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The Charter of the Forest: Evolving Human Rights in Nature

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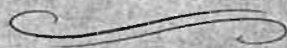
Nicholas A. Robinson, The Charter of the Forest: Evolving Human Rights in Nature, in *Magna Carta and the Rule of Law* 311 (Daniel Barstow Magraw et al., eds. 2014), <http://digitalcommons.pace.edu/lawfaculty/990/>.

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MAGNA CARTA AND THE RULE OF LAW



Foreword by Former Justice
Sandra Day O'Connor



Daniel Barstow Magraw, Andrea Martinez,
and Roy E. Brownell II

Chapter 12

The Charter of the Forest: Evolving Human Rights in Nature

Nicholas A. Robinson

In 1759, William Blackstone published *The Great Charter and the Charter of the Forest, with other Authentic Instruments, to which is Prefixed An Introductory Discourse, containing The History of the Charters*.¹ Since then, much has been written about Magna Carta, but little has been written about the companion Forest Charter. This chapter reexamines “these two sacred charters,”² focusing upon the “liberties of the forest”³ that the Forest Charter established, and how they evolved amid the contentious struggles over stewardship of England’s forest resources.⁴ The Forest Charter both contributed to establishing the rule of law and also launched eight centuries of legislation conserving forest resources and landscapes.

Carta de Foresta, the Charter of the Forest of 1217, is among the first statutes in environmental law of any nation. Crafted to reform patently unjust governance of natural resources in 13th-century England, the Charter of the Forest became a framework through which to reconcile competing environmental claims, then and into the future. The Charter confirmed the rights of “free men.”⁵ Kings resisted conceding these rights. When confronted with violations of the Charter, barons and royal councils obliged

1. WILLIAM BLACKSTONE, *THE GREAT CHARTER AND THE CHARTER OF THE FOREST, WITH OTHER AUTHENTIC INSTRUMENTS, TO WHICH IS PREFIXED AN INTRODUCTORY DISCOURSE CONTAINING THE HISTORY OF THE CHARTER* (Oxford at the Clarendon Press 1759). References are to the first edition of this elegantly printed work, an outstanding aesthetic and technical achievement. WILFRED PREST, *WILLIAM BLACKSTONE: LAWS AND LETTERS IN THE EIGHTEENTH CENTURY* 165 (2008).

2. BLACKSTONE, *supra* note 1, at vliv (“sacred charters”).

3. *Forest Charter*, in 1 *STATUTES OF THE REALM, Charters of Liberties*, nos. 10 and 12 at ch. 17 (Record Commission 1810–28, Nicholas Robinson trans. 2013).

4. Blackstone recounts how clergy worried that the “generality of the provisions in Magna Carta chap. 48” might endanger the “very being of all forests,” and declared that it was not the intention of the parties “to abolish the customs of the forests, without which the forests themselves could not be preserved.” They lodged their views in the Tower of London. BLACKSTONE, *supra* note 1, at xx–xxi.

5. *Forest Charter*, *supra* note 3, at chs. 4, 9, 12 & 17.

kings repeatedly to reissue the Forest Charter and pledge anew to obey its terms. Henry III (r. 1216–1272) did so in 1225 and Edward I (r. 1272–1307) did in 1297 and 1300.⁶ More than a century passed before the Crown came to accept that the Forest Charter as a law was binding upon the king.

Thereafter, for the next six centuries the Forest Charter was central to competing claims by England's governments and people to the forest landscapes. During the 16th century and onward, Parliament gradually enacted several hundred separate acts amending different provisions that the Forest Charter originally addressed.⁷ Parliament embedded the Charter so deeply in the law of the land that its formalistic repeal in 1971 was anticlimactic.⁸ The Forest Charter shaped England's constitution as well as its landscape, and it continues to confer benefits for both law and the biosphere today. Organically, over some 30 generations, humans evolved English law to conserve the oldest national system of protected natural areas in the world.

6. The Charter of the Forest of 1217, in Latin, is given the statutory citation as 1 Hen. 3; the second Charter of the Forest in 1225 appears at 9 Hen. 3. William Stubbs records the 32 times after 1217 that the king was obliged to reconfirm the Forest Charter (and Magna Carta), doing so in 1300 in the statute "*Articuli Super Cartas*." See WILLIAM STUBBS, *SELECT CHARTERS AND OTHER ILLUSTRATIONS OF ENGLISH CONSTITUTIONAL HISTORY* 490 (Oxford, 9th. ed., 1870). In Article I of his confirmation, King Edward provided in Norman French: "Know ye that we to the honor of God and of holy Church, and to the profit of all our realm, have granted for us and our heirs, that the great charter of Liberties [*la graunt charter des fraunchises*] and the charter of the forest [*la chartres de la foreste*], which were made by common assent of all the realm, in the time of King Henry our father, shall be kept in every point without breach . . ." While the text of Carta de Foresta as of 1225 became well established, it took more than a century for the Forest Charter to be accepted by the king as binding law. Only in the reigns of Edward III or Richard II were the terms of the Forest Charter being observed by the Crown as law, and there would still be subsequent efforts by kings to undermine or reject its provisions. See CH. PETIT-DUTAILLIS & GEORGE LEFEBVRE, *STUDIES AND NOTES SUPPLEMENTARY TO STUBBS'S CONSTITUTIONAL HISTORY* 232 (James Tait trans., 1930).

7. Ninety-four acts related primarily to providing timber from Royal Forests are compiled in Appendix II of N.D.G. JAMES, *A HISTORY OF ENGLISH FORESTRY* (1981). A total of 185 separate acts on forest wildlife and game relevant to those of the Forest Law appear in the table of statutes of LAWRENCE MEAD, *OKE'S GAME LAWS* (5th ed., 1912), primarily amending hunting laws. Separate acts exist for each of the Royal Forests, as their uses or ownership were revised; 57 separate acts for different Royal Forests are recorded in the appendix to RAYMOND K.J. GRANT, *THE ROYAL FORESTS OF ENGLAND* (1991). A larger body of acts after World War II provide for conservation norms and recreational uses. References to selected acts appear throughout this chapter. No comprehensive set of parliamentary acts elaborating the Forest Charter has been compiled.

8. An Act to Abolish Certain Rights of Her Majesty to Wild Creatures and Certain Related Rights and Franchises, to Abrogate the Forest Law (subject to exceptions), and to Repeal Enactments Relating to those Rights and Franchises and to Forest and the Forest Law, and for Connected Purposes, 1971, c. 47 [hereinafter *The Wild Creatures and Forest Laws Act*].

As is typical of medieval royal charters, hand-copied on vellum, *Carta de Foresta* is found in several versions. It was issued in 1217⁹ and proclaimed in a definitive text again by Henry III in 1225;¹⁰ thereafter, kings repeatedly decreed it as a Charter or confirmed it in statutes, and it was copied into numerous subsequent collections of laws.¹¹ The Forest Charter elaborated three chapters regarding the Royal Forests¹² contained in King John's *Carta de Libertatis Angliae* of 1215. When King John (r. 1199–1216) convinced Pope Innocent III (r. 1198–1216) to annul that Charter, including the chapters of forest promises, in August 1215, his act produced outrage, fueling the civil war against John. Following John's death, the coronation of Henry III led to the reissuance of the Charter in 1216, and then again in 1217, at which time there was a simultaneous proclamation of a detailed and distinct new charter, which elaborated English forest rights in 17 articles. To distinguish the Forest Charter from the 1217 reissue of the much longer

9. Blackstone could not find this original version and reported it to have been lost. Nonetheless, he found contemporary reports and copies of its provisions to verify its proclamation. BLACKSTONE, *supra* note 1, at xvii, xxi, xlii.

10. The British Library has placed online the image of the Forest Charter of 1225 (manuscript Add. ch. 24712), with the deeply blue-hued (nearly black) wax seal of Henry III still attached by cords woven into the vellum (three-fourths original wax, the balance one-third side restored). See British Library, *Taking Liberties: Laws of Forests*, The British Library, <http://www.bl.uk/onlinegallery/takingliberties/staritems/28lawsofforestspic.html> (last visited May 20, 2014).

11. The Forest Charter's text, as printed in this book's appendix H, is a translation by Nicholas Robinson of the Latin version as found in 1 STATUTES OF THE REALM (l. y's Printer, 1734), at p. 1s of the Forest71, *Charters of Liberties*, nos. 10 & 12 (Record Commission 1810–28). An original text of the Forest Charter is found compiled in the Lansdowne Manuscript, conserved in the British Library (MS 652/17). Minor variations exist among different extant versions of the Charter. See STUBBS, *supra* note 6, at 344 in Part VI as "Charter of the Forest." The Charter's name itself appears in variations: "Charta de Foresta" in JOHN MANWOOD, TREATISE OF THE FOREST LAWS 409 (4th. ed. 1717); available at <https://archive.org/details/manwoodstreatis00manwgoog>; *Charta Foresta*, in THE STATUTES AT LARGE MADE FOR THE PRESERVATION OF GAME 1 (J. Baskett, His Majesty's Printer, 1734); *Carta Forestae*, classical Latin to parallel *Magna Carta*. This chapter follows William Blackstone's usage, as *Carta de Foresta*, see BLACKSTONE, *supra* note 1.

12. Royal Forests were established by William I (the Conqueror) beginning in 1066 to assert the king's demesne and rule over the flora and fauna, in particular deer and other game, of many tracts of lands, including fields, woods, water bodies, and all the natural resources found therein. The king reserved all hunting rights in Royal Forests to the crown. In some instances, prior occupants were evicted. The *Domesday Book* records that villeins and others in Eling were evicted when the New Forest was established. DOMESDAY BOOK I.51–52 (Abraham Farley ed., n.p., 1783) (1086). Kings who succeeded William I expanded the area of Royal Forests. See CHARLES COX, THE ROYAL FORESTS OF ENGLAND (1720).

Charter of Liberties, the latter was dubbed the Great Charter, or Magna Charta, which later was changed to Magna Carta.¹³

The histories of these two companion charters are inextricably linked, although the knowledge of Magna Carta has eclipsed memory of Carta de Foresta. In the 21st century, when environmental crises abound, it is instructive to recall anew the remarkable saga of England's Forest Charter.

Tangible legacies of the Forest Charter exist in the governmental stewardship of many of its 129 remnant Royal Forests as protected areas,¹⁴ or in the Ankerwycke Yew (*taxus baccata*) at Runnymede, a tree more than 2,000 years old, which witnessed the negotiation between King John and the barons in 1215. English law today safeguards this sentinel as one of the realm's "very old trees of cultural and/or biological interest."¹⁵ The Forest Charter's intangible legacies inhere in the principles that it—together with Magna Carta—forged to establish. These include establishing the rule of law, and proclaiming the "liberties of the forest,"¹⁶ which shaped foundations for what has become sustainable natural resources law, and in particular regimes for protection of natural areas.¹⁷

13. A.E. Dick Howard, *Magna Carta Celebrates Its 750th Year*, 51 A.B.A. J. 529, 530 (1965).

14. There are 129 forests described in JAMES, *supra* note 7, at ch. 4. See HENRY SPELMAN, *GLOSSARIUM ARCHIAOLOGICUM* (1687) (reporting 68 forests, 13 chases). See Forestry Commission, *Forestry Statistics*, <http://www.forestry.gov.uk/forestry/infd-7aqdgc> (last visited May 20, 2014) (providing the Forest Commission's current statistics). One-time Royal Forests now include New Forest, Dean, Epping, Alice Holt Forest (Surrey), Carrod's Chase (Staffordshire), Rockingham Forest (Northamptonshire), and others. See *A List of the Royal Forests of England*, in GRANT, *supra* note 7, at 221–29; see also CHARLES R. YOUNG, *THE ROYAL FORESTS OF MEDIEVAL ENGLAND* 62–63 (1979).

15. DEPARTMENT OF ENVIRONMENT, FOOD AND RURAL AFFAIRES AND FORESTRY COMMISSION, *KEEPERS OF TIME. A STATEMENT OF POLICY FOR ENGLAND'S ANCIENT AND NATIVE WOODLAND* 7 (2005), [http://www.forestry.gov.uk/pdf/anw-policy.pdf/\\$file/anw-policy.pdf](http://www.forestry.gov.uk/pdf/anw-policy.pdf/$file/anw-policy.pdf). The Ankerwycke Yew was placed under an order of protection in April of 1990. See *Six of Britain's Oldest Trees*, *GUARDIAN*, July 22, 2009, <http://www.theguardian.com/environment/gallery/2009/jul/21/oldest-trees-uk> (last visited May 20, 2014); Jacob Strutt, *Sylva Britannica* (1826) (the tree is celebrated in the following lines: "What scenes have pass'd, since first this ancient Yew/ In all the strength of youthful beauty grew! /Here patriot Barons might have musing stood, /And plann'd the Charter for their Country's good; /And here, perhaps, from Runnymede retired, /The haughty John, with secret vengeance fired, /Might curse the day which saw his weakness yield / Extorted rights in yonder tented field."'). See *Forest Research—Veteran Trees*, FORESTRY COMMISSION, <http://www.forestry.gov.uk/fr/infid-5w2g5b> (last visited May 20, 2014) (regarding "veteran tree" designations generally).

16. *Forest Charter*, *supra* note 3, at ch. 17.

17. See *About IUCN*, IUCN.ORG (Jul. 10, 2013), <http://www.iucn.org/about/> (last visited May 20, 2014) (The World Commission on Protected Areas of the International Union for the Conservation of Nature & Natural Resource (IUCN) has established standards for protected areas, and every decade it convenes a World Parks Congress to advance national protected-area practices).

Study of the Forest Charter affords a glimpse into the complex relationships in feudal England among commoners, barons, clergy, the king, and his officers. It also provides a lens through which to assess laws and policies about nature and natural resources over the past 800 years. Beyond codifying customary laws associated with the Royal Forest, the Charter consciously designed new legal means to foster justice and sustain relations between the people and the natural resources of the 13th century. In doing so, it became a foundation for an intergenerational struggle toward defining a rule of law for nature.

No comprehensive history of the Forest Charter exists.¹⁸ The American Bar Association has providently elected to restore memory about *Carta de Foresta*, as an offspring of *Magna Carta*, during the commemoration of the 800th anniversary of the latter.¹⁹ Each generation has reconceived the Forest Charter's "liberties of the forest"²⁰ in light of the demands of its times. The perspective of Blackstone's age was celebratory, confirming the sacred charters' contributions to the realm's rule of law and ordered liberties. Today the focus is on the Forest Charter's role in sustaining ecological resilience. Throughout the Forest Charter's legal life, it mediated dynamic tensions between interests competing over forest products and landscapes. In its first 200 years, repeated demands that the Forest Charter's rights be implemented provided occasions to proclaim anew the Forest Charter, together with *Magna Carta*. The existence of rule of law principles owes an

18. Various descriptions of aspects of the Forest Charter exist. Some are references ancillary to accounts of *Magna Carta*. See, e.g., J.C. HOLT, *MAGNA CARTA* 338–42, 393–97, and *passim* (2d ed. 1992) and others referenced in the annotations throughout this chapter. No single book or other study devoted solely to the Forest Charter has been found. Legal commentary about the Forest Charter is mentioned in the context of discussing administration of the Royal Forests but is not singled out for specific legal analysis as a legal instrument. See YOUNG, *supra* note 14, and GRANT, *supra* note 7. In other studies, the Forest Charter is selectively discussed relevant to their focus. For example, in assessing hunting, see EMMA GRIFFIN, *BLOOD SPORT: HUNTING IN BRITAIN SINCE 1066*, at 36–48 (2008), or in urging a socialist or radical reappraisal of property rights. PETER LINEBAUGH, *MAGNA CARTA MANIFESTO: LIBERTIES AND COMMONS FOR ALL* (2008). Notwithstanding such diverse studies devoted to objectives other than recounting the special role of the Forest Charter, scholarship has yet to produce any in-depth analysis primarily of the Forest Charter.

19. The ABA Section on International Law's 2013 Fall Meeting was held in London on October 15–19, 2013, and its opening day panel titled "Magna Carta: The Foundation of Freedom and Democracy" included a lecture on the Forest Charter. This lecture may well have been the first lecture delivered in London devoted exclusively to the *Carta de Foresta* since George Trehern (d. 1526) lectured at Lincoln's Inn in 1520 (the 33 pages recording Trehern's reading are conserved in the British Library, Add Ms 73517), or since Joshua Williams lectured at Gray's Inn in 1877 as noted, see HERBERT BROOM & EDWARD A. HADLEY, *COMMENTARIES ON THE LAWS OF ENGLAND* (London, W. Maxwell, 1869). Records of professional lectures on the Forest Charter are scant.

20. *Forest Charter*, *supra* note 3, at ch. 17.

early debt to *Carta de Foresta*. But the Forest Charter also has had a life of its own.

The history of the Forest Charter falls into five distinctive periods. First is the Charter's role in the law and life of those in England in the 13th and 14th centuries. Forests were vital to the economy of this era. Forest struggles were central to the creation of the rule of law.

Second, from the 15th to the 18th centuries, the Charter served each king's quest for revenues or resources, competing with the demands of the governed, who defended their interests by seeking public participation in the Crown's decision making. This period culminates with Parliament gradually assuming authority over the Royal Forests. Forests were essential for producing timber for building ships, and Parliament established the Office of Woods to govern them. The rule of law matured.

Third, from the mid-19th century to World War II, the Forest Charter's environmental content evolved, reflecting (a) new knowledge derived from studies in ecology and other advances in the natural sciences, (b) society's new sensibilities to beauty in nature, and (c) emerging social movements protecting the English countryside in the wake of enclosures (also referred to as "inclosures"; these terms are used interchangeably in this chapter), expanding urbanization, and industrialization. Coincidentally as the 20th century began, legal scholars published translations of the early documents about both *Magna Carta* and the Forest Charter, enabling renewed study of both charters. Access to the historical record enabled invocations of forest liberties and rights in debates about common access to open space and nature conservation. In this period of rapid social evolution, Parliament transformed the Law of the Forest by establishing the Forest Commission in 1919.

Fourth, in the later 20th century, especially after World War II, spirited debates about the recreation in the countryside and the content of maturing conservation law reshaped public policy. Advances in the still young science of ecology and acceptance of norms for sustainable development progressively prompted changes to Forest Laws. Laws for publicly protected areas consciously emerged as Parliament increasingly amended aspects of the Forest Charter. Ad hoc lawmaking inevitably left vestiges of the medieval Forest Law under the Forest Charter still in force, a handful of incidents once intended to protect commoners still formalistically burdening lands near former Royal Forests.²¹ To quiet these legal relics burdening land stewardship, Parliament finally repealed the Forest Charter in 1971. Today,

21. For example, until 1971, in the New Forest in order to assert and preserve royal prerogatives on then essentially private land holdings, "keepers entered the ancient assarts and fired a ritual shot to declare the crown's rights each year." COLIN R. TUBBS, *THE NEW FOREST* 73 (1986).

governance of the New Forest²² illustrates how traditional Forest Charter liberties have been integrated with contemporary ecological practices, outdoor recreation, and cultural heritage.

Fifth, the future of the Forest Charter's "liberties" in the 21st century extends into the Anthropocene Epoch,²³ whose rapid environmental changes are altering Earth's natural systems. A well-documented record of legal management of natural resources over ten centuries is rare and merits deeper study. The Forest Charter's resilient past offers insights about stewardship of natural areas in the Anthropocene.

I. Introduction: The Forest Charter in a Nutshell

An overview of these five periods charts a pathway through the details of the Forest Charter's history, lest a reader miss the forest for the trees. In the 13th century, the Charter of the Forest's legal architecture mediated competing uses of natural resources in and around the Royal Forests. Rudiments of forest governance had existed under Edward the Confessor (r. 1042–1066), before the Norman invasion.²⁴ After 1066, William I (the Conqueror) (r. 1066–1087) brought to England his Norman concepts to English forests. He set aside Royal Forests, such as the New Forest in 1079, displacing or limiting the customary access of many, including commoners, to forest areas. Popular demands to reaffirm traditional forest uses led to including three chapters in Magna Carta dealing with forest rights. When the Forest Charter was issued on November 6, 1217,²⁵ it strengthened provisions of chapters 44, 47, and 48 of Magna Carta of 1215. Where once William had held unfettered sway in forest domains, the 150 years following the Forest

22. The New Forest includes one of the largest remaining tracts of unenclosed pasture land, heathland, and forest in southern England.

23. The Anthropocene Epoch is the current geological age in which human activity is the dominant influence on the environment, including climate. See *Subcomission on Quaternary Stratigraphy, ICS, Working Groups, Working Group on the "Anthropocene,"* QUATERNARYSTRATIGRAPHY.ORG (Aug. 1, 2014), <http://quaternary.stratigraphy.org/workinggroups/anthropocene/>.

24. H.G. RICHARDSON & G.O. SAYLES, *THE GOVERNANCE OF MEDIAEVAL ENGLAND FROM CONQUEST TO MAGNA CARTA* 22 (1963) (outlining the shift from Old English law to Norman law). See also GRANT, *supra* note 7, at 7–8.

25. The Forest Code was issued in the name of the nine-year-old King Henry III, with the Seals of the Papal Legate and Earl of Pembroke William Marshall as regent, because the young king had no seal for the first two years of his reign. G.J. TURNER, *SELECT PLEAS OF THE FOREST ix–cxxxiv* (1901), available at <https://archive.org/details/selectpleasoffor00engluoft>. Henry III reissued the Forest Charter on February 11, 1225, and confirmed it in 1227 when he became of full age. Edward I reconfirmed Magna Carta and the Forest Charter in 1297. See Magna Carta, 1297, 25 Edw., cc. 1, 9, 29, available at <http://www.legislation.gov.uk/aep/Edw1cc1929/25/9>.

Charter established rules binding William's successors to respect others' rights. It guaranteed rights for commoners (free men, *liber homo*), and prescribed procedures to ensure the king's continued compliant observance of these "forest liberties."

The Forest Law²⁶ exclusively served royal prerogatives,²⁷ governing the king's dominion over deer and other forest resources. Often arbitrary or avaricious enforcement of Forest Law produced fines and payments, which provided the king with significant revenues, and aroused resistance from barons, the Church, and commoners alike. Kings regularly expanded their Royal Forests by adding adjacent lands to them, and then assessing fines and payments for ongoing uses of those lands from nobles, churchmen, and commoners. Simon Shama observes, "It seems like sylvan gangsterism, and so it was."²⁸ Early Forest Law was characterized by arbitrary and unjust practices. Exactions of fines and rents, retroactively and unfairly, caused widespread civil strife and contributed to civil wars. King John had promised in chapter 48 of Magna Carta to renounce "all evil customs"²⁹ in governing the Royal Forests, but then he reneged on this pledge. To address this concern, the Forest Charter was issued to reverse the king's aggrandizement of lands and resources and to restore the "ancient" rights. Among other things, the Forest Charter confirmed the rights of commoners to resources associated with the Royal Forests.³⁰ Commoners would reassert their rights repeatedly in centuries to come, and parliamentary acts confirmed their "forest liberties."

Successive kings resisted the constraints of the Forest Charter, neglecting it or acting as if it had never been issued. The Tudors later would use the Forest Charter proactively to reassert their prerogatives. As Parliament incrementally acquired its lawmaking powers, it removed the king's authority

26. He refers to an extensive body of law based on royal edicts and rulings of royal officials and courts devoted exclusively to the administration of the king's Royal Forests. As much as 25 percent of England in the 13th century was governed by Forest Law, as it comprised Royal Forests. The Forest Law was governed in the Royal Forest separately from the common law, with its own elaborate system of officers and courts. The 12th-century royal treasurer Richard FitzNigel described Forest Law as: "The whole organization of the forests, the punishment, pecuniary or corporal, of forest offenses, is outside the jurisdiction of other courts, and solely dependent on the decision of the king or of some officer especially appointed by him." RICHARD FITZNIGEL, *DIALOGUE CONCERNING THE EXCHEQUER* 60 (Charles Johnson ed. & trans., London 1960) (circa 1180).

27. Kings asserted the law of the forest and the Forest Charter in Wales and Scotland, but in ways that differ from England. The Forest Charter's history outside of England is beyond the scope of this chapter.

28. SIMON SCHAMA, *LANDSCAPE AND MEMORY* 148 (1995).

29. 1215 *Magna Carta* ch. 48, in HOLT, *supra* note 18, at 465.

30. The barons had protected their own interests, but more importantly they provided that "[e]qually, all sections of society might benefit from the Charter of the Forest." D.A. CARPENTER, *THE MINORITY OF HENRY III* 63 (1990).

to govern the Royal Forests. With changing times, Parliament redefined Forest Law to promote timber production, facilitate private game parks, and allow enclosures of open forest countryside. These measures conflicted with commoners' usufructs for three centuries, but commoners continued to practice their rights to agricultural pasturage or recreational activities (e.g., hiking or "rambling") as best they could. Later, usufructuary rights held in common regained ascendancy. By the 21st century, the Charter's recognition of commoners' "forest liberties"³¹ became a principal concern of Parliament. Today, Parliament aims to sustain multiple uses for the once Royal Forests, mediating among the still competing users.

Despite its contested existence, throughout its initial two centuries the Forest Charter provided a legal foundation for socioeconomic life in England. The Forest Charter both regulated a principal source of revenue for the Crown, and confirmed core components of the agrarian production for ecclesiastical holdings and baronial manors, as well as for the livelihoods of the people. In order to finance King John's expensive military ventures, the Crusades and wars with the French, Scots, or Welsh, and his civil wars with the barons, the king enforced Forest Law to raise as much income as possible. Resentful of high-handed tactics of the king's forest officers, the barons resisted when they could, and constrained the king through asserting their Forest Charter rights. Throughout these struggles, the *curia regis* of Norman kings, with its churchmen and barons, evolved so that by Henry III's reign it had become an assembly or a *parliamentum* (a gathering for parlay or colloquy) mostly about war and taxation.³²

Later monarchs, such as the Tudors and Stuarts, would invoke the Forest Charter to reassert royal prerogatives.³³ Yet by the time Henry VIII (r. 1509–1547) created a Royal Forest at Hampton Court in 1540 for his personal hunting, or Charles I (r. 1625–1649) did so with the Forest of Richmond in 1634, both monarchs were obliged to act with the consent of Parliament. Inaugurated by the Forest Charter, a system of "laws not men" had begun to constrain the monarch in the context of forest governance.

31. Some contend that the Forest Charter and Magna Carta were not genuinely concerned with the interests of commoners. Both Charters' formations as statutes are explored in a text-based exegesis on analogies between law and music. Desmond Manderson, *Statuta v. Acts: Interpretation, Music, and Early English Legislation*, 7 YALE J. L. & HUMAN. 317, 317 (1995). Manderson deemed that the Charters' texts lacked norms that spoke to the community as a whole. This view, however, is derived primarily from an analysis of the language in the texts, and is not supported by historical scholarship of communities in the 13th century. See KATE NORGATE, *THE MINORITY OF HENRY III* 250 (1912) and CARPENTER, *supra* note 30, at 60–63.

32. MICHAEL PRESTWICH, *EDWARD I* 466–68 (1997) (1988). See also G.W.S. BARROW, *FEUDAL BRITAIN—THE COMPLETION OF THE MEDIEVAL KINGDOMS 1066–1314*, at 296–309 (1956).

33. See GRANT, *supra* note 7, at 181–203.

When royal prerogatives continued to circumscribe rights held in common, the commoners protested, often with riots in the 17th century.³⁴

In the 17th century, individuals who received grants of forest lands and rights from the Crown would invoke rights that they derived from the Forest Charter to justify their aristocratic control of game, with parliamentary sanction.³⁵ In time, resources within Royal Forests would come to serve wider national objectives, rather than generating income for the king. Laws were enacted to provide timber for the royal navy in the 16th and 17th centuries,³⁶ and once begun, plantations for timber would persist into the 19th and 20th centuries.

In the 18th century, jurists in Great Britain and abroad took note of the Forest Charter anew. They recalled the commentaries about the Forest Charter in Edward Coke's *Institutes* (1641).³⁷ More important in setting the stage for parliamentary reforms was the definitive republishing of the texts of the Great Charter and the Charter of the Forests by William Blackstone in 1759.³⁸ Blackstone made the Forest Charter accessible to all those who studied the common law and the Acts of Parliament. When writing his *Institutes* Coke had been "uncritical and unhistorical,"³⁹ whereas Blackstone was meticulous, seeking out full texts of both Charters, authenticating their terms, and placing them in historical contexts. Lawyers and courts in the

34. Lacking resort to forest courts, which were little used in the 17th century, there were riots by commoners in Rockingham Forest in 1607, Leicester Forest in 1627, Gillingham Forest in 1628–1629, Dean Forest in 1632, and Pendall Forest 1633. See BUCHANAN SHARP, *IN CONTEMPT OF ALL AUTHORITY: RURAL ARTISANS AND RIOTS IN THE WEST OF ENGLAND 1586–1660* (1980).

35. By the Game Law (1671), freeholds valued at 100 pounds were accorded the right to hunt. JOHN WILLIS BUND, *OKES HANDY BOOK OF THE GAME LAWS* 25–26 (Butterworth ed., 1912) advises that 69 forests allocating Royal Forest rights to hunt granted by the Crown existed by the 19th century. Extensive private property rights to hunting had replaced the regime of the Forest Charter, such as the Game Act, 1831, 1 & 2 Will. 4, c. 32 § 69. The Forestry (Transfer of Woods) Act transferred the remnant Royal Forests to a newly established Forestry Commission. The Forestry (Transfer of Woods) Act, 1923, 13 & 14 Geo. 5, c. 21 [hereinafter 'Transfer of Woods Act'].

36. JAMES, *supra* note 7, at pt. II. SYLVIE NAIL, *FOREST POLICIES AND SOCIAL CHANGE IN ENGLAND* Section 1.3.3, at 22–23 (2008).

37. EDWARD COKE, *THE FOURTH PART OF THE INSTITUTES OF THE LAWS OF ENGLAND* ch. 73 (London, 1671) (2009), available at http://books.google.com/books?id=M_bY7-JOMgAC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

38. BLACKSTONE, *supra* note 1, was originally published in a presentation edition for the Earl of Westmoreland. Reissued by Oxford University Press. The *Carta de Foresta* appears at page 60.

39. WILLIAM S. MCKECHNIE, *MAGNA CARTA: A COMMENTARY ON THE GREAT CHARTER OF KING JOHN 178* (2d ed. 1914).

United States relied on Blackstone's commentaries, sometimes citing the Forest Charter.⁴⁰

In the later romantic age of the 19th century, cultural reimagination "recalled" Royal Forests and the Charter as the "greenwood," a place of freedom and chivalry described in Walter Scott's *Ivanhoe*, or the tales of Robin Hood.⁴¹ Living then increasingly in urban settings, people began to visit forests and the countryside for recreation, appreciation of natural beauty, and nature study. By the late 19th and 20th centuries, the "liberties and customs" guaranteed in chapter 17 of the Forest Charter had evolved to encompass norms for conservation of nature and sustaining biological diversity. Formally repealed in 1971,⁴² some of the Charter's original provisions and offices, reconstituted by Parliament, operate still today, such as in the New Forest.⁴³ Concepts originally found in the Forest Charter reappear today worldwide in policy debates about accessing and sharing the benefits of natural resources.⁴⁴

The rule of law is established, strengthened, and observed in the crucible of conflict. Disputes over the forest repeatedly tested the principles of Carta de Foresta and Magna Carta throughout the 13th and 14th centuries. Contests to vindicate the Forest Charter's liberties served to keep Magna Carta alive. Each time the barons forced the king to adhere to the terms of the Forest Charter, the king was obliged to reissue both Charters and to disseminate them across the realm. The intensity of the forest struggles carried Magna Carta forward in its early years.

If knowledge of the Forest Charter is scant outside of England, it is because Forest Law under the Charter was a body of royal law, which was found essentially only in England. Forest Law was not received, as was common law, into the law of the British colonies. Moreover, rules regarding governance of game or timber emerged independently in the New World, where there was an abundance of natural resources and no tradition of

40. See, e.g., *State v. Mallory*, 73 Ark. 236, 83 S.W. 955 (1904) (citing Blackstone's *Commentaries on the Laws of England*).

41. SCHAMA, *supra* note 28, at 149–53; J.C. HOLT, *ROBIN HOOD* (1982).

42. The measure was amended gradually, especially in the 18th and 19th centuries, to vest aspects of the Charter in different new statutes. See THE WILD CREATURES AND FOREST LAW 1971, c. 47, <http://www.legislation.gov.uk/ukpga/1971/47> (last visited May 20, 2014) (formally repealing the Forest Charter). See also NAIL, *supra* note 36, at 18.

43. See Verderers of the New Forest, *Verderers' Court in the New Forest*, VERDERERS.ORG.UK, <http://www.verderers.org.uk/court.html> (last visited May 20, 2014) (the Verderers' Court for the New Forest is now a National Park).

44. The third objective of the UN Convention on Biological Diversity is the fair and equitable sharing of benefits arising from the use of genetic resources. Issues of access and benefit-sharing (ABS) are hotly contested among and within nations. See United Nations Convention on Biological Diversity, art. 1, 2, 15, 16, 19, June 5, 1992, 1760 UNTS 79, ILM 818, <http://www.cbd.int/convention/text> (last visited May 20, 2014).

commoners' usufructs against the Crown. Courts cited Blackstone on the status of wild animals,⁴⁵ and in cases involving taking wild honey bees, a species (*Apis mellifera*) imported to the colonies from England, which escaped to form wild hives, courts adopted the right established in the Forest Charter to allow capture of wild bee hives in forests.⁴⁶ When North American governments made decisions about competing uses of natural resources, it was only natural to create rules tailored to the prevailing local environmental conditions. There was little reason to look to how the Forest Charter constrained the king in England's Royal Forests.⁴⁷ More significantly, by the time that legislators in the early United States of America enacted their first laws on fish, game, and forests, they had accepted the fundamental legacy of both Magna Carta and the Forest Charter, that *there shall be public participation in governance over natural resources*. The state's sovereignty is not absolute but it embodies fiduciary duties to govern natural resources in the best interests of the people, with the people.⁴⁸ Rule of law principles embodied in these two Charters had become second nature.

45. See, e.g., Jeffrey Omar Usman, *The Game Is Afoot: Constitutionalizing the Right to Hunt and Fish in the Tennessee Constitution*, 77 TENN. L. REV. 57, 57 (2009–2010) (citing William Blackstone and the Forest Charter).

46. See, e.g., *Idol v. Jones*, 13 N.C. 162 (2 Dev. 1829); *Gillet v. Mason*, 7 Johns. 16 (N.Y. Sup. Ct. 1810).

47. LINEBAUGH, *supra* note 18. Linebaugh bemoans neglect of the Forest Charter in the United States, arguing that the Forest Charter's concerns for justice and the rights of the commons entitled it to some deference, which political forces precluded. Linebaugh, however, misapprehends the Forest Charter's bonding with the forest landscape of England, from which it shaped environmental conservation laws. The Forest Charter's indirect impact in the United States was to advance the principles of the rule of law, and to have repeatedly sustained Magna Carta in its roles confirming liberty, and it is ahistorical to contend otherwise.

48. The U.S. Supreme Court, and other courts, often cited and *in dicta*, referenced the Forest Charter, see, e.g., *State v. Mallory* 73 Ark 236, 83 S.W. 955 (1904). States, sovereign within their own territory, enacted their own statutes for forestry and wildlife. The relevance of the Forest Charter was slight. Roscoe Pound references it obliquely: "Except for Coke's exposition of Magna Carta and the legislation of Edward I, there has been little to do in the way of building a system of legal precepts upon a foundation of authoritative texts." ROSCOE POUND, *THE FORMATIVE ERA OF AMERICAN LAW* 97 (1939). When Congress allocated public lands, under the U.S. Constitution's property clause, it often granted wide access to pioneers to explore and develop natural resources. By the end of the 19th century, conservation laws began to constrain development, first in eastern states and then in federal law. Article XIV of the 1894 Constitution of New York established the Adirondack and Catskill Forest Preserve as "forever wild forest land," and New York enacted the first comprehensive statutory code, the NYS Conservation Law, in 1911. ROSCOE POUND, *AN INTRODUCTION TO THE PHILOSOPHY OF LAW* 198–99 (1922) (noting that government stewardship of wild game, for example, is "a sort of guardianship for social purposes"). National parks were established for public access and enjoyment, and national forests for their multiple uses, including recreation. These

The Forest Charter's resilience across eight centuries provides insights for understanding contemporary environmental law and policy-making about nature and natural resources. The Forest Charter's norms persisted because the Charter embodied both rights *and* a framework of procedures for adjusting the rights equitably over time, in judicial and legislative settings. It provided a context within which a reciprocity or balancing of competing interests could evolve into stable legal patterns for stewardship of nature, especially for areas protected for nature conservation. Despite the intense pressures of the agricultural and industrial revolutions, and rapid urbanization, England's protected former Royal Forests persist, thanks to the dynamics that the Forest Charter launched.

Relations between humans and nature have always been complex. How should the wealth from harvesting nature's bounty be shared? What measures are required to sustain biological yield and not deplete renewable natural resources? How should revenues be raised for the commonwealth? How does the love of nature, in recreation or appreciation of beauty, find a place in utilitarian or mercantile regimes to exploit nature? How does the rule of law sustain principled means to decide such questions, in place of whim or avarice? These issues of law and policy are strands woven through the life of the Forest Charter.

As a legal instrument consciously allocating rights of access to natural resources and determining correlative entitlements to their benefits, the Forest Charter is a classic environmental statute. Its chapters reflected how society valued nature. They confirmed customary, common rights, and ensured their equitable exercise. Abuses of those rights led to prosecutions as well as to appeals when commoners' rights were abridged. In the course of hearing such cases, the early forest courts and royal councils evolved into judicial or legislative bodies. Being in the form of a statute, the Forest Charter was amenable to revision by a parliament, and over time Parliament duly amended it often, reflecting evolving social values.

Values ascribed to forest ecosystems often coexist, overlap, or conflict. For example, these values include harvesting natural forest products, deriving revenues from the wealth of those harvests, hunting for recreation, grubbing new farmlands out of the woods and heaths, establishing plantations to produce commercial timber, appreciating nature's beauty, studying natural history, securing access for hiking across the countryside, extending new roads for motor vehicles or routing pipelines and power grids to traverse the countryside, preserving cultural landscapes for their own sake, sustaining wildlife corridors and biologically significant habitats, curbing excessive use of chemicals affecting the health of nature and people, safeguarding

regimes are conceptually like the regulatory antecedents ensuring access for commoners found in the Forest Charter.

habitats for their intrinsic natural integrity, enhancing forest photosynthesis for sequestering carbon within the global carbon cycle, and providing other ecosystem services locally and transnationally. How best may such competing values be accommodated? Magna Carta and the Forest Charter affirm that it is essential to reconcile competing uses in fair and efficient ways, with a neutral process for doing so sustained by the rule of law.

Today environmental rights have become central to legal discourse.⁴⁹ It is instructive to recall how the Forest Charter recognized socioeconomic and civil-political rights in the 13th century. Despite the emergence since the 1970s of the field of environmental law, few legal scholars have reflected upon the Forest Charter. Indeed, scholarship of any sort about the Forest Charter is rather scant.⁵⁰ This study invites others to fill this lacuna.

II. 13th-Century Society: The Crucible for Forging the Forest Charter

The Forest Charter cannot be understood apart from knowing the socioeconomic, political, legal, and ecological conditions of 13th-century England.⁵¹ Commoners practiced their customary law rights for the use of forest resources long before the appearance of the Forest chapters of Magna Carta or Carta de Foresta. The Charters confirmed these customary law rights. Therefore, to understand the Forest Charter, one needs to become acquainted with the laws and practices of medieval England. The contours of governance in that age may be briefly recounted.

Feudal society in England after the Norman Conquest formed around the king's royal institutions, the Church both in Rome and locally, the barons and their manors, and the emerging trading centers in London and elsewhere, as well as with peasants (free men, villeins, and others) who labored throughout to sustain the economy of those times. The barons owed obligations to the Crown, both to provide military services, and to pay taxes. The king required substantial and steady income to pay for England's constant warfare, with the Scots, the Welsh, or the French.

In 1066, England had 1.2 million people, and some 15 percent of the land was forested.⁵² As William the Conqueror confirmed or parceled his

49. A total of 147 nations provide for environmental rights in their constitutions. See DAVID R. BOYD, *THE ENVIRONMENTAL RIGHTS REVOLUTION* (2012).

50. See, e.g., Luis Kutner, *Charter of the Forest: Forgotten Companion of the Magna Carta*, 6(1) *THE COMMON LAW LAWYER*, 1, 1–8 (Jan/Feb. 1981).

51. See generally CHRISTOPHER DYER, *MAKING A LIVING IN THE MIDDLE AGES 850–1520* (2002).

52. NAIL, *supra* note 36, at 3, 7–9; GRAME J. WHITE, *THE MEDIEVAL ENGLISH LANDSCAPE 1200–1540*, at 1–11 (2012).

conquered lands to nobility in manors or to the Church, he left customary uses by commoners largely as they were. His *Domesday Book* (1086) recorded parts of today's 143 extant Forests that William reserved to serve the Crown.⁵³ William decreed that Royal Forests were subject only to his law. Wherever the king held court in different parts of England, there was always a nearby Royal Forest to serve up assured supplies of venison, forest or farm produce, fuel, and timber for building his castles and other structures. The king also derived vast political power by allocating or withdrawing lands, particularly parts of Royal Forests, among his vassals. The king held about twice the amount of forestland as all others.⁵⁴ He received taxes, fees, and fines, but most importantly could sell or seize forestland to aggrandize his income, finance wars, pay for the large body of his forest administrators, allocate sinecures, and generally exercise political will.

While valuable for the king, Royal Forests were essential to baronial manors, church properties, towns, small landowners, and commoners. None could subsist without the produce of the lands and forests. Since the 12th century, Royal Forests consisted not merely of trees, but included meadows, grasslands, heaths, moors, streams, wetlands, and also cultivated fields, gardens, priories and church lands, villages and farms, and the Roman roads and other byways that crossed the lands, along with longstanding commoners' usufructs for pasturage or collecting wood. Forest landscapes exclusively the king's were royal *demesne*, for his deer or boar hunting or timber harvests. Adjacent common usufructs often overlapped with the king's *demesne*. Substantial legal effort necessarily was devoted to delimiting each of the various uses, a process known as the "Law of the Forest" that continued for centuries.

The designation as a Royal Forest covered much more than woodlands. Lands in Royal Forests were not fenced; animals and people came and went. When peasants expanded their farmland by grubbing out trees and stumps, they often encroached on the king's *demesne*, and royal officers would fine such conduct and assess annual payments (*assarts*) in return for granting permission to allow the encroachments to continue.⁵⁵ Such unauthorized clearings for expanding farming often competed with other commoners'

53. YOUNG, *supra* note 14, at 9 (providing a map of William's initial Royal Forests); OLIVER RACKHAM, *THE HISTORY OF THE COUNTRYSIDE* 75–88 (1986) (estimating the extent of forest cover); STUBBS, *supra* note 6, at 490 (noting that full extent of the Royal Forest only became clear in 1222, when many are listed in the Patent and Close Rolls); GRANT, *supra* note 7, at 221–29 (recording the Royal Forests and their associated acts for disafforestation).

54. RACKHAM, *supra* note 53, at 131. *The Domesday Book* records that six out of ten parishes held forested lands. See RICHARD MABEY, *THE COMMON GROUND—THE HISTORY, EVOLUTION AND FUTURE OF BRITAIN'S COUNTRYSIDE* 52–63 (1980) [hereinafter *THE COMMON GROUND*].

55. YOUNG, *supra* note 14, at 93, 109, 121–22.

usufructs, depriving some of them of their sources of fuel or pasturage. Royal measures to curb such *peasant irresponsibility* had the beneficial side effect of protecting forest habitats and maintaining the "ecological balance of the countryside."⁵⁶

Economic entitlements in Royal Forests were specifically accorded their appropriate legal status. Hunting deer and most other large animals (e.g., boar) was "the right of *venison*" (the right to take red and fallow deer), and this right belonged exclusively to the king. The unlawful killing of any animal resulted in a coroner's inquest and prosecutions. Beyond royal hunting, the king supplied his court with meat and fuel from his demesne, as well as timber for his buildings.

Customary law usufructs for forest natural resources were shared by many. None but the king had the right of venison. The commoners' use rights, which often extended into Royal Forests, were for the forest's flora, as "rights of *vert*" (the trees, bushes, understory, and other plants). These usufructs included, for example: collecting bracken (*fugerium*); collecting wood (*estover*); coppicing to produce fuel wood (*robura*); cutting heathland turf for fuel (*tubary*); harvesting bark for tanning; gathering wood for making charcoal and operating iron works and smelters; running pigs in forests (*pannage*) to feed on acorns (*mas*) or beech mast; allowing cattle to graze (*pasturage*) in forest clearings; gathering herbs and berries (*herbage*); harvesting timber for bridges and buildings; preparing charcoal; mining and operating forges; and hunting and fishing. Allowing domestic animals to use Royal Forests was regulated and required payment of fees (*agistment*). *Trespasses against venison* (taking deer) originally resulted in corporal punishment, but by the 12th century it would be punished by heavy fines and imprisonment. *Trespasses against vert* (taking biological products, abuse of pasturage, or wood-cutting) resulted in fines (*amercements*) and confiscation of goods. Those who exceeded what was allowed under their customary rights, as in collecting wood from pollards, committed the offense of "waste" (*vastum*). For committing waste, whenever the Forest Eyre⁵⁷ was held a woodcutter would be amerced (required to pay a fine) until the damaged trees had grown back to their former state.⁵⁸

56. DYER, *supra* note 51, at 162: "Ultimately the arable land would yield badly, as it was poor land at the outset, better suited for pasture, and would be deprived of nutrients by the shortage of grazing for animals by which manure was produced. By their reckless assarting, it could be said, peasants displayed either short-sighted greed, or desperation."

57. The Forest Eyre was a royal court that convened in the countryside to adjudicate charges that someone had transgressed the Forest Law. As Turner explains, "The Forest Eyre was a court called into being by the king's letters patent appointing justices to hear and determine pleas of the forest in a particular county or group of counties." G.J. TURNER, *supra* note 25, at 1 (1899).

58. PETIT-DUTAILLIS & LEFEBVRE, *supra* note 6, at 157.

When the king allocated his forestlands to barons or church establishments, different legal regimes then governed such non royal places. These lands were known as parks, chases, or warrens.⁵⁹ Private owners had to observe duties comparable to those of the king, and they had to ensure that continuing royal rights were observed. Royal officers would inspect these private properties to ensure that they did not encroach on his legal rights, and to regularly and frequently assess fines and collect rents on unauthorized land uses (*assarts*). Disputes about many of the customary uses of lands in the Royal Forests existed since their creation, and would continue to feature in contemporary conservation disputes, as seen in the New Forest today.

Royal governance of such forest uses required a large bureaucracy, some of which existed even before the Norman Conquest under Edward the Confessor. Whenever the king curbed another person's rights to natural resources, disputes arose. Friction between the Crown and forest users was frequent, and measures to clarify correlative legal rights were taken. For example, the Assize of Woodstock (1184)⁶⁰ had proclaimed principles of fairness to resolve disputes and avert renewed instances of unjust treatment.

The king's *Justiciar*, sometimes referred to as the chief justice of the forest, was the king's principal minister, a vice-regent. William established the office of Justiciar as he knew it from its use in his provinces in France. Since the king was often abroad, in his French territories or at war, the Justiciar governed for him in England, supplying the king his revenues and other support. The Justiciar's arbitrary acts on behalf of the king often offended baron and commoner alike. (Edward I finally abolished the post, to eliminate an appearance of injustice. He preferred to exercise power through his chancellor.⁶¹) Unjust, arbitrary, and capricious application of forest rules contributed greatly to the discontent that produced the rebellions against the king in 1215 and 1216–1217, producing Magna Carta and the Forest Charter.

Royal Forests cannot be understood in today's ecological terms. They were special creations of law, not recognitions of natural places. As *engines* of wealth in a pre-industrial and pre-mercantile age, Royal Forests were of paramount value. The pipe rolls and sheepskin membranes, the written records of the administrative process of collecting royal revenues, were

59. MANWOOD, *supra* note 11, states definitions for the different types of protected areas: "chase" at 49, "warren" at 368, and "woods" at 370. G.J. TURNER, *supra* note 25, later restates other accepted legal meanings for "chase," at cix, "warren," and "parks," at cxv. Essentially, a "park" is an area enclosed by a fence; a "chase" is an area of protected lands where the wild animals are not reserved and may be hunted; a "warren" is a land where wild animals are found and where the right to hunt has been conferred selectively.

60. STUBBS, *supra* note 6, at 185.

61. See ROY MARTIN HAINES, KING EDWARD II: HIS LIFE, HIS REIGN, AND ITS AFTERMATH 1284–1330, at 287 (2003).

carefully maintained.⁶² These records reveal that each king extracted as much wealth from the users of the forests as possible. This governance system was resilient, lasting 500 years. In the 17th century, a Restoration aristocrat characterized woodlands as “an excrescence of the earth provided by God for the payment of debts.”⁶³ The need for securing royal revenues produced the records that tell the story of the Forest Charter.

The Forest Charter confirmed and brought within legal constraints the extensive executive and judicial institutions that the Norman kings established to govern their Royal Forests. These regimes persisted strongly through the Tudors, when Forest Law had become a largely settled subject, and bar and bench alike were accustomed to the practice of the law of the forest. Forest Law was administered through a complex regime, which will briefly be described.

To govern the vast royal enterprises of the Royal Forests (*boscus dominicus regis*), under the king, the Justiciar supervised an administrative headquarters system, the *Capitalis Forestarius*.⁶⁴ The duties of the *forest justices*, under the Justiciar, were essentially ministerial, or quasi-judicial, with appeals of their decisions or hearings on major matters coming to the Justiciar. The forest justices governed by convening courts in each forest, and through their agents (the wardens) would see to the release on bail for poachers, hold inquisitions on requests for royal grants, and oversee forest governance. In 1236, the chief justice of the forest's functions were divided, north and south of the river Trent. The offices of the two forest justices continued until abolished by the Act of 1817.⁶⁵

A number of courts convened in the forests. For example, some adjudicated charges of crimes, such as the *attachment courts*, meeting routinely about every 40 days, to hear pleas of violations for which arrests (*attachments*) had been made, and to assess fines for violations of rights of *vert* or to punish escapes of domestic animals into the king's demesne. Some courts were quasi-judicial, and some were like boards convened three times a year to address issues for administration of Forest Law. For example, the *swanimotes* convened foresters, Verderers, and agisters together to arrange for the agistment into the woods of the king's demesne, pannage, for example, and assessing the fees for such. Other assemblies were executive conclaves, royal courts. There were *Special Inquests* regarding individual forest venison offenses, which gathered

62. See Charles R. Young, *The Forest Eyre in England During the Thirteenth Century*, 18 AM. J. LEGAL HIST. 321, n.3 *passim* (1974) (discussing the records for the Forest Eyres).

63. ROGER MILES, *FORESTRY IN THE ENGLISH LANDSCAPE* 26 (1967).

64. On the king's administration, see generally RICHARDSON & SAYLES, *supra* note 24. The seat of governance is referenced in the Forest Charter chapter 16.

65. Abolition of Certain Officer of Royal Forests Act, 1817, 57 Geo. 3, c. 61; see GRANT, *supra* note 7, at 88.

evidence to submit to the Forest Eyre, whether by individuals or townships. The high court, or *Justices in Eyre of the Forest* (also known as the justice seat), eventually came to absorb these other courts.

The king appointed justices to the Forest Court, or *Forest Eyre*, to determine pleas of the forest in various counties concerning *purprestures* or encroachments on royal rights, wastes, and trespasses. All earls, barons, and knights who held land in or near the Royal Forests, and all bishops, and other ecclesiastics in the area were summoned to attend the Forest Eyre. The foresters, Verderers, and agisters attended as well. The Forest Eyre reviewed the king's interests, and heard the forest pleas, which were many and varied.⁶⁶ For example, under the Forest Charter,⁶⁷ high churchmen and nobility could take two deer while passing through a Forest for their food, but exceeding this amount was prosecuted as venison taken without warrant. Attendance of everyone local at a Special Inquisition or Forest Eyre was required, and amercements were collected from those who failed to attend. Those who failed to attend the Forest Eyre were fined.⁶⁸ *General Inquisitions* were held when townships did not fully attend, and fines were assessed. Decisions of the Forest Eyres were recorded, doubtless more to oversee revenues due the king than to report adjudications of rights.⁶⁹ By the time of Edward I, legal representatives not yet with legal education were representing noble landholders, appearing in these courts to press pleas.⁷⁰ Forest Eyres reviewed claims of illegal exactions, encroachments on the king's rights, payments due for assarts, herbage, timber exports, harms from overgrazing of pastures by domestic animals, waste or destruction of forest resources, and the value of windfalls of wood. Forest Eyres were authorized to convene a jury of 12 knights and free men, which Forest Justices consulted to determine fines (*amercements*). The Forest Eyres received pleas complaining of violations of the Forest Charter, which suggests that there was confidence in the adjudicatory process and judges.⁷¹ These courts were also largely the only pathway open to complain and seek relief.

66. See G.J. TURNER, *supra* note 25, at 1–131 (reprinting the memorials of the deliberations of the forest justices).

67. See *Forest Charter*, *supra* note 3, at ch. 11.

68. GRANT, *supra* note 7, at 55.

69. Pipe rolls recorded the financial returns by sheriffs, including rents, fees, and the fines and amercements of the Forest courts. See, e.g., D.J. STAGG, *A CALENDAR OF NEW FOREST DOCUMENTS 1244–1334* (1979).

70. 4 THE FOREST OF PICKERING, NORTH RIDING OF THE COUNTY OF YORK xli (Robert B. Turton ed., the North Riding Record Society, 1897).

71. Ralph V. Turner, *John and Justice*, in KING JOHN: NEW INTERPRETATIONS 317, 317 (S.D. Church ed., 1999).

In addition to itinerant eyres and other courts held around, in or near Royal Forests, there were officials residing in each Forest.⁷² Under the Justiciar, a *warden* governed one or more Forests, and with the consent of the king could assign portions of his wardenship to others for life. They were the king's executive officers in the Forests, and they delivered venison or wood as directed by the king. Some were hereditary offices, and some also were granted special rights, such as for hunting by falconry. A warden would lose his office if found by the Forest Eyre to have abused it.⁷³

To check on the wardens, each Forest also had a set of four *Verderers* (*viridarii*), who reported directly to the king, not to the wardens. They were elected in each county and held office for life, or until removal by the king. Verderers were usually landed barons or knights. Their chief work was to attend the forest courts. *Foresters* were appointed by the wardens, and paid by the warden. Usually numbered at five per Forest, each with an *underforester* or page, they policed the Forest for trespasses of venison or vert, for poaching and timber removals, and they arrested (*attached*) those found violating royal rights of venison or vert. To pay for a forester's services, the king conveyed rights to receive income to each warden. Examples of such entitlement were collecting bark or wood, or charging fees for required services, such as *chiminage* (the escort of persons through the Forest, as when deer were fawning in the fortnights before and after midsummer). However, as payments were often inadequate to meet their needs, foresters extorted their remuneration from inhabitants of the Forests as they could.

Pleas asserting grievances against foresters and wardens were lodged in inquisitions and eyres, which the Justiciar convened either routinely or at special times. Attendance at those courts also was compulsory for local inhabitants. In each Forest the wardens appointed four *agisters*, to collect money from those who had permission to have their cattle and pigs in the king's demesne fields and woods (*agistments*). They counted the animals allowed into and coming out of the pasturage and pannage.

When the king granted lands from the Royal Forest to barons or to the Church for his military retainers (*boscus bara*, *boscus priori*, *boscus mili*), these proprietors of lands (thereafter known as parks, chases, or warrens) were obliged to have *woodwards* and other officers (e.g., warreners, reeves, beadles) whose jobs were to police the woods and game to ensure that royal rights were not abridged. Providing services analogous to a royal forester, these private officers served the lord who retained them as well as the king;

72. MCKECHNIE, *supra* note 39, at 414. The Forest offices are described in detail in MANWOOD, *supra* note 11, and G.J. TURNER, *supra* note 25, at "Introduction." For other legal institutions, see generally GEORGE B. ADAMS, COUNCIL AND COURTS IN ANGLO-NORMAN ENGLAND (1926).

73. GRANT, *supra* note 7, at 94.

the lord of each manor presented these woodwards or other private officials to the king's forest justice to swear an oath to protect the king's interests.

Finally, once in three years an inspection of all the metes and bounds of the Royal Forests was to be conducted by the *regarders*. This *regard*, recognized in the Charter of the Forest,⁷⁴ took place when the king ordered an eyre convened, and directed that 12 knights be appointed to investigate and answer to a set of interrogatories about the king's demesne and his rights (known as the chapters of the Regard).⁷⁵ *Perambulations* of Royal Forests were held to clarify borders of royal demesne. This audit settled disputes, adjusted rights, and appears to have served a purpose not unlike a contemporary fiscal audit by an auditor-general or *cours des comptes*. Failure of the regarders to make their inspections or report to the Forest Eyre resulted in the eyre assessing fines against them.

To sustain such an elaborate regime for governing the Royal Forests, all kings, and particularly King Henry II (r. 1154–1189) and King John, devoted significant personal attention to appointing and supervising the officers chosen for this forest bureaucracy. King John may have been illiterate,⁷⁶ and in any event relied on his scribes and officials to administer his Forest Law regime. As Oliver Rackham notes,

The Forests were of more than merely economic value to the king. Medieval kings were poor, and their authority depended on the power to make gifts of a kind money could not buy, such as deer and giant oaks. The Forest hierarchy gave the king unlimited opportunities to reward those who served him well with honorific sinecures.⁷⁷

For example, in 1204 King John disafforested much of the Dartmoor Royal Forest to the benefit of the Earls of Cornwall and commoners, in order

74. *Forest Charter*, *supra* note 3, at ch. 5.

75. Richard FitzNigel, *Dialogus de Scaccario et Constitutio Domus Regis* of 1177, in *THE DIALOGUE OF THE EXCHEQUER AND THE ESTABLISHMENT OF THE ROYAL HOUSEHOLD* 90–91 (Emilie Amt & S.D. Church transl. & eds., 2008): “Indeed, the law of the forest, and the monetary or corporal punishment of those who transgress there, or their absolution, is separate from the rest of the kingdom’s judicial system, and is subject to the sole judgment of the king or his especially appointed deputy. For it has its own laws, which are said to be bases on the will of princes, not on the law of the whole kingdom, so that what is done under Forest Law is called just according to Forest Law, rather than absolutely just.” It was not just the rights of access that were clarified by the forest perambulations and regards, to inspect and make clear the borders, but also which body of justice would apply. See also STUBBS, *supra* note 6, at 201.

76. CLAIRE BREAY, *MAGNA CARTA: MANUSCRIPTS AND MYTHS* 38 (2002).

77. RACKHAM, *supra* note 53, at 138. This process continued into the future. Rackham notes: “Was not Chaucer, in the middle of a busy life, made under-Forester of an obscure Somerset Forest?”

to secure funds for his wars with France.⁷⁸ Such grants of Royal Forest lands raised funds but also led to expanding of farming and economic production in England. These developments incrementally reduced some forest cover while conserving the rest.

Changes in forest use also often led to new disputes. Incursions into the adjacent Royal Forests were frequent, and often led to fines or were allowed on the condition that annual payments (*assarts*) would be made. Disputes often led to civil unrest and armed conflict, including questions about who should serve in the various Forest offices described above. In the period immediately following the Conquest, Norman *familiares* were unacceptable in some regions, especially in Northern England. Administration of this vast and complex regime was problematic. Kings Henry II and John made governance of their Royal Forests a personal high priority, because their income and power depended upon it.⁷⁹

Until the 19th century, all kings after William the Conqueror expanded the Royal Forest to aggrandize their assets. These expansions of forest boundaries were called “*afforestation*.” By expanding the borders of a Royal Forest, land was removed from the common law and placed under the Forest Law, and became the king’s royal demesne. The barons and commoners alike resisted afforestation whenever they could. At each coronation, before swearing oaths of fealty, the barons demanded that each new king acknowledge past wrongs under Forest Law, including various afforestations. A Charter of Liberties had been granted by Henry I (r. 1100–1135) on his coronation in 1100, which attests to the early and ongoing political sensitivity associated with unjust management of uses of the Royal Forests. Henry I’s Charter of Liberties (also referred to as the Coronation Charter, an English-language translation of which appears in this book as appendix A) had required that the bounds of the Royal Forest be restricted to the Royal Forests’ limits as they had been established at the death of his father, William the Conqueror. This test became the benchmark for the legitimate boundaries of Royal Forests. As they assumed the crown, new kings conceded past inequities in governing the Royal Forests and agreed to inspections necessary to undertake “*disafforestation*.” Implementing the promise to return to William’s limitations on Royal Forests, however, was invariably prolonged and delayed. Meanwhile, the king collected his revenues, and his forest officers conducted business as usual.

Notwithstanding promises to maintain ancient limits to the Royal Forests, Henry II and his successors repeatedly engaged in afforestation, thereby increasing their revenues through additional collections of fees, rents, and fines, or grants of land. A contemporary observer, Radulfi Nigri, recorded

78. NAIL, *supra* note 36, at 13.

79. HOLT, *supra* note 18.

that Henry II used his royal powers to amass new sources of income: "His greed was never sated; having abolished the ancient laws, he issued new laws each year, and called them assizes."⁸⁰ Significant expansions of the lands held within Royal Forests, and the exactions that forest officers and courts collected, prompted opposition. Barons often invoked their ancient rights demanding disafforestations, citing the Charter of Liberties granted by Henry I. On King John's coronation, the barons invoked Henry I's Charter of Liberties, and John agreed in principle that the boundaries of the Royal Forests would be disafforested and restored to William's forest borders.⁸¹

In the decades following the reign of William the Conqueror, as the population grew, so did the ranks of forest users, and disputes as well. When the barons would express their own distress, they increasingly were the virtual representatives of all others who used the forests, commons, or church alike. In the 13th century, the well-being of all depended on the yields of agriculture and silvaculture by the commoners and small landholders, as well as villeins on manorial estates. If the king exacted too large a part of the Forest's income, this caused shortfalls in what was available to others.

This entire Royal Forest regime was largely independent of the common law, or of the governance by sheriffs in each shire, or by manorial courts. It was a powerful socioeconomic and political force. It persisted for decades after the Forest Charter was issued, albeit declining in vigor. By 1327, royal acceptance of the Forest Charter's rights had been sufficiently acknowledged such that Forest Eyres and Regards were held less often.⁸²

From a social perspective, the customary law usufructs of the commoners, confirmed in the Forest Charter, were of more lasting importance than the king's institutional systems to extract royal revenues. In feudal times, the king's legitimacy formally rested on the papal endorsement of each king's coronation oaths, but the king's temporal power depended on the feudal obligations of "knight service," that is, military service given by his barons, which over time was satisfied by a monetary payment (*scutage*), since increasingly the king hired mercenaries paid using royal income. The economy of the forest was at the foundation of these complex and interrelated aspects of feudal political power. The growth of London, its trade, and the economy of money rather than an economy of feudal services undermined

80. RADULFUS, RADULFI NIGRI CHRONICA (THE CHRONICLES OF RALPH NIGER) 13 (Robert Anstruther ed., publications of the Caxton Society 1967) (1851).

81. This Charter abrogates "evil customs" and promises an end to unjust practices. It divided lands for which military service was required from lands that could be taxed. In chapter 10 it provided that "I retain in my hand, by the common consent of my barons, my forests as my father had them." By such an acknowledgment, the barons ensured that King John would not hold greater space. STUBBS, *supra* note 6, at 116.

82. YOUNG, *supra* note 14, at 151. The statute of 1327 was reaffirmed when Richard II (r. 1377–1399) accepted the Royal Forest boundaries of his grandfather in 1383.

medieval obligations of fealty. Commoners' traditional usufructs persisted, grounded as they were in the relationships of humans with the forests.

Norman feudal legal relationships already had changed and had become muddled by the beginning of the 13th century. The mix of Norman laws with older Anglo-Saxon rules and customary practices, together with legal innovations by kings, such as the announcement of new Forest rules for pannage or chiminage at the Eyre of 1198 in the northern counties, led to disagreements about what laws governed conduct in Royal Forests. One contemporary observer bemoaned how the king's need for money for his wars in Normandy depleted everyone's assets, and complained that new rules announced at the Eyre of 1198 were a "torment for the confusion of the men of the realm."⁸³ Disagreement about the content of the rights in the Royal Forests was widespread.⁸⁴

As the first decade of the 13th century opened, the barons' frustration regarding perceived unjust or arbitrary actions by King John and his forest officers mounted. Several barons were in open rebellion. In a realm accustomed to arguing about laws to justify exercises of power, it is perhaps not surprising that two legal charters would become the tools used to settle the English civil wars of 1214–1217. *Carta de Foresta* emerged to establish justice.

III. The Creation of the Forest Charter

What is less predictable is how *Magna Carta* and the Forest Charter would establish the foundations for the evolution of the social contract in England through the rule of law,⁸⁵ or that the Forest Charter would establish norms for just relations between crucial parts of an economy grounded in natural resources. Both Charters protected the rights of commoners and their land holdings,⁸⁶ empowering barons and commoners alike in their recurring

83. GRANT, *supra* note 7, at 20 (quoting Hoveden, (Rolls Sr.) IV 63–65).

84. These claims to competing authority have been explored in analysis of the languages through which they were asserted. See Scott Kleinman, *Frid and Freedom: Royal Forests and the English Jurisprudence of Laïmon's Brut and Its Readers*, 109 MODERN PHILOLOGY 17, 17–45 (2011), <http://www.jstor.org/stable/10.1086/661955> (last visited May 20, 2014).

85. When Henry III reissued the Forest Charter and *Magna Carta* in 1225, based on his "spontaneous and free will, he was sealing a contract with society." "[T]he new Charters being part of a mutual bargain between the king and his realm. This was because they had been paid for. As the Charters themselves stated, in return for the concession of liberties, everyone in the kingdom had granted the king a fifteenth of their movable property." CARPENTER, *supra* note 30, at 383.

86. Articles 39 and 40 of *Magna Carta* provide that no freeman shall lose (be dis-seized of) his freehold except by due process of law.

disputes with the king. Throughout generations of contested decisions about Royal Forests, the Forest Charter produced the collateral benefit of stabilizing large tracts of forest countryside that have endured for a millennium.

When King John met the rebellious barons at Runnymede, he conceded forest rights in three chapters of Magna Carta.⁸⁷ Chapter 44 excused all but the accused from being summoned to attend the Forest Eyres, attendance at which had been mandatory since the Assize of Woodstock. This freed up the time of all and prevented the king from fining those who did not attend court sessions. Chapter 47 provided that all forests made under King John “shall forthwith be disafforested,” and that riverbanks placed “in defense” would be made open to public use again. Chapter 48 mandated an inquiry by 12 sworn knights, chosen by honest men in each county, into “all evil customs concerning forests and warrens” and mandated that such evils be abolished within 40 days of the inquest, provided King John would be informed and would be present in England rather than being abroad, as for war or crusade. On the same day that Magna Carta was issued, the barons obliged King John to issue writs to his sheriffs directing them to select knights to hold the local inquiries into evil customs and issues of disafforestation. Some knights began this work.⁸⁸

Once King John left Runnymede, he sought to undo all that he had agreed to do. As noted above, he convinced Pope Innocent III to annul Magna Carta, which occurred on August 24, 1215. (Pope Innocent III also excommunicated the barons and suspended Archbishop Stephen Langton, who had facilitated the agreement on Magna Carta.⁸⁹) Moreover, when Henry III’s guardians issued a new version of Magna Carta in 1216, these three chapters on forests were deleted (as were some other chapters). When King John disavowed Magna Carta, including the chapters of forest rights, he signaled his disrespect for the entire pact agreed upon at Runnymede. John called upon loyal barons and his mercenaries to continue his civil war with the rebellious barons. The continuing civil war in England was

87. 1215 *Magna Carta* chs. 44, 47, 48, in HOLT, *supra* note 18, at 463 and 465.

88. J. C. Holt, among others, surmises that the detail of the provisions of the Forest Charter is evidence that the inquiries of at least some of the knights commissioned by Magna Carta to investigate the grievances that arose during the reign of King John had resulted in reports that were reduced to the separate chapters of the Forest Charter. See, e.g., HOLT, *supra* note 18, at 384–85; Holt observes: “The work of the commissions of 1215 must have been even more valuable in compiling the Charter of the Forest.” Except for chapter 2 of the Forest Charter, “the rest were new and they carried the regulation of the forest law far beyond anything considered or even suggested in any of the earlier documents.”

89. G.W.S. BARROW, *FEUDAL BRITAIN* 204–09, 258–59 (1956). See also G.B. Adams, *Innocent III and the Great Charter*, in *MAGNA CARTA COMMEMORATIVE ESSAYS* 26 (Henry Elliot Malden, ed., 1917).

complicated in 1216 by the invasion of Prince Louis of France, the future Louis VIII (r. 1223–1226).

King John's unexpected death on October 19, 1216, prompted renewed negotiations between the Crown and the barons. Amidst the continuing civil war and invasion by Louis of France, William Marshal, the Earl of Pembroke, with other barons managed to restore the kingdom's governance. John's nine year-old son, Henry, was crowned king by the papal legate Gaulo (sometimes spelled Guala). William Marshal became *Rector Regis et Regent*, and managed to reunify the barons who had fought for and against King John. In the name of young Henry III, Marshal reissued a shortened Charter of Liberties (without the forest chapters) over Marshal's own seal and that of Gaulo, to legitimize the new king and win support of barons loyal to John. Louis' invasion was reversed; he lost a significant naval battle and lacked sufficient munitions to continue. In September of 1217, having negotiated the Treaty of Kingston (Lambeth), Marshal and the curia regis, in the presence of Gaulo, agreed with Louis that he would abandon his claim to the English crown and return to France in 1217.⁹⁰

At this point, William Marshal consolidated support for the regency. In 1217, the regency made possible both the reissue of Magna Carta (without the forest provisions, as noted above) and the issuance of the new Carta de Foresta, which expanded the forest rights of commoners and others, in order to end the excesses of the king's administration of Forest Law. As Professor J.C. Holt has observed, the 1215 Magna Carta was the work of King John's enemies, but the 1216 and 1217 Magna Cartas and the Carta de Foresta were the work of King Henry III's friends and supporters.⁹¹

The barons who had begun to investigate abuses of ancient rights under chapter 48 of Magna Carta had evidently compiled sufficient reports about abuses of rights that these could form the basis for drafting the more detailed rules for the Forest Charter. The barons had drafts of express forest liberties that they wished to confirm and have observed. As Professor Holt notes, "it is unlikely that such lengthy regulations could have been drawn up so soon after the civil war without some kind of documentary preparation."⁹² No records have been found to document the actual drafting of the Forest Charter, but its provisions speak for themselves. They are significantly stricter on the king than his three abjured Magna Carta articles.

As regent, just two years before he died, William Marshal arranged for Henry III to proclaim the Forest Charter on November 6, 1217.⁹³ For the next six years, forest disputes receded as the Crown, the barons, the Church,

90. KATE NORGATE, *THE MINORITY OF HENRY III* 58–60, 279–80 (1912).

91. HOLT, *supra* note 18, at 378.

92. *Id.* at 384–85.

93. The history of this era is well documented. See, e.g., THOS. PITT TASWELL-LANGMEAD, *ENGLISH CONSTITUTIONAL HISTORY* 112–16 (1905).

and the commoners restored post-war relations. Nonetheless, old habits die hard, and the Crown's forest officers engaged in renewed arbitrary actions, and violations of the Forest Charter recurred. The archbishop of Canterbury, with support of the barons, exhorted Henry III to reissue the Forest Charter. When William Briwere, one of the king's counselors, resisted, saying that concessions extorted by force might not be observed, the archbishop replied: "William, if you loved the King you would not disturb the peace of the kingdom."⁹⁴ On February 11, 1225, the Forest Charter was reissued, along with *Magna Carta*, each over Henry III's own seal.

At the time, Henry III had an urgent need for funds to confront French aggression, and he agreed to issue the Charters in return for which the barons agreed to provide the funds he required, a fifteenth of their moveable property. Blackstone cites contemporaneous historical accounts: "Matthew Paris informs us, that an original great charter under seal was sent to every county in England, and to those which had forests within them a charter of the forest was sent also."⁹⁵ In fact, the king ordered his sheriffs to proclaim and obey the Charters at the same time that he ordered them to assess and collect the tax. Indeed, crusaders were told that their heirs could not enjoy the liberties of the Charters unless they paid the tax.⁹⁶ This became known as the Forest Charter of 1225. It was indeed a social contract.

Yet, no sooner had Henry III reissued the Charters, he and his successor Edward I chose to ignore or renounce them when they thought they could get away with doing so. When Henry became of legal age in 1228, he neglected (some contend he annulled) both the Charters, on the grounds that they had been issued during the regency (even though the 1225 charters had been issued over his own seal), and he also reversed **disafforestments** made during his minority.⁹⁷ Then in 1236, when the Crown again sorely needed funds, the barons prevailed on him to reconfirm the Charters, acknowledging that he did so notwithstanding that they were issued during his minority. This pattern was to recur throughout Henry III's reign, with subsequent confirmations of the Charter issued in 1251, 1253, and 1264, each time largely because the king needed financial support from his barons. Each resulted in royal concessions, including measures for disafforestations. Gradually, the terms of the Forest Charter were becoming well known throughout the realm.

Despite the guarantees of Forest Charter liberties, unjust enforcement of Forest Law produced new conflict in the countryside. To stay the unrest, Edward I reconfirmed the Charter while abroad on November 5, 1297, and

94. BOYD C. BARRINGTON, *THE MAGNA CARTA AND OTHER CHARTERS OF ENGLAND* 165 (1900).

95. *Id.* at xlv.

96. See CARPENTER, *supra* note 30, at 383.

97. *Id.* at 392-95.

was forced to do so again in person on his return to England in 1298. He also was compelled to name commissioners and perambulators to inspect the Royal Forest's boundaries.⁹⁸ Edward convened a parliament in 1300 to receive his commissioners' report and then once again issued the two Charters. Their legal standing was becoming indisputable, and there was continuing popular intolerance of unjust enforcement of Forest Law or afforestation.

King Edward I reconfirmed the Charter because he needed funds for his battles with France and then the Scots. He had increased taxes on the clergy, merchants of wool and leather, and the barons. The Church joined the barons in their complaints. Edward also revived a tax on towns and those living in royal demesne (*tallage*), and imposed duties on merchants. As he assessed fines and collected taxes, complaints about violations of the Forest Charter escalated.⁹⁹ The king resisted the *monstraunces*, or protests, filed by the earls and barons, but in 1297 the Crown published royal letters patent confirming Magna Carta and the Forest Charter "in all points."¹⁰⁰ The Charters were ordered to be read aloud in every cathedral church twice a year.¹⁰¹ Perambulations undertaken under King Edward I in 1297 brought some relief; they determined, for example, that half of the Forest of Dean was not Royal Forest, and so for Bernwood and elsewhere.¹⁰²

When he died in 1307, Edward's continued confirmation of the Forest Charter had come to be matched by his acceptance of parliamentary assemblies, which met now to "assent and enact" (*consentiendum et faciendum*) the law. In the estimation of Williams Stubbs, the constitutional "machinery" of England was now complete.¹⁰³ David Carpenter concurs: by 1225 the king knew he "was subject to the law. It was neither 'fitting nor right' for him to act unjustly."¹⁰⁴ Those governing then knew that Charters would become a permanent feature of English political life, which "laid tracks for the future but also sealed up the divisions of the past."¹⁰⁵ Although still honored too often in the breach, the terms of the Forest Charter of 1225 would stay intact until Parliament would amend them centuries later.

98. YOUNG, *supra* note 14, at 124–25, 136–45.

99. *Id.* at 157–59.

100. G.W.S. BARROW, *FEUDAL BRITAIN—THE COMPLETION OF THE MEDIEVAL KINGDOMS 1066–1314*, at 382 (1956).

101. HOLT, *supra* note 18, at 400–05.

102. Perambulations were repeatedly demanded by barons and acceded to by the king. YOUNG, *supra* note 14, at 135–48. For example, the Forest of Essex benefited from perambulations in 1224, 1225, 1228, 1277, 1298, 1299, 1301, 1333–1335, and thereafter. WILLIAM RICHARD FISHER, *THE FORESTS OF ESSEX 18–52* (London, Butterworths 1887), available at <https://archive.org/details/forestessexitsh00fishgoog>.

103. STUBBS, *supra* note 6, at 54–56.

104. CARPENTER, *supra* note 30, at 386.

105. *Id.* at 386, 388.

IV. Substantive Provisions of the Forest Charter

The Forest Charter proclaimed forest *liberties* with such clarity that those holding the rights could assert them through the Forest Eyres. The recurring struggles applying the Charter of the Forest to the king's Forest Law were proving grounds for Magna Carta. Professor Holt observes that issues of disafforestation remained contentious throughout the 12th and 13th centuries: "Indeed, the repeated demand for disafforestation was one of the main reasons for the periodical confirmation of the Charters from 1225 on to the end of the reign of Edward I. The Forest Charter, and the particular issue of disafforestation helped to keep the Magna Carta alive."¹⁰⁶ Ch. Petit-Dutaillis similarly observes, "It was principally the struggle for disafforestation which connected the history of the Forest with the history of the English constitution."¹⁰⁷ In its first 200 years of life, the Forest Charter provided the principal legal framework in which rule of law principles could take shape in practice. In this early period, Magna Carta provided only incidental support for the Forest Charter. Centuries later the relationship of each Charter would reverse.

The two charters were interdependent. Pleas of the forest would invoke Magna Carta as grounds for mitigating enforcement excesses. Forest justices had long assessed the amounts of amercements with regard to the social status and wealth of the offender. Under chapter 20 of Magna Carta, a freeman's fines were to be an amount that he could afford to pay "saving his livelihood."¹⁰⁸ Invoking this provision constrained the Crown's interest in raising as much revenue as it could from pleas heard in a Forest Eyre.¹⁰⁹

Pleas litigated under the Forest Laws incrementally fostered respect for law by claiming rights under the Charters. The Forest Charter's importance today lies less in its particular provisions than in the fact that it defined the legal space within which competing rights could be contested and through which social order could be sustained. As Professor Holt further observed, "The forest provisions of the Great Charter of 1215 and the Charter of the Forest of 1217 marked an assertion of custom and the establishment of law in a field recognized hitherto as totally dependent on the will of the king."¹¹⁰ Establishing respect for the rule of law does not happen in the abstract. It occurs and is reaffirmed in context, when concrete adverse interests can apply existing law to settle ongoing disputes. It depends on knowing one's

106. HOLT, *supra* note 18, at 386.

107. PETIT-DUTAILLIS & LEFEBVRE, *supra* note 6, at vol. II, chs. 6,7,8.

108. 1215 *Magna Carta* ch. 20, in HOLT, *supra* note 18, at 457.

109. See Young, *supra* note 62, at 327–28.

110. HOLT, *supra* note 18, at 53. Accord FITZNIGEL, *supra* note 26, at 60 (confirming that the Forest Laws were not based on or governed by Common Law but were exclusively at the will of the king).

rights. The provisions of the Forest Charter and Magna Carta were well known, since both were repeatedly copied, sent throughout the realm, and read aloud together.¹¹¹ Adjudicating the pleas of the forest bred respect for commoner's rights and forged foundations for the rule of law.

The text of the Forest Charter is extraordinary because it speaks to the rights and interests of the people more than those of the Crown, the law-giver. A chance occurrence made this politically possible. The sudden death of King John, and the succession of nine-year old Henry to the throne, provided the collective leadership of the regency with the opportunity to legislate terms to settle the raging forest disputes through proclaiming the new Forest Charter. Henry's Regent, William Marshal, Earl of Pembroke, had been with the barons at Runnymede. At and after Henry's coronation, he administered the realm to bring the Crown and barons into accord on what rights and liberties could avoid the injustices experienced under Forest Law. By 1225, when Henry III reissued the Forest Charter *spontanea et bona voluntate nostra*, the Forest Charter had become an acknowledged legal bond between the Crown and the barons.¹¹²

The Forest Charter consists of 17 chapters addressed to two groups: (a) those who hold and use lands subject to the Forest Law (i.e., the archbishops, bishops, abbots, priors, earls, and barons); and (b) those officers whose discretion is now fettered by the restrictions of the Forest Charter, as the Charter's salutation recites the justiciars, foresters, sheriffs, reeves, ministers, "*et omnibus ballivis et fidelibus suis*."¹¹³ The terms of the Forest Charter of 1217 restricted the king more severely than had the three forest chapters of Magna Carta in 1215. Only one forest provision from Magna Carta (chapter 44) was carried over into the Forest Charter: in chapter 2. All the rest of the Forest Charter was new, and it confirmed customary law rights against rights of the Crown. Through the Forest Charter, the king pardoned past offenses and reversed the assarts and purprestures on private properties since Henry II's reign,¹¹⁴ and assured the rights of those with legal usufructs in the Royal Forests.¹¹⁵ Most significantly, the Forest Charter immediately decreed disafforestation of the lands added to Royal Forests by Kings Richard I (r. 1189–1199) and John beyond the boundaries of the Royal Forests of 1087, when William the Conqueror died. To implement this disafforestation, the Forest Charter

111. FAITH THOMPSON, *THE FIRST CENTURY OF MAGNA CARTA* 63 (1925).

112. Henry III also "put on record the grant of a fifteenth of moveables made to him in return for this 'concession and donation' on his part." KATE NORGATE, *THE MINORITY OF HENRY III* 250 (1912). The barons would not make the payments the king needed without the issuance again of the Forest Charter and Magna Carta.

113. *Forest Charter*, *supra* note 3, at salutation ("to all bailiffs and our other faithful subjects.").

114. *Id.* at chs. 4 and 15.

115. *Id.* at chs. 9, 12, 13, and 17.

required an inquest “by good and lawfull men”¹¹⁶ of the afforestments of Henry II, to determine which were to be disafforested. Only William’s demesne was to remain Royal Forest. Whereas Magna Carta in 1215 had deferred disafforestments of areas acquired by Henry II and Richard I, the 1217 Charter decreed immediate disafforestation and enabled many future perambulations that were to restore rights upon which kings had encroached. A procedure to enforce Forest Charter rights existed, and would be used repeatedly.

The Forest Charter’s separate articles, or chapters, may be restated from their Latin text and summarized, in plain English with chapter numbers added for easier reference, as follows:¹¹⁷

1. The common right of gathering herbs and berries in the forests (*herbage*) is preserved, even in the king’s Royal Forest domain (*demesne*), and all Henry II’s expansions of his Royal Forest domain (*afforestations*) are to be reversed following an independent inspection.
2. Those who live in or near the Forests no longer must attend sessions of the Forest Courts (*eyres*) when these itinerant courts come to their area, unless they have been charged with an offense or are sureties for those charged. This frees all from the threat of being fined (*amerced*) for failure to appear, and frees up significant amounts of time.
3. All expansions of Royal Forests (*afforestations*) under Kings Richard and John are reversed immediately. Existing procedures for the physical inspections of Royal Forest boundaries (*perambulations*) provided a means to enforce this provision, and restore lands that had been unjustly taken.
4. All holdings by ecclesiastic, noble, and free holders (*libere tenentes*), as they were at the time of the coronation of Henry are to be restored, and any fines, rents, and fees assessed on these lands are forgiven; unauthorized land uses (*purprestures*), degradation of resources (*wastes*), and compulsory payments, like rents (*assarts*) required for those uses, as they were in existence from the second year after Henry III’s coronation, are to be assessed and paid. This set limits on what the Crown could claim for revenues.
5. Inspections of the Royal Forests (*regards*) are to be held in accordance with the practices as prescribed at the time of the coronation of Henry II, every three years regularly. This restores traditionally accepted procedures, and restricts the king to follow only this procedure.

116. *Id.* at ch. 1.

117. *Id.* (in its entirety).

6. Formal investigations (*inquiry*) to determine who possesses dogs near Royal Forests is constrained, and the practice of removing the toes of dogs ("lawing"), ostensibly to keep them from chasing and killing the king's deer is curbed, and allowed only where the practice was in force as of the coronation of Henry II, and when a dog is found the cutting is limited to three toes cut from the front foot. The fine for having dogs whose toes have not been removed (unlawed) is set at three shillings, and no longer may an ox be taken for the lawing of a dog. Hunting or traveling through Royal Forest with dogs remains banned.
7. Foresters may not collect exactions of grains or sheep or pigs. The number of foresters is to be determined by the 12 knights chosen for conducting investigations (*regardars*) during their inspections of Royal Forests.
8. Councils to supervise the introduction of domestic animals into the forests [*Swanimote* courts, from an old Anglo-Saxon word, "swainmote," meaning a meeting of swineherders] are to be held regularly three times a year, to arrange for the counting (*agistment*) of the pigs that enter the Royal Forest for eating mast and acorns (*pannage*), or to manage commoners' usufructs to ensure no disturbance of allowing for mating and fawning of deer. Foresters and Verderers are to meet every 40 days to deal with arrests for offenses of killing or hunting deer (trespasses of *venison*) or harvesting vegetation without authority (trespasses of *vert*).
9. Every free man (*liber homo*) can let his animals use (*agist*) his own forestlands located within Royal Forests at will, and can drive his pigs through the Royal Forest to allow them to reach places to eat acorns (*pannage*), and if a pig strays into the Royal Forest for a night, it shall not be an offense.
10. No one shall lose life or suffer loss of limbs as punishment for killing a deer. [The old penalty, still allowed in 1198, had been loss of eyes and testicles, but in place of dismemberment, severe fines had become preferred in the 13th century.¹¹⁸] The person who kills a deer shall be fined and if he cannot pay a fine, he shall be imprisoned for a year and a day. He can then be released, if he posts sureties, but if he cannot do so then he is to be exiled.
11. Archbishops, bishops, earls, and barons traversing Royal Forests may take one or two deer, in view of the foresters, for their own use, and may blow horns to scare up deer or show when they are not hunting.
12. On his own land and with his own access to water within a Royal Forest, every freeman (*liber homo*) can make a mill, fishpond, dam,

118. See GRIFFIN, *supra* note 18, at 16.

marsh pit, or dike, or reclaim arable ground, without danger of constituting an offense under the Forest Law, so long as it is not a nuisance to any of his neighbors.

13. Within his own lands located in Royal Forests, every free man (*liber homo*) can have eyries and nests of hawks, and other birds, and may take any honey from wild bee trees discovered in the forest.
14. Only a forester who holds his office by hereditary right (*forester in fee*) can escort persons through a Royal Forest and take a fee for doing so (*cheminage*) or collect a toll, which is set for carriage by a cart at two pence per half year, and for a horse a half penny per half year. Persons carrying their brush or bark or charcoal on their backs shall pay no fee (*cheminage*), unless they are removing it from the king's domain in a Royal Forest (*demesne*).
15. All offenses committed during the time of Henry II to the coronation of Henry III are pardoned, but those pardoned must find sureties to pledge that they shall not commit new violations.
16. Procedures for handling offenses are regularized. No warden of a castle may hold a court to enforce Forest Law or to hear pleas of the Forest, and foresters who make arrests (*attachments*) must present them to the Verederes, who will make a record and present them to the forest justices when Royal Forest Courts (*Eyres*) are held to determine forest pleas.
17. These liberties of the forest (*libertates de forestis*) and free customs traditionally had (*consuetudines predictas et libertates*), both within and without the Royal Forests, are granted to ecclesiastics, nobles, freeholders, and all in our realm (*omnes de regno nostro*), in short to everyone. Everyone is also obliged to observe the liberties and customs granted in the Forest Charter.

With these 17 specific, succinct, and clear provisions, the Forest Charter established the terms for a just society in the critical context of forest governance in 13th-century England. These terms would remain intact for the next 500 years and more. The Charter's requirements that the afforestations of Kings Henry II, Richard I, and John be disafforested meant that these lands would be removed from under the Forest Law and returned to the realm of the common law, and to their prior proprietors.¹¹⁹ Previous royal grants of privileges for clergy and nobles were confirmed.¹²⁰ Past injustices were erased when amercements for offenses in the reign of Henry II were remitted and amnesties granted.¹²¹ Prospectively, restrictions on the

119. *Forest Charter*, *supra* note 3, at chs. 1, 3.

120. *Id.* at ch. 17.

121. *Id.* at chs. 4, 15.

use of the forest's produce were reformed.¹²² Very limited hunting rights were accorded to landed nobility.¹²³ Rules for Forest Court proceedings were regularized¹²⁴ and penalties clarified.¹²⁵ Unlawful exactions and other evils and malpractices of foresters were prohibited.¹²⁶

The Forest Charter's provisions for commoners hold continuing importance. The Charter made numerous references to customary rights of commoners, such as herbage, estover, pannage, pasturage, and other usufructs. When the barons insisted on confirming rights that would benefit all of the people in the 13th century, they set society on a path for ensuring public rights generally. Parliament's later mandate to represent the people is forecast in chapters of the Forest Charter privileging commoners. When the Forest Charter established liberties of the forest for all, rights that sustain their economic and social lives, the Charter also anticipated what today is expressed in human rights instruments.¹²⁷ The open-ended provision of chapter 17 in the Forest Charter, guaranteeing the "liberties of the forest" and "free customs," allowed future generations to elaborate and evolve new definitions of these liberties and shared rights.

Important also was that the Forest Charter acknowledges the legitimacy of the king's demesne, his core holdings in the Royal Forests. There is a reciprocity between the king and the people. The Forest Charter insists that its terms be observed by the people, as well as by the Crown. King Henry III used this duty to resist disafforestments that encroached on his demesne. Moreover, by appearing to defend the rights of commoners, the Crown "could hope to win favour of sections of society below the magnates."¹²⁸

Because the Forest Charter confirmed that the king's Royal Forests were his legitimate sovereign estate, these forest areas were protected against development. The environmental stewardship implicit in this has not been acknowledged, but it should be. In retrospect, this acknowledgment has been fundamental over the centuries in stabilizing the Royal Forests as what we now call protected areas. They were largely removed from what became a marketplace in land (except for the Crown's own disafforestments), and everyone regarded them as being set aside under a special governance regime.

In 1225, the Forest Charter's recognition of Royal Forests was also a concession to the king's ancient rights, legitimizing the Royal Forests with the borders that William the Conqueror had established. Once the ancient

122. *Id.* at chs. 9, 12, 13.

123. *Id.* at ch. 11.

124. *Id.* at chs. 2, 8, 16.

125. *Id.* at ch. 10.

126. *Id.* at chs. 5, 7, 14.

127. Guarantees of economic and social rights, as human rights, are today found in the Universal Declaration on Human Rights, and the two Covenants bring these rights into public international law.

128. CARPENTER, *supra* note 30, at 386–87.

metes and bounds of the king's demesne were confirmed, *Carta de Foresta* provided that the king had to observe customary law usufructs therein. Chapter 1 recites that, although the king's demesne is acknowledged, existing common rights of herbage, and other uses in the forest, are secured. These rights of "free men" persist to the present, as is seen today in the New Forest.

Finally, the terms of the Forest Charter are prescient in the ways that they linked rights to procedure for vindicating those rights. When kings resisted observing Forest Charter rights, recourse to these procedures provided avenues to seek justice. Although often ineffective, by repeatedly invoking their rights through available procedures, commoners and barons over time won the Crown's observance of their Forest Charter "liberties." Disafforestations were implemented following perambulations; the adjudication of the rights following disafforestation led to hearings of competing claims, settled by laws rather than resort to arms. The open proceedings of the Forest Eyres allowed predictable and fairly transparent decision making, while affording the right of a hearing. The pleas of the forest were procedural means to invoke and apply rights of the Forest Charter in specific instances. The Charter's clear articulation of specific rights, correlated with known procedures and designated royal officers to administer them, is among the Forest Charter's most significant features. The Charter provided rights with remedies.

The Forest Charter bolstered the economy of its time, providing a more secure and stable setting for agriculture and silvaculture. The Charter's provisions in chapter 14 about the role of charcoal production and trade anticipate roles that Royal Forests would come to play in the 16th and 17th centuries. Additional uses beyond customary law usufructs already had appeared by 1217, and further new uses of forest resources would emerge. While sustaining traditional forest usufructs was the Charter's immediate focus, by leaving the scope of forest "liberties" open-ended, the Charter allowed for their evolution in later ages. The Forest Charter would accommodate remarkable adaptations in centuries to come.

V. Evolution: A Forest Charter for Each Generation

Over the next 500 years, each generation shaped the Charter of the Forest to serve its own interests. The unique Law of the Forest, so ably set forth by John Manwood for the times of Queen Elizabeth I (r. 1558–1603),¹²⁹ gradually evolved into a regime for commercial timber and subsequently into the conservation law regime under Queen Elizabeth II (r. 1952–present).¹³⁰

129. MANWOOD, *supra* note 11.

130. See, e.g., the 20 conservation areas in the New Forest National Park, "of which three straddle the boundary between the Park and New Forest District Council's area." *Conservation Areas—New Forest National Park Authority*, NEWFORESTNPA.GOV.UK,

The intervening years endowed the Forest Charter with attributes sought by each prevailing social order. The Forest Charter itself became the focus of new appeals to tradition, just as in the 13th century advocates for Royal Forest rights invoked the Charter of Liberties of Henry I. Eventually, English common law eclipsed the Law of the Forest, and Parliamentary statutes absorbed, revised, and elaborated provisions of the Forest Charter.¹³¹ The four next stages of this social evolution offer insights about both the rule of law and environmental conservation.

A. The Forest Charter from 1400 to 1850

The social history of how English society regarded nature, particularly in each of the Royal Forests, is a task beyond the scope of this chapter. Suffice it to say that each generation's perceptions of the law of the land reflected prevailing perceptions of nature. Recalling the highlights of these social changes over four centuries sets the stage for examining the contemporary relevance of the Forest Charter on the eve of its 800th anniversary.

During the 14th and 15th centuries, the Forest Charter was no longer at the center of governmental decision making. Society endured the turmoil of extensive and deep loss of life caused by the Black Death in 1349, by civil strife including the Peasants' Revolt of 1381, and by the War of the Roses, which weakened the barons. Repeatedly, kings raised revenues through grants of forest tracts to others. By the 17th century, private wooded parks, chases, and warrens were widespread, and their proprietors tended to their natural resources more assiduously than the Crown did for the largely untended Royal Forests. Commoners expanded their uses of forest resources in Royal Forests. Forest Courts continued in some places to mediate disputes. Urban centers and trade grew more powerful, with wool farmers, manufacturers, and merchants gaining wealth and influence.¹³²

http://www.newforestnpa.gov.uk/info/20044/building_conservation/27/conservation_areas#.U16qBCjmKBg (last visited May 20, 2014). Queen Elizabeth II visited the New Forest at the conclusion of her Diamond Jubilee. See *Diamond Jubilee: Queen Visits Cowes and New Forest on Final Day*, BBC NEWS, Jul. 25, 2012, <http://www.bbc.com/news/uk-england-hampshire-18971802>.

131. During the reign of Henry III, several authors compiled the treatise. See HENRY OF BRATTON, *DE LEGIBUS ET CONSUETUDINIBUS ANGLIAE: ON THE LAWS AND CUSTOMS OF ENGLAND* (1235). This text elaborates legal practices of land tenures and other provisions of what would become common law, but makes slight mention of Magna Carta and omits the Forest Charter, probably because Henry III did not wish to acknowledge that his Forest Law prerogatives were restrained by the Forest Charter. See Harvard Law School, *Bracton Online Home Page*, BRACTON.LAW (Apr. 2003), <http://bracton.law.harvard.edu> (last visited May 20, 2014).

132. See generally, EILEEN POWER, *THE WOOL GRADE IN ENGLISH MEDIEVAL HISTORY* (1941).

Parliament's authority also was growing. In 1407, Henry IV (r. 1399–1413) recognized Parliament's decision-making roles regarding taxation and spending.¹³³ Legislation shaped law consciously, rather than relying on custom or judge-made common law. The struggles and bargaining between the Crown and the barons was absorbed into an emerging parliamentary system.

Types of forest uses also changed. By 1476, the printing press had been developed in England, and millions of tons of wood were harvested per year to produce paper.¹³⁴ Renewable timber production became a priority. Timber was also needed to build the ships for the Royal Navy and merchant marine. Parliament began enacting legislation in 1482 through the 17th century to facilitate converting forests into timber plantations.¹³⁵

The Tudors used the Forest Charter when it suited them. Georges Ferrers published an English translation of the Great Charter of Liberties and the Forest Charter in 1534,¹³⁶ and went on to advise King Henry VIII (r. 1509–1547), who invoked the Forest Charter to revive royal forest prerogatives.¹³⁷ Henry VIII incurred large debts. Seeking to increase royal income independently from Parliament, he allocated Royal Forest lands to secure wealth, political support, and services, and seized Catholic Church assets in 1536 when he broke with Rome.¹³⁸ Henry collectively governed

133. Douglas Biggs, *An Ill and Infirm King: Henry IV, Health and the Gloucester Parliament of 1407*, in *THE REIGN OF HENRY IV: REBELLION AND SURVIVAL 1403–1413*, at 180 (Gwilyn Dodd & Douglas Biggs eds., 2008). The long Parliament of 1406 from March and to the end of December met and granted taxes only after securing major reforms, including an audit of the new land tax passed at Coventry in 1404, and reforms of the Council (Councilors had to swear not to take anything but their official salaries).

134. HENRY R. PLOMER, *A SHORT HISTORY OF ENGLISH PRINTING 1476–1900* (1900).

135. Legislation to encourage the production of timber included the following: An Act for Inclosing of Woods in Forests, Chases and Purlieus, 1482, 22 Edw. 4, c. 7; An Act for the Preservation of Woods, 1543, 35 Hen. 8, c. 39; The Delimitation of Forests Act, 1640, 16 Car. 1, c. 16; and An Act for the Punishment of Unlawful Cutting or Stealing or Spoiling of Wood and Under-Wood and Destroyers of Young Timber-Trees, 1663, 15 Car. 2, c. 2. See JAMES, *supra* note 7, at 139–88.

136. "The Great Charter called in laytn Magna Carta with divers olde statutes whole titles appere in the next leafe newly corrected [. . . translated out of Latyn and Frenche into Englysshe by George Ferrers], Imprynted at London, in Paules church yerde at the signe of the Maydens heed by Thomas Petyt, 1542." GEORGES FERRERS, *DIVERSE OLDE STATUTES* (1534).

137. "Henry VIII, for instance, who hunted deer with passion, was the last king to create a Royal Forest, the forest of Honour at Hampton Court in 1539." NAIL, *supra* note 36, at 14–15. "[T]he structure in Epping Forest now misnamed 'Queen Elizabeth's Hunting Lodge' is really a 'standing,' or observation tower for ceremonial hunts, built by Henry VIII in the 1540s when he tried to make a part in part of the Forest of which he had confiscated the land from Waltham Abby." RACKHAM, *supra* note 53, at 138.

138. Henry VIII's Statute of Enrolments recorded land tenures. See 27 Hen. 8, c. 16.

all the Church and Royal Forests in the Crown Estate, first in 1547 under a Court of Augmentations with two masters and two surveyors-general, and subsequently directly under the exchequer.¹³⁹ Administrative surveys replaced the perambulations. The king also sold Royal Forest lands and harvested timber to build ships and run forges. Elizabeth I followed this path. In her reign, John Manwood first published his *Treatise of the Forest*, definitively accounting for the Charter of the Forest and Forest Law.¹⁴⁰

King James I (r. 1603–1625) sought to restore control over Royal Forests to enhance his revenues. He announced he would enforce the Forest Laws “which were as ancient and authentic as the Great Charter.”¹⁴¹ Disingenuously, he omitted any reference to the Forest Charter. In 1661, his grandson, Charles II (r. 1660–1685), cut down 1,800 oaks in the New Forest for building ships for his Royal Navy.¹⁴² Forest symbols would come to be synonymous with the king’s power, foremost the oak tree. James launched inspections of assarts in Royal Forests, raising £25,000 by compounding the fixed payments due that were applied to those occupying royal lands.¹⁴³

King Charles I (r. 1625–1649) continued to disafforest and sell Royal Forests, such as in Dean.¹⁴⁴ Again needing funds to deal with the French, Charles returned to afforestation, enlarging the Royal Forests, and then selling off the parts he had seized. Royal commissioners were sent to perambulate the Forests and reclaim lands. Landholders were required to pay substantial sums to have the land they wished to have disafforested. The Crown imposed the heavy royal penalties of the Forest Law widely.¹⁴⁵ Around 1635, Charles reestablished Forest Eyres.¹⁴⁶ His afforestations caused riots, the “Western Rising,” in West Country forests, including Gillingham, Braydon, Dean, and Feckenham.¹⁴⁷ Charles I’s offensive personal rule over Royal Forests contributed to the discontent that ended his reign. The Grand Remonstrance of 1641 protested “enlargements of forests, contrary to *Carta de Foresta*,” and the king’s “destruction of the Forest in Dean, [which was]

139. See generally WALTER C. RICHARDSON, *HISTORY OF THE COURT OF AUGMENTATIONS* (1961). An Act for the Preservation of Woods, *supra* note 135, established woodland management rules to increase timber production. These rules were applied to both Royal Forests and the woods taken from the Church; the Crown’s principal interest was in increasing revenues, not in silvaculture.

140. See MANWOOD, *supra* note 11.

141. GRANT, *supra* note 7, at 187.

142. NAIL, *supra* note 36, at 23.

143. GRANT, *supra* note 7, at 186–88.

144. SCHAMA, *supra* note 28, at 156; see also J.P. Sommerville, *The Personal Rule of Charles I*, FACULTY.HISTORY.WISC.EDU, <http://faculty.history.wisc.edu/sommerville/123/123%20303%20Personal%20Rule.htm> (last visited May 20, 2014).

145. *Id.*

146. *Id.*

147. SHARP, *supra* note 34.

sold to Papists,” and demanded enactment of a “good law” to reduce forests “to their rightful bounds.”¹⁴⁸

New uses also came to the Royal Forests. The Royal Forest of Dean expanded its provision of charcoal for the forges for making iron there.¹⁴⁹ Forges were situated within the Dean Forest from 1612 until about 1670. Iron making was the subject of a parliamentary Reafforestation Act in 1667.¹⁵⁰ Forest Courts were held to regulate the activities of the Free Miners in Dean. Dean continued to be a source of wood for producing charcoal in the late 18th century, and the Free Miners of the Forest of Dean continue their practices to this day, under an Act of Parliament.¹⁵¹

The leading jurist in the 17th century, Edward Coke described the Forest Charter and law of the forest in the fourth part (chapter 73) of his *Institutes of the Laws of England* (1671).¹⁵² This publication shaped the knowledge of the Forest Charter for generations. Coke, when asserting the rule of law against James I, was removed as chief justice, was for a time detained in the Tower of London, and helped prepare the Petition of Right of 1628. His *Institutes*, published posthumously, described the Forest Charter and argued that the Law of the Forest was constrained by common law. However, it was to be Parliament, not common law judges, that revised the Forest Charter as a statute.¹⁵³

Needing additional funds from Parliament for his struggles with France, Charles I convened Parliament in 1628. In its deliberations over whether to provide funds for the Crown, Parliament secured the king’s consent to the Petition of Right, which formally provided for no taxation without

148. Gardiner: *Constitutional Documents of the Puritan Revolution*, 43. *The Grand Remonstrance, with the Petition Accompanying it*, CONSTITUTION.ORG, <http://www.constitution.org/eng/conpur043.htm> (last visited May 20, 2014).

149. YOUNG, *supra* note 14, at 132–33; Mary Ley Bazeley, *The Forest of Dean in Its Relations with the Crown During the Twelfth and Thirteenth Centuries*, 33 *TRANSACTIONS OF THE BRISTOL & GLOUCESTERSHIRE ARCHAEOLOGICAL SOC’Y* 153, 153–285 (1910). See SARA MITTLAND, *GOSSIP FROM THE FOREST: THE TANGLED ROOTS OF OUR FORESTS AND FAIRYTALES* 171–88 (2012).

150. The Dean Forest (Reafforestation) Act, 1668, 20 Car. 2, c. 3. See ANDREW RICHARD WARMINGTON, *CIVIL WAR, INTERREGNUM & RESTORATION IN GLOUCESTERSHIRE 1640–1672* (1997).

151. The Dean Forest (Mine) Act, 1838, 1 & 2 Vict., c. 43.

152. COKE, *supra* note 37, at ch. 73.

153. The Forest Charter was not subject to interpretation by the common law courts. The analogous courts of the forest, the eyres, applied and enforced the Forest Law, but did not change its terms through case law. As Parliament assumed authority to enact statutes, over time it selectively revised the Forest Charter’s provisions. See references at *supra* note 7. For example, in the 19th century, “[t]he game laws eroded the principles of the Forest Charter. Where the Charter had proudly restated the right of all to hunt wild animals on their own land, the game laws removed that right.” GRIFFIN, *supra* note 18, at 62. Finally in 1971 they saw no need for the residue of the ancient Charter, repealing even that, *supra* note 8.

consent of Parliament, along with ensuring other rights, such as no arbitrary imprisonment. This was the most important royal concession of rights to the people since the confirmation of the Forest Charter and Magna Carta in 1297. The Petition of Right, in principle, resolved in the people's favor the recurring struggle about the Crown's renewing its promise to adhere to the Charters when in need of new revenues.

Nonetheless, in 1640, Charles I again needed funding and convened Parliament. Complaints about administration of the Forest Law had continued. Upset with the Crown's practice of using the courts to collect revenues through fines, Parliament passed legislation curbing abusive royal practices in Royal Forests.¹⁵⁴ Thereafter, concerns about the Forest Charter again receded with the social discord that accompanied the English Civil War. Oliver Cromwell prevailed and Charles I was executed. By 1653, Parliament had granted its powers over to Cromwell, and Cromwell annulled the Forest Charter and took Royal Forests into his power.¹⁵⁵ His acts, however, would prove ephemeral. After Cromwell's death in 1659, the army and barons recalled the former Parliament, which invited Charles II to return to England from his exile abroad. The Royal Forests and Charter were restored, whereupon Charles II continued to sell off parts of the Royal Forests to finance his regime.

In the Restoration, the Crown reverted to treating Royal Forests as revenue, and commoners' rights suffered. The king's policy toward Royal Forests shifted to favoring timber production. In 1664, John Evelyn published *Silva, or A Discourse of Forest Trees and the Propagation of Timber in His Majesty's Dominions*, in print through a fifth edition in 1729.¹⁵⁶ Evelyn makes no mention of the Forest Charter and essentially dismissed commoners' rights to their forest usufructs. Allowing commoners' usufructs hindered the silvaculture that Evelyn espoused. His work promoted forest management for timber production, and provided justifications for the Crown's restoring its rule in Forests in order to produce timber, primarily for ships. Reflecting the influence of *Silva*, the Forest Courts took decisions to preserve and advance the production of timber for the Royal Navy.¹⁵⁷ Now

154. 1640, 16 Car. 1, c. 16, *supra* note 135.

155. See, e.g., Cromwell's actions with regard to the Forest of Needwood. JOHN CHARLES COX, *THE ROYAL FOREST OF ENGLAND* 142 (1905).

156. JOHN EVELYN, *SILVA: OR, A DISCOURSE OF FOREST TREES AND THE PROPAGATION OF TIMBER IN HIS MAJESTY'S DOMINIONS, AS IT WAS DELIVERED IN THE ROYAL SOCIETY IN 1662* (1st ed. 1664), available at <https://archive.org/details/silvaordiscourse/0level> (last visited May 20, 2014).

157. France pursued forest timber policies akin to those in England. See JEAN-BAPTISTE COLBERT, *ORDONNANCE DE SAINT GERMAIN EN LAYE* (n.p. 1669).

the national defense required timber production. Inclosures were ordered to protect tree plantations from deer or intrusions by commoners.¹⁵⁸

James II (r. 1685–1688) followed Charles II and was displaced in favor of William III (r. 1689–1702) and Mary II (r. 1689–1694) in 1689.¹⁵⁹ Thereafter Parliament's enactment of statutes began to reshape elements of the Forest Charter, Forest Law, and Magna Carta. In January of 1689, Parliament enacted the Declaration of Rights,¹⁶⁰ strengthening civil and political rights, but weakening the collective, common rights accorded in the Forest Charter. Landed property owners were redefining forest uses through their influence in Parliament. These private parks were often enclosed, and commoners excluded, in disregard of their common law usufructory rights or the Forest Charter's provisions. The Game Law of 1671¹⁶¹ confirmed that hunting was a privilege of freehold property owners. Poaching was made a felony. This regime for hunting and fishing continued until 1831. Enclosures on forested private parks and chases, with deer farms, transformed hunting by gentry and kings alike into a restricted, legal privilege. Management of these privately protected areas also privileged conservation of nature, to enhance deer forest habitat.¹⁶²

The Enclosure Acts allowed private landowners to exclude both commoners and the king from forestlands.¹⁶³ English imports of wood from its colonies and the expanse of trade generally reduced demand for wood products from Royal Forests, which also facilitated conversion of once Royal Forests into private preserves. For example, Royal Forests disafforested, sold, and enclosed included Enfield Chases (Middlesex) in 1877, Needwood Forest (Staffordshire) in 1801, Windsor Forest in 1817, and Wynchwood Forest in 1857.¹⁶⁴ Oliver Rackham notes, "When a Forest was enclosed its

158. CHRISTOPHER JESSEL, *A LEGAL HISTORY OF THE ENGLISH LANDSCAPE* 129–38 (2011) ("Enclosures and Inclosure"). See generally JAMES, *supra* note 7, at 3 and app. II with a roster of the Acts of Parliament from 1184 to 1971 relating to forests and forestry.

159. "The Stuarts, History of the Monarchy," ROYAL.GOV.UK, <http://www.royal.gov.uk/HistoryoftheMonarchy/KingsandQueensoftheUnitedKingdom/TheStuarts/TheStuarts.aspx> (last visited May 20, 2014).

160. This instrument, also termed the "Bill of Rights," is a statutory enactment on December 16, 1689, of the "Declaration of Right," which Parliament presented to William and Mary in March of 1689. An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown, 1688, 1 W. & M. c. 2, sess. 2.

161. An Act for the Better Preservation of Game, and for Securing Warrens Not Inclosed, and the Severall Fishings of This Realme, 1671, 22 & 23 Car. 2, c. 25, in 5 STATUTES OF THE REALM 1628–1680, at 745–46 (1891), available at <http://www.british-history.ac.uk/report.aspx?compid=47447> (last visited May 20, 2014), discussed in P.B. MUNSCHÉ, *GENTLEMEN AND POACHERS: THE ENGLISH GAME LAWS 1671–1831* (1981).

162. JESSEL, *supra* note 158, at 115–28 ("Ch. 11: Landed Estates").

163. Extensive inclosures occurred in 1760–1780 and 1800–1815. See JESSEL, *supra* note 158, at ch. 12 ("Enclosures and Inclosures 1660–1900").

164. RACKHAM, *supra* note 53, at 139. See also JAMES, *supra* note 7, at 167 (1981).

wood-pasture, heath, etc., passed to private owners who, with rare exceptions, instantly destroyed them.”¹⁶⁵ The enclosures were inimical to the multiple-use approach that the Forest Charter had sanctioned.

Enclosures were not always peaceful. Disafforestation and enclosures excluded commoners from their pasturage, pannage, and other usufructs. Commoners protested. Riots took place at Feckenham Forest (Worcestershire) in 1631–1632, and took place also from time to time elsewhere.¹⁶⁶ Riots at Dean occurred as late as 1831.¹⁶⁷

Some Forest Eyres continued to be held, for example, one was held for the New Forest in 1670. However, the role of forest courts was declining. The system of eyres and perambulations was replaced in 1715 when Parliament formally established the Office of Surveyor.¹⁶⁸ Royal Forests remained part of the Crown estate. The rights of freeholders, landed gentry, and customary forest users with their commoners’ rights of grazing, and timber resources of the nation, were now a major focus of the Crown’s attention.

In 1787 and 1793, the Royal Commission on Crown Woods and Forests reported about neglect and decline of the Royal Forests and other government forest lands, particularly in Sherwood Forest, New Forest, and three others in Hampshire; Windsor Forest in Berkshire; the Forest of Dean in Gloucestershire; Waltham or Epping Forest in Essex; three forests in Northamptonshire; and Wychwood in Oxfordshire. While swanimote courts still administered some of the Forests locally, Crown supervision was lacking. The Royal Commission’s report favored continued use of Royal Forests for timber production.¹⁶⁹

The Crown’s administrative governance of Royal Forests developed slowly in the 19th century. In 1810, the surveyors-general, who had reported to the auditors of Land Revenue, were replaced by a Commission of Woods, Forests, and Land Revenues.¹⁷⁰ The Commission’s forest duties were diluted between 1832 and 1851, as responsibilities for *Works and Buildings* were assigned to it.¹⁷¹ But by 1851, the Commission’s duties again were focused

165. RACKHAM, *supra* note 53, at 139.

166. GRANT, *supra* note 7, at 189–90; SHARP, *supra* note 34, at 143–68.

167. NAIL, *supra* note 36, at 18, citing P. Large, *From Swanimote to Disafforestation: Feckenham Forest in the Early Seventeenth Century*, in *THE ESTATES OF THE ENGLISH CROWN 1558–1640* (R. Hoyle ed. 2002).

168. The surveyor general of woods, forests, parks, and chases oversaw the management of Royal Forests and their revenues. In 1810, the office was subsumed within the Surveyor General of Land Revenues. An Act for Uniting the Offices of the Surveyor General of the Land Revenues of the Crown and Surveyor General of His Majesties Woods, Forests, Parks and Chases, 1810, 50 Geo. 3, c. 65, *amended* 10 Geo. 4, c. 50.

169. JAMES, *supra* note 7, at 179–181.

170. 1810, 50 Geo. 3, c. 65, *supra* note 168.

171. JAMES, *supra* note 7, at 184.

on woods, forests, and revenue.¹⁷² The Office of Woods came to exercise governmental authority over Royal Forests, emphasizing timber production and enhancing revenues for the Crown. By now the Royal Navy's fleet was built of steel and its demand for wood had receded.

Inclosure acts¹⁷³ and forest plantations continued to induce opposition from commoners, frustrated with the Crown's disregard of their ancient Forest Charter rights. Emerging social values competed with tree plantations. Controversies between the Crown and the public varied from forest to forest. Examples in four Royal Forests illustrate trends defining new forest "liberties" despite each Royal Forest's distinctively local history.

In New Forest, tree plantations emerged with an Act of Parliament of 1698,¹⁷⁴ and timber production from the New Forest was extensive. In 1851, Parliament adopted the Deer Removal Act¹⁷⁵ to remove deer from the New Forest, facilitating its further use for tree plantations and not as a deer farm for the king. This act produced strong opposition. Besides commoners, new stakeholders sought to protect the New Forest. In 1863, John Wise published his book *The New Forest, Its History and Scenery*, and in 1867 the New Forest Association was formed to protect common rights in the New Forest. In 1871, the Crown's Office of Woods proposed a bill in Parliament that would have removed all forest rights to enable conversion to plantation wood production. Opposition from civic groups prevented the bill's adoption. After the bill failed, in 1877, Parliament passed the New Forest Act,¹⁷⁶ which recognized the rights of commoners and provided that the Court of Verderers would administer and manage those rights.

In Epping Forest, a different path appears. A Royal Forest since Henry I, commoners had enjoyed their usufructs for generations. Throughout the 18th century, they resisted inclosures, which accelerated with expansion of agricultural lands in the 19th century. In 1851, Hainault Forest adjacent to Epping had been disafforested, its trees removed and replaced with plowed and fenced fields. In 1866, commoners sued in Chancery to challenge enclosures that denied them their Forest Charter rights. They were joined by the Corporation of the City of London, which wished to save Epping for the health and recreation of the residents of London. Courts held that

172. *Id.*

173. JESSEL, *supra* note 158, at 134–36.

174. See An Act for the Increase and Preservation of Timber in New Forest in the County of Southampton, 1698, 9 & 10 Will. 3, c. 36.

175. An Act to Extinguish the Right of the Crown to Deer in the New Forest, and to Give Compensation in Lieu Thereof, and for Other Purposes Relating to the Said Forest, 1851, 40 & 41 Vict., c. 121 [commonly referred to as the "Deer Removal Act"]. See COLIN R. TUBBS, *THE NEW FOREST* 76–77 (1986).

176. An Act to Amend the Administration of the Law Relating to the New Forest in the County of Southampton, and for Other Purposes, 1877, 40 & 41 Vict. c. 121 [hereinafter *The New Forest Act 1877*].

commoners could not have consented to enclosures by purchase, because “it would be impossible for the landowners to demonstrate that every single entitled commoner had given consent and been compensated, and that since the right was individual rather than collective, each and every commoner had the right to veto the change.”¹⁷⁷ Enclosures in Epping Forest were thus unlawful. In the wake of this ruling, in 1878, the city acquired 3,500 acres of forest, and then secured Parliament’s adoption of the Epping Forest Act, making London the Conservator of the Forest. When Queen Victoria inaugurated Epping Forest as a place for public recreation, it marked a new conception of the “liberties of the forest.”¹⁷⁸ Under the Epping Forest Act 1878, conservators were “at all times as far as possible [to] preserve the natural aspect of the Forests . . . protect the timber and other trees, pollards, shrubs, underwood, heather, gorse, turf and herbage.”¹⁷⁹ The documented rights of commoners were to continue unchanged, and Verderers were to be selected to defend the interests of commoners. Initially lacking scientific capacity to guide preservation, it took time to build a nature conservation theme at Epping. Oliver Rackham worried that Epping “is well on the way of becoming just another Chiltern-type beech-wood.”¹⁸⁰ Notwithstanding Rackham’s concern, two-thirds of Epping have been designated as Sites of Special Scientific Interest¹⁸¹ and English Nature identifies Epping’s biodiversity as “outstanding.”¹⁸² The City of London saved Epping from becoming a plantation for timber. Epping today hosts numerous recreational facilities.

In the Forest of Dean, established by William the Conqueror for its large oak forests, Parliament enacted individual laws also. Dean’s rich oak resources had built the Cathedral in York and the Tower of London. It was a great source of revenue for the Crown.¹⁸³ In the 1850s, deer were ordered

177. MAITLAND, *supra* note 149, at 92 (the account of Epping).

178. *Forest Charter*, *supra* note 3, at ch. 17. See generally ALFRED QVIST, *EPHING FOREST* (1958).

179. *THE COMMON GROUND*, *supra* note 54, at 136.

180. RACKHAM, *supra* note 53, at 150.

181. Sites of Special Scientific Interest (SSSIs) began as an inventory of sites, and became a network of natural areas, initially designated by the Council of the Nature Conservancy, an agency established by the National Parks and Access to the Countryside Act of 1949. National Parks and Access to the Countryside Act, 1949, 12, 13 & 14 Geo. 6, c. 97, http://www.legislation.gov.uk/ukpga/1949/97/pdfs/ukpga_19490097_en.pdf [hereinafter *Access to the Countryside Act*]. More than 344 SSSIs are situated in Crown Forests. See DAVID EVANS, *A HISTORY OF NATURE CONSERVATION IN BRITAIN* 202–03 (1992).

182. See *Biodiversity Action Plan—Epping Forest District Council*, *EPHING FOREST DC.GOV.UK*, <http://www.eppingforestdc.gov.uk/index.php/residents/your-home/285-out-and-about/our-countryside/countrycare/biodiversity/676-the-epping-forest-biodiversity-action-plan> (last visited May 20, 2014).

183. The annual income from this one forest in 1195–1232 equaled the annual revenue of Henry II and more than half that of Henry III. YOUNG, *supra* note 14, at 131.

removed from Dean to further plantations, and in five years all were eliminated.¹⁸⁴ By the 19th century, it was a significant source of timber for the navy. By 1809, four-fifths of Dean was enclosed for plantations, which coexisted with ironworks dating from Roman and medieval periods. Miners had been granted royal charters by Edward I, and in 1838 Parliament confirmed their rights. “There are around 150 Free Miners alive today”¹⁸⁵ in Dean. Dean illustrates a mixed-use approach today. The Forestry Commission now administers Dean, which hosts small herds of fallow deer along with camping and other recreational facilities. The Verderers court administers access to the commons and a “Speech Court” is held every 40 days.¹⁸⁶ Dean too has been reinvented.

Exmoor Forest was afforested by King John but restored to its original boundaries under the Forest Charter, and the boundaries were enforced by perambulations in 1279, 1298, and 1651.¹⁸⁷ Exmoor had little oak wood, but ample deer for royal hunting.¹⁸⁸ Numerous streams and rivers traverse Exmoor. Parliament disafforested Exmoor in 1851 and a portion of Crown lands was sold to John Knight in 1818.¹⁸⁹ The Knight family designed the landscape of Exmoor, planting woodlands and enclosing farmlands (only 14 percent is now enclosed).¹⁹⁰ Exmoor’s mixed uses include farming, raising sheep, forestry, recreation, and scientific pursuits.¹⁹¹ Situated along the Bristol Channel, Exmoor is removed from major population centers. Exmoor was proposed for status as a National Park in 1945, and designated one in 1954. The Forestry Commission and two County Committees and a Joint Advisory Committee govern Exmoor. The history of Exmoor is more respectful of commoners’ interests. It accommodates private agricultural properties, customary usufructs, aesthetic amenities, recreation, timber production, and the harvesting of other natural resources. Exmoor’s patterns of land use appear to have entailed less conflict than in other former Royal Forests. Exmoor appears well suited to the national park planning regimes.¹⁹²

These four different administrative patterns for protection of common and public interest in Royal Forests developed partially in reaction to the Industrial Revolution in England. The Industrial Revolution shifted demands away from wood to coal and coke for industrial production. Parliament enacted legislation for new roads, canals, and railways. As

184. GRANT, *supra* note 7, at 212.

185. MAITLAND, *supra* note 149, at 180.

186. GRANT, *supra* note 7, at 214–16.

187. *Id.* at 155, 159; *see also* JAMES, *supra* note 7, at 923–93.

188. JAMES, *supra* note 7, at 34, 133.

189. *Id.* at 93.

190. C.S. ORWIN, *THE RECLAMATION OF EXMOOR FOREST* (1929).

191. ROGER MILLS, *FORESTRY IN THE ENGLISH LANDSCAPE* 139–70 (1967).

192. *Id.* at 135–242; *see also* Home Page, EXMOOR NATIONAL PARK, <http://www.exmoor-nationalpark.gov.uk> (last visited May 20, 2014).

demands for timber fell in the late 19th century, the Crown's Office of Woods was less assiduous in promoting forest productivity. Laws promoted industrialization, mining, and new financing systems, which were needed for economic development. As industrial pollution burgeoned, Parliament enacted the Alkali Acts (1863)¹⁹³ and the Public Health Act (1875),¹⁹⁴ and unpolluted forests beckoned. Railways allowed urban dwellers easy access to the countryside. The population of England shifted from being largely rural in 1800 to doubling in size and becoming increasingly urban by the 1850s. England's population nearly doubled again by 1900, with most people living in urban settings. Urban congestion and slums emerged; as open space and public gardens in cities disappeared, public demands grew for access to natural areas. Trevelyan notes that: "[I]t was characteristic of the altered balance of society that enclosure of commons was ultimately stopped in the decade between 1865 and 1875 by the protest not of the rural peasantry, but of the urban populations, who objected to exclusion from its holiday playgrounds and rural breathing spaces."¹⁹⁵ Parliament responded. "Liberties of the Forest" were now espoused in new ways.

The late 19th century also ushered in a new sensibility toward nature. Reacting to the excesses of the Industrial Revolution, the Romantic movement emerged in aesthetics, literature, and art.¹⁹⁶ Appreciation of natural beauty became a popular priority, infusing renewed interest in the once Royal Forests, as is illustrated in the many organizations celebrating the Lake District. The Commons, Open Spaces and Footpaths Preservation Society was established in 1865. In 1895, the National Trust for Places of Historic Interest or Natural Beauty was founded. These trends bred conflicts with the prevailing policies of the Office of Woods.

Timber operations expanded to serve needs in World War I. Forest lands accounted for some 5 percent of England's landscape in 1914. In 1919, Parliament established the Forestry Commission, and in 1924 transferred authority for the Royal Forests to the new Commission, setting the stage again for conflicts between the Crown's interests in timber and the commoners' rights and the new public stakeholders with their amenity, aesthetic, recreational or scientific values.

Two significant advances in knowledge stimulated new values regarding Royal Forests in the late 19th and early 20th century. Both would refocus English attitudes toward Royal Forests and the Forest Charter. First was the scientific revolution associated with the discoveries of Charles Darwin

193. EVANS, *supra* note 181, at 56.

194. Public Health Act, 1875, 38 & 39 Vict., c. 55.

195. G.M. TREVELYAN, *ENGLISH SOCIAL HISTORY* 537 (1942).

196. *See, e.g.*, the works of William Wordsworth (literature), John Ruskin (aesthetics), and John Constable or J.M.W. Turner (landscape painting).

and the birth of the science of ecology. Second was the publication of forest courts' records, enabling legal scholarship to rediscover the importance of the Forest Charter. Both deserve to be recalled, for both quietly influenced the "liberties of the forest."

B. Evolution and Ecology: The Science and Ethics of Nature Conservation

Commoners' rights under the Forest Charter persisted both in law and practice, although royal grants alienating lands and allowing governmental inclosures and private enclosures often excluded commoners. In the 18th and 19th centuries, new commonly held interests in the nature of the forest countryside were emerging. This was the study of natural history. Widening economic prosperity in England led to a flowering of natural history studies. Works like Gilbert White's *The Natural History and Antiquities of Selborne* (1788) reflected and inspired a growing interest in the flora, fauna, and geography of England.¹⁹⁷ Natural history societies emerged to foster collections and classifications of the variety of natural life, and by 1851 Cambridge University launched a degree in natural science.¹⁹⁸

When Charles Darwin published *The Origin of Species* (1859), and the *Descent of Man* (1871), his theories of natural selection were a scientific revolution in biology, with profound implications for all scientific inquiry. The Education Act of 1870¹⁹⁹ required, for the first time, the teaching of elementary science in all government schools. The public explored the countryside to study geological and biological phenomena.

A public informed about natural science emerged. The expansion of railways, provided ready access to the countryside, for appreciation and study of nature. Enclosures restricted access to natural areas, and opposition to enclosures emerged. In 1865, John Stuart Mill and others founded the Commons Preservation Society, which won open space access for Epping Forest, Blackheath, Hampstead Heath, Wandsworth Common, Wimbledon Common, and elsewhere.²⁰⁰ Similarly, civic conservation societies emerged,

197. RICHARD MABEY, GILBERT WHITE: A BIOGRAPHY OF THE AUTHOR OF THE NATURAL HISTORY OF SELBORNE 1–13 (1986). The edition of White's *Natural History of Selborne* published in 1827 by William Jardine led to a wider readership, including the young Charles Darwin.

198. DAVID ELLISTON ALLEN, THE NATURALIST IN BRITAIN—A SOCIAL HISTORY 162 (1976).

199. The Elementary Education Act, 1870, 33 & 34 Vict., c.75, available at <http://www.educationengland.org.uk/documents/acts/1870-elementary-education-act.html>.

200. The Open Spaces Society (OSS) continues this movement, and OSS provides a history of the movement. *Open Spaces Society*, OSS.ORG, www.oss.org.uk/ (last visited May 20, 2014).

such as the Royal Society for the Protection of Birds. In 1895, the National Trust for England and Wales was created, leading to the enactment of the National Trust Act (1907).²⁰¹ The Society for the Promotion of Nature Reserves was founded in 1912, later becoming the Royal Society for Nature Conservation. Advocates for nature conservation were becoming a political force. New uses for the forests had emerged.

While social movements for conservation grew, scientists tested and refined knowledge of ecology as the 19th century concluded. The Oxford ecologist A.G. Tansley and others founded the world's first Ecological Society in 1913.²⁰² The science of ecology rapidly matured, although it was set back when a generation of young scientists was killed in World War I.²⁰³ Stewardship of land increasingly came to be measured by norms based on ecological relationships. The ecological approach would reverberate back to stimulate reforms in management of the governments' timber plantations and remnant Royal Forests.

As public concern grew about the loss of species and habitats, Parliament enacted further laws for nature conservation, such as The Wild Birds Protection Act (1880).²⁰⁴ Local lands were set aside and opened for public access. Nature conservation was often congruent with commoners' usufructuary rights, since both relied on stable and healthy

A succinct history of the OSS movement:

Lord Eversley, the former Liberal MP and minister, founded the Commons Preservation Society in 1865. The aim of the society was to save London commons for the enjoyment and recreation of the public. Its committee members included such important figures as Octavia Hill, the social reformer, Sir Robert Hunter, solicitor and later co-founder of the National Trust, Professor Huxley, and the MPs, Sir Charles Dilke and James Bryce. Most of the society's members initially came from the south east, so their interests focused on London.

In 1899 the Commons Preservation Society amalgamated with the National Footpaths Society, adopting the title Commons Open Spaces and Footpath Preservation Society. The shortened name, Open Spaces Society was adopted in the 1980s. The society promoted important pieces of legislation, including the Commons Acts of 1876 and 1899.

Open Spaces Society—University of Reading, The Museum of English Rural Life, reading.ac.uk, http://www.reading.ac.uk/merl/collections/Archives_A_to_Z/merl-SR_OSS.aspx (last visited May 20, 2014).

201. An Act to Incorporate and Confer Powers Upon the National Trust for Places of Historic Interest or Natural Beauty, 1907, 7 Edw. 7, c. 136.

202. The British Ecological Society grew out of the 1904 Committee for the Study of British Vegetation. EVANS, *supra* note 181, at 53.

203. DONALD WORSTER, *NATURE'S ECONOMY—A HISTORY OF ECOLOGICAL IDEAS* 205–42 (1977).

204. The Preservation of Wild Fowl Act of 1876 was soon replaced by An Act to Amend the Laws Relating to the Protection of Wild Birds. See the Preservation of Wild Fowl Act, 1876, 39 & 40 Vict., c. 29; the Wild Birds Protection Act, 1880, 43 & 44 Vict., c. 35. See MEAD, *supra* note 7, at 208.

natural habitats. The mix of values supporting forests and countryside embraced new objectives: restoring and safeguarding species, habitats, ecosystems, landscapes, and aesthetic values. Legal reforms would gradually accommodate new uses of once Royal Forests: for rambling hikes, nature study, and environmental conservation.²⁰⁵ These practices were reasserting common rights. Rediscovery of the Forest Charter's rights could complement them.

C. The Forest Charter Reemerges: The Selden Society and Legal Historians

While scientific knowledge about nature (and humans) was evolving, legal and historical knowledge about humans (and nature) rediscovered the Forest Charter. Law, as a learned profession, investigated its medieval roots. Scholars probed behind the text of the Forest Charter. Blackstone had reconciled the various original versions of the Forest Charter, providing an authoritative text.²⁰⁶ His commentary reported about the Charter, rather than evaluating its legal process. Blackstone relied on few primary sources, largely limited to extant copies of the Charters and the writings of Matthew Paris. In his 1759 work, Blackstone wrote that "The charter of the forest . . . is printed from an original in the archives of the cathedral at Durham; the seal whereof, being of green wax, is still perfect, but the body of the charter has been unfortunately gnawed by rats, which has occasioned pretty great mutilations."²⁰⁷ Blackstone inspected other extant variants of the Forest Charter and also the enrollments of the Charters in the Tower of London, and supplied the words that the rats left missing in the Durham Charter. He set the stage for subsequent legal scholarship about the Forest Charter to search where he left off.

Whig interpretations of history had projected a progressive and felicitous chain of governmental development from ancient traditions of the English nation to its celebrated unwritten constitution. These perceptions are belied by the tortuous and troubled history of the Forest Charter. The story of the Forest Charter in the 20th century was profoundly influenced by the unearthing in the late 19th century of the documentary history of the Forest Law and Carta de Foresta. While the Justiciars of old, and their successors, had required the keeping of careful records of royal revenues and adjudications of disputes, these documents lay unread in libraries, unrecalled. Translating Latin and Norman French texts written on sheepskin into English, scholars made this trove of materials accessible. Their work transformed knowledge

205. MILES, *supra* note 63, at 53–58; Philippa Bassett, *A Brief History of the Ramblers Association*, in LIST OF HISTORICAL RECORDS OF THE RAMBLERS ASSOCIATION (1980).

206. PREST, *supra* note 1.

207. BLACKSTONE, *supra* note 1, at l.

of the 13th century, inspiring new studies about how its events reverberated in later eras.

In 1882, the William Salt Society printed two rolls of proceedings before the justices in Staffordshire in 1199 and 1203.²⁰⁸ The Pipe Roll Society was established in 1883 to publish all unprinted records before the year 1200.²⁰⁹ Building on such studies, knowledge of the Forest Courts under Kings Richard I and John was further advanced when Francis Palgrave published *Rotuli Curiae Regis*,²¹⁰ and Frederic Maitland edited, and the Selden Society published, the first volume of the *Select Pleas of the Crown* in 1887.²¹¹ Maitland edited a number of Selden Society volumes. The Selden Society's contribution to understanding the Forest Charter and Magna Carta cannot be underestimated. Without Turner's *Introduction* and the documents that he edited for *Select Pleas of the Forest* (1901),²¹² there would be little contemporary understanding of the origins and the extraordinary role of the Forest Charter in the 13th century. Reviewing Turner's work upon its publication, the *Harvard Law Review* noted, "Heretofore Manwood's Laws of the Forest and Coke's Fourth Institute, chapter 73, have been the chief authorities on the subject."²¹³ The *Harvard Law Review* welcomed the lively new understanding of law in the 13th century.

The scholarship that followed refreshed knowledge of both the Forest Charter and Magna Carta. With Frederick Pollock, Frederic William Maitland wrote the *History of English Law Before the Time of Edward I* in 1895, with a second edition in 1898. William Sharp McKechnie published his *Magna Carta: A Commentary on the Great Charter of King John* in 1905, with a second augmented edition in 1914.

Legal scholarship refreshed the memory of the Forest Charter, restoring it to public policy discourse. The Charter could now feature in debates about nature conservation, ecology, biodiversity, land use, and heritage cultural values. The Forest Charter's new relevance was also possible because Magna Carta's principles for the rule of law guaranteed that appeals to legal

208. The William Salt Archaeological Society, now the Staffordshire Record Society, published these documents in Volume I, First Series (1879). See *The Staffordshire Record Society Publications First Series*, S-H-C.ORG.UK, <http://www.s-h-c.org.uk/Publications%20first%20series.html> (last visited May 20, 2014).

209. See *The Pipe Roll Society—Home*, PIPE ROLL SOCIETY, <http://www.piperollsociety.co.uk/index.htm> (last visited May 20, 2014).

210. FRANCIS PALGRAVE, *ROTULI CURIAE REGIS: ROLLS AND RECORDS OF THE COURT HELD BEFORE THE KING'S JUSTICIARS OR JUSTICES* (1835).

211. *ENGLAND CURIA REGIS, 1 SELECT PLEAS OF THE CROWN: A.D. 1200–1225* (Frederic W. Maitland ed., London, Selden Society 1887).

212. William Turner wrote a lengthy *Introduction* TO SELECT PLEAS OF THE FOREST, *supra* note 25.

213. Books & Periodicals Review, 15 HARV. L. REV. 421, 421–22 (1901), reviewing SELECT PLEAS OF THE FOREST (G.J. Turner ed., 1901).

norms, like those of the Forest Charter, would have a receptive audience in Parliament.

D. Forest Charter “Liberties” in the 20th Century

The administrative law systems of the modern state emerged in the 1900s, especially after World War II. In the 20th century, conservationists brought scientific reassessments of nature in England to the attention of Parliament. Where each Royal Forest once reflected more or less the same application of Forest Law, or of the Crown’s regimes for timber plantations, each now tended to evolve its own separate stewardship regime, reflecting local contexts and stakeholders. Intellectual and social changes redefined competing forest values. Through uniquely English appeals to tradition, some former Royal Forests retained institutions of Forest Law, such as Verderers, retooling them to serve new functions and meshing their mandates with those of new administrative agencies. While two world wars and the Great Depression suppressed reforms of forest governance, pressures persisted from holders of commoners’ usufructs, and from advocates of countryside protection and nature conservation. The question remained: What should the Crown do about forests, the Royal Forests, and the Forest Charter? Age-old debates about common forest rights versus the Crown’s search for revenues recurred anew.

Meanwhile, utilitarian mandates to promote timber production advanced on their own separate pathways. In 1919, Parliament enacted the Forestry Act.²¹⁴ Forest Commissioners were granted full authority to develop timber resources and buy or sell lands, and exercise eminent domain to take lands.²¹⁵ In 1924, the Royal Forests were transferred to a newly established Forestry Commission.²¹⁶ By 1939, the Commissioners had bought 172,000 hectares for new forest plantations.²¹⁷ Critics found the plantations impoverished the landscape’s beauty and ecological richness.²¹⁸

To ameliorate public concerns, Forestry Commissioners set up forest parks, including one in the Forest of Dean.²¹⁹ Nonetheless, public debates about reconciling nature conservation and resource exploitation grew. For example, on August 26, 1936, the Forest Commissioners published a

214. An Act for Establishing a Forestry Commission for the United Kingdom, and Promoting Afforestation and the Production and Supply of Timber Therein, and for Purposes in Connexion Therewith, 1919, 9 & 10 Geo., c. 58.

215. *Id.* at § 7.

216. The Transfer of Woods Act, *supra* note 35, at § 1, transferred the Crown interest in Royal Forests to the Forestry Commission.

217. MILES, *supra* note 63, at 207–58.

218. THE COMMON GROUND, *supra* note 54, at 47, 73–80 (1980).

219. EVANS, *supra* note 181, at 171; for earlier analogous uses of the Forest of Dean in 1946, see MILES, *supra* note 63, at 239.

white paper proposing expanded tree plantations for the Lake District. The Council for the Preservation of Rural England, Ramblers Federation, Friends of the Lake District, and others protested against the loss of native hardwood ecology and traditional landscape aesthetics.²²⁰ The Commission argued that its afforestation increased timber production and created jobs. Opponents cited losses of sheep pastures and their jobs. Above all, however, opponents urged protection for common rights of access to open space and aesthetics. Their vision was clear: "The ideal for the Lake District is a national park, not a national forest."²²¹

Competition and conflict between forest *users* of nature conservation for species or open-space landscape versus timber production grew sharper. After 1945, the Forestry Commission acquired new lands, and then poisoned or rooted out native vegetation to replace it, usually with conifer plantations.²²² Oliver Rackham notes that "for its first twenty-five years the Forestry Commission had little direct impact on woodland,"²²³ but the Commission's post-war expansion was more intense.

This was justified by a crude sort of cost-benefit analysis, which treated a plantation as if it were an investment in Government stock, and tried to set off hoped-for income against present expenditure by a discounting procedure . . . As much ancient woodland was destroyed in twenty-eight years as in the previous 400 years; the rate of destruction in the 1950s and 1960s was without parallel in history.²²⁴

Protests persisted.

In the Forestry Act (1951), Parliament directed the Forestry Commission to respect the amenity value of lands that it purchased for plantations.²²⁵ In the 1960s, the Commissioners began to provide picnic areas, trails, and other recreational facilities.²²⁶ By 1965, the Forestry Commission had

220. Opposing the cost-benefit analysis of the Forestry Commission, Symonds argued *inter alia* that "Beauty as a whole, one and indivisible. And it has an absolute claim. You cannot measure it in statistics, or plot its benefits in a curve, as men live by it, and much as by bread or wood-pulp: It has a final value." H.H. SYMONDS, *AFFORESTATION IN THE LAKE DISTRICT* 13 (1936).

221. SYMONDS, *supra* note 220, at 67.

222. RACKHAM, *supra* note 53, at 93.

223. *Id.*

224. RACKHAM, *supra* note 53, at 97.

225. An Act to Provide for the Maintenance of Reserves of Growing Trees in Great Britain and to Regulate the Felling of Trees, to Amend the Procedure Applicable to Compulsory Purchase Orders under the Forestry Act, 1945, and for Purposes Connected with the Matter Aforesaid, 1951, 14 & 15 Geo. 6, c. 61.

226. This did not always satisfy commoners whose land uses would be affected by afforestation. The Royal Commission on Common Land in 1955 recommended full access to all commons lands. Act to Provide for the Registration of Common Land and

adopted policies to conserve and manage wildlife since forests were “acting as a wildlife reservoir.”²²⁷ It created a Conservation and Recreation Branch in 1970, and designated its own forest nature reserves.²²⁸

The battles like those with the Forestry Commission arose in other sectors. World War II-era England had few laws governing land use.²²⁹ In 1925, Parliament modernized its laws on sales and transfers of private property.²³⁰ The stage was set for suburban real estate development. As automobiles enabled strip development along roads, in 1935 Parliament found the need to enact the Ribbon Development Act.²³¹ While town and country development land planning was still in its infancy, Parliament also enacted statutes facilitating designation of nature reserves in many locations. By 1943, 61 reserves had been established by non-governmental organizations or governmental units.²³² Nonetheless, areas around former Royal Forests faced growing development pressures.

The second half of the 20th century witnessed enactment of stronger land use controls in the wake of rapid post-war real estate development. Government control of land began when the War Ministry ruled that lands were needed for the war effort. To guide post-war recovery, Parliament enacted the Town & Country Planning Act of 1947.²³³ Local authorities assumed control over new land. Real estate development flourished, and public debates over competing land uses ensued.

Responding to growing demands for access to open space and strong nature conservation, Parliament withdrew support for treating forests as primarily sources for timber and revenue, and it enacted new laws defining and protecting public interests in forests and countryside. In 1949, Parliament adopted the National Parks and Access to Countryside Act,

Town or Village Greens, to Amend the Law as to Prescriptive Claims to Rights of Common, and for Purposes Connected Therewith, 1965, c. 64 (Eng.) (provided for a registration of all commons, but did not provide for how this was to occur) [hereinafter the Commons Registration Act].

227. Forestry Commission, *State Forest Memorandum* of June 1965, cited in Evans, *supra* note 181, at 12.

228. MILES, *supra* note 63, at 116–17, 129–32.

229. See, e.g., The Housing and Town Planning Act, 1909, 9 Edw. 7, c. 44; JESSEL, *supra* note 158, at 172–76.

230. JESSEL, *supra* note 158, at 172 (observes that “In 1926 there was, for lawyers, an English revolution. . . . The property legislation of 1922 to 1925 [Notably, the Law of Property Acts of 1922 and 1925, the Settled Land Act 1925 and the Land Registration Act 1925], came into force on the first day of the new year. It did away with many of the ancient laws.”).

231. The Restriction of Ribbon Development Act, 1935, 25 & 26 Geo. 5, c. 47.

232. EVANS, *supra* note 181, at 68–69.

233. Town and Country Planning Act, 1947, 10 & 11 Geo. 6, c. 51 [hereinafter the Town and Country Planning Act].

authorizing nature reserves.²³⁴ To help resolve the controversies that raged when commoners' customary rights interfered with new land development, Parliament adopted the Commons Registration Act of 1965,²³⁵ revised again in the Commons Act of 2006.²³⁶ Rules for tree preservation orders were added to the Town & Country Planning Act.²³⁷ Permits to cut down trees were established in the Forestry Act of 1967.²³⁸ Nature reserves were more systematically provided for in the Countryside Act of 1968.²³⁹ The Wildlife & Countryside Act of 1981²⁴⁰ authorized designation of Sites of Special Scientific Interest (SSSIs) on public and private lands; despite having been designated, SSSIs have sustained damage estimated annually at 5 to 10 percent of sites.²⁴¹ SSSI nature reserves were identified in some Royal Forests, such as the New Forest's heaths and mores. While these Acts privileged scientific preservation over other values, such as aesthetics or recreation, Parliament separately acknowledged these forest uses also. In contrast, Areas of Outstanding National Beauty (AONB) were designated

234. Access to the Countryside Act, *supra* note 181, at § 15, <http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/97>. The Act defined nature reserves for (a) "the study of, and research into, matters relating to fauna and flora of Great Britain and the physical conditions in which they live, and for the study of geological and physiographical features of special interest in the area, or (b) of preserving flora, fauna or geological and physiographical features of special interest in the area, or for both these purposes."

235. The Commons Registration Act, *supra* note 226.

236. The Commons Act, 2006, c. 26.

237. The Town and Country Planning (Environmental Impact Assessment) Regulations, 2011, S.I. 1824 (U.K.), http://www.legislation.gov.uk/uksi/2011/1824/pdfs/ukxi_20111824_en.pdf.

238. An Act to Consolidate the Forestry Acts 1919 to 1963 with Corrections and Improvements Made Under the Consolidation of Enactments (Procedure) Act, 1949 (also known as Forestry Act 1967). The Forestry Act, 1967, c. 10, <http://faolex.fao.org/docs/pdf/gbr18985.pdf>.

239. An Act to Enlarge the Functions of the Commission Established Under the National Parks and Access to the Countryside Act 1949, to Confer New Powers on Local Authorities and Other Bodies for the Conservation and Enhancement of Natural Beauty and for the Benefit of those Resorting to the Countryside and to Make Other Provision for the Matters Dealt with in the Act of 1949 and Generally as Respects the Countryside, and to Amend the Law about Trees and Woodlands, and Footpaths and Bridleways, and Other Public Paths, 1968 c. 41, http://www.legislation.gov.uk/ukpga/1968/41/pdfs/ukpga_19680041_en.pdf (amended in 1973) [hereinafter the Countryside Act].

240. An Act to Repeal and Re-Enact with Amendments the Protection of Birds Acts 1954 to 1967 and the Conservation of Wild Creatures and Wild Plants Act 1975, to Prohibit Certain Methods of Killing or Taking Wild Animals, to Amend the Law Relating to Protection of Certain Mammals, to Restrict the Introduction of Certain Animals and Plants, to Amend the Endangered Species (Import and Export) Act 1976, to Amend the Law Relating to Nature Conservation, the Countryside and National Parks and to Make Provision with Respect to the Countryside Commission, to Amend the Law Relating to Public Rights of Way, and for Connected Purposes, 1981 c. 69.

241. Peter Marren, *Appendix B*, in *THE COMMON GROUND*, *supra* note 54, at 210 (1980).

separately.²⁴² Hikers, walkers, and ramblers won statutes confirming rights of way across private lands for footpaths. In 2000, the Countryside and Rights of Way Act²⁴³ established rights of access on commons and open space, as did the Marine and Coastal Access Act in 2009.²⁴⁴

Statutes also specifically protected species. For example, the Protection of Birds Act (1954)²⁴⁵ protected wild birds and their nests and eggs, imposing criminal sanctions for violations. Parliament mandated that boards and ministers “take into account any effect which their undertakings could have on ‘the natural beauty of the countryside’ or flora, fauna or features.”²⁴⁶

The laws for recreation, aesthetics, science, and conservation often operated independently of each other. Procedures to integrate these various laws in the context of approving new developments were adopted.²⁴⁷ Laws for environmental impact assessment (EIA) were enacted in response to the 1985 Directive of the European Union.²⁴⁸ Too often, however, the EIA provisions were applied with a narrow focus. Little effective integration of these various laws was achieved.

In the Wildlife and Countryside (Amendment) Act of 1985, Parliament directed the Forestry Commission to strike a reasonable balance between forestry and the environment.²⁴⁹ The Commission began to diversify its plantings to include broad-leaved and deciduous trees. In 1991, the Forestry Commission was split into the Forestry Authority, to administer grants and licenses to cut trees on private woodlands, and the Forestry Enterprise, to manage the Forestry estate.²⁵⁰ The Forestry Enterprise was mandated to protect and enhance the environment and provide recreational facilities. The Commission agreed to manage many SSSI sites. This evolution of the Forestry Commission’s work is significant because the Forestry Commission

242. EVANS, *supra* note 181, at 80, 82–85. Areas of outstanding natural beauty are designated under the National Parks and Access to the Countryside Act of 1949, but any protection accorded to these areas is provided by local authorities.

243. The Countryside and Rights of Way Act, 2000, c. 37.

244. The Marine and Coastal Access Act, 2009, c. 23.

245. An Act to Amend the Law Relating to the Protection of Birds (also known as Protection of Birds Act), 1954, 2 & 3 Eliz. 2, c. 30, http://www.legislation.gov.uk/ukpga/1954/30/pdfs/ukpga_19540030_en.pdf.

246. Evans, *supra* note 181, at 104.

247. See, e.g., the environmental impact assessment procedures for forestry projects: Forestry Commission, *Environmental Impact Assessment (EIA) (England)*, Forestry Gov UK, <http://www.forestry.gov.uk/england-eia> (last visited May 20, 2014).

248. Council Directive 85/337/EEC.

249. The Wildlife and Countryside (Amendment) Act, 1985, c. 31.

250. The Forestry Enterprise (FEE) became an executive agency of the Forestry Commission. Forestry Commission, *Forest Enterprise, Local Offices (England)*, FORESTRY Gov UK, <http://www.forestry.gov.uk/forestry/HCOU-4U4HZV>.

not only governed much land in the former Royal Forests, but it had become the largest landowner in Britain, holding 6 percent of its lands in 1987.²⁵¹

The transformation of the Forestry Commission shadowed an evolving debate over National Parks. Public advocacy for national parks was growing throughout England, not just in the Lake District. Since 1926, the Council for the Preservation of Rural England had been promoting policies to stabilize landscapes and combat the effects of suburban sprawl. In response to public pressure from nature conservationists in 1929, Prime Minister Ramsay MacDonald established a commission to study ways to preserve natural landscapes and wildlife. In 1931, the Addison Commission endorsed creation of national parks in England, but the government delayed responding.²⁵² Parliament enacted a modest land use planning law, the Town and Country Planning Act of 1932,²⁵³ but it did not stem new land developmental incursions into the countryside, nor did it address past problems. Public protests against past enclosures grew, accompanied by civil disobedience.²⁵⁴ “Trespass hikes” were held, with landowners complaining and police making arrests.²⁵⁵ Civil discord marked the renewed fight for “forest liberties,” albeit now liberties that were not recognized at the time of the Forest Charter.

After World War II, renewed pressure for establishing a system of national parks emerged. Because the Town and Country Planning Act of 1947²⁵⁶ empowered local county councils to control land development, local government defended its prerogatives and now opposed ceding authority to any national park agency. Despite its name, the National Parks and Access to the Countryside Act 1949²⁵⁷ modestly authorized only providing scientific advice about conservation and managing nature reserves. County councils were authorized to provide public access to protected areas and private properties (a response to the unlawful mass trespasses). The Act allowed the term “national park” to be applied to areas that were essentially regional parks for recreation, with various provisions for nature protection while allowing for various roads, farms, and buildings. The Countryside Act of 1968 extended the definition of wild landscapes in national parks to include woodlands.²⁵⁸ National Parks today cover 9 percent of England and

251. EVANS, *supra* note 181, at 201.

252. On the Addison Report on National Parks (1931), see MILES, *supra* note 63, at 68.

253. The Town and Country Planning Act, 1932, 22 & 23 Geo. 5, c. 48, http://www.legislation.gov.uk/ukpga/1932/48/pdfs/ukpga_19320048_en.pdf.

254. EVANS, *supra* note 181, at 62–64.

255. *Id.*

256. The Town and Country Planning Act, *supra* note 233.

257. Access to the Countryside Act, *supra* note 181.

258. The Countryside Act, *supra* note 239.

Wales.²⁵⁹ The designations overlap with nature reserves and various other environmental conservation categories.

Gradually, as Parliament reshaped England's laws for governing forests and fostering environmental conservation, it supplanted the original statutory provisions of the Forest Charter. New statutes had so often replaced the Charter that its final repeal in 1971 was formalistic and anticlimactic. The interests of commoners, so evident in Forest Charter, were now reflected throughout many Acts of Parliament. The public's "forest liberties" had been redefined.

VI. A Case Study of the New Forest: Contemporary "Liberties of the Forest"

The New Forest is a living synthesis of legal reforms reiterated over many years. It was William the Conqueror's first Royal Forest (1079); today the rule of law mediates competing interests. Carta de Foresta was proclaimed to bring the rule of law to the king's command of the Royal Forests and secure the rights of commoners, whose welfare depended on access to the fields, forests, and waters. The Charter's legacy is reflected in the New Forest's landscape with its once-medieval forest officers, who today serve the rights of commoners to pasturage and herbage and advance the wider public's enjoyment of nature conservation, recreation, and beauty.

New Forest consists of heaths, bogs, and grazed forests, mingled with villages and historic buildings, crossed by lanes and roads and walking paths.²⁶⁰ Sustaining vast and diverse habitats, New Forest wildlife is exceptional. Inclosures are found there, the result of the Forestry Commission's 40 years of afforestations begun in the 1960s, renewing timber operations in prior eras. Enclosures are found where private estate owners secured leave to remove commoners' rights from their land. Private land owners usually enclose farm or lands planted for wood. Some original heathland is also enclosed and left undeveloped.²⁶¹

Where once perambulations under the Forest Charter set borders, now Acts of Parliament do so.²⁶² Of the 37,907 hectares within the New

259. National Parks include some former Royal Forests, such as Exmoor and New Forest. See *National Parks UK: National Parks UK*, NATIONAL PARKS.GOV.UK, www.nationalparks.gov.uk (last visited May 20, 2014).

260. CLIVE CHATTERS & MIKE READ, *NEW FOREST NATIONAL PARK* (2009).

261. See *id.*

262. An Act to Alter Perambulations for the New Forest, to Make Further Provisions for the New Forest, to Amend the New Forests Acts 1877 to 1949, and for Purposes Connected with the Matters Aforesaid, 1964, Eliz. 2, c. 83, http://www.legislation.gov.uk/ukpga/1964/83/pdfs/ukpga_19640083_en.pdf [hereinafter *New Forest Act 1964*].

Forest, portions are owned by Parish Councils, Hampshire County Council, and private owners. Commoners' rights of pasturage cut across all these holdings. An Atlas of Commons Rights (such as for *pasturage* and *pannage*, or rights to collect firewood or turf) are recorded in the Verderers' Court. Animals roaming freely are branded to identify their owner, and marking fees are assessed.

Efforts by the Office of Woods to expand inclosures for plantations in the New Forest, facilitated by the Deer Removal Act of 1851,²⁶³ stimulated intense opposition from commoners and freeholders. Parliament then enacted the New Forest Act of 1871, reinventing the court of Verderers, as a "special board of commons conservators,"²⁶⁴ whose loyalties were to the Forest itself and the usufructs it supported, not to the Crown or its revenues. Because timber operations under the Crown's Office of Woods conflicted with the usufructs of commoners, this Act also restored powers to the court of Verderers, limited the Crown's right to inclose, and regulated commoners' rights. The court's regulations still guide its administrative and judicial proceedings.²⁶⁵

Throughout the 19th century, Verderers opposed legislation requested by the Office of Woods that would authorize expanding inclosures for timber plantations, expanding drainage of wetlands, allowing open burning and clearing, and promoting other projects. As the 20th century opened, the Verderers and commoners were in a "perpetual state of conflict with the Crown."²⁶⁶ The House of Commons' Select Committee of 1912 reviewed all the "controversies that had plagued the Forest since 1877."²⁶⁷ World War I interrupted any efforts to resolve disputes, and necessitated military use of parts of the New Forest, with again constraints on the exercise of the rights of commoners. Between the world wars, old tensions resurfaced and new ones emerged. In 1916, the Verderers arranged for insurance for commoners' stock because of increasing numbers of motor vehicle road accidents with commonable animals.²⁶⁸ World War II brought two airfields and bombing ranges and timbering to the New Forest, leaving it in "a physical and

263. An Act to Authorize the Right of the Crown to Deer in the New Forest, and to Give Compensation in Lieu Thereof; and for Other Purposes Relating to the Said Forest, 1851, 14 & 15 Vict. c. 76.

264. ANTHONY PASMORE, *VERDERERS OF THE NEW FOREST—A HISTORY OF THE NEW FOREST 1877–1977*, at 2 (1976).

265. The New Forest Act 1877, *supra* note 176, at § 24. See *Verderers' Court in the New Forest*, VERDERERS.ORG.UK, *The History of the Verderers*, <http://www.verderers.org.uk/court.html> (last visited May 20, 2014).

266. PASMORE, *supra* note 264, at 79.

267. *Id.* at 121.

268. *Id.* at 148.

administrative mess.”²⁶⁹ In the post-war years, Parliament adopted statutes for New Forest in 1949 and 1964.²⁷⁰ Competition intensified between commoners’ usufructs, recreational activities, siting of new highways or utility lines, and projects of the Forestry Commission. Verderers fought efforts by the Forestry Commission to sell off open forest without even consulting the Verderers.²⁷¹ Verderers opposed commercial expansion of timberlands and urged the Forestry Commission to plant diverse woods, with more broad-leaved trees. Verderers also won an end to unrestrained camping in open forest in 1971.²⁷² The disputes led Parliament to enact legislation to resolve disputes, and coincidentally in 1971 led to the formal repeal of the Forest Charter and remnant incidental duties of the Forest Law.²⁷³

The New Forest Act of 1949²⁷⁴ had increased the number of Verderers to nine (five elected, one of whom is the Official Verderer, and four appointed). The Act also authorized the Verderers to adopt bylaws. Today the Verderers exercise powers conferred under the Countryside Act of 1968 (sec. 23),²⁷⁵ as well as under the New Forest Acts of 1877, 1879, 1949, 1964, and 1970.²⁷⁶ The court’s bylaws²⁷⁷ specify forest rights of common pasture (ponies, cattle, donkeys, and mules in the Open Forest), common pasture for sheep, a common of *mas* (pigs in the fall devouring acorns), *estovers* for fuel wood, a common of *marl* (the right to dig clay), and a common of *turbary* (the right to cut peat turves). These rights of commoners, confirmed by the Forest Charter, have been practiced in the New Forest since the 11th century. A registry of these rights is published in the Atlas of Forest Rights.²⁷⁸

269. JAMES, *supra* note 7, at 226–37; F. E. KENCHINGTON, THE COMMONERS’ NEW FOREST 144–52 (1944).

270. An Act to Make Further Provisions as Respects the New Forest in the County of Southampton, 1949, 12, 13 & 14 Geo. 6, c. 69, http://www.legislation.gov.uk/ukpga/1949/69/pdfs/ukpga_19490069_en.pdf [hereinafter the New Forest Act 1949]; the New Forest Act 1964, *supra* note 262.

271. PASMORE, *supra* note 264, at 220–221.

272. *Id.*

273. The Wild Creatures & Forest Laws Act, *supra* note 8.

274. The New Forest Act, 1949, *supra* note 270.

275. The Countryside Act, *supra* note 239, at § 23.

276. The New Forest Act 1877, *supra* note 176; An Act to Amend the New Forest Act, 1879, 42 & 43 Vict., c. 194; New Forest Act 1949, *supra* note 270; the New Forest Act 1964, *supra* note 262; An Act to Make Further Provision for the New Forest, 1970, c. 21, http://www.legislation.gov.uk/ukpga/1970/21/pdfs/ukpga_19700021_en.pdf?timeline=true.

277. *Policies and Bylaws of the New Forest and Verderers*, VERDERERS.ORG.UK, *Byelaws*, <http://www.verderers.org.uk/policies.html#byelaws> (last visited May 20, 2014).

278. For access to the Atlas of Rights, see *Forest Rights in the New Forest*, VERDERERS.ORG.UK, *Byelaws*, <http://www.verderers.org.uk/rights.html> (last visited May 20, 2014). The New Forest has provisions for registering common rights apart from the Commons Registration Act of 1965.

The Verderers employ agisters to oversee the management of the commoner's stock in the Forest, who inform Verderers of breaches of the bylaws, attend to automobile accidents involving animals and deal with injured animals, and manage the fall roundups of ponies and cattle. The Verderers' court is formally the Courts of Attachment and Swainmote, and it hears presentments from forest residents about issues affecting the environment and the various uses made of the Forest. While the Verderers' court can prosecute criminal offenses of protected forest interests, these today are usually handled by the Magistrate's Court in Lyndhurst or Southampton. Many "pleas of the forest" today involve charges of automobiles driving through the New Forest colliding with free-ranging animals.²⁷⁹

Today the New Forest is a biologically diverse place, with an amalgam of overlapping laws and institutions. The forest regime accommodates commoners' rights to access forest assets, respect for local villages and their land development roles, nature protection, recreation and public access, sustainable forestry practices, and yield revenues. It is a regime adapting to new technologies and times, and perhaps its whole is greater than the sum of its parts. Sylvie Nail observes,

A study of landscape preservation campaigns at the turn of the 20th century devotes a passage to the New Forest in the 1890s, and the arguments used are worth noting, all the more so as the New Forest represents the Royal Forest *par excellence*. They refer mostly, not to the landscape or amenity value of the site, but to the historical and heritage value of the Forest, stating that the New Forest provided a glimpse of "the England that was and ceased to be," the "England of the outlaw, or the singer of ballads, of the lover of the greenwood life." This vision of the New Forest as a "national inheritance," providing a "connection with the Saxon origins of modern England"²⁸⁰

To all other forest uses, cultural heritage now is added. Cultural memory is a principal reason given for preserving New Forest as a national park. The New Forest National Park was established in 2005, the first to be designated after Northumberland National Park was named in 1956, and the smallest to have been designated.²⁸¹

279. Annually between 1955 and 1975, between 170 and 349 motor vehicle accidents with commonable stock took place on roads traversing the New Forest. See PASMORE, *supra* note 264, at app. IV, at 278.

280. NAIL, *supra* note 36, at 18 (citing Paul Readman, *Landscape Preservation, "Advertising Disfigurement" and English National Identity c. 1890–1914*, 12 RURAL HIST: ECON. SOC'Y, CULTURE 61, 61–83 (2001)). A number of articles and books about New Forest exist. See, e.g., SARAH NIELD, *FOREST LAW AND THE VERDERERS OF THE NEW FOREST* (2005).

281. *Id.*

The Verderers court's roles overlap with other authorities in the New Forest. Jurisdictional conflicts among authorities are resolved largely by negotiations through various planning systems. The Verderers and the Forestry Commission have a Memorandum of Understanding²⁸² regarding the exercise of their respective responsibilities within the Forest. The Forestry Commission's duties to provide recreation, including appropriating land in the New Forest for recreation, involve operating camping, sporting, and other recreational activities. Tensions still exist between competing uses and safeguarding the remnant primeval ecological niches, SSIS sites, and heritage areas. The Forestry Commission has its own planning procedures.²⁸³ The Verderers also have their own guidelines for the competing interests found in the New Forest: "precious wilderness or suburban park?"²⁸⁴ There is also the Master Plan (2010–2015) of the National Park Authority, which is a branch of local government, representing local councils, the Crown, and the public.²⁸⁵

Numerous additional layers of law also exist to confirm the stewardship of nature in New Forest. The European Union's Wild Birds and Habitats directives apply.²⁸⁶ New Forest's wetlands are registered under the Ramsar Convention on Wetlands of International Importance.²⁸⁷ New Forest is also a UNESCO World Heritage Site.²⁸⁸

282. *Verderers' Court in the New Forest*, *supra* note 43; MEMORANDUM OF UNDERSTANDING BETWEEN THE FORESTRY COMMISSIONERS AND THE VERDERERS OF THE NEW FOREST (2002), <http://www.verderers.org.uk/mou.pdf>.

283. *Forestry Commission Homepage*, FORESTRY.GOV.UK, <http://www.forestry.gov.uk> (last visited May 20, 2014).

284. THE VERDERERS OF THE NEW FOREST, THE NEW FOREST: PRECIOUS WILDERNESS OR SUBURBAN PARK? (2007), http://www.verderers.org.uk/wilderness_park.pdf.

285. See *New Forest National Park Authority Homepage*, NEWFORESTNPA, <http://www.newforestnpa.gov.uk> (last visited May 20, 2014).

286. Council Directive 2009/147/EC of the European Parliament and of the Council of 30 Nov. 2009 on the Conservation of Wild Birds, 2009 O.J. (L 20) (EU), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0147&from=EN> (also known as "The Wild Birds Directive"); Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, 1992 O.J. (L 206) (EC), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN> (also known as "Habitats Directive"). For guidance on the application of article 6(4) in England see, DEPARTMENT FOR ENVIRONMENT, FOOD & RURAL AFFAIRS, HABITATS AND WILD BIRDS DIRECTIVES: GUIDANCE ON THE APPLICATION OF ARTICLE 6(4) (2012), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69622/pb13840-habitats-iropi-guide-20121211.pdf.

287. Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Feb. 2, 1971, T.I.A.S. 11084, 996 U.N.T.S. 245, *amended by* the Paris Protocol, Dec. 3, 1982, *and* Regina Amendments, May 28, 1987, http://www.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31-38%5F20671_4000_0_.

288. United Nations Educational, Scientific and Cultural Organization, Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972,

Major threats to New Forest arise from increasing demands from urban and suburban populations located nearby. Some 24 million visitors and tourists use New Forest for recreation every year. The need to produce revenues to manage the various recreation and conservation programs is ongoing. At the same time, New Forest finds it must cope with the rise in sea level on its coasts and the changes that new weather patterns bring.

The accretion of legal stewardship regimes in the New Forest complicates how such new problems will be addressed. National Park planning procedures guide negotiations about the future administration of New Forest. Environmental laws, mandating protection for nature, constrain new human endeavors. Just as the Forest Charter once constrained the king, now Parliamentary Acts constrain all to conserve biological features. The bogs, downs and other heaths, ponds, woods, rivers, fields, coastal wetlands, eelgrass, lagoons, and foreshores are protected for themselves.

VII. Conclusion: The Once and Future "Liberties of the Forest"

If the history of the Forest Charter demonstrates nothing else, it is that human management of forests is controversial. This is so not just in England but in all countries. The United Nations Earth Summit in 1992 agreed on a great deal about sustainable development, but it could not agree on a treaty about forests.²⁸⁹ The eight centuries of policy changes, political jockeying, and legal decision making with respect to Carta de Foresta and Royal Forests in England are remarkable in providing a well-documented record of cultural evolution. By privileging extensive forest biomes with legal protection, the law ensured their continuity for both humans and nature. The Royal Forests were the subject of many disputes and even warfare over conflicting uses of the same natural resources, but because the Crown initially had set each forest aside, their essential biological, hydrologic, and other natural systems were allowed to function overtime without irreversible human interruption. The legal (*de jure*) protection afforded by the initial Royal Forest designation,

1037 U.N.T.S. 151; 27 UST 37, <http://whc.unesco.org/archive/convention-en.pdf> (commonly referred to as the World Heritage Convention).

289. In 1992, the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro agreed on recommendations for combating deforestation in Chapter 11 of *Agenda 21*, but rather than negotiate an international agreement on forests as International Union for Conservation of Nature and others had urged, UNCED adopted a statement titled the "Non-legally Binding Authoritative Statement of Principles For A Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests." See N.A. ROBINSON, *AGENDA 21: EARTH'S ACTION PLAN* 666 (1993) (reprinting the Statement of Principles).

coupled with the rights later accorded by the Forest Charter, had the *de facto* consequence of inducing most development, urbanization, industrialization, and other activities destructive of forests, to locate elsewhere.

England's intergenerational record of sustaining large natural areas may serve humans and nature well in the future. Sustaining extensive natural areas is important in the era of climate change. The Anthropocene Epoch disrupts human development and transforms landscapes.²⁹⁰ Where natural systems are robust, ecology teaches that they can reset, adapt, and persist.²⁹¹ Where they are degraded, or fragile, or managed for an exclusive, single purpose, they may be lost. The size of the intact biological area is important in this respect. The history of the Forest Charter offers guidance for human stewardship necessary to conserve large natural areas to allow for their evolution in Earth's new climatic conditions.

There are at least five dimensions of the Forest Charter's legacy that deserve further study. First, human society's stewardship to sustain ecosystems depends upon having a just stewardship framework that understands and values the way nature provides services to humans, and therefore acts to conserve nature. Humans can understand the reciprocity involved in enabling nature to thrive in order to provide for human needs.

Second, justice is an innate requirement of stable human stewardship regimes, and depends on the rule of law. Without the rule of law, there is neither sustainable development nor a peaceful social order. The gradual evolution of parliamentary acts and judicial decisions from the early forest councils and eyres built an expectation that law could ensure exercise of forest rights. The settlement of the many incidents of injustice in administration of the Royal Forests over time built institutions and norms that respected the rule of law.

Third, "forests" cannot be reduced to a single definition or purpose, such as being dedicated solely for producing timber or hunting deer. "Forests" are nested richly in layers of relationships with many species and systems, such as the Earth's hydrologic or carbon cycles. This complex of forest ecosystems in turn is networked into a great variety of human expectations and needs. Deer hunting and autumnal pannage for pigs can coexist with plant photosynthesis and aquifer recharge through wetlands. Stewardship of natural resources entails diffuse complexes of land uses, claims, and entitlements, and rights about the same natural places, and their ecosystem

290. See Will Steffen et al., *The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature?* 36 *AMBIO* 614, 614–21 (Dec, 2007).

291. B. WALKER & D. SALT, *RESILIENCE THINKING: SUSTAINING ECOSYSTEMS & PEOPLE IN A CHANGING WORLD* (2006). For the studies at the Stockholm Resilience Center, see *Stockholm Resilience Center*, STOCKHOLMRESILIENCE, *Sustainability Science for Biosphere Stewardship*, <http://www.stockholmresilience.org> (last visited May 20, 2014).

services and functions. A sustainable legal regime, as has evolved in the New Forest, recognizes and accommodates these competing interests.

Fourth, the efficacy of nature conservation depends on the multilayered legal regime that emerges from respecting a community of values and expectations, such as has grown up about each of the former Royal Forests, as well as the involvement of civil society. When forest rights of commoners were threatened by either the king, landed gentry asserting exclusivity of hunting rights, or the Office of Woods or Forestry Commission planning inclosures for timber plantations, the responses were protests, riots, civil disobedience, and demands for law reforms. Ultimately the curia regis and eventually Parliament would reassert a balance among competing rights. Overlapping or competing forest rights produce messy politics, but they can induce dispute-resolution systems, reaffirming the rule of law and sustaining the ecosystems without which no forest rights would exist.

Fifth, legal regimes that accommodate this sort of competition end up promoting cooperation, as planning systems at work in the New Forest illustrate. Disputes are not eliminated but are channeled into regimes for collaboration, which result in sustaining the natural resource. All stakeholders need a seat at the table.

Where these five dimensions of ecological stewardship are found, natural systems tend to be sustained, maintaining their benefits to humans. Reciprocal rights and responsibilities produce dynamic interactions that maintain a balance of human uses, as is evident in England's Royal Forests today. Encroachments, or overreaching by any one interest, produces reactions by other adversely affected interests. When competing forest users are aware of each other, expectations about how to behave are shared, and accommodation of other interests is possible.²⁹² As the case study of New Forest illustrates, when disruptions emerge, there is a struggle to reset the balance of relationships. This resilience merits wider analysis.

The Forest Charter embedded in the culture of the English people an expectation that they possessed "liberties of the forest" worth defending. Were it not for the Forest Charter, England would have conserved fewer of its large Royal Forest natural areas.

The Forest Charter has wider legacies as well. English biologists and lawyers have been leaders in expanding protected areas around the world, through the International Union for the Conservation of Nature (IUCN).²⁹³ Large areas conserve biological diversity²⁹⁴ and sustain photosynthesis

292. These dynamics are found in academic studies of forest governance in places other than England. *See, e.g.*, RYAN C.L. BULLOCK & KEVIN S. HANNA, *COMMUNITY FORESTRY* 1–42 (2012).

293. MARTIN HOLDGATE, *THE GREEN WEB* (1999); EVANS, *supra* note 181.

294. Convention on Biological Diversity, *supra* note 44.

services that remove carbon dioxide from the atmosphere.²⁹⁵ Through the United Kingdom's membership in the European Union, English law implements the Habitats Directive,²⁹⁶ the Wild Birds Directive,²⁹⁷ and the UNESCO 1972 Convention Concerning Protection of the World Cultural and Natural Heritage.²⁹⁸ Internationally, both the Forest Charter and Magna Carta repeatedly inspire the adoption of new charters to further the rule of law. The United Nations General Assembly adopted the World Charter for Nature,²⁹⁹ whose principles are incorporated into the Convention on Biological Diversity. An Earth Charter is promoted by civil society and some governments.³⁰⁰ Multilateral environmental agreements are evolving a complex system of laws to protect the biosphere.³⁰¹

These intergovernmental laws now also serve former Royal Forests. The complexity of the interrelated laws protecting the many stakeholder interests in the New Forest only make it more likely to be sustained. Where too few laws exist to protect a site, what scant legal protection exists can be stripped away, with rapid and irreversible loss to ecosystems. Ecosystem complexity is matched by the legal complexity of statutes and customs that align the laws of humans with the laws of nature.

It is possible that law and ecology have combined in this felicitous manner not merely by coincidence. The biologist Edward O. Wilson has posited that humans have an instinct to protect nature, which he terms "biophilia."³⁰² The history of the Forest Charter and England's Royal Forests lends support to his hypothesis.³⁰³ Humans saved English forest areas since the 12th century not only because they depended on them for survival, but also because they had an affinity for these natural areas. Their *evolved norms* became customary law and eventually statutory law, replete with administrative implementation.³⁰⁴

295. See IUCN, *LEGAL FRAMEWORKS FOR REDD: DESIGN & IMPLEMENTATION AT THE NATIONAL LEVEL* 3–11 (John Costenbader ed., 2009), <https://portals.iucn.org/library/efiles/documents/EPLP-077.pdf> (REDD stands for reducing emissions from deforestation and degradation).

296. See 92/43/EEC, *supra* note 286.

297. Council Directive 79/409/EEC.

298. See Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 23 1972, 27 U.S.T. 37, 1037 U.N.T.S. 151, <http://whc.unesco.org/archive/convention-en.pdf>.

299. G.A. Res. 37/7, U.N. Doc. A/RES/37/7 (Oct. 28, 1982).

300. The Earth Charter, Earth Charter Commission (2000), http://www.earthcharterinaction.org/invent/images/uploads/echarter_english.pdf.

301. *MANUAL ON INTERNATIONAL ENVIRONMENTAL LAW* (L. Kurukulasuriya & N.A. Robinson eds., 2006).

302. E.O. WILSON, *BIOPHILIA: THE HUMAN BOND WITH OTHER SPECIES* (1984).

303. STEPHEN R. KELLER & EDWARD O. WILSON, *THE BIOPHILIA HYPOTHESIS* (1993).

304. Nicholas A. Robinson, *Evolved Norms: A Canon for the Anthropocene*, in CHRISTINA VOIGT, *RULE OF LAW FOR NATURE: NEW DIMENSIONS AND IDEAS IN ENVIRONMENTAL LAW* 46–72 (2013).

The history of the Forest Charter also offers insights about how property law works. Exclusivity of title is a fragile way to sustain nature. Instead, recognizing multiple rights and shared uses of the same natural system is more robust, and fosters resilience. Stakeholders act to conserve the resources upon which they mutually depend. The history of the Forest Charter teaches that shared rights can be sustained over time, even in the face of efforts by persons in power to rescind or restrict those rights. Common property rights, exercised locally, have as much or more staying capacity than do private property rights. They require legal recognition and the legal means by which they can be asserted, and vindicated. Guided by the Forest Charter, England's system of Forest Law legitimized common rights, often seemingly against all odds. Comparable dynamics are at work in contemporary forest struggles, as is evident in applying the environmental rights accorded by Article 225 of the Constitution of Brazil to administration of Brazil's Forest Code in the Amazon.³⁰⁵

Finally, at a time when many nations have yet to embrace the rule of law, the history of the Forest Charter offers lessons for resolving conflicts over natural resources and suggests ways to foster the rule of law. The elements of the Forest Charter's effectiveness can be applied to the work of conservationists elsewhere. In Russia, conservationists have repeatedly won battles to conserve Lake Baikal. China has established pervasive nature conservation programs in Yunnan Province and elsewhere. In central Africa, customary law together with national park designations sustains ecological systems, against all odds.

Where environmental laws lack the resilience of the Forest Charter, it may be because they are not grounded in a specific forest or for a particular species, or because the political system does not allow expression and resolution of opposing views. For example, hunting or endangered species laws are effective because they target specific species and specify unjust behavior.³⁰⁶ The survival of Royal Forests suggests that legal systems work robustly when law is connected to nature, and where those who seek to vindicate the law have access to a relatively balanced and neutral system for resolving competing demands.

Sharing a common birth, Magna Carta and Carta de Foresta are foundations for the principle and practice of the rule of law. This alone

305. Nicholas S. Bryner, *Brazil's Green Court: Environmental Law in the Superior Tribunal de Justiça (High Court of Brazil)*, 29 *PACE ENV'T L. REV.* 441, 470–537 (2012).

306. Compare the current smuggling and unlawful trade in endangered species today, under the Convention on the International Trade in Endangered Species, with the unlawful taking of game in the Royal Forests. See Convention on the International Trade in Endangered Species, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243, <http://www.cites.org/sites/default/files/eng/disc/E-Text.pdf>; ARTHUR L. CROSS, *EIGHTEENTH CENTURY DOCUMENTS IN RELATION TO THE ROYAL FORESTS—THE SHERIFFS AND SMUGGLING* (1928).

is sufficient reason to celebrate the Forest Charter after almost 800 years. Yet today the history of the Forest Charter resonates also for what it teaches about how society values and conserves nature. The history of the Forest Charter invites new inquiries into how law shapes nature that in turn nurtures the well-being of humans. Both Charters hold transcendent importance in society's adaptations to changing climatic conditions, Magna Carta for bolstering the rule of law in troubled times, and Carta de Foresta for stimulating resilient norms for stewardship of nature. As it was for past generations, the wider value of the Forest Charter is to serve the next generation.