

William & Mary Bill of Rights Journal

Volume 25 (2016-2017)
Issue 2 Symposium: After Runnymede:
Revising, Reissuing, and Reinterpreting Magna
Carta in the Middle Ages

Article 8

December 2016

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Repository Citation

Sarah Harlan-Haughey, *Forest Law Through the Looking Glass: Distortions of the Forest Charter in the Outlaw Fiction of Late Medieval England*, 25 Wm. & Mary Bill Rts. J. 549 (2016), <https://scholarship.law.wm.edu/wmborj/vol25/iss2/8>

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FOREST LAW THROUGH THE LOOKING GLASS: DISTORTIONS OF THE FOREST CHARTER IN THE OUTLAW FICTION OF LATE MEDIEVAL ENGLAND

Sarah Harlan-Haughey*

INTRODUCTION

Even before Runnymede, forest law seems to have been perceived as a legal category adjacent to mainstream law—some contemporary legal commentary suggests that forest law was perceived as arbitrary, whereas common law was not.¹ Literary commentary on the forest laws also emphasized their singularity and difference. Indeed, soon after the Conquest, a complex cocktail of literary parody was born. It harnessed the complexity and perceived illogic of forest law and public protest using a poacher’s vocabulary of disobedience, infused with post-Conquest rhetoric against unjust forest law.² Animals in the chases and forests were often characterized as prestige objects that reflected the status and values of their “owners” and also those who poached them.³ Accordingly, chronicle accounts taking stock of the rule of Norman and Angevin kings seem often to comment on the near absurdity of the monarchs’ excessive love for their beasts.⁴ After the watershed moment of Magna Carta,

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¹ The most famous example of the acknowledgment of the essential arbitrary quality of forest law is found in the late twelfth-century DIALOGUE OF THE EXCHEQUER:

[T]he organization of Forests, and also the punishment or absolution of those doing wrong in them, whether it be pecuniary or corporal, is separate from the other judgments of the realm, and is subject to the discretion of the king alone or of an associate specifically deputed for this. For it has its own laws, which are said to be based not on the common law of the realm [*communi regni jure*] but the arbitrary institution of princes [*voluntaria principum institutione*], so that what is done through its law is said to be not just absolutely but just according to the law of the Forest.

JOHN HUDSON, 2 THE OXFORD HISTORY OF THE LAWS OF ENGLAND: 871–1216, at 455 (2012) (quoting DIALOGUS, i. 11, ed. Amt, 90). For a clear summary of forest law in the period from the end of the Anglo-Saxon period to the Forest Charter’s inception, see *id.* at 455–65.

² See Stefan Jurasinski, *The Rime of King William and Its Analogues*, 88 NEOPHILOLOGUS 131–44 (2004) (analyzing the creation of this genre of protest).

³ EMMA GRIFFIN, BLOOD SPORT: HUNTING IN BRITAIN SINCE 1066, at 44 (2007).

⁴ JOHN STEANE, THE ARCHAEOLOGY OF THE MEDIEVAL ENGLISH MONARCHY 146–47 (1993).

the already surreal (according to lay understanding) world of forest law became even more polemical and complex. The Carta de Foresta (Forest Charter)—a separate document apparently created because the issues around forest rights seemed too controversial and important to be included in Magna Carta, lest the entire project lose momentum—helped refine and interpret a preexisting system that many perceived as unjust.⁵ Nevertheless, the popular genre of literary forest law parody was established quickly after the Conquest, and functioned as a ready-made engine for the evolution of parody of the kind that would lead to the late medieval outlaw rhymes, masterworks of absurdist nonsense. Poachers, as well as poets, continued to perceive forest law on the ground as unjust and parodied it in word and action.

This Article will provide a brief survey of outlaw narrative as it reflects the perception of forest law in the period following Magna Carta, and, more specifically, the ways in which poets and storytellers used nonsense concepts—remarkably similar to those used by earlier chroniclers to describe Angevin and Norman kings as bestial in their sensibilities and their absurd attachments to their beasts of the chase—to think about the law of the king's forest. Outlaw narrative from the late medieval period in England has the uncanny ability to blend almost seamlessly into real-life practice and protest and vice versa, as Hanawalt, Holt, Pollard, and other historians of outlawry have demonstrated.⁶ Attacks and trespasses on forests, reserves, and chases (seigneurial forests) intensified in the fourteenth century, as did literary interventions in what seems to have been perceived as a particularly oppressive form of law.⁷ It is no coincidence that the behaviors described in the literature of outlawry were performed by real-life poachers and protestors.⁸ This study will draw on genre

⁵ See FAITH THOMPSON, *THE FIRST CENTURY OF MAGNA CARTA: WHY IT PERSISTED AS A DOCUMENT* 80–81 (1925).

⁶ See 16 *MEDIEVAL CRIME AND SOCIAL CONTROL* (Barbara A. Hanawalt & David Wallace eds., 1999) [hereinafter *MEDIEVAL CRIME*]; Barbara A. Hanawalt, *Ballads and Bandits: Fourteenth-Century Outlaws and the Robin Hood Poems*, in *ROBIN HOOD: AN ANTHOLOGY OF SCHOLARSHIP AND CRITICISM* 263–84 (Stephen Thomas Knight ed., 1999) [hereinafter *Ballads and Bandits*]; Barbara A. Hanawalt, *Men's Games, King's Deer: Poaching in Medieval England*, 18 *J. MEDIEVAL & RENAISSANCE STUD. (SPECIAL ISSUE: REWRITING THE MIDDLE AGES)* 175–93 (1988) [hereinafter *Men's Games*]. Six essential studies of the outlaw material are J. C. HOLT, *ROBIN HOOD* (1982); TIMOTHY S. JONES, *OUTLAWRY IN MEDIEVAL LITERATURE* (2010); MAURICE KEEN, *THE OUTLAWS OF MEDIEVAL LEGEND* (1961); STEPHEN KNIGHT, *ROBIN HOOD: A MYTHIC BIOGRAPHY* (2003); THOMAS H. OHLGREN, *ROBIN HOOD: THE EARLY POEMS, 1465–1560: TEXTS, CONTEXTS, AND IDEOLOGY* (2007); A. J. POLLARD, *IMAGINING ROBIN HOOD: THE LATE-MEDIEVAL STORIES IN HISTORICAL CONTEXT* (2004).

⁷ As A. J. Pollard notes, even though in the fourteenth century:

Hunting ceased to be a forest-based privilege, and conflict between crown and nobles over the right to hunt in the forest virtually came to an end. But for the local inhabitants there had never been much difference between a royal forest and a seigneurial forest, or a royal or seigneurial park. They were excluded from them all.

POLLARD, *supra* note 6, at 84–85.

⁸ See *Men's Games*, *supra* note 6, at 178, 192.

theory to examine the performance of forest law protest, both literary and real-world.⁹ There are striking thematic parallels between articles in the Forest Charter, incidents in fictional outlaw narratives, and real-life poaching performances of a kind of genred rhetoric of thought and deed that comments on forest law and specific articles in the Forest Charter. This is a literary study that reads the body of discourse around poaching in these three fields of late medieval activity (law, criminology, and literature) as constituting part of a rhetorical genre. The study uses the term “genre” following Carolyn Miller’s theorizing of genre as a form of social action, a recurring, typified situation that individual people can recognize.¹⁰ When an individual finds herself within a recognized rhetorical genre, the discourse performed by all participants creates a kind of exigence for the individual to act discursively within it as well, either consciously or subconsciously—i.e., in the genred context of a sporting match, each attendee is more likely to shout and cheer because all other attendees are doing so, and the situation seems to call for it. This is a result of our ability to understand different “situations as somehow ‘comparable,’ ‘similar,’ or ‘analogous’ to other situations.”¹¹

Therefore, in this reading of the many conversations about forest law preserved in the outlaw fictions that burgeoned after the Forest Charter, we will spend some time with the Forest Charter itself, as well as exploring the literary contexts of forest law protests before the Forest Charter, as a way of orienting ourselves to the kind of generically coded conversations people were having about the forest. The Forest Charter may have been instrumental in the establishment of the rule of law—but the folklaw reaction against incursions on ancient rights continued, and the fight continued as well—and these reactions built on genred rhetoric that had been established before Runnymede.¹²

As an illustration of the range of these reactions, this Article will explore real-life thirteenth- and fourteenth-century outlaws’ and poachers’ “performances” of the kind of nonsense constructions that are developed in literature commenting on forest law. This Article juxtaposes different kinds of texts from three interrelated kinds of discourse: poaching, outlaw narrative, and the Forest Charter itself, to see how they might act as foils to one another and give insight into the variety of ways people talked and thought about forest law. It will find that the tone of this genre of forest law

⁹ In this reading I am grateful to writing studies scholar Ryan Ware’s formulation of the hunt á force as a codified generic form, a reading which inspired me to think more deeply about the subject as it pertains to late medieval poaching, fictional and otherwise. See Ryan Ware, *The Genred Hunt á Force* (Fall 2015) (unpublished essay, University of Maine) (on file with author).

¹⁰ See generally Carolyn R. Miller, *Genre as Social Action*, 70 Q.J. SPEECH 151, 151–67 (1984) (arguing that a “rhetorically sound definition of genre must” focus on “the action [genre] it is used to accomplish”).

¹¹ *Id.* at 156.

¹² WILLIAM SHARP MCKECHNIE, *MAGNA CARTA: A COMMENTARY ON THE GREAT CHARTER OF KING JOHN 440* (1914).

protest was set and codified in the period before the Forest Charter, when chroniclers, jurists, and other writers developed a syntax and vocabulary of protest through nonsense inversions of legal constructions. Following the watershed moment of Magna Carta, and the subsequent Forest Charter, these earlier authors' legacies were enhanced by poachers' subversive performances and the narrative outlaw tradition of the late thirteenth to the fifteenth century. The outlaw tradition built on and enriched this nonsense vocabulary as it remained in constant conversation with real-life incidents and laws. Finally, this specific register of parody and inversion of legal constructions and social institutions created a powerful and transferable genre of protest rhetoric, which arguably continues to the present day in the kind of anti-forest law protest employed by many stakeholders in game law in regions impacted by English legal tradition.

I. THE WATERSHED MOMENT

The creation of the Forest Charter marks a watershed moment in the history of environmental and human law. The Forest Charter is at its core an environmental statute—one concerned with the use and conservation of natural resources.¹³ This is perhaps one of the first moments in history where animal rights were considered as a parallel or even alternative to human law. For example, deer had a right to move through protected areas without molestation, and any suspicious deaths were carefully looked into.¹⁴ And the Charter's understanding of human rights was also expanded from just the interest of the ruling class (as in Magna Carta) to all those who used forest land.¹⁵ It also helped stabilize the English countryside: "Throughout generations of contested decisions about Royal Forests, the Forest Charter produced the collateral benefit of stabilizing large tracts of forest countryside that have endured for a millennium."¹⁶ Arguably, without this unique document, the British landscape might have looked quite different by the end of the Middle Ages, as it seems to have slowed down the exploitation of such vulnerable ecologies as woodland. It also helped clarify and codify property boundaries and the rights and restrictions of forest use of not only people in power, but also commoners. The transparent presentation of users' rights in the charter empowered many to defend or assert their rights through the Forest Eyres (or perhaps feel more comfortable asserting their ancient rights through extralegal channels).¹⁷ And "[t]he recurring struggles applying the Charter of the Forest to the king's Forest Law were proving grounds for Magna Carta."¹⁸

¹³ See Nicholas A. Robinson, *The Charter of the Forest: Evolving Human Rights in Nature*, in *MAGNA CARTA AND THE RULE OF LAW 335* (Daniel Barstow Magraw et al. eds., 2014).

¹⁴ See STEANE, *supra* note 4, at 146.

¹⁵ Robinson, *supra* note 13, at 340 ("The text of the Forest Charter is extraordinary because it speaks to the rights and interests of the people more than those of the Crown, the lawgiver.")

¹⁶ *Id.* at 335.

¹⁷ *Id.* at 339.

¹⁸ *Id.*

The contents of the Forest Charter were disseminated in many ways. They were “repeatedly copied, sent throughout the realm, and read aloud together. Adjudicating the pleas of the forest bred respect for commoner’s rights and forged foundations for the rule of law.”¹⁹ It protects forest users from undue prosecution, from arbitrary mutilation of their animals, and the encroachment of acquisitive lords or kings on land traditionally held by smallholders.²⁰ The Latin text of the Charter was likely read and understood by many, and even those who did not understand Latin would likely have had the matter of it translated into Anglo-Norman French or Middle English so they could understand their rights.²¹ The Forest Charter in particular held much material of great interest to all stakeholders in natural resources, from great lords to poor people dependent on woodland or wetland for the necessities of life, like firewood, peat, or charcoal. It is not overly naïve to suggest that nearly everyone might have made it their business to become acquainted with the conventions and rules governing this resource.²² The complicated dissemination of the manuscripts of the Forest Charter suggests that communities all over the realm worked hard to obtain and keep a copy of the Forest Charter—the garbled versions extant in far-flung regions offer evidence of this.

The pleas of the Forest Eyres also point to a widespread and intimate level of knowledge of forest law, as in the case of the man who thought he could legally take more deer if they were scared out of the official royal forest.²³ He was mistaken:

When the lord king gave James of Panton two does in the forest aforesaid, the same James took six does, whereof four were without warrant. And by reason of the noise which he made by beating drums when he beset the does many beasts came out of the forest into the liberty and were taken; to the loss of the lord king and the detriment of his forest. And the aforesaid James comes, and being convicted of this is detained in prison.²⁴

¹⁹ *Id.* at 340.

²⁰ *Id.* at 341–43.

²¹ See generally Paul Brand, *The First Century of Magna Carta: The Diffusion of Texts and Knowledge of the Charter*, 25 WM. & MARY BILL RTS. J. 437 (2016) (discussing the dissemination of Magna Carta throughout England and what kinds of people had access to these documents, and in what languages).

²² D. A. CARPENTER, *THE MINORITY OF HENRY III* 63 (1990) (“Equally, all sections of society might benefit from the Charter of the Forest.”).

²³ SELDEN SOC’Y, 13 SELECT PLEAS OF THE FOREST 44 (G. J. Turner ed., London 1899) [hereinafter *SELECT PLEAS*].

²⁴ *Id.* This Article finds instances of real-life behavior from one major source, G. J. TURNER’S classic *SELECT PLEAS OF THE FOREST* (1899). This particular example comes from the pleas of the venison of the county of Rutland, 44:

[C]um dominus rex dedisset Iacobo de Paunton’ duas damas in foresta predicta idem Iacobus cepit sex damas vnde quatuor erant sine warento;

Here we have an example of someone willfully following the letter of the law—i.e., not to take more than his allotted amount from the Forest—but not its spirit. The performative quality of his careful law-following suggests he is prepared to engage in a hair-splitting conversation about technicalities in court, and does not mind making a public fuss. One cannot help but admire the many examples in the Forest Eyre rolls of such wily legal finagling.

The Forest Charter's gradual and rocky rollout—like that of Magna Carta—was complex and problematic, and similarly the performance of protest through poaching and literature is complex and difficult to connect directly to the advent of the Forest Charter.²⁵ For example, private chases—hunting parks owned by lords—followed their own rules, certain parts of the country were slow to take up the Forest Charter, and some regions resisted the changes actively.²⁶ But in spite of the halting implementation of the Forest Charter, it seems likely that people did feel mobilized to take more ownership of their local woodlands after the change (decrease) in afforestation, regulation, and punishment as a result of the Forest Charter. In their appeal to researchers for a more concerted effort to study the history of woodland, John Langton and Graham Jones, the leaders of the St. John's College, Oxford research group who have collaborated on an interdisciplinary study of the forests and chase of England and Wales, make the most compelling case for further study of forest culture in the past:

The phrase 'half our history' could quite reasonably be applied, in an anecdotal way, to describe the gradual disappearance of the hunting-and-gathering side of our ancient rural economy. In this old way of providing for our food, clothing, and healthcare, hunting-and-gathering was balanced by the production of crops and animals—farming—which has now all but overwhelmed it. And with the hunting and gathering has gone also a way of life,

et per tumultum quem fecit taborando in stabilia sua exierunt plures fere de foresta in libertatem que ibi capte erant ad dampnum domini regis et detrimentum foreste sue. Et predictus Iacobus venit; et super hoc conuictus detentus est in prisona.

²⁵ As Carpenter notes, “Almost immediately difficulties arose over implementing the Charter of the Forest.” CARPENTER, *supra* note 22, at 63. As the counties exhibited an “intense determination . . . to exploit the Charter of the Forest and achieve a large measure of deforestation,” the Crown struggled to find some compromise. *Id.* at 89.

²⁶ On this, see generally David Crook, *The Struggle over Forest Boundaries in Nottinghamshire, 1218–1227*, 83 *TRANSACTIONS THOROTON SOC'Y NOTTINGHAMSHIRE* 35, 35–45 (1979) (discussing the difficulties in asserting forest boundaries in Nottinghamshire). See also the discussion of the controversial practice of disafforestation, the process of decreasing royal forest land, in CARPENTER, *supra* note 22, at 62–63, 89–91, 129, 145, 150, 168–69, 180–82, 384–85. Henry III and his guardians were quite loath to actually go forward with the removal of land from the royal forest they had promised. *Id.*

what human geographers call an eco-system and historians describe in terms of society, economy and culture. In terms of area too, the phrase is not inappropriate, for the forests and chases of England and Wales—those districts where forest law, not the Common Law ran—covered a third to two-thirds of several historic counties at their greatest extent.²⁷

The Forest Charter gives us glimpses of an entire alternate world of biopolitical life as it appears to have been conceptualized at the moment of the creation of the Forest Charter. We see a moment where the essential identity of those foraging and hunting, trapping and herding within the forest was shifting again.²⁸ These regions of biopolitical life would come under increasing scrutiny and control throughout the later Middle Ages, and the Forest Charter's groundbreaking clauses would become the language people used to talk about their rights and privilege within this important space.²⁹

The Oxford forest study group laments the neglect of an issue that has until recently gone virtually ignored: the fate of royal forest administration from the thirteenth to the eighteenth century—somewhat parallel to a similar problem in Magna Carta scholarship addressed by this volume.³⁰ It is difficult to say what actually did change in the royal forests, as well as other kinds of reserves, such as chases, parks, and private forests that seem to have followed other rules—though in those places, too, the vert and venison were protected rigorously.³¹ Lords and other great landowners often

²⁷ John Langton & Graham Jones, *Forests and Chases, c. 1000 to c. 1850: Towards a Multi-disciplinary Survey*, FORESTS & CHASES ENG. & WALES C. 1000 TO C. 1850, <http://info.sjc.ox.ac.uk/forests/NonTech.html> [<https://perma.cc/E4E6-NZTW>].

²⁸ *Id.*

²⁹ Robinson, *supra* note 13, at 339–40.

³⁰ See generally Thomas J. McSweeney, *Salvation by Statute: Magna Carta, Legislation, and the King's Soul*, 25 WM. & MARY BILL RTS. J. 455 (2016). As Thomas McSweeney notes, the Symposium that generated the articles contained in this Issue focused on Magna Carta and the Forest Charter's impact on the subsequent two centuries, in an attempt to generate more scholarship on this crucial time. The majority of Magna Carta scholarship to date has focused on the immediate context of 1215, and on its modern legacy in Anglo-American law. Thomas J. McSweeney, Assoc. Professor of Law, William & Mary Law Sch., Opening Remarks at the William & Mary Bill of Rights Journal Symposium (Mar. 18, 2016).

³¹ Langton's recent assertion that little materially changed, especially in chases and private parks and forests, after the drafting of Magna Carta and its sister document is instructive:

'It is impossible to describe with any accuracy the laws which obtained in chases or private forests of the thirteenth century.' Yet one way or another vert and venison were as rigorously protected there as in royal forests. In Staffordshire 'much care and attention was lavished on the deer of the [royal] forests, and, *even more*, the [private] chases'; in Sutton Coldfield Chase, like the king in his forests, the earl of Warwick licensed deer parks, forbade hunting by all others when he intended to do so and the use of nets at all times, and, also as in royal forests, woodwards of private woods had to swear to preserve his venison.

behaved like absolute monarchs in their private reserves, and were not necessarily beholden to the laws stated in the Forest Charter.³² In other words, there is no hard-and-fast correspondence between laws, on the ground praxis, and literature.

Part of the reason for the disconnect between the laws' actual content and the way people perceived that content, argue Jean Birrell and Richard Firth Green, is that customary rights were longstanding aspects of the folklaw. "By the twelfth and thirteenth centuries common rights were old and customary, known to all concerned, and there was in general no need or formula for writing them down."³³ Any law on paper, in such a transitional legal context, might have seemed to some like an oppressive or redundant innovation. But the Forest Charter opened up the floodgates of debate, as the articles were read out loud,³⁴ memorized, and discussed and pondered, and the debate spilled into the forests and chases, and into the literature of stakeholders and observers. The many cases of poachers and trespassers *performing* their crimes that are recorded in the rolls suggest people knew the law and felt empowered to discuss its justice or injustice.³⁵ This debate took place at a time when the woodland was particularly vulnerable, as the economic pressures of the thirteenth century, such as growing inflation, assarting of land to make more arable land, and the taking of land back into lords' hands as demesne, led to increasing desire to exploit woodland.³⁶ The assertion of common rights could potentially interfere with landowners' desire to maintain the status quo of their landholdings, as well as to keep their game herds and woodlands at sustainable levels. Conversely, many people felt that the ancient world Langton refers to—the ancient rural economy of hunting and gathering—was in danger of slipping away, and that every new law, even ones that may seem to protect all users' rights, as was the case of the Forest Charter, were just the thin end of a wedge that might ultimately separate people from that ancient way of life. Moreover, arable land was necessary.³⁷ Richard Firth Green notes historians'

John Langton, *Royal and Non-Royal Forests and Chases in England and Wales*, 88 HIST. RES. 381, 397 (2015) (alteration in original) (quoting SELECT PLEAS, *supra* note 23, at cix, and Jean Birrell, *The Forest and the Chase in Medieval Staffordshire*, 3 STAFFORDSHIRE STUD. 23, 31 (1990–91)).

³² *Id.*

³³ Jean Birrell, *Common Rights in the Medieval Forest: Disputes and Conflicts in the Thirteenth Century*, 117 PAST & PRESENT 22, 24 (1987); see also RICHARD FIRTH GREEN, *A CRISIS OF TRUTH: LITERATURE AND LAW IN RICARDIAN ENGLAND 165–66* (1999).

³⁴ Robinson, *supra* note 13, at 340.

³⁵ *Id.* at 339–40.

³⁶ *Id.* at 332, 348.

³⁷ [T]he existence of common rights could hinder or prevent other uses of the woodland. These disadvantages from the lords' point of view, though always implicit, were felt much more acutely in the thirteenth century when the motives to exploit or to clear woods were so much stronger. On the one hand, lords had reason to maximize their incomes. On the other, the expanding markets of the period provided the possibility as

views of the “endemic lawlessness of the later Middle Ages: unruly subjects ignoring established legal channels and resorting to violence to settle their differences[,]” but argues that this supposed lawlessness is actually a symptom of “a wider conflict between two legal orders (what [he has] called the folklaw and the king’s law) which raged through the fourteenth century and which was to come to a head in the Peasants’ Revolt.”³⁸ Nevertheless, the reaction against the perceived encroachment of the king’s law on long-held custom was not just a reflex of the lower classes, as Green reminds us: “resentment of the king’s law was far from restricted to the lowest levels of society.”³⁹ People from all classes poached and enjoyed stories about poaching because such stories and actions seemed to restore a sense of balance between people, their land, and their king.⁴⁰

II. GENRES AS CONVERSATIONS

These stories about poaching were all part of a widespread conversation between participants on many different kinds of social platforms; poachers commented on the laws through their subversive acts, as did the literary elites, jurists, and chroniclers who engaged in an intellectual critique of forest law. This Article reads all three of these disparate acts as a rhetorical genre, following Carolyn Miller’s seminal formulation of genre as a process of typification:

It is through the process of typification that we create recurrence, analogies, similarities. What recurs is not a material situation (a real, objective, factual event) but our construal of a type. The typified situation, including typifications of participants, underlies typification in rhetoric. Successful communication would require that the participants share common types; this is possible insofar as types are socially created (or biologically innate).⁴¹

Genres are not just recognizably artistic types of discourse like poems or music, but also contexts within which people perform through signals, sounds, and utterances. And they need not be formally similar; as Miller notes:

well as the incentives to sell timber and wood; even more pressing was the demand for arable land, long in short supply in many parts of the country a demand which might often only be met by clearing woods.

Birrell, *supra* note 33, at 41.

³⁸ GREEN, *supra* note 33, at 165–205.

³⁹ *Id.* at 169. A. J. Pollard memorably notes, “poaching was the gentleman’s sport and the common man’s fair game.” POLLARD, *supra* note 6, at 85.

⁴⁰ The impetus for the creation of Magna Carta (barons’ disgruntlement) is a strong example of people from all walks of life taking exception to perceived excesses of royal power.

⁴¹ Miller, *supra* note 10, at 157.

The understanding of rhetorical genre that I am advocating is based in rhetorical practice, in the conventions of discourse that a society establishes as ways of “acting together.” It does not lend itself to taxonomy, for genres change, evolve, and decay; the number of genres current in any society is indeterminate and depends upon the complexity and diversity of the society.⁴²

In the case of a hunt, some ways to “act together” could be calls, horn notes, movements of horse and dog, as well as verbal discourse performed within the context of the hunt.⁴³ While the more official hunt could be more easily identifiable as a rhetorical genre, poaching also is one.

III. A POETICS OF POACHING

A poetics of poaching had already been established by the time the Forest Charter entered the picture, a result of on-the-ground praxis and literary commentary.⁴⁴ Several precedents for talking about the absurdity of forest law can be found in twelfth- and early thirteenth-century literature, as writers had been emphasizing the absurdity of repressive forest law for a century.⁴⁵ John of Salisbury, Walter Map, and various chroniclers of kings’ lives had made a series of generically codified points about the way royal interest seemed out of proportion, as too much energy was spent on creating and maintaining royal forests and their denizens, and too little spent on the well-being of subjects; these literary protests likely echoed popular anger at a repressive legal reality of forest law.⁴⁶ These literary works also helped establish a rhetoric of resistance.⁴⁷ To break this message down to its most basic non-sensical equation: if a human is equivalent to an animal, then the law is absurd. Furthermore, if a beast equals a subject in the mind of a monarch, then the country is in the grip of despotism. In the fundamental equation of human life with animal, the murder of deer is, in folk terms, equal to the murder of a man, and poaching performed in such a context and with intent to make a point, was a potent act of transferred aggression towards the magnates themselves.⁴⁸ Therefore, rhetorical performances

⁴² *Id.* at 163.

⁴³ *See* Ware, *supra* note 9.

⁴⁴ *See, e.g.*, Jurasinski, *supra* note 2, at 131.

⁴⁵ For a succinct discussion of the debate surrounding the “popular” quality of the *Rime of King William*, see *id.* at 131–32.

⁴⁶ *See id.* at 137; see also WILLIAM PERRY MARVIN, HUNTING LAW AND RITUAL IN MEDIEVAL ENGLISH LITERATURE 48–49, 63, 67, 69 (2006); *Men’s Games*, *supra* note 6, at 177.

⁴⁷ *See* MARVIN, *supra* note 46, at 74.

⁴⁸ *See id.* at 52; see also *Men’s Games*, *supra* note 6, at 175, 178, 192.

as diverse as writing a political poem, poaching a king's deer, or musing on the arbitrariness of forest law in a legal treatise were all taking part in typifiable, recognizable, repeatable genre of forest law critique.

The most famous early example of the literary equation so central to this genre, which likely expresses a widespread opinion, is the rhyme of William the Conqueror in the Peterborough continuation of the Anglo-Saxon Chronicle, quoted in full below:

He commanded castles be built and miserable men to slave away.
 The king was so very overpowering and took from his vassals
 many a gold mark and many hundreds of pounds of silver. Thus
 he took with cunning and injustice from his subjects without cause.
 He fell into avarice and he loved greediness over all else. He cre-
 ated many forests (a great deer-frith) and laid down laws for them
 such that whosoever slew hart or hind should be made blind.⁴⁹
 He forbade the hunting of harts, and also the bears, as if he were
 their father. Also he commanded that hares should travel/go free.
 His rich men protested; his poor ones bemoaned it. But he was so
 tough that he didn't care about all their suffering, but rather they
 all had to follow this king's will if they wanted to live and have
 land—land or possessions, or even his good regard. Welaway,
 that any man should in such a proud way heave up himself and
 hold himself over all others. May Almighty God decree mercy for
 his soul and forgive his sins.

Castelas he let wyrcean,
 7 earme men swiðe swencean.
 Se cyng wæs swa swiðe stearc,
 7 benam of his underþeoddan manig marc
 goldes 7 ma hundred punda seolfres.
 Det he naM be wihte
 7 mid mycelan unrihte of his landleode,
 for litte[!]re neode.
 He wæs on gitsunge befeallan,
 7 grædinæsse he lufode mid ealle.
 He sætte mycel deorfrið,
 7 he lægde laga þærwið
 þet swa hwa swa sloge heort oððe hinde,

⁴⁹ I translate this word as forests while acknowledging Jurasinski's point that "the compound *deorfrið* . . . remains a puzzling *hapax legomenon* whose meaning would be wholly transparent if there were not reasons for suspecting that it is being used here as a legal term." Jurasinski, *supra* note 2, at 134.

þet hine man sceolde blendian.
 He forbead þa heortas,
 swylce eac þa baras.
 Swa swiðe [he] lufode þa headeor
 swilce he wære heora fæder.
 Eac he sætte be þam haran
 þet hi mosten freo faran.
 His rice men hit mændon,
 7 þa earme men hit beceorodan;
 ac he [wæs] swa stið
 þet he ne rohte heora eallra nið.
 Ac hi moston mid ealle
 þes cynges wille folgian,
 gif hi woldon libban,
 oððe land habban,
 land oððe eahta,
 oððe wel his sehta.
 Walawa, þet ænig man
 sceolde modigan swa,
 hine sylf upp ahebban
 7 ofer ealle men tellan.
 Se ælmihtiga God cyþæ his saule mildheortnisse,
 7 do him [his] synna forgifenesse!⁵⁰

This poem paints a picture of a world profoundly out of joint. We see a king who treats men like beasts of burden in his great building projects, and farms them for their yield of gold, silver, and land. While perpetrating these great injustices against fellow humans, he treats beasts like valued subjects, granting them amnesty and peace, and loving them as if they were his children; this rhyme gives William a bestial quality that will be echoed later in the poem when he is characterized as rapacious and predatory.⁵¹ His gentle and tender treatment of the animals in his realm seems especially offensive when it is juxtaposed with his brutality towards those to whom he should serve as symbolic father. While men suffer in bondage, beasts roam freely throughout the land.⁵² The poem presents a powerful picture of a nonsensical and

⁵⁰ THE PETERBOROUGH CHRONICLE: 1070–1154, at 13–14 (Cecily Clark ed., Oxford, Clarendon Press, 2d ed. 1970) (translation mine); *see also* Jurasinski, *supra* note 2, at 133–34 (for translation and analysis).

⁵¹ *See* THE PETERBOROUGH CHRONICLE, *supra* note 50, at 13–14; *see also* Jurasinski, *supra* note 2, at 137–38.

⁵² This passage is echoed by Geoffrey of Monmouth's prophecies of Melin: "Geoffrey of Monmouth probably parodies the usage of the royal household when he includes among

topsy-turvy world, and it has greatly impacted the way we have viewed William over the centuries.

But the rhyme of William is only one of a spectacular array of literary protests of forest law in the twelfth and early thirteenth centuries.⁵³ Other chroniclers found William's apparent preference for animals over human beings problematic, as in this passage from John of Worcester:

In times past, that is, in those of King Edward, and of his other predecessors as English kings, that area was fruitfully planted with churches and with people who worshipped the Lord, but, on King William the Elder's command, men were expelled, homes were cast down, the land was made habitable only for wild beasts.⁵⁴

Here again, William not only chooses animals over people, he even prefers them to God and his place of worship.⁵⁵ On a similar line, Walter Map throws abusive foresters in Hades in his *De nugis curialium*, while Gerald of Wales noted that the king's addiction to the hunt was excessive.⁵⁶ Many other writers made subtle or overt points about the danger of a monarch's loving the hunt too much and his subjects too little.⁵⁷ John of Salisbury offers a very cogent and careful critique of "the Nimrodian problem"—that it is unhealthy for a ruler to hunt in excess, as it arouses his bestial appetites and draws him closer to animal life and away from human civilization and justice.⁵⁸

Legal scholars were also working on the question of the king and his deer, albeit from a different angle. The great legal treatise *Bracton*

Merlin's prophecies of the reign of Henry I: 'Pacem habebunt fere, humanitas supplicium dolebit' ('The beasts will have peace, humanity will suffer torture')." Jurasinski, *supra* note 2, at 136 (quoting GEOFFREY OF MONMOUTH, 2 HISTORIA REGUM BRITANNIE 104 (Neil Wright ed., 1988)).

⁵³ After offering an impressive and convincing summary of literary responses to William's forest law, Jurasinski notes: "All of the passages mentioned above follow a similar pattern. Arguments that originally were offered quite genuinely by the king and his household were parodied, or at least reiterated with a fair amount of bitterness, by opponents of the forest law." *Id.* at 137.

⁵⁴ 3 THE CHRONICLE OF JOHN OF WORCESTER 93 (P. McGurk ed. & trans., Oxford, Clarendon Press 1998).

⁵⁵ *See id.* at 93.

⁵⁶ *See* MARVIN, *supra* note 46, at 67, 69.

⁵⁷ For an excellent synthesis of the literary equation of hunting with tyranny and a more complete list of authors who took on the question in the years before the Forest Charter, see *id.* at 63–74.

⁵⁸ *See id.* at 65 for John of Salisbury's take on the Nimrodian problem.

offers a complex typology of things, including those things that belong to no one and therefore cannot be stolen, like wild beasts. For a thing to come within the sphere of the law means that it is not a wild thing; it must be a thing that has a relationship to a person, that has a social history.⁵⁹

The author of this passage in *Bracton* eventually throws up his hands and concludes that while the common usage aligns with Roman law and “insular usage as of old . . . given the times he was living in, he had to concede that ‘custom’ and ‘privilege’ could overrule it.”⁶⁰ Thus, while deer and other products of the wild were still at their core *res nullius*, they were at this moment in time also capable of being held by someone.⁶¹ Therefore the killing of a deer or hare in a forest could not technically be poaching, but rather trespass.⁶² Nevertheless, there was a fundamental tension in the definition of game—if, on the one hand, it could not belong to anyone, on the other, in a practical sense it could. This implicit understanding underlies the indignation expressed in such instances as the aforementioned Panton case where the deer are described as coerced out of the royal forest to the great detriment and damage to the Crown.⁶³

The performance of forest law in the decades leading up to the Magna Carta moment would only have emphasized the absurdity intellectuals and jurists were so quick to point out. Take for example, the process of inquest into poaching offences—which looks an awful lot like a homicide inquest, to the extent that the forest officials and local people would gather around the dead animal, just like the coroner’s inquest would gather around a human body.⁶⁴ These changes were seen as encroaching on ancient rights. People would be called from the neighboring townships to appear at the scene of the animal’s death—a responsibility that could require travel and the cessation of work at potentially inconvenient times. Why should the death of a deer or hare be attended by the same solemnity and legal rigmarole as that of a man, we can imagine some put-upon laymen wondering!

⁵⁹ Louise O. Fradenburg, *Needful Things*, in *MEDIEVAL CRIME*, *supra* note 6, at 60.

⁶⁰ MARVIN, *supra* note 46, at 60; *see also* HUDSON, *supra* note 1, at 455.

⁶¹ *See* MARVIN, *supra* note 46, at 59.

⁶² *See id.* at 60.

⁶³ SELECT PLEAS, *supra* note 23, at 44 (“ad dampnum domini regis et detrimentum foreste sue”).

⁶⁴ The most arresting feature of this inquest, with officers and forest inhabitants convened around a dead animal or parts thereof, or at least on the site of its death, is the way in which it reflects the coroners’ procedure for conducting inquests into deaths of humans by misadventure and homicide.

MARVIN, *supra* note 46, at 62; *see also* Jurasinski, *supra* note 2, at 139–40.

Perhaps most importantly, the forest laws were an occasion for an early clash between a marginalized subculture and an organized police force.⁶⁵ “[T]he subculture of poaching seems like a prime venue for a poetics of open and armed resistance to royal power.”⁶⁶ Poachers’ agendas often happened to align uncannily with literary protest against forest law. Thus the genre of protest encompassed a rhetorical field that included the forest, the taverns and halls, “the courts, the capital, and the battlefield.”⁶⁷

IV. THE FOREST CHARTER AND THE GRAMMAR OF NONSENSE

This controversy about forest law and the rights of forest users versus the rights of the king and other privileged parties is reflected in the mirror image of outlaw literature, which is reflexive of poaching records in legal history and literature, offering us an application of this genre of social activity in the late medieval world. In outlaw narrative, woodcraft is upheld as an activity separate from human law, and the traditional activities of woodcraft are juxtaposed with bureaucratic encroachments and legalistic invasions of a fictional woodland that is portrayed as primeval, wild, and romantically separate from workaday human life.⁶⁸

In the outlaw fictions, the grammar of nonsense, introduced by John of Salisbury and others, where animals replace human actors in dramas of resistance and political commentary, is developed to full flowering.⁶⁹ The serious tone of laws and statutes is echoed by the parodic one of literature and chronicle, but both deal with strikingly similar issues. This field of protest includes performative poaching and the thoughtworld of the Robin Hood material and constitutes an infrapolitical rhetorical genre of poaching nonsense.⁷⁰ Just as *Alice in Wonderland* reverses in wonderful inversion the most revered and deeply felt truisms of Victorian society, so too do the literary parodies invert a matter of grave importance.⁷¹ And just as Carroll is the

⁶⁵ See *Men’s Games*, *supra* note 6, at 178–80.

⁶⁶ Randy P. Schiff, *The Loneliness of the Stalker: Poaching and Subjectivity in The Parliament of the Thre Ages*, 51 *TEX. STUD. IN LITERATURE & LANGUAGE* 263, 263 (2009).

⁶⁷ *Men’s Games*, *supra* note 6, at 176.

⁶⁸ As William Perry Marvin argues, woodcraft’s basic lore or character . . . derived from the immemorial antiquity of tracking game through the woodlands. Woodcraft at its core, therefore, relates only tentatively to laws of the forest and their attendant culture of authority, or perhaps not at all, because woodcraft is about freedom. It is the lore of the fathers from back in the day when men hunted without constraint.

See MARVIN, *supra* note 46, at 130.

⁶⁹ See *id.* at 64; see also OHLGREN, *supra* note 6, at 20, 26.

⁷⁰ See MARVIN, *supra* note 46, at 67, 74, 80; see also POLLARD, *supra* note 6, at 84–85.

⁷¹ See Elizabeth Sewell, *The Balance of Brillig*, in *ALICE IN WONDERLAND: AUTHORITATIVE TEXTS OF ALICE’S ADVENTURES IN WONDERLAND, THROUGH THE LOOKING-GLASS, THE HUNTING OF THE SNARK: BACKGROUNDS; ESSAYS IN CRITICISM* 377–87 (Donald J. Gray ed., 1971).

most sentimental of Victorians, as evidenced by his saccharin *Sylvie and Bruno*,⁷² yet capable of offering an entirely different vision, at times merciless, of his society and children's place in it, so too are the writers of outlaw narratives intimately knowledgeable about and deeply invested in medieval forest law. If Carroll's parodic poem "Speak Roughly to Your Little Boy" inverts brutally the precepts contained in the mainstream didactic poem "Speak Gently" in *Alice in Wonderland*, similarly the late medieval outlaws' decapitation of an enemy, or a poacher's display of a stolen deer's head, directly echo and parody the revered and arguable clauses of forest law.⁷³

Nonsense needs a grammar, a set of linguistic or logical rules that scaffold the creation of the nonsense, and for poachers on the ground and for creators of outlaw fiction—who share this field of protest—the great grammar and syntax that scaffold their acts of protest was forest law. This study will now explore specific articles of the Forest Charter, and show how poachers and poets inverted the grammar of the law into nonsense constructions.

V. AFTER THE FOREST CHARTER

This study will now discuss the literary record—and to a lesser extent, relevant court records—produced in the two centuries following Magna Carta as they interact with and comment on three different laws established by the Forest Charter in 1297. After a brief orientation to the literature of outlawry in late medieval England, this Article will discuss in particular three ways in which the outlaw fictions and the crime record seem to comment on the Forest Charter's articles on corporal punishment and mutilation, cheminage, and use of the horn while hunting or traversing royal forest.

The outlaw material is notoriously difficult to pinpoint in terms of audience, authorship, and date of composition. Most outlaw narrative existed in an oral form or in another version before it was recorded in the manuscripts that now preserve the

⁷² See *id.* at 381.

⁷³ Compare the original poem, believed to have been written by G.W. Langford or David Bates:

Speak gently!—It is better far
To rule by love, than fear—
Speak gently—let not harsh words mar
The good we might do here!

with Lewis Carroll's parody:

Speak roughly to your little boy,
And beat him when he sneezes:
He only does it to annoy,
Because he knows it teases.

LEWIS CARROLL, *THE ANNOTATED ALICE: THE DEFINITIVE EDITION* 62–63 (Martin Gardner ed., W.W. Norton & Co. 2000).

narratives we have.⁷⁴ All of the early rhymes of Robin Hood were recorded in the fifteenth century, which places them over a century and a half later than the creation of the Forest Charter.⁷⁵ Nevertheless, strong evidence suggests that Robin Hood was a popular hero in the fourteenth century. The early extant Robin Hood poems likely represent just the tip of an iceberg of poetry composed about him and his merry men. It is suggestive that the earliest mention of the poems appears in *Piers Plowman*, where the allegorical figure Sloth performs rhymes of Robin Hood in the tavern.⁷⁶ If these tales were prevalent enough in Langland's time for him to treat them as the quintessential enemy of a good day's work, there must have been many of them indeed by the middle of the fourteenth century. But other outlaw narratives adjacent to the Robin Hood tradition were without a doubt extant in the thirteenth and fourteenth centuries.⁷⁷ The Anglo-Norman *Fouke le Fitz Waryn*, a family romance about multiple generations of border barons and their repeated struggles against royal power, as well as their bouts of outlawry, is extant only in a prose summary of a rhyming Anglo-Norman romance in a manuscript compiled c. 1325–50, and in a sixteenth-century summary of a Middle English poem—which attests to the likely popularity of this outlaw romance.⁷⁸ Significantly, linguistic evidence provided by the embedded fragments of the verse romance upon which the extant summary is based suggest that the Anglo-Norman romance was originally composed in the mid-to-late thirteenth century, placing it within reach of the great events surrounding the genesis of Magna Carta and its sister document.⁷⁹ Indeed, Fulk III, the great outlaw hero of this grand family, was one of the troublesome barons who pitted themselves against the king, so it is quite likely the author would have the two documents generated in this conflict in mind when he wrote.⁸⁰

⁷⁴ See *The Tale of Gamelyn*, in *ROBIN HOOD AND OTHER OUTLAW TALES* 187, 190 (Stephen Knight & Thomas Ohlgren eds., 2d ed. 2000).

⁷⁵ See THOMAS H. OHLGREN & LISTER M. MATHESON, *EARLY RYMES OF ROBYN HOOD* xviii–xx (2013) [hereinafter *EARLY RYMES OF ROBYN HOOD*].

⁷⁶ See Fradenburg, *supra* note 59, at 50–54, for more on the relevance of *Piers Plowman* to “need” in outlaw literature and forest law.

⁷⁷ See MAURICE KEEN, *THE OUTLAWS OF MEDIEVAL LEGEND* 2 (1961) (arguing that there is a well-established “Matter of the Greenwood”—a cycle of tales and songs about outlaws, and that the outlaw material is a literary genre or mode as distinct as Arthurian legend or the Matter of Rome). My book *The Ecology of the Outlaw in Medieval English Literature* explores this possibility further. See SARAH HARLAN-HAUGHEY, *THE ECOLOGY OF THE OUTLAW IN MEDIEVAL LITERATURE* (2016).

⁷⁸ The manuscript is in the British Library, Royal 12 C. XII, fols. 33–61. See *ANGLO-NORMAN TEXT SOC'Y*, *FOUK LE FITZ WARYN* xix–xx (E. J. Hathaway et al. eds., 1975) [hereinafter Hathaway]; see also GLYN BURGESS, *TWO MEDIEVAL OUTLAWS: EUSTACE THE MONK AND FOUKE FITZ WARYN* 127–31 (1997).

⁷⁹ See Hathaway, *supra* note 78, at xix–xx.

⁸⁰ See *id.* at xxix. Interestingly, the events at Runnymede and the production of the two documents are not mentioned in the extant romance.

The Anglo-Norman poem *Trailbaston* has a much more precise date of composition, as it was written for a private audience in response to the Trailbaston statutes and has been dated to sometime between April 1305 and February 1307, though the only extant manuscript containing it has been dated to around 1341.⁸¹ *The Tale of Gamelyn*, a Middle English ancestral romance and swashbuckling outlaw yarn, has been variously dated from 1340 to 1370.⁸² The unique and allusive lyric poem “Robyn and Gandelyn” exists in only one manuscript, Sloane 2593 in the British Library, an anthology of lyrics and carols compiled around 1450.⁸³ Of course, many of these lyrics predate the manuscript, but we do not know how much older this cryptic outlaw lyric might be. This list of heterogeneous outlaw texts may seem disheartening, since it is difficult to attach them to a specific moment in the history of the Forest Charter’s impact. But since this study uses outlaw fictions as evidence of “conversations” about forest law that are shared by many, and sees them as participants in the genre of absurdist protest literature, they can be considered as potentially commenting on the Forest Charter. In the following sections, outlaw poems will be identified by the estimated date of manuscript production, but readers are encouraged to remember that these poems and narratives were probably in circulation before they were written down.

A. Mutilation and Lawing

Two articles in the Forest Charter deal with mutilation. Chapter 6 refers to the lawing of dogs, 10, to the corporal punishment of humans.⁸⁴ In both articles, these earlier injustices of overzealous expedition of dogs and corporal punishment of trespassers in forest law are corrected.⁸⁵ After the Forest Charter, it was no longer legal to punish poachers with mutilation—loss of genitals, eyes, or limbs—or loss of life, at least in the king’s forest.⁸⁶ It is likely, however, that amercement had already replaced corporal punishment as standard procedure long before the advent of the

⁸¹ *Trailbaston*, in *ANGLO-NORMAN POLITICAL SONGS* (Isabel S. T. Aspin ed., 1953); see also *The Outlaw’s Song of Trailbaston*, in *MEDIEVAL OUTLAWS: TWELVE TALES IN MODERN ENGLISH TRANSLATION* 151–55 (Thomas Ohlgren ed., Carter Revard trans., 2005).

⁸² It was included in the *Canterbury Tales* by the Harley 7334 scribe, and is appended to the CD group of manuscripts as a follow-up to the unfinished “Cook’s Tale.” See *The Tale of Gamelyn*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 264–65 (providing an overview of theories about the tale).

⁸³ See *Robyn and Gandelyn*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 227.

⁸⁴ THE CHARTER OF THE FOREST, in *ENGLISH HISTORICAL DOCUMENTS*, 1189–1327, at 337–39 (Harry Rothwell ed., 1996) [hereinafter Rothwell].

⁸⁵ *Id.*

⁸⁶ *Id.* at 339; Robinson, *supra* note 13, at 342.

Forest Charter. In place of mutilation, trespassers were to be amerced according to their means—and if unable to pay, imprisoned for a year and a day.⁸⁷ In a parallel construction, dogs could no longer be ‘lawed’ (i.e., have the toes of their forepaws removed) willy-nilly.⁸⁸ Both of these provisions preserved the bodily health and safety of poachers and their helpmeets—but the literary record shows a revealing obsession with mutilation, and also with murder in the greenwood. In this way, it seems the acts of poachers in mutilating animals and people are intended to register protest, and the compositions of the outlaw poets that feature decapitations, castration, and mutilation use the grammar of the Forest Charter but turn it upside down, to quote its guidelines inversely. It is tempting to think that they were playing with the document’s conventions in a manner that would suggest that its groundbreaking innovations intended to protect forest users’ rights were not being honored in all cases. Chapter 10 of the Forest Charter, on poaching and other offenses against the vert or venison, reads as follows:

No one shall henceforth lose life or limb because of our venison, but if anyone has been arrested and convicted of taking venison he shall be fined heavily if he has the means; and if he has not the means, he shall lie in our prison for a year and a day; and if after a year and a day he can find pledges he may leave prison; but if not, he shall abjure the realm of England.⁸⁹

As Robinson notes, the old penalty for taking venison had been “loss of eyes and testicles, but in place of dismemberment, severe fines had become preferred in the 13th century.”⁹⁰ The Forest Charter made this shift towards fines and imprisonment and away from capital or corporal punishment official. Nevertheless, in *Trailbaston*;⁹¹ *Robin Hood and Guy of Gisborne*;⁹² *Robyn and Gandelyn*;⁹³ *A Gest of*

⁸⁷ Rothwell, *supra* note 84, at 339.

⁸⁸ *Id.* at 338.

⁸⁹ *Id.* at 339.

Nullus decetero amittat vitam vel membra pro venacione nostra; set, si aliquis captus fuerit et convictus de capcione venacionis, graviter redimatur, si habeat unde redimi possit; si autem non habeat unde redimi possit, jaceat in prisona nostra per unum annum et unum diem; et, si post unum annum et unum diem plegios invenire possit, exeat de prisona; sin autem, abjuret regnum Anglie.

J.C. HOLT, *MAGNA CARTA* 431 (3d ed. 2015) [hereinafter *MAGNA CARTA*].

⁹⁰ Robinson, *supra* note 13, at 342.

⁹¹ *Trailbaston*, *supra* note 81, at 69–76 (including a translated copy).

⁹² *Robin Hood and Guy of Gisborne*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 173–80.

⁹³ *Robyn and Gandelyn*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 230–32.

Robin Hood;⁹⁴ and in the later ballad *Johnie Cock*,⁹⁵ among other fictional outlaw narratives, physical violence is a fixation—and some of it is line with pre-forest charter forest law practice.⁹⁶ A particularly interesting inversion occurs in the short and haunting poem *Robyn and Gandelyn*. The outlaw Robyn is summarily executed for poaching by a sniper in the woods—obviously a violation of the protections established in the Forest Charter:

He hadde not the der iflawe,
Ne half out of the hyde,
There cam a schrewde arwe out of the west,
That felde Robertes pryde⁹⁷
(He had not flayed the deer more than halfway out of its hide when
a sharp arrow shot out of the west and felled Robin's pride.)

Robin is caught red-handed in the act of poaching, but according to the Forest Charter, he should be attached and brought to court, not killed without warning.⁹⁸ The sudden and unexpected nature of this forest murder is emphasized in the admittedly formulaic yet appropriate way Gandelyn, the surviving poacher, looks both east and west in a frantic attempt to locate the source of the arrow. Once he finds the sniper, one Wrennock of Donne, Gandelyn then engages him in a duel. Granted the first shot, Wrennock of Donne tries to hit Gandelyn's testicles:

Wrennok schette a ful good schote,
And he schet not to hye;
Throw the samclothis of his bryk,
It towchyd neyther thye.⁹⁹

(Wrennock shot a very good shot and he shot not too high; through
the crotch of his breeches, it touched neither thigh.)

⁹⁴ *A Gest of Robyn Hode*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 90–148.

⁹⁵ *Johnie Cock*, in 3 *THE ENGLISH AND SCOTTISH POPULAR BALLADS 1–5* (Francis James Child ed., Houghton, Mifflin, & Co. 1890).

⁹⁶ *A Gest of Robyn Hode*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 128, 135; *Johnie Cock*, *supra* note 95; *Robin Hood and Guy of Gisborne*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 175, 180; *Robyn and Gandelyn*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 232; *Trailbaston*, *supra* note 81, at 74. These selections represent but a few of the instances of violence within the fictional outlaw narratives.

⁹⁷ *Robyn and Gandelyn*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 230.

⁹⁸ See Rothwell, *supra* note 84, at 339.

⁹⁹ *Robyn and Gandelyn*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 231.

Castration, one of the old punishments for poaching, was supposed to have been thrown out when amercement replaced corporal punishment.¹⁰⁰ Why then does it appear here in what is likely a fourteenth century lyric? Does the poet have a long memory that reaches back to a common punishment from before the Forest Charter, or is he indicating that castration still obtains? It is an elusive allusion, and couched in lyric uncertainty, but it is an intriguing literary episode, nevertheless. Whatever the case, Gandelyn cuts to the chase and murders his opponent in his turn to shoot:

Gandeleyn bent his goode bowe,
 And set ther in a flo;
 He schet throw his grene certyl,
 His herte he clef on too.¹⁰¹

(Gandelyn bent his good bow and set an arrow in it; he shot through his green tunic and cleft his heart in two.)

The sniper's untimely end seems poetically satisfying; his violation of the due process of the law is echoed in kind. The vigilante justice depicted here seems to correspond to the all-important folklaw principle of equilibrium detailed by R. F. Green.¹⁰²

In the historical records of poaching, this obsession with mutilation that echoes earlier punishments for poaching is also apparent in the stories of various poachers who mutilate the heads and bodies of poached deer to make political points calculated to catch the attentions of those they felt oppressed them.¹⁰³ For example, it is interesting to examine the angry behavior of rebels who inverted laws explicitly mentioned in the Forest Charter to make a macabre point, as in the real-world case of William Tuluse's son Simon and his friends who killed three deer:

It is presented etc. that Simon the son of William Tuluse, Richard of Ewyas, the page of William Tuluse, William of Wootton, Ralph of Drayton, the chaplain at Wootton, Simon of Hanslope, the page of the aforesaid Simon, Alan the son of Hugh of Lowick, the woodward of Robert de Nowers of his wood of Bulax, John Messias of Lowick, Robert Pette of Lowick, Ralph Iuelhering of the same town, Robert of Grafton, Henry of Drayton and others of their company, whose names are to be ascertained, entered the forest aforesaid on Wednesday the

¹⁰⁰ Rothwell, *supra* note 84, at 339.

¹⁰¹ *Robyn and Gandelyn*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 232.

¹⁰² GREEN, *supra* note 33, at 81.

¹⁰³ SELECT PLEAS, *supra* note 23, at 38–39.

feast of St. Bartholomew in the fifty-sixth year with bows and arrows; and they were shooting in the same forest during the whole of the day aforesaid and killed three deer without warrant, and they cut off the head of a buck and put it on a stake in the middle of a certain clearing, which is called Harleruding, placing in the mouth of the aforesaid head a certain spindle; and they made the mouth gape towards the sun, in great contempt of the lord king and of his foresters. And the foresters, when they were at last perceived by them, hailed them; and the evil doers shot at them against the peace of the lord king. And the foresters, after raising the hue upon them, fled and could not resist them.¹⁰⁴

The aggression of these contemptuous and high-ranking poachers spills out beyond even the violence they visit upon the doe's head—they attack their policers determinedly, putting them to flight. This is a dramatic episode, and one which shows us the poachers are deliberately performing an extravagant and generically coded violent protest, one which is meant to comment on the perceived injustice of forest law.

In his treatise on the forest laws, John Manwood cites a very similar incident to this one in the rolls of the Pickering Eyre in the later fourteenth century:

Item, Nicholas Mevill and divers offenders were indicted for that they with bows and arrows and doggs had killed xliiii. staggs and hindes within the forest, and in despite had cut off their heads,

¹⁰⁴ *Id.* at 38–39.

Presentatum est etc. quod Simon filius Willelmi Tuluse, Ricardus de Ewyas, garcio Willelmi Tuluse, Willelmus de Wotton' (alibi) Radulfus de Drayton', capellanus apud Wotton', Simon de Hamslepe, garcio predicti Simonis, Alanus filius Hugonis de Lofwyk', wode wardus Roberti de Nowers de bosco suo de Bulax, Iohannes Messias de Lofwyk', Robertus Pette de Lofwyk', Radulfus Vuelhering' de eadem, Robertus de Grafton', Henricus de Drayton', et alii de societate eorum, de quorum nominibus inquirendum, intrauerunt forestam predictam die Mercurii in festo sancti Bartholomei anno quinquagesimo sexto cum arcubus et sagittis, et fuerunt bersantes in eadem foresta per totum diem predictum, et occiderunt tres feras sine warento, et abciderunt capud vnus dami et posuerunt illud super vnum pelum in medio cuiusdam trenchie, que vocatur Harleruding', inponendo in os predicti capitis quendam fucellum; et fecerunt illud iniare contra solem in magnum contemptum domini regis et forestariorum suorum; et forestarii, ex eis tandem percepti, ipsos exclamauerunt; et ipsi male factores ad eos saggittauerunt contra pacem domini regis; et forestarii, hutesio in eis leuato, fugierunt nec eis resistere potuerunt.

Id.

and set them up upon stakes: And for this heynous offence they were first committed to prison, and grievously fined.¹⁰⁵

In both of these cases, leaving an animal's head on a stake seems to be the "gesture of choice to express contempt," one that is performed to echo the "prestige code it aims to subvert, namely the courtly hunting ritual."¹⁰⁶ The gesture also echoes the code of capital punishment. The foresters who found the heads certainly see this as an overt gesture of defiance towards them and the kings whose laws they uphold.¹⁰⁷ The act is "in magnum contemptum domini regis et forestariorum suorum."¹⁰⁸ Nevertheless, the malefactors are imprisoned and fined, not shot down in the forest, even if the men were obviously guilty of the treasonous spite the record implies.

It is instructive to compare these historical deer's heads on stakes to Robin Hood's fictional treatment of the corpse of Guy of Gisborne: In *Robin Hood and Guy of Gisborne*, Robin Hood becomes aware of the sinister personage of the bounty hunter Guy of Gisborne, who is clad in a kind of strange camouflage:

There were the ware of wight yeoman,
His body leaned to a tree.

A sword and a dagger he wore by his side,
Had beene many a man's bane,
And he was cladd in his capull-hyde,
Topp, and tayle, and mayne.¹⁰⁹

(Then they became aware of a tough yeoman, his body leaned against a tree. Sword and dagger he wore by his side—these had been many a man's bane; and he was wearing a horse's hide, top, tail, and mane.)

After an exchange of menacing pleasantries, the two engage in a shooting contest followed by a sword fight. Once he has vanquished Guy, Robin removes his head and sticks it on a pole, nicking it with an Irish hunting knife, which furthers the parallels between this deadly contest in the woodland and the dispatching and processing of poached animals.¹¹⁰

¹⁰⁵ M. JOHN MANWOOD, A TREATISE AND DISCOURSE OF THE LAWES OF THE FOREST 251 (William S. Hein & Co. 2003) (1610); see MARVIN, *supra* note 46, at 75–76 (commenting on the quoted passage).

¹⁰⁶ MARVIN, *supra* note 46, at 76.

¹⁰⁷ See *id.* at 80.

¹⁰⁸ *Id.*

¹⁰⁹ *Robin Hood and Guy of Gisborne*, in ROBIN HOOD AND OTHER OUTLAW TALES, *supra* note 74, at 174.

¹¹⁰ See Stuart Kane, *Horseplay: Robin Hood, Guy of Gisborne, and the Neg(oti)ation of*

He tooke Sir Guys head by the hayre,
 And sticked itt on his bowes end:
 “Thou hast beene traytor all thy liffe,
 Which thing must have an ende.”

Robin pulled forth an Irish kniffe,
 And nicked Sir Guy in the face,
 That hee was never on a woman borne
 Cold tell who Sir Guye was.¹¹¹

(He took Sir Guy’s head by the hair and stuck it on his bow’s end:
 “you have been a traitor all your life, and this must come to an
 end.” Robin pulled out an Irish knife and cut Sir Guy’s face so that
 there was never anyone born of woman who could tell who Sir
 Guy was.)

This gesture seems an ironic inversion of the kinds of poaching behavior of such miscreants as the Rockingham poachers. It also, of course, echoes punishments for treason.¹¹² He also takes the horse’s skin Guy was wearing in a symbolic flaying of his prey.¹¹³

Readers may note that these examples seem to hearken back to an imagined “bad old time” when one’s ancestral rights were not respected, and corruption was rife among forest officials. But the Robin Hood poems are a creation of the fourteenth century. They seem in close conversation with real-life poachers and with law enforcers and interpreters, and suggest the poachers and poets are invoking the forest laws obliquely when they invert them so drastically. They do this to make a subtle point: the legal ideals are not always being held up in practice.¹¹⁴ For if all were well in the King’s forests, outlaw fictions would not waste time on foresters and poachers, but would rather focus on injustices that spoke more directly to lived experience.

the Bestial, in *ROBIN HOOD AND POPULAR CULTURE: VIOLENCE, TRANSGRESSION, AND JUSTICE* 101, 109 (Thomas Hahn ed., 2000).

¹¹¹ *Robin Hood and Guy of Gisborne*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 163–70.

¹¹² See Richard Firth Green, *Violence in the Early Robin Hood Poems*, in ‘A GREAT EFFUSION OF BLOOD?’ INTERPRETING MEDIEVAL VIOLENCE 268, 275–77 (Mark D. Meyerson, Daniel Thierry & Oren Falk eds., 2004) [hereinafter Green, *Violence*] (discussing, in full, the echoes of punishment for treason).

¹¹³ *Robin Hood and Guy of Gisborne*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 128.

¹¹⁴ See, e.g., *id.* at 135–38 (“The Seventh Fytte” from “A Gest of Robyn Hode” discussing the King’s futile attempts to apprehend Robyn, who ends up robbing him in the end).

In the *Outlaw's Song of Trailbaston*, the speaker threatens physical violence to anyone who attempts to capture him.¹¹⁵ He takes refuge in the fictional forest of Belregard:

[A]ntre bois, suz le jolyf umbray;
La n'y a fauceté ne nulle malle lay,
En le bois de Belregard, ou vole le jay
E chaunte russinole touz jours santz delay.¹¹⁶

(In the woods, beneath the lovely shade / there is no falsehood
nor bad law. / In the woods of Belregard, where the jay flies /
and the nightingale sings all day without delay.)

In this forest, natural law is good, and in harmony with the nature that surrounds it. Any invasion of this space by the representatives of the legal system will be summarily dealt with:

Je lur apre[n]droy le giw de Traylebastoun,
E lur bruseroy l'eschyne e le croupon,
Les bras e les jaunbes, ce serreit resoun,
La lange lur tendroy e la bouche ensoun.¹¹⁷

(I'd teach them the game of Trailbaston / And I'd bust their
backbones and their asses / Their arms and their legs, that would
be just. / I'd also take their tongues and their mouths.)

In *The Tale of Gamelyn*, the violence against representatives of the law threatened in *Trailbaston* comes to its most extravagant flowering.¹¹⁸ Not only the justice, but all the members of a corrupt jury are hanged by the outlaw hero Gamelyn:

Than seide Gamelyn to the justise,
"Thou hast yove domes of the worst assise;
And the twelve sesoures that weren on the quest,
Thei shul be honged this day so have I good rest!"
Than seide the sheref to yonge Gamelyn,
"Lord, I crie thee mercie brother art thou myn."
"Therfor," seide Gamelyn, "have thou Cristes curs,
For and thow were maister I shuld have wors."

¹¹⁵ *Trailbaston*, *supra* note 81, at 74.

¹¹⁶ *Id.* at 69.

¹¹⁷ *Id.* at 70.

¹¹⁸ *The Tale of Gamelyn*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 218.

For to make shorte tale and not to longe,
 He ordeyned hym a quest of his men stronge;
 The justice and the shirreve both honged hie,
 To weyven with the ropes and the winde drye;
 And the twelve sisours (sorwe have that rekke!)
 Alle thei were honged fast by the nekke.¹¹⁹

(Gamelyn then said to the justice, “You have given judgments of the worst assize, and the twelve jurors that were on this inquest, they’ll be hanged this day, I declare!” Then the sheriff said to young Gamelyn, “Lord, I beg for mercy—you are my brother!” “For that reason,” said Gamelyn, “you’ll have God’s curse, for if you were in charge, I’d have even worse treatment.” So to cut short this tale, he called an inquest of his own thugs; they hanged the justice and the sheriff, to wind in the ropes and dry in the wind; and the twelve jurors (may those who care come to sorrow), they were all hanged by the neck).

After this spectacular coup, Gamelyn becomes chief justice of the king’s free forest.¹²⁰ This seems to be a fantasy of a complete takeover of the forest; this text does not just comment on the laws and customs that be—it imagines a revolution of justice.

Trailbaston and *Gamelyn* both explicitly threaten or carry out mutilation or capital punishment of justices. Gamelyn kills an entire jury and a judge, while the speaker in *Trailbaston* threatens to cut off the noses and tongues of justices of Trailbaston—admittedly a separate legal problem, but one that is in conversation with the tumult of forest law in the late medieval period.¹²¹ In *Robyn Hod and the Shryff off Notyngham*, the punishment the Sheriff plans for the outlaws is much more extreme than the outlaws’ crimes, as he threatens a traitor’s death of drawing and quartering: “Co[m]e þu forth þu fals outlawe. Þu shall [be] hangyde and y drawe”¹²² (come out you false outlaw. You will be hanged and drawn). The early audience might have recognized that his threat is out of line in a post-Forest-Charter world.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ In *Fouke le Fitz Waryn*, the outlaws chop off the chins and noses of those attempting to hunt and capture them—mutilations reminiscent of earlier punitive norms. See Hathaway, *supra* note 78, at xvi. As Thomas McSweeney has pointed out to me, “it’s interesting that mutilation is still remembered in these other contexts. Mutilation was the ordinary way to punish a felon until about 1200 or so, when it became hanging. It had been a long time since it was the ordinary way to punish felons, too.” Email from Thomas McSweeney, Assoc. Professor of Law, William & Mary Law Sch., to Sarah Harlan-Haughey, Assistant Professor of English & Honors, The Univ. of Me. (on file with author).

¹²² *Robyn Hod and the Shryff off Notyngham*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 275.

The outlaw fictions go beyond ironic repetitions of corporal punishments. They also tackle capital punishment, presenting multiple examples of forest trespassers summarily executed by representatives of a law, and denied their right to a trial by jury.¹²³ Turning again to *Robin Hood and Guy of Gisborne*, a pathetic tableau greets Little John when he seeks out the outlaw band:

And when hee came to Barnesdale,
Great heavinesse there hee hadd;
He found two of his owne fellowes
Were slaine both in a slade,¹²⁴

(And when he came to Barnesdale, he felt great grief; he found
two of his own companions lying slain in a vale).

In revenge for the murder of his associates, Little John predictably shoots at the sheriff's men:

¹²³ If we understand the outlaws to be simply poachers, this is of course problematic. If they are criminals with bounties on their heads, then the destruction of the outlaws is legal. For a classic example of the call for Robin Hood, quick or dead, see Richard Grafton's *Chronicle at Large*:

This man ([s]ayth he) di[s]cended of a nobel parentage: or rather beyng of a ba[s]e [s]tocke and linage, was for his manhoode and chivalry advaunced to the noble dignite of an Erle, excellyng principally in Archery, or shootyng, his manly courage agreeyng therunto: But afterwarde he [s]o prodigally exceeded in charges and expences, that he fell into great debt, by rea[s]on wherof, [s]o many actions and [s]utes were commenced against him, wherunto he aun[s]wered not, that by order of lawe he was outlawed, and then for a lewde [s]hifft, as his last refuge, gathered together a companie of Roy[s]ters and Cutters, and practi[s]ed robberyes and [s]poylyng of the kinges [s]ubjects, and occupied and frequented the Forestes or wilde Countries. The which beyng certefyed to the King, and he beyng greatly offended therewith, cau[s]ed his proclamation to be made that who[s]oever would bryng him quicke or dead, the king would geve him a great [s]umme of money, as by the recordes in the Exchequer is to be [s]eene: But of this promi[s]e, no man enjoyed any benefite.

RICHARD GRAFTON, *CHRONICLE AT LARGE AND MEERE HISTORY OF THE AFFAYRES ENGLAND AND KINGES OF THE SAME 1568*, at 85 (London 1568). As Thomas McSweeney has pointed out to me, some lords had the franchise of infangtheof, which allowed them to kill a thief caught red-handed. It could be that the logic of these killings lies in that practice. Nevertheless, killing the king's deer was not considered tantamount to theft. It is a separate offense, under the forest law, that can't be punished with death or mutilation (unlike theft, which carried the death penalty).

¹²⁴ *Robin Hood and Guy of Gisborne*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 174.

[his arrow] mett one of the sheriffes men;
Good William a Trent was slaine.

It had beene better for William a Trent
To hange upon a gallowe
Then for to lye in the Greenwoode,
There slaine with an arrowe.¹²⁵

(his arrow hit one of the sheriff's men; good William a Trent was slaine. It would have been better for William of Trent to hang on the gallows than to lie in the greenwood slain with an arrow.)

The Sheriff, too, loses his life shortly thereafter—his heart is cleft in two by an arrow as he flees, running like a deer from a hunter.¹²⁶

This discovery of the fictional slain men, shot by foresters without, obviously, the protections of the legal system uncannily echoes the historical foresters' accounts of their discovery of dead game poached and abandoned in the woodland. These outlaws lie there like the animals that have been poached and abandoned by fleeing malefactors. Moreover, the poet's sympathetic dwelling on the shame of "Good William a Trent" shows us how demeaning this kind of death is, precisely because it parallels the death of beasts.¹²⁷ Consider in comparison a typical example from the Forest Eyre rolls from 1255:

It is presented by the same persons that on the Friday next
before the Purification of the Blessed Mary in the thirty-second
year a certain hart was found, struck with a certain arrow, and
dead in Littlehawe.¹²⁸

What is aesthetically striking about this typical entry, and the many like it in the Forest Eyre Rolls, is the discovery of the slain corpse of the animal on the forest floor. Its body has gone to waste, either because the poachers were forced to run away, or because it was slaughtered for fun. To do the same to a human seems unconscionable.

In the *Gest of Robyn Hode*, these tensions are explored but resolved when the king as the "owner" of the deer makes an appearance in the "king and subject" episode that effectively concludes the action of this exceptionally long poem.¹²⁹ The

¹²⁵ *Id.* at 175.

¹²⁶ *Id.* at 180.

¹²⁷ *Id.* at 175.

¹²⁸ SELECT PLEAS, *supra* note 23, at 31. "Presentatum est per eosdem quod diea Veneris proxima ante Puriti cacionem beate Marie anno tricesimo secundo quidam ceruus mortuus fuit, percussus quadam sagitta, et mortuus fuit inuentus in Lytlehawe." *Id.*

¹²⁹ *A Gest of Robyn Hode*, in ROBIN HOOD AND OTHER OUTLAW TALES, *supra* note 74, at 135–43.

king (referred to as Edward, “oure comly king” in lines 1411 and 1513 of the poem, and connected by scholars variously to Edwards II and III in an attempt to date the poem) enters Robin’s Greenwood only to be much distressed, for:

There our kynge was wont to se
Herdes many one
He coud unneth fynde one dere
That bare ony good horne.¹³⁰

(There where our king was accustomed to seeing many herds, he could hardly find a single deer that bore a good rack.)

The outlaws have decimated his game through their perpetual poaching, and the king is not happy. He visits Robin’s hideout in disguise, and is alarmed at the military organization of the outlaw band.¹³¹ The dramatic tension intensifies when Robin challenges his disguised visitor to a series of contests, and the two “kings” play the violent game of pluck-buffet—a simple game where archers take aim at an agreed-upon target, and he who loses receives a buffet on his chest or head.¹³² The question is, of course, will the real king punish the outlaw king corporally in the contest? He does, in fact, giving Robin a shrewd knock on the head.¹³³ But this symbolic punishment is all, and, once the king recognizes Robin’s loyalty, he reveals his true identity, and the two are reconciled.¹³⁴ Still, it is interesting to note that the punishment to which the king subjects Robin—symbolic bodily harm—hearkens back to before the Forest Charter, not after.

1. Lawing Dogs

Closely related symbolically to the mutilation of men is the “lawing” or expeditation of dogs. The Forest Charter’s Chapter 6 put an end to the indiscriminate mutilation of a dog’s forepaw—and stipulated exactly where it should be cut where the practice still obtained:

The inquest or view of the expeditating of dogs in the forest shall henceforth be made when the regard ought to be made, namely every third year, and then made by the view and testimony of law-worthy men and not otherwise. And he whose dog is then found not expeditated shall give as amercement three

¹³⁰ *Id.* at 135.

¹³¹ *Id.*

¹³² *Id.* at 140–41.

¹³³ *Id.* at 141.

¹³⁴ *Id.* at 142.

shillings, and in future no ox shall be seized for failure to expeditate. The manner, moreover, of expeditating by the assize shall generally be that three claws of the forefoot are to be cut off, but not the ball. Nor shall dogs henceforth be expeditated except in places where it was customary to expeditate them at the time of the first coronation of king Henry our grandfather.¹³⁵

This Chapter is summarized by Robinson as follows:

Formal investigations (*inquiry*) to determine who possesses dogs near Royal Forests is constrained, and the practice of removing the toes of dogs (“lawing”), ostensibly to keep them from chasing and killing the king’s deer is curbed, and allowed only where the practice was in force as of the coronation of Henry II, and when a dog is found the cutting is limited to three toes cut from the front foot. The fine for having dogs whose toes have not been removed (unlawed) is set at three shillings, and no longer may an ox be taken for the lawing of a dog. Hunting or traveling through Royal Forest with dogs remains banned.¹³⁶

It can be argued that outlaw fiction obliquely comments on this Chapter.

In two of the earliest surviving Robin Hood plays, the presence of dogs adds to the gleeful absurdity of the outlaws’ carnivalesque behavior. The play *Robin Hood and the Friar* is the only early outlaw narrative that features real, not symbolic, dogs in the company of a trespasser in the forest.¹³⁷ Three dogs, free and unlawed—and presumably illegal—appear in the company of the sexually obscene Friar Tuck, who joins the band after a knock-down drag-out with Robin (and three live dogs presumably made an appearance in the performance).¹³⁸ The friar has come to test his strength against Robin’s, and if that outlaw wins, he declares:

¹³⁵ Rothwell, *supra* note 84, at 338.

Inquisicio, vel visus de expeditacione canum existencium in foresta, decetero fiat quando debet fieri regardum, scilicet de tercio anno in tercium annum; et tunc fiat per visum et testimonium legalium hominum et non aliter. Et ille, cujus canis inventus fuerit tunc non expeditatus, det pro misericordia tres solidos; et decetero nullus bos capiatur pro expeditacione. Talis autem sit expeditacio per assisam communiter quod tres ortilli abscondantur sine pelota de pede anteriori; nec expeditentur canes decetero, nisi in locis ubi consueverunt expeditari tempore prime coronacionis regis Henrici avi nostri.

MAGNA CARTA, *supra* note 89, at 430.

¹³⁶ Robinson, *supra* note 13, at 342.

¹³⁷ *Robin Hood and the Friar and Robin Hood and the Potter*, in ROBIN HOOD AND OTHER OUTLAW TALES, *supra* note 74, at 287 (“And lead these dogges all three.”).

¹³⁸ *Id.* at 287–89.

His servaunt wyll I be, and serve him truely;
 But if that I be better man than he,
 By my truth my knave shall he be,
 And lead these dogges all three.¹³⁹

The friar seems to have in mind an approximation of a formal hunt deep in the greenwood, with Robin Hood serving in this fantasy as a menial boy, and the Friar playing the role of the great lord hunting on horseback. This friar is something like Chaucer's outrider—a man addicted to the hunt and other pleasures, who willfully ignores the restrictions of travel through forests and the curtailment of unauthorized dogs detailed in the Forest Charter.¹⁴⁰ Later on in the play, Robin craftily asks leave to blow his horn and call his “hound”:

In this forest I have a hounde,
 I wyl not give him for an hundreth pound:
 Geve me leve my horne to blowe,
 That my hounde may knowe.¹⁴¹

The “hound” that comes at Robin's call is, unsurprisingly, no dog at all, but a “sorte of ragged knaves come in, [/] Clothed all in Kendale grene.”¹⁴² Here the outlaws are explicitly and ironically described as dogs. This is an irony that would not have been lost on consumers of outlaw fiction. Robin Hood's band functions like dogs on a hunt, chasing their prey and surrounding it. It is an interesting feature of the extant poems that dogs never accompany the poachers, though the records of actual poaching often attest to the use of hunting dogs, especially greyhounds. Is this one place where the outlaw fiction follows the rules whereas real-life poachers do not? Or is the humorous and mythic potential of the wolf's head as a member of a doglike pack more valuable for the narratives' impact?¹⁴³ The equation of outlaws with wolves seems to be an ancient one, if early legal codes are any indication. Bracton puts it most succinctly: “Ex tunc enim gerunt caput lupinum ita quod sine iudiciali inquisitione pereunt” (and then they bear the wolf's head and thus die lawfully without a judicial inquisition.)¹⁴⁴

¹³⁹ *Id.* at 287.

¹⁴⁰ See GEOFFREY CHAUCER, *General Prologue*, in *THE CANTERBURY TALES* lines 165–207, reprinted in *THE RIVERSIDE CHAUCER* (Larry D. Benson ed., Houghton, Mifflin, & Co. 3d ed. 1987).

¹⁴¹ *Robin Hood and the Friar and Robin Hood and the Potter*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 289.

¹⁴² *Id.*

¹⁴³ See HARLAN-HAUGHEY, *supra* note 77, at 23–68, 101–42, 143–77. See also TIMOTHY S. JONES, *OUTLAWRY IN MEDIEVAL LITERATURE 27–28* (2010) for a summary of the ways the outlaw is portrayed as a wolf or wolf's head.

¹⁴⁴ 2 BRACTON ON THE LAWS AND CUSTOMS OF ENGLAND 354 (Samuel E. Thorne trans., 1997) [hereinafter BRACTON].

Thus a group of men roaming the forest in bands, poaching the king's deer might actively invoke this fundamental equation.

The doglike behavior of fictional outlaw bands comments obliquely on the Forest Charter's restriction of dogs. The outlaws' ability to run as swiftly as dogs might seem a wish-fulfilling fantasy of swiftness and precision of a hunting dog, most of which are still banned in royal forests. (It is also a reflection of the status as wolfs' heads—outlaws are constantly portrayed as lupine, and they behave accordingly). This is seen most clearly in the *Gest*, where critics have been flummoxed for years by Little John's stamina and ability to run for five miles and then run some more alongside a hunting horse for "[o]f fote he was full smerte"—this inhuman speed and endurance makes more sense as a wish-fulfilling parody of the laws against using or owning dogs in the wood.¹⁴⁵

Expeditation continued illegally even in spots where the practice was not "in force as of the coronation of Henry II."¹⁴⁶ For example, in 1219, four foresters violated Chapter 6, and others did so again in Somerset in 1279, and in York in 1305.¹⁴⁷ In Southampton, two men working for the king's manor in Basingstoke charged a forester of illegally requiring cheminage (this will be discussed below), and footing their dogs "*contra formam corte regis Henricis patris regis nunc*."¹⁴⁸ The struggle over interpretation and even basic enforcement of the Forest Charter's laws seems to have continued well into the century after the Forest Charter was created, as this telling entry—an official grievance registered against the Forest Charter in Somerset in 1298—suggests:

La ou la chartre dit ke veue de espeutison de chens deyt estre fet de terz an en terz an *quaunt* len fet le regard e dunke *par* veue de leus hommes e de bons e nemye autrement la veynent les foresters par my les viles cornant, e funt noyse a graunt bruyt pur fere les mastins venir hors a boyer eus, si attachent la bone gent de an en an pur lur mastins si les trez ortils ne seyent copes, e vne maylle de la pelote del pe destre v la chartre dit ke les tres ortils seyent trenchez saunz la pelote del pe deuaunt.¹⁴⁹

(Although the charter says that view of the lawing of dogs ought to be made every third year, when the regard is made, and then by view of loyal men and good, and not otherwise, yet the foresters come through the towns blowing horns and make a nuisance with

¹⁴⁵ *A Gest of Robyn Hode*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 113.

¹⁴⁶ Robinson, *supra* note 13, at 342.

¹⁴⁷ THOMPSON, *supra* note 5, at 86–87.

¹⁴⁸ *Id.* at 87.

¹⁴⁹ SELECT PLEAS, *supra* note 23, at 126.

much noise to cause the mastiffs to come out to bark at them; and so they attach the good folk every year for their mastiffs if the three toes be not cut and a little piece from the ball of the right foot, although the charter says that the three toes are to be cut but not the ball of the fore foot).

The plaintive quality of this grievance, the careful presentation of injustices in French, which suggests a concerted effort to express perceived wrongs on the part of non-legal specialists, and the picture it paints of a rowdy, abusive group of thuglike foresters entrapping citizens' dogs, is quite powerful, and certainly points to continuing struggles over expeditation. It is no wonder this theme might make its way into the literature.

The fantasy exploration of the nonsense and absurdity of the expeditation rule appears in the later traditional ballad *Johnie Cock*¹⁵⁰—first collected in 1750 but likely a “precious specimen of the unspoiled traditional ballad” of great antiquity, as Francis James Child controversially argued¹⁵¹—where an outlaw, hunting with his pack of able-bodied dogs, takes down a doe and devours part of the carcass raw in a macabre communion with his pack:

And he has taen out of that dun deer
The liver bot and the tongue.

They eat of the flesh, and they drank of the blood,
And the blood it was so sweet,
Which caused Johny and his bloody hounds
To fall in a deep sleep.¹⁵²

While Johny, drowsy from this feast, falls asleep in the midst of his dogs, the foresters that have been hunting him come upon him in this state and chop off his leg—a transferred expeditation taken to the extreme. Johny then fights an epic last stand against the seven foresters who ambushed him. He notes that they are much more brutal than the most dangerous denizen of the forest:

[Y]ou might well ha wakened me,
and asked gin I wad be taen.

‘The wildest wolf in aw this wood
Wad not ha done so by me;

¹⁵⁰ *Johnie Cock*, *supra* note 95.

¹⁵¹ *Id.* at 1.

¹⁵² *Id.* at 3.

She'd ha wet her foot ith wan water,
 And sprinkled it oer my brae,
 And if that wad not ha wakend me,
 She wad ha gone and let me be.¹⁵³

That a later ballad should still display a fixation on expeditation and mutilation suggests a long memory of the supposedly outlawed practices—or that these deterrents were still used in places, which they were. It was legal to law dogs in places where that had been done in the time of Henry I, and the practice continued for many centuries.¹⁵⁴ If, as Richard Firth Green argues, this fixation upon mutilation is a hallmark of the outlaw tradition specifically because of the reality of their ultimate institutional punishment, then what is a late outlaw poem doing reflecting on expeditation in a nightmarish fever dream?¹⁵⁵ This Article argues that the fixation on mutilation not only uses fiction to reflect on punishment, but also to take part in a conversation that includes poachers, law enforcers, and consumers of outlaw narrative—and that this conversation continued for centuries!

B. Traveling and the Horn

Chapter 11 of the Forest Charter details the proper use of the horn to signal lawful hunt and lawful passage through royal forests:

Any archbishop, bishop, earl or baron whatever who passes through our forest shall be allowed to take one or two beasts under the supervision of the forester, if he is to hand; but if not, let him have the horn blown, lest he seem to be doing it furtively.¹⁵⁶

The Forest Charter's emphasis on making public and audible one's lawful hunt draws upon ancient practice, and is explicitly subverted in outlaw fiction, as it is in late medieval poachers' behavior in the field. Poachers were known to seek out horn-blowers who could alert others to their illegal activities. In the quoted example below, we see men caught in the act of hunting attack the person of the forester, taking his horn and sword:

On the Sunday next after the feast of St. Osithe in the twenty second year of the reign of King Henry Simon the son of Norman

¹⁵³ *Id.* at 4.

¹⁵⁴ See *supra* note 146 and accompanying text.

¹⁵⁵ GREEN, *supra* note 33, at 54, 172.

¹⁵⁶ Rothwell, *supra* note 84, at 339. "Quicumque archiepiscopus, episcopus, comes vel baro . . . transierit per forestam nostram, liceat ei capere unam bestiam vel duas per visum forestarii, si presens fuerit; sin autem, faciat cornari, ne videatur furtive hoc facere." MAGNA CARTA, *supra* note 89, at 431.

was going through his bailiwick of Kingswood, and he saw there full sixteen men on foot and two on horseback with bows and arrows; and as soon as ever he saw them he raised the cry upon them. And immediately afterwards the two men on horseback came, and assaulted him and beat him, and wounded him. And afterwards the aforesaid sixteen men on foot came and took away from him his horn and his sword, his bit and his surcingle. And when the aforesaid Simon had escaped from their hands he went to seek the verderers; and immediately they came with men of the neighbourhood and sought those aforesaid men in the aforesaid forest, and they could not find them.¹⁵⁷

As Marvin notes,

[t]he horn is not only a sign of animal potency but also an instrument for the production of signs, the ‘motes,’ by which the hunt’s progress is signaled, hounds directed, the hunting party more or less held together, and the ritual moments of kill and presentation declared. In the institutional field, the horn is a manifest sign for the social capital represented by the formal relationship between the holder of the forest or chase . . . and any hunter authorized to hunt at the lord’s pleasure . . .¹⁵⁸

It also, of course, is a special tool of the forester and links him with the institutional power that supports him. It is not surprising, therefore, that the hunting party went for this unfortunate Simon’s official accoutrements.

In the Robin Hood world, the use of the horn establishes an alternate law of the forest—where the outlaws co-opt the symbols of rightful ownership of the forest and rule their domain sonically and physically with a system of horn communication (a

¹⁵⁷ SELECT PLEAS, *supra* note 23, at 69:

Die Dominica proxima post festum sancte Osithe anno regni regis Henrici vicesimo secundo ibat Simon lius Norman’ per balliam suam de Kingswod’ et vidit ibidem bene sexdecim homines pedites et duo equites cum arcibus et sagittis ; et statim ut illos vidisset leuauit super illos clamorem ; et statim postea venerunt duo equites et ipsum assultauerunt et verberauerunt, et ei plagas inposuerunt ; et postea venerunt predicti sexdecim homines pedites et abstulerunt ab eo cornu suum et gladium frenum supercengulam suam. Et cum predictus Simon esset euasus a manibus eorum ibat querere viridarios; et statim venerunt cum hominibus visneti et querebant illos predictos homines in predicta foresta et illos inuenire non potuerunt.

Id.; see also *id.* at 14.

¹⁵⁸ MARVIN, *supra* note 46, at 234.

fiction that would have struck contemporary audiences). They use the horn to take complete ownership of the woodlands they occupy, not to signal transient occupation while traveling as archbishops, bishops, earls, and barons traversing Royal Forests may do. Their complex system of horn communication is used to scare up—and scare—men, scare up deer, but not to “show when they are not hunting”: because they are always hunting!¹⁵⁹ As Robin puts it to his enemy in the early play fragment of *Robyn Hod and the Shryff off Notyngham*, “Owte on the I blowe myn horne. hit ware better be vn borne.”¹⁶⁰ (“damn you, I’ll blow my horn, and if I do, it would be better for you never to have been born!”). All the privileged travelers in the outlaw fictions would do well not to announce their presence—they do not blow horns as they enter the Greenwood! In this way the use of the horn by the outlaws parodies the legal practice of “fancy people” who are charged to behave in a similar way in the Forest Charter.¹⁶¹ It is a final irony that while these transient lords are permitted to take two of the king’s deer as they travel, but no more, the outlaws, in their unruly parody, “spare non of this venyson.”¹⁶²

The outlaw Fouke Fitz Waryn, who travels through and uses the resources of the king’s forests in his peripatetic outlawry, is often set in opposition to horn blowers. Unfortunates who try to blow horns to let the pursuers know where Fouke and his band are, are stopped almost before they can press their lips to the instrument: “Finally, they went down a path and encountered only one man raising the cry with a horn. One of their company struck him in the body with the bolt from a crossbow. He ceased raising the cry.”¹⁶³ Fouke’s stopping the horn’s note—a symbol of the rule of forest law—sends a potent and clear message, indeed! In another incident, Fouke encounters a band of outlaws on a faraway island who are kidnappers, rapists, and murderers, and they use a complex system of horns to communicate amongst themselves.¹⁶⁴ Fouke steals their horn and blows it to trick more than two hundred of the bandits to emerge from the woods, and destroys them all. This puts an end to their dangerous horn use.¹⁶⁵ This is clearly a fanciful episode much more in line with

¹⁵⁹ Robinson, *supra* note 13, at 342.

¹⁶⁰ *Robyn Hod and the Shryff off Notyngham*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 275. The text has been transcribed from Cambridge, Trinity College MS R.2.64 (fragment) c. 1475. I read this passage as being uttered entirely by Robyn, though Knight and Ohlgren read the second part of the couplet as coming from Robyn’s adversary in this scene, the knight who is helping the Sheriff.

¹⁶¹ See *supra* note 156 and accompanying text.

¹⁶² *Robin Hood and the Monk*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 41.

¹⁶³ BURGESS, *supra* note 78, at 154–55.

¹⁶⁴ See *id.* at 117.

¹⁶⁵ *Id.* at 175. “Atant entrerent en une veye, e ne vyrent qe un lever la menee au un corn. Un de la compaignie le fery parmi le corps de un quarel; Atant lessa le cri e la menee.” THOMAS WRIGHT, *THE HISTORY OF FULK FITZ WARINE, AN OUTLAWED BARON IN THE REIGN OF KING JOHN* 82 (London, The Warton Club 1804).

romance than history, but it is intriguing to note what an important role the horn plays in the episode, as if it is somehow central to the notion of outlawry for the author.

In many of the late medieval outlaw fictions, outlaws travel across multiple forests and reserves, poaching as they go, in direct violation of this clause.¹⁶⁶ *Adam Bell, Clim of the Clough, and William of Cloudesley* rhapsodizes about this mobility (which emulates the practice and privilege of great lords) with the gleeful:

Mery it was in grene forest,
 Amonge the leves grene,
 Where that men walke both east and west,
 Wyth bowes and arrowes kene,

To ryse the dere out of theyr denne;
 Suche sightes as hath ofte bene sene,
 As by the yemen of the north countrye,
 By them it is as I meane.¹⁶⁷

To walk both east and west at liberty in a forest subject to such restriction would have powerful resonances for the audience of outlaw rhymes.

C. *Cheminage*

The third category of behavior in outlaw fiction that parodies the articles of the Forest Charter is in many ways the great hallmark of at least the Robin Hood tradition and needs no great explication here. Chapter 14 of the Forest Charter attempts to limit the numbers and kinds of people permitted to charge others for their use of and travel through the forest:

No forester henceforth who is not a forester-in-fee rendering us a farm for his bailiwick may exact any chiminage' in his bailiwick; but a forester-in-fee rendering us a farm for his bailiwick may exact chiminage, namely for a cart for half a year 2d and for the other half year 2d, and for a horse with a load for half a year 1/2d and for the other half year 1/2d, and only from those who come from outside his bailiwick as merchants with his permission into his bailiwick to buy wood, timber, bark or charcoal and take them elsewhere to sell where they wish; and from no other cart or load shall any chiminage be exacted, and chiminage shall only be exacted in places where it used to be exacted of old and

¹⁶⁶ See *supra* note 156 and accompanying text.

¹⁶⁷ *Adam Bell, Clim of the Clough, and William of Cloudesley*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 241.

ought to have been exacted. Those, on the other hand, who carry wood, bark, or charcoal on their backs for sale, although they get their living by it, shall not in future pay chiminage. In respect of the woods of others no chiminage shall be given to our foresters beyond [that given] in respect of our own woods.¹⁶⁸

As clarified by Robinson,

Only a forester who holds his office by hereditary right (*forester in fee*) can escort persons through a Royal Forest and take a fee for doing so (*cheminage*) or collect a toll, which is set for carriage by a cart at two pence per half year, and for a horse a half penny per half year. Persons carrying their brush or bark or charcoal on their backs shall pay no fee (*cheminage*), unless they are removing it from the king's domain in a Royal Forest (*demesne*).¹⁶⁹

Robin Hood and his men, as pseudo-foresters, famously charge chiminage in direct contradiction of this clause. Examples of their subversive practices include the poem *Robin Hood and the Monk*, where the Monk was charged “C Libri” to pass through the woods,¹⁷⁰ and the poem *Robin Hood and the Potter* where the Potter flatly refuses “I peney of pauage to pay” to the outlaws (“What ys they name seyde þe potter / ffor pauage thow aske of me”).¹⁷¹ The potter wants to know the name (and thus to understand the title or rank) of the man confronting him. Presumably,

¹⁶⁸ Rothwell, *supra* note 84, at 339.

Nullus forestarius decetero, qui non sit forestarius de feudo firmam nobis reddens pro balliva sua, capiat cheminagium aliquod in balliva sua; forestarius autem de feudo firmam nobis reddens pro balliva sua capiat cheminagium, videlicet pro caretta per dimidium annum duos denarios, et per alium dimidium annum duos denarios, et pro equo qui portat summagium per dimidium annum unum obolum, et per alium dimidium annum obolum, et non nisi de illis qui de extra ballivam suam, tanquam mercatores, veniunt per licenciam suam in ballivam suam ad buscam, meremium, corticem vel carbonem emendum, et alias ducendum ad vendendum ubi voluerint; et de nulla alia caretta vel summagio aliquod cheminagium capiatur: et non capiatur cheminagium nisi in locis in quibus antiquitus capi solebat et debuit. Illi autem qui portant super dorsum suum buscam, corticem, vel carbonem, ad vendendum, quamvis inde vivant, nullum decetero dent cheminagium.

MAGNA CARTA, *supra* note 89, at 431–32.

De boscis autem aliorum nullum detur chiminagium foristariis nostris, preterquam de dominicis bocis nostris.

Id. at 432 n.4.

¹⁶⁹ Robinson, *supra* note 13, at 343.

¹⁷⁰ *Robin Hood and the Monk*, in EARLY RYMES OF ROBYN HOOD, *supra* note 75, at 12.

¹⁷¹ *Robin Hood and the Potter*, in EARLY RYMES OF ROBYN HOOD, *supra* note 75, at 28.

if he did have a hereditary right (i.e., the right name) he could legally have demanded cheminage.¹⁷² In the related early play *Robin Hood and the Potter*, we learn that the Potter has been traveling the forest paths for seven years without paying the outlaws—this is presented by Robin as a violation of the mirror-image “forest law” practiced by the outlaw bands:

This seven yere and more he hath used this waye,
 Yet was he never so curteyse a potter
 As one peny passage to paye.
 Is there any of my mery men all
 That dare be so bolde
 To make the potter paie passage either silver or golde?¹⁷³

To Robin, it is not right that the Potter should pass through “his” woods without paying cheminage. His justice is anybody else’s injustice. Or is it?

And of course, in the *Gest*, people from the higher walks of life, such as knights, monks, and kings are waylaid and asked for payment.¹⁷⁴ The outlaws’ demand of payment from everyone who traverses their greenwood is such a fundamental part of their stories’ appeal that it need not be explored in depth here, but it is important to note that in the earliest material, the outlaws charge a form of cheminage from unlikely victims—a potter, for instance—in direct disobedience of the clarifications in the Forest Charter.¹⁷⁵

Interestingly, this sort of illegal collection of cheminage is not echoed in the extant pleas of the forest in relation to offenders against forest law, though it is attested as an illegal practice of foresters. For example, as mentioned above, in Southampton, two men of the king’s manor in Basingstoke charged a forester of illegally requiring cheminage “*contra formam corte regis Henricis patris regis nunc.*”¹⁷⁶ In the complaints against the Forest Charter recorded in Somerset, we get a clearer picture of the kinds of abuses that are still widespread:

La ou la chartre dit ke nul forester ke ne seyt forester de fe
 rendant ferme a1 rey pur sa baylye ne deyt prendre nul cheminage
 en sa baylye, le forester de Menedepe e de Celewode en *Somerset*
 ne rent nule ferme a1 rey ne nul cheminage ne prent, mes il prent
 pys, dunt le pays se sent greue ou le rey nat nul pru, kar ce est

¹⁷² See *supra* note 168 and accompanying text.

¹⁷³ *Robin Hood and the Potter*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 290.

¹⁷⁴ *A Gest of Robyn Hode*, in *ROBIN HOOD AND OTHER OUTLAW TALES*, *supra* note 74, at 90–91.

¹⁷⁵ See *supra* notes 168, 171 and accompanying text.

¹⁷⁶ THOMPSON, *supra* note 5, at 87.

hors de son demeyne la attachent il checun riche e poure dedenz forest manaunt oueke mortboys e oueke sec e prent de poures de checun siz deners ke portent sur lur dos e de riches solum ce ke il vnt *grace* de finir. Les foresters a chival e foresters a pe e lur garsons prenent telement en coste de charette deuz soz trez soz *quatre* soz de akun plus de akun meyns solum ce ke il est eyse e de chival ke porte summage duze deners diz e vyt deners sezze deners *pur* leuer lur fin ke il vnt fet a lur chef forester a *graunt* destruccion de la forest le rey e a greuance de ces ke boys ont en forest kar il le suffrent aler *quite* *par* tut le an saunz attachement ou le rey nat nul pru.¹⁷⁷

(Although the charter says that no forester who is not a forester in fee rendering farm to the king for his bailiwick ought to take any chiminage in his bailiwick, yet the foresters of Mendip and of Selwood in Somerset render no farm to the king nor take chiminage, but they take worse, whereby the country feels itself aggrieved, without the king having any profit, for it is outside his demesne; for they attach every man, rich and poor, dwelling within the forest with dead wood and with dry wood; and from the poor they take, from every man who carries wood upon his back six pence, and from the rich as much as they have fortune to make fine. The foresters, riding and walking, and their pages take likewise with respect to a cart two shillings, three shillings, four shillings, from some more and from others less, according to their means, and from a horse which carries a load twelve pence, eighteen pence and sixteen pence to raise their fine which they have made with their chief forester, to the great destruction of the forest of the king, and to the grievance of those who have woods in the forest, for they suffer the carriers to go quit all through the year without attachment and yet the king has no profit.)

The foresters' habit of taking more from the rich, since they can afford to pay more, is echoed to great comedic effect in the early outlaw poems.¹⁷⁸ The medieval outlaws depicted in the poems are not very generous to the poor, either, more like these foresters than the later heroes of early modern drama and twentieth-century Hollywood.¹⁷⁹

¹⁷⁷ SELECT PLEAS, *supra* note 23, at 127–28.

¹⁷⁸ Peter de Neville's abuses included posting a forester on a bridge to take illegal cheminage, and imprisoning those who resisted paying this illegal fine. *Id.* at 51–52 (chronicling Peter de Neville's abuses).

¹⁷⁹ See *supra* note 176 and accompanying text.

CONCLUSION

To conclude briefly, this Article has collocated three kinds of texts from three interrelated genres to see how they might act as foils to one another and give insight into the variety of ways people talked and thought about forest law. The results are suggestive of a real conversation about the past, present, and future of forest law, but they are in no way conclusive. What one can say with some confidence is that a genre of rhetorical response to perceived injustices had already established a syntax and vocabulary of protest through nonsense inversions of legal constructions long before the Forest Charter, and its legacy continued well into the fifteenth century. The outlaw tradition in particular built on and enriched this nonsense vocabulary. This tradition—always riffing on real-life incidents and laws—would provide a context for various forms of popular protest throughout the late Middle Ages and beyond. The parallels sketched here are just the beginning of what could be an extensive inquiry.