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## What is a Commons?

The "commons" means many things to many people. Take John Locke's *Second Treatise of Government* (1690) in whose chapter "Of Property" the commons is not to be found in then-contemporary English villages but in a time and place more reminiscent of the *Book of Genesis*. "God...has given the earth...to mankind in common," writes Locke. Nature is "the common mother of all," albeit a "wild common," for she lacks the improving hand of man. For Locke, that original wilderness resembles a thing called "America" whose "wild woods and uncultivated waste" call to mind the world before it was first peopled by "the children of Adam, or Noah." "...In the beginning all the world was America, and more so than that is now; for no such thing as money was any where known." Call it America or call it Eden, in this seminal document of modern liberalism the commons bespeaks a primordial first condition, one that existed before labor, before cultivation, before money, and before the constitutional state with all its apparatus for the protection of property.

Or take Lawrence Lessig's book, *The Future of Ideas* (2001), which bears the subtitle, "the fate of the commons in a connected world." The "commons" here is the internet, and the shared technology that enables it, but it is much more besides. At one point, speaking of the Linux open-source operating system, Lessig asserts that, "Like Mother Nature herself, [Linux] is quickly becoming universal and free." Elsewhere, speaking of the possibility of technologies that would open up broadcast spectrum to an unlimited number of users, Lessig writes: "The realist in all of us refuses to believe in Eden. But I'm willing to believe in the potential of essentially infinite bandwidth."

Here again we have the aboriginal commons that preceded the fall of man, and again we have an Adamic New World, a place where nature and technology sweetly jump together. In the nineteenth century this fantasy was embodied by an endless series of patented devices for coring and peeling apples, as if the problem that arose in the Garden of Eden were not about the apple itself but about apple technology. In this century we find Lessig imagining that Adam in the Garden had all the bandwidth he needed and dreaming that now (as figured by the Apple Computer logo: rainbow over bitten apple) we shall have it again, have it just as soon as we get the optical switches perfected and all the patents fall into the public domain.

Among other things, then, the commons is the name of an answered longing. If there is a commons, perhaps we can be quit of the chitinous skin of scarcity. Perhaps life is abundant and capaciously supporting. The commons is the fantasy that more than air can be like air, always there for the inhaling lung. Infinite bandwidth, codfish of such bounty that fishermen walk the sea on their backs, passenger pigeons darkening the air, all of literature instantly available on the computer screen, unfenced prairies stretching to the sea, unmown meadows where the ancient cattle graze. There are psychological, spiritual, and mythic elements to "the commons" and we should mark them at the outset so as to attend to how they refract our thinking about the other, more concrete commons.

As for these concrete commons, I propose to elaborate one image of them using some actual data from the kind of English agricultural villages that Locke ignored, though before entering the history it will help

to sketch a few matters of definition. I take a commons to be a kind of property (not "the opposite of property" as some say, following Locke I suppose) and by one old dictionary sense, "property" is "a right of action." Take some simple object in your house, a pencil say, and imagine all the actions that you might take in regard to it. You can use it to write a letter, but you can also give it away, or sell it, or rent it, or bequeath it to your heirs, or use it to stir soup, or break it in half, or burn it, or bury it in the backyard. We don't normally separate out all possible actions in this manner because normally what we mean by "property" is the whole bundle. If the pencil is my property I can do anything I want with it. William Blackstone, the eighteenth-century British jurist, defined ownership as such: "That sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." The word "dominion" here, by the way, was the same word that John Adams chose to describe the political power that some men hold over others. In Adams's politics, the opposite of "dominion" is "liberty." If I own a pencil in Blackstone's sense, I am its despot; it has no liberty.

Enslaved pencils aside, if we return to this atomizing idea of "a right of action," it soon becomes apparent that ownership even today rarely consists of the entire set of possible actions. To move from the pencil to the house where the pencil lies: if I own a house in an American city I have many "rights of action," many "properties," in it, but not all. In the city where I live, for example, I cannot put a herd of cows in my yard; I cannot convert my home into a soap factory; I cannot build a tower ten stories high; I cannot even rent an office to a friend, for I live in a noncommercial zone. And all these are things I cannot do even if I own the house outright, a rare case, for most homeowners have mortgage contracts that further restrict their rights of action.

We have moved from a pencil to a house to the city where the house is found, and this last widening of the focus allows me to suggest a "right of action" that will complicate the picture. Adult citizens in American cities have the right to vote; I suggest we consider this right to be a "property." It is certainly a right of action, and one of the few remaining for which there is no market. The right to vote comes with citizenship and though there are ways in which citizens can lose it, in the normal course of events we consider it inalienable. You cannot sell your vote; you cannot give it away. There is no material property, only an action that expresses the political agency of persons who have it as a right. In fact, by its inalienability it is one of the things that makes such persons who they are. We usually say that citizenship gives me the right to vote but one could as easily say that the right to vote gives me a property called citizenship. Something along these lines is what James Madison was getting at when, in a 1792 essay he wrote that "As a man is said to have a right to his property, he may be equally said to have a property in his rights." Madison's prime example was freedom of speech: "A man has a property in his opinions and the free communication of them." The right of free speech, like the right to vote, we usually think of as a 'civil' rather than a 'property' right, but the distinction begs the question of where to draw the line between the material and the social worlds. Defining property in terms of actions keeps that question open so that 'property' is never just some physical thing (pencil or house), nor a person's rights of action, nor the social regime recognizing those rights, but some combination of these joined together.

Pencils, houses, or a democracy built of inalienable rights, my point is that the idea of property as a right of action suggests a simple first definition: a commons is a kind of property in which more than one person has such a right. You and your spouse might own a mutual fund as "tenants in common"; your

account is a commons with two commoners. In Puritan New England the family was called "the little commonwealth"; family property was the commons of all members.

Couples and families are, however, among the smallest of possible commons, the simplest compounds, the sand and gravel of the set of institutions we are out to understand. To describe the more complicated commons that the term more usually denotes, the rest of this essay will expand on the simple definition through a look at one set of historical conditions that gave rise to the term in the first place.

Traditional English commons were lands held collectively by the residents of a village, the fields, pastures, streams, and woods that a number of people, none of them the owner in Blackstone's sense, had the right to use in ways organized and regulated by custom. Those who held a common right of pasturage could graze their cattle in the fields; those with a common of piscary might fish the streams; those with a common of estovers might cut bushes, gorse or heather; those with a common of turbary might cut turf to burn for heat. Everyone, poor cottagers especially, had the right to glean after the harvest. Those to whom these various rights of action belonged were called commoners.

Systems such as this were the norm in most premodern communities. Alpine grazing fields in Switzerland were village commons for millennia. Early landholding practices among Native Americans offer other parallels, as with this description in regard to California Indians:

Sometimes people owned plots of land, particular trees, or special fishing places outright; in other situations they owned 'rights.' One family, for example, might own salmon-fishing rights from a particular place along a river; another family might own the eel-fishing rights

there; and a third family might own the rights to cross the river at the same place.

In this case, no one absolutely owns that "place along a river"; it is, rather, the object of a set of use rights, multiply owned and embodying or reflecting the fact that communities have many interrelated members with many interrelated needs. In both this and the traditional English case, the commons is not so much the land in question as the land plus the social relations and traditional institutions that organize its use.

The system of English common land tenure lasted for over a thousand years, a span of time that can roughly be broken into three periods. In the Saxon age before the Norman conquest it is assumed that all village lands were held and worked in common, except for a few enclosed gardens and orchards. No one person or family was the ultimate owner; what belonged to people were use rights, the commons being the place those rights were expressed. During the many centuries after the Norman conquest the lands of any village were more likely associated with a local manor, the assumption being that the commons belonged ultimately to the lord of the manor and that rights of common were granted on condition of fealty to him and attendant acts of tribute (military service especially). The third period, the age of enclosure, ran from the early eighteenth century to the end of the nineteenth. During these two hundred years as much as one-seventh of all English common land--about five million acres--was divided up, fenced, and converted into private property in the modern sense.

It should be said that the notion that feudal commons ultimately belonged to the lord of the manor is more likely a legal fiction promulgated during the age of enclosure than an accurate description of how feudal peoples themselves understood their situation. It would be hard to find a case during all those

many centuries in which any overlord acted as owners today might act (evicting tenants, say, so as to sell land to speculators). The commons were managed collectively; no overlord alone could set in motion any significant change in how they operated. Significant changes required consensus agreement among the commoners which meant, for one thing, that the commons was a very stable form, unchanged for centuries. It also meant that when landlords finally moved to enclose the land they could not simply do so, they had to go to parliament and persuade the legislators the change the rules of the game. Most enclosure in England was "parliamentary enclosure," a legally sanctioned act of appropriation often justified by the convenient notion that the landlord's ancestors had anciently bestowed use rights upon the commoners, the idea being that if someone granted the rights in the past, his descendants might recover them in the present.

Later in this story we will come to the colonial American idea that the best kind of land to own is "fee simple," and it will be useful to pause here to explain what the phrase means because it arose by contrast to true feudal ownership. In the Middle Ages, an estate in land granted by a lord to a vassal was called either a "feud" or a "fee." A fee was not a sum of money, it was an estate held on condition of the vassal's loyalty and service. A "fee simple," on the other hand, was an estate held subject to no such obligations. A fee simple is a simple estate, an unconditional or unencumbered estate, one held free of the many reciprocal duties that were the mark of medieval hierarchy.

In all of the grain and complexity of the story of land tenure in England before enclosure, several things are worth marking for the present discussion. First, a point already touched on bears stating more fully. The commons are not simply the land but the land plus the rights, customs and institutions that

organize and preserve its communal uses. The physical commons--the fields and woods and so forth--are like a theater within which the life of the community is enacted and made evident. A bit more detail about the medieval case will illustrate what I mean. Under the manorial system, an overlord had obligations to the free tenants of the manor; the tenants had rights to meadow land and so-called "wastes" (land not cultivated), and the lord could not alter those rights, nor diminish the amount of land involved. On the other side, these tenants usually owed the lord military service and other kinds of tribute. Below the free tenants were serfs or "villeins" who, again, had rights in the common land, but whose obligations to the lord were fuller and more burdensome.

A serf's holdings obliged him in money, labor, and kind. Of money, for example, he was obliged to give the lord a sum upon the marriage of one of his daughters. Of labor, he was obliged to come with his own plow and oxen to plow the lord's acres, and when the plowing was done there was harrowing, reaping, threshing and so forth, for an allotted number of days in the year. Of kind, he might be required to provide honey, eggs, chickens, and so forth. Such a commoner had use rights in the land, but certainly no fee simple. He lived under what Daniel Defoe called "the great law of subordination." Manorial commons were the land, yes, but more substantively the land was a place where an aristocratic society staged and displayed its rigorous and inescapable hierarchies.

Feudal commons are only one case, of course; different societies will have different kinds of commons, even when at some level they all involve multiple use rights in land. Pre-conquest English commons were much more egalitarian in practice, for example, at least according to the stories the English tell about their Saxon past.

Such historical cases aside, the idea that attention must be paid as much to social life as to the land means there are some simple questions to ask of any commons, existing or proposed: What social structure does its use rights embody? What political form is being enacted? Given that the commons arose in premodern agrarian villages, to what degree can the form be translated into modern contexts? If there are commons in the United States today, can their form be continuous with our inherited politics and ideas about property? Can there be democratic commons? Can there be capitalist commons?

I said above that, for present purposes, several issues are worth marking in the complex story of the English commons. The first is this suggestion that commons and community will tend to map one another. A second has to do with the longevity of the institution. English commons lasted for centuries, possibly for millennia. To what might we attribute such remarkable stability?

All who are in the least familiar with literature on the commons know that no discussion of that question can proceed without addressing Garrett Hardin's influential 1968 essay, "The Tragedy of the Commons." Hardin was then concerned with the problem of controlling world population growth and, in the course of a thoughtful meditation on that topic, he paused to consider why it so often happens that human beings find themselves destroying their own resources.

Fisheries such as those off the coast of New England are one of the examples Hardin used to illustrate the diagnosis he offered. The fish stocks in question could be treated as a common property for centuries, so long as "the commoners" were limited in number. But there came a time, quite recently, when unlimited fishing with unlimited means threatened the fish populations with utter collapse. Every common has a carrying capacity, a limit on its use beyond which the

common itself will begin to suffer. A forest where commoners gather wood will replenish itself so long as the commoners never exceed the forest's carrying capacity. The moment they do, the forest will die out.

As many have since pointed out, Hardin's tragic model may have been well applied to modern fisheries but it had little to do with how commons were managed historically. Hardin began, for example, by asking us to "picture a pasture open to all," and then to imagine these "all" invading it beyond its carrying capacity. But no commons was ever open to all; access was always limited in some way, a point I'll come back to shortly. Beyond this, Hardin had people using the commons who seem to have no neighbors they know or care about:

The rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another.... But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy.

Hardin was prompted to this individualist daydream by his reading of an 1832 essay on population control by an amateur mathematician, William Forster Lloyd. Written during the height of the enclosure period in England, Lloyd's essay included a supposed story that Hardin did not reproduce but which is worth citing here for the parallel strangeness of its assumptions:

Suppose two persons to have a common purse, to which each may freely resort. The ordinary source of motive for economy is a foresight of the diminution in the means of future enjoyment depending on each act of present expenditure. If a man takes a guinea out of his own purse, the remainder, which he can spend afterwards, is diminished by a guinea.

But not so, if he takes it from a fund, to which he and another have an equal right of access. The loss falling upon both, he spends a guinea with as little consideration as he would use in spending half a guinea, were the fund divided .... Consequently..., the motive for economy entirely vanishes.

Just as Hardin proposes a herdsman whose reason is unable to encompass the common good, so Lloyd supposes persons who have no way to speak with one another or make joint decisions. Both writers inject laissez-faire individualism into an old agrarian village and then gravely announce that the commons is dead. From the point of view of such a village, Lloyd's assumptions are as crazy as asking us to "suppose a man to have a purse to which his left and right hand may freely resort, each unaware of the other." The "Prisoner's Dilemma" is the label that game theorists now give to one of the conundrums that can arise when self-interest and common purpose are set at odds. The name is telling: difficulties are easy to generate if you assume the parties cannot communicate and it is handy therefore to begin your parable in a prison, almost as handy as assuming a herdsman who acts as if he had despotic dominion over the commons.

Both Hardin and Lloyd posit a kind of freedom that custom never allowed to those who held use rights in the commons. The simple fact is that the commons were a form of property that served their communities for centuries because there were strict limits on the use rights. The commons were not open, they were stinted. If, for example, you were seventeenth-century English common farmer you might have the right to cut rushes on the common, but only between Christmas and Candlemas (the 2nd of February). Or you might have the right to cut the branches of trees, but only up to a certain height and only after the tenth of November. Or you might have the right to cut the thorny evergreen shrubs called furze, but only so much as could

be carried on your back, and only to heat your own house.

And these are simple restraints; most stints were more fully elaborated. If you were a farmer who held what were called "rights of common, appendant," you were constrained in the following ways: you must own land within the manor; you must actively cultivate your own land, your rights to the common pasture on "the lord's waste" arising out of your need to pasture your cattle in summer when you are cultivating; you may only pasture beasts needed in agriculture (oxen and horses to plow, sheep and cows to manure); you may only pasture your beasts during the growing season, when your land is under cultivation; you must not put more animals on the lord's land in summer than your own land can feed for the winter. In short, you must own and cultivate land distinct from the commons, and your use of the commons is limited by the size of your holding, limited in the kind of animal you may pasture, and limited to certain times of year

In sum, use rights in the common were typically stinted, rarely absolute. No common was "open to all" and no "rational herdsman" was ever free to increase his herd at will.

It should be noted, too, that as the commons were stinted, so was the market in goods (especially in grain). Markets could not operate without regard for the provisioning of commoners and the poor. Farmers, for example, were obliged to bring grain to market rather than sell it in the field to wholesalers, and markets themselves were fenced, as it were, so that speculators couldn't outbid the poor. A description of "the orderly regulation of Preston market" dated 1795 reads:

The weekly markets...are extremely well regulated.... None but the town's-people are permitted to buy during the first hour, which is from eight to nine in the

morning: at nine others may purchase:  
but nothing unsold must be withdrawn  
from the market till one o'clock, fish  
excepted....

In another town "hucksters, higlers, and  
retailers" were excluded from eight in the  
morning until noon.

Nowadays it would be hard to find a time or a  
place where there wasn't an available market,  
and certainly it would be hard to find a market  
carefully fenced to make sure the poor could  
provision themselves. But in premodern  
England a market was a limited thing, a  
stinted thing. In a seven-day week, only one  
day was "market day," and on market day only  
the afternoon hours were a free market where  
anyone could buy.

As with the constraints on the commons,  
markets were stinted for social and moral  
ends. No one was left to follow his or her  
own ends without regard for the group. In  
*Customs in Common*, the historian E. P.  
Thompson cites a pamphlet from 1768 that,  
he says, "exclaimed indignantly against the  
supposed liberty of every farmer to do as he  
likes with his own. This would be a 'natural,'  
not a 'civil' liberty." The pamphlet itself  
declares that such liberty

cannot then be said to be the liberty of a  
citizen, or of one who lives under the  
protection of any community; it is rather  
the liberty of a savage; therefore he who  
avails himself thereof, deserves not that  
protection, the power of Society affords.

To these eighteenth-century eyes, a stinted  
market, one constrained by moral concerns, is  
a social market while a wholly free market  
operating without limits is savage.

There is one last point to make about the way  
that the commons operated in premodern  
England. The commons were gated  
institutions--only certain persons could use

them, and only for limited uses--but these  
uses, once established, were not to be cut off.  
In general no one could erect barriers to  
customary common rights, not the lord of the  
manor, not even the king of England. In fact,  
if encroachments appeared, commoners had a  
legal right to throw them down. In some  
locations, villagers would annually walk the  
boundary of the commons, carrying axes and  
crow bars to tear down any building or fence  
which had been raised without permission. In  
the early seventeenth century, King Charles I  
enclosed Richmond Park by building an  
eleven-mile wall around it; regularly thereafter  
parishioners would pull down those parts of  
the wall that blocked their perambulations of  
the parish bounds.

The enclosure of common lands in England  
began as early as the fourteenth century when  
plague killed so many people that overlords  
could simply appropriate common land, the  
constraining use rights having died with the  
users. There was another wave of enclosures  
early in the sixteenth-century, but it was in the  
years 1750 to 1850, more or less, that the bulk  
of the commons in England were converted  
to private land. Many forces lay behind the  
change. An emerging wool market  
encouraged fenced, single-use pastures for  
sheep, for example, while a rising industrial  
economy introduced rural peoples to wage  
labor, the freedoms of which many found  
preferable to the obligations of village life.  
The claim was also made that enclosure  
promoted agricultural efficiency. Separated  
fields could be planted with single crops to  
improve the soil or they could be drained to  
improve the health of livestock, changes  
which were almost impossible to effect in land  
held by many different people for many  
different uses.

The early modern phase of enclosure  
coincided with many other changes in how  
persons, their work, and their public lives  
were imagined, and in an associative sense the  
meaning of "enclosure" lies in those changes

as much as in the overt fencing of fields. Enclosure means a shift away from lives guided by customs preserved in local memory toward those guided by national law preserved in writing. It means a shift in the value of change itself, once suspect and associated with decay, now praised and linked to growth. It means the loss of the right to tear down encroachments, which is also the loss of any protective barrier between the values of the commons and those of the marketplace. It means a change in the measurement and perception of time. In the mid eighteenth-century, factory time--coordinated, precise, and finely divided--arrives to judge agrarian life and find it wanting. Enclosure took the village sundial, hung it on the wall and added a minute hand. Before too long it would strap the wall clock to the wrist and add a second hand. We who wear those watches, skilled now in what Wordsworth called "the usury of time," are the late inheritors of enclosure.

To my mind, though, the central meaning of enclosure's erasure of the commons lies in the way it carved that thousand-year-old animal, the commoner, into his constituent parts, then reshaped him for the new world of efficiency, law, progress, and time-as-money. A commons depends on a special sort of property that can, in theory, be broken into three parts: there is the use right, there is the commoner who has the right, and there is the land where the right is exercised. "In theory," yes, this division can be made, but not in practice, at least not if the goal is to preserve a viable world of common holdings, for these three things are one thing in that world, and it would cease to exist if they were picked apart.

To illustrate by an analogy to a kind of "property" I suggested some pages back, in the United States, if you have a home in the state of Florida, say, you have the right to vote in that state's elections. All such elections have some sort of residency requirement, so the home helps establish your right. Again, we have three things--a residence, a person, a

right of action--and in a viable democracy, these things cannot be separated one from the other. In theory, perhaps, we could design a system where the right to vote belongs to the house and not the householder, but then we would have created a situation in which the rich can multiply their votes by buying up houses. Or we could, perhaps, say that the right to vote is a property that the citizen can transfer at will, though again by doing so we would open the door to the kind of plutocracy where the rich can buy more votes than the poor. Residency, resident, and right are bundled together to produce a "citizen of the state of Florida." No part can be split off as a separable property, at least not if we wish to preserve our kind of democracy.

But exactly this kind of severing attended the enclosure of common lands in England. During the days of Parliamentary enclosure, the understanding was that people holding use rights in a commons should receive something--cash or some equivalent in private land--in exchange for the loss of those rights. In theory this seems fair; it is hard to imagine how enclosure could have proceeded without some such conversion. In practice it amounts to a sea change in how persons and communities are imagined and given their agency.

To flesh this out with but one example, in 1812 the eight-thousand acre Delamere forest was enclosed, half of the land going to the king. Except in regard to a few moss pits and peat bogs, all rights of common in the forest were extinguished. The chief forester and his assistants, whose uses had included a right to raise rabbits in the woods, were given cash. Local landowners had their use rights exchanged for alienable plots of land. The tenants of these landowners, who had enjoyed a centuries-old right of estovers, got nothing, though the landowners were instructed to offer cash compensation.



Such a conversion severs the land, the users, and the use rights, commodifying the first and last of these and leaving the middle term--the human being who once used the forest--changed from a commoner into a modern individual.

The story of enclosure wakes a resistant pastoralist in many readers, so it may be worth pausing here to say a few words in favor of the modern and against these agrarian commons just to be sure that nostalgia does not fog the edge of thought. I mentioned in passing that along with enclosure we find the rising appeal of wage labor. Remember that feudal vassal who owed his lord the service of his sword, and below him that simple commoner obliged in honey, chickens, eggs, and time at the plow. Such people have no employers, they have lords and masters, and little or no freedom to alter the terms of their work. The great stability of the commons is a great confinement too; those with inherited rights to common land were the fortunate heirs of a world resistant to change, but by the same token they had little way to modify that world should they so desire.

Wage labor unsettled all that. It brought its own kinds of confinement, to be sure, but it also brought a promise of mobility and choice. To illustrate with one of the classic American cases, no one wants to be Benjamin Franklin apprenticed in Boston to his bullying brother the printer; everyone wants to be Franklin the runaway, going to Philadelphia, setting up his own shop, and advertising his do-it-yourself self by wheeling a barrow of printer's paper through the dawn streets.

Early-modern political thought long linked personal mobility with the mobility of property or, more specifically, linked political liberty with the right to hold an estate in "sole and despotic dominion." After the Puritan Revolution, the distinction between the vassal and the freeholder became marked and full of meaning. The vassal's land and sword were

not his own, they were his lord's, and therefore so was he. For the freeholder, both land and sword were unencumbered and consequently so was he. A right to own land in fee simple and the "free" individual appeared together, each knit to the other. Wool was not the only crop to be taken from post-feudal fields; God's Englishman grew there as well, a new animal--at least in the rhetoric of the time--bred to become an actor in the public sphere.

It is not hard to feel a sentimental attachment to the premodern commons but the sentiment should at least be informed. Let us not elide the fact that agrarian commoners lived embedded in a set of obligations most of us would find onerous if not actually oppressive. Enclosure and all its attendant meanings loosened up that "great law of subordination" and brought modern choice and political agency. Even E. P. Thompson, not a pastoral moralist but an apologist for the commons nonetheless, is willing to concede that "the older ... culture was in many ways otiose, intellectually vacant, devoid of quickening, and plain bloody poor."

All this said, I have not offered this short history of one country's actual commons in order to weigh it against the modern; the point has been to gather material that might help in fleshing out an image of the institution. We began with a simple assertion: a commons is a kind of property in which more than one person has a right of action. A useful start, but traditional commons are of course larger than the two-person or family holdings this definition first suggests. Traditionally, the bundled rights of action that constitute a commons embody a community and, in so doing, reflect its shape or structure. A commons comes to life around some matter, tangible or not (pastures, fish, ideas, tricks of the trade), but the commons is not that matter by itself. Because the matter of the commons is the focus of rights of action, it soon becomes a kind of theater within

which people enact their set relationships--to one another, to the past and future, and to the natural world. Consequently, an accurate description of any commons should suggest answers the question, What kind of social life finds its being here? or, more fully, What structures of power, obligation, reciprocity, gratitude, status, honor, learning, dependence, inheritance, intimacy, and so forth are fostered by this thing?

To say this briefly by way of beginning to answer the question posed by this essay's title, a commons is a social regime for managing a collectively owned resource, and the emphasis should be on social rather than on resource. In addition, although it is not hard to split a commons into the parts that make it up--the commoners, their use rights, the fields where those rights are enacted--in actual practice these parts cannot easily be separated one from another because (and this is a second part of my definition) it is the parts bundled that constitutes the commons, that bring it into being. The things (fields, fish, ideas) are where the common use rights meet, and that means that the things are encumbered, not readily available for trade. Likewise, because the use rights are in an important sense what make the commoners who they are, the rights are also not readily available for trade, at least not if the people and the community wish to preserve their identities. The agrarian commons I've been reviewing was not made of alienable rights or alienable things.

Another feature of most durable commons is their stints, the constraints placed on use in the name of longevity. Moreover, the inalienability of rights and resources means that the right to resist encroachments or tear down enclosures should be considered a primary kind of stint. The commons is never the only kind of property at large in the land; there is always some form of despotic dominion and some form of market nearby, and for the commons to endure it must be

protected from these. It needs some kind of built-in border patrol, a defense against the undue conversion of use rights into rents or the fencing of open fields into sheep pastures. Almost by definition, the commons needs to stint the market, for if the "free market" is free to convert everything it meets into an exchangeable good, no commons will survive.

As a subset of this point about stinting it should be noted that limits to use will be less important where there is no issue of carrying capacity. Garrett Hardin was wrong to ask that we "picture a pasture open to all," but he was right to make carrying capacity a central question. Especially in a case like an agrarian commons, there will always the problem of how to make sure that the land remains productive generation after generation, and the solution has always been to set clear limits to use. Where there is no problem of carrying capacity, as with ideas and inventions in the public domain, there may be little need for limits on use except for the all-important limit on encroachment. An invention or discovery beneficial to all is not by its nature a private property, but it can be made into one by the artifice of law. Where we wish the wealth of ideas to be a commons we will need to set a boundary on that artifice. (If the internet is to be a commons, for example, the primary stinting will have less to do with limiting use as with limiting encroachments. When motivated advertisers or propagandists have managed to insert themselves into every link, we will no longer have a common good.) Finally, the management of any commons can be seen not just as responding to the nature of its materials but also as organizing action toward certain ends and purposes. (In the internet case, the goals could be equal access to knowledge rather than maximizing wealth.) Every form of property raises political, ethical, even eschatological questions. The catechism of the old *New England Primer* used to ask, "What is the chief end of man?", the Puritan response being, "to glorify God and to enjoy Him forever." Such declarative faith may not

always be available, but that does not mean that questions about ultimate purposes disappear. Toward what ideals have we adopted the ways in which we live? To what end should one or another thing be open to common usage rather than held in private by individuals?

We have already seen some ways in which questions like these might be answered. It is not hard to nominate goals, both positive and negative, in the case of traditional English commons. They were, at various times, organized to ensure the sustainability of arable lands, to give village life stability over time, to lock in the hierarchies of medieval life, and so on. Some time ago I mentioned that poor cottagers were entitled to glean: whatever remained in the fields after the harvest belonged to them by right of common. In addition, the poor always had a right of access to the non-arable commons, to forests and other "waste" lands. Gleaning and access rights were especially important in times of dearth or scarcity and, along with the stunted market that kept "hucksters, higlers, and retailers" at bay, were part of a system of communal tenure that knew one of its ends to be the provisioning of the poor.

The modern ends toward which commons might exist are similar if more various. Issues of sustainability have not left us; if we wish to preserve watersheds, the oceans and their bounty, the atmosphere, aquifers, and so on, some modern form of commons is in order. Issues of social equity and distributive justice are always with us, too--not just in regard to the internet, but in discussions of radio spectrum, for example, or of medicines that can be brought into the public domain. Many argue (myself included) that treating ideas, inventions, and discoveries as a commons fosters creativity and innovation. Finally, the commons is a form of property that gives body to, or brings to life, human sociability. It is one of the places where we can express, demonstrate, and foster the fact that the

human self is not a solitary but a collective thing, embedded in family, community, history, and nature. There are plenty of forms of property that express our individuality; the commons expresses our mutuality. One of its ends, that is, is to give presence to the collective portion of our humanity.

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