

In Harm's Way  
*Hobbes on the Duty to Fight for One's Country*

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In November 2004, eighteen army reservists in Iraq were brought up on charges for disobeying a direct order. The members of the 343rd Quartermaster Company based out of Rock Hill, South Carolina, had refused to drive a fuel convoy from Tallil Air Base to Taji, complaining that inadequate equipment made the trip unsafe. The 207-mile route was widely known to be dangerous, and the unit's trucks were neither armored, nor were they scheduled to receive an armed escort. Unsurprisingly, army officials did not find this excuse convincing and, in light of their defiant behavior, the soldiers faced punishments ranging from demotion to court-martial.<sup>1</sup>

Though this story received relatively little reaction among the American public, from a philosophical perspective, it raises a number of intriguing but rarely asked questions. In the context of civil society, fear of death or serious physical harm serves as a legitimate – albeit *prima facie* – moral excuse for otherwise problematic actions; such fears often serve as grounds for a legal excuse as well. Actions motivated by self-preservation are generally judged to be neither morally impermissible nor the kinds of things that call for legal sanction. Thus, it seems puzzling that matters appear different in the case of military service, or at least this difference requires explanation. Why doesn't the fact that the members of the 343rd Quartermaster Company had a very reasonable fear of serious injury or death serve to excuse their actions – at least morally, if not legally? Why think that these soldiers have done something wrong or that they have violated a duty when we would not make the same judgment of a civilian

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<sup>1</sup> <http://query.nytimes.com/gst/fullpage.html?res=9D06E4D7153FF935A25752C1A9629C8B63>

who refused to carry out an action that she had good reason to think posed a serious threat to her life or well-being?

Certainly, complaints about the risk to one's personal safety seem strange, and perhaps inappropriate, coming from a soldier in the middle of a war. There seems to be a presumption that fear is simply not a viable excuse for those who are engaged in military service. But there are a number of further questions that we can ask about this presumption. What exactly are the nature, origin, scope, and limits of the duties of military service? When can a person be morally required to risk her life for the sake of her country? Does it matter if she believes the war to be a just war? Does it matter if the war really is just? Is it relevant whether or not the person entered the service voluntarily or involuntarily? Is the conscript more justified in disobeying, or even deserting, than the enlisted or voluntary soldier? Is serving in the military when called upon to do so part of the civic duty of members of a society? If so, on what grounds?

The "obligation to die for the state," as Michael Walzer calls it, is hard to justify as an aspect of political obligation. As A. John Simmons points out, the obligation to fight for one's country involves a number of serious costs, including not only the obvious immediate risk to life and limb but also the foreseeable loss of economic, career, and personal opportunities, not to mention the brute loss of months – and even years – of one's life.<sup>2</sup>

While questions about the justifiability of conscientious objection and the specter of just war theory have dominated much of the contemporary debates about the duties of military service, the role of fear in the context of military service and our obligations to serve have received far less consideration. In virtually all contemporary work on the subject, the fact that a person fears for her safety is simply not considered a legitimate justification for draft-dodging, dereliction of duty, or desertion; in fact, for most, it is not even considered to be a *possible candidate* for such justification. This view seems to be so taken for granted that most do not even bother to articulate it, much less explore it. Consider David Mapel's discussion of people's responsibility for military service, a representative example in this regard. He considers a person who is trying to decide whether to participate in a war she believes to be unjust and says, "In this context, fear does not seem to be very plausible as a general excuse. If we do not think that civilians can generally justify escaping military service by pleading personal cowardice, why should they be able to justify joining an army engaged in a criminal war on the grounds of personal cowardice?"<sup>3</sup> It is clear that Mapel simply assumes that fear is not a legitimate

<sup>2</sup> Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge, MA: Harvard University Press, 1970), chapter 4; A. John Simmons, *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2001), p. 48.

<sup>3</sup> David R. Mapel, "Coerced Moral Agents? Individual Responsibility for Military Service" *The Journal of Political Philosophy* 6.2 (1998): 178.

excuse for evading military service; however, it is not clear whether – or on what grounds – such an assumption is justified.

For those of us to whom it is at least *plausible* that fear for one's life can give someone a legitimate reason not to do something – especially an act that, when viewed objectively, does pose a significant risk, the contemporary philosophical debate about the duties of military service may appear narrow, even frustrating. Such frustrations can perhaps be appeased by turning to the work of Thomas Hobbes, a philosopher who was primarily concerned with addressing what contemporary philosophers take for granted in their discussions of the “obligation to die for the state.” First, unlike most contemporary political theorists, Hobbes took seriously the role of fear (or concern for one's personal safety) as a limit of political obligation. One might say that no philosopher has taken the issue *more* seriously than Hobbes. Second, and relatedly, one way to understand the goal of Hobbes's political philosophy is as an attempt to reconcile rational self-interest and political obligation.<sup>4</sup> The case of military service provides a test for any theory of political obligation that is grounded in considerations of self-preservation, as some citizens in any state will have to risk their lives for the protection and preservation of the whole. Finally, Hobbes's explicit comments about military obligations are incredibly brief – contained in only a few short paragraphs of text – but they are extremely puzzling and provocative. According to Hobbes, if a subject is conscripted, she is allowed to pay a substitute to take her place in battle, and the subject is excused if she flees the battlefield out of fear. Accepting money or volunteering for service takes away these excuses, as does the presence of a national emergency. Unfortunately, he does very little to explain or expand upon any of these claims let alone to *argue* for them or defend them against objections. Thus, it is uncontroversial to say that Hobbes's account of military service is vastly underdeveloped.

This aspect of Hobbes's political theory has not received much attention in the secondary literature, and those who do discuss it tend to be highly critical.<sup>5</sup>

<sup>4</sup> While I take this to be historically the dominant view in Hobbes scholarship, there is increasing disagreement about whether Hobbes should be read in this way. The most prominent dissenter is Sharon Lloyd, who argues that Hobbes was not making a claim about rational self-interest; rather, he was concerned with what she calls “transcendent interests,” those interests that people are willing to die for. See S. A. Lloyd, *Ideals as Interests in Hobbes's Leviathan: The Power of Mind over Matter* (Cambridge: Cambridge University Press, 1992).

<sup>5</sup> While few delve into the details of Hobbes's arguments about military service, most who do are unconvinced. Not only do they think Hobbes fails to ground an obligation to defend the state, but some also draw catastrophic conclusions from this perceived failure, for example, Hobbes's commonwealth is likely to be short lived because people as Hobbes conceives of them will be unable or unwilling to defend it against attack by enemies, either domestic or foreign. Michael Walzer and Gregory Kavka make this claim explicitly, though Kavka attempts to modify Hobbes's arguments to deal with this objection (Walzer, pp. 77–98; Kavka, *Hobbesian Moral and Political Theory* [Princeton: Princeton University Press, 1986, pp. 424–33]). In a similar analysis, Richard Flathman claims, “It looks as if, for all of her authority, the Sovereign's power is mainly on paper, that the Leviathan is indeed a paper tiger” (Richard E. Flathman,

These critics are understandably puzzled; Hobbes's remarks about military service *do* seem to conflict with his well-known claims about the inalienability of the right of self-preservation and the natural fear of death.

The question of this chapter is: What is the best way to make sense of Hobbes's claims about what Walzer calls "the obligation to die for one's state"? Should they be interpreted simply as a series of strange and undefended assertions, about which Hobbes says so little because they are peripheral to his political theory? They certainly can appear this way on an initial reading: if you are scared you can run or pay someone to take your place, but if there is some special circumstance – a national emergency – then suddenly you are expected to get over your fear and fight to the death for your sovereign. Understood in this way, it seems that we should chalk Hobbes's assertions up to the almost charming idiosyncrasies common among historical figures; we need not pay attention to them either as important parts of Hobbes's political theory or as philosophical claims worth engaging in their own right. In this chapter, I argue that we should not dismiss these brief remarks so quickly, that despite the brevity and lack of clarity of the discussion, we can uncover a surprisingly coherent account, complete with *arguments* for the various claims that initially appear bizarre and ad hoc.

#### SOME PRELIMINARY OBSERVATIONS

"It is useless for men to keep peace amongst themselves, if they cannot protect themselves against outsiders."<sup>6</sup>

– *De Cive*, 6.7

There are a number of ways in which subjects of a state can be obligated to contribute to the provision for national defense that are completely unproblematic

*Thomas Hobbes: Skepticism, Individuality, and Chastened Politics* [London: SAGE, 1993, p. 124]). According to Flathman, Hobbesian subjects simply will not engage in the activities necessary to empower a genuine Leviathan. Sommerville, who discusses Hobbes's account of military service in a footnote, criticizes in passing saying, "It is unclear that these principles flow very naturally from Hobbes's premises" (Johann P. Sommerville, *Thomas Hobbes: Political Ideas in Historical Context* [London: Palgrave Macmillan, 1992, p. 185]). Edwin Curley expresses similar skepticism about Hobbes's ability to explain and justify what he calls the "enforcement cadre" (Curley's Introduction to *Leviathan*, pp. xxxv–xxxvi). An important exception to this trend in the literature can be found in Baumgold's work on Hobbes, for example, Deborah Baumgold, *Hobbes's Political Theory* (Cambridge: Cambridge University Press, 1988).

<sup>6</sup> Hobbes's works are cited by chapter and paragraph number, using the following editions of his texts: Thomas Hobbes, *The Elements of Law: Natural and Politic*, ed. Ferdinand Tönnies (London, Frank Cass & Co, 1969); Thomas Hobbes, *On the Citizen* [*De cive*], eds. Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998); Thomas Hobbes, *Leviathan with Selected Variants from the Latin Edition of 1668*, ed. Edwin Curley (Indianapolis: Hackett, 1994); Thomas Hobbes, *Behemoth or the Long Parliament*, ed. Ferdinand Tönnies (London, Frank Cass & Co, 1969).

from the standpoint of Hobbes's theory. First, in most cases subjects support war efforts in ways other than fighting in battle. The primary way most subjects contribute to their collective defense is a financial one; that is, they pay taxes. In wartime, more specific kinds of assistance are possible – for example, quartering soldiers, rationing, participating in the production of the resources armies need to function (e.g., food, weapons, and uniforms). The obligation to make such “non-risky” contributions is actually over-determined in Hobbes's theory. The obligation of subjects to pay taxes is covered by their general obligation to obey the commands of the sovereign. It is also explicitly justified by the language of the social contract, which (at least in one of its incarnations) requires each person to agree “not to withhold the use of his wealth and strength” from the sovereign.<sup>7</sup> Moreover, according to Hobbes's notion of authorization, every subject is an owner of – and so responsible for – every action of the sovereign, including his declarations of war. Finally, the supplementary law of nature that Hobbes proposes in the “Review and Conclusion” states that “*every man is bound by nature, as much as in him lieth, to protect in war the authority by which he is himself protected in time of peace,*” making it clear that the general obligation to contribute to the defense of one's country persists in wartime.<sup>8</sup>

It is clear that the obligation to fight battles does not exhaust the topic of the obligation to contribute to the defense of one's country – which in turn does not exhaust the topic of political obligation in general. While going to war involves inherently risky behaviors, most of the ways in which most members of a political community assist in defense require little to no personal risk.<sup>9</sup>

In present-day discussion of such matters, the basic right of governments to compel or draft citizens into warfare is rarely taken for granted; rather, it is taken to require explicit, and often extensive, justification. In contrast, the existence of such a right is simply not in question for Hobbes; instead, he is concerned to determine with whom, exactly, this right lies and how it gets exercised. As his discussion of the essential rights of sovereignty makes clear, Hobbes imparts total discretion to raise and control armies to his absolute sovereign: he “annexes” to the sovereign a general right to judge what constitutes a threat to the commonwealth and what to do about it, as well as a specific (and somewhat redundant) right “of making War, and Peace, as he shall think best.” One of the key issues in Hobbes's time was a question about the division of rights and powers in the commonwealth: here he argues that all of the

<sup>7</sup> De cive, V.6.

<sup>8</sup> “Review and Conclusion,” paragraph 5 in *Leviathan*.

<sup>9</sup> It is conceivable that being obligated to pay a tax could put a person's life at risk: if, for example, she was already living on the brink of survival; but this would happen only in the most exceptional circumstances. And Hobbes presumably would excuse her refusal to pay the tax under those circumstances. It is easier to see how other civilian war efforts might expose participants to personal risk; consider, for instance, the targeting of munitions factories by bombers (and the ensuing casualties to civilian labor therein).

relevant rights, including the right of deciding when and how armies need to be assembled and the attendant right of “levy[ing] money upon the subjects to defray the expenses thereof,” belong to the sovereign.<sup>10</sup> Control over military forces is, for Hobbes, one of the most important rights of sovereignty; indeed, he suggests that having command over the army is itself a sufficient condition for being the sovereign.<sup>11</sup>

There is, however, a remarkable peculiarity to his account. That the sovereign has the right to issue any command that he sees fit does not entail that there is a corresponding obligation on the part of subjects to obey that command. Hobbes recognizes a range of cases (to which I will return later) in which subjects have rights to disobey even an absolute sovereign. This means that although conscription can be justified on Hobbes’s view, this does not settle any of the interesting questions about the conditions under which subjects are obligated to comply with conscription orders. An independent account must still be provided for the sorts of obligations to engage and persevere in the kind of high-risk fighting that inevitably accompanies armed conflict.

The question of obligatory, high-risk military service brings two central aspects of Hobbes’s political philosophy into conflict: (1) his claim that political obligation is grounded in, and limited by, rational self-interest and (2) his claim that subjects can be obligated to perform acts that are clearly *not* in their rational self-interest. Hobbes is commonly taken to ground political obligation (i.e., the obligation to obey the commands of the sovereign) in rational self-interest, for it is only in submitting to the authority of an absolute sovereign power that we can truly escape the horrors of the state of nature. Yet, Hobbes also makes it clear that one’s obligation to obey the sovereign’s commands is nullified whenever one’s life is in danger. However, given that political obligation is grounded in the subject’s interest in self-preservation, it is unclear how Hobbes can ever hope to justify an obligation to jeopardize one’s life at the command of the sovereign. This raises a difficulty for the Hobbesian account of political obligation: How can there be a stable commonwealth if none of its subjects are obligated to undertake the necessary, but dangerous, duties required for the effective maintenance of that stability? On Hobbes’s view, and indeed on any plausible view of a viable state-based society, law enforcement and military service play an essential role in the maintenance of domestic order and national security. If state security can be assured only at the expense of individual security, then the Hobbesian ground for political obligation is self-undermining. In short, whether, when, and where an individual has a duty to risk her life for her country are particularly difficult questions for Hobbes’s moral and political theory.

<sup>10</sup> *Leviathan*, XVIII.8, XVIII.12.

<sup>11</sup> “The command of the *militia*, without other institution, maketh him that hath it sovereign. And therefore, whosoever is made general of an army, he that hath the sovereign power is always generalissimo [supreme commander]” (*Leviathan*, XVIII.12).

## THE DUTY TO "EXECUTE A DANGEROUS OFFICE"

Hobbes addresses the question of dangerous duties in *Leviathan* by laying out a complex set of rights and duties. These specify the conditions under which a person is obligated to risk her life, as well as the conditions under which she is free to avoid the dangers of battle. He introduces the subject of military obligations in the context of his discussion of the "true liberties of subjects" in chapter XXI. The key passages are presented in their entirety as follows, and I refer to them in passing for the remainder of the chapter:

[15] No man is bound by the words themselves, either to kill himself or any other man; and consequently, that the obligation a man may sometimes have, upon the command of the sovereign, to execute any dangerous or dishonourable office, dependeth not on the words of our submission, but on the intention, which is to be understood by the end thereof. Then, therefore, our refusal to obey frustrates the end for which the sovereignty was ordained, then there is no liberty to refuse; otherwise there is.

[16] Upon this ground a man that is commanded as a soldier to fight against the enemy, though the sovereign have right enough to punish his refusal with death, may nevertheless in many cases refuse without injustice, as when he substituteth a sufficient soldier in his place; for in this case he deserteth not the service of the commonwealth. And there is allowance to be made for natural timorousness, not only to women (of whom no such dangerous duty is to be expected), but also to men of feminine courage. When armies fight, there is, on one side or both, a running away; yet, when they do it not out of treachery, but fear, they are not esteemed to do it unjustly, but dishonourably. For the same reason, to avoid battle is not injustice, but cowardice. But he that enrolleth himself a soldier, or taketh imprest money, taketh away the excuse of a timorous nature, and is obliged, not only to go to the battle, but also not to run from it without his captain's leave. And when the defence of the commonwealth requireth at once the help of all that are able to bear arms, every one is obliged, because otherwise the institution of the commonwealth, which they have not the purpose or courage to preserve, was in vain.

There are four main tenets of his account of the obligation to fight in battle against enemies of the commonwealth, or what he calls the "obligation a man may sometimes have, upon the command of the sovereign, to execute [a] dangerous ... office."<sup>12</sup> In the order they are presented in the text, they are as follows:

<sup>12</sup> The "dangerous offices" Hobbes has in mind here likely include both defense against foreign enemies and keeping internal peace and order (see *Leviathan*, XXIII.10). This chapter deals exclusively with the former, though similar issues are likely to arise with the latter. It is difficult to know to what "dishonourable offices" are meant to refer, but it is plausible to assume that they are supposed to refer to a subset of law enforcement duties, namely, those whose job it is to actually carry out punishment sentences. In the "Review and Conclusion" of *Leviathan* (paragraph 10), Hobbes describes executioners as those "in whom want of means, contempt of honour, and hardness of heart concurred to make them sue for such an office." Hobbes seems to presume that there is something inherently dishonorable about being an executioner, but he does not explain what that might be.

1. If a subject can pay another to go in her place, she is free to refuse military service.<sup>13</sup>
2. Those who fear for their lives are excused when they avoid conscription or desert the force on the battlefield.
3. Those who volunteer for the army, unlike ordinary subjects who are conscripted, are obligated *not* to run from danger.
4. No able subject is exempt if the commonwealth itself is under attack and the help of all that are able is required to preserve the state.

At any given time, a particular person's obligation to fight will depend on (1) whether that person has voluntarily joined the armed forces (i.e., by enrolling or accepting money) and (2) whether there is a national emergency (i.e., whether or not the defense of the commonwealth requires the efforts of all who are capable of fighting). Where there is no national emergency, a (non-enlisted) subject who is ordered to fight has at least two specific excuses that she can invoke: provision of a substitute to fight in her stead, and fear (or what Hobbes calls "cowardice"). While the latter cases surely include some of the former, Hobbes treats them as conceptually separate. That is, while some may pay another because they are scared, presumably those who are scared but cannot or do not find a substitute are still excused; and it is plausible to think that some pay to get out of military service not primarily from fear for their lives but for other reasons.

One can describe these tenets as the rights that a subject retains in relation to the defense of the state. Hobbes invites the use of the language of rights in introducing the topic of the true liberties of subjects, saying "consider what rights we pass away, when we make a commonwealth, or (which is all one) what liberty we deny ourselves by owning all the actions (without exceptions) of the man or assembly we make our sovereign etc."<sup>14</sup> However, care is required in articulating the idiosyncratic notion of rights that Hobbes has in mind. Briefly stated, for Hobbes rights are understood as moral permissions, or what he calls "blameless liberties."<sup>15</sup> They do not imply correlative duties on the part of others to respect their exercise. If a person has a right to  $\Phi$ , then she is at liberty to  $\Phi$ ; and if she does  $\Phi$ , she has not committed any injustice. According to this theoretical framework, the true liberties of subjects – "the things which, though commanded by the sovereign, he [a subject] may nonetheless without injustice refuse to do"<sup>16</sup> – can be understood not only as liberties, but also as rights in this special Hobbesian sense.

The true liberties of subjects are remnants of the expansive right of nature that people must give up when they enter into civil society. They are the rights

<sup>13</sup> I have taken the liberty of using the female pronoun here, though Hobbes specifically excludes women from this discussion.

<sup>14</sup> *Leviathan*, XXI.10.

<sup>15</sup> *Elements of Law*, I.14.6.

<sup>16</sup> *Leviathan*, XXI.10.



that a subject cannot reasonably be expected to give up even though she has entered into a civil society. Accordingly, in the case of military service, we can say a conscripted subject has the right to refuse to go to battle, and even a right to flee the battlefield, unless the commonwealth itself is threatened – in which case no one who is able to fight has a right to refuse. At least where ordinary subjects are concerned, Hobbes presumes a separation between the questions of obligation and questions of motivation. He emphasizes that refusal to fight – even when that refusal is “without injustice” – is punishable by death, but he clearly thinks that some will nonetheless refuse. The presumption seems to be that even in the face of the most severe sanction possible, some will inevitably retreat from battle. (As he says, “When armies fight, there is, on one side or both, a running away.”) At the same time, the implication of Hobbes’s claims is that those who have already voluntarily enlisted or accepted a monetary advance for serving in the military never have a right to refuse to fight, or to flee from battle. Indeed, whenever enlisted soldiers do so – even in the face of grave personal danger – they commit an injustice.

We are thus faced with three questions. First, what are the grounds for these exemptions? Second, why does voluntary enlistment eliminate fear as an excuse? Finally, what obligations do national emergencies generate for every subject in a commonwealth?

Understandably, many readers have wondered how people, as Hobbes describes them, can *ever* be obligated to take on serious risks, enlisted or not, national emergency or not. Kavka worries that Hobbes’s claims about the dangerous duties of military service do not “jibe with Hobbes’s claim that the right of self-preservation cannot be surrendered.”<sup>17</sup> Walzer sees grounds for a devastating criticism:

An individual can sell his labor to another, and a soldier can also, but he can neither sell nor give away his right of self-defense. That is an inalienable right, and it must include the right, under certain circumstances, to run away. Individual bodily security is the only ultimate in Hobbes’s system and the search for that security can never be forsaken or transcended. In fact, then, for Hobbes there can be no obligation to die of any sort.<sup>18</sup>

I argue that a coherent account of these obligations can be recovered from the text, but only if we distinguish the role of the subject, as structured by the social contract, from the role of the soldier, as structured by a more local “soldier contract.” This local contract would make clear that voluntary enlistment requires, among other things, undertaking the obligation to risk one’s life. In an important sense, signing such a contract involves the renunciation of the right of self-preservation. Moreover, I argue that careful consideration of Hobbes’s social contract provides a systematic justification for the general exemptions

<sup>17</sup> Kavka, pp. 431–2.

<sup>18</sup> Walzer, p. 85.

that subjects enjoy, and an explanation of Hobbes's apparently puzzling claim that all are obliged in cases of national emergency.

My discussion of these points follows broadly the logic of the key chapter XXI passage in the preceding text. I begin with the general exemptions from military service on the basis of "substitute soldiers" and considerations of fear. I then turn to the special obligations incurred by those who voluntarily enlist for military service, and finally to the obligation of all to fight in cases of national emergency.

#### THE GENERAL EXEMPTIONS

There is an initial interpretive question about the scope of Hobbes's claim that "a man that is commanded as a soldier to fight against the enemy, though the sovereign have right enough to punish his refusal with death, may nevertheless in many cases refuse without injustice." It is not immediately clear whether he intends a strong presumptive obligation to fight when ordered to do so and that there are certain exceptions to this obligation, or that there is a strong presumptive excuse from fighting, and that specific circumstances provide an exception from this excuse. Some readers, for example Johann Sommerville and Deborah Baumgold, have assumed that the former reading is correct<sup>19</sup>; however, I am inclined to adopt the latter reading for the following two reasons. First, the corresponding paragraph note makes it clear that subjects are not bound "to warfare unless they voluntarily undertake it." Moreover, there are a number of other comments that support this latter reading as a general tenet in his overall theory of political obligation. For example, in the chapter on "Punishments and Rewards," Hobbes claims "though men have no lawful remedy when they be commanded to quit their private business to serve the public without reward or salary, yet they are not bound thereto by the law of nature, nor by the institution of the commonwealth, unless the service cannot otherwise be done."<sup>20</sup> It is clear that Hobbes's emphasis is on subjects' exemptions

<sup>19</sup> Specifically, Sommerville says, "Moreover, the end or purpose of the covenant, though not necessarily its express words, requires that subjects aid the sovereign by performing dangerous and dishonourable offices, or even by risking their lives as soldiers, when the preservation of the peace demands such a course" (Sommerville, pp. 58–9). See Baumgold, "Subjects and Soldiers: Hobbes on Military Service," p. 57.

<sup>20</sup> *Leviathan*, XXVIII.24. In the 1668 Latin edition, the import of this sentence is even clearer. Here it reads "for although all subjects are obliged to quit their private business to serve the commonwealth, even without wages, if there is need, nevertheless this is not [an obligation imposed] by the law of nature or by the institution of the commonwealth unless the commonwealth cannot otherwise be defended. For it is supposed that the sovereign can fairly use the resources of all subjects, and that from those resources those who defend the commonwealth, having set aside their own affairs, ought to be compensated, so that the lowest of soldiers can demand the wages of his service as a thing owed by right" (Curley, p. 209). The assumption seems clear: ordinary subjects are expected to contribute by paying taxes. They are responsible for the wars but not for fighting those wars themselves.

from service rather than on any sort of broad obligation for service. And, of course, in the primary passages under consideration, the points he is concerned to make are that a person is bound to undertake the risk of battle only if she has “voluntarily undertaken it” or on those rare occasions that “the help of all” is needed.

Given that this first clause is best understood in terms of a general exemption from service, we now come to the intriguing claim that a subject can refuse to serve without injustice “as when he substituteth a sufficient soldier in his place; for in this case he deserteth not the service of the commonwealth.” This claim follows directly from the decision procedure with which Hobbes has introduced the discussion of military service: if “our refusal to obey frustrates the end for which the sovereignty was ordained, then there is no liberty to refuse; otherwise there is.” The reasoning in favor of the substitute soldier clause seems to be as follows: subjects are at liberty to refuse if their refusal does not undermine the sovereign’s ability to do the job for which he was instituted, namely, provide for the maintenance of internal peace and defense from external enemies. In cases where a subject refuses to fight, but provides the sovereign with a substitute soldier, her refusal in no way undermines the sovereign’s ability to provide for the common defense.

In the absence of a standing army, although there would be some mercenaries employed at any given time, there also would be conditions in which this mercenary force was insufficient to carry out the military actions desired by those in power. In these cases, ordinary subjects could be conscripted to carry out these military actions. The Hobbesian sovereign, of course, has the right to raise an army of whatever size he wants, and this means he can issue conscription orders for a certain number of men. So, suppose that the conscription orders issued by the king require your locality to provide 1,000 soldiers for the king’s service; further, suppose that you are one of the thousand subjects who has been chosen to serve. If you have the means to pay another (who presumably was not so ordered), the 1,000 men who are required by the conscription orders will still be provided. Regardless of what your reasons happen to be for refusing to fight, be it fear or something else, by providing an equally capable substitute to serve in your place you have not deserted the service of the commonwealth. In fact, your action constitutes a sort of service by proxy. Hobbes seems to think that subjects are fungible (maybe because they are all equally untrained); your refusal then is *of no consequence at all* to the sovereign’s ability to raise whatever forces he deems necessary to provide for the common defense.

Such reasoning is reminiscent of other places Hobbes discusses the circumstances under which subjects have the right to refuse certain of their sovereign’s commands. For example, we find an almost identical argument being made in *De Cive*. Here, Hobbes claims that “if I am told to kill myself, I have no obligation to do so. For if I refuse, the right of government is not frustrated, since others may be found who will not refuse to carry out the order ... Nor is

he obliged to kill a parent, whether innocent or guilty and rightly condemned; since there are others who will do it, if ordered to do so.”<sup>21</sup> In these cases, a subject’s refusal to obey a command of the sovereign is justified (though she can still be punished with death) because someone else can be found to do the job. Notice how the language and the reasoning that is used in this case mirrors the language and reasoning used to explain why someone can refuse to undertake military service.

In addressing military service, Hobbes is clearly invoking a line of argument that he uses regularly. Moreover, the essential commitment in the substitute soldier condition is that it is universally applicable. Hobbes is adamant that people retain only rights that everyone can retain without posing a threat to the sovereign: “Nor doth the law of nature command any divesting of other rights, than those only which cannot be retained without the loss of peace.”<sup>22</sup> Hobbes seems to adopt a principle like the following: *a right can be retained if its retention (by everyone) does not affect the absolute power of the sovereign*. So, *everyone* has the right to serve by proxy in non-emergencies. Of course, in practice this right can be exercised only by those with a certain amount of economic privilege. Nonetheless, it is, at least in theory, an option available to any who receive conscription orders. The sovereign is still able to raise the army he desires even if many, or perhaps even all, of the subjects initially commanded into battle find others to go in their stead. On Hobbes’s account this is not the kind of disobedience that is destructive to the sovereign power.

The sorts of exceptions that Hobbes wishes to allow are far broader than this. Recall that Hobbes thinks that an allowance must be “made for natural timorousness, not only to women (of whom no such dangerous duty is to be expected), but also to men of feminine courage.” Hobbes acknowledges that there will always be those who will run away from battle. But he concedes that “when they do it not out of treachery, but fear, they are not esteemed to do it unjustly, but dishonourably. For the same reason, to avoid battle is not injustice, but cowardice.” While it is clear how the provision of a substitute soldier can be accommodated within Hobbes’s overall framework, the claim that avoiding battle out of fear is not unjust sits far less easily with the sovereign’s ability to raise and maintain whatever forces he deems necessary. In fact, Hobbes admits that “something is to be subtracted from the supreme right because of the

<sup>21</sup> *De cive*, VI.13.

<sup>22</sup> *Elements of Law*, I.17.2. The requirement that retained rights be universally retained is actually a law of nature: “Just as it was necessary for each man’s preservation that he should relinquish certain of his *rights*, so it is no less necessary to his preservation that he retain certain *rights*, namely the *Right* of protecting his person, the right of enjoying the open air, water, and all other things necessary for life. Since therefore men entering into *peace* retain any common *rights* and acquire many personal *rights*, the ninth dictate of natural *law* arises, namely: *whatever rights each claims for himself, he must also allow to everyone else*” (*De cive*, III.14; see also *Leviathan*, XV.22).

natural timidity of certain men.”<sup>23</sup> I am inclined to read the “allowance” here as indicating that the sovereign should prepare and compensate for the foreseeable and inevitable losses that are likely to come about because of the natural fear of death. On the assumption that the sovereign will compensate for this natural timorousness of men, the fact that some people are likely to defect on the battlefield does not *necessarily* or even *likely* “frustrate the end for which the sovereignty was ordained.”

However, I suggest that the fear excuse might be better understood in the context of Hobbes's claim that considerations of self-preservation provide a justification for disobedience more broadly. Before I turn to discussion of the obligations that are incurred in voluntarily enlisting for military service, I pause to discuss briefly Hobbes's understanding of the right that all subjects retain to disobey the law where considerations of self-preservation are at issue.

For all his posturing about the absolute power of the sovereign, Hobbes is almost equally adamant about the inalienability of the subject's general right of self-preservation. Most generally, Hobbes asserts that “No man in the institution of sovereign power can be supposed to give away the right of preserving his own body, for the safety whereof all sovereignty was ordained.”<sup>24</sup> This retained right is a right to resist or disobey the sovereign only under a narrow range of circumstances. A subject is always *at liberty* to “preserve his own body,” and when he so acts, he acts *without injustice*. Hobbes justifies these acts of resistance by appeal to a right that was not given up in the social contract (though he sometimes speaks as though it is never possible to alienate the right in *any* contract).

The paradigmatic example of this right, as it is usually discussed, is the subject's right to resist the sovereign (or more likely, an officer of the sovereign) when he comes to kill, wound, or imprison her.<sup>25</sup> And indeed, Hobbes's emphasis is usually on the permissibility of refusing or resisting the sovereign when a subject is the potential target of punishment. He justifies what we would now think of as the excuse of self-defense on the grounds that “no man is supposed at the making of a commonwealth to have abandoned the defence of his life or limbs where the law cannot arrive time enough to his assistance.”<sup>26</sup> However,

<sup>23</sup> See the Latin version of the chapter XXI passage.

<sup>24</sup> *Leviathan*, XXVII.3.

<sup>25</sup> For example, *Leviathan*, XIV.8, XIV.18, XIV.28, XIV.30, XXI.11, XXVIII.2; *De cive*, II.18, V.7. While Hobbes does not use the term himself, most in the secondary literature refer to it as the “right of self-defense.” For representative examples, see Claire Finkelstein, “A Puzzle about Hobbes on Self-Defense,” *Pacific Philosophical Quarterly* 82.3–4 (2001): 332–61; Susanne Sreedhar, “Defending Hobbes's Right of Self-Defense,” *Political Theory* 36.6 (2008): 781–802; and Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1992). Self-defense is a slightly misleading term not only because not all of the cases in which this right can be exercised fall under what we would now call self-defense, but also because the notion of self-defense fails to capture the complexities involved in the discussion of military service.

<sup>26</sup> *Leviathan*, XXVII.20.

Hobbes's discussion of the right of self-preservation is not exhausted by these sorts of cases. For example, when Hobbes sets out the conditions under which a person who has broken the law is "totally excused," he says:

If a man, by the terror of present death, be compelled to do a fact against the law, he is totally excused, because no law can oblige a man to abandon his own preservation. And supposing such a law were obligatory, yet a man would reason thus: *If I do it not, I die presently; if I do it, I die afterwards; therefore by doing it, there is time of life gained.* Nature therefore compels him to the fact.<sup>27</sup>

The illustration that Hobbes offers is of not a person who defends him- or herself from attack by an agent of the sovereign, but a starving person who steals food and is thereby totally excused for her action.<sup>28</sup> So we can think of the right of self-preservation (or that basic right retained by each subject in the commonwealth) as *the right to do what one judges necessary to preserve oneself or to save oneself from death and serious harm.* As a subject of a commonwealth, you retain a right of self-preservation on the grounds that self-preservation was the reason you had for entering into the social contract in the first place. We can extrapolate from this point a more fundamental principle for deciding how the obligations that a person incurs as a result of her roles are to be individuated. Briefly stated, the obligations that a person incurs in entering into any particular contractual relationship must cohere with (at least in the sense of not contradicting) the reasons she agreed to enter into the contract (and thus, incur the obligation) in the first place. Hobbes explains that a person cannot lay down her right to protect herself from death, wounds, chains, and imprisonment:

... [because] the motive and end for which this renouncing and transferring of right is introduced, is nothing else but the security of a man's person, in his life and in the means of so preserving life as not to be weary of it. And therefore if a man by words or other signs seem to despoil himself of the end for which those signs were intended, he is not to be understood as if he meant it, or that it was his will, but that he was ignorant of how such words and actions were to be interpreted.<sup>29</sup>

He makes a similar point a few pages later: "no man can lay down his rights to save himself from death, wounds, and imprisonment (the avoiding whereof is the only end of laying down any right)."<sup>30</sup> So while refusing to fight in battle out of fear likely meets the requirement that "refusal does not frustrate the end for which the sovereignty was ordained," the excuse of fear is more plausibly interpreted as following from his general notion that people retain the right to self-preservation.

<sup>27</sup> Ibid., XXVII.25.

<sup>28</sup> Ibid., XXVII.26.

<sup>29</sup> Ibid., XIV.8.

<sup>30</sup> Ibid., XIV.29.

Thus, the various options available to the conscripted person can be explained in a manner consistent with Hobbes's broader political commitments and project. But the condition of the person who voluntarily enlists – the person who “enrolleth himself a soldier, or taketh imprest money” and so loses “the excuse of a timorous nature, and is obliged, not only to go to the battle, but also not to run from it without his captain's leave” – still requires explanation. As I noted earlier, this introduces a further worry: How can it be the case that the enlisted soldier, as such, gives up her right of self-preservation? I suggest this puzzle can be solved by making a distinction between the social contract and a soldier contract, that is, between “him that hath no obligation to his former sovereign but that of an ordinary subject” and “a man, besides the obligation of a subject, [who] hath taken upon him a new obligation of a soldier.”<sup>31</sup> While subjects have the right to flee from battle, adopting the role of the soldier brings with it the further obligation not to flee the battlefield.

#### THE OBLIGATIONS OF THE SOLDIER

Unfortunately, Hobbes provides us with little help in understanding what, precisely, the soldier contract is supposed to be. His discussion of enlisted soldiers is confined to the remarks just quoted about the obligation not to flee in battle. However, by building upon the theoretical framework that I introduced earlier, there is a way to make sense of the sort of contractual relationship that Hobbes has in mind. Briefly stated, we must understand the Hobbesian soldier as someone who has, in an important sense, voluntarily given up her right of self-preservation in entering into a contractual obligation to serve the state in battle. Note, however, that this is not to claim that the soldier gives up the right of self-preservation *simpliciter*. The soldier retains the right to defend herself against attacks *by the enemy*. Moreover, she retains the right of self-preservation in any case that is not explicitly covered by the contract that she has made to serve the state in battle. However, *qua* soldier, she has obligated herself to abandon her preservation upon command.

Consider an example from Locke, who takes it for granted that a sergeant “could command a Souldier to march up to the mouth of a Cannon, or stand in a Breach, where he is almost sure to perish.”<sup>32</sup> Hobbes seems committed to saying that soldiers do not have the right to disobey this command, though

<sup>31</sup> From “Review and Conclusion” paragraph 6. I borrow the term “soldier contract” from Deborah Baumgold (1988). Baumgold takes it for granted that the “soldier contract” involves the renunciation of the right of self-defense. But the point is not as obvious as she seems to think, and part of the project of the current paper is to expound and defend this interpretation of Hobbes's claims about the duties of “soldiers” (i.e., those who voluntarily enter the service) versus the duties of conscripts.

<sup>32</sup> John Locke, *Second Treatise of Government*, chapter 11, section 139. Hobbes does not give specific examples like this but there is no doubt he saw military service as involving great risks. In the Latin edition he uses the phrase “duties of such great danger.”

ordinary subjects – as discussed earlier – do. Hobbes’s conception of the predicament of the subject in the middle of a dangerous battle can be understood on the model of the case of the starving subject discussed previously. A person is permitted to steal food if she is starving, because she reasons thus: “If I do not do this I will die.” A person might very well reason in the same way on the battlefield: If I do not get out of here right now, I am a dead person. Of course, as a practical matter it is sometimes safer to remain with one’s fellow soldiers. But this does not bear on the philosophical point, since her duty as a soldier and her desire for self-preservation are only contingently directed toward the same action. The soldier is obligated to stay whether or not she judges staying is or is not most conducive to her safety. This shows that the soldier contract must involve an agreement *not* to do what one judges necessary to protect oneself from mortal danger, or in Hobbes’s terminology, a transfer of the right of self-preservation.

Consider the soldier who agrees to stay on the battlefield when she judges it to be the greater danger and in circumstances an ordinary subject would be justified in fleeing. Such a soldier agrees to *refrain from doing* whatever she thinks necessary to avoid death, wounds, and chains. Indeed, these are exactly the risks of the battlefield: you can be killed, wounded, or taken prisoner.<sup>33</sup> The “new” obligation that Hobbes attributes to the enlisted soldier must be understood to include the renunciation of the right of self-preservation, that is, the obligation not to do what one judges necessary to preserve one’s own life. While Hobbes does insist that the right of self-preservation is inalienable, his claim is indexed to the social contract. In the context of political obligation more broadly (i.e., the obligations of subjects *qua* subjects), the right of self-preservation cannot be transferred. But it can be transferred in the soldier contract because it violates neither of the fundamental principles that are used to establish the right of self-preservation in the context of the social contract. Retaining a right of self-preservation in the context of a soldier contract would obviously affect the ability of the sovereign to maintain an effective army. Recalling the limits placed on the obligations of contractual relationships in the previous section, a person who enters into a soldier contract does not contradict the reasoning for so doing in giving up the right of self-preservation, for presumably she did not enter into the soldier contract in order to better her chances at survival.

Recognizing that the obligations a person incurs, and the rights that she retains, in entering into a contractual relationship are dependent upon the particular features of that contractual relationship, encourages us to challenge two dominant beliefs about Hobbes’s political theory. First, the right of self-preservation can and indeed must in some cases be alienated. Second,

<sup>33</sup> Of course, even the duties of the soldier are not without limit. If her side has been defeated or she has been taken prisoner of war, the soldier is allowed to submit to the enemy.



some people are able to overcome the fear of violent death; in fact, they must be relied upon to do so if the commonwealth is to remain secure. As the soldier contract demonstrates, Hobbes *must* think people are able to risk their lives and can obligate themselves to do so. Moreover, this reading coheres with other parts of Hobbes's corpus where he alludes to such a possibility in a variety of other contexts. Consider Hobbes's claim that "Fortitude is a royal virtue; and though it may be necessary in such private men as shall be soldiers, yet, for other men, the less they dare, the better it is both for the Commonwealth and for themselves."<sup>34</sup> Hobbes is typically read as claiming that people are fundamentally averse to death – everyone fears (or should fear) death above all and that death is so bad that even if some people take irrational risks no one can be depended upon to do so. However, those people who exhibit the virtue of fortitude are a clear counterexample to this presumption about human nature.

Fortitude among people who are natural risk-takers or who value honor, competition, and material gain more than they value their own lives can be a real source of danger in the commonwealth. Such people are not as likely as the rest of us to be moved by the terrible sanctions that are entrenched in the state's punishment power; therefore, they will also be more likely to break laws, attempt to gain power for themselves, and so forth. As Hobbes notes, it is preferable to have as few such people in the general public as possible. Military service is thus able to serve an additional function in Hobbes's account. Not only is it a necessary function of the commonwealth, but it also provides an outlet for these behaviors and dispositions that would be dangerous if left unchecked in civil society. Channeling these risk-takers into military service neutralizes them as a threat to the commonwealth, turning what would be a vice into a benefit for the common good. These people earn honors at war while serving the protective function for their fellow citizens.

#### NATIONAL EMERGENCIES

Thus far, this story seems to hang together quite nicely. However, there is one additional worry. There is a final claim advanced in Hobbes's discussion of military service, one that does not – or at least does not obviously – sit well with the picture I have painted thus far. As Hobbes notes, "when the defence of the commonwealth requireth at once the help of all that are able to bear arms, every one is obliged, because otherwise the institution of the commonwealth, which they have not the purpose or courage to preserve, was in vain."<sup>35</sup> He appears to claim that if the defense of the commonwealth requires the help of all, then everyone is obliged to abandon their right to self-preservation at the sovereign's command. It seems as though, in conditions of national

<sup>34</sup> *Behemoth*, 45.

<sup>35</sup> *Leviathan*, XXI.16.

emergency, ordinary subjects incur the obligations of soldiers. For this to be possible, they would have had to agree to it as part of the social contract.<sup>36</sup> But, if the picture that I have sketched thus far is correct, the obligation to abandon self-preservation makes sense only relative to the role of the soldier. Hobbes explicitly claims that “no law can oblige a man to abandon his preservation,” but if this were true, then even in the context of a national emergency, the command of the sovereign cannot obligate subjects to give up this right.

Fortunately, there is an alternative interpretation of this obligation in the case of national emergencies. In the case of a national emergency, people are obligated to *attempt*, insofar as they can possibly do so, to defend the country; in this case they do not have the same right to simply refuse as they would in cases where there was no national emergency. No substitutes can be found because every person is already required to fight. More importantly, those who are by nature timorous cannot refuse to fight out of fear; for if they do so, this will “frustrate the end for which the sovereignty was ordained.” The purpose of the social contract is to create an institution that can provide for the common defense, and can ensure the security of the subjects. But the social contract cannot create such an institution if everyone retains the right to abandon it in its time of need.

But this leaves us with a further question: What, precisely, is the obligation that subjects have in the case of a national emergency if it is not the same obligation of soldiers, that is, the obligation to obey commands no matter how risky such obedience is. How can we construe the obligation of citizens in a national emergency, if not in terms of the obligation soldiers have to obey even the most dangerous commands? I suggest we read the obligation weakly: as an obligation to do as much as one can to protect the commonwealth in times of need. I offer two pieces of textual evidence in support of this reading. First, in the Latin edition, the relevant sentence reads “all citizens, each person who either can bear arms or contribute something, however little, to victory, is obliged to military service.” When he revised this discussion of military service, he added the clause “contribute something, however little”; Hobbes’s reflective view is that the obligation that every person has in cases of national emergency is not *necessarily* the obligation to pick up a weapon and join the fight. Even more tellingly, recall that the supplementary law of nature in the “Review and Conclusion” states that “*every man is bound by nature, as much as in him lieth, to protect in war the authority by which he is himself protected in time of peace.*” Even the naturally timorous can be obligated to protect the state, *inasmuch as they are capable*. The precise extent of the obligations that are incurred in cases of national emergency will, thus, vary from person to person depending on exactly what it is that she can contribute.

<sup>36</sup> I take it that this is how Gauthier reads Hobbes on this point. See David Gauthier, “Hobbes’s Social Contract,” *Nous* 22 (1988): 71–82.

## CONCLUSION

Hobbes's account of military service thus offers two recommendations for how ruling sovereigns should wage war. First, given the general human tendency toward "natural timorousness," there is always the possibility for conflict between the "execution of dangerous offices" that the state requires and the levels of risks subjects are willing to accept. Thus, the sovereign has reason to inculcate values which go beyond the narrow self-interest of the members of the general public, for example, patriotic or religious duties. For example, if subjects believe in the divine sanction of a particular war or that salvation demands acting in accordance with the demands of one's king, we can expect them to make every attempt to obey commands to help defend the commonwealth. In line with this suggestion, Sharon Lloyd, who argues that Hobbes grounds political obligation in subjects' transcendent interests, says, "...in cases where the sovereign has commanded him to bear arms to defend the commonwealth [the demands of salvation] give [subjects] a transcendent interest in defending the commonwealth."<sup>37</sup> Second, a wise sovereign will wage war only when absolutely necessary (i.e., in self-defense) and will maintain only the forces needed for these purposes. In general, ordinary subjects are unlikely to make particularly good soldiers: not only are they untrained but (if the law is doing its job!) they will be unaccustomed both to the use of violence and to overcoming their natural fear of violent death. Their lives as peaceful subjects will ill prepare them for the kinds of dispositions and behaviors characteristic of good warriors. The wise Hobbesian sovereign will call on Hobbesian subjects to execute dangerous offices as little as possible.

The picture that I have painted shows a more sophisticated and philosophically richer side of Hobbes's understanding of military obligation than one would presume, given the incredible brevity and obscurity of his claims on the issue. However, Hobbes's view has a troubling side in that it seems to depend, at least in part, on a class of poor people who are driven by necessity to perform the dangerous duties necessary to keep everyone else safe. If the social contract is to fulfill its purpose of preserving life and security for the general public, this will require that some people be willing to lay down their lives for the security of the political community. This, in turn, seems likely to yield a system of private transactions where those who are economically better off will be able to buy their way out of military service. So there must exist economic inequalities and vulnerabilities in order for some to be induced to accept a wage in exchange for a willingness to risk serious emotional and physical harm (on the presumption that natural risk-takers won't make up the whole of the armed forces). Of course, this is not a unique problem for Hobbes; indeed, I would argue that it is a problem for any modern state, ours being no exception.

<sup>37</sup> Lloyd, p. 154.

Let me close by returning to the case with which I started this chapter. I can now give a Hobbesian perspective on the army reservists' refusal to obey a direct order because of the perceived danger inherent in that order. I am inclined to think that Hobbes would say that if they voluntarily enlisted in the armed forces, then their refusal counts as an injustice. Interestingly, if those soldiers had been "stop-losses," and if stop-loss is a kind of "backdoor draft," then on Hobbes's account, they are likely excused. That is not to say that punishment for refusal would not have been justified (Hobbes even suggests punishment by death). But for Hobbes, the question of the appropriateness of punishment is separate from the question of the moral status of their refusal.

These Hobbesian reflections draw our attention to two intriguing – and at least potentially compelling – claims. First, the obligation to help in cases of national defense required to have a functioning commonwealth *is* universally applicable; however, this obligation will vary in terms of the capacity to contribute that each individual actually has. Hobbes does not think that everyone must fight in battle, but it does not follow from this that anyone has the right to be a free-rider. Even those who are unable to contribute by fighting in battle have an obligation, in cases of national emergency, to contribute with some sort of personal sacrifice – even if this is not a sacrifice of life. Second, Hobbes's analysis invites us to take seriously the notion that fear for one's safety may well be a legitimate excuse for evading battle. If the joining of the armed forces is genuinely voluntary (and we will surely disagree with Hobbes about what this entails), then it seems reasonable to expect the voluntary soldier to follow through on her commitment to risk her life when necessary. However, in the absence of genuine consent, fear of death perhaps should serve a *prima facie* exculpatory role at least from the standpoint of morality, even if not from the standpoint of the law. There are, of course, further worries about justice of and in wars; however, Hobbes at least provides us with a viable account of how self-interest and political obligation might be reconciled in the context of military service.