Forests

Practitioner’s Insights: The Charter of the Forest—an Enduring Legacy

Eight hundred years ago, in England, the Charter of the Forest of 1217 (a.k.a. Carta de Foresta) was established as a complement to Magna Carta. As noted by scholars, the Charter of the Forest is one of the world’s first environmental statutes. It has influenced the evolution of law related to the management and protection of natural resources, environmental conservation and land use, over many centuries.

Despite its significance, the Charter of the Forest—sometimes referred to as “Magna Carta’s Lost Sister”—seems to have been overlooked with the passage of time. Considering its enduring legacy and its particularly heightened relevance today, initiatives have been and are being undertaken in several areas around the world in order to commemorate and celebrate its 800th anniversary. In England, for example, celebrations are taking place, including a Charter of the Forest conference at Lincoln Cathedral. In Canada, original documents of the Charter of the Forest (and the Magna Carta)—on loan from Durham Cathedral in the United Kingdom—toured the country in 2015. The Canadian Bar Association also underlined the 800th anniversary of the Charter of the Forest during its 2017 Environmental, Energy and Resources annual summit with a presentation on the topic.

And in the U.S., the American Bar Association put in place various initiatives specific to the Charter of the Forest to mark this anniversary. By way of example, it included information about the Charter of the Forest in its traveling exhibit on Magna Carta. It is also working through the Standing Committee on the Law Library of Congress to promote an understanding of the Charter and participation in events throughout the world. This article provides both an historical perspective on the Charter of the Forest and some key examples of its enduring legacy.

The Charter of the Forest was issued on Nov. 6, 1217, in England, on behalf of the nine-year-old King Henry III, as a complementary document to Magna Carta, first issued in 1215. The latter document imposed limits on the king’s powers for the first time and contained principles, such as the rule of law, the right to due process and the right to trial by one’s peers that have shaped democracy, law, and human rights over centuries. The Charter of the Forest was subsequently reissued many times, including in 1225 and in 1297, when it was reconfirmed, with Magna Carta, by King Edward I, in the Confirmation of the Charters. It affirmed the rights for all to access “Royal Forests.”

At the beginning of the 13th century, approximately one third of England was comprised of Royal Forests. These were owned by the king and included not only wooded areas but also rural villages where land was developed for agriculture. The monarch had absolute control over the governance of Royal Forests and the management of their resources, much to the detriment of Englishmen who needed access to those lands for food, fiber, water, building materials, and forage, among other things. Before the Charter of the Forest, public use of such Royal Forests was subject to arbitrary and severe rules. For example, extreme punishments, including the death penalty or the amputation of limbs, could be meted out for killing a deer.

Right of Common Access With the Charter of the Forest, the area of Royal Forests under the control of the monarch was substantially reduced, and a right of common access was provided. The Charter of the Forest gave every freeman the right to access and use Royal Forests, implicitly allowing him to meet his fundamental needs for food, water, shelter and other things, and aspire to attain adequate standards of living. Extreme punishments were no longer permitted.

The Charter of the Forest provided that “on his own land and with his own access to water within a Royal Forest, every freeman can make a mill, fishpond, dam, marsh, pit or dike, or reclaim arable ground, without danger of constituting an offense under the Forest Law, so long as it is not a nuisance to any of his neighbors.” As underlined by scholars, it created a new way of managing common resources by transferring authority over forest development from the monarch to freemen. Instead of being accountable only to the king, freemen now needed to take into account their neighbors, in
other words, the interest of their communities to ensure sustainable development and responsible use.

Section 17 of the Charter of the Forest provided that such “liberties of the forests” and customs were granted to everyone, regardless of social background, both within and without the Royal Forests. Every person was bound to observe its dictates. By establishing “liberties of the forests” for all, the Charter of the Forest planted the seeds of the eventual development of a culture that valued a just society through sustainable use and public access to land and natural resources—precepts which would evolve over centuries and still remain in our laws and values today. The requirement that a user not cause a nuisance to any of his neighbors continues as a central provision in modern land use laws.

The application of the Charter of the Forest was adapted over time, through many statutory enactments, as a function of the changing social, political, and economic realities of England. In 1971, what remained of it was repealed by the Wild Creatures and Forest Laws Act which formally abolished the prerogative rights of the Crown to wild creatures “together with any prerogative right to set aside land or water for the breeding, support or taking of wild creatures; and any franchise of forest, free chase, park or free warren.” The Charter of the Forest is the statute that remained in force for the longest period of time in England.

**Enduring Legacy** The Charter of the Forest has contributed to the establishment of foundations for the legal protection of the environment in the Anglo-Saxon world. It created long-lasting precedents regarding community responsibility for the management and use of shared resources and public access to land, which notions spread in various jurisdictions. It has also influenced the development of legal tools aimed at protecting the environment and natural resources for the common and public interest, including laws related to nature conservation, biodiversity, and access to land.

In essence, it is still current today and, although it was repealed in 1971, the principles behind the Charter of the Forest persisted and are still present, not only in the United Kingdom but beyond.

**Influence on American Natural Resources Law** The Charter of the Forest is reflected in the development of laws regulating both forests and natural resources in the U.S. It firmly established forest lands and forest resources as commons—allowing their use by all inhabitants. This concept of the commons has played a significant role in the U.S., particularly in its westward expansion, during which portions of the commons (federal lands) were given to private individuals and entities, including through homesteading and land grants. In addition, and more significantly, the federal government set aside huge swaths of public lands through the creation of national parks, assuring long-term use by all citizens.

Other federal lands continue to be used by private individuals and entities that secure grazing rights as well as timber, mineral, and oil and gas rights. Indeed, these types of uses of the commons have fostered considerable political and other tensions in the last several years. They typically involve the proper use and stewardship of government land and the appropriate role of government in allowing access to public land for private gain. These themes are playing out in the use of public lands for mining, gas drilling, grazing, and, most significantly, the use of water resources. In addition, the current administration is giving considerable attention to the establishment of national parks and has proposed reducing the number and size of certain national monuments. There remains a constant tension between the concept of private use of public lands and how any harmful effects that such use may be limiting other public uses. This is a concept that stems directly from the Charter of the Forest’s mandate that use should not cause a nuisance to others.

The Charter of the Forest is also reflected in the development of state constitutional and statutory law. For example, several states have adopted constitutional amendments assuring the rights of citizens to clean air and water. These constitutional amendments have become an important tool for environmental groups and other non-governmental organizations seeking to challenge a variety of state actions to approve drilling, mining, and the construction of pipelines, among other things. These laws can be viewed as direct descendants of the principles embodied in the Charter of the Forest.

**Canada’s Forest Management** In Canada, various statutes and regulations, at the federal, provincial and territorial levels, deal with public access to land and sustainable use of shared resources in the common and public interest, in the spirit of the Charter of the Forest.

Regarding forest management specifically, Canada’s provinces and territories have jurisdiction over the vast majority of the country’s wooded areas and develop and enforce laws, regulations, and policies related to forests. Such legal tools integrate sustainable forest management principles taking into account the interests of the various stakeholders, such as the general public, industries, First Nations and others. A parallel could be drawn with section 12 of the Charter of the Forest which provided, at the time, that the interests of “neighbors” i.e. the community, should be considered in the management of forests. Such provincial and territorial forest laws govern a range of economic, social and environmental matters—as was the case at the time of the Charter of the Forest in the 13th century—which impose, for example, land-use planning, wildlife habitat protection, and responsible timber harvesting. This established sustainable practices to ensure that forests would flourish and regrow, and serve their crucial purposes in any ecosystem.

For example, in Québec, in 2013, the provincial government enacted the Sustainable Forest Development Act (SFDA) which is applicable to forests in the domain of the state but also to the ones belonging to private owners. The object of the SFDA was to, notably, establish a forest regime designed to implement sustainable forest development, govern forest protection activities, and determine how responsibilities under the forest regime are to be shared between the state, regional bodies, Native communities, and users of the forest. Section 2 of the SFDA provides that sustainable forest development in Québec must contribute to:

- the preservation of biological diversity,
- the maintenance and improvement of the condition and productivity of forest ecosystems,
- the conservation of soil and water,
- the consideration—when making development choices—of the values and needs expressed by the affected population, and
the maintenance of the many socio-economic benefits derived from forests.
The predicates of SFDA are set out in its preamble, which, among other things, states that forests cover an enormous area and constitute a social asset of immeasurable value for present and future generations in Québec. They play a crucial role in maintaining ecological processes and the ecological balance at local, national and global levels, in particular by helping to counter climate change, protect land and water ecosystems and preserve biodiversity. Forests also serve to meet many socio-economic needs and are crucial to the viability of forest communities and for ensuring the perpetuity of forests in keeping with the principle of sustainable development. The SFDA entrenches the notion that it is important to establish a forest management model that is based on new approaches to forest development and takes into account the impact of climate change on the forest. In addition, it helps to account for the interests, values, and needs of Native communities and the regions of Québec. It further acknowledges the economic, ecological, and social potential of forests and of all the products derived therefrom.

The SFDA also establishes that, each year in Québec, the month of May is declared “Tree and Forest Month” in order to promote sustainable forest development.

Although not explicitly inspired by the Charter of the Forest, the SFDA is clearly predicated on the same principles, and its effects are similar in many ways to the 800-year-old Charter of the Forest, including by virtue of the importance it attributes to giving ‘liberties of the forests for all’ and to the interests of the “neighbors”—i.e. all the various stakeholders of our society—in the management of forests.

More generally, at the federal level, the Canada National Parks Act provides for the protection of the various parks and national park reserves’ ecosystems throughout the country. It states that the national parks of Canada are dedicated to the benefit, education and enjoyment of all Canadians and shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations. The Canada Wildlife Act designates certain public lands as wildlife refuge areas, where the government may take measures as are necessary to protect species.

International Forest Sustainability Parallels with the Charter of the Forest’s principles also could be drawn regarding certain initiatives at the international level.

For example, the concept of “Reducing Emissions from Deforestation and Forest Degradation and the Role of Conservation, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks in Developing Countries” (REDD+) was presented by developing countries at negotiations, in 2005, pursuant to the United Nations Framework Convention on Climate Change. REDD+ aimed to create economic, social, and environmental incentives for developing countries to reduce greenhouse gas emissions by economic use, protection and restoration of forests. Notably, it was established with the goal of ensuring that those who depend on forests for their livelihoods can continue to do so for the foreseeable future through sustainable development (as was the case, in England in the 13th century, at the time of the Charter of the Forest). Since 2005, there have been several decisions on REDD+ at the Conference of the Parties under the United Framework Convention on Climate Change providing an outline of rules for countries to start implementing such a program. Among other things, REDD+ provided that countries should introduce a “national strategy or action plan which addresses land tenure issues and forest governance.”

More generally, two other international initiatives reflect the 1217 Charter of the Forest. The United Nations Convention on Biological Diversity aims to ensure the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources. Likewise, the World Heritage Convention aims to protect world cultural and historical heritage sites based on these same principles.

Charter’s 800-Year Legacy Despite the fact that it is no longer in force, the Charter of the Forest’s legacy has spanned eight centuries, and the ideas and concepts it comprised of are as relevant today as they were in 1217, as efforts continue to improve legal mechanisms and develop new norms with respect to environmental protection, nature conservation, and land use.

The Charter of the Forest’s resilience is manifested not merely by the fact that it was the longest standing statute in England but mainly because it contained timeless principles that have shaped and influenced environmental laws. It continues to do so today.

Steven Miano is a shareholder at Hangley Aronchick Segal Pudlin & Schiller in Philadelphia, where he leads the firms’ environmental practice. He is a past chair of the ABA Section of Environment, Energy and Resources. Isabelle Blouin is counsel in the Montreal office within the Climate Change Strategies and Environment and Natural Resources groups at Dentons Canada LLP. The authors are grateful to Daniel B. Magraw for his guidance on this article.

The opinions expressed here do not represent those of Bloomberg BNA, which welcomes other points of view.