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Chapter 4
Ancient Rights in Ancient Forests

Graham Bathe

How ancient practices have shaped the forests surviving today

The ancient forests of Europe are recognised as making significant contributions to biodiversity, landscape, recreation, tourism, climate, flood control, and other ecological services alongside their value for timber. Such forests are often the product of centuries or millennia of multi-purpose exploitation, shared by communities through the exercise of common use-rights. A comprehension of historic use adds a social dimension to the cultural importance placed on such forests, and provides the context of management which has generated the biodiversity and environmental features valued today, which modern conservation effort may need to emulate.

The hunting forests, through their resistance to change until modern times, exemplify a situation appertaining throughout much of European history, with local settlements deriving their basic needs from a complex mixture of shared and exclusive resources. Early societies established rules or laws which governed the ability to extract such goods, hence ascribing (and limiting) the notion of defendable 'rights'.

The significance of different commodities (e.g. the relative importance of pastoral, hunted or harvested goods), and the proportion of shared and exclusive resources, fluctuated through time. Tensions would arise within and between communities, when the exercise of certain rights affected the entitlements and interests of others. However, the commons and shared use-rights remained an enduring feature of the hunting forests for more than half a millennium. This chapter examines how hereditary use helped shape the royal hunting forests, drawing especially on examples taken from the Forest of Savernake in central southern England. It also makes comparisons with the New Forest, near the southern English coast, one of the few surviving examples of the royal forests.

Royal hunting forests of England

The royal forests once covered more than 25% of England (Langton and Jones, 2009). Whilst hunting was clearly enjoyed by the earlier Anglo-Saxon and Danish kings, who could sport in certain great unfarmed tracts of land remaining, the concept of 'royal forests', as areas set aside and subjected to unique forest law, was unknown in England prior to the Norman conquest of 1066. The invading Norman kings were probably able to import a mature system, already fully developed, from their homeland, with its complex, ritualistic judiciary and administration. This in turn appears to have had its progenitor in Frankish institutions which secured the protection of game for the exclusive privilege of the king. It is estimated that some 40% of the Carolingian landscape had been uncultivated, with most of this wooded, and large areas in royal hands and maintained as hunting reserves (Verhulst, 2002). The laws or 'capitularies' of the Carolingian dynasty relating to the 'forestis', have close parallels with the later English Assizes of the Forest (Petit-Dutaillis, 1915).

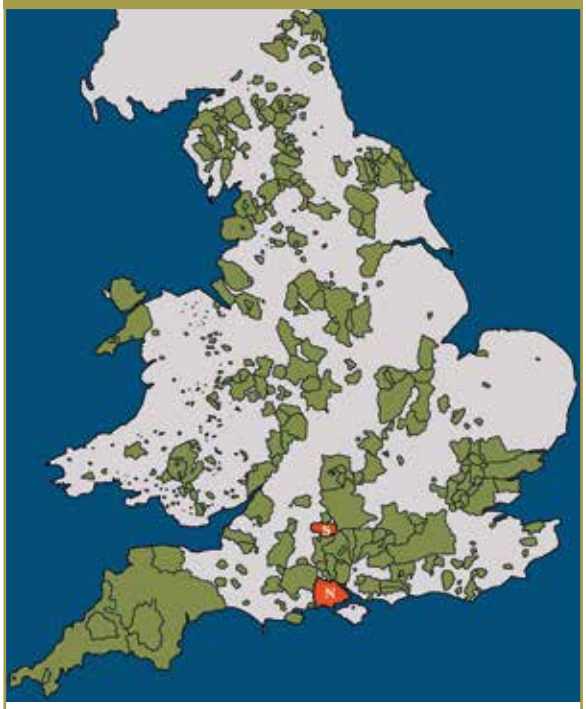
Whilst surviving documentation is sparse, charters from the mid-11th century relating to the Forests of Evereux and Cherbourg confirm that William, the future king of England, held forests in Normandy prior to his invasion (Fauroux, 1961). Evidence from the early 12th century, when continental sources are more plentiful, shows that forests on both sides of the English Channel were being governed by directly comparable legislative regimes (Petit-Dutaillis, 1915).

The royal hunting forests were not necessarily areas with dense or even significant tree cover. Whilst variable, they generally involved unenclosed tracts of land, often kept open by deer and commoners' animals, and with a mosaic of scrub, heath, trees, woodland groves or coppices. Landscapes in the New Forest probably retain characteristics once typical of the royal forests (Photograph 1 and 2). The universal distinguishing feature of the royal forests is that they were protected

Photograph 1 (above) and 2 (below): Two views of the New Forest, which newly came under Forest Law in 1079, and has retained the name 'New' into the 21st century.

Figure 4.1

The royal hunting forests of England and Wales in medieval times, after Langton and Jones (2009)



The forests shown here are at their maximal extent (not necessarily contemporary). Darker shading shows case study of Savernake Forest (S), with New Forest (N) also shown.

through unique laws, which had the interests of the king at their core. Forest Law was imposed on great swathes of the English countryside from the end of the 11th century. In some cases, established hunting grounds recognised and managed during the previous Anglo-Saxon era, such as the Forest of Galtres, formed the basis for royal forests. In other cases, such as the New Forest established in 1079, extensive heaths and woodland held by the king were newly incorporated within Forest Law. By the time of the Domesday Book, a massive record of landholdings compiled for taxation purposes in 1086, some twenty-five forests were listed. Savernake Forest, situated in southern England, was established at some time between 1086, and its first parenthetic mention on a surviving parchment from 1130 (Calendar Pipe Rolls). In due course there were at least 648 royal forests in England and a further 332 in Wales (Figure 4.1).

Whilst the protection of game, especially on the King's own land, constituted its conceptual rationale, Forest Law became equally important for other functions. It conferred prestige and social exclusivity, which could also be extended to those currently in royal favour. More importantly, it massively strengthened the monarch's authority and ability to generate revenue. Forests were also closely associated with castles. They provided constructional timber and other building materials for erecting and maintaining castles, whilst also offering food for the larder, fuel for heating, and opportunities for recreational hunting.

Shared resources in the royal hunting forests

Despite the supreme power of the monarch, the landscapes of the royal hunting forests were moulded by a complex web of relationships in which different rights, privileges and obligations were shared amongst diverse individuals and communities, ranging from the king to the local peasant. The notion that land ownership conveyed autocratic exclusivity was unfamiliar throughout most of England's medieval history. People could have rights and privileges associated with office, status, landholding or tenancy, and exercising such rights was usually conditional on providing military, religious or labour services, or on the provision of commodities or (generally much later) money. Of particular importance in the historic management of forests is commoning, a form of shared property right whereby one person has the ability to exploit a product on land which they do not

hold. The range of rights and privileges appertaining in Savernake Forest in medieval times is shown in Table 4.1.

Rights of the King

The Normans exercised rule through feudal tenure. The king was the lord of every part of the conquered lands, and others could occupy or 'hold' (not own) land only from the king in chief, generally by fulfilling duties, such as protecting the king's interests, or providing military or other services. Through forest law the king held the exclusive right to hunt game, and anyone caught taking deer without authorisation could, in theory, be executed, suffer amputation or be maimed. In Savernake, forest proceedings show that in practice such draconian punishments were not implemented, and perpetrators were normally bailed and then subjected to fines. The main quarry species in Savernake and probably most of the other royal forests was the fallow deer, *Dama dama* (Photograph 3). In Britain, there are extremely few, intermittent remains of this species dating from before the 11th century. Strong circumstantial evidence suggests that the Normans introduced and populated the royal forests with fallow deer, where they rapidly established and naturalised (Yalden, 1999). Wild boar, *Sus scrofa* (Photograph 4) were also regarded as game, but may have been exterminated as early as the 13th century (Rackham,

Shared rights and responsibilities in the Royal Forest of Savernake — Table 4.1

Beneficiary Origin of role	Responsibilities	Rights and Entitlements
King Hereditary		Royal game (deer, boar) – exclusive rights Timber trees –exclusive rights (widely disregarded) Great cablish (wind-thrown trees and timber) Monies from additional grazing Pannage – fee for depasturing pigs
Warden Hereditary	Protection of forest from unauthorised hunting and damage, clearance and cultivation Preside at local attachment courts. Attend Forest Eyre (courts)	Hawks from eyries (for falconry); Honey; Nuts; Rose hips Fern all year; Heath Tree stumps; Small wood for house repairs and fencing Free warren (small-game): hares, foxes, wildcats, badgers, and pests or vermin Depasturing pigs (quit of pannage) all year except in the fence month Depasturing all domestic stock except goats and mature sheep, all year except fence month Fines imposed for taking small game, using nets, and taking deadwood without authority Fines imposed for releasing stray domestic stock Money charged to maim dogs to prevent them hunting
Foresters Hereditary, and linked to land-holding	Protection of forest from unauthorised hunting and damage, clearance and cultivation Attend local attachment courts and Forest Eyre (courts). (In certain cases) provide military service – providing one man in armour on horseback	Collection of standing deadwood for nine weeks each year; Fallen sticks (except great cablish) Small wood for house repairs and fencing; Lop-and-top of trees felled by command of king Certain timber trees each year; Fees charged for firewood or small wood for making ploughs First acre of each coppice felled; Deadwood hedges when no longer needed Fern all year; Sand – one man digging all year Depasturing pigs (quit of pannage) in the autumn season Depasturing draught animals (oxen/horses) Fees charged for pigs in early winter (retro-pannagium) Cheminage -tolls charged for use of forest roads
Commoners Rights normally attached to land, with occupiers able to exercise rights	Attend or send representatives to local commoners courts	Variable, but include: Estovers – sticks, firewood, fern, heath, furze, small wood Right to cut tree limbs and bushes for browse Botes – rights to take small wood for house repair, fuel, ploughs, fences, carts Depasturing pigs in autumn (pannage) – small charge may apply Pasturage – grazing animals (sheep, cattle, horses). May be quantified or not. Locally also rights to take minerals, peat for fuel, and fish for personal consumption.

Photograph 3: Fallow deer (*Dama dama*) were introduced to England by the Normans to populate the royal hunting forests, and became rapidly naturalised.

Photograph 4: Wild boar (*Sus scrofa*) were probably exterminated in the early years of the royal forests, although there were local attempts at reintroduction.

1986). Later records of boar in documentation relating to Savernake probably concern reintroductions.

The king also had the right to all timber trees. In Savernake the most valuable timber trees were oaks, mainly *Quercus robur* with fewer *Q. petraea* and hybrids. At times of castle construction and rebuilding, and during the tension of war, timber exploitation was considerable, involving thousands of trees. Although the king theoretically held exclusive rights, in practice there was a culture of the widespread taking of timber, and perpetrators could receive modest fines or have their equipment confiscated, without further retribution unless they were 'persistent malefactors'. The king also had the right to wind-thrown trees and timber, known as 'great cablish'. In 1222 a massive storm wreaked havoc throughout the royal forests, felling numerous valuable trees. Henry III sent instructions to each of the affected forests, including Savernake, to see that 'the cablish of ours which was flattened in the forests should be inspected, and a valuation submitted under seal', prior to sale (Calendar Patent Rolls). Timber could be sold, but venison and hunting were not traded in this way. However the king frequently conferred gifts of venison and recreational hunting on close supporters, hence displaying his exclusive power and strengthening allegiance through patronage. The king also bestowed gifts of timber to religious institutions for building cathedrals and priories and to certain favoured nobles for major projects.

The king had income deriving from agistment (the admission of grazing animals into the forest), and other payments and fines for clearance or cultivation. In 1370 the king was entitled to all payments for pigs (known as 'pannage') in Savernake during the autumn season, which extended for forty days between the festivals of Holyrood Day and the Feast of St Martin (WSA 1300-153A). However the warden and certain commoners were permitted to keep pigs in the forest 'quit of pannage'.

Privileges and Obligations of the Forest Warden

Through the system imposed by Norman kings, local officials held positions on a territorial basis within the forests, deriving lucrative benefits in return for serving as custodians, and guarding the king's interests. These officers did not hold salaried appointments, but nevertheless maintained profitable positions, enabling their occupiers to generate or extort substantial revenue and other benefits. Such offices conferred a badge of honour and were sought vigorously. The most senior local officer in each forest was the warden, who had overall responsibility for the site (or sometimes two or more forests). In a high proportion of the forests, the warden held the position on a hereditary basis. Savernake Forest is probably unique in that the wardenship has stayed in the same family throughout its entire history. Hence Richard Esturmy, who was mentioned in the Domesday Book of 1086, was almost certainly the ancestor of all wardens right into the 21st century.

Wardens were proud of their appointments, and guarded their posts jealously. Whilst wardenship was often hereditary, the king personally sanctioned transfer to each new heir, exacting fees for issuing such licenses. A charter of April 1200 records a transfer of wardenship of Savernake after the death of Geoffrey Esturmy (Photograph 5). It relates that 'John, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, conveys to Henry Esturmy such seisin [possession] in the Forest of Savernake as Geoffrey, his father, had held at his death, subject to the same duties that Geoffrey and his ancestors had always performed'. Henry was granted all the land in 'wood and open country, in roads and paths, in meadows and pastures and in all places and things with all liberties and free customs pertaining' (WSA 1300-12).

Photograph 5: Charter through which John, King of England and Duke of Normandy, confirmed Henry Esturmy as warden of Savernake, with the same rights and duties that his father and ancestors had always held (WSA 1300-12). Courtesy of Wiltshire and Swindon History Centre.

Most forest wardens had positions established through a feudal tenure known as 'grand serjeanty', and undertook specific duties for the king. Amongst forest duties, the warden had the general responsibility of maintaining the king's peace. He protected the deer, ensuring that browse was cut for them in times of shortage, and arrested poachers. He presided at inquests of trespasses against the vert (vegetation) and venison (deer), and at the local attachment courts where offenders were indicted for formal judgement at the itinerant national court, the 'Forest Eyre'. He prevented unauthorised purprestures (enclosures and buildings), threw down houses, and seized assarts (cultivated land), in both cases 'attaching' offenders to appear at the Forest Eyre. The warden of Savernake also held specific duties as a forester in one of the divisions or bailiwicks of the forest, and this also carried military obligations. Hence Sir Henry Esturmy, who died in 1295, had to provide one man armed with a hauberk (chain-mail armour), whenever the king demanded military service 'within the seas' (usually in Wales) (WSA 1300-6574).

The warden also ensured that commoners did not exceed their established rights. He was frequently commanded to provide venison for the king's table, or to supply a royal gift, or occasionally to take live deer for stocking parks. He would supervise the cutting of trees upon instruction to provide constructional timber for castles or other works, and the supply of fuel.

The forest warden was entitled to a range of privileges in association with his office (Table 4.1). He could take the eyries (broods) of hawks used in falconry, honey, nuts (mainly hazel, *Coryllus avellana*) and rose-hips (fruits of *Rosa* spp). He could take animals regarded as pests or vermin, and had free chase of hares (*Lepus europaeus*), foxes (*Vulpes vulpes*), wild cats (*Felis sylvestris*), and badgers (*Meles meles*), whilst retaining fines levied in the Forest court on anyone taking these or partridges without authorisation. He was also entitled to fines imposed for the use of nets and traps for rabbits (*Oryctolagus cuniculus*), or the unsanctioned taking of deadwood, and the straying and escape of animals except in the 'fence month' in the middle of the year when deer were fawning and were not to be disturbed. He could take timber for repairing buildings, and wood for fencing. These rights were known as 'housebote' and' haybote'; the word 'bote' comes from a redundant Old English word meaning 'good' (from which the modern term 'better' has survived). He was also entitled to tree-stumps, after each inspection of the forest known as a 'regard', and the collection of fern (mainly bracken, *Pteridium aquilinum*) and heath (*Calluna vulgaris, Erica* and other low shrubs) for animal bedding or thatch. He could depasture pigs, and all domestic animals except goats and 'two-toothed' (ie mature) sheep, all the year except during the fence month, without payments. He was also entitled to retain money charged for the deliberate maiming of dogs, so that they were unable to hunt (WSA 1300-153A).

In the case of Savernake, even within a forest extending (at its greatest) to 250 square kilometres, it is unlikely that these privileges were viewed as substantial. Indeed, it is uncertain whether an entitlement to take certain products, like rose-hips, was valued or exercised, and such produce may have been adequately available to everyone who wanted them anyway. Whilst the utilitarian right to depasture grazing stock and pigs had a value, it provided limited foundation for wealth. It is likely that the real value of wardenship, which caused it to be revered and ruthlessly protected, was the despotic power it conferred on its holder, who was capable of ruling a minor baronry under the king's banner. Through his authority to hunt or take produce denied to others, he ostentatiously asserted his eminence within the king's close circle. This power also extended to the ability to impose fines and attach offenders for trespasses against the vert and venison. The fear of the courts, especially the Forest Eyre, whose draconian penalties theoretically extended to execution or maiming during the early years of the royal forests, provided opportunity to extort monies or other favours for overlooking misdemeanours. By controlling all roads, erection of buildings and fences, every use of the plough, grazing of animals, cutting of vegetation and hunting, he exercised power over the local populace, who found that money could be demanded for every minor activity.

Privileges and Obligations of the Foresters

Each division or bailiwick was overseen by local officers called foresters-of-fee, who answered to the warden. In Savernake there were five bailiwicks. The foresters occupied their positions as hereditary entitlements attached to specified parcels of land which were held from the King. A parchment roll that can be attributed to 1245 states that the 'foresters of fee in Savernake hold their office anciently from the conquest of England' (i.e. 1066) (PRO E146-2-33). The foresters were required to protect the vert and the venison, to report offenders and attach them at local courts, and appear at Forest Eyres, where they had to swear allegiance.

The foresters had the right to collect dead wood without using metal tools during each of the three-week periods before Christmas, Easter and Michaelmas. They were entitled to take fallen wood except great cablish (wind thrown trees) which belonged to the king. They could also take reasonable small-wood for housebote (minor repairs to houses) and haybote (fencing). In certain areas they held specific rights, including collecting fern all year (for bedding) except in the fence month. They could graze draught animals, whilst also retaining fees charged to others who grazed stock. They could graze pigs without payment in the autumnal pannage season when animals fed on acorns and beech-nuts, and could keep fees known as 'retro-pannagium' paid for pigs from the festivals of Martinmas to the Purification of the Blessed Virgin Mary (early winter). Some foresters were permitted to take a certain number of oak each year, retain fees charged for taking fuel or timber for making ploughs, have an acre of underwood from every coppice cut, and have the old deadwood hedges after they were no longer needed to protect young growth. They could have lop and top (small branches and leaves) of trees felled for the use of the king or queen, or where timber was gifted by royal warrant. Some could have a man digging sand all year. They were also entitled to charge toll monies known as 'cheminage' levied on goods carted through their bailiwick. If foresters left their bailiwick, the warden was entitled to seize their 'equitatura', comprising horse, saddle, bridle and horn (PRO E146-2-33; E32-348; WSA 1300-153A; 1300-6574).

The Rights of Commoners

The forest did not affect the different strata of society evenly. Whilst it severely constrained ploughing, it provided a stable resource for commoners from bordering settlements, whose ancient rights were fully protected within the forest system. Despite the subservience of the peasant population, the protection of commoning may have meant that they were net beneficiaries of forest law. It is almost inevitable that commoning pre-dated the establishment of Savernake and most of the other royal forests. However, because such rights were ancient, long established by custom and practice, they are unrecorded. It is only when new rights were established by express grant that they feature significantly in documentary sources, mainly from the 13th century. Forests were initially established on those lands retained by the king, and not transferred to lords for management by agricultural communities within the manorial system. The lands least suited for the establishment of manors were those with natural constraints on farming imposed by unfavourable soils, drainage, or climate. These areas, whilst difficult to plough productively, had extensive resources for grazing, fuel, heath and fern. It is probable that use in Saxon and prehistoric times mirrored that which is traceable throughout most of the second millennium, when bordering settlements had well-established rights throughout the landscape, moving their animals significant distances to make use of the pasture, or to collect fuel. Hence, the cumulative circumstantial evidence suggests that forest law simply applied a mantle above the existing pattern of common usage.

Hunting forests, like other commonable lands, provided distinctly different benefits for the right-holders and land-holders (in this case – the king). The former derived largely agricultural and domestic products. The forest provided, more than anything else, pasturage for their animals. Lopped or pollarded trees also supplied browse, and could provide nutrition even outside the growing season. The forests also provided fuel and animal bedding. Coppice poles, which had to be purchased rather than taken as a right, were partly used to make fence hurdles, and faggots of firewood, while furze and thorn, together with deadwood, provided domestic fuel. In contrast, the landowner derived benefit from the deer and the prestige associated with them, and from constructional timber and sale of wood products, including coppice and bark for the tanning industry. The landowner's interests suffered from the activities of the borderers, whilst they, in contrast, found that the deer, which they were not entitled to take, competed for browse and trespassed into their arable lands. Although acorns and beech mast provided fodder for pigs, any large, unlopped and spreading trees could be a nuisance to the commoners by shading out the lush grazing, whilst they had no authority to take timber anyway. Indeed, in most cases borderers were forbidden from taking any oak or 'great trees' without authorisation, even on their own holdings.

The commons were managed in accordance with societal customs, which could be recognized and enforced by judgments and decrees of the courts. Where local decision-making was challenged, higher courts (at county or hundred level) could determine issues. In due course however, where custom and precedent were unclear or inconsistent, parliament could draw up legislation. Common lands and rights hence exemplify the transition whereby the ancient laws of England were derived from custom, recognised in the courts during the development of common or universal law, and transposed into national statute. Some of England's oldest legislation relates to common land, including the Commons Acts of 1235 and 1285 – named 'The Statutes of Merton and

Westminster' – (the latter of which stayed in force for 721 years until its repeal in 2006). Despite their antiquity, even these Acts included no new provisions, and simply confirmed through statute something long recognised in practice. Local courts, focused either on the manors where these existed, or forest courts (on the king's extra-manorial land) provided a meeting place of commoners and the lord's or king's representatives. They established rules and byelaws, oversaw the rights of tenants, and administered fines on miscreants, either as a punishment or in the form of a licence to exceed their normal rights. Such laws were often unwritten, although occasionally specific attempts were made to set out in writing the memory of such traditions as a 'custumal' (customs of the manor or holding). Despite their local and often unwritten nature, custom and practice carried the weight of law.

Even within the royal forests, where it might be anticipated that the king's prerogative need have little regard to commoners, their rights were given protection in law. The 'Carta de Foresta' (Charter of the Forests) of 1217 makes explicit reference to the commoners. The Charter had been drawn up alongside the Magna Carta, a cornerstone of English (and American) law. Article 1 of the Carta de Foresta states: 'Those woods which belong to the King, which have been afforested, shall remain forest, saving the common usage of pasture and other matters, to those who were accustomed to the same' (McKechnie, 1914). In 1592 the barrister John Manwood, who attended some of the last itinerant courts or Forest Eyres held in England, produced 'A Treatise of the Lawes of the Forest', the first book on Forest Law. Drawing heavily on the Carta de Foresta and other early proclamations, he confirmed the rights of the commoners. He stated, 'where the King doth afforest his own woods or lands, he must not … prejudice any man to have common in the same that used, or by right ought to have common therein, but does still reserve the common of herbage, as it was at the Common Law'. Such rights of common were again asserted through a summary of forest law known as the 'Ordinatio Forestae' (Assize of the Forest) of 1305 (Young, 1979).

Of the seven main categories of common right generally encountered in England, three occur frequently in the royal hunting forests. These are: estovers, the right to take sticks, bracken and other minor products; pannage, the right to put pigs into woodland in autumn; and pasturage, the right to graze animals. Three other rights - turbary, the right to cut peat for fuel; piscary, or the right to fish; and also the entitlement to take minerals (known as a 'right in the soil') may have occurred locally. A further category, the ability to catch wild creatures for personal consumption ('animals ferae naturae'), was probably rarely a common right within forests, because of the protection of game, and existed solely as a privilege conferred on the warden and certain favoured nobility.

Photograph 6: The collection of fern and heath, mainly for animal bedding, was an important component of the common right called 'estovers'. Postcard of Savernake, 1916.

Estovers – the collection of sticks, fern, heath and minor wood products

The right of estovers, named from an Old French word meaning 'necessary', is a common right to take sticks, small wood, shrubs, bracken, rushes or other minor vegetation for personal use in buildings or on farms (Photograph 6). Such rights were attached to land where the benefits could be used – for example, the right to firewood could apply only to the household where it was to be burned, and it could not be sold to others. The ability to take small products in the forest could become an inalienable common right, when it was formally granted by the lord of the manor, or had been carried out through custom and practice for a sufficient period to be recognised by law. For traditional practice to be properly codified as a common right, the law required such usage to meet the three tests of 'nec vi, nec clam, nec precario' (without force, without secrecy, without permission).

Where documentary sources are available, these generally relate to new rights being formally granted, rather than established custom and practice. Many such rights of estovers were conferred on neighbouring religious institutions. In Savernake for example, in 1223 Henry III granted to the brothers and sisters of the hospital of St. John the Baptist, Marlborough, the right to have 'for ever, one man going daily for dry and dead wood into the Forest of Savernake, to collect as much as he can by hand, without using any iron tool or axe, and to carry the same to the hospital on his back for their hearth' (Calendar Patent Rolls). The Priory of St Margaret's had common rights to collect firewood in the forest, taking as much as one man with one horse could carry to the priory every day except on holy days, between the Feasts of All Saints and the Invention of the Holy Cross (WSA 9-2-388).

Rights were also sometimes granted to neighbouring nobility. When staying at Marlborough castle in 1231, the King granted the Countess of Pembroke reasonable

estovers from Savernake, to maintain her manor, wherever sufficient could be taken without nuisance to the forest (Calendar Close Rolls). The right to take firewood was not necessarily free. At an inquisition at Marlborough in 1361 it was found that the Abbot of Hyde had always been accustomed to take 100 loads of fuel at Christmas, and 100 at Easter, for which a charge of 14 shillings was made, under the name of 'stocksilver' (Stokes, 1914).

It was normal practice for commoners to take small wood from the commons to maintain their buildings; they could face eviction if their properties were not maintained. The entitlement of 'botes' operated at all levels of the social hierarchy, and from the lowliest hovel to prestigious royal buildings. For many centuries Savernake was associated with Marlborough castle, and seen as essential to its upkeep. In 1254 a mandate was issued to Ernaldo de Bosco, Justice of the Forests, to permit the constable of Marlborough housebote and haybote in the Savernake, as accustomed for the safe keeping of the castle (Calendar Close Rolls).

The entitlement of poor people to take wood in the forest was recognised in the forest courts, and any infringement of the right could be challenged in law. However, it was also recognised that the collection of these minor products could damage Forest interests. In 1340 the regarders reported that undergrowth was suffering from rights called 'wood-leave' and 'fern-leave', as men from the adjoining townships entered the forest in search of dead wood and bracken (PRO E32-217).

Bracken, the commonest fern of Savernake and much of Britain, was used for bedding, and was stored for winter use when harvested dry and brown in the autumn. Bracken could also be used for thatching (WSA 192-44). Bracken for thatch typically used the hard shiny stems, stripped of their fronds, collected in late summer (Winchester, 2006). Forest documents record many incidents of people from neighbouring villages removing the outer branches ('exbranchatura') of oak – probably 'shrouding' the trees to provide small wood and fodder for domestic animals (PRO E146-2-27). Some people received minor fines for this, but in other cases the practice was recognised as a right or there was implied licence. Sometimes such rights were quantified through tenancy agreements. In 1578 Crofton tenants were allowed "two lots of shroud wood [lopped limbs] from the common of Crofton" (WSA 9-14-223). Forest keepers were required to cut and store branches and shrubs for winter use. This was sometimes called 'hart-hewing' when used as winter fodder for deer or other stock, or 'fuel-hewing' when intended for domestic purposes. The cutting of browse resulted in large quantities of sticks after the animals had stripped them of leaves, bark or buds, which were then available as firewood. In later centuries the keepers were allowed to make faggots of sticks after the deer had browsed them (WSA 1300-1500).

Photograph 7: Pigs snuffling amongst leaf litter in the New Forest, in association with the right of 'pannage' exerciseable in autumn, when they fatten on acorns and beech-nuts.

Pannage – the right to fatten pigs

Pannage was originally a fee charged for allowing pigs into forests in the autumn when they could fatten on acorns, beechmast and other nuts (Photograph 7). However, by the 13th century pannage was sometimes applied colloquially to a common right to depasture pigs without payment (Manwood, 1615).

Whilst most pigs were released during the autumn, when acorns lay across the Forest floor, or could be knocked from trees, some were present in other seasons. For example in 1344 Queen Philippa granted to the Priory of St. Margaret's, common of pasture for 100 demesne swine, quit of pannage, together with pig-sties in the queen's Forest of Savernake at all time of the year except the fence month, and except in her lawns there, 'for ever' (Calendar Patent Rolls). In 1399 Walter Hungerford was granted a lifetime privilege of turning as many pigs into Savernake, as could be supported at the Barton of Marlborough during the winter (Calendar Patent Rolls).

Pigs could present particular difficulties in the Forest. During the fawning season they had capacity to kill young deer. At a court held on the 19 June in the 6th year of the reign of King Edward VI [1552] the Ranger John Berwyck reported that pigs had killed fawns in his bailiwick (WSA 1300-86). Pigs could also cause significant damage to the Forest by rooting. In 1331 the forester Robert de Bilkemore was mentioned in court for his piggery from which 35 pigs wandered into the forest to the lord king's damage and to the detriment of the pasture of his beasts of chase (E32-217). In March 1595 it was reported that "Nicholas Kember hath suffered nine hogs or swyne to go at large in the forest and that they have dug the ways in the forest in the bottoms and hath done much harm and hunted the most part of this winter" (WSA 1300-87).

Unringed or pegged pigs could cause particular damage. In 1577 it was "ordered that the keepers finding any hog between Holyrood Day and Saint Martin's day unringed should bring them unto the pound and there

keep them until the owner has payed such penalties as are contained in the statute". It was also ordered that "in the fence month every person must keep his hogs out of the forest on pain to forfeit 4d for each" (WSA 1300-87). It seems likely that fines were treated as occasional routine charges rather than punishments, and enabled regulation of normal practice. At a forest court of 1563, fines of 4 pence were imposed after hogs were impounded on 32 occasions. All of the borderers involved were repeat offenders. One man had to pay fines on five occasions after his hogs were impounded. The court book stated that all were unringed (WSA 9-22-240).

Pasturage – the right to graze animals

Common grazing was the greatest single asset available to borderers living in settlements around the forests (Photograph 8). In Savernake common pasturage was almost certainly of ancient origin, and long pre-dates the first written material from the 12th and 13th centuries. The survival of documentary evidence of such rights is probably a reflection of their atypical origin through formalised legal grants, often to religious institutions. Frequently grants were made in 'frankalmoin', which was a tenure bestowed upon those in the service of God, in exchange for divine services or the performance of a religious duty. For example, in c1250, for the well-being of his soul and the souls of his ancestors, Geoffrey Esturmy granted to the Priory of Easton and the 'brothers serving God there, 50 acres of his wood in Savernac, … with full common of pasture for all kinds of beasts there' (WSA 1300-1). The parcel of Savernake can be traced subsequently, and became known as Priory Wood. In 1540 it was described as a common wood thinly set with great oaks. Some of these giant spreading trees, grown in open conditions maintained by grazing animals, have survived into modern times (Figure 4.2).

The grant of 'full common of pasture for all kinds of beasts in Savernac' is an example of common rights 'sans nombre' (without number). This does not mean that the rights were wholly unconstrained, but that they were not formally quantified. Right holders could still be accused of surcharging a common if they put out so many animals in a Forest that it prejudiced the browse of deer, or pasture by the king or lord (Manwood, 1615). The quantification of rights became increasingly frequent during medieval times.

Grazing commons were universal throughout the forest and manors of the Savernake area. A principle employed to ensure that grazing did not become excessive was termed 'levancy and couchancy'. This limited the animals that could be depastured in summer, to the number that the right holder could accommodate and feed on their own farm in the winter. This enabled the lord to exercise control, facilitating sustainable management, whilst allowing flexibility. An indenture of one farm in 1376 included the right of pasture for as many bulls, cows, bullocks and heifers in Savernake Forest as the lessee could maintain in forage during the winter, plus pasture of one cow for the keeper of the animals (Calendar Patent Rolls). Whilst such rights were not expressed in number, infringements could still be identified. For example in 1601 the commoners' court known as the 'Forest View' reported a cottager for pasturing 20 beasts, which was 16 more than his tenement could sustain in winter (WSA 1300-87). 'Levancy and couchancy' was a widely applied mechanism in England for at least 600 years. In Savernake it often existed alongside quantified rights, using separate systems for different stock, even within the same tenancy. For example, in 1540 tenants from neighbouring villages could depasture as many beasts horses and cows in the summer as they could feed in the winter, whilst sheep-rights were quantified at between 30 and 300 (Longleat House, Seymour Papers, vol 12).

Photograph 8: Common grazing, mainly by cattle and ponies, is still the predominant feature governing the management and appearance of the New Forest today.

Rights of common could become established when new cottages were built. In 1580 a Forest Court heard that 15 smallholders had each established cottages and a few acres of ground on the waste 'and every of them claims and prevaileth to have common pasture in all the Forest of Savernake' (WSRO 1300-87).

Whilst common rights were often attached to property, which might be rented or held in exchange for goods or services, the rights themselves were not contingent upon payment. This was in contrast to agistment, where grazing was purchased. Through such licence, those without rights or wanting to exceed their rights could depasture stock in the forest. Hence a complex system arose, where some animals were present by right, and some by licence. Agisters were recognised forest officials, who worked alongside the foresters, and were required to collect dues. Despite the payment, which suggested a temporary and discretionary licence, agistment became recognised as a custom, and hence could not be lightly withdrawn. Agistment rents could be set according to the size of smallholdings, suggesting that the principles of 'levancy and couchancy' applied here too.

Figure 4.2

Engraving of the King Oak in Savernake by J.G. Strutt, 1822, in a woodland granted to Priory of Easton in c1250.

It was described as being 'common land with great oaks thinly set' in 1540, and was later called 'Priory Wood'.

The rights of commoners needed to be accommodated within estate plans. Forest documents frequently relate to customary practices which were 'held by right', and 'ought to be held by right', implying a certainty respected on all sides. Attempts were sometimes made to acquire rights, or to negotiate agreements amongst right holders to permit division and exclusive management. In 1270 Henry III had granted the Priory of St Margaret's at Marlborough the right to depasture sixteen oxen and four cows in the Forest of Savernake, excepting the lawns 'for ever', without having to pay the usual fine (known as 'exchapium') if the cattle accidentally strayed, but instead driving them back into the forest pasture (Fry, 1908; Calendar Close Rolls). These rights remained attached to the site of the Priory when it was closed and converted into a farm in 1539. The rights must have been perceived as a considerable encumbrance on the Estate, as William, later second Duke of Somerset, agreed with the occupants of the new St Margaret's Farm to relinquish their right to collect firewood for £120, and their right to graze 20 cattle for £270 (WSA 9-2-388).

Where common rights were conveyed through a legal grant of the monarch during medieval times, such rights were not geographically constrained, suggesting a theoretical entitlement to graze or collect firewood in all areas. However other rights established through prescription (custom and practice) probably always applied to a specific area. The forest courts heard accusations of commoners exceeding their bounds. Certainly by 16th century there was recognition that the borderers from neighbouring settlements had common rights in defined parts of the Forest, where they could be expected to oppose trespass by neighbouring villages. Areas of the forest were named after the settlements which were entitled to depasture their stock, even when such villages were some kilometres away (WSA 9-2-388).

The number of commonable animals fluctuated as new properties were established or tenancy agreements made. The grazing of animals over protracted periods (centuries) could result in major landscape-scale changes, perhaps barely perceptible within one lifetime. This was especially the case as populations increased and new common rights were recognised. Such rights could become established when new cottages were built. In the 16th century a Savernake Forest court heard that 15

smallholders had each established cottages and a few acres of ground on the waste 'and every of them claims and prevaileth to have common pasture in all the forest' (WSA 1300-87). In extreme cases prolonged grazing prevented regeneration of trees, and woodlands gradually converted to open pasture. An awareness of timber shortfalls led to the introduction of legislation to protect woodlands throughout Europe from the late 15th century. However it was not until the Statute for the Preservation of Woods was passed in 1544 that attempts were made to address timber shortfalls and its economic implications in England (35, Henry VIII, chapter 17). The pre-amble to the Act gives emphatic expression to the parlous state of the woods. It states 'The King perceiving the great decay of timber and woods universally to be such that unless speedy remedy be provided, there is great and manifest likelihood of scarcity and lack, as well of timber for making, repairing and maintaining of houses, as for ships for the necessary relief of the whole community'. The Act required that, during clearance, coppices should retain twelve uncut standard trees per acre. These had to be at least 10 inches (25 cm) in diameter before they might be felled. Young coppices had to be enclosed to protect them from grazing animals for at least four years after clearing; those over 14 years old had to be enclosed for six years, and older coppices for seven. An Act of 1558 (Elizabeth I) extended the closure period to nine years. Once standard trees were a certain height, they were out of reach of both deer and domestic stock, and could continue unhindered. In ideal conditions this would lead to coppice-with-standards woodland, in which great trees formed an intermittent canopy over an understory of coppiced hazel and other poles.

Although the long term reduction in tree cover may have been tolerated whilst such sites remained royal hunting forests, in England such sites were transferred into private estates, especially during the 16th century. In the case of Savernake, the paucity of trees was thrown into sharp relief when the new owner, Edward Seymour, resolved to build a grand mansion in the 1570s, and asked his steward about where his best trees were. The response was shocking. Despite owning a forest of thousands of hectares, he had no timber trees left (Longleat House, Seymour Papers, Volume V). He was in the absurd position of having to purchase 640 oak from a neighbour (WSA 9-26-512).

The records reveal chronic deterioration and abuse of the woodlands, coupled with commoners' traditional determination to guard their rights jealously. Seymour's officers reported that there had been "great decay and spoil of woods so that much woodland is converted into pasture … whilst the Great Wood in Savernack is empty and old, and the underwood much decayed". They continued that the "deer were great annoyances and caused destruction to the wood, whilst the borderers oppress the forest with more cattle than in former times, and many connive to bring cattle from foreign townships [ie those without true rights] …and spoil the first spring of wood as well of coppice, which were formerly preserved" (WSA 1300-104).

In 1594 Seymour instructed his officers to find a suitable location for inclosing part of the Forest, and planting it with oak, ash (*Fraxinus excelsior*) and hazel, and "to increase the same to thick and strong wood; and not to suffer any cattle". The whole forest however was common land, and the commoners threatened to prevent any workmen from banking, ditching and erecting fences. They resisted the planting programme, which had to be abandoned. In a general tirade against the destruction of estate woods the steward bewailed "these commoners do marvellously murmur and grudge", and continued: "this realm will, in short time, rue the waste of it, and yet how lamentable a case is it to see the perverse disposition of the people" (WSA 1300-104).

It is clear that, in this particular instance, the interests of the landowner, and those of the borderers, had become diametrically opposed, establishing barriers related to status and class. This can be interpreted as part of the occasional antagonism between lord and peasant found throughout much of Europe. This antipathy, which persisted for centuries, was part of a land-use system later described in a parliamentary journal as "a perpetual struggle of jarring interests, in which no party can improve his own share without hurting that of others" (House of Commons, 1788). However, despite occasional conflicts caused whenever one party tested how far their rights might extend, commoning was an enduring practice in the royal hunting forests for most of a millennium (and possibly much longer), from which nearly the whole community could derive benefits. Its eventual demise brought disruption to the fabric of local society, and inflicted hardship on those least able to suffer.

Although the new landowner's attempt to extinguish common rights was abortive, the transfer of forests from state to private hands marked the beginning of a gradual change in which landowners progressively gained control. Inclosure of the extensive commons of Savernake and its environs spanned 200 years, and mirrored movements elsewhere in Britain and Europe. Whereas common rights had formerly extended over most of Savernake, by a combination of negotiation and legislation, they were ultimately extinguished almost everywhere. In many of the former royal forests this finally enabled planting of trees, hence perpetuating the (fundamentally wrong) impression that such forests had always been cloaked in trees.

In general, during the decline of the commons, it was the least productive land that was most likely to survive: it had been the last of the King's lands to be allotted to subjects, the last parcel (the 'waste') of any manor to be cultivated, and the last to have its common rights extinguished through inclosure. When inclosure took place, certain less productive land was occasionally retained as a token 'Poor's Allotment' where peasants could collect firewood or plant crops, a futile gesture to those made destitute, and often of short duration. The private Savernake Estate was undoubtedly a colossal beneficiary from inclosure. By parliamentary inclosure

Photograph 9: The King of Limbs, one of many giant named oaks in Savernake. The girth is larger than trees known to be 1000 years old.

alone it was allocated c2,800ha (Sandell, 1971), and may have achieved many times this figure through private negotiation. Corporately these inclosures caused a massive change in landscape and society. The substantial rise in estate income enabled the pursuit of ambitious building, landscaping and woodland planting programmes. In contrast the landless poor could be driven further into poverty and desperation. John Aubrey, travelling through Wiltshire in the 17th century, remarked on the poverty caused by inclosure and disafforestation: "... the cry of the poor was … lamentable. I knew several that did remember keeping a cow for four pence per year. The order was, how many they could winter they might summer, and pigs did cost nothing. Now travellers on highways are encumbered by beggars" (Jackson, 1862).

The legacy of the commons and royal hunting forests

The New Forest, one of the first areas to come under Forest Law in 1079, is still managed by the state. It survives as a large tract of unenclosed land, a mix of heath, bracken, gorse, acid grassland, scrub and trees, grazed by commoners' cattle and ponies, and with pigs feeding on acorns during the pannage season. The area of the New Forest available for common grazing is 22.000 ha. It is browsed by herds of wild deer, although hunting, the underlying purpose of its establishment, has ceased. Its appearance today may be little changed from that of 900 years ago (Photograph 2 and Table 4.1). The great majority (perhaps 99%) of other former royal hunting forests have long been transferred to private hands, and in most cases the commons extinguished. However, they still exhibit centuries of shared use and common rights, which are fundamental to their value for biodiversity. In particular, such areas frequently have ancient oaks, with spreading crowns, which have grown in open conditions, and bear the marks of centuries of pollarding or shrouding, both practices of removing limbs from standing trees without felling, suitable for grazed landscapes. These trees with abundant deadwood are important for lichens, fungi, invertebrates and hole-nesting birds. Surviving veterans have often acquired names. Ancient named trees in Savernake include the Big-bellied Oak, Cathedral Oak, Duke's Vaunt and King of Limbs (Photograph 9). Such trees have great social and cultural significance, are prominent landmarks and are depicted on maps. It seems probable, based on a comparison of girth sizes with trees of known age, that a few of the veterans surviving in Savernake predate the Norman conquest of 1066, and the establishment of the royal hunting forests themselves. The spreading, low growing and ancient trees are unable to survive well amongst dense, modern plantations, and need space to photosynthesise, especially as they age and an increasing proportion of foliage is produced close to the trunk. It is important that the conditions which established such trees is either re-established or emulated, ideally by permitting the reintroduction of grazing, or by cutting back neighbouring trees to allow these relics to persist for centuries to come.

References

Printed Sources

Fauroux, M., 1961. *Recueil des Actes des Ducs de Normandie.* Societie des Antiquairies de Normandie, France, 911-1066.

Fry, E.A., (ed) 1908. *Abstracts of Inquisitions Post Mortem.* British Records Society, London, 1242-1326.

Gover, J.E.B., Mawer, A. and Stenton, F.M., 1992. T*he Place Names of Wiltshire*. English Place Name Society. Nottingham, UK.

House of Commons, 1788. *Journal 43*, p 561.

Jackson, J.E.J., (ed.) 1862. *Wiltshire: The Topographical Collections of John Aubrey 1659-1670.* Wiltshire Archaeological and Natural History Society, Devizes.

Langton, J. and Jones, G., 2009. *Forests and Chases of England and Wales c. 1000 to c. 1850*. [http://info.sjc.ox.ac.uk/forests/Index.html, accessed 2013]

Manwood, J., 1615. *A Treatise of the Lawes of the Forest*. Society of Stationers, London.

McKechnie, W.S., 1914. *Magna Carta: A Commentary on the Great Charter of King John, with an Historical Introduction.* Maclehose, Glasgow.

Petit-Dutaillis, C., 1915. *Studies and Notes Supplementary to Stubb's Constitutional History*. Manchester, UK.

Rackham, O., 1986. *The History of the Countryside*. Dent, London.

Sandell, R.E., 1971. *Abstracts of Wiltshire Inclosure Awards and Agreements*. Wiltshire Records Society, Devizes, UK.

Stokes, E., (ed) 1914. *Abstracts of Wiltshire Inquisitiones Post Mortem, King Henry III, 1327-1377*. Wiltshire Archaeological and Natural History Society, Devizes, UK.

Verhulst, A., 2002. *The Carolingian Economy*. Cambridge University Press, Cambridge, UK.

Winchester, A., 2006. *Village byelaws and the management of a contested common resource: bracken (Pteridium aquilinum) in highland Britain, 1500-1800*. IASCP Europe Regional Meeting.

Yalden, D., 1999. *The History of British Mammals*. Poyser, London.

Young, C., 1979. *Royal Forests of Medieval England*. University of Pennsylvania Press.

Printed Calendars

Pipe Rolls

31 Henry I: 1129-1130

Patent Rolls

7 Henry III: 1222.

8 Henry III: 1223.

23 Edward III: 1350.

1 Henry IV:1399.

1 Richard II: 1376.

Close Rolls

1 Henry III: 1227-1231.

39 Henry III: 1254.

55 Henry III: 1270.

Acts of Parliament

Statute for the Preservation of Woods, 35 Henry VIII, chapter 17.

Primary sources

Wiltshire and Swindon Archives.

WSA 9-2-388: Lawsuit Extent St Margaret's Common 1762.

WSA 9-14-223: Survey of the manor of Crofton Fitzwarren c1597.

WSA 9-22-240: Presentments at the court of 'Morleighe Savernack', 1565, concerning forest animals.

WSA 9-26-512: Bargain and sale of oak trees, 1575.

WSA 192-44: Account book of the Earl of Hertford's Savernake Estate.

WSA 1300-1: Grant c1250, of Geoffrey Esturmy to hospital of Easton 50 acres of his wood in Savernake.

WSA 1300-12: Charter of King John, c1200, granting Henry Esturmy wardenship of Savernake.

WSA 1300-86: Savernake Forest Court Book 1541-1557.

WSA 1300-87: Savernake Forest Court Book 1577-1609.

WSA 1300-104: c1598, Legal Papers Savernake Forest.

WSA 1300-153A: Plea of the Eyre held at Amesbury, 1490 (citing earlier records).

WSA 1300-1500: Instructions to forest keepers at Savernake.

WSA 1300-6574: Notes by H.C. Brentnall relating to military service of Sir William Esturmy.

Longleat House

Seymour Papers, Volume V, fos 56, 57d: Correspondence Sir John Thynne and the Earl of Hertford.

Seymour Papers, vol XII: Tenancy agreements.

National Archives (Public Record Office)

PRO E32-217: Forest Plea Rolls Edward I – Edward III.

PRO E32-348: Portions of a forest eyre roll for Savernake forest.

PRO E146-2-27: Roll of Henry Esturmy, warden of Savernake Forest, c1350.

PRO E146-2-33: Pleas of Savernake Forest at an attachment court held at Wilton 1245.