



The commons and world governance

Toward a global social contract

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FOREWORD

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The Commons are based on a common philosophy that gives birth to a fabulous diversity of practices, rules, and institutions. The philosophy is in essence very simple and in many respects evident: the means of subsistence provided by our natural and cultural environment must be ensured and managed jointly, in a spirit of collective responsibility. History and current events have actually shown that such responsibility *can* be shared, all the more when all those who are mobilized—people and social groups—are considered in fairness and equality. This requires as a crucial factor the continuous maintenance and regeneration of a collective framework for social justice and equality.

Satisfactory conditions for justice and equality can only come about through a concrete co-operation process. This process is called “Commoning.” Conceptually speaking, Commoning designates an action conducted within a system of interrelations, where the subjects act according to principles of interconnectedness with the other subjects and the surrounding elements. Practically speaking, Commoning requires institutions, and more specifically, within these institutions, persons completely at one with the philosophy underlying the Commons. Commoning advocates may be found in every institution.

It is often claimed that the Commons can only work in highly structured societies and that their principles cannot be transferred to the global architecture of power. If it is true that we only create what we can think, then this assertion must be removed from our presuppositions. Why should the organizational logic of the Commons be limited to the current scale of its practices and of its social process? Can we venture to assert that it is possible to consider the principles of Commoning at every level of the architecture of governance?¹ It does not really matter, in fact, if the context is elementary, complex, or structured. Of course, it is easier to make consensus-based decisions within a small group of persons. This does not, however, preclude developing such practices within larger, more heterogeneous groups. To broaden our thinking, it is important to first get a good understanding of how the Commons work and to adopt a way of thinking and of acting that can open perspectives, new forms of institutionalization, and a new legal framework adapted to the foundations of the Commons. Hence the importance of the conceptual contribution of this Proposal Paper and of the serious questions it raises.

1. The principles of Commoning are not to be confused with the principles defined by Ostrom for the collective management of resources in connection with stable institutions.

Designing, and above all implementing governance based on the Commons is an inevitably lengthy process. The Commons are social processes, produced by the interconnections and cooperation forged within society. They are beyond the grasp of modeling with conventional algorithms. It is therefore impossible to reproduce the principles of Commoning on the basis of simple and linear operations. It requires previously developing a sensitive and dynamic conception of social relations, which is obviously much easier said than done. For example, for the delicate issue of property rights, the challenge for the Commons will be to approach it from the angle of a social relationship.

If we wish to go further and to innovate, we need to step beyond all the limitations of our imagination, including the traditional theories of governance, which are underpinned by thinking built around the nation state. Arnaud Blin and Gustavo Marin have taken up the stimulating challenge of exploring new avenues for the regulation and transformation of societies from the perspective of the Commons.

The goods that we share are not restricted to the divisions inherent to political and administrative borders. Watersheds or fish, for instance, are not limited by a national border or any sort of territorial property. The atmosphere protects us all ... or will protect no one! Nowadays, it only takes seconds to spread knowledge, know-how, and ideas around the entire planet. These realities need to be taken into account now by governance structures.

Basically, the question is not just to know how we can move from the scale of local groups and that of networks to that of the world community, it is also to know how to integrate the emerging Commons thinking into our legal systems, social-welfare structures, education, and economic systems. In the future, one of the challenges will clearly be to have institutions facilitating, not limiting, commoning. There are more questions than answers on the subject. Arnaud Blin and Gustavo Marin have raised them and put us on the right track. The idea will be then to persevere, doggedly, and with clarity of mind and determination.

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<http://www.transcript-verlag.de/ts2036/ts2036.php>.
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1.

Enter “The Commons”

There is a great revolution—in fact, the first global revolution in history—deeply transforming the manner by which humankind has traditionally organized itself. Today the state is no longer equipped to ensure the sustainability of humankind, nor is it able to prevent itself, other states, and private actors from plundering our most precious treasure, our planet, irretrievably. The sudden powerlessness of the most powerful actor of the global stage has been caused by the onrush of globalization, which with breathtaking speed has overtaken the traditional actors of international politics and rewritten the rules of the game of economics. By doing so, it has also fostered the need to devise and uphold what can be described as the *global interest*, one that should inevitably take precedence over the outdated and ineffectual individual “national interests” that have for centuries determined the direction of international affairs.

This nascent global interest varies from national interests not only in its scope—it is not an aggregation of national interests—but also in its premises. National interests are inherently based on competition, both for resources and for power, in what amounts to a form of political Darwinism where the “fittest” dominate and take advantage of the weakest. In this scheme, “Others” are conceived only in terms of whether or not they constitute a hindrance to one’s national interests.

One of the most insightful discussions of this fundamental point was provided in the middle of the twentieth century by the German jurist Carl Schmitt, who posited that each society defines itself by its opposition to other societies. As such, politics in and of themselves are defined through the dichotomy friend/foe, with the state having historically embodied the most complete form of politics. According to Schmitt, however, the state is a transitory embodiment of politics and when it loses the monopoly of determining who is friend and who is foe, it perishes. Put differently, this means that the potential (and long-term) effects of globalization are to annihi-

late the very notion of friend/foe, and with it politics and, ultimately, the state itself. Nonetheless, historical processes are not linear and cannot be predetermined. Schmitt’s intuition and doctrine appear all the more salient with the changes that have come about in recent years where the traditional notion of friend/foe has become increasingly complex as global interdependence has become more prevalent and, more importantly still, as global consciousness has arisen about the vulnerability of our planet and the need to address this existential threat in the only manner possible: collectively.

It is however necessary to avoid any kind of illusory vision of this global interdependence inasmuch as one of the characteristics of the historical period that began at the end of the twentieth century is the mutation of the traditional friend/foe dichotomy, whose very essence is changing. The new global awareness of our common human destiny does not only bring about new social, political, and cultural confrontations that keep the challenge alive of building a world in peace. In addition, ecological damages and risks are such that common human destiny is itself in danger.

It is through this sudden perception of our vulnerability and diversity that the concept of “common goods” and then simply “the commons” has arisen in recent years. Although compounded by the grinding effects of neoliberal policies and practices, “the commons” have increasingly been seen as a benchmark in terms of what politics are all about, with profound ramifications that go to the very root of political philosophy. In other words, this idea pushes us ever closer to asking ourselves, collectively, what kind of (global) society we want.

David Bollier points out that “[a]s a system of governance, the commons offers several critical capacities that are sorely missing from the neoliberal state and market system: the ability to set and enforce sustainable limits on markets; the ability to internalize the “externalities” that markets pro-

*duce; and an ability to declare that certain resources are inalienable—that is, off-limits to markets.*²

Thus, by suggesting that certain resources can be seen as being associated with inalienable rights, what Bollier is saying in essence is that the commons allow us to envision another paradigm for political action, at scales that go from micro-political action to global political action. This is a powerful argument as until now, political theory has been either confined in practice to closed political entities, be they city-states, kingdoms, republics or empires, or restricted in theory to top-down authoritarian global states such as Dante's monarchy or Hobbes's Leviathan. If a system of global governance based on the commons were potentially achievable, this indeed would present a revolutionary breakthrough in human history for it would be the first example of a bottom-up global system of governance.

The twentieth-century political theorist Leo Strauss defined political action simply as concerned with either preservation and/or change. "*When it is concerned with preservation,*" he suggested, "*it is concerned with avoiding that something worse will happen. When it is concerned with change, it is concerned with change for the better.*"³ Our topic of discussion takes us precisely within these two realms: taking care of our Mother Earth, and protecting our environment and its integrity, on the one hand, and changing our modes of governance in order to ensure our collective freedom to access the commons on the other.

The through line of this paper rests on the premise that the commons can act as a central concept that could potentially change our social and political makeup while pushing us to develop new modes of global governance. We will start by examining exactly how the rules of the game have changed radically during the last two decades or so. Then we will briefly step back to address some fundamental questions that go to the root of political philosophy and action. We will then discuss the idea of a *global social* contract and end with a discussion of how the very concept of the commons will enable us to open the pathway through which we will progress in making these ideas reality.

2. David Bollier, "The Commons, Political Transformation, and Cities," at <http://bollier.org/commons-political-transformation-and-cities>

3. Leo Strauss, "Lecture on Plato's Meno", University of Chicago, Spring 1966. Audio made available by the University of Chicago's Leo Strauss Center at <http://leostrausscenter.uchicago.edu/audio-transcripts>.

2.

The Commons Are Not Common Goods, It Something They Can Become

Before endeavoring into these murky waters, let us first try to define what we mean by “the commons.” While “common goods”—in most other languages, this concept often is preferred to “the commons”—is a fairly straightforward concept, “the commons” is somewhat more complex to grasp. An often used definition is the one found in the World Conservation Strategy Report of 1980: “A *commons* is a tract of land or water owned or used jointly by the members of a community. The global commons includes those parts of the earth’s surface beyond national jurisdiction—notably the open ocean and the living resources found there—or held in common—notably the atmosphere.”⁴ While useful to catch the essence of the concept, one might find the definition of global commons as outside of national jurisdiction to be too restrictive. In addition, this definition lacks an integral part of the commons: “enclosure.” Therefore, and while no definition will prove entirely satisfactory or all-encompassing, as is true with most such concepts, David Bollier’s definition seems to us more satisfactory: The commons “refers to that vast range of resources that people collectively own, but which are rapidly being enclosed: privatized, traded in the market, and abused.”⁵

Two notions are important here, that of *collectively owned resources* and that of *enclosure*. The concept of resources, in reference to the commons, is much broader than is usually understood. Such resources can be physical (rivers or forests for example) and spatial (oceans and space), but they can also be digital (cyberspace, software) or cultural (art, literature or mathematics). They concern vital resources such as potable water and more trivial ones, such as access to a good wave for surfers.

The latter example, for all its wackiness, illustrates the problem at the micro-level: unlike most sporting playgrounds, spots for good surfing waves are in finite numbers. At the same time, the number of surfers around the world is growing exponentially, thus creating a

surplus relative to the number of spots and a need to manage the problem. The solutions found show some spots being self-managed by surfers using quotas (establishing the number of times one can surf); others have governments intervene, as in Fiji, where the authorities allowed the main spot (“Cloudbreak”) to be privately run, charging guests up to \$4,000 a day. The third solution has been to look for new spots around the world, which abound, notably on the African coasts. This example of a rather odd “common,” the surfing wave, aside from showing the varieties of commons that exist in the world, exhibits in a nutshell how they might suddenly rise from non-entity to common, and how people differ in their approaches to managing the common.

In this particular case, the main people concerned, the surfers, are a rather peaceful and eco-friendly group. Yet, one of the responses is to “enclose” the common, in this case through privatization. This story also bears an interesting twist of events: the outrageous rates practiced at “Cloudbreak” drove tourism on the island sharply down and local businesses out, so many, that the government had to rescind and reopen the waves to all, rich or poor.

4. *World Conservation Strategy. Living Resource Conservation for Sustainable Development*, Prepared by the International Union for Conservation of Nature and Natural Resources, Chapter 18, “The Global Commons”, 1980.

5. David Bollier, “Reclaiming the Commons,” *Boston Review*, Summer 2002. In the original definition, and given the context of the article, Bollier refers to “The American people.”

3.

The Commons Facing the State and the Market

The great Arabian historian Ibn Khalun postulated in the fifteenth century a paradigm of political history that revolved around the perpetual and relentless cycles that see societies rise, decay, and disappear only to rise again in some other form. A century later in Europe, Machiavelli pierced through the common political wisdom of the time with a similar theory that set the parameters of modern political thought and its corresponding practices. During the ensuing five hundred years, several such cycles have revolutionized political practices around the world, each revolution, often painful and violent, having generated new economic mores that transformed the social and cultural landscape of entire continents.

The empire and church that dominated Europe gave way to the modern secular state in the seventeenth century and the aristocratic regimes gave way, through the American and French revolutions, to the advent of democracy in the nineteenth and twentieth centuries. All the while, mercantilism was thrashed by capitalism, agricultural societies were replaced by industrialized urban ones, and class society was turned upside down by social mobility. With each cycle, political and economic Darwinism ruled the day: creaking empires were no match for modern states while totalitarian states, be they promising hell or paradise, proved too feeble against the lure of freedom and economic dynamism offered by (liberal) democracies. During those five centuries, whether by force or by choice, most of the world followed the path of the West. Until the twenty-first century and the reemergence of China, those that did not were quickly relegated to the back waters.

Today, we are in the midst of another global revolution, in another cycle. This revolution, like the previous ones, is of epic proportions, but what makes it totally unique is its global dimension. In a matter of

twenty years, the triumphant West that trumpeted its “final” victory in the early 1990s is now looking at what will probably be the final chapter of its five hundred years of hegemony. Though still strong, Europe and America have ceased to be the sole movers and shakers of world politics. At the same time, the equally triumphant democratic model has shown serious limits, if not frightening failings, its main claim being that no other model has shown to be superior.

Capitalism, after its triumph over the hapless communist model, has in some measure responded with some success to the problem of global economic growth but has been abysmal at meeting humankind’s quest for social and economic justice. While political systems have progressed, be it slowly, in solving one of history’s main conundrums, namely how to limit the concentration and abuse of power by the state, capitalism has gone in reverse, providing a privileged caste with another source of seemingly limitless power. Nevertheless, capitalism, and its accompanying ideology, neoliberalism, appear all the more feeble, not because they have completely failed but because they have only partially succeeded.

In the nineteenth century, Alexis de Tocqueville noted counter-intuitively that political regimes begin to crack not when they revert to authority but rather when they open up, thus showing their shortcomings, which then appear intolerable, a logic that precedes many revolutions, as it did notably in France and Russia. The same logic is true of neoclassical economic practices. Today, for example, and contrary to what one may commonly read or hear, it appears that poverty has receded significantly on a global scale, world poverty having being halved between 1990 and 2010.⁶ At the same time, however, the gap between the very rich and the poor has also progressed significantly. Thus, whether or not

6. This surprising finding comes from the World Bank’s Development Research Group. If confirmed, this would mean that the millennium goal of halving world poverty by 2015 has been met five years early. While China is in great part responsible for this upturn, other parts of Asia and Africa have also progressed remarkably. The reasons for this turnaround, however, will undoubtedly divide economists.

the receding of poverty is attributable to the genius of capitalism, the inequality and injustice that it otherwise breeds will increasingly make it unsustainable and unacceptable. The two alternative models of human organization on a global scale are the often overbearing (and often incompetent as well) state on the one hand, the overreaching—and erratic—market on the other, both being unsatisfactory on many levels. The collusion of state and market forces has inevitably made a bad situation worse, as exemplified by the recent economic and financial crisis which has revealed to a surprising extent the degree of selfishness, greed, irresponsibility, corruption, cowardliness and lack of foresight that pervade the higher rungs of governments and financial institutions, notably in the United States and in Europe.

Let us examine briefly these two entities, the state and the market. The state, or more precisely the nation-state as we know it today is a seventeenth-century invention that really came into being a century later. For the last two hundred years, it has in some measure been able to meet the challenges of the day, albeit with vast differences between each individual state, some falling far short of what one should expect from governments. Since 1945, and more so since 1991, no nation-state in the world has purported to risk all in order to alter the geopolitical *status quo* to its advantage, a novel phenomenon that has largely gone unnoticed, with the result being a significantly greater global security than in the past: yes, despite what one may hear from political leaders or the media, the world is in fact a much safer place than it has been for centuries. In some regions of the world— northern Europe or Canada come to mind—the state, despite problems here and there and some room for progress, has been able to create what one could describe as a “good society,” in other words a space that combines social justice, individual freedom, security (including from the state itself) and economic well-being: short of happiness, pretty much all that one can be entitled to have, regardless of one’s social origins.

Nonetheless, as the state as a political model and the relations between states have vastly improved in a short span of time, a new set of problems and issues have arisen that have shown the state to be completely powerless as such or to have a negative impact on the evolving situation. Issues related to the environment, to global economic and social justice, to migration, global resources and common goods, to name a few, are in effect proving to be beyond the reach of the state.

For some, where the state is irrelevant or ineffectual, the “market” will solve all. Contrary to the state which is a (political) construction with a fairly clear frame-

work and objectives, the market is essentially a mechanism. In this historic period, however, it is not just a mechanism, the function of which would be to facilitate trade. It is, in essence, a capitalistic market. As such, the only law it obeys is profit and, under the guise of freedom and the purpose of serving the consumer, it generates intense predatory activity that favors the wealthy and powerful and crushes the weak and the poor. Much like government, the capitalistic market has a logical propensity to generate and concentrate power, which is then abused by those who have managed to take hold of it. Much like government, and contrary to the self-serving arguments trumpeted by neoliberalism, the issue is not to give it a blank check but to impose upon it a set of checks and balances. Like the colonial empires of the nineteenth century that sought to colonize new territories to increase their power, the market tends to move toward territories where it will impose its will more easily. This state of affairs has long been a staple of commercial and economic practices, but in a very short span of time, it has taken such a qualitative and quantitative step that the erratic behavior of the market is likely to alter the geopolitical *status quo* to an unprecedented degree. In the twenty-first century, the market has the disruptive potential, now global, that in the past only a Robespierre, a Napoleon or a Hitler could garner. Oddly for what is just a mechanism, the market has given birth to an ideology that, not illogically, has come to replace both nationalism and communism as the most potent ideology of the age.

Both the liberal democratic model and neoliberal ideology have fostered an ethics of selfishness, the former by exacerbating the individualistic ethos, the latter by removing all barriers to economic riches and promoting their selfish pursuit while branding consumption as the ultimate purpose in life. At the same time, states have pursued policies focused on what is called the “national interest.” The spirit of competition, a byproduct of this ethos and a central part both of democracy (the competition for votes) and the capitalist market (the doctrine of comparative advantage), has undermined the sense of community and its inclination toward cooperation.

4.

The Commons, Private Property, Collective Property

Another central element to both democracy and capitalism has contributed to the atomization of societies: the sanctity of private property. John Locke, by far the most influential political philosopher of modern times, stated this point very clearly in terms of individuals' natural rights: "Every man is born with a double right: first, a right of freedom to his person, which no other man has a power over, but the free disposal of it lies in himself. Secondly, a right, before any other man, to inherit with his brethren his father's goods,"⁷ and in terms of their purpose in entering society: "The reason why men enter into society is the preservation of their property, and the end why they choose and authorize a legislative, is, that there may be laws made, and rules set, as guards and fences to the properties of all members of the society, to limit the power, and moderate the dominion, of every part and member of the society."⁸ Interestingly, it is another seventeenth-century English thinker, James Harrington, who foresaw insightfully that it is essentially power that breeds property (rather than the opposite), a fact demonstrated subsequently with utmost viciousness both by capitalism and totalitarianism.⁹

Since Locke wrote his treatise in the late seventeenth century—at the same time that the modern state was taking launch—property has become a central element of liberal political thought and practices, one that is inseparable from freedom and, for all intents and purposes, one that is effectively written in stone, both in terms of our conception of democracy and through our legal systems. And with the advent of capitalism, the sanctity of individual property in liberal thought has come to supersede individual freedom itself when both come into conflict, capitalism resting on the sanctity of the private means of production with the understanding that "property is value," as coined by Frédéric Bastiat in the nineteenth century. Throughout the entire twentieth century, communism sought to trounce indi-

vidual freedoms by "collectivizing" property, that is, by taking property away from individuals and giving it to the state, thereby reinforcing the notion that an attack on private property is an attack on freedom, and giving a new twist to the claim first made by Proudhon that "property is theft."

Even so, the global world of the twenty-first century is a very different place from John Locke's seventeenth-century preindustrial England, and the problem of "property" is significantly different today than it might have been in what was essentially an agrarian society. Even the great champion of the market, Adam Smith, warned in *The Wealth of Nations* (1776) that "[w]herever there is great property, there is great inequality. For one very rich man, there must be at least five hundred poor, and the affluence of the few supposes the indigence of the many."¹⁰

Today, it is evident that "property" must be redefined to meet the demands of the day and respond to the abuses of those who lay claim to the sanctity of property. Scarcity, the one element put forward by Lockean theorists that warrants the creation and protection of individual property, is now, in the current environment, a principal motive for moving toward an understanding of property as a collective process destined to protect individuals and communities from the plundering of scarce resources. While private property on a small scale should remain a basic right to be upheld by society and the state in that it does not impinge on the welfare of society at large, both capitalistic property and the "collective" property taken or held by the state infringe on the collective rights of individuals and communities to have free and equal access to common goods and, more generally, to the commons.

Thus the right to private property has been turned on its head and, through the mechanism of the market

7. John Locke, *Second Treatise of Government*, Indianapolis, Hackett, 1980, p. 98 (§190).

8. *Ibid.* p. 111 (§ 222).

9. In his *Commonwealth of Oceana*, 1656.

10. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Indianapolis, Hackett, 1993, p. 177.

and the protection of neoliberal policies, has pushed the wealthiest, in the name of freedom, to deny others the right and freedom to access and enjoy the most basic common goods. In many instances the state has intervened to deny access to the commons forcefully, as exemplified recently in China with respect to the Internet. While Locke projected himself in the “state of nature” through the lens of a Westerner bent on defending what was a staple of European society, individual property (through which one garnered wealth, status, and power according to the size of one’s territorial possessions), one should now look at other traditions, for example those of the Australian Aborigines or the American Six-Nation Iroquois Confederation, which foresaw “property” as essentially collective (in the original, not totalitarian, sense) to be shared by all equally and with the respect due to its natural environment.

While freedom and property may be inextricably linked, our definition of what property entails needs to evolve from a very narrow vision of individual property to a broader understanding of collective property, one that not only involves rights, as with private property, but also responsibilities, one that does not simply amount to a “negative” vision of property, as *belonging to no one* but rather as *belonging to everyone*, a subtle distinction that in both theory and practice has significant consequences. In this light, the emergence of the commons as a key concept in contemporary political thought might prove crucial in altering our basic conception of property. This, in turn, might be a formidable stepping stone toward establishing the structure for a truly global system of governance.

5.

The Commons Are Connected to Justice and Sustainability

A fundamental problem, famously raised by Friedrich Hegel at the turn of the nineteenth century is that the answers to the main questions of political philosophy—which remain the same regardless of time and space—are determined by the times at which they are dispensed. In other words, Aristotle, Confucius or Al-Farabi, Machiavelli or Hobbes, Locke or Rousseau all grappled with the same fundamental problem but their answers were in great part determined by the political environment in which they lived (Hegel, true to himself, after revealing this fact, purported to transcend it.) Today, in 2012, our problem is similar to theirs and our questions essentially the same: How can we change what is globally a failing society to something better?

Our answers, however, might logically differ from theirs. Today, the rapid and profound demographic and technological evolution of the world has radically altered some fundamental tenets of humankind's makeup. The world can simply not move forward, perhaps not even survive, with a loose system of enclosed societies competing with one another for power and wealth. Today, the essential question of political philosophy is not just concerned with how to create a “good society” but how to create a good *global society*, one that is not only fair and secure but also sustainable. In philosophical and practical terms, this (giant) leap for mankind is not just a qualitative or quantitative leap. It poses problems of an altogether new order that are compounded by the fact that one cannot erase the old order and rebuild a new one from a *tabula rasa*.

Thus, there are two issues. The first is philosophical. The second is practical or, in essence, political. The first concerns our vision of what the “good global society” might look like. The second deals with the process through which, with all the constraints of reality, one moves from this vision toward its practical application. In other words, how one transforms political ideas into political action and institutions. Perhaps it is necessary here to point out that we have focused essentially on

politics rather than economics. This is because the nature economics—or more precisely, of political economy—are essentially determined by political organization and policies rather than the reverse. In this light, the concept of the commons and commoning offers insights to both issues: first by pointing out a universal “good” important to all of us (the commons), which upholds certain values such as justice and equity and is vital to uphold our collective freedom; second, by providing a tangible element around which new forms of governance can be developed independently of those that already exist.

This brings us to several essential questions: Why is global society failing? What is something “better”? How does one get there and can we identify a path to lead us there?

We have already started to touch upon the first question. In a nutshell though, the main issue is twofold. It concerns justice and it concerns sustainability. Justice, because while one portion of humankind is prospering, another, greater one, is left to the margins. While this is nothing new in history, it has now become increasingly intolerable both because the sheer magnitude of injustices is staggering, and because the liberty and equality that are part of our collective ethos are simply not being upheld, to the contrary, by the very model supposed to do so. Modern means of communication and information only give us an even better grasp of this sense of intolerable injustice. Sustainability, although not a new phenomenon by any measure, has also emerged as a central issue of the age through the magnitude of the problems created in this matter. There is no need here to dwell on a well-known issue that all of us grapple with in more or less detail on a daily basis, only to underline the fact that for the first time in history humankind has come face-to-face with not only its finality as a species but with the horrific prospect of being unable to stop the destruction of the environment and its capacity to sustain future generations.

6.

Toward a Global Social Contract

Thus, we come again to one of the fundamental interrogations of political philosophy: How do we protect ourselves from ourselves? To answer this eternal and somewhat elusive question, a number of political philosophers including Locke, Hobbes, Rousseau, or more recently John Rawls, have posited a theoretical, if not historical, state of nature from which man (and woman) emerges and which, through a voluntary contract, takes part in the society that will protect him/her from others and will preserve his/her life, freedom, and property.

Classical modern political theory, foremost that of Locke, posits two stages that precede the formulation of a social contract: the *state of nature* and the *state of war*. In the increasingly globalized scheme of the nineteenth and twentieth centuries, with the old geopolitical systems faltering one after the other, the individual state—whose numbers expanded exponentially to reach 200 units today—thus came to act as that individual in the pre-social state: enjoying its own freedom but unable to guarantee it or its physical security in a world that quickly became very dangerous to all. The result, true to Lockean or Hobbesian logic, led in the twentieth century to a global state of war, and none of the attempts to formulate some sort of contract—be it the League of Nations compact, the Kellogg-Briand Pact or the United Nations Charter—succeeded in containing global conflicts, as opposed to the manner by which the constitution of a nation-state might accomplish this within the territorial and juridical frontiers of an individual country.

In essence, the two World Wars and the Cold War plunged the entire world into a state of physical or latent warfare. After 1991, the world moved swiftly from a state of war to what is in effect a state of nature, a change which is not insignificant. In the words of Locke, “[t]he plain difference between the state of nature and the state of war, which however some men have confounded, are as far distant, as a state of peace, good will, mutual assistance and preservation, and a state of enmity,

*malice, violence and mutual destruction, are from one another.”*¹¹ The main problem is that the “state of nature” functions with no guarantees and can easily revert back to a state of war. Today, with few serious (armed) conflicts to boot, the world seems a more peaceful place than it has been in a very long time, if ever. Yet, the global environment as such knows few laws and even fewer institutions to enforce them; it is highly unstable and volatile and unable to prevent rogue elements—be they terrorists, political regimes or the faceless financial world—to disrupt the entire edifice, an edifice rendered all the more vulnerable by the interdependence that ties together all the elements that constitute it.

The great powers that traditionally, through force or diplomacy, purported to hold the balance together (when they chose not to disrupt it) are no longer able to accomplish this, and with time, will be even less capable of throwing their weight on the course of big events. The institutions designed in 1945 around the UN to prevent another war have shown their limits as well, chiefly because they revolve around the state and more to the point, around a handful of states that control the entire system. Today, despite some success—one thinks again of Tocqueville—the UN is grossly underfunded and overstressed; it has no means of enforcement and ultimately rests upon the good will of the five members of the Permanent Security Council who have no intention of relinquishing their position of power.

Thus, without further ado, we come to the crux of the problem, which is that the world has come to a point in history where it must imperatively find a way to establish a *global social contract* or equivalent that will enable it to extract itself from the perverse cycle that projects from the state of nature to the state of war and back again. Without such a contract, and it will either perish or irreversibly move toward decadence, decay, and a slow disintegration that will drag the weak, the powerful, and the rest of the planet. The question, of course, is: How do we build a global social contract?

11. Locke, *op. cit.*, p.15

7.

The Commons Are the Cornerstone of Global Citizenry

For all their misgivings and shortcomings, the state, the market, and democracy cannot vanish or be eliminated at the blink of an eye. And should they? The state is the basic infrastructure of all human organization and, under a potent democratic system, guarantees to a certain point the fundamental rights of the citizen.

The market, *when intelligently and forcefully regulated*, offers a means for economic growth, economic growth being itself indispensable to the global health and well-being of the peoples. Evidently, the market cannot be seen as a solution to all of humankind's problems. The establishment of a market-oversight mechanism is a more viable imperative of efficiency and justice than laissez-faire economics and continuing to push billions of human toward the alluring magnet of consumption, including excessive and conspicuous consumption for the richest.

Democracy imperatively needs to evolve, progress, and adapt, for no other system seems better able at the present time to protect the individual rights of people within enclosed political entities. In any case, the nation-state, market economy, and the democratic political regime are, at least in the foreseeable future, here to stay, for better or worse. To think otherwise would be wishful thinking.

Thus situated in this phase of historic transformation, rather than trying to undo the fundamental elements of human organization in order to extract ourselves from the state of nature and establish a global social contract, we must on the contrary accept these and use them as the building blocks upon which we can project ourselves successfully to the next stage, namely the enactment of a truly *international community* (one that is not reduced as today to a vacuous term branded right and left without discretion by the media or politicians).

The recent past, however, should make us very cautious. Peace, or at least the prevention of war, proved insufficient to accomplish this, even between two world wars, as the examples of the League of Nations—at the outset a bold and extremely novel idea—and the UN, as previously discussed, proved on two occasions. Europe, which designed a social contract of sorts expressed in the bureaucratic and hesitant institutionalization of the European Union, never quite resolved the issue of what the contract was about, whom it concerned, or why it was so important. Having failed to do this is the primary cause of its current and perhaps irreversible demise. More generally, for all the talk of solidarity, responsibility, or compassion, the fact remains that states, political regimes, private companies, and indeed many individuals, function chiefly and will continue to do so, although not exclusively, through a behavior that is unashamedly selfish, often ruthless (especially companies), and with a vision that is singularly shortsighted. To believe one minute that one could alter this universal fact is a recipe for disappointment, or worse, disaster. To believe, as classical economists like Adam Smith did, that this behavior is conducive to overall well-being has proven completely false.

That being said, what most partisans of neoliberalism tend to forget is that the classical liberal thinkers did not posit freedom as a principle without restraint. Notably, in classical liberal thought, an individual may enjoy freedom as long as he does no harm to others. In his essay on liberty (1859), John Stuart Mill postulated that “*one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used by physical force in the form of legal penalties or the coercion of moral opinion. That principle is that the sole end, for which mankind are warranted, individually or collectively,*

12. John Stuart Mill, *On Liberty*, Indianapolis, Hackett, 1978, p. 9.

in interfering with the liberty of action of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others . . ."¹² We notice here that Mill talks about a *civilized community*, in other words, one that has forsaken the state of nature to live in society. Evidently, one could go at lengths debating what he meant and what is meant by "civilized community" but this is not our purpose here. Mill simply says "*that this doctrine is meant to apply only to human beings in the maturity of their faculties.*" One could make the argument that, given the sudden rise in the last twenty years of our global consciousness that our environment matters and that we must protect it collectively, we are perhaps at the point of reaching this level of (global) maturity.

Generally though, the principle of self-protection has been largely and often dubiously exploited by states—and still is—to engage in more-or-less legitimate wars, as exemplified in recent memory by the decision by the White House to invade Iraq. By the same token, protectionist economic policies have been enacted by various governments, including those branding the flag of the free market, following the same logic. This state of affairs has come about because self-protection has been generally understood as the protection of the individual state rather than the protection of all, with the so-called "national interest," including the "national economic interest", taking precedence over any other consideration.

Thus, it is only by moving from the first idea, the protection of the one, to the latter, the *protection of all*, that one can start to envisage the possibility of a global social contract. In other words, it is our global freedom, that is, our freedom to enjoy, and thus protect, what is common to all of us as a global community that will entice us to, and determine our will to extract ourselves from what is essentially becoming a global war on our planet, on our "commons," and on ourselves.

But what does this "all" entail? For all the talk of a universal or pluri-versal culture or civilization, of a common destiny, of global ethical principles that might bind humankind together, these noteworthy concepts have not, at least not yet, withstood the test against the dark forces of nationalism, greed, and resentment that seem to rule the day despite grandiloquent discourses to the contrary. To fight these forces resolutely, relentlessly and effectively, one needs something more tangible and more palpable than what are often perceived as soft principles with few means of being altogether enforced. The concept of common goods, or simply "commons," on the other hand, is something tangible which may have the

potential of serving as this bind for humankind.

The concept of "commons" does not just entail a physical (or, in some cases "digital") matter but rather a new manner of envisioning ourselves and others, our environment, and our relationship to this environment. Through the concepts of "commons" and "commoning," one radically transforms the traditional equation of freedom and property by reasserting freedom in a global—and not just individual—fashion while also extracting from this concept its traditional tie to private property. Such a reversal has potential and profound long term consequences in that it alters our social commitment and allegiance from what was exclusively a national "contract" that most of us—with the exclusion of those changing nationalities—inherited, to what would amount to a global and voluntary contract. As such, to our traditional bi-dimensional identity as individuals and national citizens (in strictly juridical terms, as all of us identify also with communities other than national) is added a third dimension, a global citizenry of sorts.

8.

The Commons and Our Collective Sense of Freedom, Justice, and Dignity

In the early twentieth century, the British historian B. H. Liddell Hart developed the theory that all military successes throughout history rested on the victor's reliance on an "indirect approach." Whether this deterministic vision of (military) history is true is open to debate, but what Liddell Hart demonstrated is the compelling strength of engaging power indirectly.

In many ways, commoning constitutes an indirect approach to the conundrum of global politics. By taking on the juggernaut of state and capitalist-market forces, commoning relies on novel problem-solving methods that revolve not on existing, and often ill-conceived and ill-run institutions, but rather around the nature of the problem itself, and the actors that are part of it and its solution. Rather than systematically relying on government, be it local, regional or national, or the elusive forces of the market, commoning seeks to involve all stakeholders and direct them through a cooperative effort to solve a problem or manage a specific task or element. In doing so, commoning gains a legitimacy and know-how that should increasingly allow it to tackle bigger and bigger challenges on an ever increasing scale.

The commons, common goods, and commoning deal not only with static elements that one ought to preserve (such as natural resources) but also with a dynamic alternative to managing our shared resources collectively all the while generating more such resources and developing more efficient modes of collective management. In a way, "commoning" is a manner through which to *reassert people's rights to self-determination* but in a fashion that does not revolve exclusively around the state or private enterprises. The commons and commoning, which are inextricably tied with one another, form a *process for management but also for change. They constitute a form of empowerment that fosters a legitimacy that rests on the ability of "commoners" to better manage society*—understood in its local, national, regional, and global dimensions—through greater participation, di-

versity, and cooperation of multi-stakeholders, and a better grasp of the problems and solutions at hand.

The state- and market-based regime of "global governance" rests essentially on an amoral Machiavellian vision of competitive—and ultimately ruthless—social and political interaction. In contrast, commoning rests on the Aristotelian and Confucian notion of humans acting in a cooperative fashion, not just because it serves their individual interests but because humankind, despite its shortcomings, is generally, though not exclusively, inclined to do so. In other words, because human beings do have a need for other human beings, because they do have feelings of compassion and love toward one another, and because they are not motivated primarily by jealousy, distrust, resentment, or hatred, as many a government all too often would like us to believe, especially when dealing with "foreigners."

The great tenth-century Arabian philosopher Al-Farabi summarizes this perspective with a twist that is not altogether unlike our vision of a "local-to -global society": *"Man belongs to the species that cannot accomplish their necessary affairs or achieve their best state, except through the association of many groups of them in a single dwelling place. Some human societies are large, others of medium size, still others are small. The large societies consist of many nations that associate and cooperate with one another."*¹³

Hence, commoning essentially reverts back to what the great founding founders of political thought in the Western, Arabian, and Eastern traditions among others, deemed an essential component of the human makeup. By crossing the cultural, religious and national boundaries that traditionally stifled our natural attraction toward one another, commoning takes this propensity to act as "social animals" to a universal level, not through the act of God but simply by demonstrating the benefits that acting collectively might bring to all.

13. Al-Farabi, *The Political Regime*, in Ralph Lerner and Mushin Mahdi, *Medieval Political Philosophy*, Ithaca, Cornell University Press, 1963, p. 32.

The modern state has generated and developed the Machiavellian paradigm to its limit. This is evident in the attitudes, for example, of the two nations that embody today the Western and Eastern traditions, the US and China. Globalization has however opened a gap that will be difficult to close. The commons constitute a real opportunity to fill this gap and to lead the way toward new forms of governance that transcend the frontiers laid down by the state and the market. Establishing a global social contract around the commons might prove a significant step toward the development of a global society that might roll back the state's and the market's natural propensity to devour our collective sense of freedom, justice, and dignity.

The development of a global society is thus conceivable inasmuch as it can monitor itself on the variety of experiences that surround the bottom-up management of the commons and grow as these experiences gradually form a loose system of governance that in turn feeds on these practical experiences. It is through these experiences and by following a set of simple and binding universal principles that underpin the elaboration of such a global system of governance that we will be able to achieve a global social contract.

The elaboration of a global system of governance around the commons thus rests on the capitalization of these experiences and on the manner through which these universal principles can be upheld. What these principles may be is fairly simple to determine since they will revolve essentially around freedom and justice: the freedom of all to share the commons in a fair manner. These fundamental principles might imply others or make them come into play, such as responsibility, dignity, or solidarity but they constitute *first principles* of sorts, without which no global system of fair governance can be conceived. Which types of institutions, processes, and mechanisms they will require is more complicated but they essentially will have two functions: ensuring that these principles are upheld and protected, and preventing the state and the market from enclosing the commons.

John Rawls famously postulated in his vision of the fair society that "collective assets" are a fundamental part of the social contract while establishing the primacy of justice as the principle holding the contract in order to resolve the tension between an identity of interests and

a conflict of interests:

*"Let us assume, to fix ideas, that a society is a more or less sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance to them. Suppose further that these rules specify a system of cooperation designed to advance the good of those taking part in it. Then, although a society is a cooperative venture for mutual advancement, it is typically marked by a conflict as well as an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. There is a conflict of interests since persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share. A set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice: they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation."*¹⁴

14. John Rawls, *A Theory of Justice*, Cambridge, Harvard University Press, 1972, p. 4.

9.

Proposals to Move Forward

Growing interest in the commons, not only in innovative international and political circles but also in the ever-growing sectors of the so-called new social movements and networks, is the expression of a deep trend in seeking new civilization paradigms. Every time humankind has had to confront crucial challenges raised by crises that have seriously fractured the foundations on which it had thus far been built, new ideas and movements have sought groundbreaking ways out. Not all of them have managed to prosper and on many dramatic occasions, ideas and movements that had been postulated as bearing deep changes have led peoples into dead ends, or worse, over the cliffs of history. The immediate future of the commons is not guaranteed. Their extension is necessarily a complex struggle, ridden with obstacles, not only because of the weight of states and the capacity of the capitalist market to overcome crises, but above all because of the atavistic resentment keeping peoples apart and the inertia of representations and ideas preventing us from seeing the roads to another future.

Notwithstanding, the various ongoing initiatives being developed by the new social movements and networks carry this other future, indispensable at this stage of the history of humankind. Many of these movements and networks are developed underground or are not reflected in the conventional media. The architects and builders of the Internet, for instance, have allowed millions of users, the majority of them young ones, to weave cooperative networks for many different types of sharing, and in critical situations, as in the recent social mobilizations that debunked the dictatorships of Tunisia and Egypt, to play new political roles, discarding the political parties and institutions that have been unable to channel these claims for freedom and justice.

Likewise, in vast rural areas and in big city districts, numerous solidarity-economy efforts have been undertaken and been growing for the past twenty years, covering a variety of fields: agro-ecology, sustainable technology, ecological districts, bioclimatic construction, and many more.

The new regional and transcontinental migratory flows are also the expression of this quest for new common

territories. Though this statement may seem paradoxical, given that migrants suffer many forms of persecution and vexation, migrants are the promoters of a new form citizenry not contained by borders, and despite the daily discrimination to which they are subjected, they are gradually opening new multicultural spaces, often silently unveiling the concepts and practices of enclosure in which the dominant model has entrenched the different social classes and strata.

The commons are thus appearing from below, as new perspectives based on plurality and making sure they are free of the ideological views and sectarian practices that, mainly in the twentieth century, entrapped the energy of the poorer sections of society striving for solidarity-based and fair societies.

A small but resolute movement has now taken root over the last few years, which has launched various interesting and innovative initiatives, notably to educate the public, to advance our understanding of the commons, and more generally to bring the commons and commoning to the forefront of our current concerns.

The proposals are largely based on this approach and strategy while seeking to expand our realm to a greater, more diverse and global population. It seems imperative, for historical and ethical reasons, that a global commons movement take root in those regions of the world that until now have largely been the victims of the plundering of the commons. By the same token, the various ideas that can contribute to the intellectual underpinning of the commoning movement must come from various traditions and cultures because we need to look at these issues with fresh ideas.

The commoning movement has thus far largely, and logically, been carried by activists, mostly Western, many of whom are openly left-leaning in their political outlook. This is sometimes a bit baffling and can lead to misunderstandings, especially in increasingly polarized political contexts. The commons belong to all, and individuals with different backgrounds and perspectives have to be invited to actively join in the process. The commons cut through cultural, social, and politi-

cal divides, which means that it is important that the language used around the debate on the commons be comprehensible to people from different backgrounds and reflect their diversity.

Finally, when one thinks of proposals and initiatives, it is important to remember that realistic goals are more likely to yield some results than idealistic ones. From an intellectual point of view, idealism is indeed important to break the *status quo* but it should not blind us to the fact that powerful interests will systematically undermine any attempts to change the rules of the game. That being said, in today's global political environment, the power of global public opinion has never been greater than it is now and a strategy that seeks to touch global public opinion is probably the most likely to yield results, all the more reason to focus principally on this particular domain.

10.

Avenues to Be Explored

- The commons and commoning are new concepts that are familiar only to a relatively small minority of experts and interested individuals. Greater efforts must be made to educate the public through awareness-raising campaigns via the media, the Internet, and other vectors of mass communication. What is the difference between common goods and the commons? What is commoning? What types of common goods are there? These are the types of questions that most of us, including children, should be able to answer comfortably. Initiatives such as the one launched in 2012 by the UN Institute for Training and Research (Geneva) and Notre Dame University (USA), which offer an online course on the commons, need to be multiplied.

- An exhaustive and regular assessment should be realized by experts on the varieties of successful commons-management experiences that have been accomplished throughout the world. These in turn should be posted on a Web site that could become a resource center for commoning.

- Seminars are already being organized by “commoners,” as exemplified by the Minneapolis-based *On the Commons* network. More should be set up, especially those where different types of experiences can be shared. Efforts should be made to encourage international participation, both from thinkers and doers.

- A *permanent* task force of international thinkers and experts on the commons should be set up to unravel the complex theoretical underpinnings that need to be developed for commoning to present itself as a viable alternative to global governance.

- “Thinkers” and “doers” often watch one another from afar with a certain degree of contempt. Both are crucial, however, if one wants to move forward. Both should be encouraged to meet as often as possible, learn from each other’s perspectives and try to work together in a collaborative fashion.

- In order to assess progress, a “commoning index” using appropriate indicators could be elaborated that, in turn, might provide us with a refined understanding of the process.

- As the reflex of enclosure is deeply ingrained in the traditional attitudes toward the commons, juridical responses, national and international, should be encouraged to contain this process.

- Lastly, one of the weak points of commoning is the fragmentation persisting among the same actors and movements promoting a new vision and practice of the commons. Paradoxically, although communication technology and means of transportation have facilitated communication as never before, direct contacts and joint initiatives among the actors and movements are practically non-existent. The young and the women who were at the forefront of the fight against the dictatorships of Tunisia and Egypt do not know the young Chilean students who are fighting for an accessible and fair education system. The native peoples fighting to safeguard their territories against the mining and transportation companies that are wreaking irreparable damage on nature in the Andean highlands are not articulating their efforts with the thousands of African and Asian small-scale fishers working to protect marine resources.

Examples are many and varied. One of the essential features of the extension of the commons may be its diversity, and there should be no attempt to pool all efforts into a single container. Articulating all these initiatives, however, which would overcome the current fragmentation, then becomes an indispensable historical task, all the more that the dominant sectors and the capitalist market have definitely built global networks and are continuing to secure their hold at the global scale.

Building articulation mechanisms among actors promoting the commons and ensuring the diversity of the whole requires inventing and putting into practice answers to the challenges of the present that are rooted in the context of each individual, of each people. It implies acknowledging the knowledge of every continent and people without claiming that one should be the indisputable benchmark. The foundations of the new architecture of world governance based on the development of the commons must be built with a critical spirit and a democratic ethos. This is of the essence because the changes in the political systems that will be capable of underlying a new architecture of power from the local to the global must necessarily be lasting and sustainable. These tasks may seem Utopian, but they are already appearing in the daily struggles of those who are building the commons, from territories to the world.

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