Carta de Foresta: The Charter of the Forest Turns 800

by Daniel Magraw and Natalie Thomure

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November 6, 2017, marks the 800th anniversary of an extraordinary, but almost unknown, piece of environmental legislation: Carta de Foresta, also known as the Forest Charter, Charter of the Forest, or Charter of the Commons.[1] The Forest Charter is one of the world's first pieces of environmental and natural resources legislation and the earliest example of democratic environmental governance.

The Forest Charter radically changed rights relating to Royal Forests in 13th century England, and in so doing significantly diminished the power of the king relating to forests, improved the system of forest courts that provided justice from then until modern times, converted parts of the Royal Forests into commons, returned other parts to private owners, served to mediate forest-related conflicts, and thus helped ensure sustainable forest use until the present day. The Forest Charter was also central to the vitality of Magna Carta over time. Writing in the 18th century, Sir William Blackstone declared that the Forest Charter was equally important as Magna Carta, referring to them both as "sacred charters."[2]

Given the vast disparity between the notoriety and reverence accorded Magna Carta and the essential anonymity of the Forest Charter, several questions arise. How did the Forest Charter come about, what did it accomplish, why did Blackstone give it equal billing to Magna Carta, why is Magna Carta now so widely cited and celebrated in countries around the world while the Forest Charter is not, and why does the Forest Charter matter today? Put differently, why is this ancient one-page vellum document written in abbreviated Latin worth thinking about today? We address these questions below.

I. Forests and the 1215 Magna Carta

The 1215 Magna Carta dealt with many different types of abuse of power, including not only of the barons who forced King John to agree to it, but also of widows, knights, clergy, business people, and forest users. Four of its 63 chapters related to forests, reflecting the importance of forests to the king, commoners, and others at that time and the extent of King John's and his forbears' abuses of power relating to forests. It also reflected the fact that barons, knights, the clergy, and others had been making serious efforts to stop or circumvent those injustices in the decades preceding 1215, including by paying the King to disafforest (i.e., remove their status as Royal Forest) specific parcels of Royal Forest.

One of those chapters—Chapter 48—required that 12 knights be chosen in each county by "upright men" of the same county, with the mandate to investigate "all the evil customs relating to forests and . . . foresters," which were to be abolished within 40 days of the investigation. The other three provided protection to non-forest dwellers from being called before forest justices (Chapter 44), returned forests that had been declared Royal Forests by King John to their earlier status (disafforestation, Chapter 47), and provided respite to King John during his time on Crusade, if any, with respect to doing justice concerning the disafforestation or retention of forests that King Henry II or Richard the Lionheart had afforested (Chapter 53).

The original version of Magna Carta was short-lived, however. It was agreed to on June 15, 1215, but 10 weeks later on August 24, Pope Innocent III annulled it on the ground that King John had been forced to enter into it under coercion.[3] The pope had what might be loosely

1. *Forest Charter*, *in* 1 Statutes of the Realm Nos. 10 and 12 (London, Record Commission 1810) (Nicholas Robinson trans., 2013). The English translation of the Carta de Foresta used in this Comment is from Richard Thomson, An Historical Essay on the Magna Charta of King John 329 (London, John Major 1829). Another translation is at: Nicholas Robinson, *Forest Charter*, *in* Magna Carta and the Rule of Law 421 (Daniel Barstow Magraw et al. eds., ABA 2014) [hereinafter Magna Carta and the Rule of Law]. *See also* Nicholas A. Robinson, *The Charter of the Forest: Evolving Human Rights in Nature* (Sept. 23, 2017), *available at* https://www.americanbar.org/groups/public_services/law_library_congress/charter_of_the_forest.html.
2. William Blackstone, The Great Charter and Charter of the Forest, to Which Is Prefixed the History of the Charters vliv (Oxford, Clarendon Press 1759).
3. Magna Carta and the Rule of Law, *supra* note 1, at 5; the papal bull is reproduced in *id.* at 401.

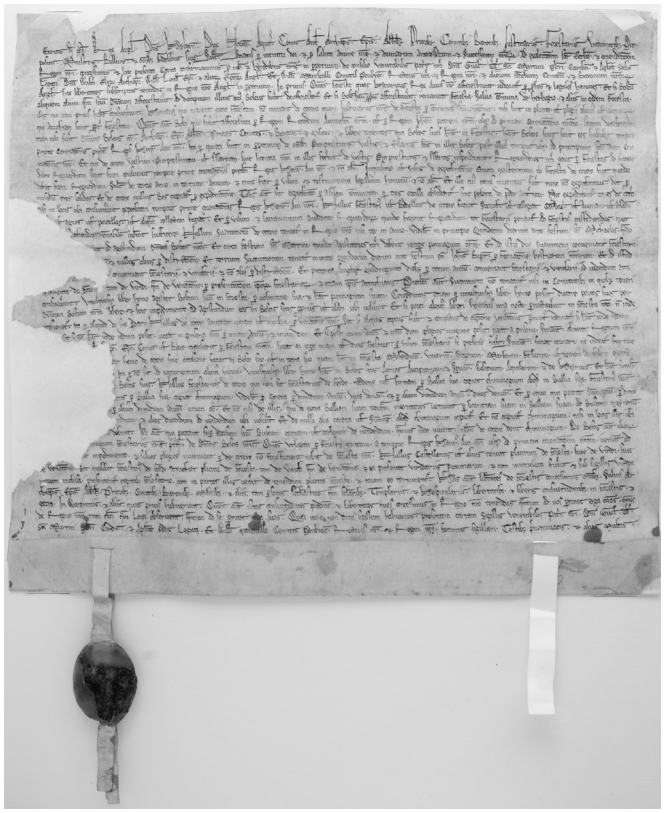
referred to as "standing" to do this because at that time, the Church of Rome owned England, including its lands in what is now France and Ireland; this resulted from a bargain struck by King John in return for the pope's revoking both King John's excommunication and an ecclesiastical interdict on John's kingdom that was prohibiting clergy from performing normal church rituals such as baptisms and marriages. At this juncture, things were not looking good for Magna Carta and the protection it afforded to forests.

II. Provenance and Initial Significance of the Forest Charter

King John died the next year, however, in the midst of a rebellion by barons and their French allies. In order to placate the barons, clergy, business community, and others whose concerns about royal abuse of power had given rise to the 1215 Magna Carta, a new Magna Carta was issued in 1216 over the seals of William Marshal, Earl of Pembroke, regent of the new, nine-year-old King Henry III, and Gualo, the pope's legate. Some portions of the 1215 Magna Carta were retained while others (including Chapter 48, mentioned above) were omitted from this version, with the explanation that they were deferred for further consideration. This represented a remarkable reversal: whereas the original 1215 Magna Carta had been imposed on King John by his enemies, the 1216 Magna Carta was issued on behalf of King Henry III by his allies.

A third version of Magna Carta was issued on November 6, 1217,[4] again over the seals of Marshal and Gualo, in return for a tax increase. At this time, two of the forest provisions in the 1215 Magna Carta (Chapters 44 and 47) and several new provisions were elaborated into a new charter, the Forest Charter, at the same time as the third version of Magna Carta was issued. It was then that Magna Carta received the name by which we know it now (previously it had been referred to as the Charter of Liberties), not because it was deemed more important than the Forest Charter, but rather because it was larger.

It is not known who drafted the Forest Charter, and there is uncertainty about the origin of its content. Two chapters of the "Unknown Charter," which was found in the French national archives in 1863 but was presumably created in the process of drafting the 1215 Magna Carta, may be precursors to provisions in the Forest Charter (although they were not in the 1215 Magna Carta): Chapter 9, which would have disafforested the lands afforested by King John's predecessors, and Chapter 12, which would have prohibited capital punishment and maiming for killing forest beasts.[5] It may also have been that even though the 1215 Magna Carta had been annulled and Chapter 48 was not included in the 1216 Magna Carta, the investigations of forest abuses called for in Chapter 48 had proceeded.[6] An indication that this might have occurred is that King John had sent a letter patent on June 20, 1215 to the Sheriff of Gloucester ordering that the process begin.[7] In either event, the King's counselors engaged in broad-based discussions about issues related to Magna Carta between 1216 and 1217, and a large council was held in October-November 1217 that ultimately led to the issuance of the



The 1217 Forest Charter, from the Lincoln Cathedral. The seal on the left is that of the pope's legate, Gualo. The seal of King Henry III's regent William Marshal was on the right, but became detached. Photo copyright Lincoln Cathedral, and published by kind permission of the Dean and Chapter of Lincoln Cathedral.

4. For a discussion of the precise date the Forest Charter was promulgated, see William Sharp McKechnie, Magna Carta: A Commentary on the Great Charter of King John, With an Historical Introduction 146 (Forgotten Books 2012) (originally published in 1914).

5. *See* James C. Holt, Magna Carta 418-28 (2d ed., Cambridge, 1992). The Unknown Charter is in the collection of the British Library. This possible lineage was discussed by Nicholas Vincent in a presentation at Bishop Grosseteste University, Lincoln, UK (Sept. 23, 2017).

6. Nicholas Robinson, *The Charter of the Forest: Evolving Human Rights in Nature*, *in* Magna Carta and the Rule of Law, *supra* note 1, at 311 (relying in part on Holt, *supra* note 5); Daniel Barstow Magraw et al., *Introduction: Magna Carta and the Rule of Law*, in *id.* at 4-5. Other commentators (e.g., presentations by David Carpenter and David Crook on September 23, 2017, at Bishop Grosseclose University, Lincoln, UK) are unconvinced that the investigations occurred, on the basis, inter alia, that there is no record of any expenses of or reports from such investigations.

7. Daniel Barstow Magraw et al., *Introduction: Magna Carta and the Rule of Law*, *in* Magna Carta and the Rule of Law, *supra* note 1, at 4-5.

Forest Charter and the third version of Magna Carta in November 1217.[8]

The Forest Charter's significance emanated in large part from the tremendous importance of forests in 13th century England, both to the king and to his subjects. In 1215, almost one-third of English land consisted of forests, which were "not primitive wilderness"[9] or even all woodlands, but rather contained open grasslands, farmland, waterways, and even parts of towns, in addition to sylvan areas.[10] The king relied on Royal Forests for a major part of his income (e.g., from fines and the sale of forest products and land), food and fuel for his court and military while traveling, masts and wood for his navy, and land to give to build political support, among other things.

Not surprisingly, English kings, including John and his immediate predecessors, habitually expanded the land designated as Royal Forest. This was much to the detriment of commoners and other non-royals, who needed access to woodlands and grasslands for water, food, fuel, grazing, building material, and fodder, among other necessities. Access to Royal Forests was thus necessary to protect what we now know to be human rights, such as the rights to water, food, shelter, culture, and adequate standard of living.

The Forest Charter operated in conjunction with the preexisting forest law that had not been altered by the charter; and together they protected those rights.[11] The denial of access to forests, abuses of power in administering justice regarding forests, and the harsh penalties (e.g., hanging, emasculation, blinding) that could be imposed for violating the forest law led to much popular unrest, many efforts to ameliorate the effect of the forest law before 1215, and ultimately to the forest-related chapters in the 1215 Magna Carta and the issuance of the Forest Charter two years later.

Kings repeatedly attempted to abrogate all or part of the Forest Charter, as well as Magna Carta, in the years following 1217; repeated struggles occurred to maintain the rights provided in the Forest Charter, particularly over the next two centuries. These struggles reinforced the rule of law, nourished the rights of commoners to access to critical resources, and were influential in keeping both the Forest Charter and Magna Carta alive. As a result of this dynamic, the Forest Charter was reissued three times, most notably in 1225 over the seal of King Henry III (when he reached the quasi-majority age of 18), and again in 1297 and 1300, and it was confirmed in the Confirmation Charters of 1259 and 1297—each time in tandem with Magna Carta.

Moreover, royal oaths of fealty to one charter were accompanied by identical oaths regarding the other. The Forest Charter was recorded as a Statute of the Realm in 1293.[12] The charters were confirmed at least 30 times in the 200 years following the Forest Charter's promulgation,[13] during which time numerous legal cases and assertions of right occurred vis-à-vis the Forest Charter, apparently more so than with respect to Magna Carta because of the importance of forests to people's daily lives.

Protection of forests and commons has waxed and waned in England over the centuries since 1217, as political power and societal views have changed. The movement to privatize property in England (leading, for example, to the enclosures) affected the size of forests and commoners' access to it, just as it did other aspects of English society. The core of the Forest Charter remained vital as various parts of it were incorporated into English law over the centuries, however, until the remaining elements were abolished in 1971 except with respect to the Forest of Dean.

III. Contents of the Forest Charter

The Forest Charter was revolutionary in its impact and protected the lives and livelihoods of English commoners and others from encroachment by the king in six critical ways. First, the charter greatly diminished the amount of land that qualified as Royal Forest: it "disafforested" large parts of the Royal Forests by rolling back their limits to their boundaries as they were when Henry II began his reign[14] and returned the disafforested portions to their previous owners.[15] Second, the Forest Charter greatly expanded the use that commoners could make of the Royal Forests. To some extent, this involved reinstating rights that had existed to use common areas; but the charter went beyond that to specifically allow uses that were essential for life at that time, effectively securing economic rights to the forests by guaranteeing access to land for commoners to forage, graze animals, farm, have eyries for raptors, and collect honey, as well as gather wood for fuel and construction.[16] In this sense, the charter was intended to allow the exploitation of forests, though it has an important proviso that some private uses were not to be to the detriment of any neighbors.[17]

Third, the Forest Charter outlawed capital punishment and maiming for poaching deer and boar, as well as for other violations of the forest law. Fourth, it prevented injustice by prescribing much-needed procedural safeguards with respect to forest courts, two of which still function

8. *See* David A. Carpenter, The Minority of Henry III 60-63 (1990).
9. Noam Chomsky, Who Rules the World 86 (2016): "In thirteenth-century England, the forest was no primitive wilderness. It had been carefully nurtured by its users over generations, its riches available to all, and protected for future generations . . . ."
10. Carolyn Harris, *The Charter of the Forest*, Magna Carta 2015 Can., Dec. 17, 2013, http://www.magnacartacanada.ca/the-charter-of-the-forest/.
11. Forest law had existed and evolved for centuries, at least since the reign of King Canute. Forest law was not the only law potentially relevant to an occurrence within a Royal Forest, however: depending on circumstances, common law, ecclesiastical law, or manorial law might also apply.
12. 1 Hen. 3.
13. Ralph V. Turner, *The Making of Magna Carta: The Historical Perspective*, *in* Magna Carta and the Rule of Law, *supra* note 1, at 44.
14. *Forest Charter*, *supra* note 1, ch.1 (negating afforestations by Henry II) & ch. 3 (negating afforestations by Kings Richard the Lionheart and John). Some of the Royal Forest that had been recovered by Henry II after they had been lost by his predecessor Stephen—rather than having been afforested de novo by Henry II—were returned to Henry III in 1227. Carpenter, *supra* note 8, at 392.
15. *Forest Charter*, *supra* note 1, ch. 4.
16. *Id.* chs. 1, 9, 12, 13.
17. *Id.* ch. 12.

today.[18] Fifth, the Forest Charter applied to everyone in England, whereas Magna Carta applied only to half of Englishmen, thus accomplishing a massive increase in civil liberties and serving as an example for future laws. Finally, the charter required that everyone in England observe the customs and liberties recognized in it,[19] thus imposing an obligation that is imperfect in present-day international human rights law.

The Forest Charter thus reestablished some land for communal management, recognized certain liberties belonging to the possessors of forest lands (known as freeholders), and limited the exercise of some of those liberties to prevent harm to neighbors.[20] The charter thus lays down a system of governance for the common stewardship of shared resources, specifically for the management of the commons by commoners and others for the preservation of the forests themselves.

The definition of what a forest was and the determination of where its boundaries lay were both highly contested and extremely important in informing its uses and the rights of the people to use it. These determine where the commons are and protect the rights of people, including the poor, to use it to earn their livelihood. In his book *An Historical Essay on the Magna Charta of King John*, Richard Thomson discusses the ancient manner of establishing a forest that included certain limits and characteristics, a type of environmental impact assessment, and public announcement. To define land as "forest" in 13th century England, it had to maintain a certain quality of soil, contain thickets of trees that touch each other (coverts), and have a certain diversity of wild beasts and fowls.[21] Once officially decreed a forest, it was within the realm of royal power to privatize the forest and all its resources.

The immediate impact of the Forest Charter was limited to England as its boundaries then existed, including parts of France and Ireland. To some degree, the charter's provisions are quite specific to then-existing circumstances. When the provisions of the Forest Charter are viewed in light of the continuing traditions of forest law at the time, however, a remarkable set of principles emerges that reflect basic tenets of environmental protection and the law of sustainable development that still energize and enlighten us today.

To ensure sustainable management of the commons, the charter built on traditional forest law to prescribe limitations on harvesting and hunting within the commons. According to Thomson, "even the Chief Justice of the Forests cannot license a tenant cutting his own Woods, unless there be enough left to shelter wild animals."[22] In another example, Thomson notes that a freeholder's license "extends only to felling, not to destroying these woods, since the springs must be left in the ground that they may grow to be Coverts again."[23] Forest dwellers thus could harvest from tree branches, leaves, and nuts, but had to leave the tree itself for regeneration. Although the terminology differs and one must take care not to project modern concepts onto an 800-year-old document, the charter can be said to embody the kernels of several important ecological concepts and principles that resonate today: a recognition of the role of ecosystems in preserving wildlife, the interdependence of nature, the concept of intergenerational equity, the concept of sustainable use, and the value of biodiversity.

The maxim "sic utere tuo alienum non laedas" ("so use your own as not to injure another's property") is also reflected in the charter. Chapter 12 provides that:

> every Freeman for this future, may, without danger, erect a mill in his own wood or upon his own land which he hath in the forest; or make a warren, or pond, or marlepit, or ditch, or turn it into arable land, so that it be not to the detriment of any of the neighbours.[24]

If a dam was constructed that stopped the flow of water, or led to the flooding of a nearby farmer's fields, the injured person could take the person who constructed the dam to court under the charter. The charter thus required consideration of the effect of one's activities on others, a concept that centuries later was the basis for the *Trail Smelter* arbitration,[25] the *Corfu Channel* case,[26] and Principle 21 of the Stockholm Declaration on the Human Environment.[27]

The charter's requirement to limit one's actions based on impacts to others also presages English philosopher John Locke's principle regarding acquisition from a commons. That principle permits a person to appropriate or use a resource provided that person does not take more than he or she can use without waste and that after the acquisition there is "enough, and as good left in common for others."[28] In addition, the legal enforcement of the common stewardship of shared resources offered local people a system for legal recourse they had previously lacked. The charter became a framework through which commoners and others could reconcile competing environmental claims.

IV. Difference in the Charters' Notoriety and Impact

Great Britain incentivized colonization by assuring colonists that their rights as English nationals traveled with them to their new homes abroad. The Forest Charter provided rights to English men and women, just as Magna Carta did. There are two differences, however.

18. *Id.* chs. 2, 7, 8. Forest courts still operate in the Forest of Dean and the New Forest.
19. *Id.*
20. *Forest Charter*, *supra* note 1, ch. 12.
21. *See* Thomson, *supra* note 1, at 340.
22. *Forest Charter*, *supra* note 1, ch. 12.
23. *Id.*
24. *Id.*
25. Trail Smelter Arbitration (U.S. v. Can.), 3 R.I.A.A. 1911 (1941).
26. Corfu Channel Case (U.K. v. Alb.), 1949 I.C.J. 4 (Apr. 9).
27. *Declaration of the United Nations Conference on the Human Environment*, U.N. Environment Programme, Principle 21, at 5, U.N. Doc. A/CONF.48/14/Rev.1 (1972).
28. John Locke, The Second Treatise on Government ch. 5, sec. 27 (London, Awnsham Churchill 1690).

First, Magna Carta was incorporated into the law of the American colonies because they adopted the common law of England. The Forest Charter and associated laws, in contrast, are not part of the common law; rather, they are forest law, which was not incorporated by the American colonies.

Second, the Forest Charter was specific to the Royal Forests, none of which were located in the colonies, whereas Magna Carta contained more general principles (such as Chapters 39 and 40 of the 1215 Magna Carta) within it.[29] These principles have wide appeal today, and they did in the 17th and 18th centuries as well. Magna Carta's notoriety and appeal in the American colonies are clear, as evidenced, for example, by the 1775 seal of the colony of Massachusetts, which shows a patriot holding a sword in one hand and Magna Carta in the other.[30]

V. Current State of Forests and Commons

The Forest Charter remains pertinent to contemporary challenges facing humankind, most specifically to forests and commons.[31] Forests are of great economic, social, and environmental significance. They are important sources of products and employment, home to 1.6 billion people, including millions of indigenous people, home to roughly 80% of terrestrial plants and animals, and essential to solving almost every environmental crisis, including desertification, climate disruption, loss of biological diversity, erosion, and availability and purity of freshwater. Forests are also critical for achieving many of the 17 Sustainable Development Goals (SDGs) adopted in 2015 by the United Nations General Assembly,[32] most expressly SDG 15 regarding protecting, restoring, and promoting sustainable use and management of forests. The issues covered in the charter are particularly related to the first-listed target of SDG 15 to "promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally."[33]

Forests provide many essential ecological services, including renewable resources, when properly managed or left in their native state. Moreover, many forests today constitute an important part of the commons. Access to and sustainable management of the commons are critically important. Yet, forests are under threat around the world from overexploitation, encroachment by urban areas, conversion into farmland, unwise land use policies, climate disruption, and pollution.

For example, in Peru, small-scale agriculture and logging operations are increasingly building roads deeper into off-plantation forests to remove old growth trees or plant crops, and operators move on when the lumber or soil is depleted.[34] In West Africa, deforestation is increasing dramatically in response to the region becoming a new frontier for oil palm crops.[35]

Commons are also under attack around the world, in both rural and urban areas. For example, pollution of freshwater and marine areas, privatization of many areas and activities, and conversion of urban open areas to commercial space are seriously diminishing access by ordinary citizens to commons. Growing economic inequality[36] also diminishes access to commons, both relatively and absolutely. Yet, such access remains essential to human well-being and must be ensured.

Interestingly, the Forest Charter's 800th anniversary coincides with the publication of two excellent books detailing some of trees' intriguing characteristics, including that they share nutrients with other trees through their roots or via fungal networks around root tips, warn each other about specific dangers by releasing chemicals such as ethylene into the air or sending electrical signals through their roots, attract predators of insects that are harming the tree by releasing pheromones into the air, and feel pain.[37] It has become impossible to view trees as mere masses of cells that exist in isolation or forests as mere assemblages of such organisms.

VI. The Forest Charter's Enduring Legacy

It is not possible to directly attribute developments in other parts of the world directly to the Forest Charter. The struggles to achieve and implement it and the concepts embodied in it, however, comprise parts of the historical development of the protection of commons and the environment. The Forest Charter aimed in part to reinstate and protect commons in Royal Forests for the use and manage-

29. *See* Turner, *supra* note 13, at 40.
30. The seal is reproduced in Magna Carta and the Rule of Law, *supra* note 1, in an illustration plate before page 233.
31. *Accord* Chomsky, *supra* note 9, at 86: the Forest Charter's "significance is perhaps even more pertinent today."
32. Transforming Our World: The 2030 Agenda for Sustainable Development, G.A. Res. 70/1, U.N. Doc. A/RES/70/1 (Sept. 25, 2015), *available at* http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.
33. United Nations, *Sustainable Development Goals—Goal 15: Sustainably Manage Forests, Combat Desertification, Halt and Reverse Land Degradation, Halt Biodiversity Loss, Target 15.1*, http://www.un.org/sustainabledevelopment/biodiversity/ (last visited Sept. 14, 2017).
34. Tiffany Basciano et al., Johns Hopkins School of Advanced International Studies, They Protect the Forests. Who Protects Them? The Intersection of Conservation, Development, and Human Rights of Forest Defenders 71-72 (2017).
35. Mikaela Weisse et al., *Global Tree Cover Loss Remains High. Emerging Patterns Reveal Shifting Contributors*, World Resources Inst., July 17, 2017, http://www.wri.org/blog/2017/07/global-tree-cover-loss-remains-high-emerging-patterns-reveal-shifting-contributors.
36. Tremendous inequality exists and is increasing both domestically in many countries and internationally. As an example, in 2013, the world's 85 wealthiest individuals owned as many resources as the poorest 3.5 billion people (i.e., half the world's population). As of 2014, the number was only 67. Kasia Moreno, *The 67 People as Wealthy as the World's Poorest 3.5 Billion*, Forbes, Mar. 25, 2014, https://www.forbes.com/sites/forbesinsights/2014/03/25/the-67-people-as-wealthy-as-the-worlds-poorest-3-5-billion/#5a41cd1111ad.
37. Peter Wohlleben, The Hidden Life of Trees: What They Feel, How They Communicate—Discoveries From a Secret World (2015); Hope Jahren, Lab Girl (2016). *See also* Colin Tudge, The Tree: A Natural History of What Trees Are, How They Live, and Why They Matter (2006); Richard Preston, The Wild Trees: A Story of Passion and Daring (2008).

ment by commoners and others against encroachment by external forces, at that time the king.

As the world becomes increasingly privatized, these rights are no longer threatened by kings, but rather primarily by commercial interests and governments that partner with them to privatize forestland for extractive industries or agriculture, and in some cases to benefit personally through corruption. The increasing privatization of natural resources, including forests and water, is especially destructive to traditional societies whose livelihoods and culture depend on access to the commons. Many people around the world view their forest-related rights, including to the commons, as human rights, as expressed in 13th century England in the Forest Charter and Magna Carta, and more recently globally in the United Nations Charter,[38] human rights instruments,[39] national and sub-national constitutions,[40] and the United Nations Declaration on the Rights of Indigenous Peoples.[41]

There are countless historical examples of efforts to protect commons. Many instances have involved struggle. Epping Forest, England, for example, was threatened in late 1800s by local lords seeking to enclose portions for private profit.[42] Commoners insisted, however, on "lopping" or cutting boughs and branches of trees for use as fuel during winter; they succeeded in protecting Epping Forest with the aid of civil society organizations. In ancient India, the first widespread forest conservancy campaign was introduced by Emperor Ashoka around 269 BCE. Along with the creation of massive tree plantations managed by the state, Ashoka forbade the killing of certain animals and the felling of protected trees.[43] Many examples of successful commons management are elucidated in the works of Elinor Ostrom.[44]

Indigenous and other local communities across the Americas invoke the ideas set forth in the Forest Charter and Magna Carta to protect the natural resources on which their livelihood and culture depend. In the United States, the Dakota Sioux's battle against the Dakota Access Pipe Line is an example. In Mexico in 1994, Zapatista leader Subcomandante Marcos invoked Article 27 of the Mexican Constitution (which he referred to as "Magna Carta") as justification for the claim that "large tracts of land that are in the hands of ranchers, national and foreign wealthy land-owners, and other people who occupy a lot of land and are not campesinos, [should] be passed over to the hands of the people who have absolutely no land."[45] In asking for agricultural land for the poor, he also was seeking access to the economic opportunities that access to the commons affords. In Bolivia, protestors objected to the privatization of water resources that would disproportionately affect indigenous communities. This uprising for more socially oriented policies led to the eventual defeat of water privatization in Cochabamba.[46]

Widespread privatization of the commons has been supported by the argument that "freedom in the commons brings ruin to all,"[47] the thesis of American ecologist and philosopher Garrett Hardin's "tragedy of the commons." But it is not necessarily the case that what is not owned privately will be destroyed by its users. In her germinal work, Ostrom demonstrated that the "tragedy" need not occur, and recounted many examples of community-managed fish stocks, pastures, woods, lakes, and groundwater basins being successfully and sustainably managed.[48] The successful experience of the Forest Charter provides additional evidence.

The United States has experienced repeated tensions regarding management of forests and other resources and protection of public lands and waters. Current examples include the Donald Trump Administration's consideration of reducing the size of and protections afforded to national monuments on land and at sea and of providing additional access to public land and waters for extractive activities, including drilling and fossil fuel pipelines. The struggle regarding management of public lands has returned to the center of political debate.

VII. Conclusion

The Forest Charter is one of the world's earliest pieces of environmental legislation, and the earliest example of democratic environmental governance. It established the Royal Forests as a type of commons, and a system for governing the commons that stopped inhumane punishments for violating forest law, provided important usage rights to commoners, required that users of their own forest lands not act to the detriment of their neighbors, and prescribed important procedural safeguards in forest courts. Moreover, it expressly applied to "everyone," in contrast to Magna Carta, which only applied to about half of the English population.

In accomplishing those advances, the Forest Charter embodied concepts and principles that continue to inspire environmental governance, including ecosystems' role in preserving wildlife, the interdependence of nature, inter-

38. United Nations Charter, Preamble & art. 1 (1945).
39. *See, e.g.*, Covenant on Economic, Social and Cultural Rights, art. 11 (adequate standard of living) (1966).
40. The vast majority of national constitutions provide environmental rights. David Boyd, The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights and the Environment (2012). Many sub-national constitutions also provide environmental rights: Montana's Constitution, for example, in Article II, Section 3, provides: "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment . . . ."
41. *Cf.* Daniel Magraw & Lauren Baker, *Emerging Human Rights Norms: Community-Based Property Rights and Prior Informed Consent by Communities*, 35 U. Denv. L.J. 413 (2007).
42. Julie Timbrell, *The Charter of the Forest: Its Importance for Today*, Assemblies for Democracy (Oct. 27, 2016), https://assembliesfordemocracy.org/2016/10/27/the-charter-of-the-forest-its-importance-for-today/comment-page-1/.
43. Sharad Singh Negi, Indian Forestry Through the Ages (1994). For a translation of the edict, see K.P. Sagreiya, Forests and Forestry (1994).
44. *E.g.*, Elinor Ostrom, Governing the Commons: The Evolution of Institutions for Collective Action (1990).
45. Zapatistas!: Documents of the New Mexican Revolution (1994).
46. Thomas Perreault, From the Guerra del Agua to the Guerra del Gas: Resource Governance, Neoliberalism, and Popular Protest in Bolivia (2006).
47. Garrett Hardin, *The Tragedy of the Commons*, 162 Science 1243 (1968).
48. *See generally* Ostrom, *supra* note 44.

generational equity, public participation, sustainable use, the value of biodiversity, and the maxim "sic utere tuo alienum non laedas." The drafters of the SDGs, *Trail Smelter* award, *Corfu Channel* decision, and Principle 21 of the Stockholm Declaration on the Human Environment have much in common with the drafters of the Forest Charter, in spite of the centuries of time separating them.

Indeed, the Forest Charter remains relevant today as a touchstone and inspiration. At 800, the Forest Charter is a reminder of the importance of forests, commons, rule of law, and human rights. It also reminds us of the need to strengthen their protection around the world, and it demonstrates that we retain the ability to do that if we are sufficiently committed.