

citizenship” and “presumptive accommodation” contribute much to our progressive imagination, the book also suggests that the “politics of fear” that has taken over the Western governments since September 11, 2001, dealt a major blow to the accommodation of diversity, leading to a decline of multiculturalist policies in the West.

This book is appropriate for both undergraduate and graduate seminars that deal with ethnic, linguistic and religious diversity, and I also recommend it for readers who want to familiarize themselves with Canadian politics and identity.

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## The Magna Carta Manifesto

By *Peter Linebaugh*

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The Magna Carta tradition that has been enshrined in Anglo-American law and celebrated in liberal political culture focuses almost exclusively on the events of 1215, when King John faced his disgruntled barons at Runnymede, acknowledged in a written charter limits to the royal prerogative, and in the immensely influential 39<sup>th</sup> chapter of the document set precedents for what have come to be considered fundamental liberal rights against the state: due process, trial by jury, *habeas corpus*, and the prohibition against torture. What is much less well known is that two years later, following tumultuous civil war and war with France, the new king, Henry III, only nine years old, in 1217 through his regent reissued the charter, amending it in key respects, and supplemented it with a second charter, the Charter of the Forest, which instantiated substantive rights of subsistence to free men by granting them various privileges within the royal forests. These included the right to have one's livestock pasture and partake of the “common of herbage” for a specified time in the for-

est (*agistment*), the right to have one's pigs access acorns and beech mast (*pannage*), and the right to wood for fuel, repairs, and other necessities (*estovers*). By 1297, Edward I declared both charters part of the common law of England. There was thus not one Great Charter, but two.<sup>1</sup> And if the first grounds our modern notion of human rights, the second stands for the right to access the commons to provide for one's subsistence.

The Charter of the Forest is not, strictly speaking, unknown. One can find it referenced, however briefly, in encyclopedias and in books on the Magna Carta—and of course monographs on medieval forest law treat it too. But Peter Linebaugh's book, *The Magna Carta Manifesto*, persuasively demonstrates that the practical reception of the Magna Carta within Anglo-American legal culture over the last 800 years has routinely ignored or forgotten the principles of commons and subsistence rights, while the individual protections vis-à-vis the state have been canonized. The steady enclosure of common lands, a definitive development of

modern political economy, was paralleled by a shrunken conception of liberty. The US Supreme Court, for example, has long taken it for granted that “Rights of personal liberty and of property...[are] the great principles of Magna Charta.”<sup>2</sup> Linebaugh objects to such a narrowing of the legacy of Magna Carta not only in the name of historical accuracy, but because he believes any decent society needs to integrate both liberties: the negative rights against despotism and the positive rights to the conditions for economic self-sufficiency. “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” (6).

However much this critique places the book within a familiar leftist paradigm, it does nothing to diminish its freshness. For one thing, if *The Magna Carta Manifesto* is a kind of communist manifesto, it literalizes communism so that it refers neither to any alleged laws of historical development nor to the necessity of class conflict, but to the cultivation of the *commons*. Linebaugh defines the commons both as the public resources available for private use and, in keeping with the medieval and early modern usage of “common” as a verb, as the set of harmonious social relations produced by individuals jointly extracting the means of their subsistence from a collective pool. While a reader may wish for greater precision regarding the mechanics of commoning rights in England—in particular, clarity as to their extent, legal basis, and purview—what one does get is an immensely rich description of commoning practices that very much supports Linebaugh’s central claim about their emancipatory potential and

that contributes to a burgeoning contemporary literature on the reclamation of the commons.<sup>3</sup>

Further, by locating the intellectual resources for commoning and subsistence rights *within* the history of the modern liberal state, Linebaugh suggests that should the sanctity of private property come to be attenuated it likely will be experienced as a return to, rather than radical departure from, the past. Economic justice is often presented as a concern of late modernity—and as something that, if achieved, would herald a new era. T.H. Marshall’s influential theory of citizenship, for example, distinguished three successive stages of expanding civic rights—civil, political, and social—and associated each stage with the 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup> centuries respectively.<sup>4</sup> The pervasiveness of commoning up until the nineteenth century problematizes this evolutionary account. And Linebaugh makes clear that despite the enclosure movement the principles of commoning and the right to subsistence were never eradicated but have continually been rearticulated throughout the long Anglo-American experience, including Kett’s Rebellion in 1549 which took aim against enclosure and led to thousands of rebels living in campsites throughout England, the “forty acres and a mule” policy briefly instituted by General William Sherman in the aftermath of the Civil War, and generations of Native Americans who have defended communal land ownership.

In some sense, it is the raw existence of the forest itself—its alternate ecology of wood, not fossil fuels, where individuals play a direct role in obtaining their own subsistence and where pauperism is there-

fore absent—that acts as a topographical reminder of alternatives to the reigning order of commodified labor. Yet this is a possibility that Linebaugh cannot consider at any length, since for him the commons of the woods is above all a historically grounded metaphor—and not the actual paradigm—for formulating present day economic justice. But if Robert Pogue Harrison is right that that the forest is the “shadow of civilization” then perhaps we should expect the communist specter Linebaugh aims to revive as having its most authentic home in the world of the forest.<sup>5</sup> Whereas Marx castigated the “idiocy of the countryside,” an unintended result of Linebaugh’s analysis is that it suggests that it is in wooded spaces, and above all the forest, that the best chance for commoning lies.

Linebaugh should be commended for the impressive scope of his analysis. It is no easy task to write an 800 year history on such a foundational topic as the inter-relation between juridical and substantive conceptions of justice. Some may be bothered by certain gaps or occasional tendentious-

ness in the analysis, but it must be remembered that the work is, as its title declares, a manifesto. And this too is a source of its freshness. The joining together of serious historical analysis with a passionate clarity about contemporary injustice is a welcome contribution to a world where historical scholarship is too often divorced, however impossibly, from politics.

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#### Endnotes

1. Edward Coke’s *Institutes of the Laws of England* (1642) could still speak in the plural of the “*Magnae Chartae Libertatum Angliae*”: the great charters of English liberties.
2. *Wilkinson v. Leland* 27 U.S. 657 (1829).
3. See, e.g., Michael Hardt and Antonio Negri, *Commonwealth* (Cambridge, Mass.: Harvard University Press, 2009).
4. *Citizenship and Social Class, and other Essays* (Cambridge: Cambridge University Press, 1950).
5. Robert Pogue Harrison, *Forests: The Shadow of Civilization* (Chicago: University of Chicago Press), 1992.