A Critical Review of David Runciman's *Pluralism and the Personality of the State*

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David Runciman's objective in *Pluralism and the Personality of the State* is simple enough: "to tell the history of [the political pluralism] movement," and to derive from this historiography "a clear narrative thread" (Runciman 1997: xii). Yet the evolution of the ideas regarding group personality that Runciman charts is anything but simple: it takes one on a journey beginning in the 17th century with Thomas Hobbes' (underappreciated) treatment of the subject in *Leviathan* into the late 19th century with the writings of legal historian and political theorist Otto von Gierke, and finally back to England in the early 20th century via the writings of F. W. Maitland. It is a story of the rise of the 'pluralist' ideal in English jurisprudence and political thought, of its ephemeral, hollow triumph from 1900 through 1920, and of aspirations crushed as the latent inadequacies of the approach became manifest to its own practitioners, who proceeded to abandon it *en masse*.

Why study a movement that, upon it reached its peak influence, was already demonstrating its irrelevance? For Runciman, the answer lies in the fascinating and frustratingly complex subject with which the political pluralists concerned themselves: "The one constant theme running through the work of the pluralists was a distrust of arbitrary sovereign authority. But though reluctant to allow one sovereign body the right to authorize the life of the political community as a whole […] None of them was willing to countenance disorder [… thus] [t]he history of political pluralism is the history of a series of unsatisfactory solutions to a set of intractable problems" (ibid: 257; 263). Runciman does not attempt to resolve the dilemma that vanquished the pluralists, and this is why the idea of group personality – how and when groups should come to achieve a personhood recognized by law, and how to conceptualize the personality of the state – fascinates him so: "The truly perennial problems, after all, are the insoluble ones. That, in a sense, is how political theory works" (ibid: 265). To understand the intractability of group personality, this critical review provides an overview of the historiography charted by Runciman, and concludes with a critical appraisal of Runciman's own efforts.

I: Hobbes' *Leviathan*

Runciman charts what may be termed a 'reverse Whiggish history' – as one transitions from the writings of Hobbes – "the greatest of all English philosophers […] one of the supreme prose stylists in the English language" – to the reception of his ideas by Gierke, to the reception of Gierke in England by legal historians and political theorists, nuance is lost, ideas remain underdeveloped, opposing perspectives are straw-manned, and efforts fail (ibid: xi). It is like a telephone game that begins with an eminent political philosopher transmitting a complex thought to an assistant professor, who then transmits it to a graduate student, who in turn passes it on to an undergraduate, who finally communicates what, by now, is a unidimensional shadow of the original concept to a high school student. "Viewed chronologically," Runciman concludes, "this is not a sequence which follows an upward curve" (ibid: xii). With the curve's peak we thus start: Hobbes' *Leviathan.*

Hobbes begins Chapter XVI by conceptualizing three types of persons: Natural persons (whose actions are their own), as with sane adults acting honestly;[1] Artificial persons (whose actions represent those owned by another), as with representatives; And fictitious persons (who cannot act unless their ability to own actions is constructed by others, or "granted by pretence"), as with bridges (ibid: 7). For Hobbes, artificial persons may represent anything – natural or fictitious – and hence commonwealths arise when a single artificial person represents a group of natural persons, making the former sovereign (ibid: 11). This act 'creates' civil society and elevates man from the state of nature: "When men erect a sovereign, they are united in his person; without him, they are returned to the state of nature. Thus there exists no social contract with the sovereign, and no basis for judgments to be made about the civility of his conduct, for it is upon his very existence that the possibility of civil society depends" (ibid: 12). So how does Hobbes' conception of the state compare with those of other political theorists? As expounded by political philosopher Michael Oakeshott, theorists are often divided into two camps: those conceiving of the state as a *societas* (a civil association), and those treating it as a *universitas* (a corporation). The *societas* is a "community of singular and purposive individuals, or groups of individuals, each pursuing their own ends, and united only by an agreement as to the conditions under which they may pursue them;" Bodin, Spinoza, Kant, and Hegel espoused this view (ibid:

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[1] Hobbes' conception of natural persons was a bit more complex: "Natural personality requires purposive actions to be related to a sense of personal identity, and it was for this reason that Hobbes did not consider children, madmen or fools to be natural persons" (ibid: 240).

14-15). By contrast, the *universitas* is "a singular and purposive community;" a view held by Cromwell, Bacon, Calvin, Rousseau, and Marx (ibid). With which camp does Hobbes hold the greatest elective affinities? Many eminent political theorists – most notably Oakeshott himself – usually proclaim Hobbes are an adherent to the conception of the state as *societas*. Yet for Hobbes although the commonwealth "is essentially a *societas*, It is not one unequivocally:" The sovereign "is a ruler who does not speak *for* the commonwealth but only *to* it"; A representative assembly "must be the entire creation of the sovereign if it is not itself to be sovereign;"[2] Unregulated associations cannot exist because "all associations follow the model of the state" which endows associations with an artificial personality via recognition; And the conduct of persons within the commonwealth are not shaped by their relation to each other, but by "the relation of each to the commands of their sovereign" (ibid: 16; 27; 33). The state, in other words, is not bound by a social contract, and indeed without it contracting cannot occur. With this conclusion, "Oakeshott's division of European political thought into two categories, and his subsequent categorization of Hobbes, finally collapses" (ibid: 26).

II. Gierke's *Genossenschaft*

For 19th century legal historian and political philosopher Otto von Gierke, the *Leviathan* had obvious appeal. Writing in the aftermath of German unification and in the midst of Germany's efforts to craft a civil code, the subject of group personality was of fundamental jurisprudential importance. And, similar to Oakeshott's binary opposition between *societas* and *universitas*, Gierke perceived two "different, and irreconcilable, concepts of order:" A Germanic one, emerging from the history of German customary law, conceived as "plurality in unity," whereby unity is causally prior, and determines the individuality of group members; And a Roman one, emerging from the *jus commune* and Justinian's *Corpus Juris Civilis*, conceived as "unity in plurality," where the group has an artificial or fictitious personality that emerges following individuals choosing to come together (ibid: 36-37). Gierke strongly favored the former, and hence Hobbes' conception of the sovereign was of obvious interest: He revered the ability of "Hobbes, 'wielding a remorseless logic,'" to alter the course of natural law forever as "'he wrested a single State-personality from the individualistic philosophy of Natural Law'" (ibid:

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[2] Hobbes, in fact, thought that "mixt Monarchy," comprised of a sovereign monarch and sovereign legislature, represents the greatest threat to the commonwealth, and likened this system to "a man, that had another growing out of his side, with a head, armes, breast, and stomach of his own" (ibid: 24).

38). Yet for Gierke – and this is a crucial move that allowed his writings to be well received by his English counterparts later – Hobbes swings the pendulum too far, and thus "attains a state whole […] but at the cost of the parts […] the Gierkian concept of plurality-in-unity, though it gives conceptual priority to unity, does not grant the group unit the capacity ever to do without plurality" (ibid: 41). Ultimately, if Roman law provided "the parts without the whole," then Hobbes "gives us the whole without the parts" (ibid: 46). Further, Gierke perceived Hobbes to be treating the state as an artificial, mechanistic personality;[3] yet he conceived of the state in organicist terms. He thus sought to articulate a third philosophy of the state – one dialectically snuggled between the extremes of Roman civil law and Hobbes' *Leviathan* – centered around the concept of the "real" personality of *genossenschaft*, or "fellowship" (ibid: 46-47).

Gierke followed the German jurisprudential tradition of treating sovereignty as a right – and conceiving rights as only capable of being held by persons. Hence the state clearly had to generate a single personality (ibid: 39). Yet this personality had to be "real" in the sense that it "had to be both unified and vital, like a true organism;" and this could only be so if it consistent an entity that was not entirely created by law (ibid: 46; 52). Gierke's purpose was to reconcile this conception with the medieval German idea of the *Rechsstaat* – a difficult concept to translate, but one roughly amounting to a state "which existed only in the law and for the law" (ibid: 53). The reconciliation came by praising the Bismarckian state, for by virtue of its federal structure, "the unity of the whole was held to be consistent with the independent identity of each member state, or part," such that plurality could be endowed with "juristic coherence" via unity (ibid: 61-62). He also hoped that the new German civil code would be founded upon the "right-subjectivity" of *genossenschaft*, for he believed this to be a uniquely Germanic conception, and only "in a state whose laws were specifically German group life could be secure" (ibid: 62). In the end, the 1896 civil code did not incorporate all of Gierke's suggestions. But where Gierke's influence faltered at home, it found a loyal following abroad. For "[in] England, in Gierke's own lifetime, there were a number of historians of a philosophical bent […] who had an interest in reforming the legal position of associations" (ibid: 63). Foremost amongst them was the father of English legal history: F. W. Maitland.

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[3] Yet it is important to note that for Hobbes, "[t]he organs of the commonwealth – not just its hands, but the judges who are its voice, the ambassadors who are its eyes, and so on – all facilitate the performance of actions. As such they collectively embody not the artificial man but its soul, the sovereign" (ibid: 23).

III. Maitland and the Birth of Political Pluralism

When F. W. Maitland began work on his translation of Gierke's writings in 1900, he faced a fundamental problem. The development of English law and jurisprudence had always and characteristically been ad hoc, whereby "ideas are assumed to be true because, when pieced together, they work; they are not assumed to work because, when pieced together, they are true" (ibid: 69). Principles emerging from practice were derived and bundled together by lawyers and historians into often contradictory conceptual systems, in sharp contrast to the logical coherence, theoretical depth, and parsimony of German jurisprudence and to Gierke's own writings. It was this incoherence – particularly with respect to the treatment of the English trust and the "corporation sole"[4] – that bothered Maitland, yet to persuade others to take Gierke's jurisprudence seriously he "had to demonstrate not just its superiority to other theories, but also that the adoption of any theory was worth the inconvenience" (pg. 70). Maitland was aided by the fact that both Germany and England shared a "common heritage in the history of ideas," as both had internalized natural law theories of the state and had been deeply influenced by the writings of Hobbes (ibid; 72). Further, English political theorists were actively searching for pluralist alternatives to the anarchism of French "syndicalism," which was gaining in influence across the English Channel (ibid: 82).

Ultimately, Maitland conceived of associations as possessing a real personality by way of two distinct paths. The first route was through Gierke, beginning with Gierke's resuscitation and critique of the Innocentine doctrine of the *persona ficta*, moving to Gierke's own treatment of *genossenschaft*, and concluding with the idea of real group personality within a *Rechsstaat* (ibid: 107). The second route was Maitland's own, and it begins with his critique of the notion of the corporation sole, through the English practice and jurisprudence concerning trusts, and onto his conclusion that "all organized groups must have a corporate personality of their own, whether we will it or no" (ibid). Like Gierke, Maitland rejects the Hobbesian notion that "corporations must be formed where and when the law insists," and instead "comes to embrace an alternative mode of legal activity, by which corporate status is made available to those who want it" (ibid: 116). Maitland proceeds to treat group personality as real, and hence as inseparable from day-to-day

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[4] The confusing notion of the corporation sole was that, in the abstract, a representative would represent a group of people, and hence be no more than an artificial person; however, at any given moment, the representative was the corporation, and thus was, in some sense, a natural person. Often, in England this concept was applied to understand sovereign authority, and Maitland thought this notion to be mere nonsense (pgs. 98-101).

practice, and the law as its context, and hence as the abstract, structural framework that situates said practice: "[W]here group persons are deemed to be real, the law is nothing more, and nothing less, than an account of the life that surrounds it. The concept of real group personality closes the gap between the world described in law and the world in which men live" (ibid: 116-117). Yet Maitland was quick to self-ascribe the label of lawyer and to stop short of addressing the philosophical implications – and critiques – of his own argument: "Maitland's fastidiousness may more politely be called a reticence on matters he felt to be beyond his expertise […] But it may also be called an unwillingness to pursue lines of thought to which no satisfactory conclusion could be brought. It was left to others to see how far they could get," and to ultimately realize that the seeds of political pluralism that Maitland had laid would germinate into a dead end (ibid: 123).

It was J. J. Figgis, a young clergyman who "fell under Maitland's spell" upon his return to Cambridge in 1896, who came to outline "the most complete pluralist position in English political thought this century" within his 1913 *Churches in the Modern State* (ibid: 124-125). For Figgis, the existing secular jurisprudence pushed moral considerations to the side by treating group life "as no more than the product of artifice," and by 1905 he had come to believe that "life must always take priority over law, facts over theories, reality over artifice" (ibid: 132). What aroused Figgis most was a series of decisions by the House of Lords regarding the representation of church groups and trade unions (whereby the Lords recognized the representative rights of a few individuals against the wishes of large majorities). He deemed said rulings to not just be wrongheaded, but fundamentally untrue, for by championing the rights of individuals they failed to recognize the real group personalities of churches and trade unions (ibid: 138-140). He thus pushed group members to "value the integrity of their associations above all else," and his prototypical group was "one with its own way of life and its own moral standards, which accepts that those standards apply to itself alone, but which believes that where they do apply they apply absolutely. Such a group, in other words, is a sectarian church" (ibid: 143). A state, therefore, is a *communitas communitatum*, or a "society made up of self-formed and self-governing associations, each of which co-existed in a broader framework, itself capable of generating a sense of community" (ibid: 144). Figgis reluctantly conceived of the state as the intermediary between these associations, but he also assumed that "groups will not conflict often," for they would concern themselves "with ends which are theirs alone" (ibid: 145). And

this is where Figgis' pluralism faltered, for a state comprised of "lesser communities all of whose concerns are otherworldly, or purely academic, or purely recreational is, at the very least, a somewhat improbable model of a political society," where interests often conflict (ibid: 146).

Shortly following publication of Figgis' writings, it was Ernest Barker, the first chair of political science at Cambridge, who labeled Maitland and Figgis' scholarship the "new federalism" and sought to make a contribution of his own (ibid: 150-151). Barker was an enthusiastic supporter of the notion that groups could hold a juristic personality. As a philosophical conservative and political liberal, he admired Maitland and Figgis' emphasis on groups rather than individuals, on freedom of association, and their distrust of centralized power (ibid). But what Barker "could not accept was that [group] personality must be counted, in some fundamental sense, as real," for real group personality seemed to ahistorically naturalize conceptions of 'groupness' (ibid: 151). Indeed, in his most influential essay, "The Discredited State," Barker contended that "the political idea of order plays a fluctuating role in the history of a community, such that any attempt to characterize its role must incorporate a sense of his fluidity" (ibid: 158). In so doing, Barker sought to strike a balance between his historical inclinations – and hence his appreciation of contingency – and his inner philosopher, which saw the state as "an identifiable, and distinct, organizing idea" (ibid). Yet this position left Barker stuck, able to recognize the "contingency of the claims that were being made on the state's behalf," yet convinced that "there was nothing he could do about it" (ibid: 161).

While Barker was frozen in-between his inner historian and political theorist, his writings came to be received by a number of intellectuals with a substantially more activist bent. One of them was a young guild socialist, D.H. Cole. Cole was an ardent federalist who also embraced Marx's view that capitalism, by "commit[ing] to treating labor as a commodity," had come to disregard the true value of labor (ibid: 165). Although he was not a syndicalist, Cole also believed that any theory that treated the state as a *sui generis* association was riddled with arbitrariness: The state was "one organization among many," and hence it could not demand the full loyalties of its citizens (ibid: 168). But what most distinguished Cole from his predecessors was his incorporation of a manifestly structural functionalist framework into the 'new federalism': associations do not simply *have* a purpose, they *serve* a broader social function as well (ibid: 169). As such, the function of the state should be "the expression of those common purposes which affect all citizens, roughly speaking, equally and in the same way" (ibid: 170).

Yet this plunges Cole into the very hole that Figgis had dug himself into, for "it cannot be the case […] that such harmony is simply produced by a division of functional spheres; it is in the very nature of functionalism that it can only operate given such harmony" (ibid: 175). By presuming and not explicating the origins of social harmony, Cole is left to wish "that people would behave functionally" – beyond this, he has "nothing else to say" (ibid: 175-176).

Yet Cole was not the only socialist functionalist who sought to engage with Maitland, Figgis, and Barker: Harold Laski, who left Oxford in 1914 to teach at Harvard, did so as well. Yet for Laski, the 'new federalism' label seemed to lose much of its edge in the U.S., where many of its manifest traits were taken to be self-evident. He thus sought to re-baptize the literature "political pluralism" and, in so doing, to mount his own effort at synthesis (Ibid: 178-180). From Barker, Laski emphasized that "history revealed the state to be, at the very least, contingent, and undercut the pretensions of those who would assert timeless dogma" (ibid: 180). Indeed, amongst the political pluralists Laski was the clearest in highlighting that "the attack on the state brings with it certain consequences for the way that the political theorist should regard himself" (ibid: 192-194).[5] Laski also believed that associations could "escape the sovereignty of the state," but this did not mean that associations should be free to do as they wish; Rather, they should be free to "understand whatever it is that they do. Armed with this knowledge, they are to become, not independent, but interdependent, as they become aware of the responsibilities they have to each other" (ibid: 187). Laski thus comes to espouse a Hegelian conception of freedom as responsibility, but this is a link he fails to recognize. In fact, Laski associates Hegel with Hobbes, for whom freedom was the antithesis of responsibility, and "[o]nce two thinkers so different, and so different in ways it was precisely Gierke's purpose to elucidate, are conflated like this, the force of Laski's argument is entirely dissipated" (ibid: 188). Further, like Cole and Figgis before him, Laski cannot explain where a "successful co-existence of the interdependence of function comes from," particularly in the absence of the very statist regulatory capacity he sought to shun (ibid).

IV. The Collapse of Political Pluralism

By the time that Laski had coined the term "political pluralism" in 1920, its constitutive ideas "were more or less exhausted," and Laski "added nothing to these ideas beyond his obvious

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[5] From this, Laski concluded that historically inclined political theorists should embrace an inductive empiricism over deductive theorizing.

enthusiasm, which was not enough" (ibid: 194). Maitland and Figgis were dead, and having been unable to found schools of like-minded historians to carry their legacy forward, from 1920 onwards "there was no-one in England prepared to further the case against the idea of the single unitary state, and its single sovereignty" (ibid: 195-196). Laski, Cole, and Barker came to repudiate their political pluralism not because they believed that "pluralist ideas had become old-fashioned: They did so because they no longer believed that political pluralism could be made to work" (ibid: 198). In *A Grammar of Politics*, Laski came to acknowledge that plural group interest required intermediation, and that the state alone could serve this adjudicatory role (ibid: 202). Laski and Cole also both came to believe that groups conflict when economic resources are inappropriately or unjustly distributed by the state, engendering their renunciation of political pluralism in favor of complete devotion to Marxism (ibid: 206-209). Barker, on the other hand, resisted the allure of Marxism, and directed his allegiance to a form of constitutionalism – a doctrine of the sovereignty of law – not unlike that espoused by Gierke: "The state is essentially law, and law is the essence of the State" (ibid: 218). In so doing, Barker concluded that the purpose of the state "'exists beyond space and time'. In 1914 Barker had wished to work with history against the state. In 1933 the task was to work with the state against history" (ibid: 219).

Ultimately, Runciman concludes his historiography with a series of complicated theatrical metaphors meant to illustrate that the concept of "real group personality" espoused by Gierke, Maitland, and Figgis is illusory. "We can imagine groups leading lives of their own," Runciman writes, "but it is very hard to imagine a group taking charge of its own life. What we are imagining is simply a representation of the group, and we know it is a representation because it is impossible to imagine the group representing anything else […] It is this, then, that constitutes the fallacy of the doctrine of real group personality, that it confuses our ability to imagine groups having their own personality with the ability to decide that personality for themselves" (ibid: 242-243). In so doing, Runciman returns to Hobbes, whose conception of natural personality required "purposive actions to be related to a sense of personal identity," an identity which groups are simply incapable of possessing (ibid: 240). Beyond this pronouncement, Runciman is happy to leave many of the knots into which the political pluralists tangled themselves unresolved.

V. A Critical Appraisal

Runciman's historiography is illuminating and fascinating, if at times unnecessary convoluted. Yet I find it somewhat curious that, having critiqued Maitland for stopping short of dealing fully with the philosophical implications and complexity of the concept of group personality, Runciman is satisfied with pronouncing this an "insoluble" problem. In particular, I found Runciman's elaboration of the metaphor of the mask and the stage to be unhelpful in clarifying the problem he had spent the previous 200 pages charting. In essence, he uses these metaphors to conclude that "the prospects offered by the doctrine of real group personality are still those of chaos and wilderness" – but the idea that groups are somehow "real" persons appears to me to be the easiest Gierkian tenet to dismiss (ibid: 250). A much more difficult problem is captured by a question that Runciman poses but fails to answer: "How can the state be provided with a mask of its own?" – in other words, in a system of rule *of* law rather than rule *by* law, where does the state's legal personality come from? (ibid: 251).

In answering this query, Runciman's emphasis on the *Leviathan* appears to be somewhat of a dead end, for (at least in the way Runciman interprets Hobbes) the leviathan's personality precedes that of all other groups and the establishment of civil society itself; Hence the personality of the sovereign cannot be endogenous – that is, it cannot emerge from within the state, as in social contract theory. Further, as Hobbes himself noted, the sovereign's personality is artificial, and hence it cannot be self-generating. Aside from the theory of the divine right of monarchs, which Runciman does not discuss, I do not see other sources of the state's personality that exist within a Hobbesian framework. It seems to me that the best means to untangle this knot without embracing religious natural law is to rely upon secular natural law – specifically the notion of popular sovereignty – which treats the people as holders of the right to recognize the state's legal personality, and hence the right to delegate some of their sovereignty to the state apparatus for the furtherance of social order. This, of course, would have been unacceptable to Hobbes, whose primary purpose in *Leviathan* was to make an argument against civil war (indeed, once the notion of popular sovereignty is recognized, the possibility of civil war also emerges). Surely social contract theory is plagued with shortcomings and circularities of its own, but by failing to seriously engage social contract theorists, Runciman fails to elucidate what these weaknesses may be, and as a result he equally fails to convincingly explicate why the metaphor of the stage, and a return to Hobbes, is the most fertile way forward.