

## **The Charter of the Forest 1217: A Medieval Solution for a Post-Modern Problem?**

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The eight hundredth anniversary of the sealing of Magna Carta in 1215 has been celebrated all over the world this year in many different ways. The document, a pragmatic peace treaty negotiated in the marshy banks of the river Thames at Runnymede on 15 June 1215, has become the iconic bedrock of fundamental constitutional principles throughout the common law world and beyond. It is the basis of the rule of law, trial by jury, *habeus corpus* although – as I have written elsewhere – the reverence afforded Magna Carta lies more in the mythological remembrance of its spirit than in historic reality. The fact that its origins may be clouded in collective amnesia does not detract from its abiding importance in framing principles of democratic governance and substantive due process today. Eleanor Roosevelt famously remarked that the United Nations Declaration of Human Rights constituted a Magna Carta for modern times.

The text of Magna Carta included high-vaulted statements of principle alongside clauses of mundane specificity. It is a matter of record that the Church had a hand in its drafting with Stephen Langton, Archbishop of Canterbury and several other bishops heavily involved in negotiating its terms. But – as I have also written elsewhere – Magna Carta was not unique. Similar charters defining the relationship between the ruler and the ruled are recorded throughout continental Europe, particularly in Italy, France and Germany. And in England there was more than one charter – following King John's death, two were promulgated during the minority of the by king Henry III by William Marshal as regent, and on obtaining his majority, Magna Carta was reissued in Henry's own name.

The original 1215 version contained the following clause:

*'All evil customs relating to forests [...] are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be abolished completely and irrevocably'*

These evil customs comprised aspects of Anglo-Norman forest law which had been extended and abused by William the Conqueror.

This clause is not included in subsequent iterations of Magna Carta. The reason, however, is not because the matters were unimportant. On the contrary, the clause had been expanded, amplified, strengthened and legitimated by inclusion in a separate document, the *Carta de Foresta* sealed on 6 November 1217. Overshadowed by its more famous companion and consigned to obscurity, the Charter of the Forest was, if anything more significant. It dealt with rights enjoyed by the common man rather than privileges of the barons, and did so far more meaningfully than the provisions of Magna Carta. It irrevocably

altered English land law. It also endured longer than Magna Carta, remaining in force until finally superseded by the Wild Creatures and Forest Laws Act 1971.

The Charter of the Forest re-established rights of access for free men which had been eroded by William the Conqueror and his heirs. The royal forests – which included heathland, farms and villages as well as heavily wooded areas – were a source of fuel for cooking, heating, and small industries such as charcoal burning. The Charter provided protection for ordinary citizens who used the forest to forage for food and to graze their animals. The King was required to give up possession of large tracts of land and make it available for use by the commoners living in community. Successive kings, Richard ‘Lionheart’ and Henry II, had designated greater areas as royal forest, creating real hardship for those living there. Historians suggest that as much as one-third of England was designated as forest. The legendary Sherwood Forest was one such area, and the tales of Robin Hood and his outlaw followers are based in reality.

The Charter itself was detailed and schematic. Just as Magna Carta was the foundation for civic rights, so the Charter of the Forest was an early and sophisticated expression of the modern concept of the communitarian stewardship of the earth’s resources. Its clauses included:

*‘Every free man shall lodge in the forest if he wishes.’*

*‘Henceforth, every free man, in his wood or on his land that he has in the forest, may without being prosecuted make a mill, fish-preserve, pond, marl-pit, ditch or arable in cultivated land outside coverts, provided that no injury is thereby given to any neighbour.’*

*‘Every free man shall have ... the honey found in his woods’*

The royal forests had been both hunting grounds and sources of revenue for the monarch, notwithstanding that two of William the Conqueror’s sons died in hunting accidents. Licences were granted to the nobility for the hunting of foxes, otters, badgers and rabbits, but only the king and his hunting parties were entitled to hunt deer or wild boar. The penalty for killing the King’s deer had been death. Mutilation was also inflicted as a punishment: anyone killing a hart was blinded. An Anglo-Saxon Chronicle recorded how ‘poor men shuddered’; another chronicler, William of Newburgh, remarked that Henry I ‘used little discrimination in public punishments between deer killers and murderers’. The Charter of the Forest ameliorated this considerably in clause 10:

*‘No one shall henceforth lose life of limb because of our venison, but if anyone has been arrested and convicted of taking venison he shall be fined heavily if he has the means: and if he has not the means, he shall lie in our prison for a year and a day.’*

Special Verderers’ Courts were established to enforce the terms of the Charter and these continue to exist today in the New Forest and the Forest of Dean. The barons insisted that Henry III curtailed his forest prerogatives to extract revenue by the levying of fines by his Chief Forrester and his deputies. Regulations were arbitrary and capricious. The right to

pasture animals was strictly controlled. If an individual offender could not be identified the whole community was fined. The Cistercian Order was prohibited from pasturing livestock until twelve abbots had begged forgiveness on their knees.

Authority therefore passed from the King to local communities who were responsible for ensuring that any development did not disadvantage their neighbours. The Charter demonstrated the principles of localism, subsidiarity, and sustainable development eight centuries before they became part of today's political agenda. And it was the churches – not entirely altruistically perhaps – who were the driving force behind this social revolution.

There was a fear that upon obtaining his majority, Henry III might disavow the Charters imposed on him by the barons in his infancy when William Marshal was regent. But he did not. He agreed to uphold Magna Carta in return for a tax on the clergy and the Charter of the Forest in return for a tax on land. The two charters became linked in public consciousness, with Magna Carta to take on a greater significance in the seventeenth century. Henry reigned for fifty-six years, a period of peace and prosperity for England and communitarian development of rural areas.

The question for today's generation is whether the spirit of Magna Carta can be harnessed by today's church leaders and a global charter negotiated which will secure the thriving of sustainable communities. The 800th anniversary of the Charter of the Forest in 2017 may provide the catalyst.

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