

## **The Origins and Development of English Forests and Chases, with some Particular Reference to Enfield**

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Enfield Chase is an area still marked on maps of London, its old borders indicated by roads called 'Chase Side'. It lies on the boundary between northern suburbia and countryside, just south of the M25. Its origins lie in the Middle Ages, its name evoking the hunt, and the reasons for its partial survival must be seen in the context of the history of the sport in England.

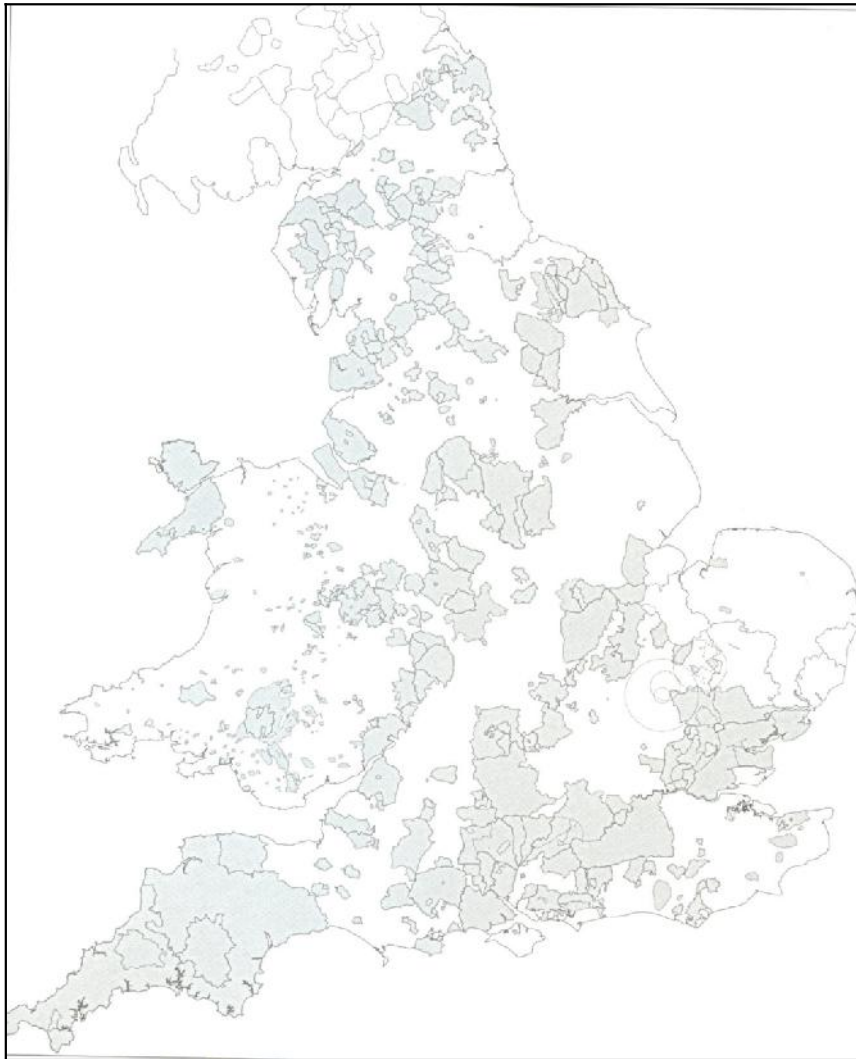


Fig. 1. Forests and chases of England and Wales. Drawn by Dr. Graham Jones, 2010.

## WHAT WERE FORESTS AND CHASES?

There have been a number of definitions of a Forest. For example, in 1644 Sir Edward Coke's formulation was published posthumously. He wrote: 'A Forest doth consist of 8 things, viz. of Soil, **Covert\***, Laws, Courts, Judges, Officers, Game, and certain Bounds.'<sup>1</sup> In 1755 Samuel Johnson, in the second definition of 'forest' in his famous Dictionary, categorized it at greater length as

a certain territory of woody grounds and fruitful pastures, privileged for wild beasts, and fowls of forest, chase, and **warren**, to rest and abide in, in the safe protection of the king, for his pleasure; which territory of ground is bounded with irremovable marks, and replenished with beasts of venery or chase, and with great coverts of **vert** for their succour and abode: for the preservation of which place, vert, and **venison**, there are certain particular laws.

He went on to explain how a forest was created and its properties:

The manner of making forests is this: the king sends out his commission, under the broad seal of England, directed to certain discreet persons, for viewing, perambulating, and bounding the place that he has a mind to afforest: which returned into Chancery, proclamation is made throughout all the country where the ground lies, that none shall hunt or chase any wild beasts within that precinct, without the king's special licence; after which he appoints ordinances, laws, and officers for the preservation of the vert and venison; and this becomes a forest by matter of record.

The properties of a forest are these: a forest, as it is strictly taken, cannot be in the hands of any but the king, who hath power to grant commission to a justice in **eyre** for the forest; the courts; the officers for preserving the vert and venison, as the justices of the forest, the warden or keeper, the **verdors**, the foresters, **agistors**, **regarders**, bailiffs, and beadles. The chief property of a forest is the **swainmote**, which is no less incident to it than the **court of pyepowders** to a fair.

\* For words in **bold**, see the Glossary after the text.

The definition of a chase was more complex. It was commonly said to be a ‘private forest’, although kings had chases as well as earls, high churchmen and barons (who in practice could also have forests), and ‘the forest or chase of [. . .]’ was a common designation (as in Cannock, Kingswood, Knaresborough, Needwood, Purbeck and Rossendale chases). Only the lord of a chase could hunt over it, whoever held and used the land within it for other purposes. Thus, like a forest but unlike a park, a chase incorporated land that did not belong for other purposes to its lord, and was not enclosed by a fence. Venison (deer, and in medieval times, wild boar) and vert (the natural vegetation on which venison fed, sheltered and bred, and through which it was hunted) were protected for the chase lord: although (unlike in a forest) the owner of a wood in a chase might cut it without permission and oversight of officers, he could not reduce it to the prejudice of the deer.

Only kings could summon the forest eyres, in which his Chief Justices of the Forest tried and punished offences under forest law, and I know of no eyres summoned for chases (even royal ones). However, some chases (for example, Cranborne, Malvern and Needwood) had chase courts, and most had officers, who could present offences against vert and venison to normal civil courts (such as manor courts and quarter sessions).

	<b>Crown</b>	<b>Roy. Fam.</b>	<b>Earls</b>	<b>Welsh Marchers</b>	<b>Church</b>	<b>Barons</b>	
<b>Forests</b>	<b>22</b>	<b>7</b>	<b>3</b>		<b>5</b>	<b>3</b>	<b>40</b>
<b>Chases</b>	<b>1</b>	<b>7</b>	<b>10</b>	<b>5</b>	<b>14</b>	<b>42</b>	<b>79</b>
<b>Total</b>	<b>23</b>	<b>14</b>	<b>?14</b>	<b>5</b>	<b>?22</b>	<b>?46</b>	<b>119</b>

Fig. 2. Forests and Chases in *Hundred Rolls* for Sussex and Yorkshire (1274-5) and *Quo Warranto Rolls* pp. 1- 800 (1278 ->)

## FOREST LAW

Forest Law gave the right of ‘free chase’ to its lord, the exclusive right to hunt not only venison, but all wild animals in a forest or chase. It was distinct from, and additional to, the common law. For example, in parts of clause 11 and clauses 12 and 13 of ‘The Dialogue of the Exchequer’ (ca 1178)<sup>2</sup> ‘the forest laws which are the outcome of the king’s mere will and pleasure are contrasted with the common laws of the realm’;<sup>3</sup> in other words the organization

of the forests 'are not based upon the common law of the realm but upon the will and disposition of the monarch'.<sup>4</sup> This was often felt to be oppressive. What has been called 'The first official act of legislation relating wholly to the forest', Henry II's Assize of the Forest, was issued in 1184 at Woodstock (his palace in the forest of Whichwood).<sup>5</sup> Although clause twelve restricted capital punishment to persons convicted of third offences against venison, most of the other fifteen clauses seem to have reiterated what had been current under Henry I as peremptory commands and prohibitions, fully consonant with the 'odious prerogative' set out in *The Dialogue of the Exchequer*.<sup>6</sup> By the end of John's reign (1199-1216) not only had 'the forest code, as set forth in the Assize of Woodstock [. . .] taken its place as a definitive system of law, distinct from common law and canon law alike',<sup>7</sup> but, according to the lawyer Manwood, writing in 1615, 'the greatest part of this Realme was become forest, to the great grieffe and sorrow of all the best sort of the Inhabitants of this land' (see Fig.1).<sup>8</sup>

The following were offences under Forest Law:

1. Chasing, killing or carrying away beasts of the forest, or 'venison', or disturbing them during the breeding season.
2. Capturing hawks and falcons, or their nests or fledglings; hunting or disturbing fowls of warren (which later became known as 'game birds').
3. Chasing or killing beasts of warren (that is, non-game wild animals such as foxes, badgers, martens and otters).
4. Damaging 'vert', specifically, the crimes of '**assart**', '**purpresture**' and '**waste**'.

There were, however, exemptions. 'Free warren' was a grant of the exclusive right to hunt beasts of warren over a defined area by king's writ. The designation 'park' gave the exclusive right to hunt beasts of the forest and beasts and fowls of warren within a defined fenced area by king's writ, and 'common chase' was the right of everyone to hunt all beasts outside forests, chases and parks.

The law was mitigated after John's death by the Charter of the Forest, first issued in 1217, two years after Magna Carta, with which it was closely associated.<sup>9</sup> Forests made since the accession of Henry II, 'whereby the Owner of the Wood hath hurt', were disafforested, except on royal demesne, and 'saving the **Common of Herbage**, and other things in the same Forests, to them which before were accustomed to have the same'. The young Henry III also declared that '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'; that 'No man from henceforth shall lose either Life or Member for killing of our Deer', and that every freeman might make arable and other areas of cultivation in his own land in a Forest, but only 'without the covert'.

#### ADMINISTRATION OF FORESTS, CHASES AND WOODLAND

An Act of 1482 [22 Edw. IV c. 7] allowed the owners of coppices in forests and chases to protect their new growth from browsing deer and **commoners'** stock by fencing them for seven years after cutting, but forest officers and their duties took precedence over surveyors and preservers of woods under Henry VIII's Act of 1543 for the preservation of woodland [35 Hen. VIII c. 17], both by statutory authority and in administrative practice (see table Fig. 3). In 1604 when coppice and timber felling in Windsor Forest was permitted, it was only on condition that it was not detrimental to vert and venison; timber management was as successfully frustrated by the lieutenant of Rockingham Forest in the 17th century as by the Duke of Gloucester in Windsor Forest in the late eighteenth; and in the 1690s Sir Richard Firebrace, master of the game and chief ranger of Enfield Chase, in a suit to Parliament, trounced the steward of the Duchy of Lancaster's attempts to control his woods.

These parallel administrative structures, and even more the differing interests of those in charge of them, led to attempts by a third group with a stake in the Chase (commoners and other local people) to gain advantages in what could be destructive ways. As Scott pointed out in 1998, 'When several agencies superintending the forest have conflicting utilitarian agendas, the result can be incoherence and room for the local population to maneuver.'<sup>10</sup> Indeed, Norden had noted in 1619 that 'everywhere in the desert forests are idleness, beggary and atheism [. . .] wherein infinite poor, yet most idle inhabitants have thrust themselves, living covertly without law or religion [. . .] among whom are nourished and bred infinite idle fry, that coming to ripe grow vagabonds and infect the commonwealth with a most dangerous leprosy.'<sup>11</sup> Clark has recently shown vividly that the inhabitants of Enfield followed this general rule.<sup>12</sup>

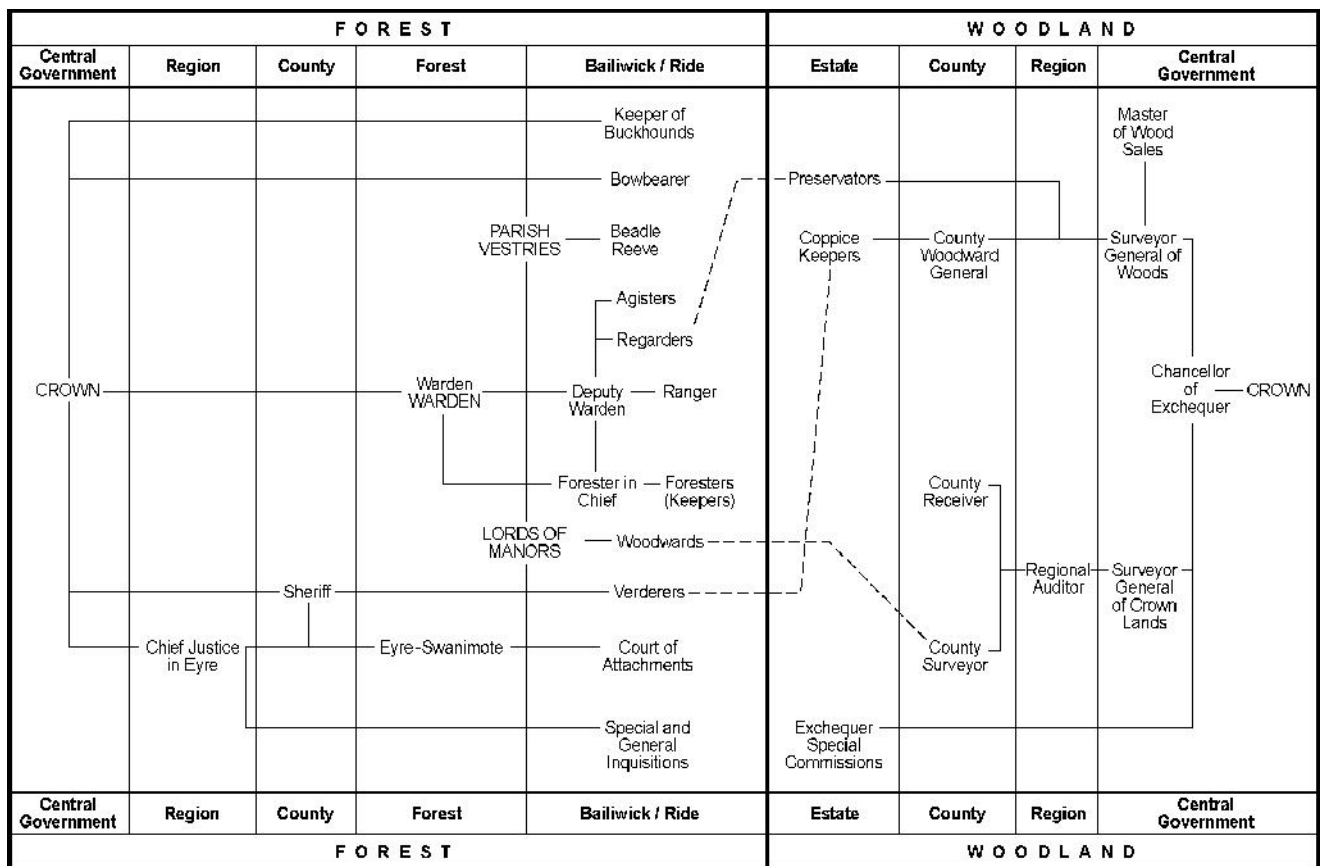


Fig. 3. Structures of Administration of Forests and Woodland

## HISTORY OF FORESTS

Historians have tended to emphasise the importance of the Middle Ages when considering forests and chases, giving relatively little attention to their later history. Arthur Lyon Cross, for example, argues that they ‘played their chief role in English public life’ during ‘the period from William the Conqueror to Edward I inclusive’.<sup>13</sup> Similarly, G. J. Turner asserts that ‘The history of the English forests can be conveniently divided into three periods, of which the first extended from the earliest times till 1217, the year of the granting of the Charter of the Forest; the second from 1217 to 1301, when large tracts were disafforested by king Edward I, and the third from 1301 to the present day.’<sup>14</sup> Margaret L. Bazeley, however, postpones ‘the final surrender’ until the reign of Edward III, but considers that ‘with it, the forest system falls into the background of national history’.<sup>15</sup>

This bias is also reflected in the amount of space allotted to different eras: one standard text has a short chapter on the forests ‘in the time of their decay’ after seven on the

medieval period, while ninety per cent of another is concerned with medieval times, and seven-eighths of a third text only with the *early* Middle Ages.<sup>16</sup>

Historians of the forests, moreover, seem anxious to apologise for them and to celebrate their passing as part of the end of feudal despotism. 'Forest' disappears from the indexes of the Oxford Histories of England after the volume on the fourteenth century, and all Victoria County Histories published between 1902 and 1914 deal with them under 'Forestry', with hunting under 'Sports'. In the 18th century Blackstone described post-medieval remnants of forest law as 'feudal slavery',<sup>17</sup> and Chapman regarded them as 'at first the offspring, and [. . .] now the dregs of Norman tyranny [. . .] a disgrace to the Statute-book'.<sup>18</sup> Stubbs' survey of the development of England's constitution fastidiously ignores forests and their laws,<sup>19</sup> as do standard accounts of England's legal development.<sup>20</sup> According to a recent authority on the medieval law and constitution, 'only the king's forests are outside the common law of the realm,' and therefore apparently outside 'the realm' as it concerns a constitutional historian.<sup>21</sup>

Nevertheless, forests continued to flourish. Magna Carta and the Charter of the Forest were re-issued more than fifty times between 1225 and 1416, and were listed together as the earliest of our operative statutes into the 20th century.<sup>22</sup> The 'theoretical sanctity' of Magna Carta is 'shared with the Charter of the Forest'.<sup>23</sup> Later reiterations of subjects' liberties reproduced both.<sup>24</sup> In fact, 'the Forest Charter and the particular issue of disafforestation helped to keep Magna Carta alive' through late medieval times, not *vice versa*.<sup>25</sup>

Between 1300 and 1971 there were 153 statutes concerning forests. The Charter and appropriate clauses of over sixty other statutes relating wholly or in part to forests, including The Ordinances of the Forest of 1305, The Customs and Assizes of the Forest (n.d.) and The Delimitation of the Forests (or Selden's) Act of 1640, were eventually abrogated by the Wild Creatures and Forest Laws Act 1971 [19 & 20 Eliz. 2, 1971, Ch. 47].

While rights were conceded and activities licensed within forests and chases, the privileges of their lords were also jealously guarded. In Young's view, 'long before Manwood's epitaph, the royal forests of medieval England had undergone a fundamental change in the fourteenth century that marked the end of what they had been at their height and *a return towards the hunting preserve that they had been under the Normans*'.<sup>26</sup> Forest law was enforced more immediately: in 1306 the Ordinances of the Forest [34 Edw. I, st. 5 c. 60] permitted the king's 'Justice of the Forest or his Lieutenant [. . .] [to] have Authority to take Fines and Amerciaments of those which be indicted for Trespasses committed in our Forests, and not tarry for the Eyre of the Justice'. Thenceforth, officers and jurors could

constitute 'inquisitions' at which 'all offences against the forest law [. . .] could be presented'.<sup>27</sup> Punishments, however, were limited to fines, or imprisonment if they were not paid. In 1297, in return for £500, Roger Mortimer granted licence to the men of his Marcher Lordship of Maelienydd to hunt, but 'if anyone kill any kind of game beyond the said bounds [that is in what therefore remained as his own forests], and be lawfully convicted by being taken in the act, or by inquisition of twelve lawful men, he shall be liable to the following penalties: twenty shillings for a stag; ten shillings for a hind; five shillings for a young hind; five shillings for a roe deer; ten shillings for a boar; five shillings for a sow', with any taken deer forfeited to the lord.<sup>28</sup>

Lords assiduously guarded their own hunting, and licences to hunt were strictly limited by the lord's privileges. An order from Edward the Black Prince to the Justice of Chester in 1351 declared that 'if any waste of the prince's forest is enclosed in such a manner as to be a nuisance to his hunting stations (*'tristres'*) the justice etc. are to have such enclosures removed so that hunting stations may be open'.<sup>29</sup> In 1352 notification was also sent to William de Stanlegh, chief forester of Wirral, that 'the prince has granted to the lady wife of Sir Warrin Trussel that whenever she comes to her manors within the said forest she may watch her greyhounds, but no other running dogs, hunting the hare, provided that she do no destruction and that the hunt be in places where the prince's deer will not be frightened; and order to allow her and warn the other foresters to allow her to do this, provided she do it in his presence or the presence of one of the foresters.'<sup>30</sup>

These privileges were protected all the more closely because hunting in their own forests and chases was regarded by royalty and nobility not just as recreation, but also as a mark of power and the right to rule; this was as keenly felt in the 16th and 17th centuries as in medieval times. 'Forests are the first mark of honour and nobility and the ornament of a flourishing kingdom', wrote Francis Bacon in 1614. 'You never hear Switzerland or Netherland troubled with forests.'<sup>31</sup> Henry VIII, Elizabeth I and James I were all passionate hunters. In 1574 Queen Elizabeth wrote personally to Lord Berkeley to say 'what good sport she had had' when 'twenty-seven stagges were slayne in the toyles in one day' on his Gloucestershire estate: away in Leicestershire at the time, he was none too pleased.<sup>32</sup> For James I, who hunted for at least six months a year, 'a royal progress was first and foremost a hunting holiday'. The sport was estimated to have cost him nearly £58,000 over six months in 1612, and his 'almost obsessive enthusiasm' meant that 'the establishment of hunting centres which were also places from which state business could be conducted was an important feature of his building programme'. He dealt with state and court business while



out hunting, disputes over hunting rights interspersed affairs of state at court in London, and his *Meditations upon the Lord's Prayer* (1619) 'indulged in several extensive digressions that are essentially reminiscences of his most successful days in the field'.<sup>33</sup> Such obsession would not necessarily have been seen as wasting time. John Coke warned in 1623 that if forests were alienated 'the Crown will necessarily grow less both in honour and power as others grow greater.'<sup>34</sup>

The nobility also had an interest in preserving forests and chases. The Marquis of Ailesbury was assured in 1725 that '[legal] opinion seems to be that once a Forest always a Forest', and Lord Rivers was advised a century later that the Games Laws and other then current legislation 'did NOT take away or abridge, change or alter any part of the Forest Laws of this Realm.'<sup>35</sup> In 1787 John St. John complained that his proposal to disafforest, enclose and sell off the forests 'may probably meet with much discountenance from some great Lords, who may consult the gratification of their own pleasures, fancy, and pride, more than the public benefit. The amusements of the chace [*sic*], which the forests afford, and the beautiful scenes with which they adorn the country, cannot be compensated by an allotment of land to those whose great estates need no addition: the patronage also which many great men possess in the forests, and the power of conferring favours, which they derive from offices, increase their influence in the country.'<sup>36</sup>

## HUNTING TREATISES

The continued importance of hunting is illustrated by the number of treatises written on the subject between 1400 and 1800. The following is a selective list:

- |                              |   |
|------------------------------|---|
| Guillaume Twici              | (MS) <i>Art de Venerie le quell Maistre Guillaum Twici Venour le Roy Dangleterre</i> (Grand Huntsman to Edward II; contemporary translation by John Giffard)      |
| Gaston III Phoebus (d. 1391) | (MS) <i>La livre de Chasse</i> , translated and amended as following:   |
| Edward, Duke of York         | (MS) <i>The Book of Venerye callyd the Maistre of Game</i> (1406-13); ed. W. A. and F. Baillie-Grohman, <i>The Master of Game</i> (London: Chatto & Windus, 1909) |

Dame Juliana de Berners	<i>The Boke of St. Albans</i> (London: Wynken de Worde, 1496), 15 editions issued in 16th century
George Turbervile	<i>The Noble Art of Venerie or Hunting</i> (London: 1576; 1611)
Sir Thomas Cockaine	<i>A Short Treatise on Hunting</i> (London: 1591)
Nicholas Cox	<i>The Gentleman's Recreation</i> (London: 1674; 1677; 1684; 1697; 1706; 1721)
Richard Blome	<i>The Gentleman's Recreation</i> (London: 1686; 1709)
Anon.	<i>Thoughts on Hunting</i> (London: 1733)
Charles Hitch and Stephen Austen	<i>The Sportsman's Dictionary</i> (London: c.1750)
Peter Beckford	<i>Thoughts on Hunting</i> (London: 1781)
Joseph Strutt	<i>Gilg-gamena, or the Sports and Pastimes of the People of England</i> (London: 1801)

#### ENFIELD CHASE

The Domesday survey of 1086 mentions a park adjoining Enfield Town (Old Park), as well as a large area of woodland sufficient to provide ‘**pannage**’ for four thousand pigs belonging to local people. This wood, together with the manors of Enfield and Edmonton, was given after the Conquest to Geoffrey de Mandeville, whose grandson converted eight thousand acres of woodland into a chase, probably in 1136 (although the inferior right of free warren, rather than free chase, is all that was claimed for Enfield by the Earl of Hereford in the *Quo Warranto* inquiry of the 1370s).<sup>37</sup> In 1421 Enfield Manor and Chase came to King Henry V by inheritance in his capacity as Duke of Lancaster, and thereafter constituted part of the royal Duchy,<sup>38</sup> which possessed more than sixty forests and chases (see Fig. 4).

At Enfield Chase as elsewhere, royal deer hunting was accompanied by extraordinary pomp and symbolism. In 1557 ‘the lady Elizabeth was escorted from Hatfield to Enfield-chase by a retinue of twelve ladies, clothed in white satin, on ambling palfreys, and twenty yeomen in green, all on horseback, that her grace might hunt the hart. At entering the chase, or forest, she was met by fifty archers in scarlet boots and yellow caps, armed with gilded bows; one of whom presented her a silver-headed arrow, winged with peacock feathers [. . .]

By way of closing the sport, or rather the ceremony, the Princess was gratified with the privilege of cutting the throat of a buck.’<sup>39</sup>

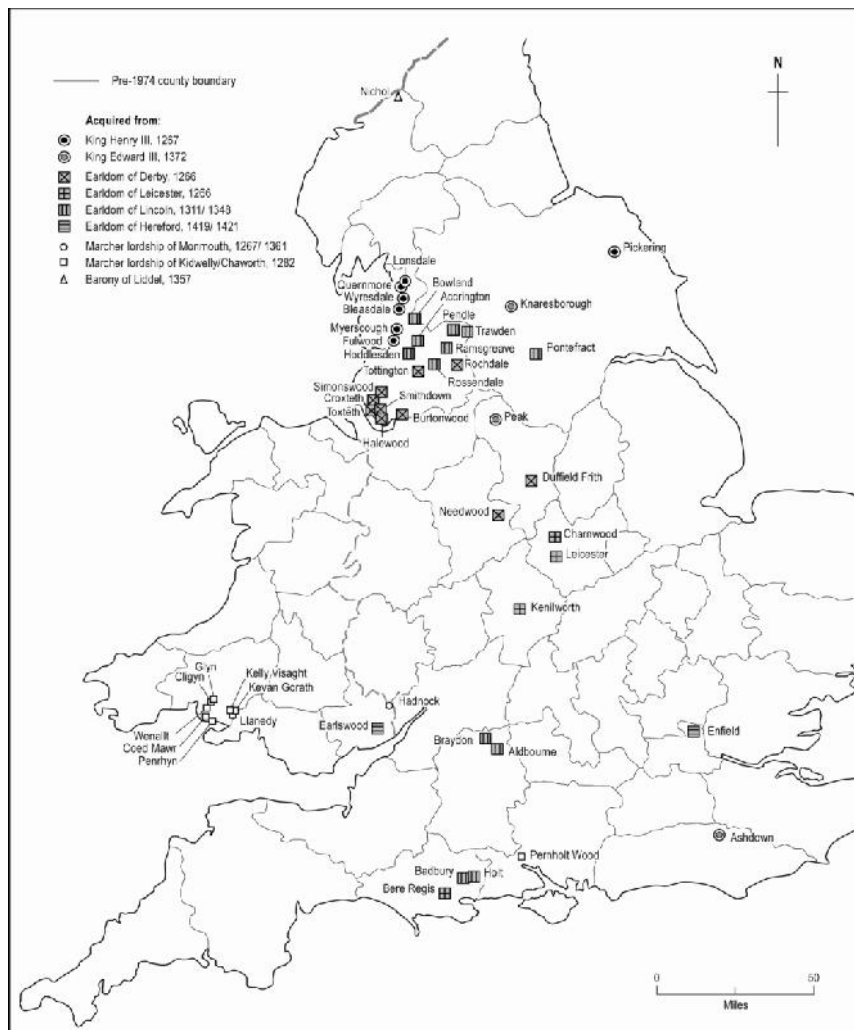


Fig. 4. Forests and Chases belonging to the Earldom (from 1267) and Duchy (from 1351) of Lancaster, 1266-1421 (plus Methwold in Norfolk, Roeburndale in Lancashire, Pevensey in Sussex, and Richmond and Huby in Yorkshire)

Everything changed, however, during the Civil War. Activation of the provision in an Act of 1649 to raise pay for the army led to surveys preparatory to the disafforestation and sale of a number of royal forests and chases, including Windsor Castle and parks, Hyde Park, Bushy Park, and Hampton Court as well as Enfield Chase (see Fig. 5). In 1652 there was a Resolution to sell them for ready money; but disposal either did not occur, or was reversed at the Restoration.<sup>40</sup> In 1660, for example, Enfield Chase returned to the Duchy of Lancaster.

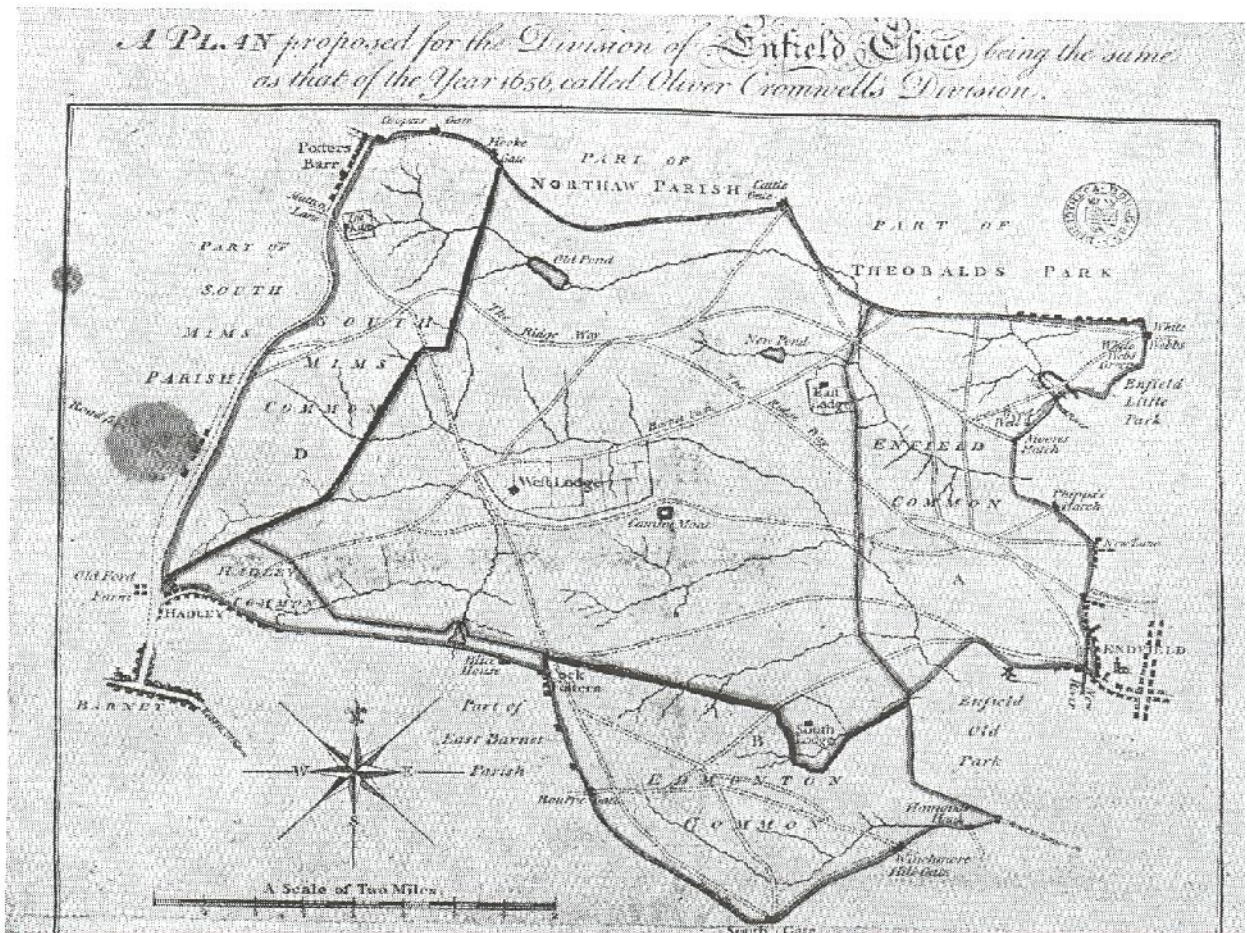


Fig. 5. A Plan for the Division of Enfield Chase, based on Cromwell's proposal of 1656

During the Civil War and Interregnum there seems to have been some disorder at Enfield, as in many forests. According to the *Journal of the House of Commons*, in 1643 there was 'an examination of the business concerning killing the deer in Enfield Chase and Park', and in July 1659 nine soldiers were court-martialled over their purchase of land there. In the same month a petition was presented by 'the inhabitants and commoners of the parishes of Edmonton, Enfield and Hadley' over the question of the Chase, and 'riotous and unlawful assemblies' were reported.

In 1687, Charles II having been restored to the throne, the Duchy drew up new 'draft particulars of the office of ranger &c of Enfield Chase'. Nevertheless, by about 1760 'Grants of Lands, Offices, or Franchises in Enfield Chase' had become so intricate, subdivided and devolved as to need a schedule of twenty-six pages to set them out. The annual sums paid to the ranger, three keepers, a woodward, a steward and a bailiff, including 'an Allowance for the Steward's Dinner upon holding the Courts for the [ . . . ] Manor and Chase' of Enfield in the 1760s, amounted to £109 2s 4d. In view of such administrative complications, together

with depredations of the woodland, in 1777, notwithstanding St. John's anxieties (see page 12 above), the Chase was disafforested and enclosed, with the preservation of some common land, under the Act of Parliament 17 Geo3 c17, which allocated large areas from the wastes of the Duchy of Lancaster's manor and lordship of Enfield to pre-existing parishes, and created a new 'Manor and Seignory called "The Manor of *New Mimms*"'.<sup>41</sup>

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## THE ANATHEMA OF FORESTS

There have been many objections to forests, by landholders within them and by historians, on legal and more general human rights grounds. The basis for the legal objection was the conflict between forest and common law. Firstly, forests gave arbitrary authority to kings: this is what distinguished Forest law sharply from common law.<sup>42</sup> Forests were also in flagrant breach of the Biblical and Roman (as well as common law) precept that wild creatures could belong to no one. This was excoriated as early as 1159 in John of Salisbury's *Polycraticus*, and eventually brought incredibly intricate and contradictory legal contention.<sup>43</sup> Moreover, as things of pleasure rather than profit, deer, game birds, hounds, hawks and so on could not under common law legally be subject to theft and therefore punished as felony until the sixteenth century.<sup>44</sup>

Forest laws could also be seen as violating natural justice, in this case the liberty of the subject with regard to his landed property. In general, 'it is necessary here to call the attention of the reader to the absolute impossibility of rendering any law, authorising a marauder to enter the property of another man, under pretence of killing game, compatible with the sacred security of property' said to devolve from Anglo-Saxon jurisprudence. In particular, Forest Law removed the right of subjects to hunt over their own land, or otherwise to manage its use for their own purposes. The Statute of Merton (1235) permitted lords of manors to enclose waste if they left enough common for their free tenants; but in Forests that was to commit assart, waste or purpresture.<sup>45</sup> The resulting injustice was exemplified by the case [brought by Lord Rivers in 1916] against the landowners on Cranborne Chase. Mr. Sergeant Best argued for the defendants in *Rivers v. King* that the 'the industry of the husbandman' would be made 'of no avail' if the provisions of the law were upheld. He enumerated them as follows: that 'in that wide range no man should plough the land to the detriment of the deer; that no man should raise a fence to the exclusion of the deer; that the growth of wood should be protected only for the benefit of the deer; that if any man turned

his sheep into his own woods, they should be impounded by the owner of the deer; that the growth of timber should for ever be prevented by the browsing of the deer; that the rights of the Chase should in all things be preferred to the interests of man; that all cultivation should be subservient to those rights, and that the benefit of the deer of Lord Rivers should be paramount to all the rights of property [ . . . ] [Lord Rivers's] claim was in its nature so oppressive, that it could hardly be consistent with any law.'<sup>46</sup>

Nearly two centuries earlier, Alexander Pope had memorably summarized these objections in his poem *Windsor-Forest* (1704):

A dreary Desart and a gloomy Waste,  
To savage Beasts and Savage Laws a Prey,  
And Kings more furious and severe than they:  
Who claim'd the Skies, dispeopled Air and Floods,  
The lonely Lords of empty Wilds and Woods [ . . . ]  
What wonder then, a Beast or Subject slain  
Were equal Crimes in a Despotick Reign;  
Both doom'd alike for sportive Tyrants bled,  
But while the subject starv'd, the Beast was fed.'<sup>47</sup>

The continual and increasingly strident clamour from landowners to be rid of them was clearly very firmly grounded (if not their customary neglect and disparagement by historians).

#### THE RECRUDESCENT FOREST?

A change in attitude towards forests, however, came in the later nineteenth century with rising concern over the loss of public open space. In 1864 a Parliamentary Committee was appointed to consider the protection of the London commons, leading to the formation of the Commons Preservation Society, with G. Shaw-Lefevre (later Lord Eversley) as Chairman. The Society's concerns also extended to forests. Looking back over a thirty-year campaign, Shaw-Lefevre wrote that the 'battle for the preservation of the Common lands and Forests of England and Wales' had begun at this time.<sup>48</sup> Supporters of the conservation movement in the twentieth century similarly regarded the existence of forests and chases as important

factors in the survival of considerable areas of open space.<sup>49</sup> Perhaps Frank Barlow was remarkably prescient when in 1981 he speculated that:

In the present climate of opinion ... there could emerge a revision of the traditional hostile attitude towards medieval kings with their hunting monopolies and cruel forest laws. Were they not the great conservators of the countryside, protecting vast stretches of land from the ravages of farmers, industrialists, property developers &c.? Perhaps I shall not live long enough to see St. William the Conqueror, the creator of the New Forest, in the ecologists' calendar, accompanied by his son, the martyr Rufus, who sacrificed his life for the cause.<sup>50</sup>

## CONCLUSION

This convergence of the aims of ancient hunters and modern conservationists has undoubtedly helped to preserve much of the open land around London that we enjoy today, in particular in Windsor and Epping Forests and Enfield Chase. Of the Chase land much remains undeveloped, in spite of disafforestation and considerable encroachment. The arrival of suburbia in the first half of the twentieth century failed to obliterate it, and when the Green Belt was established in 1938 its survival was assured. The commuters of the twenty-first century can still walk their dogs in Trent Country Park, once traversed by the hunters of the Middle Ages and beyond.



- <sup>1</sup> Edward Coke, *The Fourth Part of the Institutes of the Laws of England* (London: W. Lee and Pateman, 1644), p. 289. For a more elaborate definition see John Cowell, *The Interpreter: or Booke Containing the Signification of Words* (Cambridge: John Legate, 1607), unpaginated, 3pp.
- <sup>2</sup> Richard fitz Nigel, *The Dialogue of the Exchequer*, repr. in D C Douglas and G W Greenaway, *English Historical Documents 1043-1189* (first edition, London: Eyre and Spottiswoode, 1953) pp. 490-569, esp. pp. 526-9.
- <sup>3</sup> F. Pollock and F. W. Maitland, *The History of English Law before the time of Edward I* (2nd edition, Cambridge: Cambridge University Press, 1952) p. 177.
- <sup>4</sup> Douglas and Greenaway, *Historical documents*, (second edition, 1981) pp. 527-8.
- <sup>5</sup> Douglas and Greenaway, *Historical documents*, (first edition, 1953) pp. 417-20, quotation from p. 417; W Stubbs, *Select Charters and other Illustrations of English Constitutional History* ([1870] 9th edition., edited by H. W. C. Davis, Oxford: Clarendon Press, 1921), pp. 185-88. Stagg, *New Forest documents 1244-1334*, pp.7-8 gives an excellent explication, and Helen E Boulton, *The Sherwood Forest Book*, (Nottingham: Thoroton Society Record Series, Vol. 23 for 1964, 1965) , pp. 59-62, explains why different versions vary.
- <sup>6</sup> C. Petit-Dutaillis, *Studies and Notes Supplementary to Stubbs' Constitutional History*, II (Manchester: The University Press, 1935, pp. 180-83; Stubbs, *Select Charters*, quotation from p. 185.
- <sup>7</sup> W. S. McKechnie, *Magna Carta: a Commentary on the Great Charter of King John*, second edition (Glasgow: James Maclehose, 1914), p 415.
- <sup>8</sup> J. Manwood, *A Treatise of the Laws of the Forest* (London: Society of Stationers, 1615).
- <sup>9</sup> 2 Hen III [1217]; 9 Hen III c. 2 [1225]; 28 Edw I [1299].
- <sup>10</sup> James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition have Failed* (New Haven: Yale University Press, 1998), p. 360.
- <sup>11</sup> William Rowley, Thomas Dekker and John Ford, *The Witch of Edmonton* (1621).
- <sup>12</sup>  
Matthew Clark, 'The Gentry, the Commons, and the Politics of Common Right in Enfield c. 1558 – c. 1603', *The Historical Journal*, 54 (2011), pp. 609-629.
- <sup>13</sup>  
Arthur Lyon Cross, *Eighteenth-century Documents Relating to the Royal Forests, the Sheriffs and Smuggling*, University of Michigan Publications in History and Science, Vol. 4 (New York: Macmillan, 1928), p. 34.
- <sup>14</sup> G. J. Turner, *Select pleas of the forest* (London: Selden Society, vol. 13, 1899, 1901), p. x.
- <sup>15</sup> Margaret L. Bazeley, 'The extent of the English forest in the thirteenth century', *Transactions of the Royal Historical Society*, 4th Series, 4 (1921), p. 159.
- <sup>16</sup> J. Charles Cox, *The Royal Forests of England* (London, Methuen, 1905), quotation from p.76; Raymond Grant, *The Royal Forests of England* (Stroud, Alan Sutton, 1991); Charles R. Young, *The Royal Forests of Medieval England* (Leicester, Leicester University Press, 1979).



- <sup>17</sup> William Blackstone (1765-69), quoted in P. B. Munsche, *Gentlemen and Poachers: the English Game Laws 1671-1831* (Cambridge: The University Press, 1981), p. 118.
- <sup>18</sup> Anthony Chapman, *A Letter to the Noblemen and Gentlemen, Proprietors of Lands in Cranbourne Chace*, (London: 1791), pp. 43-44.
- <sup>19</sup> Stubbs, *Constitutional History*; Petit-Dutaillis, *Studies* were written to rectify this neglect.
- <sup>20</sup> Forest law is indexed to only one of the 1,362 pages of Pollock and Maitland's *History of English Law*; Baker's *Introduction to English Legal History* has little more.
- <sup>21</sup> Alan Harding, *Medieval Law and the Foundations of the State* (Oxford, OUP, 2002), p. 141. In fact, Common Law applied inside as well as outside forests for non- forest offences, though if there were no other local courts (forests might be outside manorial jurisdiction), forest courts dealt with common law matters. Coke, *Fourth Institutes*, p. 315; D. J. Stagg, *New Forest Documents* (Hampshire Record Series, 3; Hampshire County Council, 1979) pp. 3-4; F. M. Stenton, *Anglo-Saxon England*, Oxford History of England 2 (3rd edit, Oxford: Clarendon Press, 1971), p. 684; Elizabeth Cox Wright, 'Common law in the thirteenth-century English royal forest', *Speculum* 3 (1928), pp. 166-91.
- <sup>22</sup> *Chronological table of the Statutes*, 51st edition, Vol. 2, *Index to the statutes in force* (H.M.S.O., London, 1936), pp. 733-4.
- <sup>23</sup> F. Pollock and F. W. Maitland, *The History of English Law before the time of Edward I*, volume 1 (2nd edition, Cambridge: Cambridge University Press, 1952) p. 179.
- <sup>24</sup> Re-enacted more than 30 times before 1416 [4 Hen V c.1], usually as the first statutes of a parliament. Different MS versions vary, and all printed copies were taken from later *inspeximus* until Parliamentary Record Commissioners compiled a definitive version as *The statutes of the realm printed by command of his Majesty King George the Third* [. . . ], 9 vols (London: no publisher given, 1810-22), vol. 1, *Charters of Liberties*, pp. 20-44.
- <sup>25</sup> McKechnie, *Magna Carta*, pp.154-59; J. C. Holt, *Magna Carta* (2nd edition, Cambridge: The University Press, 1992), p. 386.
- <sup>26</sup> Young, *Medieval Forests*, p. 172 (my emphasis).
- <sup>27</sup> W. S. Holdsworth, *A History of English Law*, 7th Edition, Vol. 1, London: Methuen, 1956, p. 98.
- <sup>28</sup> Cal. Pat. Rolls, Ed. I, 1281-92, p. 290.
- <sup>29</sup> *Register of Edward the Black Prince Preserved in the Public Record Office*, Part III (*Palatinate of Chester*) A.D. 1351-1365 (London: H.M.S.O., 1932), p. 10.
- <sup>30</sup> *Idem*, p. 66.
- <sup>31</sup> Francis Bacon, quoted in Richard Hoyle, 'Dissafforestation and drainage', in Richard Hoyle (ed.), *The Estates of the English Crown 1558-1640* (Cambridge: The University Press, 1992) pp. 297-352, p. 357.
- <sup>32</sup> John Nichols, *The Progresses and Public Processions of Queen Elizabeth* (London, John Nichols & Son, 1823), Vol. 1, p. 392; John Smyth of Nibley, *The Berkeley Manuscripts ... from 1066-1618*

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<sup>33</sup> H. M. Colvin, J. Summerson, M. Biddle, J. R. Hale and M. Merriman, *The History of the King's Works*, Vol. IV, 1495-1660 (London, HMSO, 1982), p. 31; Pauline Croft, 'Robert Cecil and the early Jacobean court', in Linda Levy Peck (ed.), *The Mental World of the Jacobean Court* (Cambridge: Cambridge University Press, 1991), pp. 136-8; Roger B. Manning, *Hunters and Poachers: a Social and Cultural History of Unlawful Hunting in England 1485-1640* (Oxford: The Clarendon Press, 1993), pp. 201, 205; Graham Parry, *The Golden Age Restor'd: the Culture of the Stuart Court 1603-42* (Manchester: The University Press, 1981), p. 260n; *Report on the MSS of the Duke of Buccleuch* (Hist. MSS Comm. Vol. 45, 1899), pp. 228-230.

<sup>34</sup> Philip A. J. Pettit, *The Royal Forests of Northamptonshire: a Study in their Economy 1558-1714*, Northamptonshire Record Society, 23 (1968) p. 66.

<sup>35</sup> Wiltshire and Swindon Record Office, 1300/31; Dorset Archive Service, D/PIT/L30, emphases in original.

<sup>36</sup> John St. John, *Observations on the Land Revenue of the Crown* (London, 1787), p. 163.

<sup>37</sup> W. Illingworth (ed.), *Placita de Quo Warranto Temporibus Edw. I. II. & III. In Curia Receptae Scaccarij Asservata* (Printed by Command of His Majesty King George III in Pursuance of an Address of the House of Commons of Great Britain, 1818), p. 479.

<sup>38</sup> David Pam, *The Story of Enfield Chase* (Enfield: Enfield Preservation Society, 1984), pp. 10, 11, 17.

<sup>39</sup> Nichols, *Progresses*, Vol. 1, p. 17.

<sup>40</sup> Madge, *Domesday of Crown Lands*, pp. 239-46; *Journals of House of Commons*.

<sup>41</sup> *Statutes at Large*, Vol. 13 (Eyre and Stahan, London, 1780), p. 72.

<sup>42</sup> Marwood, *Treatise*, fos 25(r) – 26(v) and 229(r) – 231(v).

<sup>43</sup> Nicholas Everitt, *Shots from a Lawyer's Gun*, second edition (London: R. A. Everitt, 1903); only finally settled for deer in English Law Reports, *Morgan v. Earl of Abergavenny*, 8 Common Bench 768, 137 ER 710 (1849).

<sup>44</sup> Sir John Baker, *The reports of Sir John Spelman*, Vol. 2 (London: Selden Society, vol. 94, 1978), pp. 316-19.

<sup>45</sup> Sir William Blackstone [1755-9], quoted by Brown, *Forests of England* p. 240. John M. Maidlow *et al*, *Six Essays on Commons Preservation* (London: Sampson Low and Marston, 1867); George Shaw-Lefevre, *Commons, Forests and Footpaths: the Story of the Battle during the last Forty-five Years for Public Rights of Way over the Commons, Forests and footpaths of England and Wales* ([1894] Revised Edition, London, Cassel, 1910) pp. 214-28.

<sup>46</sup> *Salisbury and Winchester Journal*, August 1816.

<sup>47</sup> Alexander Pope, 'Windsor-Forest' [1704], in John Butt, *The Poems of Alexander Pope* (London: Methuen, 1963), pp. 195-210 (pp. 196-97).

<sup>48</sup> *English Commons and Forests: the Story of the Battle during the last Thirty Years for Public Rights over the Commons and Forests of England and Wales* (London: Cassell & Co., 1894).

<sup>49</sup> See, for example, Katherine Barker (ed.), *The Chase, the Hart and the Park: an Exploration of the Historic Landscapes of the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty* (Cranborne Chase and West Wiltshire Downs AONB, Occasional Papers Series, 1 (2009).

<sup>50</sup> Frank Barlow, 'Presidential Address: Hunting in the Middle Ages', *Reports and Transactions of the Devonshire Association for the Advancement of Science*, 113 (1981), 1-11 (pp. 9-10).

## GLOSSARY

See words in **bold** in the text. Definitions are based on those given in the *Oxford English Dictionary*.

agistor	officer of the royal forests, who took charge of cattle.
	admitted for a stated time into the forest.
assart	grubbing up of trees and bushes from forest land.
commoner	one who has a right of common (see below).
common of herbage	right to graze over waste.
court of pyepowders	summary court formerly held at fairs and markets to administer justice among itinerant dealers.
covert	woods, undergrowth and bushes that serve to shelter game.
demesne	land possessed and held by the owner himself, and not held of him by any subordinate tenant.
eyre	circuit court held by royal justices.
pannage	right to feed pigs on acorns and beech mast.
purpresture	an illegal enclosure of or encroachment upon the land or property of another... as by an enclosure or building.... in the royal forests.
regarder	an officer charged with the supervision of a forest.
swainmote	a forest assembly held three times a year in accordance with the Forest Charter of 1217.
venison	any beast of chase or other wild animal, especially of the deer kind, killed by hunting.
verderer	a judicial officer of the king's forest.
vert	green vegetation growing in a wood or forest and capable of serving as a cover for deer.
warren	a piece of land enclosed and preserved for breeding game. BUT: the right of 'free warren' was a licence to hunt verminous animals, usually over the grantee's own land.
waste	injury to estate caused by accident or neglect.

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