



The Incompatibility of the Commons and the Public

ROY L. HEIDELBERG 

ADVANCING THE
COMMONVERSE: THE
POLITICAL ECONOMY
OF THE COMMONS
(GUEST EDITORS:
H. WAGENAAR & K.
BARTELS)

ju[ubiquity press

ABSTRACT

In this essay I consider the conceptual conflict between the public as a modern political category and the idea of the commons. By linking the idea of the public to an early exposition that explicitly sought a distinction between the commons and the public, I show how the generalization inherent in the public contravenes the particularity of the commons. This poses important political problems for how a modern commons or a modern notion of the commons is conceived and also allows for a nuanced understanding of the political challenge posed against the commons itself.

CORRESPONDING AUTHOR:

Roy L. Heidelberg

Louisiana State University,
Louisiana, US

royh@lsu.edu

KEYWORDS:

public; statecraft; authority;
Thomas Elyot; political

TO CITE THIS ARTICLE:

Heidelberg, R. L. (2024). The Incompatibility of the Commons and the Public. *International Journal of the Commons*, 18(1), pp. 177–187. DOI: <https://doi.org/10.5334/jjc.1236>

The primary aim of this essay is to explore the commons from a specifically political perspective, without worry or concern about the contemporary tendency to view the commons from an economic one. To do so, I consider the difference between the commons and the public through a reading of Thomas Elyot's *Book of the Governor* and, through it, a consideration of Roman concepts that define the political category of the people. This consideration of the political difference between the common and the public brings out the totality of the state because it shows the growing difficulty, by design, of people to operate outside of state logic. This is apparent in the work on the commons by Elinor Ostrom and other persons sympathetic to or generally favorable of the commons; many of the frameworks around which the commons are presented retain the logic of the state by seeking out standard or replicable practices behind particular governance structures. It is further displayed by the impossibility of a *secessio*; a secession from the state is done on the terms of and within the structure of the state itself, but more importantly, being stateless is a condition of need and rightlessness. It is perhaps obvious how the commons and the private are opposed (portrayed through the idea of the market), but it is worth exploring the opposition between the commons and the public because it clarifies the force under which the state, that other part of the market-state dyad, opposes the commons. My analysis questions the tendency to conflate or pair ideas of the commons and the public. By the end of this essay, I hope to have shown how the idea of the public formed and continues to form a political worldview that works against the idea of the commons by providing precedence to the state. The interpretation gleaned from Elyot's work suggests a tension between the public and the commons that aligns with a tension between a politics that tends towards the universal instead of the particular.

This tension is a present concern in contemporary discussions of governance alternatives, especially the revitalization of the modern commons. As Bollier and Helfrich conclude in their discussion of the social life of commoning, "In the end, commoning is not just a state of enhanced awareness and being...It is an enactment of peer provisioning and peer governance...[and] the cultural form of a new kind of politics" (Bollier & Helfrich, 2019, pp. 115–116). A central facet of this new politics requires an alternative to the hegemonic discourse and practice of conventional economics, which Bollier and Helfrich explain as privileging the individual to such an extent that it operates on principles that are "antisocial, indifferent to democratic norms, and ecologically irresponsible" (*ibid.*). Articulating an alternative requires not only rethinking economic relations but also an alternative conception of the state. These two

facets together represent the market/state dyad to which a modern commons must be theoretically and practically expressed as an alternative, an arrangement that Bollier and Helfrich call the *commonsverse* (*ibid.*, see specifically Part III). On the political side of that dyad, the side of the state, we must attend to the political constructions that shape and support it in order to discover the functional alternative that a modern commons offers and thus to face the challenge, as Bollier and Helfrich (2019, p. 303) frame it, of a common that "is going to evolve as an alternative matrix of governance and provisioning [that can] overcome a deep-seated skepticism about commoning among bureaucrats, politicians, and governments;" in other words, the commons must be expressed in a way that it appears feasible to the contemporary system of state power.

A framing of the commons that satisfies the standard of feasible alternative is no small feat. It requires nothing short of a global-scale reshaping of political economy and societal organization. It must also face the taken-for-granted concepts and ideas that shape our contemporary political economy. This essay addresses one of those concepts, *the public*, by reading and interpreting an early expression of statecraft that is premised on a distinction between the public and the commons as political categories. Thomas Elyot's sixteenth century treatise on how to prepare leaders for the state and how to use the state for leadership offers insight into the tension, often overlooked, between the commons and the public. Acknowledging the distinction between these two concepts reveals other important conceptual distinctions, specifically in this essay a distinction between the state as a universal structure and the particularity of the commons. At stake in this consideration of the commons is the consistency of it with the increasingly popular idea of a global commons.

A BOOK FOR THE STATE: ELYOT'S *THE BOOK OF THE GOVERNOR*

Thomas Elyot was an English diplomat and counselor in the sixteenth century. He is reputed for being among the earliest writers to use English in literature. His affinity for using the common tongue of English in his writings is the reason for my attention to one of his most enduring works, *The Book of the Governor*, for in it he developed distinctions and meanings in English of ideas from antiquity. Among the distinctions drawn in this book is one between the English *public* and *common*. Elyot found the distinction in the context of political categories of people that, I will propose, connects with the modern state and ideas of the public.¹

At the beginning of *The Governor* Elyot argues for a distinction between public and common, between *populus* and *plebs*, which hinged on the assertion that *populus* was *more inclusive because it contained all classes of people*.² On its face, this idea appears to be a condition of equality, but Elyot's intention was not to privilege the underprivileged but rather to assert the place of privilege in the realm. In contrast was what Elyot called the communalty, or the commons, consisting of "only the multitude, the base and vulgar inhabitants not advanced in honor or dignity," meaning that the commons *lacked* what the people *contained*. Having the sense of general, the idea of the public was considered by Elyot to be more inclined to the order of the state because it included the distinctions among inhabitants of the realm that made order possible, namely, the public included those whose gifts were conducive to rule. It is the *inequality* of the public that offers the possibility of order insofar as the ones to whom God has granted greater gifts are positioned to govern.

The design of Elyot's treatise is to establish a place for the governor, for the one whose place it is to govern others, just as there are places for other roles that help the community function, roles like tailors or blacksmiths or bakers. A commonwealth implies that the wealth is with the common folk and not with the gentlefolk or nobility,³ an idea that does not leave room for the kinds of people that Elyot considered to be capable of governing. Governing is an artifice just as milling, pottery, or husbandry is, but a skill that is provided by the excellent wit and exercise of artificial science, where the craft itself is to show others how to provide for themselves.⁴ Elyot claimed through some unsophisticated theology that some are endowed with greater natural gifts than others and that it is foolish to think that divine gifts are held in common and equally foolish to think that they would be in one man.⁵

The essay is somewhat playful with language, such as when Elyot insisted upon differentiating between the communalty and the nobility. He pointed to the convention of describing a meeting as having "none but the communalte" if "no gentyl men be there" as proof that there is correspondence between communalte in English and *plebs* in Latin as well as between commoners and *plebeii*. Consequently, Elyot maintained that there is a difference between a publicwealth and a commonwealth sufficient to what in Latin would be a distinction between *res publica* and *res plebeia*. The playfulness is evident in the fact that there is no meaningful mention of a *res plebeia* in Latin. Indeed, as will be discussed below, the history between the *plebs* and the *populus* is a complicated process of political integration. But Elyot's allusion to a never-existent idea, *res plebeia*, was rhetorical: he signaled

to the audience that a commonwealth had no more basis than a Roman *res plebeia* in place of the *res publica*.

Elyot's objective in the treatise is to outline a moral education program for what he regarded as the governing class, but first he must establish the scope in which that class will act and operate. It is important to Elyot that there be continuity among all inhabitants of the realm, that the activity of governing be able to reach everyone, and that there not be any alternative governing arrangement. A commonwealth excludes the class of people who possess the wit and understanding to govern, *by Elyot's definition of communalty*. By referring to the public as that composite of people that is most general, Elyot sought to define what a properly ordered realm required, which in a simple sense is the hierarchy divined by God. The class of commoners were without order because it excluded the other classes (nobility, gentlefolk, aristocracy) that were required for there to be a proper hierarchy. It is a leap of reasoning, but basically Elyot claimed that order is the inclusion of all people in their diversity and according to their excellence, a condition alien to the idea of the common, and that to take away from this condition the element of excellence would leave behind a state of disorder, a state in which governing is impossible.⁶ This disorder is to the detriment of all since it leads to conflict.

Essentially, Elyot postulated that the common folk cannot be left to themselves; it is ultimately a disservice to them and to the nobility to allow that. In order for all to prosper, the common folk must be guided by those who are especially capable of governing and leading. For there to be order, the commons must be subsumed under the public. A curious suggestion from Elyot's linguistic play is that the common, a word that in English connotes the general, refers to something particular. Although this particularity comes down to meaning something akin to *the masses*, in a political sense this particular meaning is, well, meaningful. To call something common is to label it as unrefined, average, run-of-the-mill. Its generality is realized in its *lack of exceptionality*, and this is a notion of general that Elyot permitted while assigning to the idea of public the possibility of a general governance, meaning one that applies to all.

This is a difficult distinction to maintain in common discourse (see?). If one were to refer to the common good, it would be reasonable to believe that one is referring to something that is to the benefit of all. Sometimes the use of common as an adjective suggests that something is general in the sense that it applies to most, such as "common knowledge," which means something known by most people (especially since it is often used when that common knowledge is violated, such as when a specific person shows a lack of this common knowledge).

Elyot showed awareness of this convolution in meaning, particularly when he expressed that the body which we see as the state must not exclude what he observed as the natural distinctions of all inhabitants of the realm. As he put it, the gifts of grace are unequally granted, not “in common, (as fantastical fools would have all things),”⁷ suggesting a sense of “common” as meaning equal. Inferentially, common means something lacking distinction (failing to incorporate the natural differences). Yet the fact that there are such distinctions makes the idea of the common and the communal mean something particular, a reference to those inhabitants who lack where “gentyl men” do not. The proper way to speak about all of the inhabitants of the realm, common and noble, is by reference to a “publike weal.” To speak of the common is to speak of a condition lacking the natural differences among inhabitants and thus lacking even the possibility of order. In one of the earliest English treatises on good government we see the pejoration of the word common. At the same time, the idea used to replace the political sense of the common, namely, the public, inherits a meaning of “general” in order to insist upon a place in the realm for the nobility (for the un-common).

I have begun my essay with the first pages of this somewhat obscure treatise for two reasons. The first is that obscurity does not entail irrelevance. Many of the ideas to which Elyot appealed—ideas that distinguish between understanding and knowledge, between excellence of wit and ability in craft, between common and public-addressed concepts that would continue to be relevant in the centuries to follow. The second reason is that Elyot, having chosen to compose originally in English rather than Latin, was compelled to distinguish between the idea of the public and the idea of the common as a premise for talking about governing. It was an abuse of language, Elyot thought, that *res publica* was translated as commonweal. Consequently, this essay introduced the idea that the public and the common are importantly different, so much so that it is possible to see the public as an idea that is contrary to though not opposite of the common. The conflict between the public and the common exposed something about the state that makes contemporary calls for reviving the commons from within the state difficult to understand. Elyot introduced a distinction in which the public existed in and for the state while the commons had the potential to exist outside of it, a potential that justified the preference for the public as the idea of the general against the potential particularity of the common. In fact, Elyot divorced the idea of general from the common and insisted on its allegiance to the public *because public includes the nobility in its referent*. The commons had to be destroyed, so to speak, in order that the modern state

could emerge, a destruction that began with language. To control the language in the move from Latin into the vernacular English was a precondition for the kind of control that would shape the state, a control in understanding the conditions of politics. In the modern sense, I would say that the conception of the commons preserved an other, the nobility, but Elyot sought to collapse that distinction through the public, thus putting all, commoner and noble alike, under the order of the state.

There are two movements in Elyot’s conceptual handwringing that are important to contemporary thinking about the state. The first is that the commons are perceived as being out of order and thus of requiring solution, and the solution is the state itself. The problem of the commons is solved by the state through the erasure of the commons, a feature evident in the self-erasing movement of the *secessio plebis* from which Elyot implicitly drew his distinction between *plebs* and *populus*, and thus the public. Even the activity of commoning is subject to the subsuming force of the state, thus putting into question the soundness of any call for a revived modern commons. The second movement is that the commons consist of persons subject to state authority, an authority that is implicitly contrary to the commons, so Elyot insisted upon seeing all persons as part of the *populus* that could properly be considered *the public*. The generality of the public is possible because of the distinctions among members of the *populus*, which is inclusive of all classes. Elyot’s central goal involved strengthening the power of government through a better prepared governor, but in starting with a conceptual distinction about *res publica*, he showed the importance of the state itself; Elyot regarded the aim of government to be the strengthening of the state, a premise with implications on how persons fit into the public.

THE STATE PROBLEM OF THE COMMONS

The modern idea of the commons has been famously and erroneously shaped by the economic framing of individual exploitation traceable to Garret Hardin’s eponymous essay on the tragedy of the commons. The “tragedy” within this economic framing was somewhat remedied by the work of Elinor Ostrom and her research associates, who together provided detailed descriptions of how commons function and in the process introduced the idea of common pool resources.

Hardin proposed that a commons would be overexploited by each to the detriment of all (Hardin, 1968), but Ostrom (1999) showed how people associated with a commons might develop the rules of use through rules-in-use, including sanctions for violation, without a central authority

that seemed necessary in Hardin's framing. The problem for both Hardin and Ostrom concerned resource allocation. The problem, as Elyot framed it, is that the commons operated outside of the state and thus threatened the order that could be generally beneficial. For Elyot, the commons presented a political problem, not simply an economic one. That the modern framing of the commons is primarily viewed as an economic concern (the allocation and use of scarce resources) evinces a political condition that presumes a political solution to the commons. In other words, bringing the practices and people under the authority of the state is a condition for the perception of the commons as an economic issue. Elyot spoke to this solution in presenting the state in terms of the public and against any communal privilege. An appreciation of the problem of the commons from the standpoint of the state, as Elyot perceived it and framed it, offers a different way to conceive of the modern sensibility of the commons, a way that underscores the challenge of facing the commons as a political problem in a world consumed with the public.

The subsumption of the commons under the public that Elyot used as premise to his treatise on leadership in an ordered state is based upon Elyot's reading of the Roman distinction between *plebs* and *populus*. He was likely influenced by Cicero on the question of the *res publica* and the *populus Romanus*, though it is unknown if Elyot based his own distinction on Cicero's *De re publica*. In this work, Cicero defended the Roman state against those who would see it reformed, such as Julius Caesar (though his opponents are cleverly unnamed) and drew an equivalence between the people and the state: "Est igitur, inquit Africanus, res publica res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus." Roughly translated, Cicero has Scipio explain that public affairs are the affairs of the people (*res publica res populi*) and that the people (*populus*) are not just associations of men but rather the association of all brought together by agreement on justice (*iuris consensu*) and mutual welfare (*utilitatis communione*). Cicero thus submitted the idea that the people both constitute and are constituted by the state.

It might seem odd that the *res publica* so forcefully defended by Elyot would be so under the pretense of monarchy (after all, this was a book written for the pleasure of Henry VIII), but one cannot neglect that officially the Roman state remained a "res publica" into Justinian's reign, deep into the Roman Empire.⁸ Elyot's insistence upon a distinction between the common and the public is embedded in his conception of the state, which is monarchical, and Elyot seemed to follow Cicero in conceiving of the public as the people in its whole form, while the commons existed as a separable part of it. This is

a question distinctly different from the modern (economic) concern of the commons; at the center of Elyot's concern is a political question about how the commons fits into the state. The answer, for Elyot, was supported from the standpoint of his interpretation of the Roman tradition that distinguished between the *plebs* and the *populus* only insofar as the *plebs* would eventually become a part of the *res publica*. Roman literature refers to at least four occasions when the *plebs* separated or mutinied (*secessio*) from the state, but it is the final *secessio plebis* that satisfies Elyot's premise. In 287 BC the plebeians seceded to Aventine Hill in protest of excessive debts and land distribution following the war to conquer the Sabines. Quintus Hortensius was appointed dictator to stem the secession, and the negotiation led to the Hortensian Law (*lex Hortensia*), which made *plebiscita*, or laws passed by the Plebeian Council, binding on all citizens. The *secessiones plebis* were aimed primarily at achieving *political equality* between the plebs and the patrician class. By the time of Cicero and later Livy, it could reasonably be considered that the *populus* consisted of the nobility and the commoners, so much so that reference to *populus* was inclusive of the *plebs*. This fact reflected a conflation of these historically important categories, a "loose expression" that ultimately privileged the state order.⁹ It could also be understood as an achievement of what the plebs sought through the various *secessio*, which was political equality so complete that the categories overlap. The *plebs* sought privilege and privilege was the province of *populus*.

Elyot submitted a distinction between the public and the commoners that aligned with the Latin *populus* and *plebs*; he argued that the incorporation of the commoners into the public, and thus into the state, was a step toward order itself. One might favorably interpret this claim as offering political equality, but the history of the commons in Elyot's own country exposes the falsity of such a generous interpretation. But it is an interpretation one can derive from the history of the plebs in the Roman Republic. The story of the *secessio* exercised by the plebs is noteworthy because of how its success eventually rendered its exercise obsolete. A *secessio* dwindled in impact once the wishes and will of the plebs were given the eminence of statute.

Elyot expressed that equality could be achieved through the incorporation of the public, but that the distinctions among the people put a natural condition on this equality. What Elyot considered achievable in the subsumption of the commoners under the public was the potential for order that would bring benefit to all. He plainly stated that sovereignty is not attributable to the multitude, that a single sovereign governor "ought to be in a publike weale," and labeled the idea of popular sovereignty a "monstre with many heedes." This is how he viewed the political inheritance of

democracy, which “in englishhe (was called) the rule of the comminaltie.” Bringing the plebs/commoners under the *res publica*/state is considered *progressive* insofar as it is a move towards order. What could previously be considered the informal exercises of liberty (for the Romans the plebs and the plebiscite and for the commoners the commoning) is incorporated into the order of the state. Rules become laws. This is the pathway to order that Elyot attributed to the state, to the public weal, the *res publica*. The success of the commoners for recognition of their rights and liberties is only sensible to the extent that they relinquish the informality of the commons in favor of the order of the state. Anything short of this is disorder. Following the *lex Hortensia*, a *secessio* would essentially be a mutiny from rather than against power. Such is the condition that Elyot sought in his construction of the public.

There is more to this Roman conception upon which Elyot stood. Justinian’s *Institutes* contributed to the codification of Roman law under his emperorship. It begins with an accounting of the different forms that law can take, including a distinction between a statute as an enactment of the Roman people and the plebiscite as an enactment of plebs, to which Justinian writes, “*Plebs autem a populo eo differt quo species a genere*” (*Institutes*, 1.II.4): The commonality (*plebs*) differ from the people (*populo*) as a species differs from a genus. In other words, the plebs are a component of the people but the people include the patrician class and the senators. Eventually, as Justinian admitted, the statute *lex Hortensia* gave plebiscites the force of statute.

One of the unacknowledged threats to the commons was the expanded relevance of the public and the equality of the unequal implicit in it that made order possible. When the class differences upon which Elyot depended collapsed as a political quality, the species/genus distinction lost relevance. The *public* stood for all, stood for a political equality that offered the opportunity to expand the very notion of equality into the economic sphere, which would eventually raise important questions about private property and control over the means of production, questions that remain relevant even as the capitalist system today has achieved an unprecedented global hegemony. But as for political equality, the rise of the public produced something that Elyot dismissed in his book: *mass democracy*. What distinguishes mass democracy is its elision of the species into the genus, a conflation that strengthens the position of the state and its general focus against the particularity of the commons.

The problem of the commons is its particularity in a world moving toward generality and equality. It is for this reason that the public can be viewed as a concept in tension with the commons: the public absorbs the commonality in the

name of fairness and order. In a way, what the creation of the public does is to make the particularity of the commons irrelevant so that *the general order is common*. This can be thought of as an achievement of political equality. The balance it demands is between the individual and the public, where the individual exists as a particular and differential instance of the public. Simply put, an individual bears all the characteristics of her individuality that distinguish her from all of the other individuals, who together constitute the public. Each individual has a legitimate claim to “the public good,” which bears a more general application than a claim to the commons. The subsumption of the commons into the public is complete once the very idea of a common good is made equivalent to the public good. What remains is the binary difference of private and public, where the former occupies the particular and exclusion and the latter the general and inclusion.

State order preserving the particular in the private influenced the idea of rights and liberties that were once part of commoning. The individual rights articulated by [John Locke](#), which would inspire a revolution across the ocean based on the rhetorical ploy that all men were created equal, were strongly premised on a notion of private property, which would do more to erode the commons than any act of monarchy. Locke reversed the concern, giving privilege to the particularity of the individual against the common. Locke’s theory of property based on labor would seem to support the commoners but, on the contrary, supported the individual and private property rights:

He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. No body can deny but the nourishment is his. I ask then, when did they begin to be his? when he digested? or when he eat? or when he boiled? or when he brought them home? or when he picked them up? and it is plain, if the first gathering made them not his, nothing else could. That labour put a distinction between them and common: that added something to them more than nature, the common mother of all, had done; and so they became his private right. (2nd Treatise, 5.28)

Locke transformed the activity of the commons into the genesis of private property, which he presented as a privilege and right of the individual. What was once commoning was reframed by the particularity of the individual, a shift from the negotiated sharing of the commons to the wealth production of private property. Who was once a commoner became an individual.¹⁰

The modern concern with the commons is how to bring into the present the things that were valuable from the past, the things that have been somehow lost but that might point to a better way of sharing the world given difference, the primary question of politics (Arendt, 2009). The commons is foremost about sharing under accepted conditions of difference, which is why the Hardin framework is so out of touch with the truth of the practice. What Hardin applied was the logic of capitalism and free enterprise, an idea of freedom so enamored with the individual and justice that it can only see destruction in what is not a completely formal arrangement of exchange. The question of the commons cannot be answered from this standpoint, and it is doubtful that it can be answered where the logic of the public prevails. It is in the logic of the public, a political construction that prioritizes a political equality so complete as to erase the particularities of a place, that the achievements of modern order are founded. If capitalism and private property have eroded the commons from the economic side, the state and the public did so from the political side first. Sharing the world where each of us is a part of the public leads to a position where each of us expects equal treatment. It is such a fine value to uphold—equal treatment—where the law is concerned most of all, but this kind of equality is achieved at the loss of practices that were built explicitly on difference and particularity. Our sense of freedom is entwined with an individualism and capitalist logic that pushes the commons into a fringe, nostalgic idea; regularity based on the general replaces the particularity of the case-by-case concern.¹¹ The liberties and rights that shaped the modern state are based on a universal application to each individual in the abstract. This is what we have lost most of all: a sense of rights that incorporates the commons, a commons right. What we have put in its place is a sense of rights based on the public, on individual rights within the “ordered realm,” rights that give us a different kind of claim on what is produced rather than rights to produce. This rearrangement has happened without much change in the basic arrangement of the commons, an arrangement of political subjectivity.

A typical misunderstanding about the commons is that it was an unmanaged free-for-all, which is the misconception that Hardin applied to it. But the commons were not an “unowned” space where people exploited the resources for their own private benefit. Those who used the commons were landless in the property sense, but the land they grazed, cut, and planted (among other uses) was sometimes the property of a lord. There was a belief in the right of the practice that entailed a right to access and use, and it was a reciprocal right because the use entailed a production that sustained without exploiting.

Above all, a commons is a community, and communities are not inclusive but are premised on exclusion. Historical commons functioned through exclusion. But they were still deeply felt as a matter of rights, as a matter of freedom. The freedom of the commons was a freedom of function: freedom to collect timber (estover) or peat and turf (turbary) for heating, freedom to graze pigs (pannage) or cattle (agistment) for sustenance, and the freedom to forage for nuts and fruit. It was also a freedom from, a freedom from the encroachment of the state.

The great irony of preserving the commons and the commoners was that the goal of liberty was achieved by and through the state, from the *lex Hortensia* to the Charter of the Forest. It was through the actions and acts of the primary threat to the political commons that it was sought to be preserved, which is perhaps why it was not. The impetus for the Magna Carta was a baronial revolt against King John, and the ideals expressed in it benefited primarily those who had property. What the Magna Carta was for the nobility, the Charter of the Forest was for the peasants and landless. The Charter of the Forest expressed the values imbued in the Magna Carta and opposed the expansion of royal forest, which had grown under the Norman enclosure. It protected commoners from the harsh punishments levied against those who were accused of appropriating the forest resources (the forest during this time referred to an enclosed land of royal assets). But it was limited in its protection: Instead of death or maiming for killing royal deer, a person would be subject to a fine, and if that person had nothing to give, then the person would be imprisoned for a year and a day, and after the year and a day, the person would again be given the chance to pay, but failing to do so would mean exile from England.¹² The Charter of the Forest established reciprocal restrictions: the crown would relinquish some of its harsh punishments and some of the forests established in the time between Henry II and Henry III (essentially during the reigns of Richard and John), and the people of the realm would make use of the land and its resources within the restrictions expressed.

Hardin (1968, 1244) remarked that “ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons,” a remark of such plainness that it has the aura of truth, but the plainness conceals the conceptual error in the remark. Hardin proposes a freedom in the commons to be a belief among “men [who] rush, each pursuing his own best interest.” This individualist premise, however, contradicts a belief in the freedom of the commons. In effect, Hardin speaks not of the commons but of its antithesis. His position would become clearer in later writings and interviews. He saw the problem as a matter

of exclusion. In his 1974 article “Lifeboat Ethics: The Case Against Helping the Poor,” Hardin concluded (Hardin, 1974): “Without a true world government to control reproduction and the use of available resources, the sharing ethic of the spaceship is impossible. For the foreseeable future, our survival demands that we govern our actions by the ethics of a lifeboat, harsh though they may be. Posterity will be satisfied with nothing less.” Consistent to this idea, Hardin was strongly in favor of restricting immigration and against a multiethnic society (from an interview in *The Social Contract* with Craig Straub in 1997 (Straub, 2019, p. 32): “But I think there are other reasons for restricting immigration that are more powerful. My position is that this idea of a multiethnic society is a disaster. That’s what we’ve got in Central Europe, and in Central Africa. A multiethnic society is insanity. I think we should restrict immigration for that reason.”). What comes across from Hardin’s writings is that he favored a society in which there were controls placed on what each of us was permitted to do; contrary to the free-for-all individualism that destroys the commons, what he imagined necessary is an authority that manages it. In a strange, perverse way Hardin pointed to a defense of the commons where those who are in the particular place and time are granted the privilege of determining how to live then and there, as opposed to the universalist pretensions of a world where all, regardless of particularity, have claim to determining how to live for all. This is the grand tension of the commons, which seeks to reconcile localism with fairness. Bollier (2014, p. 157) explained the tension as avoiding a romanticization of the local in solving the problems created by global markets since “some collective-action problems can only be solved with appropriate high-level policies or infrastructures [such that] [c]entralized bodies are often needed to assure a rough equality of opportunity and resources, or to oversee redistributions of wealth.”¹³

What separates Bollier from Hardin is that the latter has no faith in the feasibility of such a centralized body.¹⁴ Hardin’s warning concerned a different way of thinking about the commons, a way that derived from the establishment of the public in political consciousness. The tragedy of the commons was produced by a sense of a global commons, a sense of commonality that might be thought of as cosmopolitan. For this is where the idea of the commons has proceeded, from the particular activities of grazing and foraging to a world in which billions share the production of modern amenities through common resources. Some conceptions of the commons call for consideration of commonality that exceeds reasonable abilities to consider time and space and that exceeds the political quality of the encounter. The consequence of this reasonable limitation

is the institution of the state. This conceptual circularity, in which the commons resists the order of the state only to find itself in need of the centralizing power of it, is a perplexing characteristic of the modern commons.

THE COMMON PROBLEM OF THE STATE

How necessary is this centralized body? The answer depends upon what the key objectives are. If the question concerns fairness among all concerned, then the centralized body is relevant to the extent of the body of concern, an extent that today can reach global proportions. This kind of thinking extends the conception of the commons, but it does so at the expense of the particularity that sustained the historic commons. The modern question of the commons requires an answer that addresses the state, specifically whether there is any longer an outside from the state, of whether a *secessio* is even conceivable, as well as how far extended the sphere of the state now is.

The development of the public proposed by Elyot signified a change from the Roman conception of the *res publica* as the affairs or the property of the people (*populus*) to the idea of the people as both constituting and being constituted by the state, of the people being the public and being defined as and by the public. One can easily surmise the importance of this from the standpoint of modern representative democracy (as the representative represents the public and not any specific individual or individuals) but also in the development of the abstract, impersonal state, an idea alien to the Romans (Brunt, 1988).¹⁵ The state is no longer the affairs of the people but is the public, independent of individuals who compose it insofar as the public is inclusive of all who are subject of and by the state. What once might have been a particular common is now a general common, a concern of all, enabling the universal idea of rights and privilege that renders the particular commons irrelevant. Any particularity is subject to subsumption under the mechanism of rules that gives form and boundary to the otherwise abstract, impersonal state. It is the flexibility of the public to be inclusive that degrades the force of the commons, an inclusivity achieved through the expansion of the state as the affairs of all. An important development occurred alongside this framing of the public, a development that Elyot likely did not anticipate, which is the idea of a republic as a democracy in what James Madison would call an extended sphere.¹⁶ The sphere is extended in order to ensure adequate authority of the state against the possibility of both factional interests and majority tyranny. This extended sphere, in which the public consumes the general interests, constructs a

“we” that is conceived of as fully inclusive, the we of the multitude. The modern idea of the commons extends along with the political sphere itself; the extended sphere that generates the multitude in all its diversity transforms the meaning of common. Consequently, the modern idea of the commonwealth refers to those things which we all share in the material world, “the air, the water, the fruits of the soil, and all nature’s bounty—which in classic European political texts is often claimed to be the inheritance of humanity as a whole, to be shared together” as well as the immaterial constructs upon which human relations are based, the “knowledges, languages, codes, information, affects, and so forth” (Hardt & Negri, 2009, p. vii). The commons has come to refer to universally shared aspects of the political and economic sphere and as such is referred to in the context of the state. Today, the commons seems at odds with the state but also in immediate and persistent need of it.

Given the history of the four-century project to build the modern state, a project conceived of and directed by nobody, what are we to make of the current call for rebuilding the commons? How can we best understand this call, this movement? Is it a reversion, or is it a call for something new? Are we hearing a regression or a progression, and what might be the difference?

If it is a progression, it is conceivable only as being something that the historic commons are not, a commons of the globe, a commons that embraces the general at the expense of erasing what the commons offered at the nascence of the state. As the idea of the commons developed between the Roman state and the modern one, the particularities upon which every commons is made through communing were erased by the rise of an impersonal rule-based order that universalizes the benefits of commonality. As such, we should be prepared to embrace the solutionism that is anathema to the historic commons, the solutionism of the modern administrative state (Heidelberg, 2017).

If it is a regression, we must attend to what it is we are regressing from and how far into the regression we are comfortable going. For the regression will happen along with and to the extent of an embrace of anarchy in the modern sense of anti-statism. What modern calls for the commons commonly embrace is some space or role for a state to handle rules and legislation permitting policies to ensure equity or redistribution, but a regressive call for the commons must reject this, must reject any involuntary hierarchical authority in the name of simple liberty. It is to this libertarian ethos that a regressive call for the commons tends, and in this regression attention must be granted to the generalized frameworks of any ideology. We

must acknowledge that realizing a commons demands an acceptance of particularities that might contradict the universalist values of liberalism. It is likely that what is good for the public is not good for the common and that a common good is something viewed as unfair through the lens of the public.

A modern conception of the commons must come to terms with the inequality it implies, an inequality of place and time and opportunity, what the classical thinkers would have thought of as the fates. The apparatus of the state is built upon a progressive movement of a universal public defining the people, which is a pursuit of universal treatment and rights under the pretense of fairness. This is the heart of the liberal tradition, and a movement toward the commons challenges this very premise. Despite the laudatory treatment of documents like the Charter of the Forest or the *lex Hortensia*, these documents did not strengthen the commons and the commonality but rather ushered their destruction through the order of the state, through Organization. By Organization, I mean a complete and total form of order that moves toward the universal through the general and against the particular. The state does not see particularity well. Instead it seeks to convert that particular into a universal, often through standardization and legibility (Scott, 1998). What we witness in the rise of the public is a destruction of the common by employment of scale: the public makes general and universal what was particular to the common so that the common becomes available to all, to the public. This is the context of rights, particularly the property rights upon which Lockean rights are founded. The control of the commons shifts to the abstract, impersonal state (remember, the Romans had no conception of an impersonal state; the state was the people) and the abstract state functions not on the particular but on the universal. This is how we arrive at a framework that views the commons in terms of unbounded (air, water) and bounded but universally accessible (finance, food) territories. The cult of control is too attractive to consider a return to the commons of the particular, and a commons of the universal is a testament to the importance of a central authority, of a state, of the public against the particularities of a community.

Much will be lost in a treatment of the commons that mirrors the treatment given to the people or the public. The commons must remain defined by what it is not: it is not private property, it is not the state, it is not universal, it is not standard. In the commons we retain some possibility of thinking outside of the state, as profoundly difficult as that now is. But at the very least we can envision what possibilities exist outside of the state as we contemplate the commons.

The public and the commons are incommensurable concepts. The moment attention turns to the public, to the Nobody, the particulars and specifics that sustain the commons are erased. The commons succeeds in bringing order by and through the particular interactions of agents in a time and space; on the contrary, the idea of the public removes the particulars of agents in time and space and replaces it with standards, measurement, legibility and like features that sustain the state. The conditions are made by the state. This is not a natural or even logical condition; it is a political construction in which the *populus*, the people, are made through the state itself.

NOTES

- 1 *The Book named the Governour*, sometimes titled *The Book of the Governour*, is available in the public domain. The source I used is available through the Renaissance Editions from the University of Oregon at <https://www.luminarium.org/renaissance-editions/gov/gov1.htm>.
- 2 Elyot says: “publike toke his begynning of people: whiche in latin is Populus, in whiche worde is conteyned all the inhabitantes of a realme or cite, of what astate condition so euer they be.”
- 3 Elyot says, after establishing a distinction between the Res publica and the Res plebeia: “if there shuld be a commune weale, either the comuners only must be wealthy, and the gentil and noble men neddy and miserable, orels excluding gentilitie, al men must be one degre and sort, and a new name prouided.”
- 4 Elyot says: “...they whiche excelle other in this influence of understandyng, and do employe it to the detaynyng of other within the boundes of reason, and shewe them how to prouyde for theyr necessarye luyng; such oughte to be set to a more highe place than the residue where they may se and also be sene; that by the beames of theyr excellent witte, shewed throughe the glasse of auctorite, other inferiour understandyng may be directed to the way of vertue and commodious luyng.”
- 5 Elyot says: “And therefore hit appereth that god giveth nat to euery man like gyftes of grace or of nature but to some more, some lesse as it liveth his divine maiestie. Ne they be nat in commune, (as fantasticall foles wolde haue all things), nor one man hath nat al vertues and good qualities.”
- 6 Elyot says: “More ouer take away ordre from all thynges what shulde than remayne? Certes nothyng finally, except some man wolde imagine eftsones Chaos: whiche of some is expounde a confuse mixture. Also where there is any lacke of ordre needs must be perpetuall conflicte...”
- 7 See n. 4.
- 8 Justinian referred to “nostram rem publicam” when referring to the government. See *Codex Iustitiani*, 7.5.1.
- 9 J.L. Strachan-Davidson raised this point about Livy and Cicero in his account of how plebeian privilege grew out of tradition or precedent that eventually became formalized (from de facto to de jure). He noted that the distinctions of the past were eventually conflated, such as when the word *lex* would be used for *plebsciturum* or *populus for plebs* (Strachan-Davidson, 1886, p. 212).
- 10 There is a linguistic importance here that deserves footnote, which is simply that a commoner is inseparable from the commoning and the commons, but an individual is, as the word implies, an indivisible agent, functioning irrespective of the community.
- 11 This condition is critical to the development of bureaucracy, as Weber explained. See *Economy and Society*, particularly Chapter XI.
- 12 “No man from henceforth shall lose either life or member for the killing of our deer; but if any man be taken and convicted


for the taking of our venison, he shall make a grievous fie, if he has anything whereof; and if he has nothing to lose, he shall be imprisoned a year and a day; and after the year and day expired, if he can find sufficient sureties, he shall be delivered; and if not, he shall abjure the realm of England.” Charter of the Forest, 10.

- 13 Bollier, D. 2014. *Think Like a Commoner*. New Society Publishers, British Columbia, Canada. p. 157.
- 14 The feasibility of such a central authority is a perpetual question surrounding the modern state. Often it is contended that national sovereignty conflicts with such centralization, but the possibility of centralization is shown in, e.g., the European Union (the durability of these arrangements is another question, e.g. Brexit). But it is also a concern of authority, hence the problems of the International Criminal Court, and more recently the concerns raised about a global wealth tax.
- 15 “Neither Greeks nor Romans conceived the state as an impersonal entity which could be sharply contrasted with the individual citizen. Aristotle represented what they all thought in describing it as a kind of partnership between the citizens or free men (Pol. 1252a1, 1279a21).” (p. 299).
- 16 The most famous articulation of this idea is found in *Federalist no. 10*: “Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.”

COMPETING INTERESTS

The author has no competing interests to declare.

AUTHOR AFFILIATIONS

Roy L. Heidelberg  orcid.org/0000-0001-9893-3420
Louisiana State University, Louisiana, US

REFERENCES

- Arendt, H. (2009). Introduction Into Politics. In *The Promise of Politics* (pp. 93–200). New York: Schocken.
- Bollier, D. (2014). *Think Like a Commoner*. British Columbia, Canada: New Society Publishers.
- Bollier, D., & Helfrich, S. (2019). *Free, Fair, and Alive: the insurgent power of the commons*. Gabriola Island, Canada: New Society Publishers.
- Brunt, P. A. (1988). *Libertas* in the Republic. In *The Fall of the Roman Republic and related essays* (pp. 281–350). Oxford: Oxford University Press.
- Elyot, S. T. (1531). *The Book named the Governour*. New York: E.P. Dutton & Co.
- Hardin, G. (1968). The Tragedy of the Commons. *Science*, 162(3859), 1243–1248. Retrieved from <http://www.jstor.org/stable/1724745>. DOI: <https://doi.org/10.1126/science.162.3859.1243>
- Hardin, G. (1974). Lifeboat Ethics: the case against helping the poor. *Psychology Today*, 8, 38–43.

- Hardt, M., & Negri, A.** (2009). *Commonwealth*. Cambridge, MA: The Belknap Press of Harvard University Press.
- Heidelberg, R.** (2017). Public administration and the logic of resolution. *Critical Policy Studies*, 11(3), 272–290. DOI: <https://doi.org/10.1080/19460171.2016.1147364>
- Locke, J.** (2019/1690). *Two Treatises of Government* (P. Laslett Ed.). Cambridge: Cambridge University Press.
- Ostrom, E.** (1999). Coping with Tragedies of the Commons. *Annual Review of Political Science*, 2(1), 493–535. Retrieved from <http://arjournals.annualreviews.org/doi/abs/10.1146%2Fannurev.polisci.2.1.493>. DOI: <https://doi.org/10.1146/annurev.polisci.2.1.493>
- Scott, J. C.** (1998). *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven: Yale University Press.
- Strachan-Davidson, J. L.** (1886). The Growth of Plebeian Privilege at Rome. *The English Historical Review*, I(II), 209–217. DOI: <https://doi.org/10.1093/ehr/I.II.209>
- Straub, C.** (2019). Population, ‘Lifeboat Ethics,’ and Human Nature: an interview with Garrett Hardin. *The Social Contract*, Spring, 24–33.
- Weber, M.** (2013). *Economy and Society: An outline of interpretive sociology* (G. Roth & C. Wittich Eds.). Los Angeles, CA: University of California Press.

TO CITE THIS ARTICLE:

Heidelberg, R. L. (2024). The Incompatibility of the Commons and the Public. *International Journal of the Commons*, 18(1), pp. 177–187. DOI: <https://doi.org/10.5334/ijc.1236>

Submitted: 08 November 2022

Accepted: 17 January 2024

Published: 29 February 2024

COPYRIGHT:

© 2024 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.

International Journal of the Commons is a peer-reviewed open access journal published by Ubiquity Press.