Notes on Peter Linebaugh: The Magna Carta Manifesto

NUMEROUS CONTEMPORARY EXAMPLES OF ENCLOSURE MOVEMENTS 2

“From such stories three tendencies emerge. First, as an aspect of the recent enclosures, planetary woodlands are being destroyed in favor of commercial profit. Second, petroleum products are substituted as the base commodity of human reproduction and world economic development. Third, indigenous people worldwide—commoners all—are expropriated.” 5

CHARTER OF THE FOREST: POLITICAL AND LEGAL RIGHTS CAN ONLY EXIST ON AN ECONOMIC FOUNDATION

“There were two charters forced on King John at Runnymede. Beside the great charter with which we are all vaguely familiar, there was a second charter known as the Charter of the Forest. Whereas the first charter concerned, for the most part, political and juridical rights, the second charter dealt with economic survival. Historians have always known the Charter of the Forest existed but many of its terms—for example, *estovers*, or subsistence wood products—seem strange and archaic, and have prevented the general public from recognizing its existence and understanding its importance. The message of the two charters and the message of this book is plain: political and legal rights can exist only on an economic foundation. To be free citizens we must also be equal producers and consumers. What I shall call the *commons*—the theory that vests all property in the community and organizes labor for the common benefit of all—must exist in both juridical forms and day-to-day material reality.” 6

DEFINING COMMONS—SEE ABOVE QUOTATTION

MAGNA CARTA

“Magna Carta expressed a deal between church and state, barons and king, city merchants and royalty, wives and husbands, commoners and nobles. It was the proud product of rebellion. The U.S. Declaration of Independence of 1776 was the result of Tom Paine’s suggestion for an American magna carta.” 7

BOOK OUTLINE 8

GARRETT HARDIN’S TRAGEDY OF THE COMMONS

“His biological and mathematical arguments concluded, “Freedom in a commons brings ruin to all” and “injustice is preferable to total ruin.” Hardin’s premise depends on absolute egoism and denies several millennia of experience in the mutuality and negotiation of communing. If anything, we hear the cries of the victim of theft.” 9-10

NEOLIBERALISM AND NEOCONSERVATISM

“Neoliberalism is an economic doctrine of globalization and privatization that depends on police regimes of security and privatization. It came into being as Margaret Thatcher and Ronald Reagan came to power, in 1979 and 1980. Accompanying the privatization and marketeering of neoliberalism was its historically inseparable sidekick, neoconservativism, which provided the police and the military.” 11

HAVING THINGS IN COMMON AND THE COMING OF THE MONEY ECONOMY

“Prophets and messiahs preached the doctrine of having all things in common, which made sense to peasants who resolutely defended their customs and communal routine against the encroachments of feudal landlords and grasping clergy. The notion of having all things common was made plausible by the network of customary rights and practice on common lands, which already by the thirteenth century was both old and endangered. On the one hand the shortage of arable land led to *assarts* (arable clearings made by grubbing up the trees) in wastes and woodlands, and on the other hand, the intensified pressure in the face of rising prices by the lords on the impoverished peasantry threatened forms of communing that were essential to small-holders in the thirteenth century.” 25-26

MAGNA CARTA AND CHRISTIANITY

“Magna Carta was a document of Christian Europe—its first chapter concerned the freedom of the Christian Church from the secular authority of king.” 27-28

MAGNA CARTA: CONFLICT BETWEEN BARONS AND MONARCHY

“In May 1215 the barons took London and withdrew their homage and fealty. In June King John and the barons faced each other in armed camps at Runnymede. The parchment charter of sixty-three chapters of liberties to the “freedom of England” was sealed, and homage renewed viva voce. The charter protected the interests of the church, the feudal aristocracy, the merchants, and Jews, *and* it acknowledged commoners. It assumed a commons.” 28

HABEAS CORPUS

“…the famous chapter 39 from which habeas corpus, prohibition of torture, trial by jury, and the rule of law are derived. “No freeman shall be arrested or imprisoned or dispossessed or outlawed or exiled or any way victimized, neither will we attack him or send anyone to attack him, except by the lawful judgment of his peers or by the law of the land.” 28-29

WOMEN AND MAGNA CARTA 29

ESTABLISHED WEIGHTS AND MEASURES: BASIS OF THE COMMODITY FORM

“As a practical matter, possessions required measurement and thus depended on chapter 35: “Let there be one measure for wine throughout our kingdom, and one measure for ale, and one measure for corn, namely ‘the London quarter’; and one width for cloths whether dyed, russet or halberget, namely two ells within the selvedges. Let it be the same with weights and measures.”” 30

WOOD, NOT OIL, WAS PRIMARY SOURCE OF ENERGY 31

MAGNA CARTA CHAPTERS 47 AND 48

“If noticed at all as part of Magna Carta, chapters 47 and 48 are often discarded as feudal relics, English peculiarities, or irrelevancies of the heritage industry. Yet if we see woodlands as a hydrocarbon energy reserve, we may be willing to give the subject more than a condescending dismissal. We need to adopt a “subsistence perspective.”” 31

WOOD AS ENERGY

“People naturally went there for wood, a far greater necessity of life than in this age of oil, petrol, and metal; wood was used for heating and lighting (in torches), for building material (roof slats, castle palisades), for footwear (sabots), for plough handles and various other implements, and as faggots for strengthening roadways.”” 32

MAGNA CARTA AND THE LIMITS TO PRIVATIZATION

“Technically then estovers refer to customary gatherings from the woods; often they refer to subsistence generally. Magna Carta defined limits of *privatization*. In Chapter 33, the clause “Henceforth all fish weirs shall be removed from the Thames and the Medway and throughout all England, except along the seacoast,” refers to the right of fishing in another’s water in common with the owner and others (“in common of piscary”). The UN’s International Covenant on Economic, Social and Cultural Rights declares, “In no case may a people be deprived of its own means of subsistence.”” 40

DEFINING COMMON RIGHTS: THEY ARE EMBEDDED IN PARTICULAR ECOLOGIES AND LABOR PROCESSES

“So common rights differ from human rights. First, common rights are embedded in a particular ecology with its local husbandry. For commoners, the expression “law of the land” from chapter 39 does not refer to the will of the sovereign. Commoners think first not of title deeds, but of human deeds: how will this land be tilled? Does it require manuring? What grows there? They begin to explore. You might call it a natural attitude. Second, communing is embedded in a labor process: it inheres in a particular praxis of field, upland, forest, marsh, coast. Common rights are entered into by labor. Third, commoning is collective. Fourth, being independent of the state, commoning is independent also of the temporality of the law and state. Magna Carta does not list rights, it grants perpetuities. It goes deep into human history.” 44-45

PRACTICE OF COMMONS IN PECULIAR…IT IS HISTORICALLY AND SPATIAL DEPENDENT…USE THE ABOVE QUOTE TO LINK HISTORICAL PRACTICE OF COMMONS TO THE INFORMATION AGE

PRIVATIZATION OF ENGLAND BEGINS 16TH CENTURY 46

KI NG HENRY VIII DISSOLVED THE MONASTERIES AND THEIR COMMONS

“Henry VIII, in dissolving the monasteries and their attendant commons, opened the way for a new class, the gentry, to take land and turn it to profit by means of *enclosures*.” 48

“The dissolution of the monasteries took place in 1536, a massive act of state-sponsored privatization. More than any other single act in the long history of the establishment of English private property, it made the English land a commodity.” 49

PROTESTANT REFORMATION AS A LAND GRAB

“Cobbett understood the Protestant Reformation simultaneously as a landgrab, as a cause of pauperism, and as a violation of Magna Carta. “Englishmen…ought, above all things, to endeavor to ascertain, how it came to pass, that this land of roast beef was changed, all of a sudden, into a land of dry bread, or of oatmeal porridge.”” 49

COMMONS AS HISTORICAL PRACTICE

“The common people depended on various forms of commoning. How did it work? R.H. Tawney (1880-1962), England’s most influential socialist and social historian of the first half of the twentieth century, called attention to the great number of cottagers and day laborers who did not hold arable land but in practice used the commons for pigs, geese, poultry, and cows. “It was the essence of the open field system of agriculture—at once its strength and its weakness—that its maintenance reposed upon a common custom and tradition, not upon documentary records capable of precise construction. Its boundaries were often rather a question of the degree of conviction with which ancient inhabitants could be induced to affirm them, than visible to the mere eye of sense.”” 50

NEESON ON COMMON WASTE

“She writes, “The fuel, food and materials taken from common waste helped to make commoners of those without land, common-right cottages, or pasture rights. Waste gave them a variety of useful products, and the raw materials to make more. It also gave them the means of exchange with other commoners and so made them part of the network of exchange from which mutuality grew. More than this, common waste supported the economies of landed and cottage commoners too. It was often the terrain of women and children. And for everyone the common meant more than income.” 51

ENCLOSURE: PRODUCING A PROLETARIAT

“Enclosures were not the only force in the creation of the land market but they destroyed the spiritual claim on the soil and prepared for the proletarianization of the common people, subjecting them to multifaceted labor discipline: the elimination of cakes and ale, the elimination of sports, the shunning of dance, the abolition of festivals, and the strict discipline over the male and female bodies.” 51-52

PEASANT’S REVOLT OF GERMANY IN 1526—FIRST GREAT PROLETARIAN REVOLT OF MODERN HISTORY 55

ROBERT CROWLEY IDENTIFIED “HUMAN INTELLIGENCE” AS PART OF THE COMMONS

“He was the most eloquent of the commonwealth writers, the social conscience of England. He was a poet, a printer, and he became a Puritan. His *Philargyrie* (1550)—the title means “love of silver”—attacked human greed. His celebrated edition of Langland’s *Piers Ploughman*, written two centuries earlier, stated: “For human intelligence is like water, air, and fire—it cannot be bought or sold. These four things the Father of Heaven made to be shared on earth in common.”” 56

CONFLICT BETWEEN NEIGHBORLINESS AND PRIVATE PROPERTY

“Margaret Harkett, sixty years old, of Stanmore, Middlesex, was hanged in 1585 as a witch. “She had picked a basket of peas in the neighbor’s field without permission. Asked to return them she flung them down in anger; since then no peas would grow in the [neighbor’s] field.” 71

ATROCITITES AGAINST WOMEN AND THE COMMONS

“Many thousands of women were burned or hanged as witches in Britain during the seventeenth century. From the multiple hangings of 1612 in Pendle Forest (Lancashire) to the Salem witch trials of 1692 (nineteen hanged) through the three hundred hangings and burnings by Matthew Hopkins, the Witch-Finder General of 1645, the century of the scientific revolution—the age of reason—saw systematic terror against women, especially the old, the healers, herbalists, counselors, the poor. “They go from door to door for a potful of milk or patage without which they could hardly live,” wrote a 1594 observer of such women. Whether a young boy looking for wild plums and falling instead among a witches’ conclave, or a weaver charged with stealing turfs (peat), or a beggar charged with sheep stealing, or cow’s milk going off, a motif in the evidence against witches was association with common rights of pasturage, pannage, or estovers.” 72

17TH ENCLOSURE OF THE FORESTS—HYDROCARBON ECONOMY

“The crisis of the seventeenth century was a crisis of forestry. With Stuart financial demands, ship building, iron foundry, and a mini-ice age, a transition to coal had begun in the history of hydrocarbons. So the Stuart kings put the squeeze on the forests, reviving forest law when it suited them, extending boundaries of royal forests, prosecuting freeholders, holding forest *eyre* (as the forest courts were called), allocating timber and fuel, and stinting the commons.” 73

FORESTS WERE FUEL—ECONOMIC INPUT 73

HISTORICAL TRANSFORMATION OF MAGNA CARTA

“The crackdown on the forests was preceded by the tug-of-war between king and Parliament. The Magna Carta was transformed from a medieval document rarely cited, though frequently confirmed, into a modern constitutional law, from a feudal particularization of privileges into a charter suitable to commerce, property, and individualism. Edward Coke helped to transform it, first by amalgamating habeas corpus with chapter 39, second by inserting it into the colonial charters of Atlantic colonies, third by affirming that Magna Carta’s *nullus liber homo* (free man) equaled all the people, including women, and fourth by linking Magna Carta to Parliament.” 78

COMMONS AS A VERB, NOT A NOUN

“Coke included the Charter of the Forest in his discussion of Magna Carta and referred to it as “a declaratory law restoring the subject to his former right.” As lawyers do, he began by defining his terms: the forest is composed of eight things: soil, covert, laws, courts, judges, officers, game, and certain bounds. Three of these might be termed natural, whereas the rest pertain to human society. “Generally a man may common in a forest,” he says. Stressing the use of *commons* as a verb, Coke wants us to understand it as a customary activity, not as a thing or resource.” 79

HISTORICAL TRANSFORMATION OF MAGNA CARTA AND POLITICAL INVERSION: SUBORDINATING THE CHARTER OF THE FOREST

“On the one hand Coke recognized that the Forest Charter, like the Magna Carta, restored “the subject to his former right”; on the other hand he said that forest law was bounded by the common law and that it could not stand against laws enacted by Parliament. As he elevated Magna Carta to fundamental law, he subordinated the Charter of the Forest to statute and judges’ law.” 80

LEVELLERS—FIRST DEMOCRATIC POLITICAL PARTY 81

MAGNA CARTA AND THE AMERICAN COLONIES

“Magna Carta took on an Atlantic dimension. Coke helped to draft the royal charter of the Virginia Company in 1666. The royal charters establishing other English colonies in America—Massachusetts in 1629, Maryland in 1632, Maine in 1632, Connecticut in 1662, Rhode Island in 1663—also alluded to Magna Carta. Whereas those colonists used the Magna Carta against the authority of the crown (New York’s charter of liberty quoted Magna Carta’s chapter 39), they ignored its forest provisions when it came to their own intrusions into the woodlands of the indigenous peoples. Magna Carta became an instrument of both colonial independence and acquisitive empire.” 89

ENGLISH ENCLOSURE

“By 1832 England was largely closed, its countryside privatized (some even mechanized), in contrast to a century earlier when its fields were largely open—“champion” country, to use the happy technical term—and yeomen, children, women could subsist by commoning.” 94

ENCLOSURE AND SLAVERY

“Together the expelled commoners and the captured Africans provided the labor power available for exploitation in the factories of the field (tobacco and sugar) and the factories of the towns (woolens and cottons). Whether indentured servant, West African youngster, former milkmaid, or woodsman without his woods, the lords of humankind looked upon them indifferently as laboring bodies to produce surplus value, and so emerged the Atlantic working day, which entirely depended upon a prior discommoning.” 95

U.S. CONSTITUTION TIED TO SLAVERY WHILE THE ENGLISH CONSTITUTION WAS TIED TO ENCLOSURE 95

COMMONS AND ECONOMIC SECURITY

“The whole family commoned. It provided subsistence, a safety net against unemployment or low wages, and social security for the old. Landless laboring families opposed enclosure: “they gathered fuel, they gleaned after harvest, and their children went nutting and berrying, scared crows from the crops, watched the pigs at mast harvest, tended the sheep and gathered wool from the pastures.”” 102

COMMONS PREVENTS PUTTING PEOPLE TO WORK

“Take for instance the medlar. It tastes like baked apple and is used for jellies, preserves, and pie filling. Medlars should never by planted in new hedgerows because “it is bad policy to increase temptations to theft; the idle among the poor are already too prone to depredations, and would still be less inclined to work, if every hedge furnished the means of support.” Many medlar trees are relics of orchards or parks. Others are results of the practice that was once widespread of peasants planting orchard trees in the wild. The allure of commoning arises from the mutualism of shared resources. Everything is used, nothing is wasted. Reciprocity, sense of self, willingness to argue, long memory, collective celebration, and mutual aid are traits of the commoner.” 103

“These were not the preferred traits of the proletarian who, apart from possessing nothing, was to be nothing but a compliant slave.” 103

DECLARATION OF INDEPENDENCE VERSUS MAGNA CARTA: COMMONS VERSUS PRIVATIZATION

“The purpose of the declaration is to *justify* the powers of state that relate to war, peace, alliances, and commerce. The purpose of Magna Carta is to *curtail* the powers of the sovereign. Magna Carta put an end to a war; the Declaration of Independence intended to win allies and stiffen the resolve of soldiers to fight. They presuppose different conceptions of property. Magna Carta is a document of reparations, returning the forest, whereas the declaration is a document of acquisition. It is a continental landgrab that allows for the defense of “our frontiers” against what Paine termed “the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.”” 124

TOM PAINE AND A CRITIQUE OF *COMMON SENSE*

“The phrase was thus in the air when Paine wrote. His pamphlet, warming and timely as it was, nevertheless suffered from three contradictions. First, he insisted, “Oppression is often the *consequence*, but seldom or never the *means* of riches.” Such a sentence could not be written after the widespread use of the factory; that it is written after the plantation reminds us that he excludes slaves from independence. Second, part of the condemnation of England is that is “stirred up the Indians and Negroes to destroy us, the cruelty hath a double guilt, it is dealing brutally by us, and treacherously by them.” Third, he had an argument which we might call the “peak wood” phenomenon, the notion of a limit to the principal hydrocarbon energy source that may put the project of independence in crisis. The forests are disappearing, he argued, hence the ability to build ships, the weapons of war, will diminish the future.” 126

THOMAS SPENCE

“In 1775 he gave a famous lecture at the Philosophical Society arguing for the equal restoration of land to all people. He was thrown out of town, moved to London, and became an innovating propagandist and popular theorizer of agrarian communism, but he also called for an intellectual commons in his opposition to patents. Among reformers and radicals he distinguished himself from Tom Paine, who did not go far enough in respect to equality of resources. “The country of any people is properly their common, in which each of them has an equal property, with free liberty to sustain himself and family with the animals, fruits, and other products thereof.” Spence’s argument was never based on law, custom, or contract. There is no reference to the Forest Charter or Magna Carta. However, he was imprisoned three times when habeas corpus was suspended.” 136

HISTORY OF THE MAGNA CARTA AND ITS INTERPRETATIONS

“Created in the thirteenth century in the context of crusading as an armistice in civil war, the Charters of Liberties, both big and small, gradually became foundational to statute, law, and common right in the growth of English monarchy and the other constituents of the realm, such as church, town, family, and commons. At the dawn of modern capitalism in the sixteenth century, Magna Carta was ignored for two reasons. First, the centralized monarchy of the Tudors tended to monopolize force, whereas the Magna Carta tended to hedge the power of the king. Second, in the sixteenth century the commodity began to become the local, national, and imperial form of economic accumulation, replacing the many forms of commoning. But in the seventeenth century this changed, as Magna Carta took on its modern form—the protector of individual rights and free trade—just as private property (the legal form of the commodity) was reconciled during the English Revolution with mixed forms of political power. The change, however, required its severance from the Forest Charter. Commoning persisted, adopting even to urban conditions, but commodity exchange and private property exploded in the rapacious greed of international trading that left tens of tens of thousands of fatalities in the racialized slave trade as human beings themselves became commodities in the eighteenth century. Commoners and slaves frequently crossed paths, but the emerging culture of white supremacy limited the possibilities to which Magna Carta was put, though it became part of the abolitionist movement in 1770 by the Fourth of July. The settler colonies of North America, which in the seventeenth century had embraced chapter 39 of Magna Carta, united in the 1770s using Magna Carta as an example of a charter of resistance and a declaration of independence. After the eighteenth-century slave risings in the Caribbean and the mainland colonies, Magna Carta was adopted to the federal Constitution without its commonist and abolitionist meanings. These nevertheless were kept alive at the same time by the English working class in its struggle against enclosure and the factory. In general, commoning persisted where the forest remained standing. The destruction of the woods, as we found in India’s history, where it was a vast means of expropriation, left a cultural remnant of commoning even as the chartered basis receded. Its not being legal partly explains the “unrealistic” forms of the commons—primitive, romantic, childlike, cultural, artistic, utopian. In the United States Magna Carta was a foundational document to law and constitution, yet it also coexisted with the robbery of indigenous peoples’ lands and the expansion of racial slavery.” 170-172

PRIVATE PROPERTY IS THE LEGAL FORM OF THE COMMODITY—SEE ABOVE QUOTATION

ADAPTING MAGNA CARTA TO SERVE BOURGEOIS VALUES

“Magna Carta is a source, a metaphor, an ethnic talisman, a scholarly sign. It has a contradictory position in American law. To be effective, ruling-class ideology must acknowledge those insistencies of the ruled that otherwise threaten alternatives to its overall rule. Law has long required the appearance of fairness and proportionality despite the emergency caprice of dictatorship (e.g., suspension of habeas corpus or Guantanamo) or the exercise of informal state terror (e.g., the Palmer raids or KKK). The difference expresses the odd relation of Magna Carta to American law—familiar *and* different, obsessive *and* ornamental, fundamental *and* incidental. The Supreme Court adopted Magna Carta to the dominant institutions and social forces of the United States, private property, commerce, capitalism, slavery.” 184

MAGNA CARTA, AMERICAN, AND PRIVATE PROPERTY

“The key to understanding Magna Carta in the United States is private property. “Rights of personal liberty and of property…[are] the great principles of Magna Carta (*Wilkinson v. Leland*, 23, February 1829).” 184

“The United States began as a bourgeois republic and Magna Carta was to serve its purposes. During the Napoleonic Wars when danger on the high seas was great and the safety of neutral shipping insecure, the Supreme Court several times referred to that provision of Magna Carta that was designed to protect the interests of “merchant strangers.”” 185

AMERICAN DISTORTIONS OF MAGNA CARTA

“Magna Carta was employed to maintain a central paradox of American law, namely, that persons were property. The due process clause of the Fifth Amendment was applied by the Fourteenth Amendment to the states. But instead of aiding the freed persons as intended, it became the means of encouraging a new type of slavery, through the expanding entity of the corporation. At first, Magna Carta was used to defend slave masters, then it was used to defend the robber barons of the gilded age. These American distortions of Magna Carta assisted the use of the English charter as an element of ideological continuity form the slave state to the corporate state.” 188

14TH AMENDMENT

“Justice Hugo Black summed up the distorted transformation of the Fourteenth Amendment as follows, “It was aimed at restraining and checking the power of wealth and privilege. It was to be a charter of liberty for human rights against property rights. The transformation has been rapid and complete. It operates today to protect the rights of property to the detriment of the rights of man. It has become the Magna Carta of accumulated and organized capital” (*Adamson v. California*, 23 June 1947).” 190

20TH CENTURY INTERPRETATION OF MAGNA CARTA: POLITICAL INVERSION

“For a time during the twentieth century, the cultural development of Magna Carta led to its reification: it ceased to be an active constitutional force and became a symbol characterized by ambiguity, mystery, and nonsense. It began to disappear as precise law. Without the steady discipline of legal interpretation and amplification, its meanings were loosened, and by 1957 they were actually inverted. It became an idol of the ruling class. It did not start out that way.” 192

FEDERALIST PAPER NO. 10 AND THE COMMONS

“In *Federalist Paper* no. 10 James Madison expressed his alarm at the violence of faction caused by “the various and unequal division of property. Those who hold, and those who are without property, have ever formed distinct interests in society,” he stated. Madison wrote from, for, and to the propertied class. The constitution was to harmonize the different types of property—landed, manufacturing, mercantile, and banking. Madison argued directly against “theoretic politicians” who sought “an equal division of property, or for any other improper or wicked project.” If, as he explained, the U.S. Constitution was founded for the propertied, we must infer that the constitution of the unpropertied was left to a later time.” 243

AMERICAN ENCLOSURE—NATIVE AMERICANS

“The land as stolen *and it was privatized*. The project of assimilation or the project of genocide was expressed by Thomas Jefferson who in 1801 began to anticipate the termination of their history. That history depended on common land. The Indian Removal Act of 1830 led to the Trail of Tears forcing the Cherokees, the Chickasaws, the Choctaws, the Creek, and the Seminole nations—the Five Civilized Tribes—to evacuate their lands and remove to Oklahoma. These five nations retained most of what is now eastern Oklahoma as communal.” 247

“Senator Henry L. Dawes of Massachusetts led the next attack. “They have got as far as they can go, because they own their land in common. It is Henry George’s system, and under that there is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization.” The Commission of Indian Affairs would define citizenship and allotments. The Dawes Act of 1887 destroyed the common lands of Oklahoma’s indigenous peoples, turning them into either individual private allotments for the Indians or surplus to be sold to the whites, in a “saturnalia of exploitation.”” 247-248

RECONSTRUCTION AND THE 14TH AMENDMENT

“The Civil War was compared to the barons’ war against King John, and “a rich and perpetual product” was the result: in the former, Magna Carta, in the latter, Fourteenth Amendment. They are “blazed on the forehead of constitutional liberty.” References to Magna Carta were plentiful in Congress during debates concerning the Thirteenth, Fourteenth, and Fifteenth Amendments, especially the Fourteenth. The ability to walk the streets, the ability to use public transport, to be a witness in a trial, to be a juryman, these were examples of the “common rights” recognized by the Fourteenth Amendment and the Magna Carta.” 251

MAGNA CARTA AND CONTROL OVER MEANS OF PRODUCTION/REPRODUCTION

“We know Magna Carta has no chapter declaring that labor is or is not a commodity. Instead, it forbids the king or his servants from taking what belongs to commoners. The means of production and reproduction are collective and the goal of Magna Carta was to limit the king’s access to them.” 255

REPEAL OF ARTICLE 27 OF THE MEXICAN CONSTITUTION—REPEALING COMMUNCAL RIGHTS TO LAND IN PREPARATION FOR NAFTA 1994 265

DEFINING COMMONS

“”Commons” has a multitude of meanings—common land, common rights, common people, common sense. In 1598 John Manwood published *A Treatise and Discourse of the Lawes of the Forrest* in which he attempted to answer the question, “what Common is, and whereof named Common.”

It taketh the name of Common, a Communitate, of communitie, participation, or fellowship, because that most commonly, where men have common of pasture for the feeding of their beastes or cattell, many mens cattell do use to feedde there together.

A hundred and fifteen years later a fourth edition, “corrected and enlarge,” was published in which this passage was rendered without the term “fellowship.” In this way the textual codification of commoning was misrendered and diminished. The meanings imprinted in text were subject to further closure in the removal of a powerful term of sharing, agency, and equality. To speak of the commons as if it were a natural resources is misleading at best and dangerous at worst—the commons is an activity and, if anything, it expresses relationships in society that are inseparable from relations to nature. It might be better to keep the word as a verb, an activity, rather than as a noun, a substantive. But this too is a trap. Capitalists and the World Bank would like us to employ commoning as a means to socialize poverty and hence to privatize wealth. The commoning of the past, our forebears’ previous labor, survives as a legacy in the form of *capital* and this too must be reclaimed as part of our constitution. Chapter 61 giving liberty to the *communa totius terrae* provides the right of resistance to the reality of a planet of slums, gated communities, and terror without end.” 278-279

CAPITALISTS WOULD LIKE TO USE COMMONS AS A WAY TO SOCIALIZE THE COSTS OF POVERTY—SEE ABOVE QUOTATION

ARGUING FOR A DIGITAL COMMONS WITHOUT ARGUING FOR REPARATIONS IN THE REAL WORLD WOULD BE PARADOXICAL—HOW MAY WE ARGUE FOR THE REAPPROPRIATION OF INTELLECTUAL PROPERTY WITHOUT ALSO RECLAIMING THE PHYSICAL PROPERTY (MEANS OF INTELLECTUAL PRODUCTION/DISTRIBUTION)—SEE ABOVE QUOTATION