The Charter of the Forest in historical perspective

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In 2015 it was almost impossible to avoid the nation-wide events that marked the 800th anniversary of the sealing of Magna Carta. I was the academic curator of an exhibition, 'Magna Carta and the Changing Face of Revolt', which was held at Durham between June and August 2015 to commemorate the sealing of the Great Charter by King John. The British government had a particular interest in the celebration of the anniversary of Magna Carta. At a time of increasingly heated and polarizing debates about citizenship, identity, and belonging, it looked upon the charter as a document embodying and imparting a distinctive and time-honoured set of 'British values': the right to a fair trial, the rule of law, the consensual basis of authority. But what of the Charter of the Forest? Back in June 2015 the Liberal Democrat peer Baroness Miller asked Her Majesty's Government 'whether they will mark the 800th anniversary in 2017 of the granting of the Charter of the Forest in a similar way to that in which the Magna Carta is being marked this year'. Lord Faulks answered on behalf of the government. The response is worth quoting in full:

'The Charter of the Forest was an important document in its own right when it was issued by Henry III in 1217 at the same time as a re-issue of Magna Carta. The Charter re-established rights of access to the forest for free men that had been eroded over the time. However, although the provisions of the Charter of the Forest remained in force for a number of centuries, it has not enjoyed the same lasting and worldwide recognition as Magna Carta, which has had an enduring significance on the development of the concept of the rule of law.

Consequently, while the Government is actively supporting the celebration of the 800 anniversary of Magna Carta this year, it has no plans to mark and celebrate the 800th anniversary of the Charter of the Forest.'

The political indifference has been matched by scholarly neglect. In contrast to the hundreds of books and articles on Magna Carta, there is not one book or article devoted to the Charter of the Forest itself: to its contents, its meaning, its history. It has been tempting to see it simply as an appendage to Magna Carta, as a kind of afterthought. Historians often note that, from 1217, reissues of Magna Carta were accompanied by the Forest Charter. There is also the question of length. Where the 1215 Magna Carta consists of 63 separate clauses, the Forest Charter comprises only 17. Finally, while Magna Carta contains some memorable clauses and statements of principle (most notably clause 40: 'To no one will we sell, to no one will we deny or delay right or justice'), the Forest Charter is specific, practical, and bureaucratic. Finally, the archaic language of the charter evokes the 'world we have lost', or are in the process of losing: a rural landscape of 'purprestures' (encroachments on the forest), 'assarts' (clearances of land for cultivation), and 'swanimotes' (local forest courts).

The aims of my talk are two-fold. First, I want to present a documentary history of the Forest Charter: a history of the charter itself. What does it say? Why was it written? What were its effects? How have its clauses been interpreted and re-interpreted over time? In the second part of the paper, I would like to move beyond the charter to think, more broadly, about the ways in which rights of common have been regulated and about the persistent conflict that their exercise has provoked. James Holt, whose book on Magna Carta remains the classic study of the Great Charter, wrote that 'The history of Magna Carta is the history not only of a document but also of an

argument.' The history of that argument, according to Holt, was a history about the extent to which authority should be subject to law. The history of the Forest Charter is *also* a history not only of a document but of an argument. That argument is about the status and significance of the commons: specifically, about *who* could claim rights of common, about *what* they could claim, and about the *basis* on which they could claim them. In making claims, and defending and asserting rights of access to, and use of, land and natural resources, individuals and groups learned to become citizens. Land was, and remains, the crucible of citizenship.

The Charter, its Context and its History

The Charter of the Forest (*Carta de Foresta*) arose from the failure of 1215: the sealing of Magna Carta did not end the barons' rebellion against the king. King John gained the pope's support to declare Magna Carta null and void. War restarted. The barons decided that they could not trust King John and they offered the throne to Prince Louis, the son of the French king (Philip II). Then, in October 1216, the English king died. King John's son, Henry III, was only nine years old at the time. To win back the support of the barons, Magna Carta was reissued in November 1216 (Durham Cathedral has the only surviving copy of this version of Magna Carta). In 1217 Magna Carta was circulated again, only this time another charter was produced as well: the Charter of the Forest. The Charter of the Forest was an attempt to shore up the new regime of Henry III: it was, for want of a better word, propaganda.

The charter addressed grievances and complaints about the state of 'forest' that had been festering and growing for years. The 'forest' was not 'forest' as we might understand it today: it could include woodland, but it was essentially a legal entity. It was the area in which special law – known as forest law – applied, which protected the king's exclusive rights to hunt. The area of the 'forest' grew dramatically after 1066 (a process known as 'afforestation'). The 'forest' came to include arable land, villages, even towns: by the late twelfth century it covered between one-quarter and one-third of all of England; land in twenty-nine counties, including the whole of Essex, as well as places such as New Forest in Hampshire and Sherwood Forest in Nottinghamshire. Kings valued it for recreation and leisure; they regarded the forest also as a source of revenue. Kings could not yet raise taxation as they wished, so they made lots of money from fines imposed on people who had killed deer and boar, or who kept hunting dogs, or who cleared and enclosed land without permission.

So, the other point about why the forest was such a contentious issue in the early thirteenth century is that so many people in England had an interest in the 'forest'. Barons and earls, along with knights and gentry, hunted in the forest, while the ranks of the 'free men' among the peasantry tried to extend their holdings in the forest. There were also many others who used the forest for basic subsistence, and who placed their animals in the forest to graze, collected wood from the forest for fuel or building, or gathered nuts, berries, and herbs for food. The 1215 Magna Carta contained three clauses about the 'forest', including a commitment to abolish the 'evil customs' of the forest; but the issue of the 'forest' was so serious and wide-ranging, and explosive that in 1217 a separate charter was written: this was the Charter of the Forest.

The Charter of the Forest was issued on 6 November 1217. Although it bore the name of the king, Henry III was only ten years old at the time and had no authority of his own, so the charter was sealed by William Marshal, who was the earl of Pembroke and the king's guardian, and by a representative of the pope. The product of political conflict, the Charter of the Forest had three aims.

One purpose was to limit the king's rights. On the one hand, the power of the forest officials, who exercised the much-hated forest law, was curtailed. Clause 15 granted a general pardon for those who had committed offences against the forest law going all the way back to the reign of Henry II in the second half of the twelfth century. Clause 10 offered leniency rather than clemency: instead of mutilation (blinding or castration) or execution for forest offences (in particular, the hunting and poaching of venison, a term encompassing all the beasts of the forest: deer, boar, hare, rabbit, or other game animal), those convicted were to pay a fine or, failing that, suffer a year and a day's imprisonment. Clause 2 freed people living outside the forest from appearing before the royal justices of the forest. There were also new rules governing the conduct of the forest officials and the frequency of judicial inquests: clauses 5, 6, 7, 8, 14, 16. On the other hand, the Charter of the Forest tried to reduce the geographical bounds of the royal forest (see clauses 1 and 3). The forests created by Henry II outside his own land (the royal demesne, which he possessed directly and was not held of him by another) were to be 'disafforested', which is to say, freed from the operation of forest law, after scrutiny of their boundaries. The land made forest by Henry II's successors, his sons Richard I and King John, was to be immediately 'disafforested'. In short, the area of the royal forest was no longer to be the object of the arbitrary will of the king. The crown could not do as it pleased. The charter was nothing less than a written constitution of the forest.

The second aim was to safeguard the rights of those holding land within the forest. These individuals were described as 'Archbishops, bishops, abbots, priors, earls, barons, knights and freeholders'. They were pardoned for previous encroachments on the royal forest and were in future to clear, enclose, and cultivate land under royal licence (clause 4). These men also had rights in their private woods in the forest. According to clause 12, 'Every free man' was to be allowed to use freely the land he held in the forest, so long as it did not harm that of his neighbour, whether he wanted to construct a mill, a pond, a ditch, or a hedge. The charter gave landowners rights over their *own* land within the area of the royal forest: rights to clear and enclose woodland.

Thirdly, the Charter of the Forest was careful also to acknowledge the existence of rights of common, which were not to be reduced, compromised, or surrendered. According to clause 1 of the charter, woodland that belonged to the crown in its private capacity and that had been made subject to forest law was to remain forest 'saving common of pasture and other things in that forest to those who were accustomed to have these rights'. 'Pasturage' (also known as 'herbage') was the right to graze animals on woodland and meadow. Clause 9 stated that every free man was to have his right of 'pannage' in the forest (the right to feed and fatten pigs on fallen acorns and beech-mast – nuts of beech trees). According to clause 14, a levy known as 'chiminage' (payable to forest officers for passage through the forest) was to be paid *only* by those described as 'merchants', who came into the forest to buy wood, timber, bark, and charcoal for sale elsewhere. Local inhabitants, who had a right to collect wood for subsistence (building, fencing, fuel) did not have to pay it. This was a reference to the common right of 'estovers': gathering of wood.

In trying to reconcile, in a pragmatic and concise way, the needs and interests of the propertied and of the property-less, of the many individuals and groups who had a stake in the countryside and who valued it for different things (recreation, subsistence, property), the Charter of the Forest made a critical intervention. The natural landscape, which up until then had been the space within which royal government had projected its power, was now to be somewhere that royal authority could be negotiated and even resisted. While Magna Carta promised, in a rather abstract way, the rule of law, the Charter of the Forest tried to restrict royal authority through its delineation on the ground. It made it necessary to hold perambulations of the forest, in order to mark out boundaries, to define and therefore limit the power of the crown. The boundaries between what

was or was not permissible needed to be written into the landscape. In demarcating territory, through human agency, the power of government was made visible, real, and tangible, yet also containable. Government might be projected in space, but it was also in space that it was most effectively resisted. Space was not only the place in which politics happened; it was the object of contestation in its own right. Space – the landscape – was one of the stakes of politics.

The impact of the Charter of the Forest was felt nationally and locally. It was the Charter of the Forest that made Magna Carta what it was, and what it became. First, the name: Magna Carta was originally known as the 'Charter of Liberties' (*Carta Libertatum*) and was first called Magna Carta – the Great Charter – in 1218 to distinguish it from the Charter of the Forest, which was the smaller of the two documents. Secondly, public and political debate about the royal forest did not abate after 1217; it only intensified. The boundaries of the forest were inspected and perambulated in many counties to determine its bounds, but the crown was determined to resist turning the clock back to the beginning of Henry II's reign. Conflict about the forest was the stimulus to the repeated reissue of Magna Carta, a process that was always accompanied after 1217 by the confirmation of the Charter of the Forest. The two documents went hand in hand. Magna Carta was the solution to the political disputes of the thirteenth century that debate about the forest had unleashed. In 1297, for example, at the height of a major crisis, King Edward I saw it expedient to confirm the two charters, which were then copied on to the statute roll to last in perpetuity.

This action helped to give the Charter of the Forest a particular importance at parliament, where the emerging House of Commons transformed the charter, along with Magna Carta, into the touchstone of good government in the fourteenth century. From the first parliament of Edward III's reign in 1327, the lower house repeatedly asked from the crown, and received, the confirmation of the two charters. The request was usually the very first of the commons' petitions, and the crown was only happy to oblige. The frequency and timing of the petitions, coupled with the repetitive nature of their wording and formulaic content of the royal response, might suggest that the political exchange involving the Charter of the Forest had been reduced to a mere ritual, devoid of political meaning. The charter actually empowered the parliamentary commons: the confirmation of the Forest Charter allowed them to assert the sanctity of the statute roll and the primacy of parliament. In their habitual request that the Charter of the Forest and Magna Carta be upheld in all points, the commons were of the view that changes to these statutes could be made only at parliament. In 1386 MPs asked that Magna Carta and the Charter of the Forest be maintained 'and that nothing be done to the contrary by any mandate or ordinance made or to be made, nor the same statutes nor ordinances repealed unless by parliament'. At the same time, the attachment to the Charter of the Forest among the political classes was a consequence of the spatial dimension of the charter, which was always present, but which grew in significance. The Forest Charter regulated the use of land, but it endeavoured also to delineate space. It was concerned with boundaries, which were both physical and juridical. It made tangible, calculable, and visual the limits that might be placed upon royal authority. In routinely seeking the confirmation of the Charter of the Forest, and in asking for a perambulation of the forest boundaries, as they did in 1348, 1372, 1376, 1377, 1378, 1379, and 1381, the parliamentary commons appropriated the charter and made it a test of the crown's obligation to rule for the common good. The Charter of the Forest made the crown, in a literal sense, subject to the law of the land.

But the Forest Charter was not only a totem in national politics; it resonated even more powerfully in the localities. Political debate at the centre reverberated widely and reached lower down the social scale, too. The forest was a potent symbol of royal government. It was not only MPs who saw misgovernment, corruption, and the abuse of power reflected in the condition and extent

of the royal forest. When a popular revolt led by the rebel leader 'Captain' Jack Cade erupted towards the end of May 1450, the rebels marched to Blackheath, just outside London. There they formulated a petition consisting of 16 articles, touching 'wrongs' that required 'redresse and reforme' for the sake of the 'common weale'. The very first of these articles read: 'Inprimis, it is openly noysed that Kent should be destroyed with a royall power, and made a wilde Forest, for the death of the Duke of Suffolke, of which the commons of Kent were never guiltie.' The rumour that the whole county of Kent should be transformed into a royal forest was a lightning-rod of deeper discontent about the coercive and arbitrary exercise of power.

Local knowledge of the Charter of the Forest should not surprise us. In the thirteenth century copies of the Charter of the Forest and Magna Carta – and their periodic reissues – were made by the royal chancery and circulated locally. Durham Cathedral is unusual in having preserved multiple original copies of both the Charter of the Forest and Magna Carta. Three originals of Magna Carta have survived in the archives: those of 1216, 1225, and 1300. Three originals of the Charter of the Forest remain in the archives of Durham Cathedral: those of 1217, 1225, and 1300. Charters were read out in cathedrals, but in the fourteenth century their contents were read out also in meetings of the county court and proclaimed publicly in market places. Copies of the Charter of the Forest, accompanied by Magna Carta and a record of the perambulation of Sherwood Forest, were kept by Nottinghamshire landowners in the early fifteenth century.

It was within this level of society that the Charter of the Forest continued to have meaning in the seventeenth century. The crown's renewed interest in exploiting its financial rights from land and the revival of the forest law made the royal forest a source of heated political debate again, especially during the personal rule of Charles I in the 1630s. In 1641 one of the items on the Grand Remonstrance – a list of grievances passed by the House of Commons and presented to the king – was the enlargement of forests 'contrary to the Carta de Foresta'. The Charter of the Forest was co-opted by Sir Edward Coke, the parliamentary lawyer, whose case against the absolute power of the sovereign was based upon historical research and knowledge of the common law. Although the Charter of the Forest was originally a royal statute – a charter issued in the name of the king – Coke preferred to recall that 'The Statute of *Carta de Foresta* hath been above 30 times ... confirmed and enacted and commanded to be put in execution'. He was adamant that 'no Forest law can stand against laws enacted by authority of Parliament'. The Charter of the Forest, like Magna Carta, was an expression of the 'Ancient Constitution' against the royal prerogative. Opposition to the restoration of forest law came principally from the gentry and from other landowners, who were anxious about the preservation of their own hunting rights in areas that had formerly been part of the royal forest. At a forest court in September 1630, the king's forest officials announced the redrawing of the boundaries of the forest in Essex, which, if implemented, would have made almost the whole county forest once more, under forest law. Four years later, when the new boundaries were proclaimed again at a forest court held at Waltham Forest, Robert Rich, the second earl of Warwick, and a group of Essex gentlemen founded their case upon their interpretation of the Charter of the Forest. These actions on behalf of the king, they argued, 'were contrary to law, and to the Charter of the Liberties of the Forests and other charters and divers Acts of Parliament'. In the seventeenth century, as in the thirteenth century, local struggles fed into, and drew on, debates in parliament. The Charter of the Forest was therefore a living document, open to multiple interpretations.

Rights of Common

The charter is imagined today as a 'charter of the commons'. According to one interpretation, 'the Charter established a basic right to use public lands and resources, and it established the concept of the commons'. In another reading, the Charter of the Forest was 'a clarion call for preservation of the commons'. In 2015 the commoners' association of the Forest of Dean in Gloucestershire felt justified in defending their practice of grazing sheep in the forest against the wishes of the Forestry Commission and the plans of the Forest of Dean District Council on the grounds that it was a 'right' derived from the Charter of the Forest. The chairman of the Forest of Dean commoners' association even had a translation of the Forest Charter at hand to support his case. The Forestry Commission's response was equally interesting: it did not dispute the tradition of grazing in the forest, but it argued that the commoners 'have never had a right to graze sheep on the Forest; they do so under sufferance'. This conflict is not narrowly semantic; it is, of course, legal. But, more than anything, this local case alerts us to one of the enduring problems of the commons: the basis upon which commoning rights are enacted.

Commoning was – and is – both a series of entitlements and a set of practices. It is an activity that requires labour and that has an essentially productive meaning and value. The land is worked for material ends. We can define, by type, the principal rights of commons:

pasture (sometimes called herbage): the right to graze animals, such as horses, cattle, sheep, and goats, permanently on woodland, waste, and meadow, as well as at certain times of the year on the fallow of open fields

pannage: the right to feed and fatten pigs on fallen acorns and beech-mast (nuts of the beech tree)

estovers: the collective name for wood-gathering (whether timber for building: housebote, wood for fencing: hedgebote, or small wood for fuel: firebote)

turbary: the right to cut turf or peat for fuel

piscary: fishing rights in ponds or streams

common in the soil: the right to take sand, gravel, clay, stone, or minerals from the earth

This exactitude is misleading. As my colleague, Professor Andy Wood, has written in his book *The Memory of the People*, entitlements and rights of use, which might also include the gathering of furze for fuel, as well as nuts, berries, mushrooms, herbs for food, and the right to glean, 'were often imprecise. Lying on the margins of the written record, they varied over time and space and emerged from the scruffy overlap of everyday habit and long usage.'

To be sure, the Charter of the Forest could be deployed to maintain customary rights of common. Around 1300 'the poor people ... of Easingwold and Huby' in the North Riding of Yorkshire protested to the king's chancellor that they 'should be quit of cheminage according to the charter of the forest'. In the parliament of October 1383 the king received a similar complaint. Whereas 'it was ordained by the Statute of the Forest that no cheminage should be taken in the forest from anyone carrying wood, coal, fuel, or anything else for his own use, excepting those who carried such items to sell or trade, yet the ministers of the forest throughout the kingdom take cheminage in the forest from all manner of local people and others carrying wool, coals or other fuel for their own use in their houses, to the very great injury of the people, and contrary to the aforesaid statute.' The complaint was made again in 1391 and 1394.

But the significance of the Charter of the Forest lies not in its codification of all commoning rights. Nor did it establish the concept of the commons, the origins of which, in a British context, lay in the pre-Conquest period, perhaps earlier. Rather, the charter articulated the *principles* of the commons:

- the essential difference between land ownership and land usage. Rights of common were – and are – rights of access to and use of another's land, in which individuals and groups *other* than the owner of that land affirm certain entitlements. Although the property rights of landholders within the area of the royal forest were to be extended and secured, this concession was not to be at the expense of rights of common that they, but also a wider group of people, enjoyed.
- the idea – sometimes forgotten in contemporary discussion about common rights – that access to commons did not belong to all. It was an entitlement, available only to a particular group. According to the charter, it was a category of free men that was allowed to enjoy the right of pannage 'freely and without impediment'. The free man was to be able to keep pigs 'in his own woods or anywhere else he wishes'.
- perhaps paradoxically, the importance of custom rather than the written record to the exercise of commoning rights. Clause 1 of the Forest Charter promised that such woodland that belonged to Henry II and that had been turned into forest should remain in this state, with the proviso that 'common of pasture and other things in that forest' should be reserved 'to those who were accustomed to have them previously'.
- the profoundly local nature of rights of common. Clause 14, which set out to remedy the abuse of the collection of a toll called 'chiminage' – payable for passage through a forest – declared that the sum of money would be paid only by those described as 'merchants' who came *into* the forest to buy wood, timber, bark, and charcoal for sale elsewhere. i.e. for profit. Those *local* inhabitants who had a right to collect wood, timber, bark, and charcoal for their own purposes (for subsistence), it was implied, should be free of the levy.

Rights of common might be written down, but it was primarily through their usage, and through the experience and memory of this usage, that commoning rights were upheld. Whenever rights were challenged, or whenever there was uncertainty as to their condition, it was habitually the older members of a community whose testimony was decisive. In the city of York, in 1524, the key witnesses were a citizen and butcher, aged 86, a pewterer aged 71, a weaver aged 64, a tailor aged 74, a cloth maker aged 81, a walker aged 68, and two shoemakers aged 66 and 68 respectively. The role of memory in the maintenance of rights of common is why, as E.P. Thompson argued, the perambulation of the boundaries of common lands was commonplace both in medieval and early modern England. Walking the bounds was a public assertion of rights. Publicity, through participation, would also guarantee their remembrance.

To think about the function of memory in sustaining rights of common is to look again at the relationship between landscape, sense of place, and identity. Many historians, working in different historical periods, from the thirteenth century to the nineteenth century, have written about the 'struggle' for common lands. The history of common rights *is* a history of conflict. We can point to the inherent and persistent tensions between the usage and ownership of land. The process of enclosure, in which hedges, ditches, and gates were erected to extinguish common rights to land, was the consequence of demographic pressures, especially in the sixteenth and seventeenth centuries, which encouraged landlords to take in land in order to make it profitable all year around. This era saw the birth of the enclosure riot. Over 100 'village revolts' have been counted between 1509 and 1640. The eighteenth and nineteenth centuries, characterized by population expansion,

were the age of parliamentary enclosure, when some 5,000 acts of parliament replaced 'open fields, common meadows and common pastures subject to common rights with enclosed fields over which the owner or tenant had exclusive rights'. It has been suggested that 'there cannot be a forest or a chase in the country which did not have some dramatic episode of conflict over common right in the eighteenth century'. Historians are right to speak of 'land hunger' and to emphasize the economic value of common rights. There was a 'politics of subsistence', a politics of economic relations, 'constructed around access to commons'. The commons were fundamental to the peasantry. They made a major contribution also to *urban* residents and to the urban economy. Urban residents, from the Middle Ages through to the nineteenth century, 'continued to have a stake in agriculture' and grazed cattle, sheep, and horses on the pasture lands that encircled English towns and cities. In 1524 the citizens of Norwich were at loggerheads with the cathedral over rights of common in land owned by the church. They drew up a manifesto of items to which they would never give their consent, whatever offers were made by the cathedral. One draft of this manifesto read: 'Item the seid Commens [i.e. citizens] seyn that thei may nor will not departe with [i.e. surrender] ther Comyn of pastour without the gates of the seid Cite ffor it is the greatest reliff that the pour Cityzens of the same Cite havyn etc ffor the socour of them & their Childern'. Here we can see, very clearly, the economic anxieties of urban householders, who were determined not to relinquish their right of keeping livestock on the commons.

Yet struggles over common lands were about more than food and subsistence. What is interesting about the document above is that it was a draft, and where it now says 'Childern', the original version read 'Citie', the word then being crossed out and replaced with something more personal. Those who wrote it thought it more persuasive to highlight the domestic and familial importance of common rights, whose removal would lead to the impoverishment of individual citizens and their families. But in letting slip that common pasture rights were of aid to poor citizens and their 'Citie', the Norwich manifesto disclosed that disputes about common rights and natural resources had at their centre debates about the nature and definition of community. They sprang also from a sense of entitlement; the tone and language of the document is forceful and uncompromising.

To exercise rights of common was to lay claim to be a member of a particular community. To do so when they were under threat, either in writing or in acts of violence, was a political act: a statement of political participation. Commoners demanded that their voices be heard, and they defined themselves as possessing certain rights that could not be given up or even sold. To think in these terms – of a sense of community, identity, and belonging, of political engagement, and of inalienable rights, all bound up in the use of land and natural resources – is to imagine the world through the language and ideology of citizenship. *Local* struggles over common rights were conflicts about the meaning and extent of citizenship.

Who had access to land, food, and fuel? Who counted in society and who did not? These were questions addressed in the Charter of the Forest. In a society as hierarchical and unequal as thirteenth-century England, the remarkable thing is that the Charter of the Forest mentioned rights of common at all. They were *recurring* questions, the answers to which changed over time and according to place. Social and economic pressures forced local people – rulers and ruled – to make sometimes uncomfortable choices. The bonds of community were tested. Rules for stinting the commons, which appear with increasing regularity from the 16th century, stipulated how many animals could be placed on the commons, and by whom. Did customary rights pertain to all local inhabitants, including the poor and the landless, or only to those with property, to householders,

even to certain types of people – honest commoners – owning particular kinds of tenement? These questions are as vital now as in the past.