

Law and Power: Community Charters

by Mothiur Rahman

Illustration by Samuel Hickson

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Following the recent ban on fracking and other types of Unconventional Oil and Gas development (UOG) by the Scottish Government, this article explores how the Community Chartering Network helped Scottish communities resist the UOG industry, makes the case for a legal lineage between Community Charters and the Charter of the Forest, and asks what can be learnt from Scotland to help marginalised communities find a way to speak for, and across, multiple-interest groups in these times of rapid change.

Falkirk: Communities gather to resist UOG development

In 2012 a planning application was made near Falkirk in Scotland by Dart Energy (now owned by multinational chemicals company INEOS) to develop the UK's first commercial UOG facilities. To put this application in context, there are typically four stages to UOG commercial development: exploratory, appraisal, production, and decommissioning. Nearly all the UOG development in England is currently at the exploratory and appraisal stages, but by 2012 Dart Energy had already reached the production stage.

In response, local residents set up the Concerned Communities of Falkirk group (CCoF). I was put in touch with one of the founders and helped to host a series of meetings and workshops to allow residents to explore questions such as, "What do you want for your grandchildren?", "What made you come to live in Falkirk?" Having worked as a lawyer in London, I felt there was a need for a planning law narrative that stepped out of the oppositional "communities against", towards one which asked "What are we for? What do we love and want to protect?"

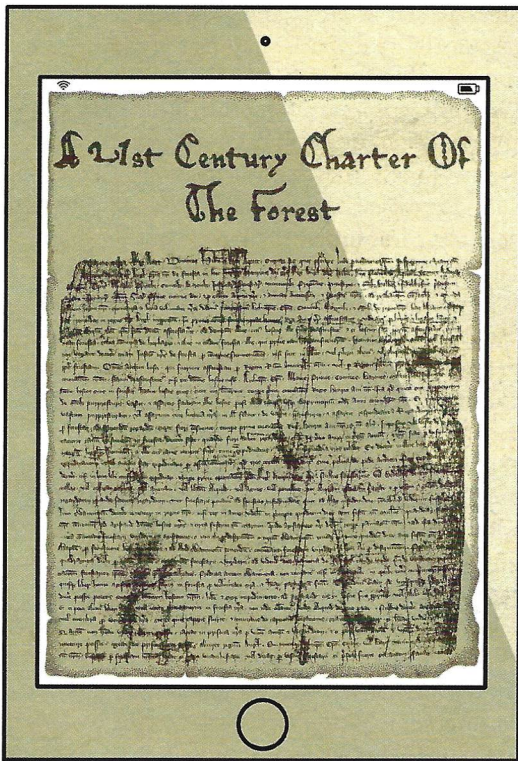
We came to realise that behind nearly every resident's remark was an unspoken desire to

have a sense of ownership and control over their lived experience. This insight became the ground for a legally arguable objection to Dart Energy's planning application: that its Environmental Impact Assessment (EIA) was inadequate since it did not assess the impact of the UOG project on the community's lived experience – an element we described as their 'cultural heritage'. Falkirk's Community Charter was created to define both the intangible and tangible assets that shape such experience.

Walking the Talk: A public inquiry and moratorium

By the time of a public inquiry in April 2014, the Community Charter had been adopted by eight Community Councils, and CCoF was given a main seat at the Inquiry, along with Falkirk Council and Friends of the Earth Scotland. Together with the determination and hard work of residents, CCoF's legal team presented a strong case about the risks of UOG development and also a case for the inadequacy of the EIA. Just as we were expecting Scottish Ministers to make their decision (they had "recalled" the decision due to public interest), they announced a moratorium on all Scottish planning applications for UOG development until further evidence had been gathered on its risks.

During a four month government public engagement between February and May 2017, the Community Chartering Network worked with Connecting Scotland to support 16 Community Councils to host Fracking Conversations for their constituents. Despite an overwhelming majority against UOG development, there were many who felt the moratorium and public consultation would ultimately lead to no change in a major story of our times: government in bed with big business.



However, in a welcome surprise, Scottish Ministers went against the grain of this story. On 3rd October 2017, the Energy Minister for Scotland, Paul Wheelhouse MSP, shared the Scottish Government’s decision to ban UOG development. The public engagement, he said, had demonstrated there was “no social license” for fracking in Scotland.

A Legal Lineage: Marginalisation to resistance to power

During the workshops for the Falkirk Charter, residents were asking themselves “Why isn’t the law serving to protect us?” The Chartering process began to recognise a commons that needed protection and which, for the purposes of a legal argument, we termed cultural heritage. We argued it constituted “an inseparable ecological and socio-cultural fabric that sustains life, and which provides us with the solid foundations for building and celebrating our homes, families, community and legacy within a healthy, diverse, beautiful and safe natural environment.”

The lived experience that arises out of this commons has roots in a set of values that can be understood as ‘intrinsic values’. Tom Crompton, founder of the Common Cause Foundation,

spoke as an expert witness at the Inquiry on the subject of values, stating that “human values are quantifiable; communities flourish when importance is placed on particular values; and changes in the social surround... will have effects on these values.”

In other words, the Falkirk Community Charter was asserting a need to experience life from a fundamentally different set of values to those of Dart Energy: co-operation rather than control and mastery; measures of wellbeing rather than measures of profit. There is an English lineage to asserting the importance of intrinsic values for living a valuable life, the Rochdale Pioneers of the 1840s and the Levellers and Diggers of the 1600s. Further back we can look to the circumstances leading to the Charter of the Forest.

The Charter of the Forest

The early 1200s in England were a time of civil war and social unrest. The conquest of England by the Normans in 1066 led to a land grab of wooded and pastured lands, which had previously served to support the basic subsistence needs of the Anglo Saxons.

In 1217, to help with appeasement and end a civil war, the Magna Carta was re-executed (it had originally been executed in 1215 but soon after annulled), this time with a sister charter – the Charter of the Forest – that gave back certain subsistence rights to the landless majority. If the world of 1217 seems too distant, Professor Linebaugh makes an analogy that brings it closer to home: the forests, he says, were the “hydrocarbon energy reserves” of their times, being reliant on an “energy economy of wood” is comparable to today’s dependency on oil and gas.

Then as now, who has access and rights to primary economic commodities greatly influences the social, legal, and political currents for how everyday life is experienced. Considered like this, one can see how radical it was for a King to grant legal rights to commoners to take from this primary economic commodity: wood for fuel or fencing, clay or marl for building and fertiliser, foraging rights for food and medicinal purposes. However, this legal mechanism of commoning to meet ‘needs in common’ has been extinguished for all practical purposes, replaced with state regulation as the main legal mechanism for meeting such needs.



Championing the Charter of the Forest, Professor Guy Standing claims it was a far more radical legal instrument than the Magna Carta, in that it was more than just a redistribution of power between a King and his barons and landed gentry – it gave power and rights to the landless to meet their basic subsistence needs. In attempting to draw a lineage between the Charter of the Forest and Community Charters, I believe it is also arguable that the land was not only a primary ‘resource’ by which commoners could meet their basic subsistence needs, it was also a primary ‘place’ through which they derived their experience of daily life and made meaning for themselves. The cultural heritage basis of the Community Charter refers back to this meaning of place.

Community Charters – our common values

There is an equivalent contemporary unmet need to that of “unmet subsistence needs” in pre-Charter of the Forest times – the need to maintain a healthy sense of agency in one’s own life. The ancient commons were a place where rights and responsibilities remained whole through acts of commoning. The Falkirk Charter, and recently the St Ives Charter in Cornwall, are helping revitalise these ancient memories of place. Individuals separated by contemporary ways of living can come together for the purpose of modern day ‘commoning’, which can also be thought of as ‘place-making’, finding meaning through belonging to a community rather than individual and

separate ‘self-interest, and growing the sense of responsibility towards shaping a community’s collective lived experience. The Community Chartering process attempts to bridge across abstracted politics of division (“Are you for or against Brexit?”) by rooting itself in a *Politics of Local Experience* and asking, “What do you need here as a community to thrive?” (rather than asking “What do you believe?”).

It is important to recognise that the values residents began discovering in themselves and in their communities are not relative to each culture, but are common between each and every culture. This is what Tom Crompton’s expert evidence on values demonstrated during the Falkirk Inquiry. It does not matter whether one has hundreds of millions or just one hundred pounds, an experience of honesty remains available to both. To express this sentiment in the language of the commoners of old, the values by which a king may unfold his life are the very same values available to a commoner to unfold his life. Or in the words of Colonel Thomas Rainsborough, one of the leaders of the Leveller movement in 1647, “I think the poorest he that is in England hath a life to live as the greatest he.” Thus, it is arguable that our greatest commons is the availability across cultures of common values by which to measure worth – not the words representing such values, but the actual lived experience that is attainable by each and every person when a life is led from this common place.

What the Community Chartering process has achieved by focusing on cultural heritage is to make intangible cultural assets important where they are often denied value. It privileges and gives credence to our felt experience as a source of knowledge. The Community Chartering process enacts a worldview where individual people have the power to change things, as it validates a principle of complex systems that goes beyond the ‘predict and control’ principle that shapes our laws, to a more participative worldview. If anything useful can be shared from my experience of the Falkirk Chartering process, it is that the work of communities, discovering and rooting themselves in values that emerge from discovering their ‘needs in common’, is invaluable as a source of strength, determination, and resilience to invite in a better future for ourselves.