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LAW AND THE SOCIETY: A CRITICAL COMPARATIVE ANALYSIS OF THE PHILOSOPHY OF THOMAS HOBBS AND JEAN-JACQUES ROUSSEAU ON THE STATE OF NATURE AND THE SOCIAL CONTRACT THEORY. IS SOCIETY A NATURAL CREATION OR AN ARTIFICIAL INVENTION?- Lisang Nyathi¹**ABSTRACT**

For as long as human societies and the law exist, the sociology of law as a science that aims to explicate the relationship between society, law, and other social factors will forever be relevant in the legal and sociological disciplines. This is certainly not the only, first or last paper to investigate the genesis of society and its relationship with the law. In fact, numerous studies have been carried out over the past years until today. However, this paper is among the few comparative studies that amalgamate sociology, law, and philosophy to study Thomas Hobbes and Jean-Jacques Rosseau on the State of nature and the Social contract theories. The objective is not to ingeminate how different their comprehension of human nature, society, and law is but to critically analyze their philosophy. Therefore, this paper will thoroughly evaluate their arguments individually and by comparison, appreciate their strengths and criticize their weaknesses while proposing ideas that seem coherent within the understanding of the author. The main ambit of this study is to conclude by demonstrating the meaning of society as depicted in Hobbes and Rosseau. Thus, in the end, the question of whether society is natural or artificial will be answered. However, since this is not a story about the above philosophers and their theories but an analysis, the author will pursue a different understanding of society contrary to that pursued by Hobbes and Rosseau. Their views about society cannot be accepted passively, they must and can be challenged where they do not seem to present a genuine picture of human beings. Rhetoric questions will be employed throughout this paper, they are intended to serve as a technique of analysis and as a tool to

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encourage a wide room for further critical thinking beyond what has been analyzed in this paper.

Keywords: Law and Society, State of nature, Social contract, Thomas Hobbes, Jean Jacques Rosseau

INTRODUCTION

The genesis of society, its development, and its relevance to human nature has been subject to a lot of studies that have resulted in numerous theories. These theories have been propounded by a lot of philosophers, sociologists, scholars, experts, and other people from different fields. They are interested in exploring how and why society emerged. Consequently, there is no one agreed meaning of this concept and how it relates to the existence of human beings. For some, society is artificial [absolutely a human product], for others, it is a concept inherently interconnected with human existence such that to disassociate it from human nature appears like absolute madness. African philosophy of humanity would not entertain the concept of society as artificial. This is because the African philosophy of ubuntu (humanity) teaches that “I am because we are” and that this reflects the core of society. This view is similar to the Aristotelian comprehension of humans as “social animals”. However, in the contemporary world, it is not surprising that there are conflicting views, this is because there are many factors that influence one’s understanding of society. This paper seeks to determine how society has been explained through the philosophy of Thomas Hobbes and Rosseau and to explore the relevance of law in society.

To answer these questions, due regard will be given to the notions of human nature and social contract theories as propounded forward by the above philosophers. The concept of human nature and social contract is the basis through which Hobbes and Rosseau explain their comprehension of society and its gist. Although both Hobbes and Rosseau employ the use of human nature and social contract theory, their philosophy is different. Thomas Hobbes has a pessimistic view of humans in the state of nature, whereas for Rosseau man is naturally good, he is only corrupted in the process of the development of society. Similarly, their social contracts are inspired by different circumstances and are intended to remedy different problems. For Hobbes, it is an escape from the chaotic state of nature to a new artificial man-

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made state. On the other hand, for Rosseau, the social contract is intended to determine whether there can be a justified political authority. Thus, simply put forward the social contract model, as used by Hobbes and Rosseau is a tool to explain the foundations of human society.

It is prudent to take into careful consideration that the differences reflected in Hobbes and Rosseau are inspired by many factors that influenced their life and their general worldview. However, despite all the differences that their philosophy embodies, there are indeed a few common grounds, both explicit and implicit. Beyond their conflicting views, there also are lessons worth grasping about the concept of society. Consequently, it will be realized that it is a notion that is at the core of human existence regardless of the path they take to arrive at the definition of the term “society” and how they substantially decide to position it within the nature of mankind. The most important stance that this paper is interested in, is the true meaning of society. To this end, the main question of this work or study is to consider whether one can conceive of society as something invented by humans or it is a concept embedded in and within human nature. By exploring Hobbes and Rosseau, it is possible to understand how society is positioned and to track its development.

However, the study of Hobbes and Rosseau in this paper does not entail or imply that they are the only philosophers whose theories have been able to capture and master the concept of society. This paper finds their theories to be inconsistent in many ways, such that a critical eye will be kept and maintained at each ambiguous argument they embrace. The study of society is not only relevant from a historical point of view, but it is even more vital in the contemporary world of new developments. There may be different views associated with this concept in general but how one chooses to consider and position society in their life determines their interaction with others in the society. In the process of exploring these philosophers and their thoughts, the first question that one might think of, is, should we consider a social contract as a definitive gesture marking the emergence of society? Or should we think of the very existence of mankind as symbolizing the presence of society in a continuous process of development? The following essay attempts to explore and analyze the philosophy of Thomas Hobbes and Jean-Jacques Rosseau on the State of Nature and the Social Contract theories to evaluate the concept of society.

THOMAS HOBBS AND THE STATE OF NATURE

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Thomas Hobbes (1588-1679) is commonly considered the first philosopher to mark the emergence of modern political thought. Compared to Rousseau, (who is yet to be examined as the discussion unfolds), Hobbes' philosophy and political ideas are radically distinct. His vision of the law, society, and generally human politics stems from a gloomy picture of the human condition in the state of nature. Some modern scholars refer to this idea, the state of nature as a hypothetical condition of human beings (Steele, 1993 for instance). Indeed, I concur with this notion given the many inconsistencies associated with this theory. Hence, this paper contends that Hobbes' philosophy on human nature as great as it is does not wholly constitute a genuine portrayal of human beings and their interaction with one another.

According to Thomas Hobbes, the natural state of man is one where people live in "continual fear and danger of violent death and life itself is solitary, poor, nasty, brutish and short." (Hobbes, 1651). This is because Hobbes contends that in the natural state, man has the "Right of Nature". The right of nature (*ius Omnia*) refers to absolute freedom or liberty which everyone has, to use his power as he wants for the preservation of his own life. It follows from this portrayal that according to his philosophy, all men are equal. However, this concept of equality is different from the modern understanding, his comprehension of equality is very peculiar and needs to be stressed. For Hobbes man is bestowed with equal capacities for thinking and reasoning and in addition, equal strength thus man is moved by whatever he wants for survival and preservation no matter what it takes.

Given this, it is not astonishing that Hobbes contends that the natural equality of all men leads to a natural state of war against all. Hobbes argues that "from equality proceeds diffidence... and therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies..." and eventually this results in the destruction of lives. This is because in this state man is selfish, thinking only of himself and since he has the liberty to do so, which refers to the absence of external impediments, he is only interested in his desires. Following this, it is conspicuously visible that Hobbes does not imagine a human being in this state, as compassionate towards others. This picture given by Hobbes is very difficult to get along with, without criticizing its flaws. What about conscience, which is inherent in every human being? Did he ever thoroughly and fairly consider the inner nature of humans? Perhaps, Hobbes would have quickly answered this question by simply propounding that, in this state of nature there is no sense of morality, right or wrong, just, or unjust. This argument which, in effect, he embraced in his philosophy does not present a genuine picture

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of humanity. It is true that man is selfish by nature, but Hobbes overemphasized this point and painted a completely different picture. He gives no attention to the fact that every human being is born with an inherent feeling of humanity toward others, whether they want to recognize it or not. Therefore, it cannot be seriously argued that humans are born strangers to the idea of just, unjust, and morality.

According to S. Coyle (2014), analyzing the above portrayal by Hobbes, justice, and injustice (and other moral values) is "to be understood as artificial products of social convention." However, similarly, Coyle realizes that this would imply that they are established by law, not something intrinsic to the human mind or body. Thus, it can be determined that viewing human beings from a Hobbesian perspective, shows that in the state of nature, mankind had no moral values or any sense of what is right, therefore morality is only a concept that exists externally from human nature. This is what precisely the philosophy of Hobbes implies, but this is not a compelling perspective, such that it can be accepted free of criticism. How is it possible that man can be driven by selfish desires of wanting to obtain all that he needs, but at the same time not feel a sense of morality? If in the state of nature, man can share a selfish desire then he is also capable of intrinsically understanding, within his nature the ideas of what is right for him, which inevitably involves one's interaction with others. Therefore, I argue that all human beings are born aware of the notions of justice and morality, the fact that they are not acting with morality towards each other does not mean that it is something extrinsic from their nature.

Needless to say, in such a state of autonomous individuals as depicted by Hobbes, it is impossible to have peace, hence it will always be "war against all". Hobbes further posits that this state of war is lawless and with no common power. Consequently, fear of losing one's life in the state of nature compels man into forming a social and political life. Thus, in the natural state, fear and continual insecurity urge rational natural men to agree and surrender their liberties, the right of nature, and by mutual agreement appoint a ruler over them.

This is what the next section of this paper aims to explore. But at this point, it can already be determined how Hobbes considers society, in the state of nature we cannot talk about this notion because it is a state of egocentric individuals, driven by desires that appeal individually, and no common ground, except that everyone has an equal right to all. The question we now seek to answer is, what is Society and its relationship to the Law? For now,

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and in so far as this paper has unfolded, a lesson can be drawn from Hobbes's discourse, that society has to do with the coming together of individuals, to share a common ground. Even though this notion is not unheard of in the contemporary world, how Hobbes formulates his argument differs significantly not merely from the ideas of Locke and Rosseau but also other modern scholars. The problem is that the Hobbesian concept of society raises controversial questions like these: do we exit the natural state so that we can find society? Is it not something intrinsic to human nature or it is something that humans create or invent? We may also ask, in his theory does Hobbes demarcate the line between the meaning of peace, unity, and society? ²

Law, Society, and the Social Contract.

The first remark that can be asserted from the onset is that Hobbes does not present man as a social being. Society is not something man knows in his nature, and so are rules, and the law, (except for the Law of Nature). However, as he argues mankind comes to the idea of society and rules because the natural condition forces him towards this end. One analysis devoted to this view once propounded that the conditions in the natural state provide an escape and salvation opportunity to man. This is Hobbes' social contract theory, he says that due to the chaotic natural state man agrees with others to subject themselves to the will of the sovereign, the Leviathan. Each man transfers his natural rights to the sovereign in exchange for protection and peace. Thus, the social contract is a mechanism of survival, an instrument to preserve life from destruction by others. It can also at the same time be interpreted as a key to lock the state of nature and enter civil society.

However, it is a paradox that the same man whom Hobbes described as solitary is now willing to cooperate and live together with others. It might seem as if this paper does not appreciate the philosophy of Hobbes, but such a conclusion would not be true. Nevertheless, this paper is prepared to question every piece of argument that does not provide a convincing explanation. Therefore, again another question can be posed; How can a man naturally asocial as depicted by Hobbes ever desire a social life? Analyzing his philosophy, two main

²*In this paragraph, I ask if Hobbes distinguishes the meaning of peace from that of society, which is important from my perspective. I vehemently argue that though his philosophy intends to suggest that the natural state was left for a new man-made artificial state, this can be interpreted differently: Society was not invented, it was discovered, it has been part and parcel of mankind but only became evident at the time they decided to unite. This is not what Hobbes teaches but this is how I choose to accommodate his philosophy since I cannot entertain the idea that society is an artificial creation.*

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justifications may be drawn that better explain this sudden plot twist, from a brutish and chaotic nature to a desire for peace. He explains,

"The passions that incline men to peace, are fear of death; the desire of such things as necessary to commodious living; and a hope by their industry to obtain them. And reason suggested articles of peace upon which men may be drawn to agreement. These articles, are they, which otherwise are called the Laws of Nature..."

Fear drives men out of their natural state and because they are rational beings, they can comprehend that the only optimal solution out of this natural state is the need to unite with others. According to Daniel M Farrell, "here, of course, we have the core of Hobbes' great insight into the necessities of social life." Social life becomes the only means to escape the evils of the natural condition. Subsequently, men give up their unconstrained rights and liberties to the sovereign by a collective agreement, that is the social contract. Each person renounces their "Right of nature" and transfers it to the sovereign ruler. While this paper does not seek to go into detail on the features of this Hobbesian political idea, it is sufficient to say the following:

The sovereign is not a natural man or a human being, it is portrayed in the form of an office with absolute power as the most salient feature. Hobbes described this power through the imagery of the Leviathan. According to him, the Leviathan is the absolute power of the sovereign ultimately justified by the consent of the governed who agree to obey it in exchange for a guarantee of peace and security. It is also interesting that this political thought depicts the power of the sovereign as unconstrained, because once each renounces their rights, they cannot revoke them. Accordingly, Hobbes' political idea is centred on absolutism, and this is one of the many pieces of his philosophy that have attracted a lot of scholarly criticism. For instance, Sharon A Lloyd argued that Hobbes "is infamous for having used the social contract method to arrive at the astonishing conclusion that we ought to submit to the authority of an absolute-undivided and unlimited-sovereign power". For Hobbes to have peace entails that there must be absolute political obedience from those governed. A similar argument is found in an article by Mathew Shea in his analysis of Hobbes's theory. He wrote that "The Leviathan ...shows a massive monarchical figure made up of the teaming subjects that have willingly submitted to his rule to keep the peace." It can be said that for Hobbes a social contract, once it is formed through the coming together of

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individuals, requires enforcement by a powerful authority, the sovereign. This gives an insight into the interplay between society, law, and politics.

Evaluating the meaning of Society as depicted by Hobbes.

Hobbes' philosophy and political thought establish an important distinction that becomes a definitive expression of what he sees as constituting a society. He remarks and stresses the demarcation between the state of nature and civil society. The state of nature was the condition upon which the idea of the modern state or civil society was constructed (.....). Therefore, critically evaluating the philosophy of Hobbes one can indisputably argue that for Hobbes civil society emerged as a tool and a mechanism to eliminate the state of nature because it was unbearable. Therefore, the society presented from this lens shows beyond any iota of doubt that it is an artificial state of man representing a compromise between individuals who by nature must be unconstrained in their conduct. What Hobbes' philosophy teaches is that civil society is an invention of mankind that seeks to establish peace. On the other hand, the rules of the sovereign are necessary to establish and enforce social order. To elucidate this point, Hobbes argues as follows:

“I Authorize and give up my Right in Governing myself to this artificial Man, or this assembly of men, or community, under this condition, that thou give up thy Right to him, and Authorize all actions in like manner”. (Hobbes, 1989, p. 87).

The wording of this extract is very important, not only does it depict the character of what is formed (society) but it also underlines the foundation of the result (society), that is through consent. The coming together of men and the giving up of their right to self-governance is on its own symbolic. It reflects and marks a formal transition from one state to another and in this case, from the original state to that which is invented by mankind, the society. The ambit of this paper as already established is not to praise or rubbish the ideas of these philosophers such as Hobbes but to bring their inconsistencies into the light. Thus, it is essential to reflect on these questions: Does this exit from the state of nature and entry into a new community constitute a denial of nature by mankind? Can men exit their original state such that they create a better condition for themselves, by what capacity? Hobbes' philosophy is very provocative from all spheres and walks of life (i.e religious, social, ethical, and philosophical). However, for this analysis, it is now sufficient to put an end to a further

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analysis of Hobbes at this point otherwise the discussion and the questions it sparks will run into volumes of pages.

ROSSEAU ON THE STATE OF NATURE AND THE EVOLUTION OF SOCIETY

Rousseau generally has a different philosophical explanation of anthropology, his views differ significantly from those of Thomas Hobbes. However, he is not the only philosopher whose views conflicted with the philosophy of Hobbes so did John Locke. The picture of the state of nature and human nature found in Rousseau is the opposite of the portrayal embraced by Hobbes. According to Rousseau in the state of nature, man is good, totally free, and a stranger to war and social connection. In this state, Rousseau sees man as living in true freedom whereas for Hobbes fear of death is the most salient feature.

However, it is not surprising that Rousseau argues for the presence of freedom in the state of nature because for him man is not a beast. According to Rousseau “man is naturally peaceful and timid, at the least danger, his first reaction is to flee...” (2002:417). Therefore, violence and war are not found in the state of nature. This is a very important distinction because if violence and fear are unknown in the original human condition to encounter them in a civilized society shows that for Rousseau society is not something desirable.

Rousseau’s Discourse on the Origin of Inequality portrays man as content and morally innocent in this solitary state. This is because of self-love (amour de soi), which denotes a pure feeling about good things because a natural man lives only for himself. He only becomes corrupt and evil through a gradual process of the formation of society. Thomas Hobbes saw the formation of society as a means to end the chaos in the state of nature, but Rousseau depicts the evolution of society as the genesis of inequality and the origin of what man in the Hobbesian theory escapes from. Bertram C (2020) argues that “Rousseau repeatedly claims that a single idea is at the centre of his worldview, namely, that human beings are good but rendered corrupt by society”. Thus, for Rousseau, all the atrocities happening today could only be blamed on the society which changed human nature.

Although Rousseau praised the natural state for peace, he equally acknowledged that it is not a static condition, people started to interact but with no premeditated intention. The problem began as human societies started to emerge. This means that as people formed social institutions, they developed devil traits (i.e., greed and selfishness). Among these social

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institutions, Rousseau discusses private property in length and with absolute dislike. In the state of nature, there is no question of property, but as private property emerged, it imposed injustice that called for an organized society to protect lives and one's property.

It is interesting how Rousseau was devoted to demonstrating the negative impact of the emergence of society. According to him with the advent of society, there was a new driver of human action: amour propre (Corey M, 2021).

Rousseau defined amour propre as:

“...always comparing self with others, is never satisfied and can never be; for this feeling which prefers ourselves to others, requires that they should prefer us to themselves, which is impossible”

Thus, for Rousseau, amour propre resulted from people living in close proximity, yet in the state of nature man only cared about himself, since he was a solitary being though not egocentric (sentiment of existence³). Hence it can be deduced that with the advent of society, man began to change his desires because the environment was now different. For Rousseau, natural inequalities take centre stage in this new social existence and come to have meaning they did not have in the previous era (Michael L. M. 2014). Thus, it is important to note that Rousseau implicitly embraces the idea that in the absence of social interactions, there will be no conflicts between humans.

Rousseau on the Social contract and the Society

It has been shown in the above analysis that for Rousseau the natural state is a peaceful condition, however since man cannot remain forever in this state, a social contract becomes necessary to overcome conflicts that inevitably arise as society grows and individuals become dependent on others to meet their needs. This is another example of how Rousseau's views differ from those of Hobbes. It can be interpreted that Rousseau unlike Hobbes does not consider society as a necessary advancement from the state of nature. Rousseau posited that:

“Good social institutions are those best fitted to make a man unnatural, to exchange his independence for dependence, to merge the unit in the group, so that he no longer regards himself as one, but as a part of the whole, and is only conscious of the common life.”

³The notion of the sentiment of existence is pivotal in Rousseau's philosophy. It refers merely to an awareness that one exists and it is often contrasted with the notion of the sentiment of identity.

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The main noticeable common ground between Rosseau and Hobbes is that they both consider society as artificial to the nature of mankind. Nevertheless, they recognize its development. To live in a society is to abandon one's natural state and this is exactly the implication underpinning their philosophy. On the contrary, this paper argues that portraying the relationship between the state of nature and society in this way is not merely problematic but also distorts the truth about human evolution. If Rosseau in his philosophy accepts that human beings are evolving species, then societal institutions cannot be considered to make a man unnatural especially given the inevitability of their emergence.

To continue further with the discussion, for Rosseau the social contract serves to provide a solution to economic and social inequalities that rose due to the creation of social institutions and the dependence of men on each other as the society developed. He argued,

“Harmony becomes impossible. Forced to combat either nature or society, you must make your choice between the man and the citizen, you cannot train both...” (Emile or on Education).

Thus, the normative social contract, argued for by Rosseau is meant to respond to this sorry state of affairs and to remedy the social and moral ills that have been produced by the development of the society (Celeste F). Rosseau stated his solution through the social contract as follows:

"Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole." (. J. Rousseau, The Social Contract).

It can thus be seen that Rosseau's social contract is not merely about individuals coming together to form a unit. It is also about the acceptance of each contracting party as a fraction of the community that is being established. Unlike in Hobbes, under Rosseau individuals transfer their natural rights and freedoms to the general will, not a single sovereign (Leviathan). This general will aims at the common good and it is determined by individual participation. This is a huge shift from the Hobbesian political theory of absolutism, where only the will of one man (Leviathan) is sufficient to run and regulate society. In Rosseau, everyone in the society shares power through the vote and this collective participation ensures and secures natural freedom.

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For Rosseau, the general will in the social contract is intended to allow all members of society to be as free as they were in the state of nature. He posits that any legitimate state must be based on the general will, which is the fundamental source of sovereignty. Hence this means that the law itself must be in line with the general will. It is very important to pay attention to this because the general will represent a compromise, thus the social contract reflects unity which according to Rosseau entails the true foundation of society.

GENERAL COMPARATIVE EVALUATION: HOBBS V ROSSEAU

It is not a question of determining who is right between Hobbes and Rosseau on their philosophy about human beings, the state of nature, society, and the law. Both theories have certain inconsistencies that this paper finds difficult to concur with especially their understanding of anthropology and the portrayal of society. However, despite all this, through a comparative study of their socio-political philosophy and social contract theories, one can understand that there is an implicit overall definition of what constitutes society and how the law relates to it. For both Hobbes and Rosseau society is about individuals coming together to pursue certain common goals and it is established by an agreement, the social contract. Society itself is a means to enforce peace and at the same time, it serves to reflect co-existence between people who naturally had individual interests. This is how one may interpret the theories of these philosophers.

On the other hand, from Rosseau and Hobbes, one can grasp the essence of the law and its relevance to and in society. They both depict law as a set of rules that establish social order. However, how they picture the instruments and agents of law differ. In the theory of Thomas Hobbes, the law is conceived as the command of the sovereign whereas for Rosseau it is a result of the general will. In the contemporary world, the law is still considered to be an instrument backing and supporting the existence of society, hence these are not new ideas, although there may be differences in the way the idea is now formulated.

CONCLUSION: AN ATTEMPT TO DEFINE SOCIETY.

Based on the discussion above, society remains a vaguely defined concept. However, from what has been demonstrated throughout this paper, it can be conspicuously concluded that Hobbes and Rosseau consider society as a concept that is outside or external to human nature. More explicitly, for Hobbes in the state of nature man is not a social animal, he is a beast.

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Rousseau, on the other hand, though in the state of nature, man is good, he is better off before the emergence of society. The use of the concept of the state of nature and the social contract theory as a mechanism to explicate society by these philosophers also demonstrates their desire to distance society from the nature of human beings. Simply, put forward, for these philosophers' society can only be conceived purely as a human product, not something inherent to humans in the state of nature. As has been demonstrated by Rousseau society makes man unnatural.

Having come this far, this paper concludes by emphatically arguing that the origin of society cannot be purely and solely explained as a human product. This is because, the very nature of human beings is built upon interdependence on one another, such that one cannot reasonably consider society as an unknown concept in the state of nature. Such belief cannot be entertained to be true. Therefore, contrary to Hobbes and Rousseau, this paper contends that man is born a social animal [Aristotle]. It is not a question of a social contract; the origin of society can only be explained in terms of human existence. Where there are humans, there you find a society. It is not a question of whether they recognize or not that there is a society because they already are a society. However, society is not a static phenomenon, such that humans cannot be able to develop society in the best possible ways that fit their environment and time of existence. Human beings can only adapt society to their time; therefore, society is not a human product. It is a natural creation flexible to adaptations and further development, but the very idea of having a society is not the invention of man as Hobbes believed. Living in society does not entail an exit from the state of nature, this does not make sense. Thus, it is not a question of exit from the state of nature and entry into society, man is born into a society, and he is by nature a unit of society.

It is an unimaginable belief to regard man in the state of nature as a non-social being. It is also very interesting for this analysis, that for Hobbes and Rousseau, although society is not to be spoken of in the state of nature, nevertheless it emerges. What an unbelievable paradox! This means that they indirectly see society as a phenomenon connected to human nature, but they turn a blind eye to this. Their theories fail to articulate the concept of society, for them, the idea of society is only by necessity. However, this paper vehemently concludes that man is inherently a social being not only by necessity but by nature. Law is indeed a tool through which societies are regulated and it is a human mechanism able to transform the already dynamic concept of society.

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