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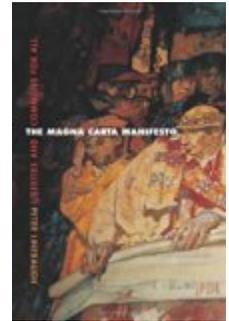


Peter Linebaugh. *Magna Carta Manifesto: Liberties and Commons for All*. Berkeley: University of California Press, 2008. 376 S. \$24.95 (cloth), ISBN 978-0-520-24726-0.

Reviewed by Kenneth Aldous

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## Our Common Interest in the Charters of Liberty

At a Sotheby's auction in New York City on December 18, 2007, the Carlyle Group's David Rubinstein purchased a manuscript copy of the Magna Carta for \$21.3 million. Because the Ross Perot Foundation had purchased the manuscript twenty-three years earlier for a mere \$1.5 million, the manuscript netted a tidy profit of approximately \$19.8 million for one of the United States' highest-profile billionaires.[1] This arm's-length transaction established the current exchange value of one of among a handful of Magna Carta's physical remnants (circa 1297 AD), and the fact that this piece of our collective past is now on permanent loan to the National Archives as a gift to the American people is emblematic of Magna Carta's preeminent and iconic role in protecting common rights and empowering common people.

In keeping with its title, Peter Linebaugh's *The Magna Carta Manifesto: Liberties and Commons for All* marries a Marxist orientation with a uniquely Anglo-American articulation and development of shared liberties. The overarching theme of the book underscores the importance of the "commons," as well as the fact that the legal, political, and constitutional freedoms attendant to Magna Carta at the time of its first appearance were not—and, at the present stage in our history should not—be divorced from the equally vital economic freedoms attendant to that other lesser-known charter, the Charter of the Forest. Although weaving a polemic throughout his discussion of the "Charters of Liberty"—a name by which Magna Carta and the Charter of the Forest together are known—Linebaugh tells a fascinating—even if somewhat

disjointed—story of transformation, deception, and distortion.

In his first two chapters ("Introduction" and "Two Charters"), Linebaugh introduces his twin themes, identifying modern-day examples of struggles for legal, political, and economic freedoms for common people from such diverse geographic regions as Mexico, Nigeria, Vietnam, Ireland, India, the Amazon, and New York's Adirondack Mountains. From these examples, Linebaugh extracts tendencies toward enclosure and environmental destruction in the name of commercial profit, the substitution of petroleum products as the world's base economy, and the expropriation of indigenous people. With these tendencies front and center, Linebaugh explains that where Magna Carta protected certain political and juridical rights, its companion, the Charter of the Forest, protected rights to extract energy resources and ensure economic survival. Reminding his reader that, during the thirteenth century, wood was the primary energy source, Linebaugh correctly explains that the growth of state power stemmed largely from the royal power to place forests under law, and he finds in Magna Carta's references to things such as "widow's estovers of common" a direct link with "a world of use values" (pp. 42-43). The common rights that the charters defined were embedded in local husbandry and the political organization and activities of the commons. This was independent of the state and the temporality of the law and state. For this reason, Linebaugh asserts that Magna Carta "goes deep into human history" (pp. 44-45).

In chapters 3 and 4 (“The Commodity and the Commons” and “Charters Lost and Found”), Linebaugh traces the Charters of Liberty through the tumultuous decades of the sixteenth and seventeenth centuries. As “the climax of medieval feudalism and the beginning of modern capitalism,” the sixteenth century witnessed the dissolution of both the monasteries and the commons, opening avenues for the appearance of a new class, the gentry, which profited from the transformation of English land into a commodity (pp. 48-49). Enclosures had the unfortunate effect of “destroy[ing] the spiritual claim on the soil ... prepar[ing] for the proletarianization of the common people” (p. 51). With a focus on women’s experience, Linebaugh explains that, during the sixteenth century, “the rhetoric of the commonwealth had become dangerous to the state” (p. 53), with the prevalence of competing concepts of social morality–commonwealth and commodity (p. 57).

With the dawn of the seventeenth century, the neglect which Magna Carta experienced during the prior century was transformed into a centerpiece “in the revolutionary struggle of empire” (p. 68). The Charters of Liberty took their separate paths: Magna Carta “became a constitutional bulwark” (p. 70), and, with the conjuncture of renewal of slavery, colonial conquest, enclosure of common lands, and manifold assaults upon women, the Charter of the Forest was largely relegated to the history books. As Linebaugh explains: “Over the great arch of English history some parts of Magna Carta, namely chapter 39, evolved in creative response to events while other parts, such as chapter 7 providing the widow with her reasonable estovers of common, and the entire Charter of the Forest, collected dust among the muniments” (p. 72). Thus, with specific reference to the assertion of colonial independence and acquisitive empire which gave Magna Carta “an Atlantic dimension” (p. 89), Linebaugh identifies in the concluding decades of the seventeenth century the completion of a process in which—with some notable exceptions—“the Charter of the Forest, like Cinderella’s missing shoe was, for all practical purposes, lost” (p. 93).

In chapters 5 and 6 (“The Charters in Blackface and Whiteface” and “1776 and Runnamede”), Linebaugh argues that where slavery “was indispensable to American constitutional and revolutionary history ... the salient English development was the statutory enclosure of lands and privatization of all attempts at commoning” (p. 95). With an Enlightenment tendency toward textual analysis and historical criticism, the scholarship of estovers and forest customs were preserved to some extent, as Linebaugh argues, by “blacking,” a form of dis-

guise that dovetailed socially with both the slave trade in America and the expansion of the working class in England. And whereas Magna Carta played its role in the abolition of slavery in America, the Charter of the Forest fell out of memory, casting aside an “ancient” basis for common rights. Referring to Mr. Perot’s 1984 acquisition of the copy of Magna Carta referenced above, Linebaugh notes not only the place of Magna Carta alongside American imperialist charters in the National Gallery, but also the absence of its “centuries-long companion” (p. 120). With the underpinnings provided by the Charter of the Forest missing, the stage was set for the American founding fathers. Linebaugh differentiates Magna Carta and the Declaration of Independence, observing that, although the Declaration justifies the power of the state, Magna Carta curtails sovereign powers. As he asserts, “Magna Carta is a document of reparations, returning the forest, whereas the declaration is a document of acquisition” (p. 124). An interpretation of Magna Carta devoid of “its pastoral and woodlands underpinnings” enabled “American independence [to be] conducted in the name of Magna Carta [and to] occur in the midst of Atlantic expropriation of commons lands” (p. 135).

In chapters 7 and 8 (“The Law of the Jungle” and “Magna Carta and the U.S. Supreme Court”), with reference to the nineteenth-century works and activities of Rudyard Kipling, Robert Stephenson Smyth Baden-Powell (the founder of the Boy Scouts), Mahatma Ghandi, and Alfred Russel Wallace, among others, Linebaugh traces a process of forest expropriation, in the name of commodity exchange and private property, that proceeds from naming (identification and categorization), to law (typified in the activities of the Indian Forest Department), to science (typified in Darwin’s works), and to myth (where the “jungle” reveals a “socialist code of conduct,” a “moral economy” (p. 158)). The nineteenth-century experience in India typifies the spectre that has continued since the Charters of Liberty first appeared. But if the Indian experience of expropriation “left a cultural remnant of commoning even as the chartered basis receded” (p. 172), in the United States, the U.S. Supreme Court’s own case law provides some explanation for how “a foundational document to law and constitution ... co-existed with the robbery of indigenous peoples’ lands and the expansion of racial slavery” (p. 172). To illustrate this point, Linebaugh focuses on: (1) three cases that cited Magna Carta extensively (namely, *Martin v. Lessee of Waddell* [1842]; *Hurtado v. California* [1884]; and *Browning-Ferris Indus. v. Kelco Disposal* [1989]); (2) the overall prevalence of Magna Carta in the Court’s history;

and (3) a pattern of absence of references to Magna Carta during the early republic (with the expansion of slavery) and between the two world wars (with the class conflicts led by the Socialist Party, the Industrial Workers of the World, and the Communist Party). For Linebaugh, in order to understand Magna Carta in American jurisprudence, one must remain mindful that “law and money are essential to the modern state, the one protecting property, the other signifying value. Magna Carta backs up each. It seems to signify equity in exchange and equality under law” (p. 179). Thus, “the key to understanding Magna Carta in the United States is private property” (p. 184).

In chapters 9 and 10 (“Icon and Idol” and “This Land Was Made by You and Me”), Linebaugh argues that, during the twentieth century, Magna Carta “ceased to be an active constitutional force and became a symbol characterized by ambiguity, mystery, and nonsense. It began to disappear as precise law” (p. 192). With powerful expressions concerning Magna Carta drawn from modern artwork, Linebaugh explains Magna Carta’s iconic force, with a “vast and durable prominence in the architecture of government” (p. 208). And although Magna Carta was—and, to this day remains—powerfully emblematic, the twentieth century witnessed a dramatic decline in Magna Carta’s role as law with a real function in legal proceedings. In this way, the icon became idol, myopically “extolling individualism, private property, laissez-faire and English civilization” (p. 216) and blindly ignoring the commons’ central role. Against this backdrop, Linebaugh invites his readers to reconsider both the commons and communism, explaining that “the idolatry of Magna Carta effectively shut off both” (p. 219).

In his concluding chapters (“The Constitution and the Commons” and “Conclusion”), Linebaugh circles back to his overarching theme: Magna Carta and the Charter of the Forest together “stipulated restraints upon the royal claim [and] provided subsistence in the common realm” (p. 242). As reliquary eventually became idol, the Charters of Liberty were separated and Magna Carta was used to destroy what the Charters had sought to preserve—the commons. Magna Carta’s restraints on state power—the principles for which Magna Carta became idolized—although necessary, are not in themselves sufficient. Such restraints cannot succeed if not accompanied by action based on “commoning” principles.

The most significant contribution of Linebaugh’s work lies in the reminder that Magna Carta must be understood in its wider context—a context that includes not

only its social, economic and legal environment but also the place of Magna Carta alongside other law, including the Charter of the Forest. It is undeniable, of course, that Magna Carta appeared during a particular period in history with its particular problems and priorities. And his emphasis on the agrarian and woodland economy provides a vital perspective through which, at least in part, the Charters of Liberties must be understood. At the same time, Linebaugh perhaps overstates the effect of the Charter of the Forest when it first appeared. As J. C. Holt has explained: “In the case of the royal forests numerous local communities had already by 1215 obtained partial or complete exemption from the forest regulations.”[2] But even if this were the case, Linebaugh’s admonition to consider Magna Carta’s multifaceted context still stands.

To the extent that the population of thirteenth-century England held things in common, Linebaugh correctly encourages his reader to consider those commonalities. But Linebaugh’s excessive focus on the “commons,” “commoning,” and Marxist theory is unabashedly a priori, overly romantic (in the sense that Linebaugh sees all virtue and no vice in the “commons”) and detracts considerably from the central message that Magna Carta’s most powerful meaning can only be understood when one considers its wider context. In part because his stated purpose is more than historical (i.e., one of his stated purposes is “to put the commons back on the agenda of the political constitution” and to get “the world’s commoners ... to think constitutionally” (p. 20)), his narrative and argument is often dry, confused, and scattershot.

Observing that history both advances and goes backward, Linebaugh appears to ground his work upon a particular philosophy of history that shuns fanaticism, builds “trans-historical constructions,” and brings historical inquiry to “the level of historical reality” (p. 19).[3] In fact, Linebaugh’s philosophy appears more or less consistent with that of Roberto Unger, whose own historical vision “might be represented by the metaphor of a spiral that reverses direction without returning to its starting point. This would mean that individual freedom could be rescued from the demise of the rule of law and brought into harmony with the reassertion of communitarian concerns.”[4] For Linebaugh, “historical reality” lies in “the praxis of the commons in its manifold particularities” (p. 19).

As an academic work, Linebaugh’s books falls short of what appropriately can be expected from serious study. But in fairness, Linebaugh’s aim is not merely

to engage in a disconnected academic debate. Instead, he seeks to inform everyone—“commoners” everywhere—of the historical underpinnings of the constitutional, juridical, and economic need for a return to the commons. But in an effort to achieve this objective, Linebaugh goes too far. For example, in various places (pp. 38, 272), Linebaugh identifies September 11 as a “date [that] associates the charters with the forest commons [in 1217], with greater Britain [in 1297, when William Wallace defeated England], with the Levellers [in 1648, with the submission of the Large Petition], and with the slave trade [in 1713, when the South Sea Company received a license to trade African slaves to Spanish colonies in America]” (pp. 38-39). Of course, Linebaugh draws a direct correlation between these historical events and September 11, 2001. But this analysis begs the obvious question: What kind of “history” is this? To be relevant today, Linebaugh’s thesis need not be tied in some mystical way with recent sociopolitical events in this way. Instead, it is sufficient that Linebaugh reminds his readers that Magna

Carta should be interpreted in its wider context—a context that includes the Charter of the Forest and its attendant economic considerations.

#### Notes

[1.] Ian McKay et al., “50 Top Auction Sales of 2007,” *Fine Books & Collections* (March/April 2008): 34. See also Anahad O’Connor, “Let Freedom Remain, Says Financier Who Bought Copy of Magna Carta,” *New York Times* (December 20, 2007); “Magna Carta Copy Sold,” *New York Times* (December 19, 2007); “Magna Carta copy sold for £10.6m,” *BBC News* (December 19, 2007).

[2.] J. C. Holt, *Magna Carta*, 2nd ed. (New York: Cambridge University Press, 1992), 60.

[3.] C. Wright Mills, *The Sociological Imagination* (New York: Oxford University Press, 1959).

[4.] Roberto M. Under, *Law in Modern Society* (The Free Press, 1976), 238-242.

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