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Magna Charta: The Charter of the Forest, and the Prerogatives of Kings Professor Allen Shoenberger

In this year celebrating the 800th anniversary of the enactment of the Great Charter, Magna Charta, ¹it is worth examining the document itself and its accompanying charter, The Charter of the Forest. The latter is a document few have heard about, although to Englishmen of the era, it was far more important to daily life in England.

“Magna Charta was wrested from a King who was a craven and a dastard as well as a tyrant, by his nobles and barons.” ²

By John's time the evils of the forest laws, the exactions and hardships of the feudal system resulted in many insurrections of the barons. The interests of the people and of the barons, as Stubbs says, were drawn into the closest harmony. Both, he says, suffered from arbitrary and excessive taxation, from delay of justice, exactions of military service, and outrages of every kind, both public and domestic.

Writers do not consider any language too strong to use in denouncing John. Green introduces the story of his treachery, ingratitude and perfidy, of his cruelties and of his cowardice and superstition, with the words, “Foul as it is, Hell is defiled by the fouler presence of John.”³

Nor can much good be said about the nobles.

The ultimate property of all lands and a considerable share of the present profits were vested in the King or by him granted out to his Norman favorites, who by a gradual progression of slavery were absolute vassals to the Crown and as absolute tyrants to the commons. Unheard of forfeitures, talliages, aids and fines were extorted from the pillaged landholders.

The nation consisted wholly of clergy, who were also the lawyers, the barons, the knights or soldiery, and the burghers or inferior tradesmen, who, from their insignificance, retained some points ... of their ancient freedom. All the rest were villains or bondmen.

How then did a Great Charter emerge from such a collectivity? John, historians tell, was coerced into signing the Magna Charta by force of arms, one of his castles had already fallen, and London had sided with his opponents. However, threats from the clergy of eternal damnation also played a part in his eventual agreement. Both King John and the Nobles appealed for aid from the Pope during the course of the dispute.⁴

¹ The words, Magna Charta, do not appear in the Magna Charta. It appears that these words were first used by a scrivener trying to describe the two Charters. The scrivener used the term to distinguish the large Charter from the shorter Charter of the Forest.

² Thornton M. Hinkle, *Magna Charta*, Yale L. J. 262, 265 (1899).

³ *Id.*, at 267.

⁴ King John attempted to revoke Magna Charta, and the Pope condemned it, stating that anyone who followed it risked excommunication. However, John died in 1216, and the next King, Henry III (then only 9 years old), affirmed it through his advisors, and also in 1217 proclaimed the charter of the forest.

The short Charter of the Forest has the distinction of being the longest-lived English Statute, only ceasing to be effective in 1971. With its repeal and substitution, one of the last prerogatives of the King, the right to claim wild animals, was finally abolished. However, these Charters both were formed by the will of the King, not the King in Parliament. As such, they emphasize the power of the King, both to do good, and evil as well.

What did the Great Charter do?

The charter established testamentary power over part of the personal estate and provided that the rest of it should go to the wife and children; established dower; uniformity of weights and measures; gave encouragement to commerce by protecting strangers; protected tenants and subtenants from illegal distresses by the Crown; limited the right of the King's officers to take necessaries for his household; fixed the Court of Common Pleas at Westminster in order that suitors should not be compelled to follow the King's person on his course through the island; directed trial to be had in the proper counties, thus bringing justice home to the people; corrected some abuses of trial by wager of law and of battle; fixed a definite time and place for holding courts; put an end to the curious system of corruption by which litigants were compelled to pay to the King large sums of money to procure a hearing in his courts; confirmed the liberties of London and all other cities; and, lastly, protected every individual in the free enjoyment of life, liberty, and property, unless declared to be forfeited by judgment of his peers or the law of the land.

Not a bad list.

What did the Charter of the Forest do? This Charter regulated the use of the Forests of England.⁵ However, the Forests were not what we call Forests. Cultivated fields and houses often were considered part of Forest land. Over a third of all land in England was forest land. The Charter of the Forest amplified provisions in Magna Charta, providing in particular:

Extreme punishments were no longer permitted for poaching the King's animals (death or blinding had been frequently employed).⁶ The Forest was treated as common land⁷ which permitted ordinary Englishmen to make use of the forest to graze pigs, for instance (one of the most important source of meat for English of the time), and to grow crops, and protect the crops from wild animals by building trenches, so long as the use

⁵ Several Kings before King John had adopted a practice of declare new parcels of land as "Forest land" effectively making such land royal land. Both nobles and peasants were upset by this practice. Magna Charta restored all such recently declared Forest land to its original status.

⁶ Instead of such serious penalties a fine could be imposed, and if a person was unable to pay the fine, jail time of a year and a day could be imposed. If after that time sureties could not be found, the offender was banished.

⁷ One definition of waste included that if one stood on the stump of a tree one could see five other stumps.

was not excessive.⁸ Reasonable use of firewood was permissible as were other “reasonable uses.” In many ways the Charter of the Forest was the first statute to protect the environment and to provide for wise use of the land. Courts of the Forest were established, Courts that persist today even after repeal of much of the Charter of the Forest.

Thus the two Charters combined provided for a system of fair justice, trial by peers, and the first environmental reform law in English history. Not bad results during the times of civil wars in England.

⁸ Twelve Knights were assembled to consider whether any use of the land was a customary use and thus permitted.