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Deer Unlimited

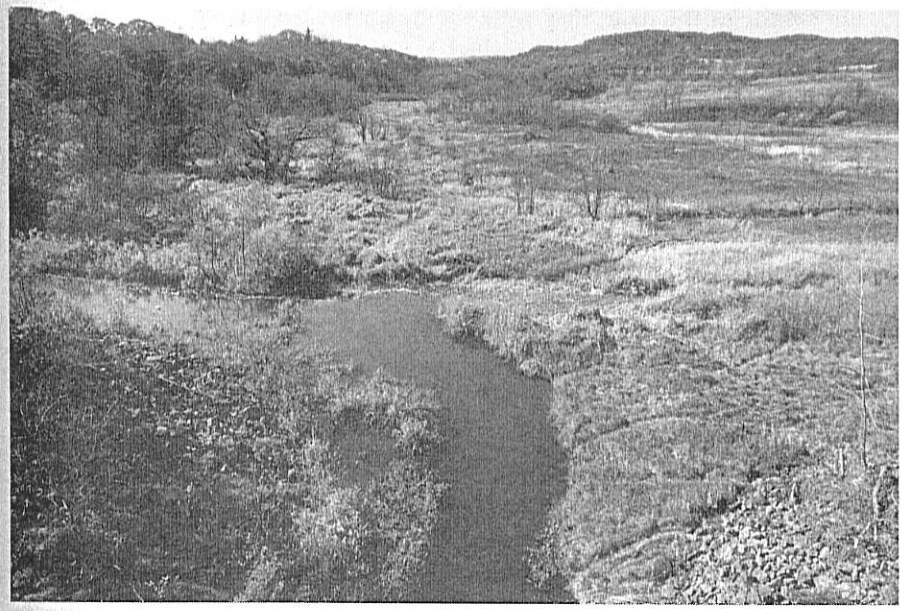
In 1979, an editor for the *La Farge Epitaph* made verbal war on deer hunters. "The deer season has come and gone," he stated flatly. "The red shirts, the four wheel drives, the vans, no longer creep by my farm with rifles ready and eyeballs staring at the hillsides. Strangers, people from God knows where, keeping me pinned down beneath my rock as the boom-boom-boom of high powered rifles blast all around for nine tedious days." The annual deer hunt was a fact of rural life, yet remarkably here was a local farmer questioning the ritual. "Why must I wear a blaze orange jacket and shiver in abject fear as I journey out to spread a load of cow poop on my rocky acres?" he asked. "Where in the hell were those trespassers and hillside scanners when it was tax paying time?"[1]

Property boundaries are essential but not sufficient for answering this editorial. They are essential because part of the answer lay in the complicated relationship of the new Corps land to the land surrounding it. From the beginning this involved private and public property whose boundaries were at once geographical, legal, and as the *La Farge Epitaph* made crystal clear, psychological. Property boundaries were also natural in that they manifested themselves on the landscape. But property boundaries cannot fully explain a property dynamic in which people wear blaze orange every fall to signal their presence on the land. Nor are they sufficient for understanding property dynamics as inherently ecological.

This chapter will explore another form of land tenure—common property. Though not a household word, common property is nonetheless an essential part of the answer to "why?" and "where in the hell?" Initially the chapter sets a broad context for change on and off the Corps land. But its central focus will be on fusions: of the human-influenced landscape to the

wildlife-influenced landscape, and of common property regimes to wild game regulation.

Almost immediately after the Corps of Engineers had acquired land for the La Farge dam, fields and woodlots on the property began reverting to a wilder condition. The herbaceous layer of the forest floor rebounded from a history of cattle grazing.[2] Jack in the Pulpit, a spring ephemeral, enjoyed a comeback, as did bloodroot, wild ginger, dutchman's breeches, and large trillium. Wild geranium became a common sight under stands of oak in early summer, while hog peanut showed itself in August and September. In the bottomlands, pasture and cropland regenerated to wet meadow and riparian forests, whose silvery soft maples, cottonwoods, and droopy willows created a new buffer along the river. An aggressive mix of goldenrod and quackgrass colonized old agricultural fields in the drier uplands. Competing with forbs and grasses were woody plants—aspen, elm, box elder, and staghorn sumac on the sunny edges between fields and roads. Led by these hardy pioneers, a process of old field succession



Riparian regeneration on the U.S. Army Corps of Engineers property along the Kickapoo River. Much of the Corps land reverted to a wilder condition. (Courtesy of Wolfgang Hoffmann)

began. A few relicts remained of old private property boundaries. The occasional gnarled apple tree stood its ground. A Norway spruce looked out of place without a house and yard to shade. These were touchstones for another era.

While the forest grew wilder, it was not left alone. The Corps land had a real presence in the region. "The Fed" some people started to call it, but nickname aside, no authority enforced rules there. The Corps of Engineers had jurisdiction, but without a dam to build the agency largely withdrew from the scene. Many people started to blaze paths across the land. During winter months snowmobilers roared through, and cross-country skiers whooshed up and down hills, across old fields, and into the woods. Come early spring, hikers and horseback riders tested how passable the paths were. By summer they could fully enjoy the shade of the forest. Bow hunters opened deer season in the fall, followed by rifle hunters. Then the place reverberated with gunshots. Gutted deer hung by vehicles parked at the forest's edge.

Among the first people to make a place for themselves in the forest were thrill seekers in pickup trucks and all-terrain vehicles. For twenty years after the demise of the dam, they were the designated forest outlaws. Carousing in the "wilderness," as they called it, they bumped into trees with their vehicles, ripped up the soil with their fat tires, and created a muddy mess.[3] That state-owned forests can be sanctuaries for wild, antisocial behavior is old news. The writer Robert Pogue Harrison has argued that forests have a long history of standing outside the ordinary domesticated world. Asserting that "Forests lie 'beyond' the law, or better, they figure as places of outlaw," Harrison invoked the great legends of the Middle Ages.[4] Arthurian knights Lancelot and Yvain were examples in his analysis, as was the most famous forest outlaw, Robin Hood.[5] Forests can still harbor society's fugitives. Bomber and self-proclaimed white supremacist Eric Rudolph became a forest outlaw and local legend when he disappeared into North Carolina's Nantahala National Forest in 1997.[6] Before Rudolph there was Theodore Kaczinsky, the Unabomber, in Montana, as well as the Viper Militia, a property rights group hidden in an Arizona forest. The humble Corps land never hosted a standoff between government agents and social critics turned criminals. But one Corps employee got an eerie feeling when he came across an old trailer on an illegal campsite, a line of animal skins strung up nearby. "I thought I had entered 'Deliverance country,'" he said, referring to the backwoods movie.[7] Even this midwestern forest could "turn social logic upside down," as Harrison put it.[8]

Muddy, rutted tracks through the U.S. Army Corps of Engineers land, for twenty years a "wilderness" haven for pickup trucks and all-terrain vehicles. (Lynne Heasley)

Horseback riders competed with trucks and ATVs for access to the U.S. Army Corps of Engineers land. (Courtesy of Wolfgang Hoffmann)

Harrison offers one way of looking at the Corps land—by the kind of landscape it was. Another way is to look at the kind of property it was. Legally the place was federal property. By default, however, it was unmanaged, undefined land. Yet even without a viable state presence, the community sought ways to control behavior in the reserve (herein a convenient shorthand for the Corps land). Certainly many people wanted to rein in the pickup drivers. One local legend told of horseback riders who laid spikes on the trails to cause tire blowouts. Other people wanted to deal with the household trash that occasionally materialized on the land. Perhaps, then, the reserve more closely resembled common property—land held by or for the community.

What notions most people have about common property probably trace their roots to Garrett Hardin's famous 1968 essay, "The Tragedy of the Commons." With the words "Picture a pasture open to all," Hardin created an indelible image of nature used up by individuals, Hardin's fictional herders, whose own private gains motivated each to act in ways that would inexorably destroy the land for all. Maybe the reserve was an analogue to Hardin's pasture and the pickup drivers akin to his herders. Yet several generations of scholars have criticized "The Tragedy of the Commons" for the sloppy way it defined common property.[9] In practice, common property has rules, customs, and social norms for its use, as have public and private property. Such rules will differ from place to place; they will evolve over time; they might not protect the environment; but they do regulate access to the commons. Hardin's pasture was not common property; it was what property theorists call an open access regime. Nor was the reserve common property. People did what they did because the reserve was a certain kind of property, public yet neglected, and also because it was a certain kind of landscape, an extensive forest. Like Hardin's pasture, the reserve risked becoming an open-access free-for-all. Such freedom—from management, from regulation, from organized community oversight—made for a raucous beginning in the history of this particular piece of public land.

Besides changes on the reserve, the La Farge dam created spillover effects that rippled across private land. Up until the 1960s, no one had paid much attention to the regular turnover of land. When the dam seemed at hand, private land ownership changed to the point that the community took notice. Figure 14 shows that between 1965 and 1978 over 60 percent of the land around the future reserve changed hands, while from 1978 to 1995 land turnover reached 70 percent. In itself this might

not have been noteworthy except that a wave of absentee owners had also appeared. The newcomers were not the corporate ranching types who had concentrated land in Liberty during the same period. Few corporations of any kind held land in Stark. Nor was the trend another version of fragmented recreational development schemes like Woodland Farms. Absentee recreational ownership in Stark was the historical prelude to Woodland Farms—its genesis really. Whether they lived north or south, in the East, the West or the Midwest, urban dwellers had begun spying out rural areas for hobby farms and vacation homes. With the La Farge dam, the Corps could respond to this growing tourist demand. The Corps's plan, in turn, attracted recreational buyers to the Kickapoo Valley. In the two-year period following the Corps's announcement of a large reservoir near La Farge, more than 80 percent of the land sold in the vicinity of the project went to nonresidents.[10] Over time, absentee owners accumulated 32 percent of all private land in Stark. When you add the reserve to the calculation, permanent residents held less than half the land in the township by 1995.

The first absentee owners in Stark bought parcels ranging from forty to one hundred acres. Early on they did not compete with local farmers for prime farmland. Rather, they favored steep rocky slopes with breathtaking panoramas.[11] The Kickapoo Valley had long been a landscape of cultivated ridges and valley bottoms separated by forests on steeper slopes. This was a happy fact for deer in the region, which thrived on edges between fields and forests. Deer stayed robust on corn, beans, and alfalfa, while nearby woodlots protected them from the weather and unhappy farmers. Eventually, though, the Corps of Engineers and absentee landowners changed this agriculture-forest mosaic by taking cropland out of production. Between 1939 and 1967, the township's acreage in crops declined by only 1 percent, whereas the period 1967 to 1995 saw agricultural acreage decline by 48 percent.

Figure 15 vividly illustrates how cropland gave way to forests and old fields (which is former cropland or pasture on its way to becoming forest). Forests were at their low ebb during the 1930s, occupying less than 40 percent of Stark's landscape. By 1995 forests covered nearly 60 percent of the township, while old fields covered 27 percent of the reserve and 12 percent of the private land around it. Private absentee and public land ownership were not solely responsible for latter-day forest boundaries, nevertheless their effects would overshadow earlier trends. Prior to the La Farge dam, for example, forests overtook pasture, not cropland. Many of these pastures

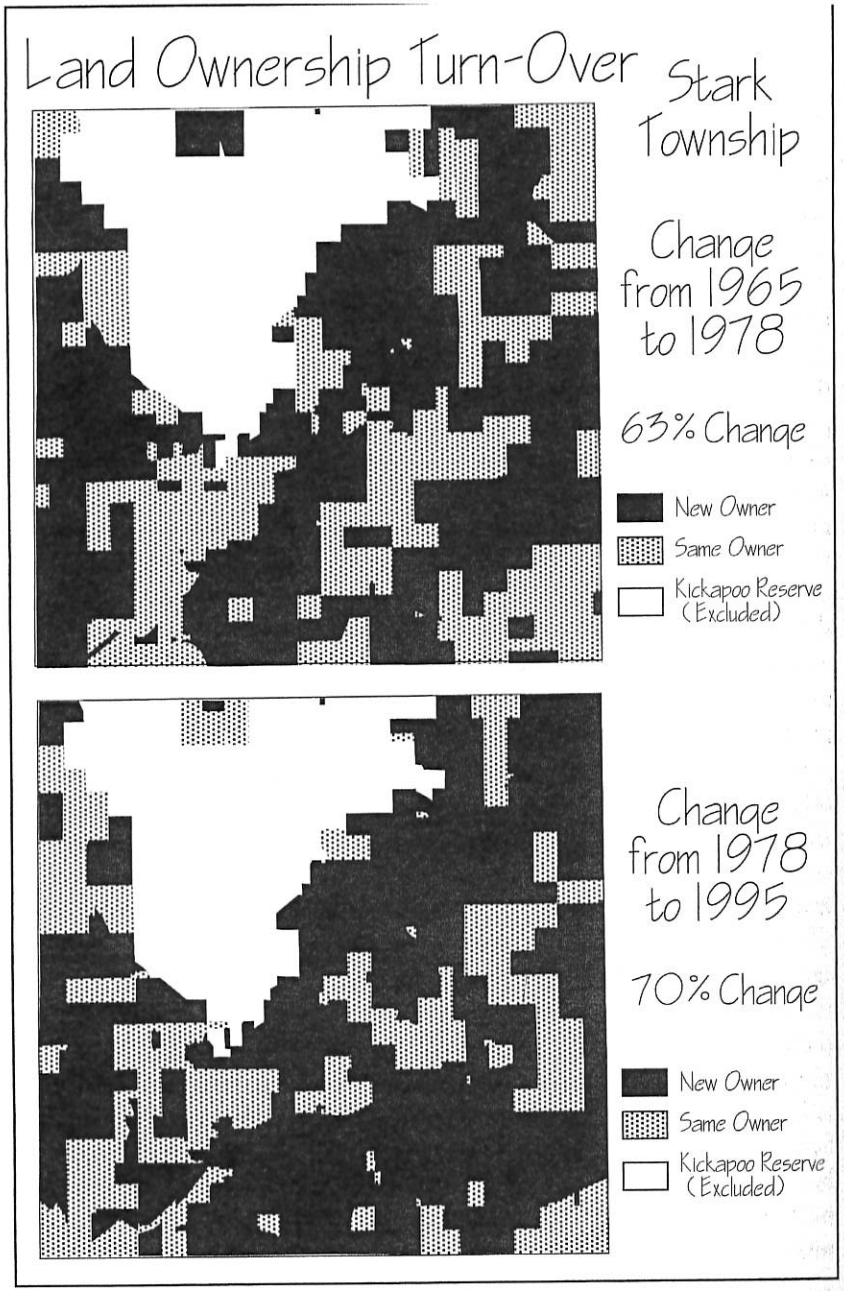


Figure 14. Private land turnover around the Army Corps of Engineers land in the township of Stark, 1965–78 and 1978–95. Land ownership had always been fluid in the Kickapoo Valley. But increased and accelerated land turnover meant more volatility in local land use and in community dynamics.

had been on steep, deforested hillsides. During the 1930s and '40s, farmers had allowed steeper land to regenerate to forest, in part because of the erosion crisis and in part because they were moving away from horses, which reduced the need for pasture, and toward tractors, which were dangerous to drive across steep slopes. In addition, the Forest Crop Law, the Woodland Tax Law, and the Agricultural Conservation Program provided cost sharing for reforestation projects on degraded land. Under these programs, Stark landowners planted 64,000 trees between 1958 and 1965—mainly red and white pine and white cedar, along with some Norway spruce, sugar maple, and walnut—on approximately fifteen hundred acres. From 1939 to 1967, forestland increased by 16 percent. Much more dramatic, however, was the 33 percent increase from 1967 to 1995. Whereas the earlier period had slightly modified Stark's landscape, public and recreational land ownership during the latter period completely transformed it.

How might a herd of deer respond to more forest cover at the expense of cropland? The white-tailed deer is a keystone herbivore in eastern deciduous forest ecosystems. This means that its presence has strongly influenced the numbers and distribution of other plants and animals and, by extension, the structure of the ecosystem.[12] So a discussion of deer should not simply describe their movements across a landscape when what is most important are their interactions with that landscape. This is more difficult than it sounds. It would be disingenuous to assert simple cause and effect between fluid phenomena like land ownership, landscape dynamics, deer populations, hunting behavior, and community attitudes. Even a basic task like estimating deer densities in an area the size of a township can cause debate among professional wildlife biologists.[13] People who are not wildlife biologists must therefore approach deer ecology with some restraint. That said, making sense of connections and changes in a cultural landscape shaped by property boundaries and ecosystems, by humans and nonhumans, is a fundamental undertaking. Otherwise we cannot assess ways in which people have owned and managed land. Neither can we understand shifting negotiations over individual prerogatives in owning, managing, or getting access to land and a community's prerogative to act for some larger common good. Federal and state governments have often become chief mediators in these negotiations. But because they have complex agendas and institutional relationships, the prerogatives they will support are rarely clear-cut. The question of deer—and deer hunting—makes a perfect case in point.

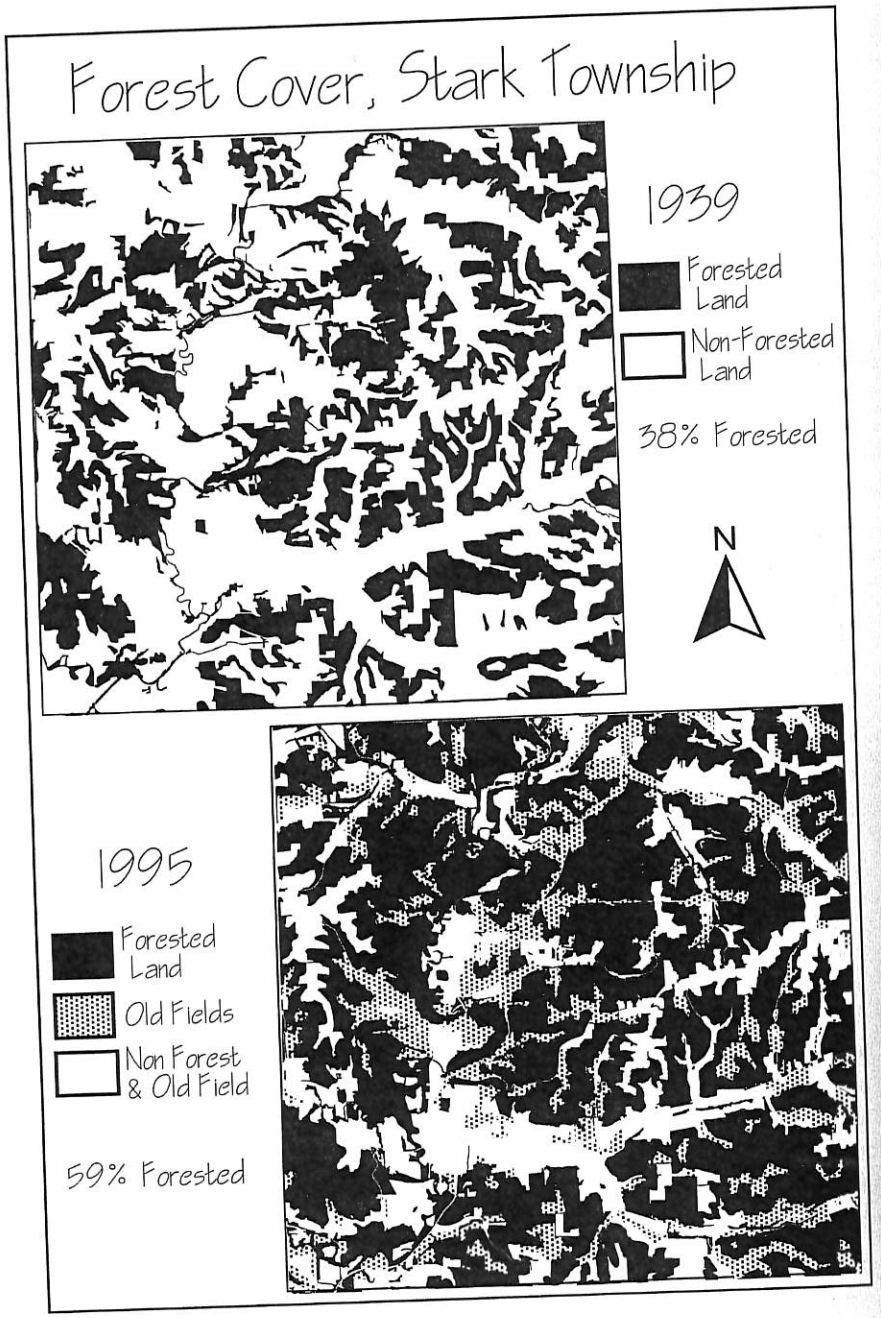
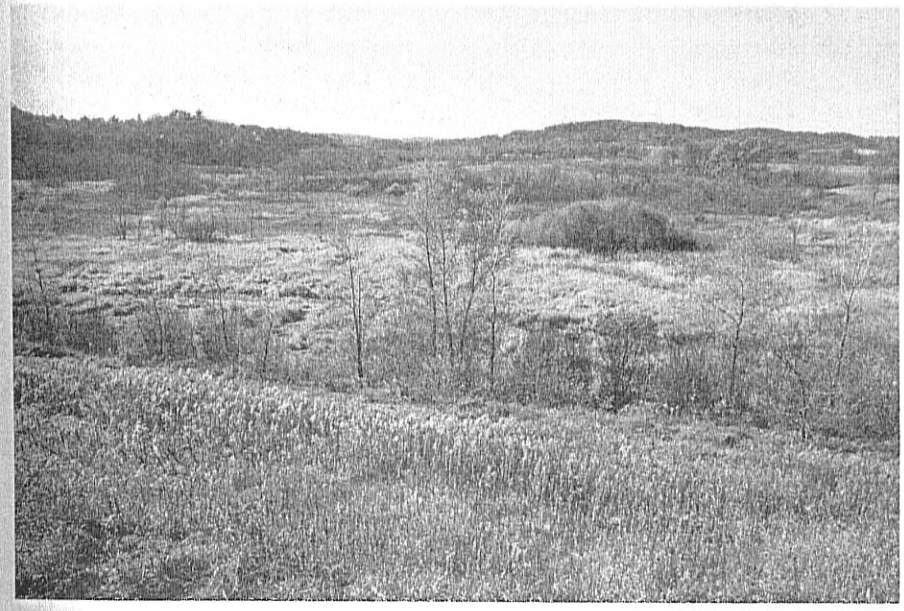


Figure 15. Expansion of forests in Stark, 1939–95.

White-tailed deer prefer edges between fields and forests, from where they can browse several hundred feet into a field and then dash back into the woods for cover. Hence any reduction in either edge habitat or the total area of cropland might be expected to lower their numbers in the long term. This would be especially true if the population had reached a size where the land could no longer provide enough food. Wildlife biologists call this limit the land's "maximum biological carrying capacity."[14] In places like Stark, the maximum biological carrying capacity could be as high as 100 deer per square mile of deer range, with deer range defined as everywhere in the township except the village of La Farge and the middle of the Kickapoo River. In the Kickapoo Valley actual deer density can range from 30 to 45 deer per square mile. Even though cropland had dwindled, deer had no problem subsisting on the fields that remained. One fall day Pam Munson counted 120 white-tailed deer in her cornfield.[15] The nearby reserve, she felt sure, had sent the whole herd her way.

As long as agriculture remained a part of the landscape mosaic, forest cover afforded important benefits. The denser forest canopy of the reserve



By 1995, old fields regenerating to forest occupied 12 percent of the private land and 27 percent of the U.S. Army Corps of Engineers land in the township of Stark. (Courtesy of Wolfgang Hoffmann)

provided deer with ideal shelter from wind and snow, and in winter, residents often came upon their telltale concave beds. Forests also supplied deer with forage. Because of this, the impact of Wisconsin's deer herd became an important ecological debate.[16] Some ecologists argued that deer did as much damage to forests as logging. They accumulated strong evidence that deer herbivory (browsing) had reduced the abundance and diversity of herbaceous plants in Wisconsin's northern forests. This occurred even though deer density in the north was considerably lower than in the southern part of the state. The issue of deer ecology was different in the Kickapoo Valley than it was in the north woods. Research suggested that in southern Wisconsin's mixed agricultural-forest landscape, deer did not put as much pressure on the herbaceous layer.[17] Deer would have certainly browsed forest herbs during the winter if they were available, but the plants had senesced until spring. The more pronounced impact involved the woody plants, or trees. In the Valley this meant mixed hardwoods, primarily oak-hickory and maple-basswood forests.

Oak-hickory forests have had a prominent place in the eastern U.S. landscape for at least six thousand years.[18] They have supported and been

White-tailed deer prefer edge habitat where fields and forests meet. (Courtesy of Wolfgang Hoffmann)

shaped by critical ecological processes like fire.[19] They have contributed to the biological diversity of the region. Important game species, such as deer, squirrels, and turkey, have depended on them for acorns and other nuts, berries, leaves, and shelter from the weather or airborne predators like hawks and owls. These forests have also played an important historical role in regional cultures and economies—supporting Indian subsistence patterns prior to European settlement, for instance, and then facilitating that settlement afterward.[20] But in recent decades ecologists have noted a sharp decline in oak-hickory forests.[21] Forest ecologist Craig Lorimer called the trend "one of the most serious silvicultural [forest management] problems in the eastern United States."[22] Readers first encountered forest succession in the townships of Liberty and Clinton. Now is the time to bring deer into the discussion and to examine them alongside logging.

When professional foresters talk about oak regeneration, they emphasize the growth of the tree. Mature trees must produce a sufficient acorn mast; these seeds must grow to saplings; and some saplings must survive until they are full-grown trees. For an oak to survive, foresters tell landowners, lots of sunlight must reach the forest floor. Otherwise it cannot compete with sugar maples, which are also present in the understory. In a shady understory, by contrast, sugar maple can survive for decades while oak saplings will die. A landowner who wants to maintain oak-hickory forests, according to foresters, must therefore create openings where lots of sunlight can penetrate to the forest floor. The solution, in other words, is to log mature forests. Versions of this argument abound in letters and conversations between foresters and landowners, in public meetings, and in other forums where oak regeneration is the theme.

The argument is true as far as it goes. Oaks do need sunlight. But will logging mature hardwood forests halt forest succession to maple? The ecological histories of Liberty, Clinton, and Stark say no. This study provides evidence that, far from slowing down succession, logging has accelerated the process.[23] Unlike Liberty and Clinton, the overall area in oak-hickory forests did not decline in Stark after the 1930s; it increased. Stark's township "average" is somewhat deceptive because it conceals succession from oak to maple on about twenty-four hundred acres over the sixty-year period. Two reasons, however, explain why the total acreage in oak rose. The first is that oak-hickory communities were part of one probable successional trajectory as old fields reverted to forests. Oak and other sun-loving species were able to colonize old fields. Second is that no timber harvests occurred on the reserve after the 1960s, where large tracts of

oak-hickory forest persisted. Of the three adjacent townships, only the one with relatively low harvest pressure in the past forty years (Stark) has sustained oak-hickory forests.

It is important to reiterate the tangled strands of cause and effect. Researchers have examined a number of possible explanations for the loss of oak. Postsettlement fire suppression, tall understory vegetation, and poor seed masts are all likely candidates.[24] So, too, is the combination of timber harvesting and deer herbivory.[25] Logging has had the opposite effect that foresters claimed for it in part because a high whitetail population will suppress oak regeneration after harvests. Pawing for acorns is a major deer pastime after the last crops have come off the fields. Come spring a forester may poke around for new oak seedlings and find none. Even when seedlings and saplings become established, they must withstand a combination of deer browsing and competition from understory trees. This is the irony: white-tailed deer thrive in and around upland oak forests, but this habitat is vulnerable to deer in the long run. Perhaps this is why landowners hear little from foresters about deer predation. Barring a steep decline in white-tailed deer populations, there is only one way to protect trees. For approximately one dollar a landowner can purchase a narrow tube to place around a sapling: one tube, one tree; one acre of planted saplings, five hundred to a thousand dollars; one acre of standing forest, perhaps a few thousand of dollars. Though simple, the technology is too expensive to counter the one-two blow of intensive logging and deer browsing across rural landscapes.[26]

It is no fluke of nature that white-tailed deer have put pressure on North American forests. The high deer numbers that created this pressure arose from new public policies. Prior to 1800, the entire southern half of Wisconsin might have supported anywhere from twenty to fifty deer per square mile.[27] According to nineteenth-century pioneer accounts, the first settlers in the Kickapoo Valley found deer plentiful. Early loggers in the area that became Stark told their children stories of shoving curious deer away from oxen teams during winter months when the men were hauling logs.[28] But deer numbers rapidly declined. Vernon County farmer C. A. Neprud told Aldo Leopold that he "had 7 deer eating pumpkins and corn on his farm in the fall of 1888."[29] Hunters killed them all that winter. "He saw only one deer after that," wrote Leopold in his notes on the conversation, "a stray in about 1908." By the end of the nineteenth century, unchecked hunting had all but eliminated white-tailed deer from southern Wisconsin.

Then the U.S. Supreme Court issued a landmark decision on "common property," which set the stage for expanded wild game regulation in the states.[30] The setting was this: On October 19, 1889, Edward M. Geer was charged in New London, Connecticut, with violation of Connecticut game law. State statutes held that no person could kill a woodcock, ruffed grouse, or quail for the purposes of transporting it across state lines, while Geer had in his possession birds he had intended to take out of the state. He was convicted and fined, and he appealed his conviction until it reached the Supreme Court. Was it constitutional, the court asked in *Geer v. Connecticut,* for the state to confine the uses of wild game killed during an open season to within state borders? The court said yes, relying for its primary rationale on a theory of property derived from ancient Roman law and later English common law.

"The solution of the question," the court said in its decision, "involves a consideration of the nature of the property in game and the authority which the state had a right lawfully to exercise in relation thereto." Roman law had explicitly classified public and common property, the court pointed out. "The latter embraced animals ferae naturae, which, having no owner, were considered as belonging in common to all the citizens of the state." Following Roman law, an "unbroken line of law and precedent is summed up by the provisions of the Napoleon Code, which declares (articles 714, 715): 'There are things which belong to no one, and the use of which is common to all. Police regulations direct the manner in which they may be enjoyed.'" The court further decided that the Connecticut law had not violated the Commerce Clause of the constitution. "The power of a state to protect, by adequate police regulation, its people against the adulteration of articles of food (which was in that case maintained), although, in doing so, commerce might be remotely affected, necessarily carries with it the existence of a like power to preserve a food supply which belongs in common to all the people of the state, which can only become the subject of ownership in a qualified way, and which can never be the object of commerce except with the consent of the state, and subject to the conditions which it may deem best to impose for the public good."

Eighty-three years later the Supreme Court would overrule Geer in *Hughes v. Oklahoma* (1979).[31] The "application of the 19th century legal fiction of state ownership of wild animals" had been wrong, the court would say, because it permitted states to discriminate against interstate commerce. "States may promote the legitimate purpose of protecting and

conserving wild animal life within their borders only in ways consistent with the basic principle that the pertinent economic unit is the Nation; and when a wild animal becomes an article of commerce, its use cannot be limited to the citizens of one State to the exclusion of citizens of another State." Despite abolishing Geer, the Hughes decision pointedly reaffirmed what by then were long-standing state rights to regulate and manage wild game in behalf of the public: "[T]he general rule we adopt in this case makes ample allowance for preserving, in ways not [441 U.S. 322, 336] inconsistent with the Commerce Clause, the legitimate state concerns for conservation and protection of wild animals underlying the 19th-century legal fiction of state ownership." It was this broad mandate for conservation—premised on historical notions of common property and the public good—that would make *Geer v. Connecticut* such an influential ecological force during the twentieth century.

After Geer, President Theodore Roosevelt, himself an avid sportsman who founded the Boone and Crockett Club, urged state governors to enact or strengthen laws that required hunters to purchase licenses, established a short hunting season, set bag limits, and restricted the killing of does.[32] With these tools, the states successfully converted deer hunting from unregulated subsistence and market activities into a fully regulated sport.[33] During the next sixty years deer herds rebounded. By the early 1960s, deer populations in the Kickapoo Valley had grown to at least 11 deer per square mile. At that time Wisconsin policy shifted focus from herd recovery to herd maximization with an all-out bureaucratic and biological effort to increase hunting opportunities. The effort paid off. The deer population in agricultural areas grew from fewer than 100,000 animals in 1962 to nearly 600,000 in 1995. Statewide the herd has now reached 1.6 million deer, while 30 percent of all Wisconsin men hold hunting licenses.[34]

Modern state policy exacerbated the problem of oak regeneration. Wisconsin's natural resource agencies manipulated deer populations to achieve what they called a maximum sustainable harvest. They wanted to produce the highest number of fawns in the spring. The larger objective was to make deer hunting big business in the state, and the policy succeeded. In 1996, according to the Department of Natural Resources, 676,000 deer hunters spent $897 million in Wisconsin on licenses, food, lodging, transportation, and equipment. The venison itself was worth approximately $35 million. By adding indirect profits from wages and taxes to the total, state accountants estimated that deer hunting generated more than $2.6 billion

of economic activity in just that one year.[35] Hunters in turn became one of Wisconsin's most powerful lobbying groups. Their role in setting policy had long been institutionalized in an organization called the Wisconsin Conservation Congress, a quasi-governmental citizens group established in 1934. The Congress's 360 delegates (mostly sportsmen elected in each of the state's seventy-two counties) were charged with making recommendations to the Department of Natural Resources on conservation policies. As the state became more active in managing the deer population, the Conservation Congress's role also expanded. It proposed deer harvest quotas, the length of the hunting season, licensing fees, and public land management for wildlife habitat. In addition to the Congress, hunters harboring any suspicion that the state had lowballed population goals, a common gripe, were quite willing to confront their county DNR wildlife biologist.[36] State wildlife biologists risked political mutiny if they attempted to manage deer for ecological outcomes. Yet the persistence of many forest ecosystems, including oak-hickory, may hinge on the enactment of just such a policy.

There was another kind of mutiny taking hold in Wisconsin. Rural communities had come to resent the hunting scene—the bell that opened the gate to a crush of deer enthusiasts racing onto rural landscapes. Proud hunters, said one Valley resident, thought that "their license gave them the right to cut fences, leave gates open, shoot hereford cattle in deer season (some of them did not know that with a deer the white is on the opposite end of the animal), to overrun the land without regard or respect."[37] The DNR was thus forced to confront growing conflict between deer hunters and landowners. To sportsmen canvassing prospective hunting grounds, the area around Stark must have seemed ideal. Deer were abundant and the reserve was open to the public for hunting. Vernon County DNR wildlife biologist Dave Matheys described the reserve as a hunting sink.[38] He was adapting the biological term "population sink," which loosely means a place that sustains large numbers of a species—only Matheys was referring to the hunters! Inviting though it was on a map, the reserve could not hold everyone who wanted to hunt there. If ever an enforcement presence was apparent, it was during deer season—the one time when people became reluctant to take their vehicles onto the land illegally. This posed a physical limitation that reduced the usable scale of the landscape. How many hunters, Matheys asked rhetorically, would willingly hunt more than a few hundred yards into the reserve having to haul out a deer over rough terrain? The reserve helped concentrate hunters in Stark,

but uncomfortable standing elbow to elbow with their fellows, many hunted deer elsewhere, on private land.[39]

As deer hunting took off in the Kickapoo Valley, residents began posting their land to rebuff fervent, trespassing sportsmen. Some people decided to lease their land for hunting, partly for the income and partly because lessees would help minimize trespass. "Who wants to confront a group of drunk men with guns?" asked a landowner who chose this method to control access to his land during deer season. This was all a byproduct of the state's "military-industrial hunting complex," he added. Plenty of landless hunters went where they could. The suburbanite turned hunter for nine days—the same person who might have chided a neighbor crossing his backyard at home—temporarily adjusted his ideas about private property while crossing another stranger's rural backyard. The farmer who hunted, the absentee owner who did not hunt, the absentee owner who bought land so that she could hunt, all started to complain. "The materialistic greed of our lawmakers has spilled over upon the participants of this fiasco," said the *La Farge Epitaph*. "And he who spends bucks expects "Buck" and will pursue his course with rugged determination involving trespass and illegalities with no love or thought of safety for his fellow man."[40]

Social conflict over deer was not new to state policy makers. In agricultural regions where biological carrying capacity did not limit herd size, the aim of modern deer management was always straightforward: Expand opportunities for sportsmen up to the point where local communities or the larger public no longer accepted the costs. The DNR's Bureau of Wildlife Management called this "social carrying capacity." Wildlife managers would consider social carrying capacity before settling on final population goals for the next year. Until the detection of Lyme disease borne by deer ticks, and more recently, chronic wasting disease in the deer herd, the most important social considerations were crop damage and collision rates between deer and motorists. In direct response to angry farmers, Wisconsin established the 1983 Wildlife Damage Abatement and Claims Program, a successor to other programs going back to 1931.[41] Under this program the state would compensate farmers for crop damage, and it would issue out-of-season permits to shoot nuisance anterless deer. The program raised landowner tolerance only so far. One farmer in Stark felt frowned upon by her neighbors when she took out a nuisance permit. The real problem, she believed, did not come from two or three animals, but from the sheer size and concentration of the herd. Creating another disincentive, the legislature linked the program to its goal of expanding

public access to hunting land. Anyone who signed up must allow hunters on their property during the open season. When the Wisconsin legislature strengthened the DNR's ability to enforce this provision in 1993, enrollment in the program dropped by more than half.[42] As of 2003, only one landowner in Stark was enrolled.

Along with crop damage, landowner tolerance for hunters had become a mainstay in the political balancing act of deer management policy. A 1995 change in state statutes on trespass suggested that the limits of this tolerance had been reached.[43] Wisconsin law once read that for unmarked private land, landowners were responsible for informing you that you had entered private property. You were not trespassing unless you were already aware of the property lines. Under intense pressure from fed-up landowners, the Wisconsin legislature changed this statute, making it the visitor's responsibility to know the property boundaries. Ignorance was no longer a legal excuse for trespass, and buying a hunting license was no longer a seasonal passport onto land normally off limits.

State game policy stacked seasonal and ecological layers onto the Kickapoo Valley's complex mosaic of private and public property. The mosaic had been in constant flux. Its fluid quality is the key to understanding the deeper significance of Stark's history. To explain with a brief recap: Land ownership was fluid. Many thousands of acres of private land became public land; and landowners who did not live in the township or even in the Valley replaced local farmers. The reserve's new status as public land cultivated a very different looking landscape, wilder, more forested. It retarded forest succession to maple but expedited old-field succession. Off the reserve, a small amount of farmland endured in the midst of a private recreational landscape.

Basic changes in landownership also had cultural consequences. As the land's status changed, people treated it differently. Their ideas and actions were as fluid as property was. On the reserve some people went berserk to an extent they would never have dreamed of on Great Uncle Eli's back forty. As for private land, it became considerably less private every autumn. Hunting season was when you might have felt justified in rebelling against someone's legal prerogative to exclude you from her land. Though landowners found it annoying, the attitude came out of traditions honoring some sort of public access to common property, which by definition no *one* owns. The state itself nurtured this ancient idea with modern game management and hunting regulations.

We return then to questions of land ownership and property. Nothing more clearly illustrates that property is not simply the adjacent rectangles on a map than Stark's history. Indeed this history, which is a history of property, consists almost entirely of changing relationships and shifting negotiations. The relationships form a triangle of sorts: people, the government, and the land itself. Within the triangle people negotiate who controls what land, who else gets access, and under which conditions. Today we call these negotiations "property debates," but that is not quite right. A debate implies a single conflict that can be settled one way or another. A negotiation denotes the open-ended condition of society establishing relationships around land and then adjusting them as new (or old) ideas take hold. Negotiation is a process, not a debate. The process is fluid.

During the process the state can assume the role of mediator, of partisan, or, in the case of deer hunting, both. A dual role will create paradoxes. The state had jurisdiction to manage deer as common property for the public good. It defined public good as maximizing the access sportsmen had to hunting land. Yet unlike deer, the state and hunters could not ignore private property boundaries. The state defined public good as managing deer at the highest population that local communities would tolerate. Yet the policy precluded other public goods, such as conserving ecologically and economically valuable forests. The negotiation—the process—continues.

As for the reserve, it became the beneficiary of an amazing change of mindset. People in Stark were still irate over its existence. But the destructive behavior of a few people had a curious effect: Other members of the community started to feel protective toward the land. At first people talked about what they did not want. They did not want free-range trucks; they did not want chaotic paths fragmenting the forest into ever-smaller pieces; they did not want a massive invasion of exotic plants; they did not want old refrigerators, feral dogs, or scary people. What they did want was a say in the land's future. Here was a small chrysalis of a new vision, but what would it transform into? Who would negotiate for it and what prerogatives would they try to assert—private, public, community? Or something else altogether?

8

(Re)Enter the Ho-Chunk

The reserve languished in administrative limbo throughout the 1980s. No one could agree on its purpose, its management, or its future. Many people continued to deplore the passing of the La Farge dam. At times their rhetoric sounded like a midwestern replay of old western land wars between the federal government and local people. But this saga had a few twists left. Oblivious to any irony in the Kickapoo Valley, the Corps of Engineers had adopted new language in the 1980s to publicize its mission. "Project delivery is the Corps' business," a glossy brochure announced. "From conception of a project until its completion and turnover to the ultimate user; the Corps provides complete project management services." Rather than districts, or engineers, or planners, the Corps now used, according to the brochure, "Corps Life Cycle Project Managers," who served "as points of contact for customers to ensure that they are fully informed and involved, forecast trends and resolve problems, and oversee all phases of project development, ensuring the delivery of 'a quality product, on time and within budget.'"[1] This advertisement is significant not because it embraced the new business jargon of the times but because project completion and turnover were precisely the aims for anyone interested in the reserve, which meant everyone who lived in Stark.

In 1993, residents across the Kickapoo Valley began meeting to develop a plan. They wanted the Corps to complete the La Farge dam's life cycle, even if the dam itself must remain unfinished. They hoped to convince the federal government to transfer the reserve to the state, after which they hoped the state would appoint a local board to manage it.[2] Doing its part to resolve the long-festering issue, Wisconsin petitioned for the land's release from federal control.