

# HOBBS, RAWLS, AND THE THEORY OF COMMONWEALTH

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## I. INTRODUCTION

As citizens of a democracy we believe that it is our civic duty to discuss and debate where we are going as a collective, and what ends we, as a collective, should strive to realize. Not only is this how we, as individuals, make our voices heard; it is also how society progresses, by working through its internal contradictions in the tug and pull of public debate and deliberation. In this sense, democratic discourse is essentially, and in equal measure, discourse on goods we hold in common and on the future we face together. And yet, if we consult the intellectual history of the commonwealth, we find matters to be more complex. That history confirms that the question of what constitutes our commonwealth was always tied to the question of where we are headed as a community. But it does so in a different way than we would expect. According to Thomas Hobbes, in joining together in society, men are driven by the desire for the same goods—life, security, and property.<sup>1</sup> But if there is consensus about the goods we have in common, individuals in the commonwealth, for having everything to fear from each other, are not sure to have a future together. It might be thought that this is a problem only in a theory of the Hobbesian type, a theory that is predicated on a limiting case of social life where the competition for scarce resources between self-interested agents will necessarily trigger violence. The intuition of this Article is that the problem engages much, if not all, of our theories of commonwealth and, by extension, of democracy. To bring out the nature of the problem, which is a problem of *theory* first and foremost, but equally, and perhaps primarily, of *sociality*, we propose to consider how we theorize what a commonwealth is, and where it should be headed.

To that end I shall engage a conversation between Hobbes and John Rawls who, more than any other thinker, tried to turn the idea of the social contract into a deliberative device. In Part II, I examine Hobbes's political theory so as to get clear on why the theory on commonwealth that he

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<sup>1</sup> THOMAS HOBBS, *LEVIATHAN* 79–82 (Edwin Curley ed., Hackett Pub. Co. 1994) (1651).

proposed was constrained in this way, and how, by what conceptual operations, he opened up a space for a human life that he could not theorize. I then go on to consider the attempt by Rawls to reframe contract theory so as to disembed it from its Hobbesian setting and give it purchase on social life. In analyzing Rawls's work, we shall be looking for signs that, as theory gets closer to the life it purports to order, the conceptual framework on which it relies—the constructs around which it is articulated, the commitments on which it proceeds—starts to fissure. As we track Rawls's efforts to shore up what is coming unstuck, we begin to see what a theory of commonwealth requires to work *as theory*.

Rawls is best known for the principles of distributive justice that are arrived at in the original position. What I am concerned with here are not principles that speak to the good a commonwealth should protect, the values it should promote, or the inequalities it should address. These are important questions, never more so than now. I hope to be excused for being concerned with more abstract questions. In a time of political upheaval where we struggle to reach reasoned disagreement with those not in our camp, these matters of theory may still be matters of interest, indeed of urgency.

## II. THINGS THAT WERE LEFT UNSAID

The modern conception of commonwealth as an intangible entity, abstract from ruler and ruled, is inextricably tied to the work of Thomas Hobbes. He was the first to conceive of the community in terms of a relationship of authorization by which the ruled continuously sign over political agency to a ruler constituted in and through this transfer.<sup>2</sup> What enables Hobbes to pull off this grand feat of publicist imagination is the supposition of a state of nature.<sup>3</sup> The radical uncertainty in a situation where the other, by his very presence, constitutes a mortal threat acts as a solvent of all pre-existing distributions of power and privilege.<sup>4</sup> The effect is to create a level playing field where all men are equal, albeit in subjection, not in

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<sup>2</sup> See Quentin Skinner, Fellow of the Academy, British Academy Lecture: A Genealogy of the Modern State (May 13, 2008), [http://www.his.ncku.edu.tw/chinese/attachments/article/291/8Quentin\\_Skinner\\_A\\_Genealogy\\_of\\_the\\_Modern\\_State\\_.pdf](http://www.his.ncku.edu.tw/chinese/attachments/article/291/8Quentin_Skinner_A_Genealogy_of_the_Modern_State_.pdf).

<sup>3</sup> *Id.* at 342; HOBBS, *supra* note 1, at 76.

<sup>4</sup> THOMAS HOBBS, A DIALOGUE BETWEEN A PHILOSOPHER AND A STUDENT OF THE COMMON LAWS OF ENGLAND 96 (Joseph Cropsey ed., Univ. of Chicago Press 1971) (1681) (“Now as to the Authority you ascribe to Custome, I deny that any Custome of its own Nature, can amount to the Authority of Law: For if the Custom be unreasonable, you must with all other Lawyers confess that it is no Law, but ought to be abolished; and if the Custom be reasonable, it is not the Custom, but the Equity [and hence the implicit jurisdiction of the King] that makes it Law.”).

freedom.<sup>5</sup> This is the backdrop to Hobbes's commitment to democracy. Because men are equally situated, no one among them should count for more than any other: "When men have met to erect a commonwealth, they are, almost by the very fact that they have met, a *Democracy*."<sup>6</sup> In a sense, the political concepts, by reference to which we understand the life we lead in common are all tributary to this dreaded state. What Hobbes gives us with this construct is not only a representation of the origin of political life; it is, in a real sense, the origin of political modernity.

The terms on which our life in common is set up give rise to a series of problems that will haunt the practice, and the theory, of power. The first concerns what we might call the temporal horizon of the commonwealth. The sovereign power around which it revolves is created in and through *authorization*, and cannot outlast it in time, but as authorization is a function of the externally imposed unity of always potentially antagonistic agents, authorization does not extend beyond the moment of its giving and must be constantly renewed.<sup>7</sup> Consequently, the elements of the commonwealth—the several subjects, the sovereign, and the people—remain in a state of continuous implication.<sup>8</sup> Paradoxically, this is what allows Hobbes to detach the exercise of sovereign power from the will of the parts that make it up; the will of the people, and the will of the several subjects.<sup>9</sup> Every point in the triadic structure, subjects-sovereign-people, makes reference to every other point, maintaining it within the present.<sup>10</sup> At no point is the fusion of the subjects into a collective entity—the people—consummated such that a collective entity could take their place.<sup>11</sup> The foundation of the commonwealth remains incomplete, which means that, formally speaking, the polity it grounds *has only a very insecure hold of what is to come*. The finality of the founding moment may be a life that is not yet, but, formally speaking, the founding remains tied to the present, a present that is eternal for being constantly repeated. At most, the founding carries the promise that there will be another day, but its hold on what is to come is not sufficiently strong to allow us to speak of anything beyond what comes with the next day.

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<sup>5</sup> Hobbes insists that man the subject is no longer a citizen (*cives*) but a subject of his master. On this point, see Yves Charles Zarka, *The Political Subject, in LEVIATHAN AFTER 350 YEARS* 167, 178–79 (Tom Sorell & Luc Foisneau eds., 2004).

<sup>6</sup> THOMAS HOBBS, ON THE CITIZEN 94 (Richard Tuck & Michael Silverthorne eds., Cambridge Univ. Press 1998) (1647).

<sup>7</sup> See HOBBS, *supra* note 1, at 101–10.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

The commonwealth, we may say, is the society that has no future; it only has a tomorrow.

Hobbes scholars have shown only scant interest in this *closure of the temporal horizon*.<sup>12</sup> No doubt this is because it is so clearly a function of *theoretical* commitments that have no purchase on the social reality theory it purports to map onto. For being only *in theory*, this closure has, however, profound and wide-reaching implications for not only Hobbes's, but for all of modern political theory. For one, it means that Hobbes cannot set forth a substantive conception of what life in the commonwealth will be like; in other words, he cannot say wherein the common-wealth of the commonwealth resides. By default, what comes to flesh out commonality, creating a sort of minimal sociality, is the desire for self-preservation, to Hobbes, the only universal, and rights-creating, drive in the state of nature.<sup>13</sup>

In grounding the commonwealth in self-preservation, Hobbes may have set political philosophy up on the most solid of foundations. He also, created a problem for himself. To be sure, life in the new polity is preferable to the near-certainty of death in the state of nature, but as Hobbes knows only too well, fear does not generate firm civic attachments. Once a sovereign power has been brought into being, ways must be found of making a life lived in subjection to it seem desirable on its own merits. Hobbes's solution, if you like, is to accommodate liberty within the commonwealth, without, however, acknowledging that it has a claim to such indulgence.<sup>14</sup>

How he does this is by taking apart what had been so laboriously assembled.<sup>15</sup> Hobbes *disaggregates the polity* into a political and a social sphere.<sup>16</sup> At the heart of his commonwealth is a sphere of individual action where man is free to do as he pleases, and where sovereign power does not manifest itself.<sup>17</sup> The liberty that he enjoys here is, first and foremost, corporal liberty, so liberty from chains and prison.<sup>18</sup> It pertains to a sphere of action that attaches directly to the individual.<sup>19</sup> As we proceed, we find,

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<sup>12</sup> But see JOHN POCOCK, *Time, History and Eschatology in the Thought of Thomas Hobbes*, in *POLITICS, LANGUAGE & TIME: ESSAYS ON POLITICAL THOUGHT AND HISTORY* 148 (2d ed. 1989) (1971).

<sup>13</sup> This is not to say that Hobbes has no conception of what the good life is, far from it. The problem is that, on the terms of his theory of commonwealth, he can only refer to it obliquely, in the margins of the text, as he does in enumerating the things, the absence of which cause the misery of life in the state of nature: industry, culture of the earth, commerce, navigation, arts, letters, and society. HOBBS, *supra* note 1, at 76.

<sup>14</sup> See *id.* at 136–45.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 136.

<sup>19</sup> See *id.* at 136–45.

however, that the liberty of the subject extends to a much wider range of activities and objects than those involved in corporal movement:

The liberty of the subject lieth, therefore, only in those things which, in regulating their actions, the sovereign hath praetermitted [omitted] (such as is the liberty to buy, and sell, and otherwise contract with one another; to choose their own abode, their own diet, their own trade of life, and institute their children as they themselves think fit; and the like).<sup>20</sup>

Around the kernel of natural right—life and physical integrity—lies a wider sphere of human life.<sup>21</sup> The activities that take place within this sphere have all been “praetermitted” by the sovereign; in other words, they have not been made the object of a sovereign decision.<sup>22</sup> The sphere is formally subject to the jurisdiction of the sovereign, but as the sovereign keeps himself out of sight, the law has no actual bearing on what goes on there: “As for other liberties [than the liberty to defend oneself against attack], they depend on the silence of the law. In cases where the sovereign has prescribed no rule, there the subject hath the liberty to do or forbear, according to his own discretion.”<sup>23</sup>

What Hobbes accords the subject is, we might say, an *interstitial liberty*, a liberty that is conditional, and so subject to revocation, but which feels real for as long as sovereign power stays within the limits it has imposed on itself.<sup>24</sup> Where man experiences freedom, the fact that he is, in law, subject to sovereign power will not be *felt* as a limit to his freedom.<sup>25</sup>

The operation of this system for accommodating liberty depends on contract.<sup>26</sup> Contract, as the form of a free and mutual determination of wills, is the only means by which free agents can limit their freedom in relation to one another.<sup>27</sup> It is, in other words, the only means of ordering interaction where subjects are left to their own devices.<sup>28</sup> For as long as subjects honor the contractual obligations they have undertaken, they remain at liberty to feel free.<sup>29</sup> Should a breach of contract occur, the mutual determination of

<sup>20</sup> *Id.* at 138.

<sup>21</sup> *See id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 143.

<sup>24</sup> *See id.*

<sup>25</sup> *See id.*

<sup>26</sup> *Id.* at 141 (“First, therefore, seeing sovereignty by institution is by covenant of every one to every one . . .”); *see id.* at 79–88.

<sup>27</sup> *See id.* at 79–88.

<sup>28</sup> *Id.* at 143 (“As for other liberties, they depend on the silence of the law. In cases where the sovereign has prescribed no rule, there the subject hath the liberty to do or forbear, according to his own discretion.”).

<sup>29</sup> *See supra* note 26 and accompanying text.

will becomes a matter for the sovereign who, this time, acts not in his capacity of lord but as judge.<sup>30</sup> With adjudication, the power of the sovereign finds its way into the civil sphere, disabusing man of the sensation, or illusion, of being free.<sup>31</sup>

Hobbes must, therefore, find a way to uphold the sanctity of contracts. The cohesion of the commonwealth, and the possibility of leading a human life within it, depends on it. This is the theme of Chapter XV of *Leviathan*.<sup>32</sup> The strategy he pursues is to nullify the grounds on which the contracting parties could void the contract, which presupposes the existence of an independent standard of justice according to which the terms of the contract could be assessed.<sup>33</sup> This, in turn, presupposes that the things or services exchanged and the parties involved have an inherent value that must factor in the determination of the just value.<sup>34</sup> To Hobbes, however, differences between men are not natural; they were introduced by consent and—this is the key point—were rendered void with the institution of the commonwealth.<sup>35</sup>

What this means is that there is no context within which the dignity and social worth of the parties could be taken into consideration. In other words, the question of intrinsic or just value for the services or goods involved does not arise. Hobbes defines the value of goods by the desire they arouse in the buying party: “The value of all things contracted for is measured by the appetite of the contractors; and therefore the just value is that which they be contented to give.”<sup>36</sup> In this respect, man is no different from other

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<sup>30</sup> HOBBS, *supra* note 1, at 113 (“And because the end of this institution is the peace and defence of them all, and whosoever has right to the end has right to the means, it belongeth of right to whatsoever man or assembly that hath the sovereignty, to be judge both of the means of peace and defence, and also of the hindrances and disturbances of the same, and to do whatsoever he shall think necessary to be done, both beforehand (for the preserving of peace and security, by prevention of discord at home and hostility from abroad) and, when peace and security are lost, for the recovery of the same. And therefore, Sixthly, it is annexed to the sovereignty to be judge of what opinions and doctrines are averse, and what conducing to peace . . .”).

<sup>31</sup> *Id.*; *see id.* at 110–18.

<sup>32</sup> *See id.* at 89–100.

<sup>33</sup> *Id.* at 89 (“Therefore, before the names of just and unjust can have place, there must be some coercive power to compel men equally to the performance of their covenants, by the terror of some punishment greater than the benefit they expect by the breach of their covenant, and to make good that propriety which by mutual contract men acquire, in recompense of the universal right they abandon; and such power there is none before the erection of a commonwealth.”).

<sup>34</sup> *Id.* at 94.

<sup>35</sup> *See id.*

<sup>36</sup> *Id.* at 138. As Luc Foisneau has shown, there is an epistemological dimension to Hobbes’s reductive conception of justice in that it posits the contract as a publicly accessible standard by which to measure men’s actions. *See* Luc Foisneau, *Hobbes et les limites de la justice*, Bordeaux: CIBEL 187, 196–98 (2007); AMNON LEV, SOVEREIGNTY AND LIBERTY: A STUDY OF THE FOUNDATIONS OF POWER 86 n.33 (2014).

commodities.<sup>37</sup> The value of a man is simply what another man is ready to pay for his power.<sup>38</sup> The reduction of value to the determination in contract means that no grounds can be invoked for voiding the contract.<sup>39</sup>

Making the contract the conduit of social cohesion safeguards the possibility of living a human life, if only for some. At the same time, however, it raises the question of whether the commonwealth is a *political*, that is, a moral community. After all, what brings us together in society are our most intimate and private wants and desires; desire for self-preservation and the personal things that matter to each of us individually. There is in this nothing that could secure the *political* or even the *public* nature of the commonwealth.<sup>40</sup>

Hobbes therefore complements the disaggregation of the commonwealth by another operation that addresses what one might call its morality gap.<sup>41</sup> For this, we need to look to Chapter XXVI on civil laws which treats of the relationship between law and morality.<sup>42</sup> Here, Hobbes assures us that even if the authority to decide what is right and what is wrong lies with the sovereign, no conflict will arise between the civil law and the law of nature.<sup>43</sup> For civil law and the law of nature “contain each other, and are of equal extent.”<sup>44</sup> This is not a thesis of strict identity, but of implication.<sup>45</sup> The laws of nature only come to govern men’s actions through sovereign command.<sup>46</sup> It is by being made the object of such command that men can be required to obey them.<sup>47</sup> At the same time, obedience to civil law is itself a law of nature.<sup>48</sup> Justice requires that the subject honor the obligation to comply with civil law that he has undertaken in relation to every other subject.<sup>49</sup>

What the idea of the mutual containment of civil law and the law of nature signals is an alignment of sovereign power on morality. Through the medium of the law of nature, civil law, that is, sovereign command, expresses, indeed consecrates, the tenets of political morality. Justice commands him to obey the civil laws of the commonwealth, and in doing so, he is sure to satisfy the requirements of morality.

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<sup>37</sup> See HOBBS, *supra* note 1, at 51.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 74.

<sup>41</sup> See *id.* at 172–89.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 174.

<sup>44</sup> *Id.*

<sup>45</sup> See LEV, *supra* note 36, at 89 n.44 and accompanying text.

<sup>46</sup> HOBBS, *supra* note 1, at 174.

<sup>47</sup> *Id.* at 175.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

Besides subordinating private to public judgment, silencing a spring of sedition, this operation has the effect of insulating sovereign power against the charge of immorality.<sup>50</sup> What Hobbes incorporates bit-by-bit into his theory of commonwealth is in fact nothing other than traditional morality, of which the laws of nature listed in Chapter XV presents a catalogue.<sup>51</sup> The conventional nature of Hobbes's doctrine of the laws of nature has been obscured by the vehemence of his polemic against the ancients and, more generally, by the air of scandal that attaches to his work. And yet, Hobbes makes no secret of it. To those, for whom the deduction of the laws of nature has been too "subtle," he offers a general definition that is "intelligible to even the meanest capacity": the injunction not to "[d]o that to another, which thou wouldst not have done to thyself."<sup>52</sup> Arguably, no maxim better captures the essence of conventional morality, illustrating to perfection the strategy of aligning the exercise of unfettered power on social mores in order to warrant its moral nature.

This dual operation of disaggregation/moralization has given rise to a *composite society* where requirements of human life and of morality are met in different social spheres that are carefully kept out of view from one another. It is, we might say, a *commonwealth by procuration* inasmuch as it is constitutionally incapable of generating, and therefore deliberating on, a conception of the good which it must take over wholesale, and import, from without.

Hobbes presents us with a blueprint of the *procedural governmental practice* that has been the matrix of how the liberal state has operated, distinguishing between substance and form so as better to keep a tighter grip on the latter and farm out the former to the social form where it would, and was meant to, return.<sup>53</sup> This was key to meeting two major post-revolutionary challenges to the western state, the first coming from the church, and the second from the working class. Fascism, and perhaps populism more generally, shows that the strategy is not always and everywhere successful.

As the state grew to maturity, its mode of governing was not without its critics, of which there were two dominant strains: *ideological liberalism* and what we might call *materialism of the state*, by which I mean the position

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<sup>50</sup> See PEREZ ZAGORIN, HOBBS AND THE LAWS OF NATURE 53–54 (2009). Hobbes designates the "seditious doctrine" that every man is judge of good and evil actions as one of the things that weaken or tend to destroy a commonwealth. HOBBS, *supra* note 1, at 212. If the alignment of the civil laws and the laws of nature can strengthen the commonwealth, it is because it confers upon man a liberty that is real, even if it must remain hidden from view, tucked away in the civil sphere.

<sup>51</sup> See, e.g., HOBBS, *supra* note 1, at 89–100 ("Justice of Manners; Justice of Actions; Justice Commutative and Distributive; Gratitude; Complaisance; etc.").

<sup>52</sup> *Id.* at 99.

<sup>53</sup> See *id.*



that the state is not only an ethical community by procuration but by nature.<sup>54</sup> Perhaps surprisingly, the two strains did not seriously challenge the avoidance of deliberating on the common good that defined the governmentality of the liberal state.<sup>55</sup> Taking ideological liberalism first, it sought to ground government in pre-political forms of authority.<sup>56</sup> Locke, for whom political societies originated in the authority of the father, comes to mind here. Where these forms of authority gave out and could not be relied upon to keep princes on the path of virtue, the liberal response was to turn away from the public.<sup>57</sup> Acknowledging that society had outgrown familial forms of authority, Locke sought to set limits to princely power so as to protect the life and the property of each individual, confirming the primacy of the personal.<sup>58</sup> In the “poor but vertuous Age” when governments were begun, rulers could be relied upon to use their power for the public good, but ambition and luxury having since driven a wedge between the prince and his people, the people now have no choice but to “examine more carefully the *Original and Rights of Government*.”<sup>59</sup>

What I have called materialism of the state is a broad term that encompasses various, and otherwise very different, political sensibilities, including absolutism, paternalism, and republicanism. One would think that its critique of liberal governmentality would rest on an implicit doctrine of the public good, but if we canvass the justifications that were advanced, we are likely to come away disappointed. Where they do not reproduce the dual structure of liberal governmentality by locating the ultimate source of authority outside the public realm, either in God Almighty (divine right) or in the person of the sovereign (patrimonialism), they fail to offer a substantive axiology to rival the one Hobbes proposed.<sup>60</sup> Hegel is a particularly illustrative example. The critique of liberal formalism is the thread that connects all of his politico-philosophical work, but where we would expect him to deliver, he gives us only a demonstration of the insufficiency of the liberal formalist approach—a demonstration that commits him to seeing war as an ethical moment.<sup>61</sup> The importance of war is that it shows that the protection of life and property does not constitute the

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 386 (Peter Laslett ed., Cambridge Univ. Press 1965) (1690).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 386–87.

<sup>60</sup> See HOBBS, *supra* note 1, at 89–100.

<sup>61</sup> GEORG WILHELM FRIEDRICH HEGEL, *ELEMENTS OF THE PHILOSOPHY OF RIGHT* 361 (Allen W. Wood ed., H. B. Nisbet trans., Cambridge Univ. Press 1991) (1821).

reasons for being of the state: life and property are contingent insofar as they depend for their existence on a sovereign power to protect them.<sup>62</sup> War thus renders liquid that which appears to be absolute and fixed when seen from the vantage point of market society.<sup>63</sup> It does not give us an alternative vision of wherein our common good might reside. It would be for twentieth century moral and political theorists, among them John Rawls, to try to deliver on that desideratum.

### III. ANOTHER BEGINNING

To liberate himself from the beginning of modern political philosophy, Rawls goes back to the very beginning of political philosophy.<sup>64</sup> What he finds there is the notion of a unitary society, a society that is not divided into different spheres, each capturing only an aspect of human life.<sup>65</sup> The substrate for all this is a different conception of human nature that embeds man, and human perfectibility, within society.<sup>66</sup> This is the essence of what Rawls terms the Aristotelian Principle, a principle of motivation which designates a higher-order desire for inclusiveness that drives the individual to perfect his faculties and develop them further.<sup>67</sup> The movement is propelled by the sense of enjoyment the individual experiences through the exercise of realized capacities, an enjoyment that increases with his mastery and the complexity of the act.<sup>68</sup>

As the examples of mastery given by Rawls show, agential complexity maps onto social complexity, not only in the sense that the social embeddedness of action is, for the most part, indicative of its complexity but also, and more importantly, in the sense that an individual takes greater enjoyment from activities that have this complexity. The nexus of agential complexity and social interdependency is never explicitly stated, but it explains the confidence with which Rawls affirms that the activities towards which an individual will gravitate as he gains greater mastery of his faculties—personal affection, friendship, meaningful work, social cooperation, pursuit of knowledge, and the making and contemplation of

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.* In a perspective different from ours, Robert B. Pippin notes that the idea of a “common” good in Hegel’s philosophy is “very thin gruel” and contains no specifications as to the substantive virtues that man must adopt in order to live a political life. ROBERT B. PIPPIN, *HEGEL’S PRACTICAL PHILOSOPHY: RATIONAL AGENCY AS ETHICAL LIFE* 209 n.33 (2008).

<sup>64</sup> See generally JOHN RAWLS, *A THEORY OF JUSTICE* (Harv. Univ. Press 1971).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 424–25.

<sup>68</sup> *Id.*

beautiful objects—will be “good for those who enjoy them” and “likely to enhance the good of others.”<sup>69</sup> As a corollary to the Aristotelian Principle, he posits an innate human tendency to appreciate moral virtues in others as they manifest themselves in social cooperation that is affirmative of just institutions.<sup>70</sup> On the supposition that excellence in individuals is correlated with social interdependency, he easily bridges the gap between (cultured) hedonism and social life: “[C]ollective activity is the preeminent form of human flourishing . . . . Thus the public realization of justice is a value of community.”<sup>71</sup>

Society, thus conceived, is a resilient thing. A society that is governed by a shared efficacious sense of justice has an innate tendency towards stability because social life fosters and reinforces a psychological disposition to collective civic action.<sup>72</sup> It is not clear from where this sanguine view of society comes, whether belief in the regenerative capacity of society makes Aristotle’s philosophy of the city-state seem attractive as the basis of a modern theory of justice, or whether Rawls’s perception of social life is colored by pre-existing philosophical commitments. What is clear is that this intuition determines how he conceives of the work that a theory of justice must do, and how he situates his own work in relation to the tradition of moral and political theory. More specifically, it determines what, or rather who, gets left out. As he explains in the preliminaries to *A Theory of Justice*, his aim is to “present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant.”<sup>73</sup> The wording does not suggest that there is anything remarkable about the choice of theorists, but the note that accompanies the passage teaches us otherwise: “For all of its greatness,” Hobbes’s *Leviathan* is not included among the works that are “definitive” of social contract theory.<sup>74</sup> It “raises special problems.”<sup>75</sup> Rawls does not dwell on what they are, but the reasons for his exclusion of Hobbes’s work are clearly stated elsewhere. In considering the principles that are to govern the assignation of rights and obligations in the original position, he notes that the Hobbesian principle of giving to each according to his threat advantage does not constitute a conception of justice.<sup>76</sup> If the principles of right and justice have the power to compel, it is because they relieve man of the need to use

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<sup>69</sup> *Id.* at 425.

<sup>70</sup> *Id.* at 529.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 11.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 134.

force and cunning, the very qualities that determine his life prospects in Hobbes's state of nature.<sup>77</sup>

The exclusion of Hobbes from the tradition represents more than an idiosyncrasy on Rawls's part; it is key to his moral theory which can be seen as an attempt to repudiate Hobbes's hypothesis about the nature of social relations. Rawls's objection to Hobbes's theory is not that it is flawed but that it offers a remedy for a predicament that is not real.<sup>78</sup> Human nature is such that there is no need for a Leviathan:

One may think of the Hobbesian sovereign as a mechanism added to a system of cooperation which would be unstable without it. The general belief in the sovereign's efficacy removes the two kinds of instability. Now it is evident how relations of friendship and mutual trust, and the public knowledge of a common and normally effective sense of justice, bring about the same result. For given these natural attitudes and the desire to do what is just, no one wishes to advance his interests unfairly to the disadvantage of others; this removes instability of the first kind. And since each recognizes that these inclinations and sentiments are prevalent and effective, there is no reason for anyone to think that he must violate the rules to protect his legitimate interests; so instability of the second kind is likewise absent.<sup>79</sup>

At the level of the text, belief in the justice-directedness of human conduct obviates the need for a sovereign to police social interaction.<sup>80</sup> On the supposition that agency tends naturally towards justice, Rawls can temper the dynamics of social interaction that arise out of what he calls the *circumstances of justice*; the fact of moderate scarcity of resources (which

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<sup>77</sup> *Id.*; JOHN RAWLS, LECTURES ON THE HISTORY OF MORAL PHILOSOPHY 87–88 (Barbara Herman ed., Harv. Univ. Press 2000).

<sup>78</sup> See RAWLS, *supra* note 64, at 497–98.

<sup>79</sup> *Id.*

<sup>80</sup> By positing as a natural fact the alignment of informal social interaction on social conduct that fall within the purview of the basic structure, this belief lessens the urgency of delimiting the notoriously porous boundaries of that structure. Cf. Michael G. Titelbaum, *What Would a Rawlsian Ethos of Justice Look Like?*, 36 PHIL. & PUB. AFF. 289, 307, 315–16 (2004). Once introduced, the nexus of the scope and site of justice reinforces itself by importing into theory the presumption that the affirmation of just institution in and through social cooperation will involve only people who are already moved by an Aristotelian higher-order desire for inclusion. The demands of justice arise between people who are already disposed to act in accordance with those demands. Arash Abizadeh has argued this gives rise to a bias in favor of the status quo. Arash Abizadeh, *Cooperation, Pervasive Impact, and Coercion: On the Scope (Not Site) of Distributive Justice*, 35 PHIL. & PUB. AFF. 318, 330 (2007). However, it is not clear that it follows, as he asserts, that Rawls conflates the existence and constitutive conditions of justice. As I have argued, the presumption that fair social interaction fosters, and grows out of a concern for, justice is not itself a term of social cooperation. It conditions Rawls's argument, but it remains external to it. Another question entirely concerns the extent to which philosophical theory can rely on such external assumptions.

makes competition inevitable without rendering cooperation impossible as we are dealing with *moderate* scarcity) and the rough equality of individuals in regards to physical and mental powers (which means that no one among them can dominate the others).<sup>81</sup>

These circumstances—structurally similar to those that govern interaction in Hobbes's state of nature, without, of course, the backstop of ultimate social connectedness—are what individuals take into the original position where it constitutes the framework of deliberations. That Hobbes is in fact hovering in the background is made clear as Rawls is called to justify restricting the information made available to the participants in the original position so as to exclude knowledge of particulars.<sup>82</sup> Were such knowledge to be allowed, the outcome of the deliberations would be determined by “arbitrary contingencies” which, Rawls tells us, would only refer us back to the notion of relative threat advantage that he associates with Hobbes.<sup>83</sup>

The structural similarity between the original position and the state of nature draws our attention to the tenuous nature of the conditions under which deliberations on the common good can be staged, even if only in theory. So tenuous in fact that it is an open question whether what goes on in the original position even qualifies as deliberation. Rawls tells us that since the parties are equally situated, and since information relating to differences between them is not available, they will be convinced by the same arguments.<sup>84</sup> Consequently, it is not necessary to deliberate on the principles that are to govern distributional outcomes in society: “[W]e can view the choice in the original position from the standpoint of one person selected at random. If anyone after due reflection prefers a conception of justice to another, then they all do, and a unanimous decision can be reached.”<sup>85</sup>

What is missing from the deliberations in the original position is the interactional aspect; the tug and pull of discussion, out of which compromises are born, but which is equally generative of discord and, possibly, conflict. Taken in itself, this evacuation of discord and conflict is remarkable, but it assumes its full significance only when placed in the context of the subsequent development of Rawls's thinking which increasingly comes to revolve around the possibility of social conflict. The political liberalism by which he replaces his theory of justice is *political* precisely because it acknowledges that justice theory is not self-executing but relies on social agency within a context marked by social antagonism. If the exercise of

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<sup>81</sup> RAWLS, *supra* note 64, at 126–27.

<sup>82</sup> *Id.* at 141.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 139.

<sup>85</sup> *Id.*

human faculties is still seen to tend towards ever-higher complexity, and ever-more embedded forms of action, the set of values that guides human development is no longer a unitary one. Of the reasonable comprehensive doctrines that circulate in modern democratic society, some will be incompatible, which raises the possibility that citizens will not be led towards the *same* schemes of social cooperation. Instead of simply assuming that people will act on what is “obviously in the common interest” and respect the obligations they have undertaken in relation to each other as he had done in his 1971 work,<sup>86</sup> Rawls now looks to identify normative doctrines likely to guide citizens towards the same schemes of social cooperation.

As social conflict moves to the foreground of Rawls’s thinking, so does Hobbes’s theories. If, in situating his political liberalism in relation to his earlier works, Rawls makes no reference to it, the observation that there is no alternative to social cooperation except “unwilling and resentful compliance, or resistance and civil war” shows that the Hobbesian hypothesis is no longer something that can just be dismissed out of hand.<sup>87</sup>

The realization of how precarious the social equilibrium is has implications for how Rawls conceives of society. The belief that a theory of justice would, in the ordinary course of things, command general assent meant that he did not have to show how the two parts of the basic structure—legal and economic/social—would cohere. He could take it as given that they would. Under the influence of reason, the desires and wants that have their place in the economic/social sphere would work themselves pure as they rose up towards the public sphere, confirming its normative superiority.<sup>88</sup> Absent such faith, social cohesion becomes a real concern.

Rawls assures us that the political is distinct from, on the one hand, the associational and, on the other hand, the personal and the familial, but he does not address the question of how, by which mechanisms, the political maintains itself between the two adjacent spheres of non-enforced and non-enforceable action.<sup>89</sup> In telling us that the two spheres are voluntary and affectional in ways the political is not,<sup>90</sup> he is not advancing an argument nor is he offering criteria that would enable us to assess where specific forms of

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<sup>86</sup> *Id.* at 348.

<sup>87</sup> JOHN RAWLS, *POLITICAL LIBERALISM* 301 (Columbia Univ. Press 2005) (1993).

<sup>88</sup> This explains why Rawls is so sensitive to a criticism of social contract theory coming from a somewhat unexpected interlocutor whose work, in many respects antithetical to his own, revolves around the dis-implication of the political and the socio-economic sphere of society. That interlocutor is Hegel. The objections that Rawls is particularly sensitive to are those that speak directly to the relationship of the two spheres of society, and the fear that they are coming unstuck. *See id.* On the concept of dis-implication in Hegel’s political philosophy, see JEAN-FRANÇOIS KERVÉGAN, *L’EFFECTIF ET LE RATIONNEL* 274 (2007).

<sup>89</sup> RAWLS, *supra* note 87, at 137; *cf. id.* at 264.

<sup>90</sup> *Id.*

action sit on the sliding scale of voluntary action. He is asking us to believe that the political sphere will maintain itself even in a society where no comprehensive doctrine is generally held. The argument, if we can in fact call it that, works by emotional appeal. Whatever compelling force it has, it derives from our conviction that there *must* be such a thing as a political community. As we shall see, moving beyond emotional discourse requires him to restructure the conceptual configuration within which a commitment to justice might lead man to the common good.

The change in how Rawls conceives of society, of social cohesion, has obvious implications for theory. It means, most obviously, that a different theory must be found that fits this new object. More fundamentally, however, it also affects how Rawls understands the very activity of theory. His initial worry was that the parameters of deliberation in the original position were too restrictive to reflect social diversity; in other words, moral theory was not reaching all the way to social reality. In *Political Liberalism*, his concern now shifts to the act, by which the principles of social life are determined.<sup>91</sup> Where Rawls formerly saw determination as an indistinctly philosophical and civic act, he now comes to worry that determination in theory is not yet full determination.<sup>92</sup> This leads him to reflect on the nature of the mechanisms through which philosophical theory comes to inform social action, carving out a new place for the philosopher within the city.<sup>93</sup>

#### IV. PHILOSOPHER/CITIZEN

Taken at a higher level of generality, the problem that comes into view in the transition from Rawls's *Theory of Justice* to his *Political Liberalism* concerns the question of how, through which conduits, philosophical theory is translated into, or mapped onto, institutional form. What is at stake has implications both for government and for philosophy. A good fit serves as a prima facie warrant that society is well-ordered. We saw how this played out in the Hobbesian notion of the mutual containment of the civil laws and the laws of nature. A good fit also warrants the relevance, indeed the very possibility, of a right-ordering of the polity through philosophy. The fact that the laws of nature, which flow from human nature and are therefore eminently knowable by the philosopher, are so closely aligned on the civil laws as to appear identical serves to warrant that philosophical theory has real purchase on the social.

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<sup>91</sup> See *infra* Part IV.

<sup>92</sup> See *infra* Part IV.

<sup>93</sup> See *infra* Part IV.

With the disaggregation of the basic structure, Rawls has come to terms with the fact that theory may not range over all of society.<sup>94</sup> A theory of justice may only have explanatory force within a certain domain of society.<sup>95</sup> This limitation is manifested in a variety of ways, perhaps most evidently in how Rawls conceives of the choice of conceptions of justice that are deliberated on in the original position.<sup>96</sup> This question was already of some concern to him in *A Theory of Justice*, the cause of the unease being that a selection has already been made prior to the initiation of deliberations.<sup>97</sup> The parties to the original position were not given free rein to table whatever conceptions they liked which prompted Rawls to assure that “[w]ith time further possibilities will be worked out, thereby providing a more convincing basis for justification.”<sup>98</sup> In *Political Liberalism*, the cause of unease has shifted to the nature of the principles, the fact that they are philosophical and that too much might therefore be expected of them.<sup>99</sup> Perhaps not surprisingly, the problematic nature of their pedigree lights up in relation to the question of the just economic arrangement for society.<sup>100</sup> In *A Theory of Justice*, this question was seen to lie beyond the ambit of a theory of justice.<sup>101</sup> A specific economic arrangement could not be derived from its principles, only a range of acceptable arrangements the choice between which would have to be made by reference to the particular historical and social circumstances of each society.<sup>102</sup> If this implied that there are limits to what philosophical discourse can do, these limits were not taken to put into question the normative primacy of the legal/political philosophy upon which Rawls’s theory is predicated. The inability to settle the question was not seen as a shortcoming of the theory but as a sign of the indeterminacy of its object—justice.<sup>103</sup>

In contrast, Rawls’s *Political Liberalism* proceeds on a belief that the question of the proper economic arrangement for society cannot be left undetermined but would need to be settled first as forming the basis of any political theory:

Philosophical argument alone is most unlikely to convince either side that

<sup>94</sup> See generally RAWLS, *supra* note 64; see also RAWLS, *supra* note 87.

<sup>95</sup> See generally RAWLS, *supra* note 64; see also RAWLS, *supra* note 87.

<sup>96</sup> See generally RAWLS, *supra* note 64; see also RAWLS, *supra* note 87.

<sup>97</sup> RAWLS, *supra* note 64, at 581; cf. RAWLS, *supra* note 87, at 122–23.

<sup>98</sup> RAWLS, *supra* note 64, at 581.

<sup>99</sup> See generally RAWLS, *supra* note 87.

<sup>100</sup> *Id.*

<sup>101</sup> RAWLS, *supra* note 64, at 200–01; cf. *id.* at 273–74.

<sup>102</sup> *Id.* at 273–74.

<sup>103</sup> *Id.* at 200–01; cf. *id.* at 273–74. See *supra* note 102 and accompanying text.



the other is correct on a question like that of private or social property in the means of production. It seems more fruitful to look for bases of agreement implicit in the public culture of a democratic society and therefore in its underlying conceptions of the person and of social cooperation.<sup>104</sup>

In order to articulate political doctrines that are likely to command assent across ideational divides, philosophical argument must proceed from society's basic economic arrangement, which means that certain contingent facts about society cannot be made the object of philosophical critique.<sup>105</sup>

Facts, to which Rawls attributed no importance in *A Theory of Justice*, are now seen to condition the activity of the political philosopher inasmuch as they determine the field of his intervention.<sup>106</sup> The difference we are trying to pin down here is a matter of emphasis rather than of substance. The demarcation of the scope of philosophy goes back to *A Theory of Justice*; what has changed is the importance that Rawls attaches to this demarcation, as reflected in the way he conceives of the implication of philosophy and public law.<sup>107</sup> His theory of justice proceeded on the assumption that principles agreed to in the original position can be translated without loss of transmission into a series of constitutional acts of ever-greater concretion.<sup>108</sup> The import of the principles would be preserved as we move from the original position, through the position of a constitutional convention, over the legislative stage, to the final application of the rules to particular cases by judges and administrators—the restrictions on knowledge, giving way to yet more principles of social theory and facts about society and their own place in it, being lifted with each step.<sup>109</sup>

The conduit through which this transmission happens is the identity of philosopher and citizen.<sup>110</sup> If the procedure of the original position constitutes an act of philosophy, it first and foremost engages the individual in his capacity of citizen.<sup>111</sup> It is as a “representative citizen” that the individual runs the exercise of the original position.<sup>112</sup> This act of philosophy requires

<sup>104</sup> RAWLS, *supra* note 87, at 338–39.

<sup>105</sup> The narrowing of the focus of philosophy extends to the psychological laws that explain the adhesion of individuals to the civil order and hence account for its stability. Where they were seen to be “true” in *A Theory of Justice*, they are now (merely) “philosophical.” RAWLS, *supra* note 64, at 456; RAWLS, *supra* note 87, at 86.

<sup>106</sup> That this conditioning has the discourse of philosophy as its object is reflected in the fact that Rawls continues to hold that property rights relating to the ownership of the means of production are not to be included among the basic liberties. RAWLS, *supra* note 87, at 298.

<sup>107</sup> RAWLS, *supra* note 64, at 196–200.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 247; *cf. id.* at 196, 305.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

that one disengage from the given social order, but disengagement does not strain the bond between philosopher and citizen, the two roles that the individual alternates between. In *Political Liberalism*, this bond has been stretched to breaking point.<sup>113</sup> It is not that the citizen has lost interest in philosophy; rather, the activity of philosophy is no longer seen to be *civic*.<sup>114</sup> In taking part in deliberations in the original position, the individual is still seen to be acting as a would-be legislator, but sovereign though his actions may be, they do not realise the highest form of moral autonomy.<sup>115</sup> As a philosopher-legislator, there is only *rational* autonomy.<sup>116</sup> To be *fully* autonomous takes something else philosophy cannot provide.<sup>117</sup> It is not in doing philosophy that full autonomy is realized but in acting from the principles of justice that are the object of politico-philosophical reflection, and this acting-on is the province of the citizen, not the philosopher.<sup>118</sup>

Rational autonomy designates the power to give a reasoned account of and to revise a conception of the good; full autonomy is realized in the public acts of citizens who act on political principles of justice, making the terms of social cooperation that (would) have been agreed on in the deliberations in the original position the reasons for their actions.<sup>119</sup> The two forms of autonomy are ordered according to a common-sense intuition that a surplus of reality attaches to the actions of citizens compared to the theorizing of philosophers.<sup>120</sup> The form of rationality that is instantiated in and through the actions of a citizen is higher because, unlike the rationality that informs philosophical theory, it is manifested immediately *in history*. This difference in how rationality is manifested in history maps onto two different ways of relating to the inertia that historical reality opposes to this manifestation.<sup>121</sup> This is what Rawls calls the constraints of the reasonable, and if the philosopher is only rationally autonomous, it is because he takes a passive attitude to these constraints.<sup>122</sup>

The parties to the original position, however, are only rationally autonomous, "since the constraints of the reasonable are simply imposed from without."<sup>123</sup> "Indeed, the rational autonomy of the parties is merely that

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<sup>113</sup> See RAWLS, *supra* note 87, at 72–81.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 73.

<sup>117</sup> *Id.*

<sup>118</sup> See *id.* at 72–81.

<sup>119</sup> *Id.* at 72–75, 79.

<sup>120</sup> See *id.* at 72–81, 306.

<sup>121</sup> *Id.* at 98–99.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 306.

of artificial agents who inhabit a construction designed to model the full conception of the person as both reasonable and rational.”<sup>124</sup>

It is equal citizens in a well-ordered society who are fully autonomous because they freely accept the constraints of the reasonable, and in so doing their political life reflects that conception of the person which takes as fundamental their capacity for social cooperation. It is the full autonomy of active citizens which expresses the political ideal to be realized in the social world.<sup>125</sup>

Crucially, the difference between the two forms of rationality does not concern the principles involved or the constraints of the reasonable that weigh down with equal force on philosopher and citizen. The semantic surplus that takes us from ideal to non-ideal theory—and from the philosopher-legislator to the citizen—concerns the involvement of the individual in the mediation between the principles and the circumstances of justice.<sup>126</sup> The political conception of liberalism that Rawls advances requires an inward turn in which the principles of justice are taken up by each citizen as their constituent beliefs and, by extension, as the constituent beliefs of the society of which they are a member.<sup>127</sup> What the citizen demonstrates, by exercising the rights and powers that accrue to them as a citizen, is a willingness to accept a set of terms of social cooperation as the reasons of *their* actions, here and now.<sup>128</sup> The philosopher does not demonstrate this willingness in deliberating on the principles of justice, not for want of civic-mindedness but because this engagement cannot be displayed in the deliberations of the original position nor can it be modelled by that conception.<sup>129</sup> It lies wholly outside the scope of philosophical discourse.<sup>130</sup>

With the hiatus between the philosopher and the citizen that comes into view comes the realization that philosophical theory cannot account for the decision to accept the *terms of social cooperation as reasons for action*. Philosophical theory, as defined by Rawls, does not have the semantic resources to articulate the reasons that motivate this decision.<sup>131</sup> This want or lack of resources means that philosophy cannot simply take as given the existence of a bond between citizen and philosopher which in turn raises the

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 304–10.

<sup>127</sup> *Id.* at 11–22.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 21.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

question of individual allegiance to society.<sup>132</sup> On the terms of Rawls's theory of justice, participation in the deliberations of the original position, in which the individual is involved as a "representative citizen,"<sup>133</sup> entails a commitment to respect and uphold the political order that enshrines the principles of justice agreed upon. The terms of political liberalism offer no such guarantee. The surplus that political theory needs in order to do its work of securing the stability and justice of a society of free and equal citizens is no longer immediately available. It must be found elsewhere.

The need to tap into new sources of commitment makes sense of a singular tightening of the bond between individual and society that seems to have gone largely unnoticed. In *A Theory of Justice*, the place of birth of an individual has no intrinsic significance.<sup>134</sup> As Rawls notes more than once, an individual is born into a society not of their choosing.<sup>135</sup> He gives no indication that this fact, perfectly arbitrary from the standpoint of moral theory, is somehow determinative of the future trajectory of an individual's life, and no mention is made of a nexus arising subsequently between individual and society. What occurs after birth is life, a series of decisions to enter into schemes of social cooperation by which an individual gives his life trajectory a determinate direction. Not so in Rawls's *Political Liberalism*. He still stresses that the idea of a closed society constitutes a "considerable abstraction,"<sup>136</sup> but the notion of closure has taken on a significance that goes beyond what considerations of methodology and a sense of fidelity to the philosophical tradition might dictate. Closure is now seen as a condition of a life well-lived:

I assume that the basic structure is that of a closed society: that is, we are to regard it as self-contained and as having no relation with other societies. Its members enter it only by birth and leave it only by death. This allows us to speak of them as born into a society where they will lead a complete life.<sup>137</sup>

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<sup>132</sup> See *id.*

<sup>133</sup> See RAWLS, *supra* note 64, at 247; *cf. id.* at 196, 305; see *supra* note 113 and accompanying text.

<sup>134</sup> *Id.* at 13, 337.

<sup>135</sup> *Id.*

<sup>136</sup> RAWLS, *supra* note 87, at 12.

<sup>137</sup> *Id.*; *cf. id.* at 40–41, 301; *cf.* RAWLS, *supra* note 64, at 13, 337. Onora O'Neill notes the "striking" nature of the passage and the importance Rawls attaches to generally affirmed identity but does not, to my mind, grasp the full extent of their implication. Onora O'Neill, *Political Liberalism and Public Reason: A Critical Notice of John Rawls, Political Liberalism*, 106 PHIL. REV. 411, 418 (1997); *cf. id.* at 419–20. Contrary to what O'Neill suggests, the premise that society is self-contained and democratic will not get Rawls from a modal to a motivational conception of public reason; showing that certain principles and standards for the fundamental arrangements of life *could* be the object of general assent among citizens does not allow us to affirm that it *will*. This is what reasonable pluralism means. Rawls cannot just assume that being willing to seek and abide by shared principles and standards "is more or less what it is to be a

In the passage quoted above we are given to understand that the contingent fact of being born in a particular society continues to exert its influence on an individual throughout their life. Belonging to society is, quite literally, a matter of life and death as only death will loosen the bond that is established at birth. This bond carries over into *The Law of Peoples*.<sup>138</sup> In earlier work, Rawls mentions the possibility of emigration, but it is clearly seen as a peripheral phenomenon that could not form the basis of a theory of political community.<sup>139</sup> With approbation he now notes that “attachments formed to persons and places, associations and communities as well as cultural ties, are normally too strong to be given up.”<sup>140</sup> The significance of cultural ties, which prefigure the idea of proper patriotism introduced in *The Law of Peoples*,<sup>141</sup> goes beyond the exclusivity of the emotional ties that an individual forms. In saying that we may speak of an individual as leading a “complete life” for supposing that birth and death constitute lasting ties between the individual and the society of which they are a member, Rawls is not only saying that individuals are likely to live their whole lives within the same society, but he is also implying that the life they lead there will be complete, a successful life in the Aristotelian sense, a life well-lived because in it, all the potentialities of human nature are realised.<sup>142</sup>

These potentialities are realized in and through social cooperation. The reference to the fullness of life is, therefore, a placeholder for an individual’s commitment to civil order and to the principles of justice it enshrines. As a result, proper patriotism fulfils the function that formerly devolved on moral deliberation. We might say that the nation becomes the real subject of justice. These developments link back to earlier strata of his work. As Rawls defined it in *A Theory of Justice*, the first aim of political theory is to reconcile us to the life we have here and now, not to show how we may transfer out of it.<sup>143</sup> Having said that, the introduction of the idea of the fullness of life does reflect a fundamental shift in Rawls’s thinking. In making the nation the primary conduit of an individual’s attachment to civil order, he ties theory to history.

citizen of a democratic society,” *Id.* at 421, which is why he needs to secure the allegiance of the individual by other, non-political means.

<sup>138</sup> JOHN RAWLS, *THE LAW OF PEOPLES* 26 (1999).

<sup>139</sup> See *supra* note 138 and accompanying text (noting that we are born into our societies); RAWLS, *supra* note 87, at 277; *id.* at 216 (noting that in democratic societies, people are born into the societies in which they normally lead a “complete” life).

<sup>140</sup> RAWLS, *supra* note 87, at 277.

<sup>141</sup> RAWLS, *supra* note 138, at 44, 62.

<sup>142</sup> RAWLS, *supra* note 87, at 277 (noting that “attachments formed to persons and places, to association and communities, as well as cultural ties, are normally too strong to be given up, and *this fact is not to be deplored*”) (emphasis added).

<sup>143</sup> RAWLS, *supra* note 64, at viii, 11.

He encloses the individual within a horizon that is not fully transparent to philosophical analysis, thus marking off a limit to theory.

## V. CONCLUSION

In bringing Hobbes and Rawls into conversation, it is easy, too easy, to focus on the fact that they are obviously at cross-purposes. We end up seeing only where they come up short. Each shows us a fatal flaw in the theory of the other. Rawls shows Hobbes's theory to be frankly unreasonable and inadequate to the problems contract theory addresses. Hobbes shows Rawls's belief in the capacity of human nature to work itself pure to be naïve, anachronistic, and misguided (which Rawls has the intellectual probity to acknowledge).

There is another way to make sense of Rawls's realignment of his theory on the theory of Hobbes, one that speaks more directly to the concern with the future of the commonwealth. On that view, what Rawls realizes is not the perennial truth of the Hobbesian hypothesis about the conflictuality of human relations; what he realizes is the importance of what comes before the original position. We deliberate terms of social life only with those to whom we already feel bound by a sense of community—a sense that does not reduce to a willingness to play the language game of moral theory. Thus, there is no *original* position, no founding moment that is not an egregious fiction. *A commonwealth always precedes itself.*

Hobbes presents us with an example of what it does to a theory of commonwealth that it must create everything from scratch. He describes pre-societal life as a dystopia because this is the only way he can bring a plurality of individuals that have no sense of being bound together to agree to minimal terms of social life.<sup>144</sup> We might think that this problem belongs to a bygone era, but it is worth keeping in mind that, unlike Rawls, Hobbes can fall back on a traditional morality, the content of which is not in doubt.

Philosophy sublimated the problem of our commonwealth. Unable to show how, on what terms, we agreed to live together, philosophers offered instead indirect demonstrations that we must have. In taking government back to the family, Locke sought to convince us that we are already carried by the movement out of which our institutions of government arose. Hegel

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<sup>144</sup> It is often overlooked that Hobbes did not deny man's sociability. It would, as he tells us in the first commentary to the first chapter of *On the Citizen*, be "foolish" to deny that man is naturally inclined to the company of his fellows. What he denies is that a well-ordered society could be set up on this foundation as "writers on public Affairs," had blithely asserted: "I am not . . . denying that we seek each other's company at the prompting of nature. But civil Societies are not mere gatherings; they are Alliances, which essentially require good faith and agreement for their making." HOBBS, *supra* note 6, at 21, 24 (translation modified).

would show the successful mediation of social life in the modern state by reference to the high drama of world history. Rawls invokes pride in the history of the people and its achievements, without giving any indication as to how he would answer the underlying, burning question of who gets to be counted as a citizen.

It is perhaps inevitable that the theorist who wishes to answer this question by way of a conceptual demonstration will get into this tangle. We might think that the real choice in political philosophy is between the commitments and the blind spots on which these demonstrations must rely. The question we should ask ourselves is whether the current state of our societies does not require us to abandon the belief that what we should demonstrate, as theorists, is that we are in fact a collective. Perhaps the time has come to focus on the good about which we can agree, and disagree, accepting the risks that that entails.

