Private carriage roads in Inclosure awards

This paper was prepared to draw together examples of private carriage roads in inclosure awards which, from their description or connecting highways, were public roads, not 'private' in today's sense of exclusive to specific persons.

Its purpose is to provide the argument that the decision in the case of *Dunlop*[1] is not applicable to all awarded private carriage roads; that decision should be applied only to the road in the award considered in that case.

Having grown beyond its original outline, the paper is recognised as unwieldy and would benefit from re-structuring, however, the contents still fulfils its purpose to inform those working on behalf of the British Horse Society of private carriage roads which contradict the decision of *Dunlop*.[2]

This is a work in progress and is therefore marked as draft. Any suggestion on re-structuring for clarity and additional examples are welcome to access@bhs.org.uk.

An archive of images and transcripts of the Acts, Awards and plans for the examples of inclosure which will be available with the final publication.

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[1] Dunlop v Secretary of State for the Environment and Cambridgeshire County Council, Queen's Bench Division (Sedley J), 29 March 1995. 70 P. & C.R. 307, 94 LGR 427
[2] *Ibid*

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Introduction

Inclosure was the process of changing land held in common to held in severalty, that is, from being farmed by many inhabitants, each with strips of land and rights on the commons, to being farmed by a few. Inclosure began in the mediaeval period but the majority of inclosure was between 1750 and 1850, peaking in the early nineteenth century. It was a significant and costly process which included an Act of Parliament, an Award and, usually, a map, undertaken by Commissioners employed by the people seeking inclosure. It was commonly funded by sale of land. While elements were similar, there was a wide variation in what type of land was inclosed, how inclosure was accomplished and the wording in acts and awards, although the latter became more consistent after the first general Inclosure Consolidation Act 1801.

The process included provision for stopping up and creating roads; with the new roads commonly in two classes, public carriage roads and private carriage roads, but various other terms were also used, such as halter road.

Today, it is widely assumed that 'private carriage road' in an award meant for use by specific persons only and this view has been upheld in judgments relating to two awards;[3] however, in the inclosure period, the term was not always clearly defined and elements of some awards are inconsistent with the roads so awarded being private roads, they were intended as public roads.

[3] *Dunlop v Secretary of State for the Environment and Cambridgeshire County Council*, QBD [1995] 70 P. & C.R. 307, 94 LGR 427 and *Buckland & Ors v Secretary of State For Environment Transport & Regions* [2000] EWHC Admin 279

This article shows that the award of a 'private carriage road' did not always mean it was exclusive in right of use and it is therefore unreasonable to ascribe today's meaning of a private road to every instance of private carriage road in every award.

The article is constructed with summaries of the example awards, liability to repair, highway law and a conclusion. The appendices contain the full text which has been summarised.

To avoid tedious repetition, the term 'award' is used throughout as an abbreviation to include the enabling Act of Parliament, the Award and the Plan; all three being generally crucial to interpretation.

Summary of example awards (Appendix 1)

Analysis of a random selection of awards reveals a wide variation in terms used to describe roads. 'Public carriage roads' were a category of public road with a minimum width and were usually between thirty and sixty feet. They were commonly existing turnpike roads. Comparing with their status today, they are likely to correspond to an A or B class road, but not always, as importance of roads may change over centuries, to become more or less significant.

'Private carriage roads' are more varied and fit a range of meanings from less important or minor roads used by the public, 'local roads' or 'parish roads', to roads which were 'prviate' in the meaning ascribed today, for use exclusive to specific people.

In some awards, 'private' appears to relate to the burden to repair rather than to the public right of way. In others, 'private' meant an access route for named persons or the occupiers only, which are often dead ends to allotments and may have remained occupation roads or been subsumed into fields.

Some awards set out private carriage roads to be *"commodious or convenient to the public"* or *"for the use benefit and convenience of all and every person and persons who may have occasion to use the said roads"*.[4] It is hard to see how this was other than provision of a public right so the commissioners must have had a reason for setting out as such rather than a public carriage road.

Some awards provided private carriage roads only but covered areas too large to not have had public access. Those roads are public today and appear to have been public since their award so it is difficult to draw a conclusion other than that they were intended as public at the time.[5]

Inclosure was generally of land where roads and other rights of way already existed and evidence from maps before and after inclosure shows that the roads sometimes continued

[4] E.g. North Petherton, Somerset 179
[5] E.g. Martock, Somerset 1810 520 acres

on the same routes after inclosure (example 0). After the Inclosure Consolidation Act 1801, commissioners could only award a public carriage road by widening to thirty feet (or whatever the local act specified) which, including setting it out and making it up, was a considerable cost. It seems unlikely that they would go to this expense, especially where existing roads were constrained by natural or artificial features, therefore awarding a private carriage road was conceivably their pragmatic attempt to continue the existing status and physical character of a road.

Sometimes private carriage roads were to be *"maintained in like manner as public carriage roads"*[6] or in *"like manner as the other Roads and Highways / not being Turnpike Roads"*[7] or *"repaired by the Surveyors of the Highways … as part and parcel of the General Highways of that Parish".*[8]

This may have meant under the statute duty, therefore were public roads, but may have meant simply to the same standard. In this respect, the term public reflects state interest, relating to the soil or materials used to build the road using statute duty, not the common law or modern sense of the right to pass. If the phrase meant to the same standard as the public roads, that seems excessive and illogical for private roads for occupiers, who would surely make their own decision about the standard of maintenance of their road. Equally, it may have meant the method by which repair was organised, through local rates, the highway surveyor, etc. In the last example, Brampton, one of several private carriage roads was to be repaired by the surveyors (not the adjacent owners like the others) because of its *"great public Traffic and Travelling"*, so clearly not a public road.

Some private carriage roads were awarded as a private carriage road and public bridleway, public bridleroad, public pack or prime way, or public footroad, any of which appear to suggest the use with carriages being exclusive to user—today's private road—coincident with a public bridleway. Such description could also be consistent with the liability for repair being split: if the way was out of repair to pass on foot or horseback (as a bridleroad), then the remedy lay by indictment (see 0) to the Surveyor of Highways (the whole parish); if the road was out of repair for vehicles, then an action could be taken against those responsible for repair—the village, a person or body. However, this supposition has not yet been substantiated beyond it being a feasible explanation for some of the phraseology and actions at the time.

These examples reflect a variety of intentions in awarding a private carriage road ranging from a road for the expressly specified use of particular allotment holders, maintainable by them, to a road which is expressly available to anyone who had occasion to use it, maintainable by the parish, so public in use and maintenance liability. It is therefore not possible to say that all awarded private carriage roads were or were not public—each road will sit somewhere in that range depending on the award.

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[6] Mepal, Cambridgeshire 1854
[7] Shepton Mallet, Somerset 1782 QRDe 27
[8] Brampton, Derbyshire 1831 Q/RI/22a and b

Two points appear important: the liability to repair, and ownership of the land over which the road passes. This is the basis of the fundamental difference between a way over private land for use with carts by a vaguely defined group, *"each and every person",* that effectively constitutes the public—a public right of way—and land on which a carriageway has been constructed using state funds and clearly defined as for the use of the public—a public carriageway or highway.[9]

(Note: The number of awards included in the examples from Somerset is due only to ease of access to records for that county.)

Summary of historical origin (Appendix 2)

Roman law divided roads into public and private by ownership of the soil; the soil of the former being owned by the state and the soil of the latter being owned by an individual or body.

English law continued this principle in the mediaeval period but was already becoming more about the right to pass and burden of repair rather than direct ownership of the land, 'the King's Highway' being a right for his subjects but there also being other roads used by the public but not 'highway'.

This evolved into multiple categories of road: highway, public roads and private roads, but the last did not necessarily mean private in today's definition, that it was not for use by the public, but that it was a lesser road, just as there was a king's highway had greater status than a public road. This is apparent in the language of the time, as shown in Appendix 4.

Inclosure in relation to roads and rights of way can be seen as an attempt to force a jigsaw of grey common law tenets into a black and white grid imposed by the inclosure acts. With each decade, and particularly after the general acts, the prescription made it harder to fit common law concepts and by the mid-nineteenth century, much of the earlier latitude had changed to an acceptance of black and white.

In addition, the nineteenth century could be seen as a culmination of the gradual change to a society of few landowners and many employees or tenants, rather than the Middle Ages pattern of many commoners, with collective government and greater equity of status with much consensual decision-making to accommodate needs of all, rather than a few.

Summary of liability to repair (Appendix 3)

[9] The National Parks and Access to the Countryside Act 1949 declared a public footpath, bridleway or byway as described by that Act to be public highway and added that description to the Highways Act 1980. Prior to that Act, a public right of way was not necessarily a highway, although a highway was always a public right of way.

Until the Definitive Map and Statement of Public Rights of Way,[10] which intended to record the *status* of public rights of way, records of highways were predominantly about *repair*, whether records of the parish or later highway authorities.

In the history of highways, repair is the most common repeated topic and is upheld by every iteration of the Highways Acts, such as attempts to limit the width of cart wheels to cause less damage and reduce repair. The means of transport arises only relative to the damage it caused and therefore the level of repair required to accommodate passage. The right of way appears to have been for the person, irrespective of their means of transport. In this context of liability to repair, it is possible that private carriage roads were public as to right to use but the liability to repair was with the landowner or other body (e.g. group of adjacent owners) since such liability was common at the time.

The distinction between ownership of the soil and the liability for repair created different means of bringing an action by a user when a road was out of repair:

- **Public roads** came under the Statute Duty and the parish's Surveyor of Highways was liable for an indictment for out of repair, the whole parish (the public) being liable.

- **Private roads** were the responsibility of the village, person or body and any inhabitant could bring an action of common law nuisance against them.

Prior to the 1835 Highways Act, roads were maintained under common law by the parish. If the parish would only maintain those roads whose use excluded inhabitants of other parishes, that would suggest a double network of roads in the parish: one for use by parishioners only, one to include inhabitants of other parishes. This clearly was not the case, therefore 'all persons' for whom the private roads were for the use of had to comprise the public.

Summary of horse transport in the inclosure period (Appendix 4)

Evidence other than inclosure awards illustrates that 'private road' was a term in common use but which did not have today's meaning; that is, it is clear from the evidence that if the private road had not been a public right of way, the public would have been unable to travel to places to which they quite obviously did travel freely and at their will.

White's Map of the Ainsty of York, 1785 shows only *"Turnpike Roads or those which pay toll, Private or Occupation Roads [and] Open or uninclosed Roads"*. The 'Private or Occupation Roads' appear to coincide with public roads today which are less than main roads. The extent of the map demonstrates that travellers or local people would not have been able to move around the township of York had the private roads not been public

[10] 1949 National Parks and Access to the Countryside Act Part IV

rights of way. Private therefore must have had a meaning which did not relate to right of use.

It is known that many more roads and rights of way existed prior to inclosure,[11] providing options and, often, shorter routes, which were important for people working long hours and travelling some distances for their trade or purpose. Despite the dramatic change which inclosure effected on inhabitants' work and patterns of travel, it is human nature to take the direct route and no doubt this continued, therefore the label of 'private carriage road' for convenient through routes could not have meant exclusive as to user otherwise there would have been opposition from the public suddenly expected to use only circuitous roads. Although there are cases of individuals being prosecuted for continuing to use a stopped road, arguing that they needed it to access land, there is no documentation of widespread opposition and the inclosure process was well-publicised locally.

Texts from the period indicate that private carriage roads were used by the public, since they were the parish or township roads of diarists and the minor or cross roads[12] of the small scale maps of the period, so parish roads, township roads, cross roads and private roads are all terms for the same type of road, which were public as to user but private as to repair and ownership of the soil—the minor local roads and lanes of today, predominantly used by local residents but still available to the public.

Conclusion

The term 'private carriage road' in inclosure awards is often unclear in its meaning, in today's terms, even the term 'public carriage road' is not so clear as may seem as there appears to be some subtle distinction between highway, public, private and occupation in many cases.

Considered contemporaneously, the word private seems associated more with ownership of the soil and liability to repair, as it had been for centuries, than with the right of passage and by what means of transport. 'Public' inferred maintenance provided by the state in some way; 'private' inferred by individuals or a group of individuals, commonly adjacent owners. A range of meanings can be ascribed to the term dependent on the period, the location, the history of the parish, the purpose of the inclosure, the nature of the landscape, the commissioners, and other variants.

Inclosure was a very public process, done by professional men, who covered huge areas and many awards. It seems unlikely that they acted *ultra vires* on a regular basis whilst setting out roads, in which every member of the community had an interest. If they had

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[11] Thriplow, Cambridgeshire: The Ecology of Enclosure, the effect of Enclosure on Society, Farming and the Environment in South Cambridgeshire, 1798 – 1850, Dr Shirley Wittering, 2013, Windgather Press p86

[12] Secondary or minor roads *What is a Cross Road?* Susan Taylor, 1997, South Pennines Packhorse Trails Trust

been *ultra vires* then there would presumably have been some public outcry but none has been found on this topic (although there is documentation of other features of inclosure).

Therefore, interpretation of whether a 'private carriage road' set out a road used by the public must be specific to each and every Act and award and, in many cases, to individual routes within an award, because the intention was not necessarily clearly exclusive as to user.

Authors

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Appendix 1: Extracts from Example Awards

Fairfield, Derbyshire 1772

Awarded a variety of roads:

ID	Awarded as	For the use of	Width	Status today
A	Public carriage roads	Not specified	60 feet	A road
B	Private carriage road	Inhabitants of Fairfield and public pack and prime road	36 feet	Unclassified public road
C	Private carriage road and public pack and prime road[13]	Not specified	2x 36 feet 1x 30 feet	Unclassified public road
D	Public pack and prime road	Not specified	1 differing breadths 1 set out on plan	Public footpath, application for bridleway pending
E	Private carriage and drift road	Specified allotment holders		None
F	Drift road	For watering of cattle in certain closes		None
G	Private carriage and drift road and public foot road	Specified allotment holders		None
H	Public footpath or way	Not specified		Public footpath or subsumed in road

All were to be kept in repair by the holders of the allotments through which they passed with no distinction in the burden of repair between the different terms used, public or private.

'Inhabitants of …' is a common category in inclosure awards relating to minor local roads primarily used by inhabitants who, although not described as 'the public at large' were nevertheless still the public.[14]

There appear to be two types of private carriage road in this award which are differentiated by:

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[13] A pack and prime road or way was for use with horses or other pack animals and on foot, a prime way being named from the primary or first mode of transport – on foot.

[14] *Poole v Huskinson* (1843) EngR 39; (1843) 11 M & W 827; 152 E.R. 1039 (1 January 1843), *R v Inhabitants of Southampton* 1887

- who could use them – the public or specified allotment holders, and
- their width – defined or not defined

'Use of' was not specified for the public carriage roads (A), the private carriage roads and public pack and prime roads (B, C),[15] public pack and prime roads (D) or the public footpaths (H). 'Use of' was specified for some private carriage roads and drift roads (E) as certain allotment holders.

The roads for which 'use of' was *not* specified had a specified width (except the footpaths). The private carriage roads for which 'use of' *was* specified did *not* have a width.

The private carriage and drift road for specified allotment holders which was also a public foot road (G) specified user but did not specify width, which is different from the private carriage roads and public pack and prime roads (B, C) which did not specify user and did specify width but is consistent with the public footpaths not having a width.

A, B, C, D and H which were *not* specific as to user all exist as public rights of way today.

E, F and G which *were* specified for users do not exist today (though arguably G should be a public footpath).

There can be conjecture over what was intended by the difference between B/C and E, however, the differences in description and width and status today indicate that the private carriage roads were not all the same, some were exclusive as to user, and others were public roads, at a lesser status than the turnpikes, which were awarded as public carriage roads.

Methley, Yorkshire, 1787

The Methley Award provided:

- Public Highways "as and for a public highway for carts and carriages and all other purposes … used as such and repaired and kept in repair in such manner as the other public highways … repairable at the general expense of the said Parish"
- Private Roads "used and enjoyed with carts and carriages for the occupation of the said several lands and allotments … and may be used by all persons whosoever on foot and on horseback passing or repassing … without any interruption … repaired and kept in repair in such manner as the said highways"

[15] Except the first which stated for the inhabitants, although that could be construed as also applying to the subsequent roads as they were awarded as 'one other' but the wording is not always the same

- Occupation Roads awarded to specific allotment holders "without any interruption … repaired … by the occupiers in like manner as other Roads repairable Ratione Tenurae"

A private road in this award included a public right of way on foot and horse. Awarding both private roads and occupation roads has to mean that they were not the same and this is clearly differentiated in the words, therefore in this case a private road was still at least a public bridle road.

Rufforth, Yorkshire 1795

Awarded "public carriage roads and private or occupation carriage roads … to be repaired by and at the expense of the inhabitants and occupiers of hereditaments … in like manner and with the like exemptions from contributions to repair as the public highways of the said township are or ought to be by law repaired and maintained", as opposed to later in the award "other private or occupation carriage road to be maintained by the owners and occupiers".

It distinguished between two types of private carriage road: one for all persons to use maintained by the parish; one for occupiers only, maintained by said occupiers. However, all were indicated by the same term of 'private or occupation carriage road'. The term itself—'private OR occupation'—clearly infers that private road was not the same as occupation road.

North Petherton, Somerset 1798

Several private carriage and horse and drift ways were awarded *"for the use benefit and convenience of all and every person and persons who may have occasion to use the said roads"*, therefore appear public in intention[16] despite use of the word 'private'. Defining 'every person with occasion to use the road' as not the public would be perverse.

Shipham and Winscombe, Somerset, 1799

Several roads or ways and foot ways are appointed, *"no public carriage or bridle roads being thought by us necessary"* but the area of the award, 1,080 acres, means that had there been no public roads, travel would have been grossly limited in the area.

The commissioners set out a number of private roads or ways for "all and every other person and persons whomsoever having any occasion whatsoever to go travel pass and repass through upon and over the same roads and ways and every or any or either of them on foot or on horseback with horses cattle carts and other carriages loaded or unloaded at their and every of their free wills and pleasure" which is a very clear

[16] *Poole v Huskinson* (1843) EngR 39; (1843) 11 M & W 827; 152 E.R. 1039 (1 January 1843), *R v Inhabitants of Southampton* 1887

description and intention of use by the public, "maintained and repaired and kept in good and sufficient repair and condition by and at the charges and expenses of all and every the owners tenants" which is interpreted as the differentiation from the 'unnecessary' public roads which would have been maintained by the parish.

Lieven J considered this award in *Craggs*[17] and concluded that "clear intent of this clause was to give the public unfettered rights to use the roads which had been described above in the Award as 'private', and to place the maintenance liability on the owners and occupiers of the land rather than on the Parish" (9). Notwithstanding that conclusion, she accorded with the judgment of Kay J in *Buckland*[18] that in doing so, the Commissioners acted *ultra vires* as the Act did not give them powers to set out a public road at less than forty feet wide. Lieven J then considered the claimant's case that the *ultra vires* appointing of a public road could be severed from the intra vires ability of the Commissioners to award a public bridle road.

North Curry, Somerset 1800

Awarded:

- Roads: "for the use and benefit of all and every person and persons whomsoever at and upon all times and occasions whatsoever to go pass and repass in through over and upon the said roads either on foot or on horseback with horses cattle carts wagons or other carriages loaded or unloaded at their and every of their free wills and pleasure as the Kings Highway when and as often as they any or either of them shall think fit … mended and repaired and kept in proper repair and condition by such of the parishioners and inhabitants … who by law ought to repair the ancient carriageways"

- Private Roads: "for the use … of all and every the owners, tenants and occupiers [of the allotments] and all and every other person and persons whomsoever … to travel pass and repass … on foot or on horseback with horse cattle carts and other carriages … of their free wills … as and when and as often as they or any or other of them shall think fit", maintained and repaired by and at the expense of the owners tenants and occupiers

- Private Ways: for the "owners tenants and occupiers for the time being of the said ancient inclosures each and every of them their each and every of their agents

[17] *Craggs v Secretary of State for the Environment* [2020] EWHC 3346 (Admin) (07 December 2020)
[18] Buckland & Ors v Secretary Of State For Environment Transport & Regions [2000] EWHC Admin 279 (11 January 2000)

servants workmen and attendants"[19] maintained and repaired by and at the expense of the owners, tenants and occupiers

The definition of 'use of' the Private Roads is the same as a Road in principle—everyone—despite the specific inclusion of *"the owners, tenants and occupiers",* and is consistent with the standard definition of a highway. They are distinguished by the liability to repair at the expense of the owners and occupiers rather than the parish, not by the right of user. The logic appears to be main through 'Roads' compared with local 'Private Roads', the latter being more used by owners and occupiers but still public rights of way. The 'Private Ways' are specific in right of use as well as liability to repair.

Bolton Percy and Appleton Roebuck, Yorkshire 1804

Sets out a public watering place accessed by a 'private or occupation road' also set out and named Wood Close Road. There was no other access to the public watering place. Wood Close Road was therefore a public right of way on foot or horse and presumably with carts, since water was commonly collected in containers and taken to fields or steadings.

Watering Place in Bolton:

> And we do order award and direct that there shall be a public watering place in the Little Marsh of Bolton aforesaid near to adjoining on the said Wood Close Road as the same is now set out and made under our direction which same watering place contains sixteen perches and is bounded…on the East side by the Wood Close Road and is…And we do award order and direct that the said watering place shall from time to time be cleansed amended and repaired and the fence across the same supported repaired and kept up by the Surveyor of the Highways for the time being of the said Township of Bolton in like manner as the Highways in the same Township are by law to be supported and maintained.

Wood Close Road:

> And also one other such private or occupation road beginning at the West End of the Church Lane of Bolton and continuing along the South East side of the Church Yard and the garth of … to the carriage bridge opposite Wood Close Lane and over such carriage bridge … and after such fencing we direct the same road shall be left Eighteen feet wide between the ditches which road we shall refer to by the name of the Wood Close Road.

[19] Except Crimson Hill Way and Huntham Way which are for *"all and every person and persons whomsoever who shall or may at any time or times thereafter have occasion to go pass and repass in thro' upon or over the same either on foot or on horseback with horses cattle carts and other carriages loaded or unloaded at their each and every of their free wills and pleasure when and as often as they any of either of them shall think proper"*

The award also set out various public bridle roads from 'private or occupation church or carriage roads' to other places, such as a ferry[20] or the next parish. The 'private carriage roads' must therefore have been public roads, otherwise the public bridle roads would not have been accessible.

The award also had an existing road, Church Lane, over which a 'private or occupation carriage road' was set out. The award sets out a private carriage road "*beginning at the West end of the Church Lane and continuing Eastwards along the said Lane to the East end thereof and then turning Southwards along the same Lane to the Bridle Road to the Ferry*" so Church Lane existed before the award. This appears to be another example of the depiction of an existing road as a private carriage road rather than public carriage road (see paragraph 0), quite possibly because there was no wish to incur the cost of complying with the requirements for a public carriage road.

Kingsmoor, Somerset 1806

The Kingsmoor award extinguished all rights to any existing roads and ways. The preamble appoints *"several public and private roads highways bridleways and footways"*. Its area was large, 5,786 acres, broken into discrete areas and only two public carriage roads were awarded, which were existing turnpikes. It awarded sixteen 'private carriage roads or driftways' specifically for the use of the *"owners and occupiers of the allotments and old inclosures"* to be kept in repair by them. Roughly half are described as to allotments or farms; the others are to river crossings (and) or the adjacent parish.

Of the latter through routes, had they not been public, the inhabitants of Knole, Long Sutton and Long Load would have been isolated from the market town of Ilchester—a Roman town, London to Exeter staging post and market of some local importance—and there would have been no public way across the river, a significant navigable watercourse which was particularly important as a winter trading route when some droves were too wet. This would have affected travellers and traders from parishes adjacent to the town as well as further afield as the only 'public' route was circuitous and included turnpikes, which would have been avoided by local people as having a toll.

Such isolation is very unlikely, therefore it is reasonable that some private carriage roads had a public right of way. It is of note that all the through routes, despite being 'private' in the award, are public rights of way today, and while it is possible that they became public after inclosure, it is equally likely that private carriage road in this case did not exclude a public right of use.

The award set out *"One other private carriage road or driftway the breadth of thirty feet … called Pill Bridge Drove … into the said bridge called Pill Bridge"*. Pill Bridge is a seventeenth century packhorse bridge, replacing a thirteenth century bridge on the crossing, and *"represents the medieval route to Long Sutton and Langport ... A*

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warehouse stood nearby by 1699, and a toll house".[21] This was an ancient public road of importance, and therefore the award setting out a 'private carriage road' over the existing ancient road appears to be another example where existing routes were set out as private carriage roads. Strachey's map of Somersetshire of 1736 has relatively few roads but shows Pill Bridge and the roads each side in the same way as Long Load Road to the west, today's B3165, which was the turnpike and subsequently set out as public carriage road. The Pill Bridge route is also shown on a road map of 1821 in the same manner as Long Load Road.[22] The justices did not stop up any roads at the time of the inclosure, so the old roads remained public and their designation of 'private carriage road' could not have excluded the public despite the words in the award suggesting they were for use by owners and occupiers only.

Pitney, Somerset 1807

Awarded two public carriage roads, to be *"kept in repair by such persons and in like manner as the other public roads"* and twenty two private carriage roads and drift ways. The private carriage roads and driftways were for the *"use benefit and enjoyment of all and every the owners and occupiers [of the allotments] and also for the use benefit and enjoyment of all and every other person or persons whomsoever having any occasion whatsoever to pass and repass thereon … and repaired by and at the Charges and Expenses of the owners and occupiers"*.

The distinction between public and private is the burden to repair and not the right to pass by all and every other person. There is no distinction between those described as private carriage road and drift way and those as private carriage road and drift way with public bridleway.

A difference is evident today between those which were through routes and those which were dead ends: the majority of the through routes are public roads or have historical evidence of byway or bridleway not yet recorded.

In the descriptions of various routes there are eighteen mentions of 'ancient lanes', twelve of which are currently public roads and one a restricted byway so it seems likely that ancient lanes were minor public roads which were being linked through the award area or incorporated in the new scheme. Like the term private carriage road, it is not possible to make a blanket interpretation that all were the same, however, one 'ancient lane', Green Close Lane, is referred to the County Surveyor for repair as a road in minutes of the Rural District Council in 1925.[23] This is over a century after the inclosure so a public carriageway might have come into being over the route subsequent to the award, however, it is equally possible that it had always been a public road.

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[21] Historic England listed building description https://historicengland.org.uk/listing/the-list/list-entry/1223184
[22] Dorset History Centre MT1/7/11
[23] 13 January 1925 Somerset Heritage Centre D/R/1a 3/1/1

Cartmel, Cumbria 1807

Cartmel award inclosed a large area and included commutation of tithe and took several years to complete the award (1809) following the Act in 1796. It set out thirty two public roads and over thirty routes with various descriptions: private road, private driving road, private carriage way, private occupation road, private carriage road & driftway, private driftway, private road or driftway. Analysis shows that many of the routes described as 'private' must have been public.

Many of the private roads were set out following existing roads. The Act says that "it shall not be lawful for any person or persons to use any other roads, either public or private… on foot, or with cattle, horses or carriages" but does not say that it was unlawful to use an existing road, newly set out as a private carriage road (or similar) or that setting out a 'private' road of any description removed the public right of way. Take one example, Hampsfield Road, which was set out as a private carriage road, to be "kept in repair by the inhabitants" so was public in liability to maintain, and was over a road that existed before the award. It is generally assumed that those who repaired could use; the Hampsfield Road was repairable by the public. Therefore this is another example of private carriage road being used to retain the existing right of way without the cost of setting out a public carriage road.

Other private roads must have been public through roads because the only occupier had other access, so these through roads were not needed for the occupiers, therefore it is more likely than not that they were for the benefit of the public.

Crossfields bridleway was set out as a public bridleway from one private carriage and driftway to another. If private meant 'not public', the public would have been unable to reach the public bridleway.

Quarry Road is described as private but went to a public stone quarry. It is inconceivable that the public were barred from reaching the quarry by the Commissioners.

Water Road was set out as a private carriage and drift way, leading from another private carriage and driftway, Templand Road, to a public watering place. The roads must have been public rights of way otherwise there would have been no access to the public watering place.

Ellerside Moss Road from Cark to Lowwood was initially set out as a 'Private Carriage Road and Driftway, and public bridleway'. The Annals of Cartmel record a complainant as to the condition of the road, who was not listed in the award as an owner of any of the allotments that this road ran over or to, implying that it was not just the allotment holders who could use the road. The arguments generally revolved around who was to repair the road: the Commissioners, the two townships or the parish at large. There does not seem to havebeen any arguments over the right of use. Eventually the townships agreed to be responsible for the upkeep of this road and it was added to the final award as a public carriage road. So, although the road was initially set out in the award as a private

carriage road, it was clearly seen as a public road before the Award was finally signed off in 1809. Today it is the B5278.

These examples drawn from the award indicate that private carriage road within the award did not always mean not public. Almost 70% of the routes described as 'private' are public rights of way today, with the majority being full public roads.

Charlton Musgrave, Somerset 1821

This was an award over one thousand acres, which set out eight 'public carriage roads or highways' and a mixture of 'private carriage roads' and 'private roads' without obvious distinction between the use of the terms; *"All of such carriage roads and highways and private roads … being in our judgement necessary … set out by us thirty feet wide … appear to us most commodious to the public … put into complete repair by us the said Commissioners".* It later says, *"several private roads shall … remain of the respective breadths … for the use of the owners and occupiers … of the several allotments and [and that they] shall henceforth be repaired and kept in repair by the owners and occupiers."*

Of the private carriage roads, fourteen of twenty are public road or bridleway today which would be more consistent with them having been awarded as minor public roads than occupier-only roads so although the award said *"for the use of the owners and occupiers"*, it is questionable whether that really precluded the public.

Brampton, Derbyshire 1831

The Act of 1815 allowed for The Award set out several private carriage roads to be repaired *"by the person or persons whose Lands adjoin the same"*, except for one, *"Nether Moor Road as aforesaid shall on account of the great public Traffic and Travelling thereupon be forever hereafter repaired by the Surveyors of the Highways of the Parish of Brampton aforesaid as part and parcel of the General Highways of that Parish."*. In this award, 'private' therefore means *vicinalis* and not *particularis.*

Kingsbury Episcopi, Somerset 1835

The Ordnance Survey one inch map of 1809-1811 did not generally show footpaths and bridleways. It shows a road in the same manner as roads which are all public today which was the only route into Kingsbury from the east and south east prior to inclosure, therefore is more likely than not to have been a public road of some importance.

A map of the parish of 1830, which was quite possibly seen by the inclosure commissioners and may be the surveyor's working drawing, also shows this road in the same manner as other roads which are public today.

The inclosure award of 1835 set out a private carriage road over this route. The tithe map of 1844 shows the route so the award can be assumed to have been executed. This is an

example of the type of road referred to in paragraph 0 where existing roads were reproduced in the inclosure award.

The Act of 1830 states that the Commissioners will require the consent of two Justices of the Peace in order to stop up, turn, divert, or extinguish any pre-existing roads. There is no trace of a stopping up in the records, therefore it has to be assumed that the original road continued to exist so a 'private carriage road' in this instance was a public road.

Witcham, Cambridgeshire 1851

Awarded ten private carriage roads varying from fifty to fifteen feet wide. Nine were to be kept in repair by the inhabitants of the parish in the same way as the public roads and the tenth was to be repaired by the owners of specified allotments. This infers that as with other awards, the same term was used for what were effectively public roads as well as occupation roads, and that a private carriage road could be a public right of way but was maintained by owners and occupiers.

Appendix 2: Historical Origin

Roman Law differentiated roads as public or private dependent on ownership of the soil of the way.

- The soil of Public Roads *(via publica)* was public, belonging to the state; commonly the great roads to ports and cities, or military roads;
- The soil of Private Roads (*via vicinales*) did not belong to the state, although the public had right of passage over the ways.

Ulpian[24] (Roman law) explained that the ownership of the soil determined whether a road was classed as public or private, and that term related to its repair, not its use:

> 21: By a public highway we mean one whose soil belongs to the people, for we do not understand a private road to mean the same as a public one. In the case of **a private road, the soil belongs to another, and we have only the right of walking and driving over it**; but the soil of a public highway is owned by the community, and has been established with reference to direction, and within certain limits, by him who had the right to render it public, in order that everyone might travel upon it, and traverse it.
>
> 22: Some roads are public, some are private, and others are local, belonging to the neighbourhood. We call roads public which the Greeks designated as royal, and we name praetorian or consular roads. Private roads are such as some persons style agrarian.

[24] Ulpian, Digest of Justinian: Liber XI 68 ad ed (Domitius Ulpianus (d. AD 228), Roman jurist)

> Local or neighbourhood roads are those which are situated in villages, or lead to towns; certain authorities also call these public roads. This, however, is only true where they have not been established by the contribution of land by private persons; but it is otherwise if they are repaired at the expense of individuals, for a road is not private on this account.
>
> The repairs of the same are common, because such a road is for the common use and benefit.

Mediaeval English Law carried forward the same principle that ownership of the soil, not use, differentiated between public and private roads:

- Public Roads belonged to the monarch, (royal and military roads) connecting cities, borough towns and ports, with free passage for the monarch and all their subjects.

- Private Roads (or community roads) were the local roads, some of which became more important as trade increased the number of market towns. These were still regarded as private roads because—even if *usque ad medium filum*[25]—the soil belonged to a person (e.g. Lord of the Manor) or body corporate or politic (e.g. monastery) not to the state, the monarch and all their subjects had a right of passage.

1555 Highways Act enacted that maintenance of the public roads should be via statute duty or the customary (historical) duty of the inhabitants of a parish under common law. At the time this Act was passed, very few roads in England were over land provided for the purpose. The roads between market towns were those between vills (communities[26]) which gained importance as markets grew from around the eleventh century.

1773 Highways Act only required that the statute duty be used to make (meaning repair with stone) cartways to market towns and not roads connecting vills. It is postulated that the private carriage road was a substitute for an old common highway, which by the common law only had to be made as good as it had ever been.

Appendix 3: Liability to Repair

The distinction between ownership of the soil and the liability for repair created different means of bringing an action by a user when a road was out of repair:

[25] Adjacent owners assumed to own to the centre line of the road in the absence of evidence to the contrary.

[26] Vill – a hamlet or village; a manor; a parish; the outpart of a parish; the smallest administrative unit of land in feudal England, corresponding to the Anglo-Saxon tithing and the modern parish

- Public Roads came under the Statute Duty and the parish's Surveyor of Highways was liable for an indictment for out of repair, the whole parish (the public) being liable.

- Private Roads were the responsibility of the village, person or body and any inhabitant could bring an action of common law nuisance against them.

Although there are instances of presentment for a public road out of repair, we know of no instances of indictment for a private road out of repair.

A difference between public and private roads in inclosure can also be ascribed to finance: money gained from the sale of land could be used by the Commissioners to make up the public carriage roads to an appropriate standard, and subsequently repaired under statute duty (equivalent of today's making up by residents or a developer to enable 'adoption' as highway maintainable at public expense). Private carriage roads were not built by the Commissioners but were to be provided by the owners and occupiers, however, they were no less public in the right of passage and are often awarded to be repaired 'in like manner to the public roads of the parish'.

The Compleat Parish Officer 1734

This principle was handed down through the statutes as laid out in the following extracts (italics) from *The Compleat Parish Officer,*[27] a manual for highway surveyors of 1734, (later editions were little changed in this section) which starts by defining the difference between highways and private ways and continues with a number of other useful references as follows. It appears that, prior to widespread inclosure, there was a clear contextual meaning of private roads in ancient highway law as pertaining to ownership of the soil, not user, which became common law.

> Before I come to the Office of Surveyors of the Highways, I shall let you know what are Highways, and what are private Ways in the Eye of the Law.
> And first, Any Cart, Horse, or Foot-way, common to all People, is the King's Highway; (whether it directly lead to any Market-Town or not) and a Nusance [sic] in any of the said Ways, is punishable by Indictment. 6 Mod.255.

The principle that a user may deviate to avoid a foundrous length is included and could be the basis of the current right to deviate around an obstruction; 'obstruction' in the past having a wider context than today's definition distinct from 'out of repair'.

> And if there be an Highway in an open Field, when the Fields are bad in the Winter, Travellers may go on the Outlets of the Lands adjoining, being warranted by Custom: For the King's Subjects are to have good Passage, and such Outlets are Parcel of the Way. 1 Roll. Abr.390; Dalt.98

[27] The Compleat Parish Officer 1734 Section 4: Surveyors of the Highways and Scavengers, their particular Business, etc. page 81 (7th ed)

It establishes that the freehold and use of the land of the highway remain with the owner, although the public have right of passage over it.

> In a Highway the King hath but the free Passage for him and his People; but the Freehold, and all the Profit are to the Lord of the Manor, and he may have an Action for eating the Grass, or for Trees taken away, etc. Dalt.76

The distinction between public and private is about who is liable to repair and what action can be taken when there is a problem.

> A private way is that which leads from a Village, etc. to the Parish Church, or Fields, without any Communication with a Great Road; which is to be repaired by the Village or Hamlet, and sometimes by a private Person; (contra of Highways, the whole Parish shall be charged). If such Way be out of Repair, every Inhabitant may bring an Action; and for stopping the Way to the Church, they may have an Action upon the Case. 1 Vent.208

Private appears to have meant a lesser or minor or local road which was no less a public way, only of lower status, just as now, where travellers through a parish will tend to use the main roads and minor roads are more likely to be used most by the inhabitants, but are no less available by right to the passing traveller should they wish to use the minor ways. A traveller today from Exeter to Plymouth is most likely to use the A38 as the 'great road', providing the most convenient, easiest and fastest route; but the traveller is equally free to use the narrow, winding local roads for the same journey.

Physically enclosing a way by fences *prima facie* did not stop it being public; it transferred the burden of repair onto the owner or occupier because limiting the width available for use potentially increased the need to repair for the way to remain usable by the public.

> All Highways of Common Right are to be repaired by the Inhabitants of the Parish in which the Way lies; unless there be some special Matter to fix the Repairs upon others; as where a Person by an Enclosure straightens a Highway on both Sides, though the Parish repaired it before, yet now he is obliged to maintain it at his own Charge; but if he lays open the Enclosure, so that the Way remains as it did before, then the Parish is to repair it again. Cro.Car.366

The Compleat Parish Officer continues with case law and statutes supporting the maintenance by the country, a particular person or a group by prescription.

> Term.Pasb. 7 Jac.1. It was resolv'd, That all the Country ought to repair a Highway, where no particular Persons are bound to repair, because the whole Country have their Ease and Passage by it. Co. Rep.13
> A Person may be obliged to repair a Way by Tenure of Lands; and Lands have been often given for the Maintenance of Highways. See Statute 22 Car.2. A particular Person may be bound to repair a Highway by Prescription; and so may a Corporation. Latch. Rep.206
> The King by the Common Law might award his Commission for amending the Highways and Bridges throughout the Realm. Dalt.77. And no Highway can be

> changed etc. Without the King's Writ of Ad quod damnum, and Licence thereupon, on Enquiry whether it will be prejudicial to the Publick, etc. 3 Cro.267

There follows detail on how Surveyors are to perform their duties and who must provide what labour or expense for repair of the roads. It is shown that the greater the extent of landholding, the more horses and vehicles the holder will have and therefore the greater the requirement from them to contribute to maintenance. Greater liability to repair was attached to greater use of wheeled vehicles—

> A Person keeping a Coach and Pair of Horses, is bound to send out a Wain towards the Repairs of Highways, a Coach and Horses doing equal Damage to the Ways, as a Cart and Horses. 1 Lev.130

The description throughout is of repair of highways, with no mention as to who could use the way or how. This is borne out by the Quarter Sessions which include innumerable cases of roads being out of repair, but rarely[28] record challenge as to mode of travel or right of use.

It clarifies that the statute to repair was simply to support common law and could be added to by raising rates or prescriptions where the statute provision was inadequate.

> It is no Excuse for the Inhabitants of a Parish indicted at Common Law, for not Repairing the Highways, that they have done the Work required by Statute; for the Statutes are in Aid of the Common Law: And when the Statute Work is not sufficient, Rates and Assessments are to be made. Dalt. c.26

The same provision as in modern highway law to repair and not improve is stated.

> But the Defendants are not bound to put the Highways in better Repair than it has been Time out of Mind 1 Salk.358

Appendix 4: Horse Transport During the Inclosure Period

To put interpretation of terms from awards in context, it is necessary to consider the language and use of roads at the time. Rights of way as a subject is the practical matter of people historically going about their business on foot or horseback and using horses, mules and donkeys for transport of goods. It is therefore important to treat historical documents with social history in mind and not to view things through the perspective of the twenty first century.

In the days of under-nourishment, weary people driving tired laden horses would have taken the easiest gradient, or the most direct route even if that was not the 'main road'. Many of these lesser roads appear to have been awarded as private carriage roads.

[28] The authors have not seen such challenge to date

Practical examples from the period indicate that private carriage roads were indeed used by the public, since they were the parish or township roads of diarists and the minor or cross roads[29] of the small scale maps of the period.

Change in terminology

It could be argued that historically, the term road meant a public way, whether a foot road, bridle road or cart road. The Road Traffic Act 1988 Section 192(1) defines a road as *"any highway and any other road to which the public has access".* While that definition is specific to the Act, it is interesting that it distinguishes that not every road to which the public has access is a highway maintainable at public expense, which reflects the findings here.

Today all roads used by the public are referred to as public roads. In the days of Inclosure, the public roads appear to have been a category of road, the main roads leading from market town to market town, which follows from early law. Today a private road is not used by the public, but in the days of inclosure some so-called private roads appear to have been used by the public and were a category of more minor public roads which differed in some way from the main public roads. In many respects, the use of 'private' appears to refer to maintenance liability, not rights.

Terminology changes over time and the words 'public' and 'private' appear to have had different meanings some 200 years ago because of the way the words were used. This is illustrated by the following examples from the period.

1736 History and Antiquities of York page 398 "*…from its situation in the most publick high road…*" The modern meaning of public cannot be coupled with the adjective 'most', hence the meaning of public at this time must have been different.

1776 was the earliest known occurrence of the term Waywarden, defined in the Shorter Oxford English Dictionary 1939 as: A person (later, one of a board) elected to supervise the highways of a parish or district. The 1850[30] Dictionary of Archaic Words defines **Way-Wardens** as keepers of private roads, which means that the private roads were the parish roads or highways.

1781 Torrington Diaries by John Byng page 34, *"The walks both public and private, are shady and pleasant…"* yet both types of walk were in use by the public, so private cannot have meant the same as now.

29 Secondary or minor roads What is a Cross Road? Susan Taylor, South Pennines Packhorse Trails Trust

30 Reprinted 1989

1789-1800 The diaries of Reverend John Swete[31] describe his travels using both public and private roads. Swete is a well-reputed diarist and traveller of the time who is much consulted by historians. He uses the adjectives 'more' and 'less' for both public and private roads, which would not make sense with their modern meanings. The following examples are typical of occurrences in his work. He commonly uses the adjectve 'public' as we would use 'main' in relation to a road today. Reading his work with the thought of 'public' and 'private' as categories of road, much like today's 'trunk' or 'minor' roads, makes complete sense of the text and his journey. Interpretation of 'private' as not public would make no sense at all.

Volume 1 : page 88 "…on the side of this however a winding road, if so it may be term'd … this I would observe is but a bye way, which I had taken in preference to the public road."

Page 133 "I turned from the public road short to the left down the hill…"

Page 150 "…having rode two miles on the public road leading to Plymouth, I turned to the right into a narrow lane"

Volume 2 : page 50 "I regained the public road at Cheriton Cross, which however I instantly quitted again taking an opposite lane…"

Page 73 "From this bridge the road begins to rise…I quitted the more public track, turning off to the right for Exminster."

Page 109 "the lanes too stoney to allow any pleasure to result from riding. Having by a steep ascent got into a more public and better road."

Page 121 "Regaining the public road…"

Page 149 "The Road continues…and just before it approaches the public one leading from Haldown to Kenton and Starcross…"

Page 151 "Crossing now the public Road leading from Haldown to Kenton and Starcross, I strike into another rural lane."

Volume 3 : page 164 "The roads around it are less public and not more than convenience would require"

Page 167 "The road from hence turning quick towards the right, soon joins the great public road leading from Topsham to Exeter".

[31] (reprint 1997-2000 taken from Devon Record Office 564M/F1-17) https://devon-cat.swheritage.org.uk/records/564M

Page 182 "I rode on the road for a mile or two which led to Sidmouth but about eight mile from Exeter, we turned to the left over a private lane, which, being no exception to the rule of the neighbourhood, was rather more than indifferent".

Page 183 "the modern turnpike road leading from Exeter to Honiton I crossed it, taking a more private one which soon brought me to Larkbeer".

1754 Diary of Alexander Fothergill[32] (Surveyor of the Richmond to Lancaster Turnpike)

Then measured the new road…I then put a value upon 665 square yards taken into the new road from Mr Carter which in consideration of the private way across it before, I thought worth….

1785 White's Map of the Ainsty of York shows turnpike and 'private or occupation' roads only so the only public communication across the whole area was via the private roads, therefore they must have been public because it would have been impossible to travel using only turnpikes or permission. Some 'private or occupation roads' are marked with a destination, e.g. *"From Wetherby"* . It is difficult to interpret this as meaning other than a road.[33]

1811-17 John Farey, 'General Description of Agriculture',[34] uses the term 'private' variously. On page 227, he describes a route from Buxton to Ashford using *"…a public Road is now completed,[35] I believe, following in great part, the romantic Vale of the Wye but independent in part, of the intended private or pleasure Road, through all the deep recesses of this very surprising Vale, that I have mentioned in Vol. I. p. 72. From Ashford, this new line is continued forwards by a private Road across Birchill's Farm, to join and cross the Bakewell and Baslow Road, and thence by a new public Road, through Pilsbury[36] to Edensor Inn (near to Chatsworth House): whence there is a private Road thro the Park, to Chatsworth lower Bridge, and thence a Parish Road, in pretty good repair, completes this line to Great Rowsley Bridge, by which, company passing from Buxton to Matlock, may make Chatsworth in their way, instead of Bakewell."* This strongly suggests that those 'private' roads are roads used by the public, and indeed, the whole of this route is today a public road. His use of 'private road' is equivalent to today's secondary or minor road.

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[32] North Yorkshire County Council Publications No. 37
[33] *Commission for New Towns & Anor v JJ Gallagher Ltd* [2002] EWHC 2668 (Ch)
[34] General View of the Agriculture and Minerals of Derbyshire: With Observations on the Means of Their Improvement Drawn Up for the Consideration of the Board of Agriculture and Internal Improvement, Volume 3 https://books.google.co.uk/books/about/General_View_of_the_Agriculture_and_Mine.html?id=chMAAAAAQAAJ
[35] Presumed to be today's A6
[36] As Pilsbury is near Longnor, some distance from the described route, this seems likely an error and should read Pilsley

Farey also described private roads of Derbyshire as "access is had to the Gentlemen's Seats, in several instances, by considerable lengths of private Roads well laid out and kept, so as to do credit to the County" and notes those roads. His brief was to survey roads used by the public, so his use of 'private' here is obviously not inferring exclusive to those owners and occupiers. The majority of roads he describes are identifiable and are public roads today, except a couple which are bridleways.

1823 William Cobbett's 'Rural Rides'[37]

These are cross roads, mere parish roads; but they are very good.

These extracts from the period show that cross roads, parish roads, township roads and private roads are all terms for the same type of road, which were public as to user but private as to repair and ownership of the soil.

1794 Parliamentary Board of Agriculture Survey

The Parliamentary Board of Agriculture was a British voluntary association and chartered society founded in 1793 to promote agricultural improvement with the backing of the Prime Minister. It produced a series of county reports.[38]

The Board had no concern for 'private' roads, since they were, in effect, easements and not of national concern. These extracts demonstrate that the terms private, parochial, parish and cross roads were used, apparently indiscriminately, for the same type of minor public road, which coincides with the texts of diarists of the period.

Cheshire: Thomas Wedge

> The great public roads are not very good, being most commonly either roughly paved and called causeways, or deep sand. Considerable improvements have been made in the last twenty years and greater attention has been paid than formerly was to the private roads. The parochial roads in the clayey parts of the county are generally bad for carriages: but a small horse-pavement on one side of the road renders them conveniently passable at all times for horsemen. The present laws and regulations relating to the public roads of the Kingdom, are in some particulars shamefully irrational and would be discreditable to a nation even in *the dawn of civilisation.*

Herefordshire: John Clark

> I cannot see any probability of making the parochial roads in this county even tolerably safe until statute labour is abolished. Except for some parts of the turnpikes, almost every road in this county is liable to be indicted.

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[37] William Cobbett was an eighteenth century journalist and political reformer; the book is his observations from travels on horseback in England, published 1830

[38] https://everything.explained.today/General_View_of_Agriculture_county_surveys/

Leicestershire: John Monk

> Some of the roads being thrown out upon the inclosures 30 feet wider than is necessary may almost be deemed waste. … There are many individuals who have been at great expense in repairing the cross roads through their estates, but in many parts of the county they are infamously bad. Indeed, great parts of them are not to be called roads, for they are nothing more than passing through the different closes upon the turf, and in many of them not the least track of a wheel is to be seen for miles. In riding a few miles you have an intolerable number of gates to open, and in most of the cross roads it is impossible to pass with a carriage.

Rutland: John Crutchley

> The parochial roads are mostly ill formed as are the turnpike roads also.

Shropshire: Thomas Bishton

> The roads in this county, both turnpike and private, are generally bad; the private ones, particularly in the clayey part of the county are almost impassable to any but the inhabitants, notwithstanding there have been many Acts of Parliament with a view to making them perfectly good. If proper steps were taken, they would insure good private roads and similar actions would procure good turnpike roads also.

Warwickshire: John Wedge's report included details of a questionnaire sent to each parish in the county, requesting the following:

> a) What is the state and length of the turnpike roads?
> b) What is the state and length of the private roads.

Northamptonshire: James Donaldson

> …particularly in regard to the private or parish roads, which are in many places in a very ruinous state.

Cambridgeshire: William Vancouver

> The public roads in general are tolerably good; the private roads are very indifferent and it is not very probable they will be much improved under present regulations of the surveyors of highways.

Joseph Granger in 'The Review and Abstract of the County Report of the Board of Agriculture. Public Works – Roads'

> The Public Roads are in good condition but the private or township roads are in a very indifferent state…