

The Taxation of the Royal Forests of England 1066 to 1307

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ABSTRACT

Following the Norman Conquest of 1066, William I designated large areas of land in England as Royal Forests. These areas coincided with heavily wooded areas of England but encompassed other land types, as well as roads, farms and villages. At its greatest extent in the early thirteenth century, Royal Forest covered more than one quarter of England's land area. Within the Royal Forests, not just in the king's demesne land but also in privately held estates, forest law applied. This was a distinct legal system enforced by its own courts and officers, accountable directly to the king, with the central purpose of protecting the 'venison' (the noble animals of the chase, notably deer and wild boar) and the 'vert' (the woodland habitat that sustained the deer). Forest law involved heavy penalties for infringements and burdensome compliance mechanisms, and proved oppressive to all, from landowners to ordinary people living in and around the Royal Forests.

Originally intended to protect hunting for the king's pleasure, it has long been recognised that the Royal Forests became an important source of revenue for the king. By authority of forest law, the king had a regular source of income from routine fines and penalties imposed by forest courts for violations of the vert, from fees for grants of licences and privileges, and the receipt of substantial sums for sales of timber and for assarting (clearing for agricultural use) and disafforestation (freeing from forest law) of pieces of land.

This paper will focus on the revenue raising aspects of forest law and the judicial mechanisms that developed, apparently to maximise revenue rather than to execute justice or resolve disputes. The elaborate administrative machinery of forest tribunals and courts put a strong emphasis on quantifying and accounting for forest resources and incorporated audits of the performance of local forest officers.

GLOSSARY

Agist: to take in cattle to remain and feed, at a certain rate; *orig.* to admit for a stated time into a forest. (OED)

Amercement: punishment or penalty applied at the discretion of a court or other authority, as contrasted with a penalty predetermined by statute.

Assart: to grub up trees and bushes from forest-land so as to make it arable.

Attach: to place or take under the control of a court; to arrest or seize by authority of a writ of attachment.

Chiminage/Cheminage: a toll for liberty of passage through a forest. (OED)

Demesne: possession (of real estate) as one's own. An estate held in demesne: land possessed and held by the owner himself, and not held of him by any subordinate tenant.

Disafforest (or sometimes Deforest): to free from the operation of the forest laws.

Estreat: the true extract, copy or note of some original writing or record, especially of fines, amercements, etc. entered on the rolls of a court to be levied by the bailiff or other officer.

Eyre: a circuit made by an itinerant judge (justice in *eyre*) in medieval England.

Farm: to take on or hold for a term at a fixed payment.

Herbage: right of pasture, pasturage.

Mark: in England approx. 2/3 of £1 sterling (~13s 4d)

Pannage: the right or privilege of pasturing swine in a forest or the payment made to the owner of a woodland for this right.

Purpresture: an illegal enclosure of or encroachment upon the land or property of another, as by an enclosure or building in the royal forests.

INTRODUCTION

Royal Forests: a legal concept

The Normans introduced the new concept to England of the Royal Forest, which profoundly affected the status of wooded areas of England for centuries.¹ The Saxon kings had had hunting reserves scattered throughout England but the Normans, specifically William I 'the Conqueror', introduced special forest law to protect animals important to the king's sport. The Royal Forest was a legal concept and was the area in which the special laws and regulations of the regime of forest law applied.

The essential feature of the English royal forest was the existence within its boundaries, side by side with common law, of a distinct legal system – forest law – that grew up by prescriptive royal right and was enforced by its own courts and officers and designed to protect the vert and venison ('viridis et venacio') for the king's pleasure and profit. 'Venison' in the Middle Ages comprised the noble beasts of the forest and chase, originally red and fallow deer, roe deer and wild boar. Deer within the forests were the property of the king and none could kill them even if they strayed outside. This system was created and maintained by the arbitrary will of the king in the face of the hostility of his subjects, who considered its interference with their liberties contrary to natural law.²

The land designated as royal forest did not belong to the king, as land ownership was understood at the time, that is, the designation did not give ownership to the king, but gave

¹ CRYoung 1979 'The Royal Forests of Medieval England', p.1.

² RGrant 1991, p7.

him extensive rights over it and the potential to derive income and other economic benefits from it. Often the king's own manors, royal demesne land, were located within the bounds of the royal forest but were generally administered separately from forest administration, although in practice the distinction was sometimes blurred.³

In this paper, the term 'forest' is used in the legal sense of land designated as Royal Forest.

Scope and Use of the Royal Forests

In 1066, at the time of the Norman Conquest, England was a heavily-wooded land and vast areas were covered with ancient woods. The royal forest (or forests) coincided roughly with the more heavily wooded areas of England but there was not an absolute correspondence. Royal forest included some of the best stretches of woodland in the country but also many sparsely wooded areas and numerous existing settlements, complete with arable fields and pastures, which lay in desirable hunting country.⁴ In the north-east and south-west of England major forests comprised extensive open moorlands. The upland moors of north Yorkshire in the royal forest of Pickering and the Bishop of Durham's Forest of Allertonshire were exploited for large scale sheep rearing by monastic and secular lords. As hunting forests the moorlands were shared year-round with the king's deer.⁵

At the beginning of his reign Henry II afforested the entire county of Essex, including villages, towns, people, farms, etc., together with the county of Huntingdon.⁶ At its greatest extent, in the late twelfth century at the end of Henry II's reign, royal forest covered in excess of one quarter of England. After that, it was successively reduced by disafforestations.⁷

The ostensible reason for the elaborate forest system was to provide hunting for the king's pleasure but, in a comprehensive appraisal of the royal forest, the importance of hunting can easily be exaggerated.⁸ Hunting may have been the primary purpose of the Norman kings in delineating the royal forest but, from an early stage, the royal forests carried economic benefits for the king. They were a source of food (venison), timber for building projects (churches to fortifications and houses), wood for fuel for heating and cooking, material for fencing and minor construction work and charcoal for smelting.

Throughout the Middle Ages the forest was used as pasture for stock, supporting horses, cattle and sheep in large numbers. Goats were normally forbidden as being destructive and incompatible with deer. The royal forest provided pannage of pigs but the woodland was protected by limiting the numbers of stock, fencing off areas of woodland temporarily to allow regrowth or by confining livestock to specific fenced areas.⁹ Under common law or local custom the inhabitants of forest villages had extensive pasture rights in woodland areas, although these customary rights were not always respected when forest law was imposed. Additionally, in most forests pasture was leased to those without common pasture rights and

³ CRYoung 1979, p5

⁴ JR Birrell, *The Medieval English Forest*, Journal of Forest History, Apr 1980 Vol 24, No.2 pp78-84 78

⁵ T Johnson 122

⁶ CRYoung 1979, p5

⁷ JR Birrell, 80.

⁸ CR Young, 1972, 9.

⁹ JR Birrell, 80

forest officers collected fees for beasts grazing in the forest year-round or for specified periods.¹⁰

Mining of various kinds was prevalent in some forests, for example, the mining and smelting of iron ore in the Forest of Dean and of lead ore in the Forest of the Peak. Also, some forest areas were used for the cutting of peat and for making salt. Commercial and economic ventures were carried on by royal servants or by licence purchased by the king, thereby contributing to the royal purse. Wood was important for its use in crafts and the manufacture of wooden goods, sustaining a range of skilled craftsmen such as sawyers, carpenters, coopers, turners and wheelwrights.¹¹

Table 1: Historical Context – Timeline

Dates of reign	King/queen	Historical events & documents	Key developments relevant to Forest Law
1066–87	William I 'The Conqueror'	1066 Norman Conquest 1086 Domesday Book	(Separate section in DB for the New Forest.)
1087–1100	William II (Rufus)		
1100–35	Henry I	c.1115 Law Codes of Henry I	
1135–54	Stephen v. Empress Matilda	1138-54 Civil war: 'the Anarchy'	1136 Forest Eyre
1154–89	Henry II	1170 Martyrdom of Thomas Becket c.1180 Dialogue of the Exchequer	1175 Forest Eyre (£12,000) 1184 Assize of the Forest (Assize of Woodstock)
1189–99	Richard I	1189-92 Third Crusade	1198 Forest Assize
1199–1216	John (aka John Lackland)	1215 Magna Carta	1215 Magna Carta
1216–72	Henry III	1217 Charter of the Forest 1225 Reissue of Charter of the Forest	1217 Charter of the Forest 1218 & 1219 Forest Perambulations 1225 Forest Perambulation 1244/45 Great Inquest
1272–1307	Edward I	1297 Confirmation of Charters	1306 Ordinance of the Forest

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¹⁰ JR Birrell, 80

¹¹ JR Birrell, 82

A Short History of the Royal Forest

The pre-Conquest kings of England shared the passion for the chase of their Norman successors but there is no evidence that they claimed exclusive hunting rights in the woods of their subjects. By the time of Edward the Confessor (ruled 1042-1066) there existed the nucleus of a forest administration.¹² Whereas in pre-Conquest England the hunting rights of the king did not differ materially from those of any other landowner, in the Carolingian Empire (800–888) of western and central Europe, the forest was essentially a royal institution and forests could be established by the king alone. Foresters protected game against poachers, and amercements for forest offences formed one of the regular sources of income for the royal demesne. After the collapse of the Carolingian Empire, the dukes of Normandy in the 10th and 11th centuries took over in their duchy many of the former attributes of the royal power.¹³ Whilst Anglo-Saxon kings had their hunting reserves, it was the Normans, specifically William the Conqueror, who introduced forest jurisdiction to England.¹⁴

Domesday recognised woodland as an important manorial resource and often measured it in its capacity to support pigs, rather than in geographical area.¹⁵

By 1086 William I was enforcing forest law far beyond the limits of his own demesnes, which caused the forest system to be bitterly hated and opposed. The restrictions were enforced by forest officers and by the transfer of certain revenues from the bailiffs of royal manors to the foresters themselves.¹⁶ The critical commentary in the Anglo-Saxon Chronicle indicate that the royal forests had the potential for provoking constitutional conflict from the very start.¹⁷

At William I's death in 1087 the succession to the throne was disputed and William Rufus was compelled to enlist the aid of the English. He promised to surrender Crown rights over 'vert and venison' in the woods of his subjects but, according to the Anglo-Saxon Chronicle, subsequently he forgot his promises.¹⁸

Successive kings continued to hunt in the royal forests and insisted on their maintenance for this purpose but they realised how profitable it could be to let people break the law and then levy fines or amercements for doing so.

During Henry I's reign, the administration of forest law developed further and evidence suggests it functioned in a systematic fashion.¹⁹

Following his accession in 1135 Stephen promised to give up all forests created by Henry I but broke his promise.²⁰ Subsequent grants of disafforestation suggest Stephen exacted

¹² RGrant 1991 p.8 In the Forest of Dean Edward granted to three of his thegns land in Dean in Longbridge hundred "quit of geld for keeping the forest"

¹³ RGrant 1991 p.9

¹⁴ CR Young, 1972,

¹⁵ JR Birrell, 80.

¹⁶ RGrant 1991, p11.

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¹⁸ RGrant 1991, p13.

¹⁹ CRY 79 17

²⁰ Henry of Huntingdon

substantial fines for granting freedom from forest law, which he had previously conceded freely as a general measure. When the Empress Matilda arrived in England, she purchased the support of powerful nobles with charters acquitting them of forest offences up to the time they joined her.²¹ She granted the Forest of Dean to Miles of Gloucester, a powerful supporter.²² By Stephen's death in 1154 the administrative system built up by William I and his sons for the protection of the vert and venison had been in abeyance for more than a decade.²³

On his accession in 1154 Henry II repudiated the concessions extorted from Stephen. The whole of the county of Essex was treated as royal forest and during 1155 and 1156 had to pay over £235 for assarts and unauthorised forest clearings. The Forest of Dean, granted away by Matilda, was reserved to the Crown when in 1155 the king confirmed the possessions inherited by Roger Earl of Hereford from Miles of Gloucester.²⁴ Henry II extended the royal forests beyond the area attained under his grandfather, to their greatest extent ever, and reconstituted and reinforced the administration of the forest. Subsequently, the legal status of land claimed to be within the royal forest, was judged by whether it had been forest at the coronation of Henry II.

The restoration of royal forest or the extension of its boundaries through added afforestation was always opposed by the landed classes who found forest law oppressive and the royal forest became an increasingly contentious issue during Henry II's reign. At times of crisis the king was forced to promise concessions around the burdensome, hated institution. In a rebellion in 1173-74 Henry II promised to abolish the entire forest system but he reneged once the rebellion was suppressed. He needed money to pay mercenary troops and to meet the expenses of the 1173-74 war and to this end a great forest visitation was carried out in 1175.²⁵

Following Henry II's death in 1189, there were no significant changes in forest policy under Richard I or John but the area under forest law was reduced in both reigns. His successors raised money by granting the disafforestation of large areas in return for substantial fines. The sale of forest privileges and exemptions was a profitable venture for both these kings. The third crusade led by Richard I was extremely expensive and the king needed to generate increased revenues. In 1190, in exchange for a fine of 200 marks, the knights of Surrey obtained the disafforestation of virtually the whole of the county.²⁶ By 1198 the king needed money for war in Normandy so resorted again to the forests and a General Eyre of 1198 in the northern counties was followed by an exceptionally burdensome Forest Eyre.²⁷

King John sold charters to a number of barons to free named woods and manors from forest law but the financial burden of war with France compelled him to make more sweeping concessions. In March 1204 the men of Cornwall paid a fine of 2000 marks and 20 palfreys

²¹ Charters of Matilda, Round in RGrant 1991 p15

²² RGrant p15

²³ RGrant p16

²⁴ RGrant p16

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²⁶ RGrant 135

²⁷ RGrant p20

for the disafforestation of the whole of the county with small exceptions. The men of Devon paid 5000 marks for the disafforestation of the county outside the bounds of Dartmoor and Exmoor Forests.²⁸

The well-known disputes between the rebel barons and King John resulted in the signing of the Magna Carta, essentially a peace treaty between John and his barons, in 1215. Magna Carta was intended to curtail John's excesses and establish rules, particularly concerning land ownership, taxes and people's legal rights. A few clauses sought to restrict the excesses of forest law and to disafforest areas of royal forest established in John's reign.

Some of the forest clauses of Magna Carta were transferred to the Charter of the Forest, signed in 1217 at the beginning of Henry III's reign, but the charter in all included sixteen clauses intended to curb what were seen as the worst excesses of forest law and to disafforest forests created since the beginning of Henry II's reign, subject to certain conditions.

Henry III, whilst ostensibly endorsing the Forest Charter, adopted tactics during the half century of his reign to stall actual disafforestations by conducting successive forest perambulations and inquests. His successor Edward I was equally reluctant to grant disafforestments. The struggle with the barons continued through both reigns and only in 1300, under strong political pressure did Edward I finally consent to disafforestations in accordance with the Forest Charter.

FOREST LAW: THE LEGAL FRAMEWORK OF THE ROYAL FORESTS

Johnson describes forest law as an "[i]diosyncratic legal tradition with its own institutions and identity", that continued to bear the imprint of sovereign power that lay at heart of forest law.²⁹

Sources for Forest Law

Little is known of the details of forest administration under William I and William II. The Anglo-Saxon Chronicle provides a commentary on the brutal penalties of forest law, the oppressive burden that royal forests inflicted on ordinary people and the arbitrary exercise of the king's authority. The Chronicle does not mention the revenue that kings obtained from the royal forest.³⁰ What emerges, even at this early stage, is the potential for constitutional struggle between the barons and king.

The Rime of King William:

He established many deer preserves
and he set up many laws concerning them
such that whoever killed a hart or a hind
should be blinded

²⁸ RGrant136

²⁹ T Johnson 149

³⁰ CRYoung, 1979, p3.

He forbade (hunting of) harts
And also of boars.
He loved the wild deer
As if he were their father
And he also decreed that the hares
Should be allowed to run free.
His great men complained of it,
And his poor men lamented it;
But he was so severe
That he ignored all their needs.³¹

Henry I announced in his Coronation Charter: “I abolish all the evil customs by which the kingdom of England has been unjustly oppressed... By the common counsel of my barons I have retained the forests in my own hands as my father did before me.”³² The reference to the royal forests in his coronation charter implies that they had an importance to the monarch beyond that of sustaining his favourite sporting pursuit.

The beginnings of a systematic forest administration in the reign of Henry I is reflected in scattered sources. The Laws of Henry I, although not an official document, are considered to represent a reasonably accurate account of Anglo-Norman law in the early 12th century. Also the forgery known as Constitutions of Cnut include a severely condensed version of forest law and has some value as a treatise on the royal forests at the time of its composition under Henry I.^{33 34} Evidence points to there being well-developed forest law and a highly organised forest system under Henry I.³⁵ Henry I sent out experienced professional administrators e.g. Geoffrey de Clinton and Ralph Basset to hear pleas of the forest at Special Forest Eyres. Charters from his reign suggest enforcement through shire courts. There is one surviving Pipe Roll. Forest law applied to clergy as well as laymen: this is clear from lists of fines and from pardons. There are records of sums paid for the office of forester and fines for foresters who failed to perform their duties properly.³⁶

By Henry II's reign the royal forest had become such a contentious institution that even his Treasurer, Richard fitzNigel/fitzNeal (1130-98), later Bishop of London, sought to explain it and justify it: “The greater part of the revenue from forests arises from judicial proceedings and imposts, and it was considered that such unlawful gains might be compounded for by the payment of tithes” of forest revenues to cathedral churches, as from the forests of Wiltshire and Hampshire to Salisbury cathedral and from the Northamptonshire forests to Lincoln cathedral.³⁷

³¹ Inserted in the Peterborough ASC, translated by ...

³² CRYoung 1979, 11.

³³ CR Young, 'English Royal Forests under the Angevin Kings' (1972) Vol.12 No1 *Journal of British Studies* 1-14.

³⁴ CRYoung 1979, 12-14.

³⁵ HA Cronne, *The Royal Forest*, 18.

³⁶ CRYoung 1979, 12-14.

³⁷ Johnson ed Course of the Exchequer (in RGrant 1991 p4.

Richard fitzNigel was also the author of *The Dialogue of the Exchequer*, a treatise on the royal finances, compiled for Henry II, which set out the revenues due to the king and the methods for collecting them. It sets out basic principles of royal policy on forests:

The whole organisation of the forests, the punishment, pecuniary or corporal, of forest offences is outside the jurisdiction of the other courts, and solely dependent on the decision of the King, or of some officer specially appointed by him. The forest has its own laws, based, it is said, not on the Common Law of the realm, but on the arbitrary legislation of the King; so that what is done in accordance with forest law is not called “just” without qualification but “just, according to forest law.”³⁸

In 1170 when Henry II returned to England after four years on the continent he commissioned the Inquest of Sheriffs, of which the eighth chapter concerned the forests with questions about receipts from office for foresters and subordinates, the number of pardons and forfeitures for forest offences and the record of forest officials in bringing alleged trespassers of forest law to justice or in releasing them without judgment.³⁹ The fullest account is in the chronicle of Roger of Howden, who served as justice in eyre for forest pleas. Ralph Diceto reflected shock at the harshness of the king’s actions in exacting every penny of forest fines.⁴⁰

In 1184 Henry II initiated a great plan of forest reorganisation: the Assize of the Forest, also known as the Assize of Woodstock, provides a comprehensive statement of forest law and administration as it existed at that time.

By the second half of the 13th century the justices for forest pleas had a set of Articles resembling those of the General Eyre, designed like them to enforce the law, bring local officials to a sense of their duties, and fill the king’s coffers by exacting amercements from everyone in default.⁴¹

Magna Carta

In the first Great Charter signed at Runnymede in 1215 there are three key clauses concerned with the forests:

44. People who live outside the forest need not in future appear before the royal justices of the forest in answer to general summonses, unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest offence.

47. All forests that have been created in our reign shall at once be disafforested...

48. All evil customs relating to forests and warrens, foresters, warreners, sheriffs and their servants... are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be

³⁸ *Dialogue of the Exchequer*

³⁹ Douglas & Greenaway p.440

⁴⁰ R de Diceto *Ymagines Historiarum*, Hist Works ed Stubbs Rolls Series 1876 1:402

⁴¹ Turner *Selden Forest Pleas in RGrant* p56.

abolished completely and irrevocably. But we, or our chief justice if we are not in England, are first to be informed.

The burden of the requirement that men living outside the royal forest but within two leagues should attend forest courts was sufficient to cause the barons to demand its removal during the negotiations leading to Magna Carta.⁴² This concession (clause 44 above) was confirmed by the Charter of the Forest in 1217 and seems to have been honoured subsequently by central administration.⁴³ Clause 48 was omitted from later reissues of the charter.

Charter of the Forest

The Charter of the Forest was first signed in 1217 and included sixteen clauses relating to the Royal Forest. Perhaps the Forest Charter's most well-known clause was that "No-one shall henceforth lose life or limb for our venison, but ... he shall pay a heavy ransom..."⁴⁴ Other safeguards provided by the charter proved difficult to enforce and forest officers continued to extort penalties in the forests.

The most reliable protection against exploitation and extortion was the disafforestation of areas of forest. The two clauses in the charter relating to disafforestation were:

1. First, we will that all forests, which King Henry [II] our Grandfather afforested, shall be viewed by good and lawful men; and if he has made forest of any other wood more than of his own demesne, whereby the owner of the wood has been hurt, forthwith it shall be disafforested; and if he has made forest of his own wood, then it shall remain forest, saving the Common of Herbage, and of other things in the same forest, to them which before were accustomed to have the same.
3. All woods which have been made forest by King Richard our uncle, or by King John our Father, until our first coronation, shall be forthwith disafforested unless it be our demesne wood.⁴⁵

In view of the huge value to the king of the income and profits from the royal forests, Henry III and his successor, Edward I, were most reluctant to implement the commitments set out in the charter to disafforest forests created since the beginning of Henry II's reign.

In January 1227, Henry III declared himself of full age and challenged some of the disafforestments made pursuant to the Charter during his infancy. He expressed dissatisfaction with the results of the forest perambulations which followed the confirmation of the forest charter in 1225, and considered that recent perambulations had wrongly disafforested many areas that were forest before the death of Henry I in 1135. However, the king was prepared to and did disafforest many areas in exchange for heavy fines from the inhabitants. Districts considered to have been wrongly disafforested were reafforested, leading to complaints and a petition from the barons in 1260. Under political pressure, the

⁴² CRY 1979 22

⁴³ RClose

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⁴⁵ Nat Archives translation

king confirmed the Charter but the confirmation was not followed by the perambulations needed to establish the correct boundaries of the forests.⁴⁶

The struggle between the barons and Henry III continued and under Edward I forest created since the accession of Henry II still remained. In 1277 Edward announced his resolve to keep the Forest Charter but this effectively just meant that a further perambulation was held, whilst the king remained resolved that the extent of the forest should remain as fixed by his predecessors. Only at the end of his reign, under strong political pressure, did Edward I consent to any disafforestments. In 1300 at a parliament held in Lincoln the king confirmed the Charter of the Forest and disafforestments, but the concessions were annulled by the pope in 1305 on the grounds that they had been extorted from the king under political pressure.^{47 48}

But the boundaries settled at Lincoln were not easily set aside and Edward II was compelled to consent to the disafforestments which Edward I had allowed but afterwards revoked.⁴⁹

1306 Ordinance of the Forest

The 1306 Forest Ordinance introduced a split jurisdiction – with the assent of the treasurer, the justice of forest might take fines from those indicted for forest transgressions without waiting for the next eyre. But the attachment court continued to make attachments of both vert and venison.⁵⁰

[T]he people of our Realm are, by the Officers of our Forests, miserably oppressed, impoverished and troubled with many wrongs, being everywhere molested. For sometimes the Accusations of the Forest, and Indictments... are not made by Lawful Inquests of true and law-worthy men of the Country, preceding them, as justice doth require, but on the command of one or perhaps two of the Verderers, who from hatred or otherwise maliciously, that they may extort money from someone, do indict or accuse whom they will; and thereupon do follow grievous Attachments, and the innocent Man is punished, who hath incurred no Fault or Offence at all.⁵¹

The ordinance enacted that all trespasses of vert and venison should be made by foresters in full attachment court, that the truth of the matter should be ascertained by sworn jury and that subsequent presentments should be confirmed and sealed by all forest officers, including foresters, verderers, regards and agisters.⁵²

Forest law and other legal systems

Ordinary civil and criminal pleas arising within the forest were dealt with as elsewhere by ordinary courts administering the common law of England. The whole of Huntingdon County was subject to Forest law but the pattern of administration of common law was similar to that

⁴⁶ Turner, ci.

⁴⁷ C.Hart, *The Verderers and Forest Laws of Dean*, 1971, 23-4.

⁴⁸ Turner, cv.

⁴⁹ Turner, cvi.

⁵⁰ CRYoung 1974, 325

⁵¹ 1306 Forest Ordinance

⁵² Statutes of the Realm I 147-48 (RGrant 39)

in counties where there was no royal Forest. Crimes such as robbery, rape, theft and homicide committed in the Forest were usually in common law courts in the ordinary way. The New Forest was exceptional in that the two codes were administered in the same courts and at the same sessions.⁵³ Despite some fuzzy boundaries between forest law and common law, both laws co-existed in large area of royal forests in 13th century with little difficulty in practice between the overlapping jurisdictions.⁵⁴

For forest dwellers their enjoyment of customary rights, such as the right to take wood for personal use, including fuel, became curtailed by over-riding forest regulations.⁵⁵ Forest law prohibited or strictly regulated the cutting of trees but this royal policy was contrary to the needs of the population. The introduction of royal forest law into England required compromise to allow those with land in forest areas to continue to use their land and to live under the restrictions necessary to protect the forest. Exemptions and modifications of forest law were frequent. According to the Laws of Henry I: if cutting of wood was committed in king's forest, compensation of 20 mancuses () was to be paid unless a stricter prohibitive rule demanded a greater penalty.⁵⁶

Forest law and the Church

Clergy too were subject to the forest law. This was resented by the Church, and monks and clergy, who were the chroniclers of the times, were severely critical of the violations of clerical privilege by forest officers and of the forest system generally.

Alan de Nevile who “did not hesitate to lay hands upon clergy who took the king's deer” was excommunicated by Thomas Becket in 1168 because he kept the archbishop's chaplain in chains.⁵⁷ Even after the murder of Thomas Becket (1170), Henry II was determined that the clergy should remain subject to the jurisdiction of forest courts. In 1175 he made an agreement with the Papal Legate, Hugo Pierleoni, that clerical privilege should not extend to forest offences, an agreement bitterly resented by the English clergy: “That a clerk shall not in future be brought in person before a secular judge for any crime, or for any trespass except a trespass of my forest...”⁵⁸ He did in fact implead English clergy for forest offences during his great Forest Visitation in 1175 and in the 1184 Assize of the Forest at Woodstock proclaimed: “The king forbids any clerk to commit trespass against him in respect of his venison and his forests; he well enjoins his foresters that if they find them trespassing, they shall not hesitate to lay hands upon them, and to detain them, and he himself will well warrant them.” This decree was repeated by Richard I's Forest Assize in 1198. Threats of spiritual penalties were not successful in securing any substantial change in the treatment of clerical offenders.

The founding of monasteries within the bounds of the royal forest was often accompanied by charters that exempted them from forest law as applied to the cultivation of land, livestock

⁵³ RGrant p78

⁵⁴ E Wright, 1928 'Common Law in 13th Century English Royal Forest'. V3 p191.

⁵⁵ JR Birrell, 82

⁵⁶ Leges Henrici Primi p145

⁵⁷ RGrant, p16.

⁵⁸ Ralph de Dicero, Historical Works (Rolls Serv) I 402-3410. RGrant 80.

pasturing, timber, firewood use, provided for monks' use and not for market. Such exemptions were valuable in the protection afforded against interventions by royal foresters.⁵⁹ Also, the clergy sometimes benefited from special privileges contained in many royal charters, such as a tithe of meat and hides for monasteries and bishops near a particular forest when the king and his party hunted nearby.⁶⁰

THE ADMINISTRATION AND ENFORCEMENT OF FOREST LAW

The administration of the Royal Forests

An extensive administrative machinery developed to make forest law effective over the wide area of royal forests in England. Enforcement of forest law by courts and justices developed alongside but apart from common law, probably from the time of William I but demonstrably from the time of Henry I.⁶¹ Administration of forest law was itself a burden on subjects. Local men had to serve as verderers or regarders and were fined if they failed to carry out their tasks properly. Private owners of woods within the royal forests were required to provide foresters who would answer to the king for the woods and beasts within their care, at risk of fines.⁶²

In the 12th and early 13th centuries, forest administration was headed by a single official 'Chief Justice of all the royal forests of England.' In 1238 England was divided into two districts - north and south of the river Trent – for forest administration purposes, with a justice of the forest appointed for each.⁶³ From the mid-13th century the justices of the forest were allowed to deduct a fixed salary out of forest revenues collected: 100 marks p.a. for north of Trent and £100 for south of Trent.⁶⁴ In time different practices developed north and south of the Trent. The justice of the forest was entrusted with the general supervision of the economic interests of the Crown in the forests. From time to time they would be ordered to raise money by leasing out assarts and waste lands and by ordering and supervising sales of timber and underwood.⁶⁵ They were responsible for the exploitation of the mineral rights of the Crown, for example for mining and smelting iron in the Forests of Chippenham and Dean and for mining lead ore in the Forest of the Peak.⁶⁶ The justice of the forest almost always headed the commission of judges on the forest eyre and usually sat in person.

For the most part the justices of the forest were important men who can have devoted only limited time to forest duties. For example, Henry III appointed Peter des Rivaux Chief Justice of Forest in 1232 for life; he was already Keeper of the Wardrobe, the Chamber and the Treasury of the royal household and became Treasurer of the Exchequer in 1233.⁶⁷

⁵⁹ CRY 79, 16.

⁶⁰ CRY 79,15: Warren Hen Ilpp602-3

⁶¹ CRYoung 1979, 6

⁶² CRYoung 1972 13

⁶³ GJ Turner Select Pleas of the Forest, xiv

⁶⁴ RGrant 91

⁶⁵ Rot Litt Pat1201-16, 13,22,27etc. RGrant90.

⁶⁶ Close R 1251-53. 246 RGrant 90.

⁶⁷ RGrant 91

As intervals between successive forest eyres lengthened, special commissions of ‘oyer and terminer’ were issued to justices of the forest and others. Such proceedings received statutory sanction by the Ordinance of the Forest in 1306. Edward I decreed that the “Justice of the Forest, or his Lieutenant, in the presence of our Treasurer, and by his consent, shall have authority to take Fines and Amercements of those who be indicted for trespasses committed in our forests, and not tarry for the eyre of the Justice.”⁶⁸

Forest administration consisted of chief justices of the forest and their subordinate foresters who held the regular forest courts or attended the courts held irregularly by the justices on eyre for forest pleas. What set the forest administration apart from the other elements of royal government was that the chief justice was not responsible to the judiciary and did not account at the Exchequer⁶⁹. All parts of the administration were subject to the king’s control but forest administration was different in being directly responsible to the king.^{70 71}

The Forest Warden was the officer at the head of each royal forest or group of forests. Some wardens had a fixed annual salary but, more usually, wardens paid a fixed annual sum into the Exchequer for the rights to collect for themselves certain forest revenues.⁷²

The wardens of a number of royal forests, including the Forest of Dean and the Forest of the Peak, were appointed by royal letters patent, usually to hold office during the king’s pleasure but sometimes for a term of years and exceptionally for life. The offices were lucrative and the king often used them to make provision for those with a claim on his bounty.⁷³ The Norman and Angevin kings established part of the local forest administration on a hereditary and territorial basis. Hereditary wardenships of royal forests were “grand serjeanties” and therefore subject to usual feudal incidents of relief, wardship and marriage. King John exacted very large fines from heirs to these serjeanties for confirming them in lands and offices, for example, £100 from Philip, son of Holgot, for the wardenship of Kinver Forest in 1199. Such excessive fines and reliefs headed the list of grievances which the barons presented to John in 1215.⁷⁴

Wardens were accused of levying illegal or excessive dues for the lawing of dogs⁷⁵, for common of pasture in the forest, and for non-attendance at forest courts and inquests, besides illegally taking the king’s deer and timber, and conniving at offences in return for bribes. Complaints of irregular and oppressive conduct by forest officers were frequent during the 13th century, for example, the long list of indictments against Peter de Nevile in 1269.⁷⁶ The Forest Charter had intended to stop abuses and extortion but it proved somewhat ineffective in practice. Many forest wardens were deprived of their offices after conviction of such

⁶⁸ RGrant 88.

⁶⁹ Warren Henry II pp306-7

⁷⁰ CRY 1979 22

⁷¹ CRY 79 18.

⁷² RGrant 105

⁷³ RGrant 94

⁷⁴ RGrant 96

⁷⁵

⁷⁶ RGrant 106

malpractices at a Forest Eyre. But the principal purpose of the forest system was by this time the raising of revenue, and in most cases the wardenships were restored to the offenders or their heirs on payment of a fine to the king. In many other cases the warden escaped indictment at the Forest Eyre because verderers, regards and jurymen feared retribution.⁷⁷

Many forest wardens had under them forest officers who held their office by hereditary right, so-called 'Foresters of Fee.' They performed duties within wards or subdivisions of the forest.⁷⁸ Foresters of Fee usually paid a farm to the warden of the forest, and many were supposed to provide under foresters at their own expense but some took money from them for their appointment. Hereditary forest officers were subject to the usual feudal incidents of wardship relief and marriage, which involved periodic payments of substantial fines to Crown. Foresters of Fee usually had the right to take cabbish and had rights of pannage and common of pasture in forest for themselves and some took nuts gathered in the king's demesne woods.

The warden was responsible for the conduct of Foresters of Fee but many forest wardens held office during the king's pleasure and for relatively short periods and were often busy, important people. Foresters of Fee were often locally important landowners and held office for life. Forest Eyres were too long apart to maintain effective control over such men, although they frequently resulted in convictions of Foresters of Fee for serious misconduct, for example, the Gloucester Forest Eyre rolls 1270 and 1282.⁷⁹

Unpaid Officers of the Forest: Verderers, Regards and Agisters.

Local knights were appointed to act as these unpaid officers. Henry II in The Assize of the Forest in 1184 decreed that in every forest county four knights were to be appointed as agisters and twelve knights to keep the vert and venison, the latter being the forerunners of the verderers and regards. By the 13th century officers were elected in the county court from land-owning knights residing in the neighbourhood of the forest.⁸⁰ Verderers and agisters were sometimes appointed directly by king or by the justice of the forest. During the 13th and 14th centuries verderers, regards and agisters usually held office for life. The offices were unpaid and no perquisites attached to them except one or two special privileges. The offices involved exacting duties in the enforcement of a system considered hateful and oppressive by forest inhabitants, and failure to perform duties resulted in heavy amercements at the Forest Eyre. Many landowners paid large sums for a royal grant of exemption from such appointments.^{81 82}

Regards made the triennial regard, which was a burdensome process for landowners and inhabitants, and were bound to attend attachment courts along with foresters, verderers and agisters, in accordance with the Ordinance of the Forest 1306.

⁷⁷ Rgrant 108

⁷⁸ RG 112

⁷⁹ RG 115

⁸⁰ RGrant 125

⁸¹ RGrant45-6

⁸² RGrant 126

Verderers were royal officials with local connections and their duties were essential to the attachment court, they were exempt from assizes, juries or recognitions and could not at the same time hold the office of coroner.⁸³ Verderers were closely examined at the Forest Eyre as to the facts they deposed in the rolls of presentments. The verderers cooperated with foresters in supervising the exercise of customary rights within the forest, such as taking wood for fuel, fencing and house repairs, in making arrangements at the swanimote for agistment of the king's demesne woods. The verderers were intended to act as a check on paid forest officers, in the interests of the Crown but evidence indicates that the verderers were often overawed by the authority and influence of the wardens and foresters of fee.⁸⁴

Agisters were responsible for the agistment of the king's demesne woods in the Forest.⁸⁵

The Forest Eyre

The forest eyre referred to the periodic visits of royal justices to hear and determine local pleas of the forest. It was comparable to the General Eyre, and in the twelfth to fourteenth centuries the forest eyre was a ponderous judicial and fiscal process undertaken to regulate the forests.⁸⁶ Writing in 1901 on the 13th century forest eyre, Turner states: "The forest eyre was chiefly concerned with fines and amercements for breaches of the laws of the forest. It was almost as much a financial assembly as a court of law. The records of its proceedings are memoranda of sums of money owing to the king rather than registers of process and judgments."⁸⁷ A cursory glance at eyre rolls is enough to indicate that levying amercements was considered the most important work of the eyre. This impression of overriding financial interest was substantiated in some rolls in which the scribe kept a running total of the amounts collected.⁸⁸

Preparations for a forest eyre began with the king appointing justices and directing writs to sheriffs to summon persons required for the business of the eyre, including royal foresters and verderers with rolls of attachments since the last eyre, regards with sealed record of regard, agisters and records and four men from each township. Regards' rolls reported 'New Assarts,' 'New Purprestures' and 'New Wastes of Woods' made since the last eyre. The lands and woods concerned were ordered to be seized for the king but could usually be recovered on payment of a fine. In addition to amercement for the offence, a further sum would be paid for any crops grown on assarted land: 12d for every acre sown with winter corn or rye or 6d an acre for spring corn, oats or beans. Tenants had to account at every subsequent eyre for payments on the same scale, which were enrolled as 'Old Assarts' or 'Old Purprestures.' 'Wasted woods' had to be enclosed so that animals could not eat new shoots and prevent regrowth. Owners paid ½ a mark at every subsequent eyre until woods had grown back into their former state – payments enrolled as 'Old Wastes of Woods.'⁸⁹ Agisters accounted for revenues received, such as pannage and herbage dues, since the last

⁸³ CRYoung 1974, 329

⁸⁴ RGrant 128

⁸⁵ RGrant 129

⁸⁶ T Johnson

⁸⁷ Turner, lx

⁸⁸ CRYoung 1974, 325

⁸⁹ RGrant p65

eyre.⁹⁰ The general summons included all prelates, knights, free tenants holding land within the forest and men living outside the forest who followed forest pleas and all persons attached for violations of forest law.⁹¹

There is no medieval treatise to explain the law and workings of forest courts, although some information can be found in the following documents: 1198 Forest Assize, 1217 Forest Charter, articles of eyre found in some eyre rolls, the law book known as 'Fleta' and the customs and assizes of 1278. Numerous eyre rolls exist for the thirteenth century but these are primarily records of penalties and amercements with little about procedures or the cases themselves.⁹²

The quality of the justice at the eyre was determined by the fairness of the amercements and of the procedures that brought the defendant to that point. The Forest Charter repudiated the death penalty and mutilation, and the ultimate punishments by the eyre were amercements and outlawry. Imprisonment was only used to ensure the appearance of the accused, and prisoners were released when there were enough men to serve as pledges for their appearance or they could pay fines to the king for their release. Transgressors who failed to appear at the eyre were declared outlaws and their names were listed as such on the eyre roll.⁹³

Defaulters were amerced according to their means, and important, wealthy men and the clergy had to pay more. Pleas of venison yielded the greatest revenue to the Crown. In setting amercements, amounts were determined by the social status of the guilty party rather than by the severity of the violation. Both ecclesiastical and lay barons had the right to have their cases heard before the king himself, but the payments that resulted were often heavy, ranging as high as £59, compared with a similar offence by a knight who was amerced 100 shillings, or 40 shillings assessed on an ordinary free man who took many more deer.⁹⁴ Eyre rolls were filled with the names of those for whom even small amercements were excused because of poverty: poor men, from whom the Crown could not extract money, were frequently pardoned for the king's soul.⁹⁵ Where both clergy and laymen were involved, clergy were amerced at a consistently higher rate. The use of royal pardons, whether for service to the king, payment of fine, or personal influence introduced further inconsistency in the proceedings. What was obvious was the interest of the Crown in the income that could be raised from the eyre.⁹⁶

The interval between eyres could be lengthy and the uncertainty and delay in holding eyres contributed to the reputation of forest law as arbitrary and capricious. In the 12th century a forest eyre appears to have taken place in 1136 but this is likely to have been the only forest eyre conducted during Stephen's reign, as forest administration fell into disuse during the period known as 'the Anarchy'.⁹⁷ By the second half of the twelfth century the object of

⁹⁰ RGrant p65

⁹¹ CRYoung 1974, 323.

⁹² CRYoung, The Forest Eyre in England during the Thirteenth Century American Journal of Legal History Oct 1974 Vol.18 No 4 321-331.

⁹³ CRYoung 1974, 327

⁹⁴ CRYoung 1974, 327

⁹⁵ RGrant p63

⁹⁶ CRYoung 1974, 328.

⁹⁷ CRYoung 1979, 12

forest eyres was profit rather than punishment. Alan de Neville as chief forester carried out the first comprehensive forest eyre of Henry II's reign in 28 counties in 1166-67, to the consternation of those affected and to the profit of the king.⁹⁸ Further forest eyres were held in 1178-1180 and 1184-85 in 29 counties,⁹⁹ and Richard I held a forest eyre in 1198, in conjunction with the Forest Assize. Thirteenth century eyres that reached most forest counties were held in 1229, 1255-6, 1269-70 and 1285-6. The intervals between forest eyres lengthened in the second half of the 13th century and towards the end of that century more reliance was placed upon general inquisition as a means of enforcing forest law and the eyre became even less frequent.¹⁰⁰ As intervals between successive forest eyres grew longer, the number of amercements at a single eyre increased: penalties of 12-40 pence were imposed on humbler trespassers and crippling amercements from 1 to 500 marks upon laymen and clerks of substance.¹⁰¹

Co-operation by the sheriff was essential to the functioning of the eyre and the sheriff could frustrate the decision of the justices if he refused to enforce orders.¹⁰² The sheriff was responsible for arresting offenders and imprisoning them until the forest eyre.¹⁰³ The sheriff was responsible for collecting a large proportion of fines and amercements for breaches of forest law and for delivering them to the Exchequer. At end of the forest eyre the judges gave the Exchequer 'estreats' of forest eyre, the list of fines and amercements made in each county.¹⁰⁴

Other forest courts – inquisition, attachment court, regard and swanimote.

The term 'swanimote' is a source of confusion as it was applied to different courts in different counties, sometimes the attachment court, and it was later applied to special inquisitions and in the time of Edward I it was applied to the general inquisition.¹⁰⁵

The Charter of the Forest refers to the attachment court being held every forty days by verderers and foresters for vert and venison and swanimotes were held in some forests three times a year to deal with placing of farm animals in the forest.¹⁰⁶

A Special Inquisition took place when evidence was found of violations of the forest. Four representatives were appointed from neighbouring townships to inquire into the circumstances. General inquisitions on articles concerning forest were in evidence by the mid-13th century and commissions of inquest into "the state of the forest" became common by the end of the 13th century, when they were used first to supplement and then to replace the forest eyre.¹⁰⁷

⁹⁸ Douglas & Greenaway eds Eng Hist Docs 1042-1189p.440 (in CRYoung 1979 p23)

⁹⁹ RGrant 135

¹⁰⁰ CRYoung 1974, 322.

¹⁰¹ RGrant p63

¹⁰² CRYoung 1974, 323

¹⁰³ Ibid 330.

¹⁰⁴ RGrant p63

¹⁰⁵ CRYoung 1974, 323.

¹⁰⁶ CRYoung 1974, 323.

¹⁰⁷ CRYoung 1974, 324

The 'Regard' was a triennial inquiry into state of vert in the royal forest. The object was to prevent the destruction of trees, bushes and vegetation which afforded food and shelter for the king's deer, but it was soon used to provide central administration with detailed record of sources of royal revenue in the forest, arising for the most part from breaches of the law relating to vert. Most assarts were small: the work of individual peasants to grow food for their families. The Crown turned these activities into a source of revenue: after inquisition 'ad quod damnum' (appropriate to the harm) licences to assart were granted in return for payment of a fine and annual rent. Enquiry was made into 'purpresture'- unauthorised buildings, enclosures, excavations or other man-made features that interfered with the freedom of deer's movement.¹⁰⁸ When someone sought a licence or privilege from the king within the forest, there was usually a preliminary enquiry through a local jury to determine the extent of the loss to the Crown if a grant were made.¹⁰⁹

Forest pleas in Central Courts

By 12th century the King's Court (Curia Reges) established jurisdiction over a long list of pleas of the Crown among which "pleas of the forest" were included by the Laws of Henry I. Pleas nominally heard before the king were usually decided by a small body of judges, professionally learned in law, who accompanied him on his progress through the realm. In the 13th century this developed into the Court of the King's Bench. From the 12th century judges were sent out on circuit to hear and determine all pleas of the Crown at the General Eyre or pleas of the forest at the Forest Eyre. But Curia Regis retained the competence to hear Forest pleas. In 1175 during his great forest visitation, Henry II held court in a number of counties and personally gave judgement upon forest offenders.¹¹⁰

INCOME, BENEFITS & PROFITS:

THE ROYAL FORESTS AS AN ECONOMIC RESOURCE

The royal forests reached into nearly all parts of the country and, as a comprehensive system of administration and enforcement developed, people who lived in the forest could not escape the ramifications of forest law.

From the very beginning the forests were important in providing a free supply of building timber for kings who were always heavily involved in construction operations. Timber and wood were essential building components, with oaks preferred and good oaks were extremely valuable. A single tree could be priced at several shillings and timber was regarded as a valuable commodity, with large amounts of timber felled for sale, especially when cash was needed. Edward I ordered the "sale of trees, woods and underwood, green or dry, to the amount of £4,000 where best and quickest".¹¹¹

¹⁰⁸ RGrant p43-44

¹⁰⁹ RGrant 90

¹¹⁰ RGrant p72.

¹¹¹ JR Birrell, 80: Close Rolls 1264-68 p.467 and Patent Rolls 1292-1301

Venison was also highly valued as meat and could be gifted or sold by the king. Forest law threatened loss of life or limb for stealing venison, until the Forest Charter limited the penalties to “grievous fines”. However, poaching by local gentry seems to have been commonplace in some royal forests and the same names occur again and again in the records of eyres and they seem to have escaped without very serious punishment.¹¹²

Royal forests had existed for a couple of centuries in continental Europe and William I may well have been fully aware of the economic benefits afforded by royal forests from the start, but there is insufficient evidence to form a judgment of the extent of forest administration in his reign and that of his successor, William II. But, by Henry I’s reign, there was an established system of forest administration in place. Accounts rendered at the Exchequer at Michaelmas 1130 for fines and amercements levied in the course of a forest eyre in fourteen counties show that the forest had become an important source of royal revenue.¹¹³ By then Henry I was undoubtedly conscious of the cash income that could be generated from the royal forests. Successive kings continued to hunt and insisted on the maintenance of the royal forests for this purpose but they realised how profitable it could be to let people break the law and fine or amerce them for doing so. There developed a set of financial penalties, over time perhaps even a price list, for routine access to wood and pasture.¹¹⁴ Forest revenue in all its different forms formed an important part of the king’s income. Great profits were derived from an institution that reached into nearly all parts of the country and people who lived in the forest could not escape its influence.¹¹⁵

During the destructive civil war from 1138 to 1154, known as ‘the Anarchy’, when Stephen and Empress Matilda fought for the succession, both learnt that the forests could be an important bargaining chip in securing support.

When Henry II needed money to pay mercenary troops and to meet the expenses of the 1173-74 war, he arranged a great forest visitation, carried out in 1175. By Michaelmas of 1176 long lists of “king’s amercements for [offences concerning] his forest” in 27 counties were presented at the Exchequer.¹¹⁶ In response to unaffordable fines, many poor men abandoned their homes and fled and sheriffs subsequently paid into the Exchequer the proceeds of the sale of chattels of outlawed “fugitives from forest law”. In all the enormous sum of £12,000 was raised from this forest eyre.

Every activity within the royal forests was exploited for profit. The complex hierarchical administrative structure, intended to ensure the enforcement of forest law and the collection of all dues to the king, created opportunities for officials to benefit, legitimately or otherwise, from a wide variety of payments and perquisites. The law and administration of the forests were intended to incorporate checks and balances, effectively a system of audit to ensure that the law was rigorously enforced for the king’s profit but that forest officials did not abuse their powers either for their own gain or for preferment from the king.

¹¹² JR Birrell, 85.

¹¹³ Pipe Roll RGrant p14

¹¹⁴ T Johnson 139

¹¹⁵ CRYoung 1972, 14.

¹¹⁶ Pipe Roll 1176 in RGrant p17.

The emphasis on management was built into the very structure of the courts that enforced forest law, which often served more as a mechanism for financial accounting than as a tribunal for the resolution of disputes or the enactment of justice. Specialist local officers, such as foresters, woodwards, and verderers, were often paid in kind with timber and venison, and were obliged to account for the way in which they cultivated and used these resources.¹¹⁷ The hierarchies of responsibility that existed between the institutions of forest law created a strong emphasis on accountability; on the quantification of forest resources and an administrative and enforcement structure that aided the audit of those resources.¹¹⁸ The unpaid officers of the forest - verderers, regards and agisters – were intended to be independent of the remunerated forest officers who were answerable to the local warden of the forest, although in practice this control worked imperfectly as a check on the often powerful local influence of the wardens and foresters of fee.

Taxation of the Royal Forests

The royal forest was demonstrably a major source of income and profits for the king, evidenced from the earliest time that financial records are available. As Frecknall-Hughes states: “It is difficult to define exactly what a tax was in this period,” and this paper will follow her approach that “all forms of revenue raising are considered as taxes.”¹¹⁹

Some sources of income provided reliable, regular (or ordinary) income streams to the king. Included in this category were duties or imposts, such as agistment, pannage, herbage and cheminage, that are recognisably forms of taxation, but also the fines and amercements routinely levied for breaches of forest law, such as the creation of assarts and purprestures. When kings needed extraordinary revenue to meet the costs of wars, rebellions and other calamitous expenditure, they resorted to exceptional taxes, such as the sale of timber, sums negotiated for the deforestation of wide areas of forest and for the grant of charters for limited or full exemption from forest law for specific land. Additionally, the requirement for additional revenue often prompted the holding of inquests and forest eyres to identify the potential for rigorously levying additional fines and amercements. In practice there was no clear dividing line between ordinary and extraordinary sources of revenue and expediency often dictated the particular choice of revenue raising activity adopted at the time.

Regular income from fines and amercements

Accounts were made by Hugh de Neville, as chief justice of the forest under King John, at the Exchequer for sums collected: 1204 £444 and 1209 £1,245.¹²⁰ During King John’s reign, Hugh de Neville and his agents collected very large sums of money to supply the urgent needs of the Crown, mainly from forest amercements, fines paid for privileges in the forest, proceeds of sales of wood and the leasing of assarts. He had his own exchequer at Marlborough for this purpose and accounted at Westminster Exchequer for transactions

¹¹⁷ T Johnson 119 120

¹¹⁸ T Johnson 127

¹¹⁹ J Frecknall-Hughes ‘Underpinning the Magna Carta: Some First Thoughts’ in J Tiley (ed) *Studies in the History of Tax Law* (Oxford, Hart, 2010) 96-7.

¹²⁰ CR Young 1972, 9

there.¹²¹ Between November 1201 and November 1203 de Nevile and his agents paid more than 8,000 marks into the king's privy purse at Caen, Rouen and elsewhere, to meet the costs of John's disastrous campaign in Normandy. His accounts at the Exchequer in 1208 for the previous 6½ years showed sums paid from forest revenues of £9,399 with outstanding arrears of £5,569. De Nevile had clearly demonstrated his financial ability to the king who made him Treasurer before 1209, although he had lost the king's favour by 1212 and had to offer an enormous fine of 6,000 marks for acquittances for all arrears since his first appointment as Chief Forester in 1198.¹²²

Over 1,100 forest amercements were separately enrolled on the 1176 Pipe Roll ranging from 5 shilling to 500 marks, besides small amounts sheriffs accounted for in lump sums. The total amounted to nearly £13,000, which represented a very substantial addition to royal revenue, which, it has been calculated, did not amount to more than £21,000 annually before 1173.¹²³

Duties and Imposts

The dues and impost from forest inhabitants and others using the royal forest included chiminage, pannage, agistment and the dues for dogs un-lawed in the forest.¹²⁴ Whilst documentary support is scarce, it is likely that some of these customary practices and payments predated the introduction of forest law to England.

1. Pannage (and afterpannage): this was the right or privilege of pasturing swine in a forest, and also referred to the payment made for exercising this right. Pigs were released in the forest for a limited period, generally of 60 days, in autumn to fatten up on mast (fallen fruit and nuts). This practice was prevalent in the Forests of Dean, Windsor and Clarendon, where the wardens collected pannage dues. In the reign of Henry II the Justice of Forest accounted at the Exchequer for the pannage of all the forests of England.¹²⁵ Pipe Rolls record information about pannage.
2. Herbage: this was the right of pasture, also known as pasturage, and refers to the dues collected for cattle and horses on pasture in the royal forest. Cattle raised in some forests, especially the New Forest and Windsor Forest were often included in warden's farm, for example in 1251 the Warden of Windsor Forest was granted herbage of the whole forest as part of his farm.
3. Agistment: the opening of a royal forest to livestock for a specified period, in return for payment.
4. Chiminage (or sometimes cheminage): a toll for liberty of passage through a forest, applied to carts and pack-animals in transit through the forest. Foresters used this customary toll as a pretext for extortion. The Forest Charter of 1217 tried to curb the abuses: henceforth chiminage was to be exacted only by foresters of fee, paying the king a farm for their bailiwicks and might take it only from those who came into the bailiwicks from outside, with their permission, to buy underwood, timber, bark or

¹²¹ RGrant 90

¹²² RGrant 91

¹²³ RGrant, p.18.

¹²⁴ RG 114.

¹²⁵ Pipe Roll 1170, 64 1178, 55 1185 27-28.

charcoal to carry it elsewhere to sell it, and from no others. Two pence per half year might be taken for each cart and one halfpenny for each packhorse. Chiminage was to be levied only “in the places where it is accustomed and ought to be taken by ancient usage” and only for wood from the king’s demesne woods. Moreover those who carry upon their backs brushwood, bark or charcoal to sell, though that be their livelihood, shall henceforth give no chiminage.” In fact the extortion of chiminage continued after 1217 and wardens continued to exact chiminage from all who carried wood and charcoal through their bailiwicks. In 1234 the Franciscan friars of Reading found it necessary to obtain a letter from the king ordering the warden of Windsor Forest not to exact chiminage re timber given them in forest for buildings at Reading.¹²⁶ The warden of the Forest of Dean levied chiminage not only on loads of wood but also on sea coal and iron ore carried through forest towards Gloucester.¹²⁷

5. Lawing of dogs: this involved the cutting off of three claws of larger dogs’ forefeet to prevent them running after deer. Amercements were widely extorted for the failure to law dogs, even for where the circumstances fell outside the specific requirements for lawing.

Income from licensing assarts

To assart was to grub up trees and bushes from forest land so as to make it arable. By the 13th century parts of the forest were needed for arable land, which was in short supply for England’s growing population.¹²⁸

Royal policy regarding assarts implies that strong economic motives were at work by the time of Henry II.¹²⁹ Some assarting was carried out legally by special licences paid for in advance, often at a heavy price. Much clearing was illegal and was paid for by amercements imposed after the event.¹³⁰

Farming out of the Royal Forests

By 1130 some income in the forest was farmed out to foresters at a fixed rent for which they accounted to the Exchequer, for example, Waleran fitz William paid £25 for the New Forest, partially in cash and partly by claiming allowances for his payments and services on behalf of the king during the year: for fixed tithes and alms that the king granted from the income of this forest, repairs, and the cost of transporting venison and cheeses from Clarendon to Southampton.¹³¹ The farming out of forest land and income was an increasing tendency and added a further dimension to sources of revenue from the royal forests. By Edward I’s reign many royal forests were farmed out and accounts for these areas were reported by sheriffs to the Exchequer, so that most forest revenue was raised and accounted for by the sheriffs.

¹²⁶ RGrant 103.

¹²⁷ Ibid.

¹²⁸ JR Birrell, 80.

¹²⁹ Ibid 1972, 11.

¹³⁰ JR Birrell, 80.

¹³¹ CRYoung, 1979, 15. (Benedict of Peterborough Chronicle I:323)

CONCLUSION

Forest law, the legal system introduced by William I and rigorously enforced by the forest administration and courts that developed over time, was deeply resented by all classes of the king's subjects. Landowners considered the restraints of forest law an arbitrary intrusion upon their rights of property, contrary to natural law and justice. They resented the virtual prohibition on hunting venison on their own land within the royal forest, on pain of heavy penalties, and also the severe curbs on their activities and access to resources. The customary rights exercised in woodland by the populace were compromised and curtailed by forest law and payments were introduced for rights that had previously been free. There were constant complaints that forest officers did not allow them to exercise their common rights unless they paid illegal, extortionate dues.¹³² Forest law functioned as a separate legal system, operating in parallel to the system of common law that had grown up in England over centuries, and it was regarded as a foreign imposition by a conqueror. The resolute enforcement of forest jurisdiction over clerical offenders exacerbated the conflict between state and church over legal jurisdiction. The tensions and resentments provoked by forest law ensured that the royal forests were always central to the demands for compromise and constitutional change by the rich and powerful from the 11th to the 14th centuries.

The burdensome nature of forest administration and enforcement through forest courts was also a cause of general complaint. Attendance at attachment courts and the Forest Eyre, unpaid duties imposed on verderers, regards and agisters, various wide-ranging penalties for breaching forest law all imposed a heavy burden upon forest inhabitants, from the poorest to wealthy holders of high office.

The Crown exploited the forest system as a significant source of revenue, in time expanding and maximising the ways in which the royal forests could generate income for the king. It can be argued that, by his expansion of the royal forest, Henry II pushed the forest system to breaking point as a generator of revenue, and thus he sowed the seeds of its decline and destruction over the next couple of centuries. From the 12th century onwards there was a bitter, determined struggle between the Crown and the barons, leading eventually to the constraints on forest law set out in the Charter of the Forest, although it would take at least another century before Edward II finally consented to the deforestations required by the charter.

¹³² RGrant 133-4