilds and by the city's freemen (known as burgesses or citizens). These practices continued well beyond the medieval period. And the townspeople who rode or walked the bounds were primarily the citizens.

In the medieval and early modern period citizenship did not involve the possession of a passport; it was not something bestowed by the state; this was an urban-based notion of citizenship, in which a citizen was a freeman of a particular town or city and was made a citizen only after he had sworn an oath to the city corporation. Citizens were almost exclusively men; they were householders; they typically belonged to a trade; and they claimed to enjoy a range of rights, one of which was the right of access to common land. Liberties and rights could be measured on the ground. A sense of citizenship was, quite literally, grounded in the soil. To be deprived of access – to common land or to any kind of open space – was to lose one's civic liberties: it was a form of exclusion, which was associated with other types of disenfranchisement.

I want to show you what I mean with reference to the city of Durham. Durham has quite a complex history. In the medieval period Durham consisted of not one but six settlements: including the peninsula, where we are tonight, surrounded by the castle wall, and the Bishop's Borough, sometimes known as the Borough of Durham, the centre of which was the market place, but which also encompassed the area across Framwellgate Bridge to the west. Each settlement had a lord: either the bishop or the cathedral priory. The religious changes of the 1530s and 1540s brought by the Reformation coincided with a growing desire for urban independence. In 1565 Bishop James Pilkington issued a charter of incorporation, which united the different areas of Durham, including the suburb of Framwellgate, into a single entity, under the government of an alderman and a council of twelve leading burgesses. In 1602 Bishop Tobie Matthew reincorporated the city, renamed the alderman the mayor, and gave Durham a new government consisting of twelve aldermen and twenty-four common councillors. All of this looked good for the city of Durham and for the aspirations towards self-rule held by the burgesses. But with a new

bishop in the form of William James came a new attitude towards the city. James was very keen to exercise what he believed were the bishop of Durham's traditional rights of lordship over the city. These were best enforced through the appropriation and domination of space.

I want to summarise quickly the details of the conflict that ensued, which came to a head in 1610 when a lawyer working for the bishop by the name of Edward Hutton tried to revive the bishop's court in the Tollbooth, the court house located in the market place, but since 1565 the site of Durham's town hall and from 1602 the home of the mayor's court. When the mayor of Durham went to enter the Tollbooth, he found Hutton, the lawyer, 'sitting in the Maiors place'. The mayor threatened 'to pull the said Edward Hutton out of the said place but could not'. A burgess who 'came hastily into the said Tollebooth stept up on the table and with both his hands tooke the said Edward Hutton by the shoulders and puld him forth of the place'. The lawyer and his associate were 'thrust … out of the said Tollebooth downe the staires into the market place', where 'diverse railing speeches' against them were made, and the burgesses gathered in solidarity with their local leaders, who went back into the Tollbooth to hold the mayor's court. Here we see the occupation of the public space of the market place, and then the re-occupation of another public space, the town hall. The bishop of Durham, unsurprisingly, took the city corporation to court.

The court case is fascinating because the witnesses who were called, some for the bishop and some for the city corporation, had very different views on what constituted Durham and on who the city of Durham was for. There were multiple, contradictory, and competing ideas of the city. The flashpoint was the city's boundaries, at least part of which were delineated by the lands over which the citizens asserted rights of common. Behind the matter of where precisely the city's borders lay were contested questions about the meaning of citizenship, about identity, and rights. And it was territorially, in the delineation of space, and in disputes over land and jurisdiction, that different ideas of citizenship were both articulated and forged. This was a stronger sense of citizenship than protesting and complaining about wrongs; it was, more actively, the assertion of rights and the advancing of claims.

Witnesses for the bishop described a small geographical area, one in which the bishop was supreme, where citizens swore an oath of citizenship to the bishop and to uphold his authority. By contrast, Durham could be seen to occupy a much larger geographical space. Asked how far Durham extended geographically, witnesses for the corporation said, simply and without qualification, it consisted of 'the Cyttie of duresme and also the streetes called Claporth and Framwelgate'. It was a single, unitary authority, which acknowledged publicly at least no separate areas of private jurisdiction, such as the Durham peninsula. Durham's incorporation and reincorporation in 1565 and 1602 as one, undivided body politic under the authority of an alderman and later mayor can only have made the existence of the bishop's liberty – located in the spiritual heart of the city and administered from the castle – even more problematic.

Now, the power of the bishop of Durham was unusually extensive and enduring. BUT Durham was like many medieval cities, where common lands were an integral part of the collective identity of the city, where town commons were perceived as open spaces to

which citizens should have access, and where enclosure of any sort – from the erection of hedges and gates outside the walls, to the construction of walls within them – was a recurring source of grievance. Common land and public space were regarded as the same thing. And citizens were animated by, and routinely policed, the boundaries between the public and the private, and opposed – violently at times – what they thought of as the privatisation of land. Privatisation meant exclusion from space, and the loss of rights that accompanied it.

What about politics in the contemporary city? There are strong parallels between the medieval and the modern city. The immediate context is different. This time, the driving force is a reaction to what seems to be the triumph of neo-liberal values, which in every way prioritise the private over the public (housing, services, or work), and which have gained an even greater hold in British cities over the past ten years in the wake of the global financial crash and the dogma of austerity that has led councils to sell public spaces, whether parks or thoroughfares or squares, to private property developers and corporations. There are calls for the creation of 'urban commons', extending beyond community gardens and allotments to involve local cooperation in the pursuit of the public good. There are concerns about the privatisation of public space in cities and the creation of so-called POPS (privately owned public space), which others have nicknamed 'pseudo-public space'. These are spaces defined in theory by the difference between land ownership and land use, and are seemingly open and accessible to the public, but because they are privately owned, in fact they are governed by rules, made by the landowner, which restrict how they can be used. The rules are not always made public, and you don't know that you have broken them until you have done so. During the Occupy movement of 2011-12, an Occupy London camp that set up outside St Paul's Cathedral had initially tried to assemble in Paternoster Square, site of the London Stock Exchange, but was prevented from doing so by a High Court injunction that made it illegal for people protesting to enter and remain in the square. A recent Guardian investigation produced a map of around 50 of these so-called POPS in the city of London: they include, interestingly, the area immediately around City Hall, the office of the mayor of London. In the same way, medieval cities – and London was no exception – were honeycombed by many different franchises. The only difference is that in the medieval city the urban enclosures had walls and were clearly visible. There is growing opposition to these initiatives, as the recently announced collapse of the London Garden Bridge project across the Thames demonstrates.

And what is so interesting in the talk about the creation of 'urban commons' and in the resistance to privately owned public spaces is how much it is infused by the language of citizenship. Who and what is the city for? These are questions as vital now as in the past. The answers will be different because the identity of the citizen is different; but the fundamental point is the same: it was in conflict about land, and about the tensions between land ownership and land use, to which the Charter of the Forest was witness, that ideas and practices of citizenship were shaped and enacted.