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POLITICAL PHILOSOPHY AND LAW

ABSOLUTISM

Political absolutism has a long history, but it was given its seminal and arguably its clearest formulation by sixteenth-century French philosopher, Jean Bodin (see his *Six Books of the Commonwealth* of 1576). In the seventeenth century, absolutist political philosophy was also taken up by the likes of Jacques-Bénigne Bossuet in France, Hugo Grotius in the Dutch Republic, Samuel Pufendorf in Germany, and Thomas Hobbes and Sir Robert Filmer in England. While Hobbes, as a canonical political philosopher, is often credited with modern political absolutism, he neither created nor popularized it. Indeed, the fact that Hobbes is the most widely known proponent of absolutist philosophy in contemporary contexts is perhaps more a function of his overall stature as a political philosopher than of the foundational nature of his contributions to absolutist thought. In fact, it was the modifications Hobbes made to the absolutist tradition that make his variant of absolutism so interesting.

There is no one theory of absolutism, but there are certain tenets that are characteristic of absolutist philosophies. First and foremost, there is a commitment to a certain conception of political sovereignty; namely, the idea that the sovereign is—or should be—a supreme, unlimited, undivided ruler who is unaccountable to those who are ruled (though the sovereign is always accountable to God). This theory of sovereignty was originally expounded by Bodin, who defended it on both conceptual and practical grounds. On conceptual grounds, he argued that absolutism is, in some important sense, entailed by the very definition of sovereignty. That sovereigns are absolute is tautological in this sense. In any state, there cannot help but be a supreme authority, that is, a final decision maker, interpreter of laws, and decider of controversies in the commonwealth. This political truth follows from the very *nature* of decision-making, legal or otherwise. Bodin's practical arguments for absolutism rely on the inherent and likely threats to political stability that arise from attempts either to divide political powers among different bodies in the state or to impose limits on the ruler's exercise of power. As an instance of consequentialist reasoning, Bodin's second set of arguments is vulnerable to empirical evidence. As such, whether or not *in actuality* non-absolutist elements in state structure necessarily tend toward political and civil unrest, or leave states vulnerable to foreign and domestic enemies, is an open question.

And, recent history seems to have shown that attempts to completely unify and centralize political power are *not* conducive to civic and political stability; arguably just the opposite is true.

Hobbes incorporated both sets of Bodinian insights into his political theory. He argued explicitly and virulently against dividing or limiting sovereign power, and it is a constant refrain in his work that sovereigns are not accountable to their subjects. In Hobbes's terms, the sovereign has "authority without stint" (*Leviathan* XVI.14); the essential rights of sovereignty—such as the power to raise money, enact laws, adjudicate disputes, and so on—are "indivisible" (XVIII.16). He repeatedly talks about the wrongness and illegitimacy of subjects "accusing" or "punishing" their sovereign (XVIII.6–7). In the Hobbesian narrative, especially as presented in *Leviathan*, his insistence on this latter point can be perhaps traced in part to his horror at the trial and execution of King Charles I by the English Parliament in 1649. The insurrection that led to this reversal of rule is precisely the kind of behavior that Hobbes is so anxious to prohibit.

Furthermore, we find the same twofold justification for sovereignty in Hobbes as in Bodin: absolutism follows from—or is included in—the very idea of a sovereign power, and attempts to institute *non*-absolutist forms of government (mixed constitutions, for example) risk disaster for the peace and stability of the commonwealth. It is unsurprising, then, that Hobbes's claims about absolutism are most extensively and passionately propounded in his account of the formation and constitution of the commonwealth (including the essential rights of sovereigns) and in his discussions of the potential causes for its destruction. But in the context of Hobbes's broader political theory, in order to make his case for absolutism, he needs to answer the question: why would people in the state of nature choose to institute an absolute sovereign power, instead of adopting an alternative constitutional design, say, separation of powers or limited monarchy? Only if Hobbes can give a satisfactory account of why the social contractors would find absolutism not only desirable but also *most* desirable can he explain why people living under absolutist regimes (or under systems of rule containing absolutist elements to some extent or another) should accept such authority willingly—and, indeed, consider themselves lucky.

Hobbes's answer to this question can only be understood in light of his overall political project, namely, to devise the principles of government that, if instituted and followed, would lead to an "everlasting" commonwealth (XXX.5). Of course, by "everlasting," Hobbes does not intend a commonwealth that would be guaranteed to last forever; even perfect absolutism only guarantees the *internal* stability of the commonwealth. No principles of institutional design can entirely protect the state from external dangers, natural or human. Nothing can guarantee that a particular commonwealth will always be undefeated on the global stage, and, of course, there are always famines, plagues, droughts, earthquakes, and other natural disasters that can cause civil unrest. Hobbes's argument is intended to show that the well-constructed—that is, the absolute—sovereign will be best placed to deal with such contingencies, and the absolutist state is most likely to survive such threats intact. The supposed guarantee of internal stability and the promise of increased resistance to external threat together explain why, according to Hobbes, social contractors will find it most desirable to institute a sovereign with unlimited, undivided powers of rule, accountable only to God and never to them. They give up their natural rights and

exit the state of nature for the sake of peace and security, and a government that conforms to absolutist principles is, for Hobbes, the most effective way of achieving that end.

At times, he speaks as though the absolute sovereign is a necessary, though not a sufficient, condition for lasting peace and stability. Then, the state is only vulnerable to the imperfections of the sovereign himself. However, it is not clear that Hobbes always takes absolutism to be necessary for political survival in the strictest sense. At other points, he emphasizes the dangers inherent in non-absolutist ways of organizing political power, but seems to recognize that such states have survived for significant stretches of time. The crucial point is not that non-absolutist governments will always self-destruct and absolutist governments will always rule forever, but that limiting and dividing power (or holding the ruler accountable to the ruled) *always* represents a potential—and avoidable—risk to the health of the commonwealth.

There are at least three important and distinctive features of Hobbes's absolutism: his account of the origin of absolute power (the social contract); his claim that any form of government—not only monarchy but also aristocracy and democracy—can be absolute; and his understanding of the relationship between the absolute power of the sovereign ruler, on the one hand, and the non-absolute obligations of subjects to obey, on the other. These three aspects, taken together, make Hobbes's own account of absolutism unique among his contemporaries. Each distinctive feature of Hobbesian absolutism—that is, the social contract as origin, the wide applicability of his notion of absolute sovereignty, and the non-absolute obligation of subjects to obey—is the subject of a separate entry in this chapter, and is discussed in further detail there (see the entries on "Monarchy and other forms of government," "Resistance and non-resistance," "Commonwealth," and "Social contract"). For the purposes of understanding Hobbes as an absolutist thinker, however, it is important to note their collective rather than individual significance. Taken together, these three features serve to render Hobbes a formidable obstacle for anyone who attempts to dismiss absolutist thinking outright: the sophistication of his absolutist approach represents, at the least, a serious challenge for those who wish to defend ideals of limited, divided, or accountable government.

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ADJUDICATION

Hobbes's affection for natural law appears nowhere more clearly than in his discussions of legal reasoning, and in particular his furious attack on the English Common law, as represented in a short work Hobbes wrote in 1666 called *A Dialogue Between a Philosopher and a Student of the Common Laws of England*.[1] *The Dialogue* is a charming debate between a philosopher and a lawyer, or, as Hobbes calls him, "a student of the common laws of England." The philosopher appears to give voice to Hobbes's own thoughts, and the lawyer is a thinly-disguised version of the preeminent jurist of Hobbes's day, Sir Edward Coke. Somewhat surprisingly, the philosopher appears to align himself with the scholastic position on civil law, in opposition to the prevailing position of the English legal profession of Hobbes's day.

In the first chapter of the *Dialogue*, the philosopher calls into question the lawyer's idea that legal decision-making is "an artificial perfection of Reason, gotten by long Study, Observation and Experience, and not of every Mans natural Reason."[2] Coke, like all English jurists, had staunchly defended the use of precedent in legal reasoning. Against precedent, which Hobbes refers to in the *Dialogue* as "custom," Hobbes has the philosopher say:

> As to the authority that you ascribe to custom, I deny that any custom of its own nature can amount to the authority of a law. For if the custom be unreasonable, you must, with all other lawyers confess that is not law, but ought to be abolished; and if the custom be reasonable it is not the custom but the equity that makes the law.[3]

In short, the philosopher argues that if the precedent case was wrongly decided, following it in the current case would only perpetuate error. And if the precedent case was rightly decided, it ought to be possible

to arrive at the same solution on the basis of first principles, making the prior case otiose. The philosopher therefore argues that precedent is either misleading or extraneous, and that there can be no justification for adhering to it.

To any lawyer educated in the common law tradition, this argument has a curious ring to it. Of course legal reasoning is "artificial"; we are trained to think. What other way is there for legal traditions to continue themselves? But there is an important point lurking behind this simple, indeed simplistic argument, which is worthy of elaboration. In this passage, the philosopher is suggesting that considerations of justice, welfare, and fairness are more authoritative than considerations of mere consistency. Indeed, the point seems to be that consistency cannot by itself be counted a virtue in this context, since a judge's sole aim should be to do justice in the particular case at hand. One can understand Hobbes's thought here. Why after all, should the fact that a case is decided the same way as an earlier, similar case be a basis for thinking it correctly decided? Would a case following in the footsteps of *Plessy v. Ferguson*[4]—the infamous decision upholding segregation on public conveyances—be a better decision for adhering to *Plessy* than for rejecting it? No, one may say, because *Plessy* was so indefensible from a moral standpoint that the value of following precedent cannot outweigh the value gained by rejecting *Plessy*. It is all a matter of balancing. But here is where Hobbes's point makes itself felt: Would a decision that followed *Plessy* be better in *any* respect, merely by virtue of the fact that it conformed to, rather than rejected, that earlier decision? Would consistency even be a point in its favor? Certainly there may be contexts in which consistency is a virtue. But is adjudication of disputes involving individual rights and responsibilities one of them?

The lawyer in this debate might have wished for a better hearing, as a possible response that draws on the defense of consistency in the law is presented by Ronald Dworkin's *Law's Empire*. In addition to fairness and justice, Dworkin argues, adjudication reflects a moral virtue that is of unique relevance to legal process, and this is the virtue of *integrity*.[5] Integrity is a near cousin of consistency. It does not defend mechanical adherence to precedent or treating like cases alike as a virtue in and of itself. Such empty formalism is worth little from a moral point of view: like a policy that would seek to split the difference on abortion by allowing women to have abortions who were born in even years only, and to forbid it to women born in odd years, policies that would make a virtue of mere adherence to rule would miss the inherent value of consistency in the law.[6] Instead, the virtue of integrity earns its rightful position in our legal system by its promotion of what Dworkin calls "principled consistency," meaning drawing consistent distinctions not at random, but according to morally relevant features of classes of persons or cases. Thus the year of a woman's birth is not in general a morally relevant feature, and thus assigning the right to an abortion based on characteristics of this sort would not defend integrity. But the source of a woman's pregnancy or the gestational age of the fetus when an abortion is sought might be such a feature. Integrity, then, is a morally defensible quality of a legal system because it seeks to treat like cases alike, according to morally salient features of such cases.

Still, one can imagine the philosopher's response to this rather more sophisticated

defense of the common law tradition. To the extent we value "principled consistency" in adjudication, it is not the fact that one case is being decided in the same way as another case, according to some set of morally relevant principles. What is valuable, in other words, is not the similarity of treatment of the cases in and of itself, however based on principle such treatment may be. It is instead the correctness of the relevant decision under such principles. Having decided a case correctly under the applicable set of moral principles, we are pleased to note in the next case that we once again find those same moral principles of relevance, and that our intuitions of justice are consistently displayed, thus perhaps supplying evidence of their veracity. But once again, it is correctness of the decision that is of relevance, not the adherence to precedent that we see as valuable.

The proof of this point lies once again in the imagined situation of having to follow a case wrongly decided on false moral principles, such as the principle of "separate but equal." Dworkin, indeed, founders somewhat on this very example, and suggests that *Brown v. Board of Education* was in part admirable for interpreting the equality requirements of the Fourteenth Amendment in a way that is consistent with the principle in *Plessy*—the relevant principle, however, being one of equality rather than one of segregation. Let us return to Hobbes's simple but rather compelling question: Is *Brown* to be thought a better case because it managed to reject the substance of *Plessy* according to a rationale that renders the two cases roughly consistent with one another? Or would it not have been better for *Brown* to declare its rejection of the principle for which *Plessy* more likely truly stood, rather than straining one's interpretive faculties to make them stations along a common line of thought? Or, to put the point another way: does not the interpretive stance required to put *Plessy* and *Brown* into a common principled framework do damage to the principles of justice and fairness the ideal of equality also seeks to defend? And is such damage justified by the somewhat dubious goal of showing the development of the law to be one that displays integrity, in addition to justice and fairness? If one were to give up on the idea of integrity, or any other interpretation of the requirement of consistency, the stance the *Brown* court ought to have taken toward the *Plessy* precedent falls not out of the need for consistency but the need instead to do justice. That, arguably, is both a better and more honest basis for reaching hard, moral decisions in the face of immoral precedent.

Had the debate been allowed to continue, the lawyer might yet have had a rejoinder to the foregoing argument. The philosopher is assuming that it is possible to determine what counts as a good or a bad decision, a just or an unjust outcome, independently of the precedent case. But the common law lawyers with whom Hobbes was arguing might maintain that this is not so: there *is* no measure of the correctness of a decision that is entirely independent of its fidelity to sources of law, among which prior decisions figure prominently. Imagine someone tried to make the same argument about following statutes, they might say: statutes are either misleading or otiose, for if the statute is bad and dictates undesirable results, we have reason not to follow it, and if the statute is good, we could have reached this same conclusion on the basis of first principles alone. Either way, we ought not to follow statutes. For statutes, this is manifestly a bad argument. Why should we be more inclined to

accept it where common law reasoning is concerned?

From Hobbes's perspective, there is a solid basis for distinguishing reasoning from statutes from reasoning from precedent. Statutes, he might say, are sources of law in a way that prior decisions are not, or at least ought not to be. They are authoritative pronouncements that create law where none was before; statutes are not themselves interpretations of other sources of law.[7] The content of these pronouncements, therefore, cannot be discerned directly from first principles. Prior cases, by contrast, are not sources of law in the same way, in that they are themselves interpretations of other sources of law. There is thus greater reason to follow statutes than to follow prior decisions. But that raises the following question. If prior decisions are not properly speaking sources of law, in Hobbes's view, what sources of law *should* judges rely on in situations in which no statute applies? We return to Hobbes's own discussion to answer this question.

In the *Dialogue*, Hobbes contrasts the "artificial reason" of the common law with "natural reason," namely reasoning from first principles. Precedential reasoning is "artificial," because it takes as its premises conventional facts drawn from legal practice. Hobbes thus sees reasoning from precedent as fundamentally positivistic. Natural reason, by contrast, relies on universal truths of human existence—truths that are accessible to all human beings in virtue of their possession of the faculty of reason. But how should a judge discover these abiding truths of reason? Hobbes's suggestion may seem particularly mysterious, given that he rejects the availability of moral principles in nature. For if natural principles are available to judges to decide cases, why would these same principles not impose obligations on private individuals in a state of nature? Or, to put matters the other way around, if the state of nature is a condition of unmitigated license, how could there be natural principles available for the guidance of adjudicators in legal cases?

The *Dialogue* gives us only the faintest description of the natural principles Hobbes has in mind. The abiding theme is the equation of reason, or "right reason," with "equity," which he explains as "a certain perfect reason, that interpreteth and amendeth the law written, itself being unwritten, and consisting in nothing else but right Reason."[8] He contrasts the use of natural principles of equity to judge between man and man with a judge's function when he is merely interpreting statutes, at which point his primary task is to discern the intent of the legislator. Clearly, right reason is not intended to refer simply to accurate calculation, as commentators have thought. It is instead meant to capture that sense of non-calculative reasoning—reasoning from a sense of justice and equity.

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AUTHORIZATION AND ALIENATION

In *Leviathan,* Hobbes's account of the social contract employs the concepts of the *alienation* of natural rights and the *authorization* of the sovereign power, arguing that both are necessary to create the commonwealth. In earlier versions of his political theory (e.g. in *De Cive*), the authorization aspect is absent from his characterization of the social contract; this has led some commentators to question its nature and purpose.

In the famous description of the social contract in *Leviathan*, Hobbes contends that we should conceive the social contract "as if every man should say to every man *I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner.*" (XVII.13) As this wording makes clear, Hobbes seamlessly joins these two kinds of declaration—alienation and authorization—in his description of the social contract. Subjects *alienate* their rights in giving up their liberty to act on their own individual judgment, promising instead to submit to the sovereign's will and judgment (see the entries on "Rights" and "Private judgment"). They *authorize* the sovereign in that they in some sense "own," or "are the authors of," every action that the sovereign takes in his role as sovereign.

Why does Hobbes supplement alienation with authorization? One possible answer might be that authorization is an effective explanation for how a person or institution comes to have *authority.* Arguably, the concept of alienation alone cannot generate authority; it only creates obligations of obedience. For Hobbes, authorization involves the transfer of normative power, of a right to act, from an author (or a principal, as we might now say) to an actor (or, now, an agent). So long as the agent acts within the scope of the authorization, the principal has no right to complain; likewise, the Hobbesian subject has authored the sovereign's actions and has no general right to complain. Further, the principal can become obligated as a result of the agent's actions; as Hobbes, says, ". . . when the actor maketh a covenant by authority, he bindeth thereby the author, no less than if he had made it himself, and no less subjecteth him to all the consequences of the same" (*Leviathan* XVI.5). Today, a principal ordinarily transfers only limited rights or powers to an agent, such as the power to invest a certain sum of money. However, in the Hobbesian social contract, the empowerment of the sovereign is unqualified: what he says is that people in the state of nature agree to give up *all* of their liberties and powers so as to institute an absolute sovereign (see entries on "Power" and "Liberty"), but also they agree to own *all* the sovereign's actions. The combination of authorization and alienation makes it overdetermined that the sovereign is immune to any possible complaint from subjects who might think his decisions or policies are unwise or even foolish.

It might seem, however, that this picture is inconsistent with Hobbes's endorsement of inalienable rights, according to which subjects retain certain rights that cannot be transferred (for instance, the right of self-defense and the general right to resist punishment: see entry on "Resistance and non-resistance"). Consider a convicted criminal sentenced to death and commanded to kill himself. Hobbes insists that such a person has the right to resist the infliction of his sentence—he never alienated his right of self-defense. However, according to the theory of authorization, the convicted criminal should see himself as the author of that command and

so be obligated to follow it—the command is in some sense his own. So it might seem that the criminal both does and does not have an obligation to obey in these circumstances. Hobbes appears to recognize this particular tension in relation to punishment, and offers a separate explanation for the state's right to punish based on the sovereign's original right of nature, which was never relinquished (*Leviathan* XXVIII.2). Even if Hobbes's explanation for the sovereign's punishment power is convincing, however, it does not dissolve the seeming inconsistency. For this and other reasons, many remain unsatisfied with Hobbes's notion of authorization (see, for example, Martinich 2008, 115–25).

Perhaps the Hobbesian notion of authorization is unavoidably problematic, and he should have kept the characterization of the social contract he offered in his earlier work, *De Cive*. Commentators disagree about the best explanation for why Hobbes added the language of authorization to *Leviathan*, especially given that it is arguably unnecessary for his justification for absolute sovereignty and seems to cause a series of inconsistencies in his political theory. Deborah Baumgold, for example, argues that his reasons for adding the language of authorization in *Leviathan* were political and historical, not philosophical (1988, 48–55).

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HOBBES AND CITIZENSHIP

Establishing what Hobbes's view was on citizenship depends on what we think citizenship means. Some of the possibilities are assessed below and a conclusion is drawn at the end. We will take Hobbes's key text, *Leviathan* (1651), as the crucial reference point for this discussion. *De Cive* (1642), translated as "On the Citizen" might on the face of it be thought to be the more relevant text, but is in fact an earlier version of Hobbes's political theory most fully worked out in *Leviathan*. What Hobbes's view was on citizenship also depends upon which Hobbes scholar you ask, because there are debates among scholars on this, as well as on every other aspect of the meaning and interpretation of Hobbes's (and all other thinkers') work. Here I am going to set out my view, but with hopefully enough

openness for you to enter into the debate if you want to.

We are familiar with the view that citizenship is a matter of belonging to an internationally recognized nation-state with bounded territory and clear borders—that is, part of the Westphalian system of international relations understood as relations between nation states. However, we cannot expect to find that view in Hobbes because the Westphalian system as we understand it had not yet been fully formed in the 1640s and 1650s. Hobbes's image of the state of nature has subsequently been taken as setting out the paradigmatic Westphalian statement of international relations as states operating in a context of anarchy. However, this view not only misrepresents Hobbes's text but is also powerfully tangled up with the subsequent development of the broadly realist position in the discipline of International Relations.

If we go a step further and think that citizenship is closely linked to national blood ties (anyone whose family have always lived here is a citizen), or shared language (we are citizens if we all speak the same language), then we need to recognize that such sources of nationalist citizenship are foreign to Hobbes.

If we take the view that citizenship concerns legal status, for instance with rights to be treated fairly by the law of the land rather than as an alien or foreigner, then again Hobbes was not writing in the context of a modern state of this kind. The idea of citizenship that accents individual rights to freedom (expressed through personal liberty and private property, under the umbrella of impartial institutions of justice), and corresponding obligations on citizens (to obey the law and pay taxes) was only formalized in the eighteenth century. Citizenship as expressed in being entitled to apply for a passport, is likewise not appropriate.

If we mean by citizenship the entitlement to participate in politics, for example, through voting in elections and being able to stand for political office, then again this is anachronistic for Hobbes's times. Such ideas only became prominent in the nineteenth century.

If by citizenship we mean the entitlement to social and economic well-being, required for the full enjoyment of civil and political citizenship, then this is an idea that only became widespread in the welfare states of the mid-twentieth century.

Citizenship in the twenty-first century is also used to refer to disruption of or resistance to unfair state practices, either on one's own behalf or on behalf of others such as refugees and asylum seekers. This notion of citizenship was unknown in Hobbes's day, as was the twentieth-century idea of citizenship as an egalitarian force to be used in claims by marginalized groups such as women, ethnic minorities, sexual minorities, and disabled minorities. The politics of inclusion and exclusion, in campaigns for instance for race-neutral and gender-neutral citizenship, as well as claims to global citizenship, transnational European citizenship, and ecological citizenship, were not part of the political discourse of Hobbes's day.

Political theorists also debate the extent to which modern citizenship has been or should be shaped by a liberal individualist tradition or a civic republican tradition. Scholars on both sides of this debate seek to enlist Hobbes to their view. Liberal citizenship emphasizes the pre-political rights of the individual against an ever-encroaching state, and citizenship as a formal legal status, with individuals much more interested in pursuing their own projects and interests

than in investing the state with moral value. Republican citizenship values community and social bonds. It upholds freedom from domination, "freedom as flowing from the self-governing capacity of free states to that of free persons" (Burchell 1999, 507), and active citizenship as engaging with the practices of the civic virtue of public spiritedness, taking a turn in the mundane but necessary job of political post-holding, for instance, playing an active role in local government. Claims for aligning Hobbes to the liberal view centre on the role of the social contract in Hobbes's work (the social contract being the conventional hinge in the liberal view for limiting the role and power of the state), and Hobbes's specification of individual freedom as freedom from constraint. However, there is much more to Hobbes than this.

While claims for aligning Hobbes with the civic republican view of citizenship are more strained, Hobbes's view of the role of "artifice" does give some grounds for doing so. In saying in *De Cive* (1.2n) that "man is made fit for society not by nature, but by training" or education, Hobbes is putting a positive value on the role of the state in enabling individual self-development. The opening statement in the Introduction to *Leviathan* takes the point further, arguing that what man can achieve through his own making and efforts, builds upon and indeed exceeds what nature can provide. Hobbes says, "[n]ature, the art whereby God hath made and governs the world, is by the art of man, as in many other things, so in this also imitated, that it can make an artificial animal." He goes on that art goes further than the nature that God creates,"imitating that rational and most excellent work of nature, man. For by art is created that great Leviathan called a commonwealth, or state, in Latin civitas, which is but an artificial man; though of greater stature and strength than the natural, for whose protection and defence it was intended" (*Leviathan* Introduction). This implies that citizenship is a concept that belongs to the society created by men through their artifice. The idea of citizenship thus highlights the marvellous achievements of man in forging together a peaceable commonwealth for their mutual benefit. It should also be noted that in his statements about "man," it cannot be assumed that Hobbes is intending to be gender-neutral. He held that "men, are naturally fitter than women, for actions of labour and danger" (*Leviathan* XX, 1946, 128).

One of the crucial points that follows for Hobbes from his argument about artifice in the Introduction is that, only under a sovereignty settlement, when political order and so government is established and instability avoided, can the benefits of living together be ensured. Hobbes paints a picture of the harmonious and commodious living, wealth, business, and general flourishing, which all absolutely require the structure of uncontested sovereignty in order to proceed.

So what *does* Hobbes mean by this term citizenship? In *De Cive* (IX.9) Hobbes asks directly, "what is the difference . . . between a free man or a citizen on the one hand and a slave on the other?" He resolves this question into one about the difference between liberty and servitude, and discusses four kinds of liberty, providing an answer to the question that is astonishing to a twenty-first-century reader. First, liberty is simply defined as "the absence of obstacles to motion," such as a "traveller is prevented by hedges and walls from trampling on the vines and crops adjacent to the road". On the strength of this definition, Hobbes argues strongly that "in this sense all slaves and subjects are free who are not in bonds or in prison." Secondly, he goes on to

define obstacles to freedom that are "discretionary," which "do not prevent motion absolutely but incidentally, i.e. by our own choice, as a man on a ship is not prevented from throwing himself into the sea, if he can will to do so." Thirdly, and building on the previous categories of liberty, civil liberty is defined by Hobbes as the capacity to always ultimately be able to defend your life and health against a ruler or master, and this capacity is held by subjects, children, and by slaves. Hobbes maintains that anyone "restrained by threats of punishment from doing all he wants to do is not oppressed by servitude; he is governed and maintained." For Hobbes, then, constraints placed by the government on a citizen's freedom do not necessarily inhibit one being a free man. Obstacles to liberty coexist with the citizenship of a free man. The difference between a free citizen and a slave, then, lies in that "the free man is one who serves only the commonwealth, while the slave serves also his fellow citizen." The fourth category of liberty is "exemption from the laws of the commonwealth" and this form of liberty is "reserved to rulers" only.

While we would expect the difference between a citizen and a slave to be that the citizen enjoys freedom while the slave exists in servitude, Hobbes has given quite a different answer, arguing instead that we all live with obstacles to our liberty but that this does not mean we are no longer citizens or free men. We can also see in this passage in *De Cive* that Hobbes in important respects does not distinguish between citizens and subjects, whereas for us the two terms have very different resonances. Indeed there is a slippage in Hobbes between "citizen," "subject," and "free man," which is consonant with the discourse of the day.

Leviathan contains a more extended and sophisticated treatment of the concept of liberty, but Hobbes's view of the citizen/subject/free man remains in important respects the same. In chapter XXI Hobbes argues that, "in the act of our submission [to create by our artifice a sovereign, by a covenant authorising him to represent us and act on our behalf], consisteth both our obligation, and our liberty" (1946, 141). He also takes the view that the "greatest liberty of subjects, dependeth on the silence of the law" (1946, 143). As Hobbes makes it clear in chapter XVI, a

> multitude of men, are made one person, when they are by one man, or one person, represented; so that it be done with the consent [this being the mechanism of their artifice] of every one of that multitude in particular. For it is the unity of the representer [that is, every man who entered into the covenant with every other], not the unity of the represented [that is, the resulting sovereign], that maketh the person one. (1946, 107)

Hobbes was not concerned with citizenship as a benchmark of civilized living in the way we are. The big question for Hobbes, writing against the backdrop of the turbulent political times of the English civil war, was how to establish political order in a world of unrest and fear, without being absolutely draconian about it. How can political order best be established? By delivering civil peace at the expense of subjection to political sovereignty (obedience for protection)? Or, through the consent of those living in the commonwealth and subject to its rules? How do you get people to agree to something that might conflict with their own self-interest? Hobbes's answer is to point out that, on the one hand, in the state of nature everyone would be equally likely to die (the stick), and on the other hand by showing a picture of a future

in which everyone wins more than they lose (the carrot). Hobbes adds to this answer, in effect, "you don't like it? But you agreed to it and signed up to it."

Hobbes is also very keen to insist that the sovereign is not just some arbitrary and tyrannical ruler, but holds the office of sovereign as a legal person. Hobbes is very keen on the idea of the rule of law. "Civil government" (*De Cive* Preface, 2) is a key term for Hobbes, meaning government under the rule of law. For Hobbes this plays a key role in safeguarding the (limited but crucial) rights of citizens, marking a boundary around the acceptable conduct of the sovereign, establishing the relations between sovereign and subject on a proper legal basis, but primarily in securing a law-abiding society in which subjects can flourish. Hobbes's thinking is oriented toward citizenship obligations in the context of "civil government," "civil society," and "civil peace," not toward the modern context of individual rights and entitlements against the state. He endorses examples from history in which "citizens did not measure Justice by the comments of private men but by the laws of the commonwealth" (6).

So, in conclusion then, Hobbes cannot be expected to hold modern views of citizenship. The notion with which we now operate, and which we take as a given, comes from a complex history of liberal and other ideas, practices that have developed, and historical events, many of which come from a later time than the one in which Hobbes lived. The modern discourse on citizenship since the eighteenth century has regarded citizenship as a "good thing," part of a cluster of broadly liberal values with emancipatory potential for the individual. However, while Hobbes predates this context of thinking about citizenship, he does have things to say about citizenship. Some Hobbes scholars think he tended toward the draconian view of ruling and governing, and see his own statements about citizenship as a bit of a sham. However, if you see Hobbes as a thinker who was primarily interested in setting out a conception of sovereignty that would be robust, and one that was grounded upon consent rather than force, then Hobbes must be included in the set of thinkers for whom citizenship is meaningful. For Hobbes it is a *political act* to make the decision to come together in a commonwealth and give up (along with everyone else) some of your rights, in order to be able to live commodiously and cooperatively. So in this sense Hobbes does allow politics a role and consequently sees citizenship as a political concept. As he says in *Leviathan*,

> as men, for the attaining of peace, and conservation of themselves thereby, have made an artificial man, which we call a commonwealth; so also have they made artificial chains, called civil laws, which they themselves, by mutual covenants, have fastened at one end, to the lips of that man, or assembly, to whom they have given the sovereign power; and at the other end to their own ears. (chapter XXI, 1946 138)

The idea of liberty is central to both the liberal and republican traditions on citizenship and, while Hobbes fits absolutely comfortably into neither tradition, he does hold that the "liberty of the subject [is] consistent with the unlimited power of the sovereign" (139). The citizen, bound by his covenant, obliges himself to the commands of the sovereign. As Hobbes says bluntly in the Preface to *De Cive* (Preface 1), the book "sets out men's duties, first as men, then as citizens and lastly as Christians." Citizenship, for Hobbes, needs to be understood in the light of a cluster of concepts that include sovereignty,

authorization, representation, covenant, artifice, and liberty.

RP

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CIVIL LAW

Historically, Hobbes has most often been seen as advancing a positivistic theory of civil law, meaning that he regards law as entirely a product of sovereign pronouncement. Support for this interpretation of Hobbes lies mostly from Hobbes's remarks about civil law in chapter XXVI of *Leviathan*. Hobbes's definition of law, for example, makes him sound like a forerunner of John Austin, in particular in the reliance Hobbes appears to place on the notion of *command*, as well as the Austinian approach that treats the import of law and command as stemming from the fact that it is a command "backed up by a threat of sanction." Apparently anticipating Austin's theory, Hobbes writes: "law in general is not counsel, but command,"[9] and the command of one who himself "is not subject to the civil laws."[10] At another point he says that "all laws, written and unwritten, have their authority and force from the will of the commonwealth, that is to say, from the will of the representative . . ." (meaning the sovereign).[11] And further, that "before the names of just and unjust can have place, there must be some coercive power to compel men equally to the performance of their covenants, by the terror of some punishment greater than the benefit they expect by the breach of their covenant . . ."[12]

Indeed, not only does Hobbes look like a forerunner of the most extreme form of positivism about civil law, but he appears to hold a cynical view of the psychology of legal duty as well, namely that the only reason to follow the law is that one will suffer punishment if one does not: Austin's view of law as a command backed up by a threat of sanction dovetails nicely with Holmes' picture of the legal subject as "the bad man," who "cares only for the material consequences which . . . knowledge [of the law] enables him to predict."[13] For agents thus constituted, the authority of the law resides entirely in its threat of external sanction, rather than in an inner sense of duty. Thus the caricature of Hobbesian legal theory anachronistically combines the Austinian command theory and the "bad man" legal psychology.

A more careful study of Hobbes's remarks about law, however, makes it readily apparent that the caricature is not correct. There are two central reasons for this. First, Hobbes's treatment of law as command of a sovereign is asserted against the background of a theory of sovereign authority that rests on contractarian agreement. Second, Hobbes's jurisprudence made extensive use of the notion of natural law, and the related concept of equity. Let us examine in turn each reason for rejecting the historical caricature of Hobbesian legal theory.

In the passage quoted earlier, where Hobbes defines law, he writes that law is not just command, but the command of a sovereign issued to one "formerly obliged to obey him."[14] The obligation to obey the law for Hobbes thus *precedes* the command in which the law is expressed. This provides an immediate basis for distinguishing Hobbes's account from Austin's: if the obligation to obey the command precedes the issuance of the command itself, the duty to obey cannot lie in the sovereign's ability to compel compliance with a threat of sanction. The commands of the sovereign are law, Hobbes thinks, not because the sovereign who issues them has the power to coerce compliance, but rather because the subjects who receive these commands have a prior obligation to obey him, an obligation that presumably stems from the contractual commitment they had previously assumed.[15] This suggests that the ultimate source of the sovereign's authority is the self-interested agreement of the subjects over whom he rules. This contractarian underpinning of Hobbes's definition of law provides a powerful reason for seeing his approach as only superficially positivistic.

The second reason—the relation between positive and natural law that Hobbes repeatedly asserts—is quite separate from the connection between positive law and contractarian agreement just noted and does not in any way depend on it. The best place to start exploring Hobbes's position on this question is with his odd assertion in chapter XXVI of *Leviathan* that "[t]he law of nature and the civil law contain each other, and are of equal extent."[16] Such a statement about the relation of civil to natural law seems more fitting for Thomas Aquinas than for Thomas Hobbes, and casts significant doubt on the view of Hobbes as a legal positivist. The meaning of this statement, however, depends on Hobbes's view of laws of nature, which needless to say is not quite identical to Aquinas's. While this entry cannot do justice to the complex topic of the law of nature in Hobbes, a cursory inspection might have us focus on Hobbes's assertion that the laws of nature, which are justice, gratitude, and other moral virtues, are mere "qualities that dispose men to peace and obedience."[17]

They become laws once a commonwealth is formed. He writes:

> That which I have written in this treatise concerning the moral virtues, and of their necessity for the procuring and maintaining peace, though it be evident truth, is not therefore presently law but because in all commonwealths in the world it is part of the civil law. For though it be naturally reasonable, yet it is by the sovereign power that it is law.[18]

Natural virtue, as expressed in the laws of nature, become part of the civil law once the sovereign converts natural law into civil pronouncements. Once part of the civil law, rules thus formulated help to sustain obedience to natural law, by supporting the commitment to the civil state and the avoidance of war. Hobbes thus appears to think that the laws of nature supply the content for the commands of the sovereign, and hence for the civil laws. The sovereign acts as translator for the laws of nature: he interprets them and gives them definite positive form.

The sense in which it is plausible to think of the civil law and the natural law as "of equal extent," then, requires some elaboration, but it may not in the end be quite as mysterious as it at first glance appeared. Adherence to the natural law is the precondition for the existence of good civil laws, that is, civil laws that suit their function. Since the ability to protect and further human welfare through legislation is one of the central legitimating functions of the sovereign, the very authority of the sovereign depends in part on the satisfaction of this condition. On the other side, civil laws have as their aim the reinforcement of the laws of nature, meaning that the civil laws help to ensure that laws of nature are satisfied. This creates a kind of feedback between the natural law and the civil law—one might say a relation of mutual reinforcement.

To see in greater detail what this relation of mutual reinforcement might look like, consider the relation between the third law of nature and the civil laws regarding the enforcement of ordinary contracts. The third law helps to establish the possibility of sovereign rule, by instructing men to abide by the original covenant through which the sovereign is instituted. Ordinary contracts are then enforced through commands of the sovereign that become law, which in turn helps to reinforce the contract for the institution of the sovereign. It is not hard to project in this context what Hobbes might mean when he says that the natural law and the civil law are of "equal extent." He emphatically does not mean that they are identical bodies of law, as one might have initially thought. Rather, he means that the principles of reason on the basis of which the natural practice and their corresponding social institutions are established are the same, and further that the natural and civil practices are therefore mutually supportive.

For those interested primarily in the contractarian aspect of Hobbes's political philosophy, the first feature of his legal theory—namely that his account of legal obligation rests on a foundation of rational agreement—makes perfect sense. But this second feature—the connection of positive law to natural law—will seem troubling, not only because it makes Hobbes look like a natural law theorist, but because it seems to stand in sharp conflict with the contractarian aspect of his account. The question, then, is whether it is possible to combine Hobbes's contractarian theory of legal authority with his naturalistic account of the necessary content of civil law. If not, as some scholars have thought, then it is difficult to assert that Hobbes has a unified legal theory. This author has argued that it is

possible to reconcile Hobbesian political and legal contractarianism, on the one hand, and Hobbes's commitment to natural law and equity on the other. However a full explanation of the nature of the reconciliation is beyond the scope of the current entry.

CF

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COMMONWEALTH

In Part II of *Leviathan*, Hobbes gives an account of the commonwealth from its emergence to dissolution, and derives a plan for those structures and institutions that will best serve the purpose for which the commonwealth was created and will most effectively defend it against threats to its existence.

For Hobbes, a commonwealth is an artificial person made up of a group of individuals who have agreed with each other, in the social contract, to obey a common sovereign power. Thus, "... the essence of the commonwealth, which (to define it) is *one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves every one the author, to the end he may use the strength and means of them all, as he thinks expedient, for their peace and common defence*." The commonwealth is artificial, then, in at least the sense that it is created by human artifacts, namely, covenants. It is important that in contracting with each other the "great multitude" of individuals, each with his own separate will, becomes a unity, ruled by a single will. Referring to the process of authorization and relinquishment of rights, which constitutes the social contract, Hobbes says "This done, the multitude so united in one person is called a Commonwealth, in Latin Civitas. This is the generation of that great Leviathan." (*Leviathan* XVII.13). Hobbes continues his description saying, "And he that carrieth this person [the commonwealth] is called Sovereign, and said to have *Sovereign Power*, and every one besides, his Subject" (XVII.14). Finally, in Hobbes's view, sovereign power can be attained either by "institution" or by "acquisition" (see the entries on "Social contract," "Authorization and Alienation," and "Sovereign").

It should be noted, however, that Hobbes's use of the term "commonwealth" is not wholly consistent or unproblematic (see Skinner 1999, 2002). Sometimes he appears to use it to refer simply to the sovereign, sometimes to the people united in obedience to the sovereign (and so *not* including the sovereign), and sometimes to the conjunction of the two. But, reference to the unity

of the people and sovereign together conveys the most distinctively Hobbesian idea about the nature of the polity. This usage is also suggested by the original frontispiece of *Leviathan*, which depicts the commonwealth as the head of a person whose body is made up of the people. In general terms, however, Hobbes's use of the Latin word "civitas" for "commonwealth" signifies that he has in mind the basic and relatively uncontroversial idea of civil society, or a political order. However, the particulars of his account of civil society, what human life outside of it looks like, and how it should be structured, are what make his theory so controversial.

Commonwealths are necessary, according to Hobbes, because of particular distinctive characteristics of human beings. He saw that ants and bees, who naturally "live sociably one with another," do not need a government—in their natural state, there is no ultimate difference between the private good of the individual ants and bees and the common good of the whole colony. Individuals of the species do not compare themselves with each other, or get offended, or desire power; lacking speech and reason, none of the problems that arise for people in the state of nature will arise for ants and bees (*Leviathan* XVII.6–12). In contrast, the natural state of human beings is vividly described as anarchic and horrid, and for this reason, human beings must create a political order if they are to survive and thrive (see the entries on "State of nature" and "War and peace").

For human beings, then, the danger, chaos, and insecurity of the state of nature make it necessary to institute the commonwealth both for self-preservation and for the hope (or chance) of a more contented life. On Hobbes's view, intermediate forms of cooperation or collective action, such as family or kinship groupings, will be internally unstable insofar as they still allow individuals to act on their own private judgment (XVII.2–5) (see the entry on "Private judgment"). As a result, collectivities that are not commonwealths will be unable to provide the goods of security and the prospect of a better life. Similarly, an agreement by many people to act on one person's judgment for a *limited* time—for instance, in a state of emergency—cannot provide the long-term security essential to a robust or flourishing civil society. According to Hobbes, only a commonwealth in which every person gives up her or his natural rights and authorizes the commands issued by the sovereign, can provide the lasting security and stability in which people can begin to cooperate, prosper, and enjoy the fruits of their labor.

Not only is Hobbes interested in giving an account of the definition, genealogy, and justification for commonwealths, he is also interested in providing a diagnosis of those things that can endanger them. He devotes chapter XXIX of *Leviathan*, entitled "*Of those things that Weaken or tend to the* Dissolution *of a* Commonwealth" to giving a detailed analysis of the main threats facing civil order. Tellingly, Hobbes chooses the analogy of health in this extended analysis. Because he treats the commonwealth as an artificial person, it is unsurprising that he discusses the things that "weaken" or "tend to the dissolution" of a commonwealth in terms of bodily ailments. The "infirmities" of a commonwealth include "want of Absolute power" (XXIX.2–3). If the sovereign does not have absolute power, the commonwealth will be subject to forces that will weaken it. For example, if sovereign power is divided among two or more entities (e.g. the king and parliament), then irreconcilable disagreements between those two entities are not only possible but also *likely*. With no power

to adjudicate them, these disagreements will produce internal discord and weaken the commonwealth because the resources and attention that should be put toward maintaining peace and prosperity will instead be spent dealing with the internal strife. This problem of two or more entities vying for power and causing internal discord is in some sense a structural problem since it derives purely from the way in which political power is constituted and distributed. But of course Hobbes also recognized that there would be threats that were equally harmful but did not arise from anything to do with the particular way in which the commonwealth is structured. For instance, he also discusses the "*diseases* of a commonwealth that proceed from the poison of seditious doctrines" (*Leviathan* XXIX.6). The series of seditious doctrines includes but is not limited to the ideas that private individuals are the appropriate judges of good and evil, that a person should follow his or her conscience at all times (even if it goes against the civil law or sovereign's command), and that there exists a natural right to property that the sovereign could somehow violate.

SS

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DUTIES OF SUBJECTS AND SOVEREIGNS

The primary, defining duty of subjects in the Hobbesian commonwealth is to obey the commands of the sovereign. This duty to submit to a sovereign is derived from the social contract, that is, the agreement made by people in the state of nature to give up their former freedom to act only according to their individual private judgment. In so contracting, they create a civil society or commonwealth that can protect them from the violence and chaos of the state of nature. In return, subjects undertake to obey the sovereign, both passively (by not resisting the sovereign or his agents) and actively (by complying with his orders to pay taxes, and so on). There are a few important and interesting exceptions to this general principle of obedience (see the entry on "Resistance and non-resistance"), but they are narrowly framed and ultimately serve to emphasize the force and breadth of the fundamental duty to obey the law.

The duties of the sovereign, on the other hand, are outlined in considerable detail. At first glance, this might seem strange. Hobbes's social contract is a contract between subjects, not a contract with the sovereign, so the source of the sovereign's duties cannot be a covenant with his subjects (see the entry on "Social contract"). However, if we consider the function of the sovereign in Hobbes's commonwealth, it becomes clear that the sovereign has duties in virtue of his role; hence, the relevant chapter in *Leviathan* is entitled "*Of*

the Office *of the Sovereign Representative*" (where "Office," as Curley indicates in the glossary to his edition of *Leviathan*, means "duties attaching to a position").

Hobbes's account of the sovereign's duties has two distinctive features. First, these are not duties *to* the subjects arising from a contract, but rather, duties arising from natural law. Though the sovereign is not accountable to his subjects, he is always accountable to God. For Hobbes, the sovereign is, by virtue of his office, "obliged by the law of nature, and to render an account thereof to God, the author of that law, and to none but him" (*Leviathan* XXX.1).

Second, the sovereign's duties are not mere recommendations for good policy, but are presented as "directives" or "commands" to the sovereign, required if the sovereign is to be effective in his task of securing enduring peace for the commonwealth. Indeed, Hobbes describes his policy prescriptions as principles required by *reason*, necessary to build and maintain an "everlasting" commonwealth (XXX.5). However, he acknowledges that principles of institutional design or public policy cannot guarantee the survival of the state; they merely create structures and circumstances that give the state the best chance of avoiding or withstanding external dangers. No matter how conscientiously the sovereign follows Hobbes's recommendations for effective rule and no matter how vigilantly the subjects obey his commands, nothing can guarantee that a state will not fall prey to a foreign power or collapse as a result of earthquakes, plagues, or famines. Since *no* governmental structure is immune to external attack or natural disaster, it would be unfair to hold Hobbes to that standard. Nonetheless, Hobbes thinks that there are principles the sovereign can follow to make his society as stable and lasting as possible, and these principles are the "duties" of the office of the sovereign representative.

Now that the nature and source of the duties of the sovereign are clear, we can examine the duties individually. The primary duty of the sovereign is to ensure the safety of the subjects and—as Hobbes subsumes within his conception of safety—to provide the proper conditions for their general well-being. He says,

> The office of the sovereign (be it a monarch or an assembly) consisteth in the end for which he was trusted with the sovereign power, namely, the procuration of *the safety of the people* . . . But by safety here is not meant a bare preservation, but also all other contentments of life, which every man by lawful industry, without danger or hurt to the commonwealth, shall acquire to himself. (XXX.1)

In essence, Hobbes claims that all laws should be for the good of the people, for peace, and prosperity; the *only* values to which the sovereign should appeal are the security of citizens and the establishment of conditions under which they can live contented lives. This claim stands in sharp contrast with much of the canon and is a distinguishing feature of Hobbes's approach to the duties of rulers. Other political theories held that the fundamental duty of government was to engage in "soulcraft"—to make people good, or to save their souls—or to allow them to fulfill their *telos* or purpose in existing. Hobbes's view is intentionally minimalist. The only normative criterion on which the government may act is the provision of the necessary conditions for the flourishing of subjects, understood in Hobbes's particular way.

This objective of providing security and enabling prosperity is philosophically richer

and pragmatically more substantive than it might seem, as becomes evident in Hobbes's discussions of several specific directives. Beginning with the idea of peace and prosperity, he derives a set of principles that can be characterized as public policies including (1) equality under the law; (2) civic education; (3) taxation; (4) social welfare; (5) punishments, rewards and counselors; and (6) military or foreign policy. Let us briefly examine each in turn.

Hobbes provides an extended discussion of *equality under the law*, arguing forcefully that the law should not treat people differently according to their social status. He requires of the sovereign

> that justice be equally administered to all degrees of people, that is, that as well the rich and mighty as poor and obscure persons may be righted of the injuries done them, so as the great may have no greater hope of impunity when they do violence, dishonour, or any injury to the meaner sort, than when one of these does the like to one of them. (XXX.15)

According to Hobbes's legal egalitarianism, "the rich and mighty" cannot get away with breaking the law because they are of a high class (so today, we might think of the police ignoring drunk driving by celebrities) and crimes against those of low class cannot be dismissed because of the class of the victim. As he makes clear in this passage, economic and social status must not be a determinant of legal treatment, whether one is offender or victim. While Hobbes was concerned with economic and social status in the England of the seventeenth century, we can see the significance of this directive by considering the Hobbesian response to more recent failures to extend equal protection under the law to various groups within civil society. Consider what happened around lynching in the Jim Crow South—where lynchers were not prosecuted because of their victims' race. If we apply Hobbes's reasoning to such a situation, we find grounds for strong criticism of the local, state, and federal government.

Importantly, Hobbes's egalitarianism also has broader consequences, as when he states: "It is the duty of the sovereign also to see that ordinary citizens are not oppressed by the great." He explains saying,

> For the common people are the strongest element of the commonwealth. It is also the sovereign's duty to take care lest the great provoke those of modest means to hostile actions by insults. The sovereign can, of course, rightly reproach a citizen of ill repute for his baseness, but to reproach someone for having a humble station is both inequitable and dangerous to the commonwealth. If the great, because they are great, demand to be honored on account of their power, why are not the common people to be honored on account of their power, because they are many and much more powerful. The sedition of those in Holland, called the Beggars, ought to serve as a warning how dangerous it is to the commonwealth to scorn citizens of modest means. (XXX.16, Latin edition)

In other words, equal protection for subjects is guaranteed not merely in relation to the law (which we might think of in terms of "vertical" protection), but also in relation to their treatment of one another (which we might think of in terms of "horizontal" protection). Depending on how we understand oppression, this could rule out anything from slavery to exploitation of immigrant workers. Applied today, this principle would also have significant implications from a

gendered perspective: traditional (twentieth century) human rights theory has often struggled to account for violations against women's human rights, insofar as these typically occur in the private (or domestic) sphere without the explicit sanction or assistance of government agents. Of course, Hobbes *himself* was concerned with events such as the Beggar's revolt in Holland in the sixteenth century. But, these broader consequences are mere extrapolations from his principles. Hobbes himself is most concerned with "the great" getting away with "scorn," "insults," or "mockery" of "citizens of modest means"; he specifies that people of "humble stations" can be reproached for baseness—that is, for doing something wrong—but cannot be reproached simply for being "of a humble station." Hobbes insists that the sovereign should ensure those with wealth or social advantage treat the disadvantaged with respect. Combined with the requirement that the sovereign ensure the security, and the potential for prosperity, for each of his subjects, it seems possible to reconstruct a substantively egalitarian version of Hobbesian public policy.

Civic education is another of Hobbes's highest priorities because of his insistence that subjects understand the "grounds" for their duties of obedience (XXX.3). He holds that people are capable of understanding the reasoning behind their political system and its specific laws, not only with reference to their content and structure, but the reasons why such laws are justified. Through civic education people come to understand why it is in their best interests, individually and collectively, to obey an absolute sovereign, why they should never resist the sovereign no matter how much they may dislike his judgments, and why sovereignty cannot be divided or limited: all these are necessary to ensure peace and security, which are the preconditions for any enjoyment of life. It is the duty of the ruler to ensure that the people are so instructed, so there is no possible justification in Hobbes's account for Plato's "noble lie" or any other ideology that is predicated on misleading the public or keeping information from them. Arguably, these claims reveal Hobbes's faith in "commoners," his anti-elitism, and his explicit rejection of perfectionism and notions of a "natural" hierarchy or political elect.

Hobbes's approach to *taxation* is unique and (in some respects) egalitarian. While Hobbes's economic policy is underdeveloped and subject to interpretive dispute, he clearly suggests taxing consumption, not income. However, his account of the purpose of taxation and the appropriate distribution of benefits is his most radical move. Taxes, for Hobbes, are payment for protection that everyone in his commonwealth enjoys alike, so that the rich are no more protected from a given threat than are the poor. If one believes that the amount of protection to which one is entitled is directly correlated with the amount of tax one pays, then this is, of course, either a problematic factual statement or a challenging normative one. Although Hobbes has in mind foreign enemies, taking his requirements about equal treatment under the law seriously means that a claim like his will rule out having neighborhoods where police will not go to, or will not go to as quickly. This also rules out the possibility of the rich purchasing "extra" protection, such as private patrols or security officers in gated communities. And it is unlikely that equal protection in this sense, as the basis for Hobbesian taxation, has ever been realized in human society. The rich *just are* safer than the poor, if not from terrorists or a nuclear bomb, then certainly from crime, violence, and other dangers to

personal security and well-being. Not only do they enjoy more protection from the police, but they also have access to better defense in court. The latter is significant given the dangers Hobbes sees in being subject to punishment at the hands of the state; anything that lessens the risk of that fate is to be valued. In any case, Hobbes shows an awareness of just these kinds of inequities, and he explicitly builds in safeguards against them.

Hobbes also advocates substantial provision of *social welfare* to ensure that every subject's basic needs are met. His first suggestion is that the state should take an active role in job creation: people should be given the opportunity to provide for themselves and their families by their own hands. According to Hobbes, "there ought to be such laws as may encourage all manner of arts (as navigation, agriculture, fishing, and all manner of manufacture that requires labour)" (XXX.19). But if by some "accident" or "through no fault of their own" some people "fall into misfortune" and cannot work or provide for themselves, the government should "see that they do not lack the things necessary for life" (XXX.18, Latin edition). Hobbes specifies that the things necessary for life include not only air, food, and water but also medicine (XXI.12). Here, then, we might hope to find the seeds of an argument for extending healthcare to all, although Hobbes does not suggest this: according to the logic of this argument, the state might have a duty to provide medicine for those who cannot otherwise afford it. However, Hobbes is not prepared to provide basic subsistence, let alone healthcare or social security, to those whose misfortune was their *own* fault. He does not provide sufficient criteria to specify who would be included under this qualification—it might eliminate from state support smokers, junk food addicts, all manner of risk-takers, and possibly even poor investors. Hobbes was likely referring to people who committed criminal offenses, and presumably saw no reason for jailors to provide convicted prisoners with, for example, food.

Hobbes offers specific directives concerning the distribution of "*punishments and rewards*" and the sovereign's choice of "*counsellors*." Hobbes's directives in these areas are instructive, not only because they appear so strikingly sensible and pragmatic but also because they show a unique appreciation of, and special attention to, certain specific aspects of human nature. For example, he insists that punishments have to be severe enough to deter: it is the sovereign's fault if he enacts a law but does not enforce it or if the punishment is too weak to deter the crime. He explicitly admonishes sovereigns who permit dueling, even though it is explicitly forbidden by the civil law (XXX.12, Latin edition). At the same time, the criminal law should acknowledge the reality of frail human nature: the sovereign should be lenient toward those who commit "crimes from infirmity," for instance, "from great provocation, from great fear, great need, or from ignorance whether the fact by a great crime or not." Since Hobbes clearly takes the purpose of punishment to be deterrence, no purpose is served by punishing crimes committed because of necessity or duress. More importantly, it is unwise to severely punish those who follow rebels out of ignorance—the "poor seduced people"—as opposed to punishing those who incite sedition and thus deserve the full force of the state. Further, Hobbes ultimately blames the sovereign for many misdeeds of the citizens: "To be severe to the people is to punish that ignorance which may in great part be imputed to the sovereign, whose fault it was they were no better instructed" (XXX.23).

Rewards should be given to those who serve the commonwealth but, for Hobbes, people should not be able to buy power or position. It is important in his view that the sovereign should choose good counselors or advisers, who should be experts rather than flatterers, who should have no stake in the matter under consideration and who will not be afraid to speak their minds. Being a counselor should not be an inherited position as, Hobbes notes, it apparently was in Ancient Germany (XXX.25). Hobbes's approach to public policy, then, requires great expertise and sensitivity to human character and motivation, and demands a sovereign who educates his subjects carefully.

Effective *military forces* are essential to support the *foreign policy* of Hobbes's commonwealth, and he gives at least three specific directives in this regard. First, according to Hobbes, there are bound to be at least a few people in society who are naturally prone to violence and therefore to cause disruption. His solution is to put them in the military so that their aggressive tendencies can be used for good ends. In addition, military commanders should be popular to ensure that they are followed, but not more popular than the sovereign (XXX.28–9). Second, sovereigns should make an "allowance" for "natural timorousness" (XXI.16) and so draft more men than they actually think they will need in any given case (given that some subjects will ultimately prove too cowardly to serve as effective soldiers). We cannot expect everyone to be unusually brave so Hobbes makes allowances for these statistical certainties, not after the fact, but at the outset, when first assembling the army. His sensitivity to human foibles and shortcomings, including both frailty and ambition, is demonstrated in these directives concerning foreign policy.

Third, he instructs sovereigns to avoid wars of grandeur or conquest, and only to make the people go to battle for the defense of their nation (*The Elements of Law* II.9.9). Internal defense—that is, law enforcement—is always necessary and involves some danger, particularly because Hobbes expects at least some subjects to resist punishment (it would be irrational for most of them not to do so, in fact). Therefore it is fortuitous that there are some people who apparently enjoy challenge and danger, and these characteristics can be used for the benefit of the state. Hobbes adopts the same strategy for dealing with ambitious and popular men who desire to gain glory through battle. He directs the sovereign to identify those men and put them in the army, so that their charisma and ability to encourage others can be put to use in the service of the state. If such men are left to their own devices in civil society, they always pose a potential threat to the sovereign. Again, Hobbes's sovereign minimizes risks to political stability by attending to the weaknesses of human nature and the diversity of character types, and co-opting or channeling them so that they serve the commonwealth's advantage.

While many of these policies seem attractive, there are a number of concerns a reader might have about his account of the duties of sovereigns from the perspective of a present day liberal reader. In the first place, Hobbes insists that subjects should be taught why sovereignty must be absolute, and instructed never to attempt to change, dissolve, or express dissent toward the government. He also seems to assume that the threat of punishment, civil unrest, and collapse into the state of nature will be enough to deter properly educated subjects from any resistance or dissent. But this is implausible: the history of the last four centuries suggests that resistance

to authority is often undertaken even when people are aware of the great risks involved. In addition, while Hobbes held that the sovereign should enact job creation legislation, he also claims that that if there are too many people the sovereign should create colonies in "countries not sufficiently inhabited." In light of European colonial history, this should leave contemporary readers discomfited—even though Hobbes instructs colonizers "not to exterminate those they find there . . . [or] range a great deal of ground to snatch what they find" but rather to enjoin the natives to "inhabit closer together" (*Leviathan* XXX.19).

Furthermore, even Hobbes's most "attractive" policies regarding "public charity" and the provision of basic necessities, as well as his justification for equal treatment under the law, are based not on equal dignity or worth of persons but on a pragmatic desire to avert crime, violence or vengeance. He is concerned about the potential for criminal—and perhaps seditious—behavior among those in need; he recognizes that, for example, the very hungry will be tempted to steal food, and on his account, they have the right to do so (XXX.18, Latin edition). Even his worries about granting immunity to aristocrats were predicated on a concern about the extent to which such immunity invites contempt for authority, inspires attempts at seizing power, and provokes the commoners to seek vengeance (XXX.16–18). For Hobbes, then, it is not that people *deserve* access to the basic necessities of life or that it would be *wrong* to allow starvation; rather, he points out that starving people tend to be "troublesome to the commonwealth" (XXX.18, Latin edition). Similarly, it is not that the poor *deserve* not to be mocked, but that such mockery might well provoke them to vengeful revolt. Arguably, therefore, he promotes equality and social welfare for the "wrong" reasons, seeing them only as instrumentally valuable for the maintenance of peace and stability, and not at all as intrinsically valuable. His specific policies and his understanding of their nature as duties thus differ fundamentally from our understanding of such policies. Consequently, Hobbes's recommendations fail to express the primacy of respect for individuals that is common in contemporary political theory, and, to that extent, an egalitarianism or progressiveness that was radical in its own time is less attractive today.

SS

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EDUCATION

In the "Review and Conclusion" of Hobbes's masterwork *Leviathan*, Hobbes offers the suggestion that his book might be used as a textbook for educating university divines so that the learning they sprinkle as graduate pastors on the common folk from the pulpit might be pure and free from the toxin of what Hobbes regards as seditious doctrines. One of the principal causes of instability in a commonwealth is the population's embrace of doctrines that support either the limitation or division of sovereign powers. Such doctrines as that monarchy is tyranny, that there is a superior earthly religious authority whose interpretations take priority over those of the civil sovereign, that subjects hold property rights against the sovereign, and that they should obey laws only if those comport with subjects' private conscience are among the destabilizing opinions that Hobbes intends a proper education to correct. These opinions are likely to prove so disruptive that in his history of the English civil wars, *Behemoth*, Hobbes affirms that it is likely that "all the states of Christendom will be subject to these fits of rebellion, as long as the world lasteth . . . and yet the fault, as I have said, may be easily mended, by mending the universities" (90).

Because of the centrality to social stability of limiting disruptive opinions, Hobbes having insisted that "in the well governing of opinions, consists the well governing of men's actions, in order to their peace and concord" Hobbes concluded that it belongs to the authority of the sovereign "to be judge, or constitute all judges of opinions and doctrines, as a thing necessary to peace, thereby to prevent discord and civill warre" (91). Thus provision of a basic education in civil duty, along with a basic religious education that reinforces the requirements of civic duty is a necessary sovereign function; and determining the content of this education is one of the essential rights of sovereignty. A sovereign's job, indeed his foremost duty under the Law of Nature, is to procure the safety of the people. This is to be done through "publique instruction, both of doctrine and example."

The sort of education Hobbes endorses in the realm of religion is quite elementary. He suggests teaching the Ten Commandments of Christianity and showing that these are the most important of the Laws of Nature (enumerated in chapters XIV and XV of *Leviathan*, and which are normative rules available through a mere exercise of natural reason to any competent adult regardless of revealed religion.) The elaborate doctrines and scholastic intricacies of finer theology are irrelevant to Christian religious education understood as education in divine positive law. All one needs for salvation is the simple belief that Jesus is the Christ, and the simple will to obey God. Doctrine more complicated than this is mere "superstruction" that will be burned away in the final reckoning.

Civic education has an equally simple roadmap. The Law of Nature requires us

to make peace with willing others; peace requires submission to authoritative arbitration to settle disputes among us; hence members of society should be taught to bring their disputes to the authoritative arbitrator (the sovereign or its deputies) and to defer to its decisions. Hobbes provides some support for this simple application of the Law of Nature by citing Christian exhortations to obey Princes and to give civic obedience (to Rome what is Rome's).

Hobbes assumes that both sorts of education will be offered to common people in local churches by local ministers. In addition, charismatic popular men, vociferous Parliamentarians, admired military figures, or roving preachers may also seek to "educate" the masses. Hobbes warned sovereigns to be aware of these external sources of forming public belief.

One serious question raised by Hobbes's recommendations concerning the centrality and content of the formation of public opinion is how far his program should be regarded as one of necessary or useful civic education, or rather as a system of ideological indoctrination done more in the interest of the state than for *salus populi*. Hobbes scholars who interpret Hobbes as having advocated rule by threat of force have been less interested in this question than scholars who view Hobbes as having seen social stability to depend on subject, or in our terms, citizen, support.

SAL

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EQUALITY

One of Hobbes's most fundamental starting points is that people are, by nature, equals. This was a radical position at the time, since the prevailing views of human nature posited various kinds of natural inequality: it was widely accepted that there were natural differences between, for example, men and women, or nobility and commoners, and those differences had clear social implications.

In the case of equality between the sexes this hierarchical reading of natural difference was very marked. The Aristotelian view of natural inequality—that there are natural slaves, and that "the male is by nature more capable of leadership than the female" (Aristotle. *Politics*. I.12.1259 A39–B4)—was commonplace in this period. Aristotle's beliefs in the natural inferiority of women to men and of some men to other men have immediate and clear implications for societal arrangements; in each case, the superior should rule the inferior. Even more prominently, many in the seventeenth century were committed to "patriarchalism," a view typified by Robert Filmer's *Patriarcha*. Filmer claims that women hold a distinctively subordinate place in the family, in society, and in the state. He argues that fathers are both the natural and the divinely ordained absolute rulers of the family. Filmer was a proponent of the divine right of kings and invoked the theory of patriarchalism to support the royalist cause. While often used for such a purpose, gender-based arguments were not at all in the exclusive purview of those arguing for the side of the king. On the opposite end of the political spectrum, Henry Parker, champion of the Parliamentarians, appealed to similar arguments intending to undercut the claims of Charles I to absolute power. Parker

argues that the husband has more power than the king because "the wife is inferior in nature, and was created for the assistance of man." So while various theories of human nature differed in their details, nearly everyone agreed that a woman's inferior nature justified her subordination within the family as well as her exclusion from the political realm. As Susan Moller Okin puts the point, "women's nature [was] defined functionally, relative to the needs of men" (1979, 120). It is for good reason, then, that feminist critics have explicitly called attention to the dominant characterization of women as emotional, subservient, passive, "naturally" enslaved to their passions, and, therefore, incapable of rational or principled thinking. Purported features of a woman's nature were conveniently used to rationalize a diminished social status. See Pateman, Okin, Coole, and Slomp in "Further Readings," for examples, of this kind of critique as directed at Hobbes.

In stark contrast to this traditional and widely accepted view, Hobbes offers an alternative conception of human nature grounded in a picture of "the natural condition of mankind" outside of society. He begins by asking: what would people be like in such a "state of nature"? What if people suddenly appeared on earth "like mushrooms," with no civil society or "power to keep them in awe"? His description of the state of nature in *Leviathan* opens with a strong claim about natural equality:

> Nature hath made men so equal in the faculties of body and mind as that, though there be found one man sometimes manifestly stronger in body or of quicker mind than another, yet when all is reckoned together the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others that are in the same danger with himself. (XIII.1)

Hobbes's point is that people are sufficiently similar in their natural physical and intellectual capacities so that no one person naturally enjoys dominance over other people or things: even the weakest can kill the smartest or strongest, if, for example, the weak get together in a group or plot the action in advance. Such a view provides only a minimal sense of human equality. Hobbesian people are naturally equal in the sense that they have a roughly equal ability to kill each other, and a correspondingly equal vulnerability to being killed.

However, from this minimal claim about the approximate equality of human physical and intellectual abilities or vulnerabilities, Hobbes then derives a more substantial equality of rights and liberties. In the state of nature, all people enjoy the "right of nature" that affords them the unlimited liberty to pursue self-preservation in whatever way they sincerely judge best (see the entry on "Rights"). This means that dominion, the right or power of governing, has no place in the natural condition of mankind. The absence of natural dominion, however, suggests a much more interesting notion of equality than the idea of roughly equal strength. For Hobbes, natural equality is ultimately an equality of *status*—for him, there are no natural hierarchies or ranks, and no one can by nature have authority over anyone else. Moreover, this understanding of natural equality is part of the explanation for why Hobbes thinks that the state of nature is, of necessity, a state of war (see the

entries on "State of nature" and "War and peace").

We can best grasp Hobbes's understanding of human equality by contrasting it with two other cases: namely, the inequality between God and humans, on the one hand, and between humans and non-human animals, on the other. First, humans are not equal to God, who is so powerful that He can dominate humans unequivocally. Second, there exists a kind of "natural" inequality between humans and animals. In relation to many animals, such as most insects and birds, we are clearly stronger. In relation to others, such as lions, we are less strong but much smarter, so that we are still able to dominate them as a species (even if there are occasional successful attacks by non-human animals on humans). For Hobbes, these natural inequalities have implications for rule or dominion. God, by virtue of his overwhelming power, rightly rules over us, and Hobbes's account presumably grounds the rights of humans to rule over non-human animals, though he is not interested in establishing this latter claim (he simply takes it for granted). Compared with these evidently unequal relationships, people are effectively equal to one another, so that among humans there are no natural relationships of dominion.

As Hobbes develops his account of the origin of the commonwealth, he frequently reiterates this claim about the natural equality of human beings and adds detail. He condemns both the "ignorant men" of his time and Aristotle for "mistaken[ly]" taking "which is the better man? [to] be a question of nature" when in fact it is a question "determinable only in the estate of government and policy." Hobbes ridicules the idea that "one man's blood [is] better than another's by nature" (*The Elements of Law* I.17.1), as well as the specifically Aristotelian notion that the wiser are "more worthy to command" while those with "strong bodies" are fit to "serve" (*Leviathan* XV.21). It is clear that Hobbes took his repudiation of theories of natural dominance to be a minority view, though he certainly was not the first or only one to propose it.

Interestingly, in various places, Hobbes pursues a different line of argument against natural dominance or authority, suggesting that even if there were variations in "inherent virtue" it would make no difference because "who hath that eminency of virtue, above others, and who is so stupid as not to govern himself, shall never be agreed upon amongst men; who do every one naturally think himself as able, at the least, to govern another, as another to govern him" (I.17.1). So even if some people naturally had qualities that made them more suited to rule it would be impossible, given men's partial and arrogant psychology, to reach agreement about who those people were. In fact, he insists that the existence of such differences is contradicted by experience, but emphasizes that what is important is that people "acknowledge each other as equals": failure to do so is pride, which is prohibited by natural law.

Kinch Hoekstra has argued convincingly that acknowledging one another as equals is not an addendum to Hobbes's notion of natural equality, it is the notion itself. Hoekstra insists that we should take Hobbes's point to be that people ought to *allow* or *acknowledge* natural equality, not that people actually *are* equal in natural power. He says that, "Hobbes maintains that even if the Aristotelian doctrine of natural aristocracy were true, it should not be propagated" (Hoekstra 2012). Hobbes denies the possibility that inherited status, or even innate talents and abilities, can ground an account of natural differences or relations of

superiority. This is not necessarily or principally because there are no differences, but, crucially, because agreement on what the differences are is impossible and entertaining the possibility leads to, or exacerbates, conflict. According to Hobbes, then, the doctrine of natural inequality is pernicious even if it is not, strictly speaking, necessarily false.

Hobbes's view of equality has interesting implications, as is demonstrated by returning to the example of sexual equality. Since both men and women are human, as a matter of logic, it would follow that men and women are equal in the minimal sense Hobbes describes. Although Hobbes uses the masculine pronoun in his statement of natural equality at the beginning of chapter XIII of *Leviathan*, he makes it clear elsewhere that he considers the actors in the state of nature to be both "male and female" (*The Elements of Law* II.3.2). Importantly, however, Hobbes goes further, noting this entailment and taking the opportunity to criticize theories of natural male dominance. In all three of his major political works, Hobbes explicitly claims that there are no general differences between men and women sufficient to justify the subordination of women to men. The point is put most clearly in *De Cive*:

> The allegation some make that it is not the *mother* in this case but the *Father* who becomes *Master* [of the child], because of the superiority of his sex, is groundless; for reason is against it, because the inequality of natural strength is too small to enable the *male* to acquire dominion over the *female* without war. (IX.3)

Hobbes repeats this point in every discussion of the topic. In *Leviathan* he criticizes those who "have attributed the dominion [of children] to the man only, as being of the more excellent sex," saying that "they misreckon in it." He reasons that "there is not always that difference of strength or prudence between the man and the woman as that the right can be determined without war" (XX.4). In *The Elements of Law*, he rebuts those that "ascribe dominion over the child to the father only" saying "they show not, neither can I find out by what coherence, either generation inferreth dominion, or advantage of so much strength, which, for the most part, a man hath more than a woman, should generally and universally entitle the father to a propriety in the child, and take it away from the mother" (II.4.2). According to Edwin Curley, the targets of Hobbes's scorn were Aristotle, Aquinas, and Grotius (Curley footnote to his edition of *Leviathan* 128). Hobbes thus explicitly rejects the patriarchalism that dominated seventeenth-century political theory along with all other versions of natural hierarchies, thereby repudiating at least one essentialist view about the nature of women, namely, the view that women are essentially intellectually and physically inferior to men (see also the entry on "Parental authority").

This sweeping rejection of notions of natural inequality is not confined to the issue of gender. Hobbes is concerned to reject *any* account of natural inequalities, including theories asserting that some people are more worthy than others due to their "birth" or "blood" or the like. While, again, Hobbes could (and in some places does) concede that there are natural variations among people with regard to cognitive and physical abilities, he denies that these variations track categories such as social status. The nobility are not by birth smarter, more entitled, nor more suited to rule than commoners. Further, even if we admit the existence of actual differences in talents and abilities, we are required by natural law to acknowledge each other

as equals. In other words, Hobbes's central claim is a normative one about what we are required to acknowledge in one another: although he does, as a matter of fact, hold that human beings are minimally equal in the relevant ways, his normative claim does not depend on this empirical claim being correct. Thus, this normative claim is not subject to counterexamples of instances of biological differences. Moreover, it is connected (albeit indirectly) to some other interesting claims in his political theory. In particular, it supports his account of political equality, which holds that subjects must be treated as equals under the law. Here again he rejects any notion that those with higher social or economic status may be treated favorably only because of that status, which leads to some striking public policy recommendations (see the entry on "Duties of subjects and sovereigns").

Hobbes's normative account of human equality has one crucial further implication for his broader political theory; it allows him to deny the naturalness of *any* particular form or structure of rule, that is, any relation of dominance or submission. He argues that authority relations are always grounded in contract and consent, and this precludes the existence of any putative "natural" authority relations that might confuse or overrule subsequent contracts. People are born free and equal, and are thus subject to authority only when they have given it their consent.

Unfortunately, the features of Hobbes's picture of normative equality that make it so useful and attractive for his own purposes are also those that make it *unattractive* to contemporary egalitarians. Although Hobbes's account demands that we acknowledge and treat one another equally, we cannot derive from it the now-commonplace belief that humans are all equally valuable or have equal dignity. Indeed, Hobbes has no notion of people having "value" in any sense that would be recognized by, for instance, theorists of human rights. Today, people rely on a more substantive notion of equality: contemporary secular ethics rely on human value—as well as human equality—to ground important moral claims. Hobbes's failure to recognize that people have an inherent value or dignity seems to miss something important about what it means to be human.

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EQUITY

Equity is an oft-discussed but little-elucidated concept in Hobbes. It is, first and foremost, a principle of natural reason, and as such has as much relevance to Hobbesian moral theory as to his legal and political theory. But Hobbes views the concept of equity more specifically than that, for he also sees it as a law of nature. Natural reasoning is reasoning that is guided by, or is consistent with, the laws of nature as Hobbes conceives them. But unlike other laws of nature, equity, which is the eleventh law of nature, is particularly directed toward sovereigns and judges:

> [I]f a man be trusted to judge between man and man, it is a precept of the law of nature that he deal equally between them. For without that, the controversies of men cannot be determined but by war. He, therefore, that is partial in judgment doth what in him lies to deter men from the use of judges and arbitrators; and consequently (against the fundamental law of nature), is the cause of the war. The observance of this law (from the equal distribution to each man of that which in reason belongeth to him) is called Equity, and (as I have said before) distributive justice.[19]

"Equity" thus has two somewhat different, though related, meanings in Hobbes's theory: First, it is a *characteristic of human beings* that describes their style of settling disputes between other men. An equitable judge is someone who is able to settle disputes between others fairly, which for Hobbes means in a way that is consistent with other natural principles. When other sources of law are absent (such as statutes), Hobbes sees the ability to do equity as the most crucial function of the adjudicator, and correspondingly *being equitable* as the most important natural principle for a judge to grasp. And this supplies us with yet one more reason to reject the conception of human beings as straightforward, maximizing egoists. For if equity is a law of nature, it is a characteristic that men can display in the state of nature. It is not an "artificial," but a "natural" virtue, and hence one that human beings are duty-bound to develop *in foro interno*. If this is correct, then there is at least one way of reasoning in nature that surpasses straightforward reckoning. Equitable reasoning, I would suggest, is right reasoning, because it is in accordance with the laws of nature.

As if to underscore the point, Hobbes also makes clear that equity is itself a specific law of nature—a particular natural principle that acts as a source of law for adjudicators. It is binding on judges in the way that all the laws of nature are, namely "in foro interno." As Hobbes explains,

> [W]hatsoever laws bind *in foro interno* may be broken, not only by a fact contrary to the law, but also by the fact according to it, in case a man think it contrary. For though his action in this case be according to the law, yet his purpose was against the law, which, where the obligation is *in foro interno*, is a breach.[20]

In other words, judges are bound by their conscience to follow the laws of nature, in deed as well as in spirit, and thus the dictate to judge equitably among litigants is a duty of any adjudicator.[21]

In light of the special obligation Hobbes attributes to adjudicators to do equity, certain remarks of Hobbes's, deemed otherwise mysterious, come easily into focus. In the *Dialogue*, for example, Hobbes makes the surprising suggestion that bishops are better suited to be judges than anyone else, because they are most likely to be skilled in equitable reasoning: "The Bishops commonly are the most able and rational Men, and obliged by their profession to Study Equity, because it is the law of God, and are therefore capable of being Judges in a Court of Equity."[22] And when the lawyer in the *Dialogue* challenges the philosopher by saying that bishops are not familiar with the workings of statutes, Hobbes has the philosopher say that judges do not particularly require knowledge of statutes, as the lawyers for the parties can inform the bishops of whatever they need to know! Could it have been a mere historical accident that induced Hobbes to endorse equitable as against precedential reasoning, given that siding with the Chancery courts was more consistent with Hobbes's monarchist sympathies? (see entry on Adjudication.)

There is enough of a basis for attributing to Hobbes a preference for equitable over formalistic forms of reasoning, however, that we need not dismiss Hobbes's fondness for Chancery as a mere historical accident. As we have seen, Hobbes's enthusiasm for the use of equity in adjudication fits reasonably well with his views on the laws of nature and the role they play in imposing content-based restrictions on sovereigns. Like all of the other laws of nature, equity and equitable reasoning contribute importantly to the impartial settlement of disputes in Hobbes's view, and thus allow subjects to avoid resort to the methods of war. Equity makes a third appearance in Hobbes's legal philosophy, namely in Hobbes's account of statutory interpretation. Hobbes sees "equitable reasoning" as essential to identifying the true meaning of a statute, namely the method for applying the statute that makes most sense of the purpose of the statute's enactment. He treats principled interpretation of a statute or other legislative provision, then, as a form of equitable reasoning. For further details see entry on Legal Interpretation.

CF

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INTERNATIONAL RELATIONS

Hobbes began *De Cive* with what he described as "two maxims which are surely both true: Man is a God to man, and Man is

a wolf to Man." He claimed that "the former is true of the relations of citizens with each another, the latter of relations between commonwealths." Citizens display charity and justice, "the virtues of peace," among themselves. But commonwealths have "the predatory nature of beasts" toward one another as they are compelled to use violence and fraud, "the virtues of war," "for their own protection" (*De Cive* Epistle Dedicatory). How could human nature be both gentle and violent and how could justice and fraud both be virtuous? The answer, according to Hobbes, lies in the difference between life under the protection of the state and life in an anarchic state of nature.

Hobbes famously described anarchy for individuals as governed by laws of nature but pervaded by conflict. The laws of nature are rules for self-preservation that require establishing peaceful relations with those who are willing to reciprocate (*Leviathan* XIV.3; XV.40). Unfortunately, the conditions for peace are not available under anarchy. Some causes of conflict are common to both anarchy and the commonwealth: resources are scarce and some people desire the glory that comes from combat. These are compounded by the pervasive insecurity of anarchy, where there are significant advantages to striking first and the consequences of waiting for unambiguous provocation can be fatal (*De Cive* ch. 1; *Leviathan* ch. 13). These considerations led Hobbes to a factual conclusion: peace is only possible for those who live under a common power that suppresses the aggressive and reassures the defensive. He also drew a moral conclusion: since the fundamental law of nature permits all the "advantages of war" when peace is not available, almost nothing is morally wrong in anarchy (*Leviathan* XIV.4).

The behavior of states provides the chief empirical evidence for Hobbes's factual claims about life under anarchy. Individuals can only be observed in commonwealths, where peaceful behavior is both safe and coercively enforced. But states are continually occupied with war, confirming the theoretical account of what a state of nature would be like for individuals (XI.2; XIII.12). On the moral side, Hobbes contended that the rules for individual also apply to states. It is not obvious that a corporate body has the same rights of self-preservation as a natural human being does. Nonetheless, Hobbes held that sovereigns have the same right to defend their states as individuals have to defend their own lives and that the same laws of nature apply to their treatment of other states (XXX.30).

There is one important difference between the individual and international cases: international anarchy is tolerable while individual anarchy is not. Hobbes argued that the insecurity of the state of nature among individuals would discourage commerce, building, and development of the arts and sciences. But these activities can be supported within the protective borders of the state (XIII.12). This is so because states are much more capable of surviving anarchy than individuals are. As Spinoza noted, states can continually keep up their guard and are more capable of surviving attacks ("Political Treatise" ch. 3, sect. 11). War among states is a normal part of the anarchic international system, but it can be managed through a balance of power as strong states deter one another and weak states align themselves with the strong. Thus civilized life is possible even for those living under weak states.

Anarchic relations among sovereign states may be tolerable but they are not ideal. Competition forces constant spending on

defense without producing any gains in security. In addition, war is an accepted practice and may be waged against states that are not themselves threatening. The case for accepting international anarchy rests on the absence of palatable alternatives. The Catholic church did not keep the peace in Hobbes's time and international institutions have not done so in ours. World government is not in the cards as even the leaders of weak states are reluctant to surrender their power to an international body. Extraordinarily powerful states sometimes seek to impose order, but modern nationalism makes the imperial model unworkable and the proliferation of nuclear weapons should discourage future attempts to resurrect it. The most promising alternative to the sort of international order Hobbes described comes from Kant, who speculated that liberal democracies could live in peace as sovereign states ("Perpetual Peace"). The absence of wars among liberal democracies suggests he might have been right. Whether this is so is the subject of ongoing debate between liberal and realist scholars of international relations.

Hobbes's claims about the morality of international relations inherit the interpretive questions about his general moral theory. Some scholars believe Hobbes denied that there are any moral restrictions in anarchy, for either individuals or states, while others think the laws of nature impose genuine constraints even in the state of nature. In the discussions of international relations, those who favor the first interpretation are typically interested in the view that moral rules do not apply to states. Since there are passages in Hobbes stating such a position, it is perfectly sensible to ask whether his arguments support it. Nonetheless, the second interpretation is almost certainly more accurate. The laws of nature generally accomodate state interests, but they do not permit states to do anything they please. For example, the laws of nature prohibit cruelty because it is provocative and never serves the cause of peace (*Leviathan* XV.19). They also require keeping treaties and protecting mediators as these tools of diplomacy help to reduce outbreaks of war (XV.29). There is another form of immoralism in international affairs that was more prominent in Hobbes's time than our own. This is the view that war is positively desirable for the glory of the state and its ruler. Hobbes unequivocally rejected this view.

Nonetheless, it is legitimate to ask whether Hobbes's moral theory gives too much leeway to the strong against the weak. His argument against cruelty was too optimistic: cruelty can be used to intimidate and it is possible to be insulated from the bad consequences of one's cruelty. Hobbes described the appetite for conquest as a kind of bulimia that tends to destroy a state (XXIX.22). But he also regarded violent conquest as the normal means of establishing political order (XX). The fundamental problem stems from the heartlessness of Hobbes's moral philosophy. It opposes cruelty and conquest because they are reckless. But it lacks the idea that people have a claim on decent treatment that does not rest on the further consequences of indecency. This is why it cannot explain why cruelty might be wrong even if there would be no further repercussions. When Bismarck recommended that Prussia crush Poland to prevent it from helping a future enemy, he remarked that, "I have every sympathy for their situation, but if we wish to survive we have no choice but to wipe them out" (Gall, 59). Hobbes's moral philosophy leaves out the sympathy.

MJG

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LAWS OF NATURE

In *Leviathan*, the discussion of natural law is divided between chapter XIV, "*Of the First and Second* Natural Laws *and of* Contracts," and chapter XV, "*Of Other Laws of Nature*." This division, and these titles, indicates the relative significance of the various laws; for Hobbes, the first two are the most important and have distinctive features.

Hobbes defines a law of nature as "a precept or general rule, found out by reason" that requires that a person act to preserve him or herself; it dictates self-preservation. The first or "fundamental" law of nature is to "seek peace." It is fundamental because it is the most basic, and because all of the other laws are derived from it, in one way or another. The second law, then, requires a person to give up his or her natural rights to create a civil order on the condition that others are willing to do the same (*Leviathan* XIV.3–5). This follows from the first law because, according to Hobbes, individuals are in such danger amid the violence and chaos of the state of nature that they can only protect themselves by forming a commonwealth (see the entries on "State of nature," "War and peace," "Social contract," and "Rights").

The seventeen "other laws of nature" contained in chapter XV range from the very general to the very specific; from the ninth law "against Pride" to the fifteenth law ensuring peaceful passage for mediators. These "other" laws are importantly different from the first two in that they are only binding

in the context of civil society: in the state of nature, they bind people only "in conscience." Hobbes says, "The laws of nature oblige *in foro interno*, that is to say, they bind to a desire they should take place" (XV.36). In this entry, I focus on the features of Hobbes's account that are most significant for his political philosophy (for more details on his account of natural law see the entry "Law of Nature" in the "Moral Philosophy" chapter and the entry on "Natural law" in the "Law" chapter).

One of Hobbes's most distinctive claims is that natural law—cashed out now in terms of self-preservation—requires the *creation* and *maintenance* of a political state. As we have seen, the creation of the commonwealth is required by the first and second laws, but the third law is central to its maintenance: this requires "*that men perform their covenants made*," which Hobbes also calls "Justice" (XV.1). Now, the third law, like all those that follow it, is binding only where there is a common power to keep us in awe. Without such a sovereign power "covenants are in vain, [they are] but empty words" (XV.1). However, the third law is also the very law that requires subjects to keep their contracts and therefore to keep the social contract itself. Thus the third law is essential to maintaining the authority of the sovereign, and the authority of the sovereign is what renders the third law itself binding. Hobbes does not discuss the central importance of the third law when he first introduces it, but in his discussion of the "foole" he argues that justice—that is, keeping covenants—is required by reason in the interests of self-preservation (see XV.4–9). There has been a great deal of debate about the nature of Hobbes's arguments against the foole and their success, or lack of it, and the question remains controversial (see the "Further Readings" section below).

A further question about the status of the laws set out in chapter XV concerns their target audience. At times, Hobbes refers to them as if they are basic moral rules for people living in any stable political order, and some lend themselves to that interpretation, such as forbidding pride and arrogance, or requiring equity and complaisance. These are the rules that lead to peace and the preservation of all, and indeed, Hobbes claims that they can be summed up by something like the golden rule (XV.35). Lloyd (2010) has recently argued that Hobbes has a moral theory—itself a controversial claim—and puts this golden rule analogy at the center of her analysis. In this sense, then, the laws of nature apply to everyone—to people as such.

Some of the "other" laws (i.e. those found in chapter XV), however, seem to be best understood as directed at the ruling power. The twelfth law, "equal use of things common," deals with the proper distribution of access to common goods, and since the sovereign is authorized to distribute property and benefits it is only the sovereign who can act on this law. It is the same for the thirteenth and fourteenth laws of nature, which respectively require distribution by lot where possible, or by primogeniture or first seizing. Similarly, the seventeenth and eighteenth laws deal with impartial judges, and the nineteenth with proper witnesses, and since adjudication is one of the central rights of sovereignty it would seem these must also be aimed at the sovereign, or, more specifically, those appointed by the sovereign. It remains a matter for debate, then, whether Hobbes's "other" laws of nature are intended as a full moral theory, or a more modest set of prescriptions for carrying out functions within a well-ordered commonwealth.

SS

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LEGAL INTERPRETATION

In *Leviathan*, Hobbes addresses the topic of interpretation of the laws, whether natural or civil, as a unified matter, much in the way Aquinas would have done:

> All laws, written and unwritten, have need of interpretation. The unwritten law of nature, though it be easy to such as without partiality and passion make use of their natural reason, and therefore leaves the violators thereof without excuse, yet considering there be very few, perhaps none, that in some cases are not blinded by self-love or some other passion, it is now become of all laws the most obscure, and has consequently the greatest need of able interpreters. The written laws, if they be short, are easily misinterpreted from the diverse significations of many words, insomuch as no written law (delivered in few or many words) can be well understood without a perfect understanding of the final causes for which the law was made, the knowledge of which final causes is in the legislator. (*Leviathan*, XXVI.21)

While both natural and civil laws require interpretation, the correct form of that interpretation will differ significantly in the two cases. The natural law is accessible to interpretation through natural reason. And since every human being is in possession of natural reason of his own, the natural law is available to every rational agent without intermediary. Nevertheless, as Hobbes explains, distortions of natural reason occur because of passions, and human beings are therefore in need of guidance as to the proper identification and interpretation of principles of natural law. We have already seen that this is one of the reasons the judge must be endowed with excellent powers of equitable reasoning. But in principle, if human beings were perfect in the use of their natural reasoning, there would be no need for assistance in the interpretation of the natural laws.

Matters are significantly different where a legal question calls for the interpretation of a statute, for as we have seen, the central question there of importance is what the will

of the legislator was when he issued the law. Since the sovereign is the legislator of the civil laws, it is the sovereign's intentions in creating the law that any interpreter of the law must strive to discover. And this is something it is difficult for ordinary persons to discern, given, as Hobbes says, that they may be unaware of the "final causes" for which the law was written. It is here that equity makes its third significant appearance in Hobbes's legal and political philosophy.

In *The Dialogue*, Hobbes says that "Equity is a certain perfect Reason that interpreteth and amendeth the Law written, itself being unwritten, and consisting in nothing else but right Reason." That is, equity is relevant not just for adjudication, but for the interpretation of the civil law as well. But this may seem puzzling. If the interpretation of the civil law is no more than a study in sovereign intention, why would equitable principles be useful as an aid to interpretation? What role, if any, do principles of natural reason play in the interpretation of written civil laws? Does Hobbes think that equity can help us to discover the lawmaker's intentions? And if he does, why did he distinguish so sharply between equitable reasoning on the part of a judge in the absence of a statute and the use of equity to interpret the meaning of a statute?

It is on this topic that, despite his differences from Aquinas on other topics, Hobbes most manifests his indebtedness to scholastic philosophy. Like Aquinas, Hobbes makes the assumption that the sovereign's laws will further the best interests of the subjects—that when the sovereign legislates, it is not his own welfare he is seeking to protect and advance, but the welfare of the community with whose care he has been entrusted. If the sovereign legislates with the interests of his subjects in mind, he legislates according to principles of natural reason. Accordingly, outside interpreters trying to discern his will could do no better than to make use of equitable principles to interpret his intentions: when in doubt as to what the words of a statute were intended to mean, we should turn to principles of equity to clarify ambiguities or fill in the gaps in language.

Implicit in this approach to interpretation is a commitment to a certain view of meaning that many contemporary legal philosophers, as well as literary critics, would want to reject. Hobbes takes authorial intent as supplying the "meaning" of a text, and the question then becomes how best to discern that intention. Other approaches to interpretation would regard authorial intent as only one ingredient in determining the meaning of a text, and in some cases it would be regarded as altogether irrelevant. Hobbes's view of interpretation may therefore appear naïve.

Yet we ought not ascribe to Hobbes a thoroughly premodern commitment to textual meaning as authorial intent, given his simultaneous commitment to equitable reasoning as a way of discerning that intent. That is, while he does subscribe to the significance of the author's purpose in writing the relevant text, he also is willing to contextualize that purpose in a larger interpretive framework in which principles of equity play a role. A contemporary version of this type of view can be found once again in the writings of Ronald Dworkin. Like Hobbes, Dworkin maintains that moral principles (Hobbes would say principles of natural reason) should be used to interpret the written law. Dworkin famously analogizes statutory interpretation to literary criticism. Great works of literature are interpreted in light of a background aesthetic theory pertaining to what makes a work of literature great. If consistency of character development and complexity of plot enhance a novel's worth as a work of literature, for example, then a literary critic should attempt to maximize the value of

a piece of fiction by interpreting it in light of such values. She will seek, in other words, to make the novel the best work of literature it can be, consistent with the constraints the text itself imposes. Similarly, Dworkin maintains, a judge should strive to make a source of law (whether text or line of cases) the best it can be, by interpreting it in light of a background political philosophy that enhances its worth. If maximizing equality and fairness makes a statute a better source of law, a judge should interpret a statute in light of principles of equality and fairness, provided that his interpretation "fits" with the text of the statute itself. Dworkin writes:

> According to law as integrity, propositions of law are true if they figure in or follow from the principles of justice, fairness, and procedural due process that provide the best constructive interpretation of the community's legal practice. . . .

Hard cases arise, for any judge, when his threshold test does not discriminate between two or more interpretations of some statute or line of cases. Then he must choose between eligible interpretations by asking which shows the community's structure of institutions and decisions—its public standards as a whole—in a better light from the standpoint of political morality.

Unlike Hobbes, Dworkin's interpretive method applies equally to statutory as to case-based sources of law. For Dworkin does not subscribe to Hobbes's distrust of common law reasoning and his rejection of the practice of following precedent. But if we limit the comparison to the exercise of statutory interpretation, we would find the two accounts deeply similar.

Consider Dworkin's famous example of the New York case *Riggs v. Palmer*, in which a young man murdered his wealthy grandfather to collect sooner under the latter's will. Strictly construed, the New York Statute of Wills did not forbid a murderer from inheriting under a will under these conditions, despite the beneficiary's evident culpability under state criminal laws (The New York legislature subsequently revised the statute). While a literal interpretation of the statute would have given the defendant his inheritance, the court was not satisfied with this reading of the statute. Instead, the New York Court of Appeals reached for a generic moral principle, unsupported by legal precedent or other textual source of law, in order to interpret the statute as barring the inheritance in this case. Applying the slogan that "no man shall profit from his own wrong," the court suggested that properly interpreted the Statute of Wills was never intended to allow murderers to inherit under the wills of their victims. According to the Court of Appeals, the true intent of the legislature in drafting the statute of wills does not emerge unless interpreted against the background of this moral principle—as though the principle itself lurked in the interstices of the written statute. The Court wrote:

> Such a construction ought to be put upon a statute as will best answer the intention which the makers had in view . . . [M]any cases are mentioned where it was held that matters embraced in the general words of statutes, nevertheless, were not within the statutes, because it could not have been the intention of the law-makers that they should be included. They were taken out of the statutes by an equitable construction . . . .[A]ll laws as well as all contracts may be controlled in their operation and effect by general, fundamental maxims of the common law. No one shall be permitted to profit

> by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes.

The reasoning of the judges in this case, of which Dworkin is so enamored, would have been music to Hobbes's ears as well: the court regarded the true meaning of the statute as depending on the intent of the legislature, and the intent of the legislature as discoverable through the application of equitable principles. Moral principles are thus seen by both Dworkin and Hobbes as a way of discovering the "intentions of the law-maker," against the background of the assumption that lawmakers strive to create the most worthwhile statutes possible.

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LIBERTY

In Hobbes's time, as in ours, liberty was a key concept in most political debates. Today, Hobbes's views on liberty are most often discussed in the context of metaphysical debates about free will (see "Necessity and Contingency" entry in chapter II, "Method, Science, and Philosophy," of this volume). However, in chapter XXI of *Leviathan*, he distinguishes between four senses or kinds of liberty that are relevant in a *political* rather than metaphysical context. Hobbes sets out the distinctions between these four different senses of liberty in order to resolve the confusions he saw in his contemporaries' views about liberty, and uses them to support his own political theory and conclusions.

First, "properly" understood, liberty or freedom signifies the "the absence of opposition (by opposition, I mean external impediments of motion)" (*Leviathan* XXI.1). A person in chains or locked in a prison cell lacks liberty in this sense; chains and walls are *external* obstacles that prevent the person's movement. This kind of liberty is not specific to people, as non-human animals and inorganic materials can be said to be free or not free in this sense: he gives the example that water constrained by the banks of a river lacks this kind of liberty in this sense. It is important to note that lack of liberty is not the same as lack of power; for Hobbes, powerlessness is a matter of *internal* impediments to motion. A person paralyzed from the waist down lacks the power to walk around the block, while a prisoner in jail lacks the liberty to do so.

In the second sense, liberty can be understood as the absence of "artificial bonds, or covenants," which Hobbes identifies with the obligation to obey the civil law (XXI.5). The thought is that the absence of such an obligation affords one the liberty to act on no one's judgment but one's own, whereas the obligation to obey the law is simply the obligation to act instead on the sovereign's judgment. People in the state of nature possess liberty in

this second sense—there called the "Right of Nature"—and independent sovereigns enjoy it with respect to one another (see the entry on "Rights").

It is important for Hobbes to distinguish between the first and second senses of liberty, in order to argue against the widely held belief that liberty is something desirable, something that subjects in a commonwealth should want. He derides his compatriots who demanded liberty, pointing out that unless they are in prison or chains, they already enjoy it (in the first sense). Furthermore, if they were granted liberty in the second sense (that is, total freedom of private judgment), they would be back in the undesirable state of nature. Liberty in the second sense is dangerous; far from being desirable, it is something we would rather not have (or, more precisely, it is something that we would not want others—or everyone—to have). In fact, people in the state of nature should be pleased and willing to part with it and those in civil society should be happy to have given it up.

The first half of his discussion of liberty, then, is in part a response to those in his time who were demanding liberty because they (mistakenly) understood it in the second sense, as a valuable—indeed a glorified—commodity that people have outside of and in opposition to the laws of a state. For Hobbes, subjects in a commonwealth already have liberty in the first sense as long as they are not literally physically constrained by external forces like shackles of prisoners. Moreover, they should not desire that liberty in the second sense be granted to subjects as a whole; indeed, they should be grateful that it is not. It is doubtful whether any of those who were the targets of Hobbes's discussion here were—or would have been—convinced by his arguments.

Hobbes's account of liberty does not end here, however; he contends further that subjects in a commonwealth enjoy liberty in two additional senses. The third and most important sense in which subjects have liberty is what Hobbes calls "civil liberty," which he understands to be the liberty to act on one's own judgment in circumstances not governed by the civil law. Thus, "civil liberty," as Hobbes calls it, consists of whatever the laws have "praetermitted" (i.e. omitted). When the law is silent, men are free to do "what their own reasons shall suggest for the most profitable to themselves" (that is, their private judgments). He gives examples of specific activities such as "the liberty to buy, and sell, and otherwise contract with one another; to choose their own abode, their own diet, their own trade of life, and institute [i.e. educate] their children as they themselves think fit; and the like" (*Leviathan* XXI.6). In these cases, subjects have the liberty to act on their own judgments about what to do, as long as their actions do not conflict with the dictates of the civil law. As his examples illustrate, his conception of civil liberty includes many of the things we would now associate with the liberal ideal of the individual's private sphere: that is, those things that grant us the ability to direct our lives according to our choices, so long as we act in accordance with the law. Hobbesian subjects retain the right to determine their actions in the market, with regard to their families, and—more generally—to pursue their personal goals in matters ranging from what to eat, to what career to pursue, or where to live, to how to raise one's family.

There are two points where Hobbesian civil liberty differs from contemporary understandings, and these are worth emphasizing. First, the content and scope of civil liberty will, on his account, vary from society

to society. He offers the example of marriage laws; in some societies men have the liberty to take more than one wife, in others they do not (XXI.18). Second, the sovereign can, in principle, regulate any—and so every—aspect of human life. There is nothing in Hobbes's theory that rules out the sovereign commanding that children have certain names or that people pursue certain professions not of their own choosing. Hobbes has independent arguments for why a wise sovereign should not regulate these kinds of things, and further, he thinks it would be impossible in practice for any given sovereign to actually do so. Indeed, he thinks a good sovereign only regulates what is absolutely necessary and allows as much civil liberty as is consistent with the peace and security of the commonwealth (see the entry for "Duties of sovereigns and subjects"). However, there are no aspects of civil liberty that are *in principle* immune from sovereign control. And, of course, for Hobbes, subjects have no right to complain if their sovereign does not afford them the amount or kind of civil liberty they would like. It is not up to them to decide; after all, that is what it means to say—that they gave up liberty in the second sense. We give up liberty in the second sense to get liberty in the third sense. As it turns out, giving up liberty in the second sense also likely affords people greater liberty in the first sense (corporal liberty, or liberty of motion). Life in a commonwealth arguably allows for more freedom of movement than does life in the state of nature, where we are constantly faced with (at least the threat of) other people physically assaulting us, trying to dominate us, and so on.

For Hobbes, civil liberty is the "greatest" kind of liberty (XXI.18). This is the most meaningful kind of liberty; and it requires we give up liberty of the second kind—that is, in a sense, the whole point. Civil liberty is valuable and desirable because it allows us to lead self-directed lives and to pursue our own goals. While the second sense of liberty may appear more desirable because it is more extensive, its value is illusory. The very conditions that make the second sense of liberty possible (the state of nature) also make it pointless: everyone possessing total freedom to act on their private judgments precludes the kind of resources and stable structures necessary for anything like a meaningful, self-directed life. In the state of nature, where we all have unlimited freedom of private judgment, there are no careers to pursue or abodes to live in. It is only when we give up that kind of freedom that we get freedom in the meaningful sense, the freedom to live self-directed lives and pursue our own goals. Only in civil society are the resources for that possible. The best example of this is with property. There can be no buying or selling of anything in the state of nature because the state of nature lacks the prerequisites for such activities, the stable and enforced property laws that make market transactions possible. As a result, there can be no "trades of life" to pursue (see the entry on "War and peace"). All of that requires a state, and having a state requires being content with the freedom the law affords you. So the freedom of the state of nature is antithetical to (and even destructive of) the kind of freedom we actually value. Hobbes is especially concerned to ridicule the republican idea that people have more freedom in "republics" or "popular" states than they do under "despotic" ones. He famously claims that people had as much liberty in the republican Lucca as they did under the "despotism" of Constantinople (XXI.8).

Hobbes calls the fourth kind of liberty he identifies the "true liberty of subjects." He defines this as "the things which, though

commanded by the sovereign, he [a subject] may nevertheless without injustice refuse to do" (XXI.10). This kind of liberty is discussed in the entry on "Resistance and non-resistance."

In sum, in terms of his political theory, Hobbes's account of liberty consists in the following four claims: first, unless you are physically confined, you have liberty in the proper sense of the word; second, only the sovereign enjoys complete freedom to act on his or her private judgment and, further, we should want it that way; third, subjects enjoy liberty in a variety of areas of life, depending on the particular system of laws under which they live; and fourth, there are inalienable liberties to refuse to obey the sovereign but, in a well-run commonwealth, they will not be exercised very often. Hobbes thus wants to render liberty consistent with subjection—indeed, it is largely because he does so that Hobbes's analysis of liberty was unsatisfactory to many of his contemporary readers, and indeed, remains troubling to his present-day readers as well.

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MONARCHY AND OTHER FORMS OF GOVERNMENT

Hobbes is famous—or infamous—in the canon of political philosophy for his contention that government should take the form of absolute monarchy. Yet the source of his infamy requires some unpacking. Hobbes does indeed defend an absolutist conception of sovereignty, and he does argue that such sovereignty should take monarchical form. However, these claims arise from two separate endorsements, which differ in nature and intended strength. The first is that Hobbes takes himself to have offered a definitive argument in support of absolute over non-absolute sovereignty (see the entry for "Absolutism"). Yet, second, while he usually speaks of the sovereign in the singular ("He"), Hobbes regularly reminds the reader that sovereignty can be held by other forms of association, such as assemblies, corporate bodies, or elected officials. So Hobbes recognizes that sovereignty can be located in any one of three forms of government, monarchies (rule by one), aristocracies (rule by few), or democracies (rule by all), but whichever form it takes—if it is properly constituted—it is absolute. Even if the form of government is aristocratic or democratic, the powers of the government can still be indivisible and unlimited. In contrast, his arguments in support of monarchy over aristocracy and democracy have a more qualified, contingent tone than his arguments in favor of absolute over non-absolute government.

The superiority of monarchy is a constant theme in Hobbes's political works. His reasons for favoring monarchy over competing forms of government are entirely consequentialist and pragmatic. In particular, he argues that monarchy is the best form of government for maintaining civil peace. His

strategy is two-fold: first, he attempts to justify the claim that a monarchy will be better at providing the long-term conditions necessary for a peaceful and prosperous commonwealth; and second, he claims that whatever flaws one might find in monarchies, they are equally present in the other two forms of government. Together, these two arguments are intended to establish a default preference for monarchy over the other forms. But Hobbes does not say that sovereignty *must* be monarchical, in the sense that anything non-monarchical would not count as genuine sovereignty, nor does he say that monarchs are necessarily or always better at ruling (better, that is, at securing civil peace and providing for the common good) than non-monarchs. Were he to make this latter claim, he would be committed to holding that the rule of any past, present, or future monarchy was, is, or will be definitely better than the rule of any past, present, or future aristocracy or democracy. But this would be an implausibly strong claim in light of Hobbes's recognition that some monarchs rule badly—he refers to "negligent government of princes" (*Leviathan* XXXI.40)—and his awareness that some democracies and aristocracies have enjoyed peaceful and prosperous rule for some period of time.

Hobbes argues that monarchy's incremental pragmatic advantages, taken together, make it more rather than less likely that a monarch will succeed in his main function, and as such, monarchies will always have a strong tendency to do better than competing forms. The cumulative considerations in favor of monarchy include the following. First and foremost, the monarch's interests are most closely identified with those of the people. Hobbes identifies the efficacy or desirability of government with how well it conduces to the public good, where that includes both security and the conditions for prosperity. But Hobbes realizes that rule is enacted by *human beings* who have "private interests" and are subject to passions, "for the passions of men are commonly more potent than their reason" (XIX.4). While we now tend to consider human frailty, self-interest, and irrationality as reasons for limited government and separation of powers, and especially for democracy, Hobbes understood the role of private interest to entail the opposite conclusion. In his view, the monarch's private interests are most closely united with the public interest; indeed, at one point, he says the two are identical: "in monarchy the private interest is the *same* with the public" (XIX.4, emphasis added). On that basis he reasons that,

> The riches, power, and honour of a monarch arise only from the riches, strength and reputation of his subjects. For no kind can be rich, nor glorious, nor secure, whose subjects are either poor, or contemptible, or too weak (through want or dissension) to maintain a war against their enemies, whereas in democracy, or aristocracy, the public prosperity confers not so much to the private fortune of one that is corrupt, or ambitious, as doth many times a perfidious advice, a treacherous action, or a civil war. (XIX.4)

The thrust of his argument is that in a democracy or an aristocracy, private individuals in power can benefit at the expense of the public interest. The collective structure of sovereignty, in these cases, means there can be powerful figures whose power is measured in relation to other powerful figures in society. In contrast, the private interests of monarchs, Hobbes points out, depend on—and vary with—the public interest. Put boldly, for a monarch, doing well as a private person

requires that they also do well as a monarch. While actual kings can and often do benefit at the expense of their people, ultimately, this will also undermine their private interests.

Hobbes suggests a number of other considerations in favor of the practical efficacy of monarchy. A monarch is more likely to receive—and more likely to be amenable to—good counsel. Monarchs, thus, can be more consistent and so more effective, having less "inconstancy" than other aristocratic assemblies or elected officials (XIX.6). Also, monarchs are (clearly) not subject to internal disagreement. As Hobbes aptly put the point, "a monarch cannot disagree with himself out of envy or interest; but an assembly may; and that to such a height as may produce a civil war" (XIX.7).

Hobbes's argument on this topic is most plausible if we take his claims to apply to what we might think of as *beneficent dictators*, which the Hobbesian sovereign will be if he rules in the way Hobbes advises. Taken in this way, Hobbes seems to be making the not implausible point that dictators can be more effective than a ruling cabinet or committee, if only for the simple reason that the sovereign monarch, being one, necessarily and spontaneously, speaks in one voice—and does not risk internal discord.

Finally, Hobbes argues that whatever inconveniences are intrinsic to monarchy, they are not unique to that form of rule and are at least as commonly found in the other forms. These are the predictable inconveniences and vulnerabilities of any form of government (for instance, that rulers are susceptible to flattery and corruption), and, while Hobbes admits that these can plague monarchs, he claims that non-monarchical rulers are just as susceptible to them (XIX.8).

But Hobbes's endorsement of monarchy is not an endorsement of every possible form of monarchy. In particular, he denies that there can be such a thing as an elective monarchy, because in such situations the king is a minister of state and those who choose him hold sovereignty. Thus, for Hobbes, a system in which monarchs gain office by election is really just a democracy (XIX.10).

The issue of succession is of major concern for Hobbes in his discussions of monarchy. Since the absence of a clear heir to the throne is clearly a threat to civil stability (and this had been borne out historically too many times to count), one of his principal goals is to specify the conditions of legitimate succession. Since he denies the patriarchical account of the divine source—and male nature—of monarchical power, Hobbes can with ease endorse female sovereigns if they meet the specified conditions (e.g. being picked by the sitting monarch). And he does just this. Though he speculates that male kings will have preference for sons over daughters, and gives guidelines for how the throne should pass in the absence of knowing the monarch's wishes, he recognizes the legitimacy of *whatever* line of succession is dictated by the existing monarch (XIX.18–22).

Hobbes's defense of monarchy distinguishes him from his royalist contemporaries on a number of fronts—for instance, he advocates absolute monarchy, as opposed to, say, the mixed monarchy advocated by some of his contemporaries. But perhaps the most distinctive feature is his account of the *origin* of monarchical power. Other monarchs, including the kings who reigned in the first half of his lifetime—James I and Charles I—claimed to rule by divine right, that is, they claimed that (their) absolute monarchical power was ordained by God.

Sir Robert Filmer offered the most sophisticated philosophical defense of this theory, arguing that a king's right to rule his subjects could be, at least in theory, traced back to God's grant of power to Adam in the Biblical book of Genesis. Hobbes's radical alternative is a non-theist account that grounds absolute monarchy in a social contract.

Interestingly, he also allows that other forms of government may have some degree of legitimacy, which distinguishes him from other monarchists whose stances were more rigid and not at all open to alternatives. Filmer, for example, often denied that anything besides a monarchy could count as a legitimate government. There are a number of reasons Hobbes would have been willing to allow that aristocracy and democracy can be legitimate forms of government and, in particular, legitimate forms of absolute sovereignty. First, like Jean Bodin before him, Hobbes sees this point as following from the logic of absolute sovereignty. Second, we should keep in mind his complete aversion to anything that could be interpreted as inviting radical political change (either in ruler or in form of government). Even if this does not indicate a complete de factoism, it explains why Hobbes would want to accept these other forms, on some minimal or basic level. If one lives under a stable form of government that happens to be non-monarchical, one should do everything in one's power to support and maintain the established system of rule. The principles of reason that establish a new commonwealth, fresh from the state of nature, will differ, from the principles that govern life under existing, likely imperfect, commonwealths. We can perhaps best understand his monarchism as a *ceteris paribus* claim: All other things being equal, a monarchical commonwealth is better than a non-monarchical one. Therefore, if we are designing a commonwealth from scratch, we should make it monarchical. But of course, this operates in conjunction with a number of other elements in his theory, including his account of how sovereigns should rule (see the entry for "Duties of subjects and sovereigns") and his absolutism. Therefore, if we are constrained by the features of an existing commonwealth that we are trying to improve, it may be that other goals—such as absolutism—should be pursued before monarchy.

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OBLIGATION

According to Hobbes, people incur obligations only by transferring or renouncing a right, that is, by giving up the moral permission to do something (see the entry on "Rights" in this chapter and the entry on "Obligation" in Chapter 4 on "Moral philosophy and moral psychology"). One incurs an obligation to do X by giving up the right not to do X. The principal way to give up a right, for Hobbes, is by means of a contract or covenant, and injustice is then defined in terms of breaking said contract. Hobbes's account of political obligation is informed by this distinctive view of the nature of obligation in general. Questions of *political* obligation are concerned with the obligation to obey the laws of one's state and the justification for doing so. Hobbes's predecessors and contemporaries offered various accounts of political obligation, including appeals to divine rights bestowed by God, straightforward power or might, and natural duties inherent in human nature or the natural order of things. For Hobbes, by contrast, the obligation to obey the law is generated by the social contract, in which people agree to give up their right to act solely on their own private judgment and to act instead on the judgment of the sovereign, as expressed by the civil law. Breaking that contract by disobeying the sovereign, then, constitutes an injustice.

Hobbes's account of the relationship between justice, political obligation, and the renunciation of rights allows for only a small number of exceptions to the obligation to obey the sovereign. According to Hobbes, there are certain rights that cannot be given up—most importantly, the right of self-defense—and subjects retain these rights even in the commonwealth. As a result, they cannot be obliged to obey a command to kill themselves, even from the sovereign: as Hobbes likes to say, one can disobey this command "without injustice" (see the entry on "Resistance and non-resistance"). However, such exceptions are rare, and for Hobbes one is both obligated to obey the law and acts rationally in doing so. In fact, this is a hallmark of Hobbesian political theory. Breaking the law is not only immoral but also imprudent. Put differently, abiding by the social contract is *both* morally obligatory *and* in one's best interest.

It should be noted that while Hobbes also claims that the sovereign is "obliged" to do various things, he is using "obligation" in a different sense than when he uses it to refer to the subjects' duties to obey the law derived from the social contract. In fact, for Hobbes, the sovereign's obligation *cannot* derive from the social contract, for the sovereign is not a party to it. Rather, the source of the sovereign's obligation with regard to his subjects derives from natural law (see the entry on "Duties of subjects and sovereigns").

There are a number of concerns that could be raised about this particular account of obligation. First, one might worry about his general account of obligation, suggesting that not all obligations arise from transference of a right. For instance, it could be—and has been—suggested that we have freestanding, intrinsic, and objective moral obligations not to lie or kill innocent people. This, moreover, is often thought to be true regardless of whether we have undertaken any contractual obligation with regard to either action. However, Hobbes is, unequivocally, committed to the view that, in the state of nature, it is morally permissible to kill an innocent person, *if* one sincerely judges that doing so is conducive to one's self-preservation (by, say, eliminating that person as a possible future threat). Second,

one might worry that some obligations seem to arise naturally and not contractually; for example, in virtue of our relationships with others; for instance, the obligation of parents to care for their children. Hobbes, however, reduces even this relationship to a contract (see the entry on "Parental authority"). Finally, one might grant Hobbes's claim that political obligation is grounded in contract, but reject his formulation of the social contract and its resulting obligations. Hobbes emphasizes that the sovereign is not party to the social contract but stands apart from it, and thus has no obligations to his subjects. However, there are other ways of understanding contractarian groundings for political obligation. Contra Hobbes, Locke, for example, argues both that the ruler must be a party to the contract and that the subjects are justified in taking appropriate action against a ruler who fails to live up to their obligations.

Against the backdrop of these concerns, it is worth noting that while the Hobbesian conception of political obligation is elegantly consistent, and while it has remained influential since its initial development as a radically new approach, many of its consequences are likely to seem unpalatable to us today. Most contemporary philosophers are unwilling to entertain the possibility that *all* obligations are grounded in contract, voluntary consent, and the relinquishing of natural rights.

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PARENTAL AUTHORITY

The nature of authority—that is, the right of one person to rule over another—was, arguably, the principal concern of political theorists during the seventeenth century. What was the source of the right to rule (or dominion, as it was often called)? Where did such a right come from? Did it have limits? If so, what were they? Although such questions were typically asked on the larger political stage, the issue of dominion over children was also discussed. Approaches to parental authority often functioned as microcosms of the larger issues, and positions on parental authority were frequently developed to show continuity with positions on political authority more broadly (see Shanley 1979 for a discussion of this phenomenon). For example, proponents of the divine right of kings argued that God granted fathers authority over their offspring when he granted Adam rights over everything in Genesis, so that *parental* authority was standardly understood as *paternal* authority. And in general,

some form of patriarchalism was almost universally accepted in Hobbes's day.

In this patriarchal context, Hobbes's account is particularly striking, because he affords natural dominion over children to women. He starts with the assumption that no person can serve two masters and then argues that dominion over a child cannot be shared between parents (*Leviathan* XX.4). Given that a choice has to be made about which parent has authority over the child, there needs to be some sort of decision procedure in place. Hobbes gives us the following set of rules. First, if the child is born in a commonwealth, dominion over that child follows the dictates of the relevant civil law. He acknowledges that this means that in most cases, dominion will go to the child's father; "In commonwealths this controversy [over children] is decided by the civil law, and for the most part (but not always) the sentence is in favour of the father, because for the most part commonwealths have been erected by fathers, not by the mothers of families" (XX.4). Second, if the child is born outside the context of civil society, then one of two things happen: either dominion follows a prearranged contract between mother and father or, in the absence of such a contract, dominion goes to the child's mother. Indeed, in all three of his major works in political philosophy, Hobbes explicitly makes this bold and unequivocal claim, saying, "[I]n the state of nature every woman who gives birth becomes both a *mother* and a *Mistress* [Lord]. . . . The original Dominion over *children* therefore is the *mother's*; and among men no less than other animals, the offspring goes with the womb" (*De Cive* IX.3). The assertion of natural maternal right was not entirely unique to Hobbes; we find similar claims in Roman law and in the views of at least one of Hobbes's contemporaries, John Selden (see Sommerville 1992, p. 82). Still, it was a very unusual position to hold in the seventeenth century, and most who participated in discussions of parental authority (such as Grotius, whose work greatly influenced Hobbes) accepted that rights over children lay with the father.

Against this background Hobbes stands out not only for the distinctiveness of his position, but also because his arguments for natural maternal right are puzzling; indeed, they are so puzzling that many have found them flatly unconvincing. He begins with the assumption that there is natural equality between the sexes (see the entry on "Equality"). Hobbes then argues that in the state of nature the mother has dominion over the child because paternity cannot be known except by a declaration from the mother and, more importantly, because the mother provides for the child's preservation. However, if the mother abandons the child, or gives it away, she loses her natural right over it and the child is then under the rule of whoever assumes its care. In Hobbes's words,

> If there be no contract, the dominion is in the mother. For in the condition of mere nature, where there are no matrimonial laws, it cannot be known who is the father unless it be declared by the mother; and is consequently hers. Again, seeing the infant is first in the power of the mother, so as she may either nourish or expose it, if she nourish it, it oweth its life to the mother, and is therefore obliged to obey her rather than any other, and by consequence the dominion over it is hers. But if she expose it, and another find and nourish it, the dominion is in him that nourisheth it. For it ought to obey him by whom it is preserved, because preservation of life being the end for which one man becomes subject to another, every

> man is supposed to promise obedience to him in whose power it is to save or destroy him. (*Leviathan* XX.5)

This explanation appears, with only slight variations, at *The Elements of Law* II.4.1–9 and *De Cive* IX.1–6.

Hobbes's explanation here is revealing. Clearly, his strategy is to invoke general principles that play important roles elsewhere in his philosophy—for instance, that all authority is grounded in consent, and that people are obligated to the one who provides for their protection. This suggests that the discussion of parental authority might be intended to illustrate and extend his general account of authority. Yet it is not clear how these principles can apply to infants or children who are incapable of giving consent. Hobbes attempts to address this in various ways, including invoking a sort of hypothetical, tacit, or future consent on the part of the child, and appealing to the fourth law of nature requiring gratitude. For example, as we see in the quotation above, Hobbes seems to claim that, although the infant is unable to give consent to be ruled, we can presume that consent is (or would be) given in virtue of the importance of self-preservation to all human beings. Hobbes does not devote much time to explaining or defending these claims, though, and to the extent that he does not, readers tend to find the minimal arguments he gives for natural maternal right unconvincing. It has, however, provided fertile ground for scholars who have explored ways to reconstruct more convincing versions of Hobbes's arguments or used them as a basis for building a broadly Hobbesian case for natural maternal right. In this way, the issue of parental authority has continued to function as a microcosm for exploring the Hobbesian conception of authority more broadly.

Finally while Hobbes did not put his theory about natural maternal right to any feminist purposes, it was explicitly put to such a use 100 years later, in 1735, in an anonymous feminist tract entitled *The Hardships of the English Laws in Relation to Wives. With an explanation of the original curse of Subjection passed upon the Woman. In an Humble Address to the Legislature*. The author of this pamphlet condemned the treatment of women in English society, and she explicitly invoked Hobbes in her claim for original dominion for women (Schwoerer, 72). This reform-minded feminist clearly saw something worth recovering in Hobbes's philosophy, showing how his ideas can be pushed in agitation for feminist goals, even if he had no inclination to use them in that way himself.

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POWER

Central to Hobbes's account of human psychology is the claim that all people desire power. He defines an individual's power as ". . . his present means to obtain some future apparent good" (*Leviathan* X.1). "Original power" concerns natural talents and abilities such as physical strength that increases one's ability to manipulate the physical world to one's benefit, and prudence that enables one to plan courses of action that minimize risk and maximize benefit. With respect to natural faculties, people are more or less equal (see the entry on "Equality"). In contrast, "instrumental powers" are acquired, and for their possessor "are instruments to acquire more [power]." Hobbes offers "riches, reputation, [and] friends" as paradigmatic examples. Consider "riches." Having wealth both allows one to fulfill one's present and future desires—whether for basic needs like food and shelter, or for "luxuries" like plasma screen TVs and spa vacations. But it also allows one to invest in things that produce *more* wealth—whether seeds for the next crop, or stocks and shares. According to Hobbes power is like fame in this regard, "increasing as it proceeds" (X.2). Being feared or loved by many is a kind of power ". . . because it is a means to have the assistance and service of many" (X.7). Importantly, being obeyed is evidence of power, while not being obeyed represents a lack of power.

There also seems to be a zero-sum characteristic of Hobbes's conception of power. As he says in *The Elements of Law*, "And because the power of one man resisteth and hindereth the effects of another: power simply is no more, but the excess of the power of one above that of another. For equal powers opposed, destroy one another; and such opposition is called contention" (I.8.4). A gain in my power, according to this notion, entails a corresponding loss in your power.

The "greatest of human powers," on Hobbes's account, is political power ". . . which is compounded of the powers of most men, united by consent in one person, natural or civil, that has the use of all their powers depending on his will, such as the power of the commonwealth" (*Leviathan* X.3). This overwhelming power of the Hobbesian sovereign is a result of the consent of his subjects, who relinquish their power to him via the social contract. Erecting a commonwealth requires that people "confer all their power and strength upon one man, or upon one assembly of men, that may reduce

all their wills, by a plurality of voices, unto one will . . ." (XVII.13) (see the entries on "Social contract" and "Commonwealth"). Later, Hobbes is concerned to emphasize the point that the particular form of government is irrelevant to the amount of power it has. He says, "The difference between these three kinds of commonwealth [monarchy, aristocracy, and democracy] consisteth not in the difference of power, but in the difference of convenience, or aptitude to produce the peace and security of the people, for which end they were instituted" (XIX.4). Hobbes thereby repudiates the traditional, widely held belief that monarchs, simply by definition, have the potential to be more powerful than aristocratic assemblies or elected officials. Consequently, Hobbes's contention thereby serves (in part) to undercut the critics of monarchical government who charged that it inherently affords kings too much power. Hence, Hobbes's point is philosophically significant in that he shows that monarchies, aristocracies, and democracies can all have the same amount of power, on the condition that they are *absolute*, which, of course, Hobbes thinks any government just *is* by definition (see the entry on "Absolutism"). In short, he reveals that the *amount* of respective power of each is neither the paradigmatic nor distinguishing feature separating monarchies from aristocracies and democracies.

But if, as Hobbes maintains, people are strongly motivated to gain more power, then why do they give up their power to an overwhelmingly powerful sovereign?

In the state of nature, the rough equality of power means that no one individual can dominate others easily or for very long. This equality of power leads to continual conflict, and because the state of nature is chaotic and violent, people's lives are unpredictable and unpleasant. In the state of nature, people generally have very little power and almost no capacity to gain more. No one has a meaningful ability to assure future goods, because there is nothing to protect one's possessions from being stolen or destroyed; one's status is under constant challenge; and it is impossible to trust anyone else for long. *Riches*, *reputation*, and *friends*, Hobbes's three main examples of acquired power, are thereby impossible to attain—let alone retain—in any kind of secure way. Moreover, in this anarchic chaos, the sole motivation for acquiring power is for its contribution to immediate self-preservation. People want power simply because it helps them survive, rather than because they are able to enjoy the results of its acquisition (see Ryan 1988, 92).

In the social contract, individuals transfer the small and relatively ineffectual amount of power they had in the state of nature in exchange for the goods of stability and order thereby provided by the commonwealth. Once in civil society, power takes on a new kind of value, and attaining power becomes worthwhile in a new kind of way. As a subject of a commonwealth, one can pursue riches, reputation, and friends for the sake of enjoying and making real use of them, whereas in the state of nature one views such things merely as means to survival. Only under a civil order is it possible to save for retirement, hold dinner parties for friends, or value the esteem of peers and colleagues for its own sake, because only under a civil order does human life become sufficiently stable and predictable to allow people to look beyond mere self-preservation. They can invest in things that in fact *increase* their ability to obtain future goods. In the commonwealth there is thus vast inequality of power between the sovereign and the subjects, but subjects nonetheless have vastly

more ability to acquire, use, and value power than they could in the state of nature. In Hobbes's view, then, power has the paradoxical property that one increases it by first yielding it entirely.

However, Hobbes acknowledges the existence of deep inequalities of power among the subjects in a commonwealth. Sources of power such as social status, wealth, and reputation derive their value from their scarcity, and that scarcity almost always gives rise to unequal distribution of powers. But these differences are trivial compared to the difference in power between sovereign and subjects, and they thus present no problem unless they threaten to destabilize the social order.

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PRIVATE JUDGMENT

Hobbes's account of human psychology includes a chapter called "*Of the* Ends, *or* Resolutions *of* Discourse" (*Leviathan* chapter VII) in which he defines judgment as "the last opinion in search of the truth of past and future . . . the *resolute* and *final sentence* of him that *discourseth*" (VII.2). Here—and in much of Hobbes's writing—it seems that it belongs to the nature of judgment to be private, at least insofar as we take "private" to mean "individual." For Hobbes, then, judgment is the "last opinion" in an individual's train of thoughts. Mental discourse consists in these trains of thoughts, and when they get "broken off" as he says, the result is opinion. He explains, "If discourse be merely mental, it consisteth of thoughts that the thing will be, and will not be, or that it has been and has not been, alternately. So that wheresoever you break off the chain of a man's discourse, you leave him in a presumption of *it will* be or *it will not* be, or *it has been* or *has not been*. All which is *opinion*" (ibid.) Judgment is a kind of opinion. If opinion represents any stopping point in a given train of thought, then judgment is the last of these stopping points: the thinker's final answer, so to speak. It is important to note that in these passages Hobbes is deeply skeptical about the possibility of most kinds of knowledge, indeed, his very next claim is that "No discourse whatsoever can end in absolute knowledge of fact, past or to come" (VII.3).

Such skeptical remarks aside, it seems that private judgment is morally neutral, for Hobbes: it is simply the judgment of the individual, one's considered opinion about the truth or falsity of some claim. However, this is misleading, as the concept of private judgment plays a crucial (and loaded) role in Hobbes's political theory. As we will see, Hobbes's ultimate position on private judgment is a decidedly non-neutral one.

The implications of how Hobbes understands *private* judgment emerge only once we consider how he employs the concept in his political theory—and in particular, how

he uses the adjective "private" to distinguish it (the judgment of the individual) from public judgment (the judgment of the sovereign as manifested in civil laws). While the public judgment of the sovereign provides the necessary conditions for peace and security, the private judgment of individuals is associated with significant risks, according to Hobbes. Specifically, it can lead to quarrels, discord, and to potentially violent conflict. Ought we to accept Hobbes's warnings about such dangers? In order to make sense of his argument for this claim, it is useful to examine three examples he provides to show *how* conflict arises from the exercise of private judgment.

The first example can be found in the discussion of arithmetic in chapter V, "Of Reason, and Science." In this crucial passage, Hobbes says,

> And as in arithmetic, unpractised men must, and professors themselves may, often err and cast up false, so also in any other subject of reasoning, the ablest, most attentive, and most practiced men may deceive themselves and infer false conclusions; not but that reason itself is always right reason, as well as arithemetic is a certain and infalliable art, but no one man's reason, nor the reason of any one number of men, makes the certainty, no more than an account is therefore well cast up, because a great many men have unanimously approved it. And therefore, as when there is a controversy in an account, the parties must by their own accord set up for right reason the reason of some arbitrator or judge, to whose sentence they will both stand, or their controversy must either come to blows or be undecided, for want of a right reason constituted by nature, so is it also in all debates of what kind soever. And when men that think themselves wiser than all others clamour and demand right reason for judge, yet seek no more but that things should be determined by no other man's reason but their own, it is as intolerable in the society of men as it is in play, after trump is turned, to use for trump on every occasion that suit whereof they have most in their hand. For they do nothing else, that will have every of their passions, as it comes to bear sway in them, to be taken for right reason, and that in their controversies, bewraying [exposing] their want of right reason by the claim they lay to it. (V.3)

What is Hobbes's argument here? Well, he begins by making the point that even though arithmetic is a "certain and infallible art" (that is to say, there are correct and incorrect answers to what the sums of various numbers are), it is still the case that "no one man's reason nor the reason of any one number of men, *makes* the certainty, no more than an account is therefore well cast up, because a great many men have unanimously approved it" (emphasis added). Many people have believed all sorts of things that turned out to be false—and here, we need only think of various widely held beliefs about astronomy and cosmology over the ages. So it is not the consensus of belief that creates certainty. What does this discussion of reason imply about *judgment*? Recall that Hobbes is skeptical about the possibility of any knowledge being certain, and holds that judgment is the final stopping point in any given train of thought. We can thus understand Hobbes's position to be that judgments are the provisional outcomes of our *exercises of reasoning*, and the fact that, if having employed my (own individual) reason, I judge something to be true does not mean that it really is true.

Hobbes's overarching goal is to examine what happens when people's individual judgments about a particular matter conflict with

each other. His example of arithmetic is particularly apt in that, despite the fact that it is this "certain and infallible art," the ablest and most practiced mathematicians—even "professors themselves"—can make mistakes and "infer false conclusions." Hobbes suggests that when disagreement about some conclusion arises, there are three options: (1) the parties can submit their disagreement to the judgment of an arbiter, in which case they agree to take the judgment of the arbitrator as "right reason" (notice that this does not mean that it is true, it just means that people accept it and do not dispute it); (2) the conflict can go undecided; (3) or people in disagreement can, in Hobbes's words, "come to blows" (*Leviathan* V.3). It is telling that he uses arithmetic as the example here. Many questions outside arithmetic do not admit of any "right" answer, knowable or not, and so the opportunities for disagreement are far greater with most subjects of inquiry, especially when it comes to morality, religion, and politics. If the problem of disagreement plagues even mathematicians, so much more will it plague those engaged in matters that are both more contentious and of far greater personal importance. This increases the likelihood that people will come to blows and, for Hobbes, intensifies the need for an arbitrator. Finally, Hobbes invites us to be skeptical of people who claim to have privileged access to "right reason" (or the truth); what they are really doing is serving their own interests (in the same way that people want the trump suit to be the suit that they have the most of in their hand). In fact, the insistence that one's private judgment is "right" in some objective sense, for Hobbes, exposes one's own bias, selfish motivations, and ultimately one's own ignorance.

The second example can be found in the Hobbesian state of nature, where we see the problem of unchecked private judgment writ large. In the state of nature, people have no judgment to act on except their own. The Right of Nature is a right (or liberty) to act on one's own individual judgment. This leads to significant conflict (see the entries on "State of nature," "War and peace," and "Rights"). Indeed, the universal exercise of *private* judgment is one of the main reasons that the state of nature is so horrid. Therefore, the right to act entirely on their own private judgment is precisely what people relinquish when they form the social contract to enter civil society. As members of civil society, people must give up their rights to "govern themselves" and instead treat the determinations of the sovereign as both final and conclusive, allowing the latter to effectively replace their own private judgments almost entirely (see the entry on "Social contract").

The third and final context in which Hobbes discusses private judgment is within civil society, where it is contrasted with the public judgment represented by the civil law. When Hobbes talks about the dangers of private judgment in the commonwealth, he is no longer concerned with the truth or falsity of scientific (or mathematical) questions, but rather with questions of morality, religion, and politics. Here, he tends to equate private judgment with conscience, so that "a man's conscience and his judgment is the same thing; and as the judgment, so also the conscience may be erroneous." Like the disagreeing mathematicians in the first example, subjects in a commonwealth should obey the will of the sovereign, who acts as arbitrator. Hobbes represents this saying "the law is the public conscience" (*Leviathan* XXIX.7). In the political context, private judgment, or conscience, is described in consistently negative terms. In his list of the "*diseases* of the commonwealth that proceed from the poison

of seditious doctrines," the first item is the doctrine that "*every private man is judge of good and evil actions*" (XXIX.6). Such false and dangerous doctrines played a key role in causing the English Civil War, at least in Hobbes's retelling of it.

The decidedly negative picture sketched so far is subject to a couple of qualifications. First, space still remains for individuals to act on their own judgments, even in the commonwealth; in relation to matters on which the law is silent, people must follow their own judgments. Thus, they can decide how to raise their families, what professions to pursue, and so on (see the entry on "Liberty"). Second, people are only obligated to follow the sovereign in *action*, not in *belief*. Hobbes acknowledges that the law does not extend to the content of people's minds. Nonetheless, this should not lead us to believe that Hobbes allows space for private conscience in any meaningful or practicable way. A subject can think whatever she wants—simply because the law is unable to dictate belief. As Hobbes says, "belief, and unbelief never follow men's commands" (XLII.11). However, that subject is not allowed to voice or act upon those beliefs if they conflict with the public judgment of the state. So while he allows room for private judgment on many things, and acknowledges that the law cannot dictate people's beliefs, Hobbes's position is that private judgment must be carefully and strictly contained in order to avoid the significant risks and dangers associated with its unfettered exercise.

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PUNISHMENT

Hobbes says relatively little about punishment. The majority of his remarks appear in chapter XXVIII of *Leviathan*, entitled "Of Punishments and Rewards," but that chapter is something of a disappointment for anyone looking for a grand Hobbesian theory of punishment. It is mostly taken up with a number of ancillary issues, and anything resembling punishment theory comes rather in dribs and drabs. At the same time, however, Hobbes's political philosophy is often taken to be of great significance for the theory of punishment. The apparent absence of a theory of punishment in Hobbes's writings, coupled with the perception that Hobbes was a significant figure in the history of that topic, is a curious juxtaposition.

One explanation for the disconnect between what Hobbes actually wrote about punishment and the perception of his importance to punishment theory may lie in the backward influence that the secondary

literature on Locke tends to have on Hobbes scholarship. Locke of course *did* have a grand theory of punishment, one that occupies a significant amount of his attention in the *Second Treatise*. Unfortunately, Hobbes scholars often read Hobbes through the lens of Locke, assuming, anachronistically, that anything significant to the latter must be significant to the former. That tendency has had a deleterious role on Hobbes scholarship, and has contributed to regarding Hobbes's political philosophy as lacking in some significant respects.

Perhaps a better explanation, however, lies in the fact that Hobbes says quite a bit about topics related to punishment: self-defense, absolute sovereignty, and the civil liberties of political subjects, to take only a few examples. These core topics of Hobbesian political philosophy have been mined for implications on the subject of punishment by more than a few authors seeking a Hobbesian approach to punishment. Thus despite the fact that Hobbes says relatively little to indicate what a Hobbesian theory of punishment might look like, there are multiple places in his writings, in addition to the few remarks he directly makes on punishment, from which one might sketch the contours of a theory of punishment.

The final reason to attempt to construct a Hobbesian theory of punishment, in the face of few hints from Hobbes about how one might proceed, is that punishment is a particularly interesting and important topic for any contractarian political theory to address. Because contractarian theories, at least in the rational choice tradition, are predicated on voluntariness, and punishment is an institution that imposes justified, involuntary treatment on political subjects, punishment theory presents both a significant challenge and an opportunity for any contractarian theory: a theory based on consent that can offer an account of a coercive institution like punishment would be particularly attractive, since consensual institutions are easier to justify as a general matter. Thus the attempt to account for punishment within a Hobbesian framework is one way of putting contractarianism to the test.

Hobbes begins chapter XXVIII of *Leviathan* with a rather bland definition of punishment, namely that punishment is "an evil inflicted by a public authority on him that hath done or omitted that which is judged by the same authority to be a transgression of the law, to the end that the will of men may thereby be the better disposed to obedience" (XXVIII.1). No sooner does he offer this rather straightforward definition of punishment than he notices the challenge punishment poses for his theory. He writes: "Before I infer anything from this definition, there is a question to be answered of much importance, which is: by what door the right or authority of punishing in any case came in?" (Ch. XXVIII.2). Hobbes spells out the puzzle here in terms of his discussion of self-defense that appeared in an earlier chapter of *Leviathan*, namely chapter XXI entitled "Of the Liberty of Subjects." In that earlier chapter, Hobbes had argued that "No man is bound by the words themselves, either to kill himself or any other man" (Ch. XXI.15). And at an earlier point, he argues "If the sovereign command a man to kill, wound or maim himself, or not to resist those that assault him, or to abstain from the use of food, air, medicine, or any other thing without which he cannot live, yet hath that man the liberty to disobey" (XXI.12).

While Hobbes's formulation here is awkward, his point is clear: because the social contract does not require men to renounce the right to protect themselves from violence,

or to do without that which they require for their survival or general well-being, and (we might add) given that men do not renounce that which they need not renounce in the transition from nature to civil society, we can conclude that man retains the right to resist violence against his person in all contexts in civil society. On a Lockean theory, any individual right of resistance would form the basis of the general right to punish. It would be "transferred" to the sovereign, who would then be authorized to inflict punishment on members of society who violated the substantive terms of the social contract. In Hobbes, however, there is no transferring of right. Indeed, given the absence of correlativity, it should be clear that it is not necessary to hypothesize a transfer of the right to punish from the individual to the State. For if it is possible for *A* to be entitled to reject B's power and for *B* to still have a legitimate claim to that power, then any entitlement a subject could potentially transfer to the Sovereign would be one the Sovereign already had.

If the foregoing is correct, the power of the sovereign to punish will seem mysterious. For, as Hobbes explains in chapter XVI of *Leviathan*, the people are the author of everything the sovereign does. But if they cannot give up the power to resist violence, they cannot authorize the sovereign to engage in violence against them. Punishment, however, is just that, namely "an evil inflicted by public authority on him that hath done or omitted that which is judged by the same authority to be a transgression of the law." (Ch. XXVIII.1.) We therefore have the puzzle that it seems that punishment could not be a legitimate power of the sovereign's, and yet we know that in any well-functioning commonwealth, it must be. Where has Hobbes's theory gone wrong?

Hobbes's answer to this puzzle is a clear one, and it is also one that sets the Hobbesian account of punishment apart from its Lockean cousin: Hobbes explains that there is no *transfer* of the right to punish, but that the right to punish resides in the original unbounded right of nature that each person has to do whatever conduces most to his own preservation. Thus the sovereign does not require that any rights be transferred to him. All that he requires is for others to lay down their right to engage in offensive acts, and by this laying down of right, the sovereign's own natural right is thereby strengthened, because unimpeded. With regard to the sovereign's right to engage in violence against his subjects, however, each man retains the right to resist that violence that Hobbes is clear he does not transfer away. The result is that the sovereign has an unlimited right to engage in violence against each individual subject, and each subject retains the right to resist any violence committed against his or her person. It follows that each subject retains the right to resist the sovereign when the sovereign decides to inflict punishment on him or her, despite the fact that such action by the sovereign is perfectly legitimate and falls within the scope of his anticipated powers.

To modern commentators, Hobbes's theory of punishment makes no sense. How could the sovereign have a right to punish subjects who violate the law, and yet those subjects nevertheless retain the right to resist when the sovereign exercises that power? Modern legal and political theorists fully accept what is often called the "correlativity of rights and duties," meaning that they believe that *if A has a right to X,* it follows that *B has no right to resist A's X-ing*. But Hobbes did not subscribe to the correlativity of rights and duties, and thus the fact that the sovereign has a right to inflict violence

on his subjects does not place those subjects under a duty not to resist the sovereign when he threatens their well-being. Hobbes *is* clear that this right is personal to the one attacked. Thus he explains that subjects *do* "giveth away the right of defending another" who is subjected to punishment, "but not of defending himself" (*Leviathan* XXVIII.2) In terms familiar from contemporary criminal law theory, we would say that Hobbes is identifying the right to resist the sovereign as what is sometimes called a "personal justification," or a "rational excuse": it functions as a right, and thereby supplies a basis for exoneration that is stronger than the typical excuse (such as insanity). At the same time, yet weaker than the typical legal justification (such as necessity), in that it does not generate a right of assistance in third parties, as justifications typically do.[23]

Ironically, modern law would treat self-defense as a justification in the strong sense, in that a defendant who assaults or kills another in self-defense has a right that generalizes to third parties; it is permissible for anyone to assist the self-defender and to perform precisely those acts that the self-defender is himself entitled to perform. This is sharply contrasted with, say, a defense like duress, that does not generate a right in third parties to take up the first party's point of view.[24] On a modern conception, if the subject's right of resistance is strong, strong enough to stand up to the sovereign's power, then the sovereign's power is not as strong as suspected. On the other hand, if the sovereign's power is truly unlimited, as Hobbes describes, then the subject *a fortiori* lacks the right to resist. The implication for a *modern* theory of punishment would be that any justified practice of punishment must be one that subjects have no right to resist. Unlike in Hobbes's account, the subject has a duty to submit to the justified use of coercion on the part of the sovereign. Any other way of relating individual rights of subjects to the powers of the sovereign, on a modern view, would be moral anarchy.

In a Hobbesian system of punishment, assuming we are right to reject the "correlativity of rights and duties" on Hobbes's behalf, there must be some means of distinguishing punishment from raw use of coercion against subjects. It would, moreover, appear to be impossible to use concepts like "right" or "duty" to distinguish the two. We cannot say, for example, that where legitimate punishment is concerned, the sovereign is acting on behalf of a societal right to which the subject has a duty to submit as part of the original social contract. For any such arrangement would presuppose the correlativity of rights and duties. How, then, can we articulate an account of punishment that holds the sovereign to certain legitimizing features of the practice, without restricting the sovereign's power? While this is not the venue in which to establish a full-blown Hobbesian account of punishment, we might note several features that such a theory is likely to contain.

First, a Hobbesian theory of punishment must explain how punishment for violation of social norms can be imposed against the immediate will of the subject, and yet still be part of a consensual social institution more generally. Second, a Hobbesian theory of punishment must be able to identify constraints that operate on the sovereign, but that are not based on duties owed directly to the individuals being punished. Third, a Hobbesian theory of punishment must be able to hypothesize specific criteria for justified punishment—namely conditions under which individuals would accept a scheme of punishment—and relatedly, a specific schedule of punishments designed to promote deterrence, or achieve

some other good appropriate to the role of the institution in society. On a theory that sees punishment as the agreed upon answer to violations of the basic norms of the social contract, and sees the sovereign as authorized to act on behalf of the people only insofar as he is working to further serve the aims of that contract, it would make sense to think of the sovereign as obligated to follow the basic principles of rationality that generated the law of nature in the first place. This is, moreover, precisely the kind of punishment theory that an extension of the Hobbesian framework gives us. On a Hobbesian system of punishment, the parameters of punishment are ultimately set by the laws of nature. The sovereign owes a duty *in foro interno* to legislate in a way that respects the purpose of his authorization. This creates a limitation on what he can do. But unlike for Locke, which accepts the modern thesis of the correlativity of rights and duties, it is not a limitation owed to the subjects over whom he wields the power to punish.

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RESISTANCE AND NON-RESISTANCE

In the Hobbesian commonwealth, there are almost no circumstances under which subjects can legitimately resist the power of the sovereign. For the most part, then, Hobbes's theory is a theory of *non*-resistance, but with one important exception: people in the commonwealth necessarily retain a right of self-defense. In forming the social contract people give up the unlimited right of nature (see the entries on "Rights" and "Social contract"). However, according to Hobbes, the right to "defend myself from force by force" is not a right that can be given up in the social contract (*Leviathan* XIV.29; see also *De Cive* II.18), and so this much narrower right is a right that all subjects necessarily retain.

Since the right of self-defense is derived from the right of nature it shares key characteristics of that right. It is only a "permission right" or liberty, so the right of self-defense does not impose any duties on others to respect its exercise. In particular, it imposes no obligations on the sovereign to respect it; indeed, since the Hobbesian sovereign is not party to the contract, he has no obligations to his subjects at all. It is for this reason that Hobbes speaks of subjects who resist the sovereign power in self-defense as having the liberty to disobey or of their resistance being "without injustice" (*Leviathan* XXI.16). So the presence of a Hobbesian right of this kind has only one effect: it determines the moral status of a person's action when exercising the right. Having a Hobbesian right to some action only signifies that the action is morally permissible and that the actor has not committed an injustice, but it has no normative effect on anyone else.

For this reason, the right of self-defense does not give the sovereign a corresponding obligation to refrain from punishing his

subjects as he sees fit, including the use of executions. Indeed, executions are Hobbes's primary example of the exercise of the right of self-defense. He repeats that—because of this right—condemned men are not obligated to go to their deaths willingly or to obey commands to commit suicide. The inalienable right of self-defense allows a Hobbesian subject to retain moral innocence if she refuses to obey a command to commit suicide or otherwise resists the sovereign's attempt to execute her. All Hobbes wants to establish is that there is no obligation to submit to deadly force and therefore no injustice when the subject does not. But the liberty to resist seems to make little difference in either practice or theory; it does not help to save a life (by, say, imposing duties on others to help), nor does it affect the moral status of the sovereign's actions if he completes the execution despite the subject's resistance. That these sorts of claims would be virtually incomprehensible in modern rights discourse underlines the fact the Hobbes is working with a very particular idea of what constitutes a right.

Besides the right of self-defense, are there other circumstances in which Hobbesian subjects can legitimately resist their sovereign? Hobbes addresses this question in his discussion of the fourth kind of liberty, what he calls the "true liberties of subjects." He defines these as "the things which, though commanded by the sovereign, he [the subject] may nevertheless without injustice refuse to do" (XXI.10). Hobbes gives three main examples of such "true" liberties. First, every subject has the liberty to disobey the sovereign if doing so is necessary for that subject's self-preservation. "If the sovereign command a man (though justly condemned) to kill, wound, or maim himself, or not to resist those that assault him, or to abstain from the use of food, air, medicine, or any other thing without which he cannot live, yet hath that man the liberty to disobey." Second, subjects accused of a crime have the liberty to refuse to testify against themselves; "If a man be interrogated by the sovereign, or his authority, concerning a crime done by himself, he is not bound (without assurance of a pardon) to confess it, because no man . . . can be obliged by covenant to accuse himself" (XXI.12–13). Significantly, both of these are liberties to resist punishment. Hobbes denies that subjects are obligated to willingly accept the state's attempts to harm them, even if such harm takes the form of justified punishment for a culpable crime. Subjects can exercise this liberty by resisting the infliction of punishment or by taking the necessary steps to avoid conviction that would result in such punishment. However, as we have seen, this means only that they commit no injustice by resisting or avoiding conviction.

The third example of a "true" liberty of subjects is notoriously both vague and puzzling. Hobbes says that subjects have the liberty to refuse to execute "dangerous" or "dishonourable" offices (XXI.15). His explanation is brief, but he seems to have in mind the liberty to refuse to assist in the defense of the commonwealth. Hobbes does not explain here what would count as a dishonorable command or office; he gives only two examples elsewhere: being an executioner is described as dishonorable ("Review and Conclusion," paragraph 10) and there is a lengthy example in *De Cive* of a son ordered to kill his father who is presented as legitimately refusing to do so (VI.13). Both examples involve the refusal to obey the sovereign's commands to execute punishment sentences. Thus, while subjects have the liberty to refuse to aid in or

submit to their own punishment, they also appear to have some liberty to refrain from taking part in the state's attempts to punish others.

The liberty to refuse dangerous offices is arguably more important than the liberty to refuse dishonourable offices, and here Hobbes provides more detail. He claims that conscripted subjects can refuse their conscription orders if they pay another to serve in their place. They also have the liberty to flee the battlefield as long as they do so out of cowardice or fear. Once again, possessing a liberty in this sense means that their refusal under these circumstances does not constitute an "injustice"—it does not involve breaking the social contract because these rights were never given up. And as a peculiarity of Hobbes's account of obligation, the existence of these liberties provides no *protection* for the subjects who have or exercise them (see the entries on "Rights" and "Obligation"). He is clear that the sovereign is entirely justified in killing those who refuse either his dangerous or dishonorable commands.

The entire account of the true liberties of subjects is conceived of as a class of exceptions to a general, *prima facie* obligation *not* to refuse (i.e. to obey). And while the liberties to resist one's own punishment are unconditional, the liberties to refuse to obey "dangerous or dishonorable" commands are not. Hobbes builds in a *proviso:* subjects cannot refuse dangerous and dishonorable commands if their refusal "frustrates the end for which the sovereignty was ordained" (*Leviathan* XXI.15). Moreover, he ends his discussion with the insistence that if the safety of the commonwealth requires the assistance of all, all are obligated to fight.

This final aspect of Hobbes's account of the true liberties of subjects made him prone to a great deal of criticism by his contemporaries. Edward, Earl of Clarendon's complaint is representative; he protests that Hobbes is "so cruel as to devest his Subjects of all that Liberty, which the best and most peaceable men desire to possess, yet he literally and bountifully confers upon them such a liberty as no honest man can pretend to, and which is utterly inconsistent with the security of the Prince and People." (Clarendon "Brief Survey," 234). Clarendon and others (in particular, Robert Filmer and Bishop Bramhall) worried about Hobbes affording subjects the liberty to the right to refuse to fight on behalf of the commonwealth or to flee the battlefield if things got too dangerous. It might seem that this is tantamount to allowing subjects to desert the sovereign when the sovereign needs them the most. However, because self-preservation is so central to Hobbes's political theory, it is not clear how he could ground such an obligation to face significant and immediate risk on behalf of the commonwealth. Hobbes's best response to Clarendon would seem to be that while subjects are not strictly speaking obligated to risk their lives, they may very well be *expected* to do so in most circumstances. After all, the sovereign can, and likely often will, punish their refusal with death. He would deny, then, that affording the true liberties to subjects presents any *real* threat to the awesome power of the Hobbesian sovereign. And if there is a real threat, recall, the Hobbesian subject loses the liberty to refuse to assist in the defense of the commonwealth.

As should be clear, Hobbesian resistance rights are severely limited in both scope and import. That is, they do not apply to very many cases and they do not afford the bearer of the right any protections or legal entitlements.

SS

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RIGHT TO REVOLUTION?

Hobbes is taken to offer an absolute prohibition on revolution (or rebellion, as Hobbes more often refers to it); indeed, he takes his project in large part to be an argument *against* rebellion. In the preface to *De Cive*, he informs the readers that "My hope is that you will think it better to enjoy your present state (though it may not be the best) rather than go to war" (paragraph 20).

In his early political works, he offers a diagnosis of the causes of rebellion, claiming that people will not be disposed to rebel unless three conditions are in place—"discontent," "pretense of right," and "hope of success" (*The Elements of Law* II.8.1). Hobbes gives at least two explicit arguments against revolution: one for its moral illegitimacy and one for its irrationality. The first argument—against "the pretense of right" condition for rebellion—stems from his theory of contract-based obligation. In the *De Cive* version of this argument, Hobbes's strategy is twofold. First, he argues that in order to justifiably attempt to depose a sovereign, one would need to have the consent of every member of the commonwealth, and that is a practical impossibility. Second, he argues that even if it were possible to acquire such unanimous consent, it would still be insufficient because subjects would still be bound by their free gift of power to the sovereign. The *De Cive* social contract bestows upon subjects a "double obligation" of obedience, an obligation to their fellow subjects and an obligation to the ruler. This double obligation ensures that no rebellion is ever done *by right*; in Hobbes's words, "There is therefore no danger that *sovereigns* can be *rightly* stripped of their authority" (VI.20). The *Leviathan* version of the social contract is somewhat different, though the result is meant to be the same. Hobbes retains

the notion of a mutual transfer of rights but adds the language of authorization: in order to institute a sovereign, every contractor—on the condition that others do the same—gives up his right of self-governance and agrees to authorize (to "own and acknowledge himself to be the author of") all the actions of the sovereign (*Leviathan* XVII.13) (see the entry on "Authorization and alienation"). In the *Leviathan* version of the social contract, as in the *De Cive* version, Hobbes uses the first opportunity to draw the inference that rebellion is impermissible; he says, "they that have already instituted a commonwealth, being thereby bound by covenant to own the actions and judgments of one, cannot lawfully make a new covenant amongst themselves to be obedient to any other, in any thing whatsoever, without his permission" (XVIII.3). Since the subjects have authorized all of the sovereign's actions, they have no grounds to complain about such actions nor any right to withdraw or transfer their allegiance.

Hobbes's second argument against revolution is a consequentialist one; he argues that prudence dictates *not* attempting to overthrow one's government. It is against one's rational self-interest to rebel. It risks reintroducing the horrors of the state of nature into the commonwealth in the form of political instability and civil war; as he says, "rebellion is but war renewed." But he also directs arguments toward would-be rebels, attempting to convince them that instigating or participating in a revolution is an exercise in futility and self-destruction. First, one can "reasonably expect" *not* to succeed, and then one faces terrible consequences—Hobbes advocates giving traitors and rebels the death penalty. Punishments in medieval and early modern England for high treason included being hung, drawn and quartered, disemboweled, and ultimately decapitated. Furthermore, even if one succeeds in "attaining sovereignty by rebellion" it is still irrational because "it is manifest that, though the event follow, yet because it cannot reasonably be expected (but rather the contrary), and because (by gaining it so) others are taught to gain the same in like manner, the attempt thereof is against reason" (XV.7). Hobbes's claim is that either one will not be around to reap the benefits of the regime change, or, if one survives, one necessarily achieves only a tenuous hold on power (since by succeeding, one has shown others that usurpation can be successful). Moreover, Hobbes's general principle of rationality dictates risk-aversion, and so rebellion is "against reason" regardless of the potential gains. Prudential considerations, then, *always* count against rebelling.

It is easy to take Hobbes at his word and read him as Carmichael does saying, "There is no right to rebellion (or sovereign replacement) in [Hobbes's] theory and no room for any such right to get off the ground" (D. J. C. Carmichael 1990). However, some of Hobbes's readers—both in his time and in our own—saw something very different in his texts, and so his legacy on the subject of the right to revolution is a complicated one. Some of Hobbes's own contemporaries indicted Hobbes on just this point; most famously, Bishop Bramhall proclaimed that "There need no other bellows to kindle the fire of a civill war, and put a whole commonwealth into a combustion, but this seditious article. [. . .] Why should we not change the Name of *Leviathan* into *Rebells catechism*?" (Bishop Bramhall 1658). A few present-day scholars have made the same point, saying, for example, that

> Because [Hobbes's political theory] was built on individualist and rationalist foundations, [it] must, in spite of

> its author's intentions, leave room not only for individual resistance but also, *in extremis*, for fully fledged rebellion. *Leviathan* may well have framed the minds of many gentlemen to a conscientious obedience, but it also framed in many others a disposition to ask whether the sovereign had failed to secure our peace and safety or was visibly about to do so. (Alan Ryan 1996, 241)

The observation is turned into a devastating criticism by Jean Hampton, who accuses Hobbes of being "skewered with his own sword" because he must allow that there are circumstances in which a subject may legitimately act to depose his sovereign (Jean Hampton 1996).

These commentators purport to find a right to revolution in Hobbes because of his account of the limits of political obligation. He explicitly allows subjects to resist the sovereign if they judge that their lives are in danger (see the entry on "Resistance and nonresistance"). And one of the implications he draws from this analysis seems to be that people engaged in an act of rebellion have the right to continue rebelling (*Leviathan* XXI.17).

But whatever right to rebellion Hobbes might be forced to acknowledge would be an extremely limited and idiosyncratic one. Potential rebels would only be justified in rebelling if they sanely and sincerely believed that their lives were insecure *and* that overthrowing the existing political regime was an effective way to ensure their self-preservation. Hobbes might very well argue that the latter condition would be met only in the rarest of circumstances. Recall his claims that revolutions are often unsuccessful and the instigators are either killed in the effort or subjected to horrific and ultimately deadly punishment, and his claim that even if the revolution is successful and an instigator survives the ordeal, he or she inherits unstable power over a society that has suffered the disastrous consequences of the revolution itself.

In an important sense, the responsibility to prevent seditious behavior falls on the Hobbesian sovereign as much as—or even more than—it falls on the Hobbesian subject. Many of the duties of the sovereign are described in this very way (see the entry for "The duties of sovereigns and subjects"). Consider, for example, Hobbes's explanation of the sovereign's duty to provide public charity. He says,

> And since there are some who, through no fault of their own, but because of accidents they could not have foreseen, fall into misfortunes, so that they cannot provide for their maintenance by their own industry, it is the duty of the sovereign to see that they do not lack the things necessary for life. For since the right of nature permits those who are in extreme necessity to steal, or even to take by force, the goods of others, they ought to be maintained by the commonwealth, and not left to the uncertain charity of private persons, *lest they be troublesome to the commonwealth*. (Latin edition XXX.18, italics added)

Moreover, it is the sovereign's duty not only to protect and provide for his subjects but also to ensure that they are educated such that they appreciate this protection and so assent to the obedience that makes it possible.

Hobbes does acknowledge the existence of "negligent princes" who are met with the "natural punishment" of "rebellion." Of course the rebels themselves are similarly punished with "slaughter" (XXXI.40). So, while

the logic of Hobbes political theory does commit him to justifying rebellion in certain extremely rare circumstances, it is difficult to read *Leviathan* as a "rebel's catechism."

SS

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RIGHTS

Hobbes employs a unique and—from a contemporary perspective—unfamiliar conception of rights. According to him, the original and foundational right is the "right of nature," which encompasses all the rights people have in the state of nature, that is, in the absence of a civil state. The right of nature exhibits the features of Hobbes's idiosyncratic account of rights in general and, indeed, there is an important sense in which his account of the right of nature *is* his account of rights.

The most perspicuous definition of the right of nature is found in *Leviathan*, where Hobbes posits that, "The Right of Nature, which writers commonly call *jus naturale*, is the liberty each man hath to use his own power, as he will himself, for the preservation of his own nature, that is to say, of his own life, and consequently of doing anything which, in his own judgment and reason, he shall conceive to be the aptest means thereunto" (XIV.1). The exact character of—and justification for—Hobbes's right of nature has been the subject of much scholarly debate, but it is relatively uncontroversial to understand the right of nature as the right a person has to act on her own judgment about how best to survive. Essentially, we can say that the right of nature accords a person the right to do X if she believes that doing X is the *best* (or maybe even a *good*) means to her preservation.

The two main features of the right of nature are that it is a *permission* right and that it is *subjective*. Its permissive character means that it simply grants a moral permission (which Hobbes calls "freedom" or "liberty") to perform a certain action. "Permission," in this sense, means that if one has a right to do X, then one does nothing wrong if one does X; however, it does not entail a corollary obligation for others to help one to do X, or even an obligation that they should not prevent one doing X. Having a right in this sense only affects the

moral status of the person who holds it; it does not affect the moral status of anyone else or impose any duties on them to respect its exercise. As a result, Hobbesian rights are not the kinds of things that can be violated by others. Second, the right of nature is subjective: it is a right to act on one's *own private judgment*, as opposed to being obligated to act on the judgment of another (see the entry on "Private Judgment"). As long as a sane adult person (Hobbes excludes "children and madmen") sincerely judges that a certain course of action conduces to her preservation, or might be helpful to her chances of survival, then she has the right to perform that action. Interestingly, this right holds even if her judgment is mistaken, as Hobbes makes clear in *De Cive*; "In the judgment of the person actually doing it, what is done is rightly done, even if it is a wrong, and so is rightly done" (I.10).

As a matter of fact, it is possible to construct an explanation of the right of nature without employing the word "right" at all, but rather using only the language of moral permissibility. What Hobbes uses the word "right" to capture is in fact a particular freedom from blame. Hobbesian rights—at their most basic level—attach to those actions which it is unreasonable to blame someone for doing. And since it would be unreasonable to blame people for trying to avoid being killed, we cannot require them not to do so. Sharon Lloyd (2010) recently defended this understanding of Hobbesian rights.

The right of nature as Hobbes conceives it is not completely limitless, although at times he writes as though it were; in *The Elements of Law*, for example, he defines it broadly, saying that it is the right "to do whatsoever he listeth to whom he listeth, to possess, use, and enjoy all things he will and can" (I.14.10). Indeed, he sometimes characterizes it as the right to "everything" (*Leviathan* XIV.4). However, elsewhere Hobbes is more precise, acknowledging that certain acts are not covered by even the broadest conception of the right of nature. These are acts that can never be sincerely judged to tend to one's preservation, so that they fall outside the rationale offered for the permission right in the first place. Suicide is an obvious example, and Hobbes also mentions vainglory, cruelty, and drunkenness. In the case of cruelty, which he defines as "vengeance without regard to future good," Hobbes says that he "cannot see what . . . cruelty . . . contribute[s] to any man's peace or preservation" (*De Cive* III.27). The right of nature only licenses those things that can be sincerely judged to be useful in a person's quest for survival, and since cruelty is, by definition, done without regard to a future good, it cannot sincerely be judged as such. So there are at least some actions that no sincere, sane person could judge conducive (even in the most general terms) to self-preservation, and therefore Hobbes's right of nature, is not literally without limits—however far reaching it might be.

Setting aside these few exceptions, however, Hobbes's right of nature is extremely broad. There are two different factors that account for its breadth. First, since the state of nature is a condition of radical uncertainty, Hobbes seems to think that *almost any act* could, under some circumstance or other, sanely and sincerely be judged as contributing to one's self-preservation. This criterion for inclusion is very weak, because it could be said of most things that they "may tend to [one's] preservation some time or other; or he may judge so" (*The Elements of Law* I.14.10). Indeed, this is why one person may attack another other in the state of nature: she need not judge that the other's death is

necessary for her survival, but merely that it is *conducive* to her self-preservation to eliminate the other as a possible future threat.

The second reason why the right of nature is so extensive in Hobbes's view is that, for him, there are almost no obligations in the state of nature. On Hobbes's view, one gives up—or "alienates"—a right by undertaking an *obligation* to refrain from doing that which the right permitted, and it is by means of a covenant or contract that we are able to undertake such an obligation (see the entry on "Obligation"). Hobbes defines "injustice" as the breaking of a contract and acting unjustly, therefore, amounts to *acting without right*. Since there are no (civil) laws in the state of nature, and therefore no obligations imposed by them, we are free to do whatever we think useful to survive. Although the laws of nature exist in the state of nature, they do not impose obligations in the strict Hobbesian sense. And here also we find his famous claim that there is no justice or injustice in the state of nature (*Leviathan* XIII.13).

The conception of rights employed by Hobbes appears coherent—that is, it seems perfectly intelligible and does not admit of any obvious inconsistencies—but it is clearly at odds with our current conceptions of rights. There are at least two important differences. First, understanding rights as mere moral permissions (as Hobbes does) seems feeble to us: today, it is generally believed that if someone has a right to something then, at least *prima facie*, others have a correlative duty to respect the exercise of that right. For instance, in most ordinary conditions my right to free speech imposes duties upon others (such as the government) not to interfere with my attempts to speak my mind. So while significant debate about the nature of rights continues, it is simply taken for granted that, whatever rights are, they are not merely moral permissions.

Second, the value Hobbes places on rights is deeply at odds with contemporary evaluations. Today, the idea of having rights almost always has positive connotations (in general, people assume that the more rights one has, the better off one is), whereas for Hobbes, exactly the opposite was true. This is especially clear in his account of the right of nature, since the subjectivity and extensiveness of people's natural rights are a strong contributing factor to the miseries of the state of nature. Indeed, much of Hobbes's political philosophy depends on a contrast between two pictures: on the one hand, the state of nature, where people possess almost unlimited permission rights to do what they judge best for their for survival, and where—as a direct result—life is uncertain, hostile, and miserable; and, on the other hand, the commonwealth, established when people leave the state of nature via the social contract, where almost all natural rights are given up and people undertake obligations to obey the will of a sovereign. As a result, they acquire the peace and stability necessary for commerce, culture, and other signs of flourishing. There is no question in Hobbes's mind in which state we are better off.

As mentioned above, Hobbes's account of the right of nature is virtually synonymous with his account of rights in general. The only other place that the topic of rights emerges in Hobbes's writings is in his discussion of the inalienable right of self-defense, which is itself a vestige of the original natural right (see the entry for "Resistance and nonresistance"). That is not to say that citizens of the Hobbesian commonwealth will never enjoy the kinds of "rights" familiar to those of us in contemporary liberal societies. The sovereign is free to afford people whatever

citizen rights he wants: property rights, rights of criminal defendants, rights to practice the religion of one's choice, right of free speech, and so on. Furthermore, when these rights are granted, they are granted as *claim rights*—that is, they entail symmetrical obligations on others to respect them. But the civil rights of Hobbesian subjects are always circumscribed in two important ways: first, they are not natural rights, in that they do not adhere to the subjects *as people*. Second, since they are granted entirely by the sovereign's command, it is impossible to invoke them against the sovereign.

Interestingly, then, rights play both a remarkably large and a surprisingly small role in Hobbes's political theory. Although Hobbes spends considerable time expounding a unique notion of rights, the role they play in his theory is a curious one: in particular, the notion of civil rights—or rights in civil society—is greatly attenuated. While rights loom large in the state of nature, they shrink in civil society to a very narrowly circumscribed set of defensive rights, which themselves turn out to be practically useless. In some sense, however, this should not surprise us, because Hobbes wants to deny that people in civil society have meaningful natural rights that deserve respect and that the government should not violate. In this regard, his account of rights is entirely consonant with the goals of his political theory, namely, forestalling any possible justification for claims against the government.

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SOCIAL CONTRACT

Hobbes's status in western political thought owes much to his reputation as the first social contract theorist. Although we find precursors to social contract theory before him, for instance, in the work of early modern thinkers such as Francisco Suárez and Hugo Grotius, Hobbes has earned the title

of "father" to the important and influential social contract tradition: it is in his writings that we find fully articulated the central notion that political authority and obligation are, in some sense, grounded in an agreement or contract. Nevertheless, from the viewpoint of contemporary social contract theories, the Hobbesian account appears idiosyncratic, differing from more recent versions in many important respects, and, more importantly, flawed or undesirable in various respects.

For Hobbes, people move from the nasty, brutish state of nature to a stable, ordered civil society by means of the social contract. In the *Leviathan* version of the social contract, people agree among themselves to alienate their natural rights of self-governance and to authorize all of the sovereign's actions (XVII.13). In this way, they promise each other two key things—(1) that they will each alienate their natural rights and (2) that they will together give the sovereign authority over them, agreeing to be ruled by him. The contract serves to unify the people into a commonwealth under the guidance of a single sovereign authority and obliges each person to obey that sovereign authority (see entries on "Rights," "Commonwealth," and "Authorization and alienation").

On this view, people agree with each other *to be ruled*; that is, to abide by the will of the sovereign, instead of following their own private judgments. The social contract is a contract of *each with* all: every member of society makes an agreement with every other other member of society. The sovereign, however, is not party to the contract, but is, in a sense, *created* by it. This distinctive aspect of the Hobbesian social contract contrasts with some of the formulations more familiar to us today, which follow Locke in seeing the contract, at least in part, as a contract between a society's members and its rulers. Since Hobbes defines injustice as the breaking of a contract, his theory has the consequence that the Hobbesian sovereign cannot be guilty of any injustice. In the Lockean social contract, in contrast, the rulers can indeed be accused of breaking the contract and, in some cases, can be overthrown for doing so. This is exactly the kind of consequence that Hobbes wants to rule out.

While the contractual element of Hobbes's political theory have been remarkably influential, its meaning and power continue to be a matter for debate. Critics who are skeptical of social contract theory, such as David Hume, emphasize that Hobbes's story of the transition to civil society is a fiction, pointing out that there never was any kind of founding contract of the kind Hobbes describes, nor could there be. Such critics argue that the very idea of a social contract reached in the state of nature is incoherent, because it is only once people are in society that their promises can create binding obligations. Indeed, even Hobbes himself asserts that putative contracts are not binding in the state of nature; but if this is correct, it creates a serious problem for the social contract, which must by definition be made in the state of nature. Note that the description in "Sovereignty by Institution" is his description of the "pure" form of the contract; his account of "Sovereignty by Acquisition" is derivative—it relies on the conceptual machinery of the contract as described in "Sovereignty by Institution" (see the entry on "Sovereign").

There are a number of possible Hobbesian responses to this line of criticism. Perhaps the most promising strategy is to emphasize the hypothetical and/or heuristic nature of the Hobbesian social contract. As Hobbes describes it in the chapter on "Sovereignty by Institution," the social contract is a hypothetical one. Hobbes does not think that such

a contract ever was or ever will be enacted as he describes it there. Rather, Hobbes seems to think of the state of nature and the social contract as useful heuristic devices that help us to engage in systematic reasoning about the nature of authority and obligation. His account of the awful conditions of life in the state of nature, without government, leads us inexorably to the realization that its inhabitants (if they existed) would seek to establish the most stable and secure political order possible. Hobbes's hope seems to be that when readers take into account the view of human nature he has propounded, they come to see that his social contract is the inevitable solution to the problems of the state of nature. Although Hobbes sometimes make references that look like tacit consent, he does not think that most people living in civil societies have *actually agreed* in any meaningful sense to be ruled. Rather, his account of the contract seems to be meant to demonstrate why they *would* agree to be ruled.

However, questions still remain for the hypothetical reading. First: how can a hypothetical contract be seen as creating binding political obligations? According to this critique, the members of the commonwealth have never actually agreed to be ruled, let alone to be ruled by an absolute sovereign of the kind Hobbes describes. Why, then, should they believe that the sovereign has any binding power over them? Second, even if we grant that there is a plausible reading of the Hobbesian contract as hypothetical, it might be asked whether this is a genuinely *contractarian* theory. It might be argued that any force the argument does have derives not from the agreement or consent embodied in the contract, but from prudential or self-interested considerations on the part of members of the commonwealth who are desperate to avoid disrupting a fragile civil order and propelling it back into a violent state of nature. If that is correct, it seems that little philosophical work is actually being done by the notion of a foundational contract.

Another major objection that has been raised to Hobbes's social contract concerns his views on what kind of government people did—or would—agree to institute. Or more specifically, what kind of government it would be *rational* for people to institute. Putting aside worries about the nature of consent subjects in existing commonwealths might or might not have given, the prior question Hobbes wants to address is about what kind of government people in the state of nature would want to create, given that they can in an important sense "start from scratch." Hobbes's answer to this question is: absolute monarchy. He wants to convince the reader that the best institutional form government can take is absolute monarchy. His priority is, of course, to establish the necessity and desirability of absolutism; demonstrating the superiority of monarchy is secondary (see the entries on "Absolutism" and "Monarchy and other forms of government"). Above all, he wants to insist on the need for unified, unlimited, and unaccountable sovereign power. He reasons that non-absolutist forms of sovereignty (i.e. mixed or divided powers, limitations on the authority of the state, mechanisms that make the government accountable to the people) risk introducing the dangers of the state of nature in the form of political instability and civic unrest. But readers have been unconvinced, and virtually no one now advocates for political absolutism, let alone for monarchical rule. In the seventeenth century, the most famous critic of Hobbes on this point was John Locke. Locke disputes Hobbes's central claim that contractors in the state of nature

would find it rational to give up their natural freedom and subject themselves to the absolute rule of an all-powerful sovereign. In an especially perspicuous passage, Locke takes on Hobbes directly saying,

> For if it be asked, what security, *what Fence* is there in such a State, *against the Violence and Oppression of this Absolute Ruler*? The very Question can scarce be born. They are ready to tell you, that it deserves Death only to ask after Safety. Betwixt Subject and Subject, they will grant, there must be Measures, Laws, and Judges, for the mutual Peace and Security: But as for the *Ruler*, he ought to be *Absolute*, and is above all such Circumstances: because he has Power to do more hurt and wrong, 'tis right when he does it. To ask how you may be guarded from harm, or injury on that side where the strongest hand is to do it, is presently the Voice of faction and Rebellion. As if when Men quitting the State of Nature entered into Society of Laws, they agreed that all of them but one, should be under the restraint of Laws, but that he should still retain all the Liberty of the State of Nature, increased with Power, and made licentious by Impunity. This is to think that Men are so foolish that they take care to avoid what Mischiefs may be done them by *Pole-Cats*, or *Foxes*, but are content, nay think it Safety, to be devoured by *Lions*. (Locke, *Second Treatise of Government* §93, 328)

Locke's point seems to be this: in the state of nature, the threats that a person faces are like threats from foxes and polecats (polecats are weasel-like animals), while under the rule of an absolute monarch, the threats a person faces are like threats from a lion. It would be "foolish" to trade the former situation for the latter. A person at least stands a fighting chance against foxes and polecats, whereas only the luckiest human being would be able to survive an attack by a lion. It is even more foolish to "think it Safety" to confront a lion over a fox or polecat. It seems that on Hobbes's own grounds, it would be irrational to leave the state of nature—where one's enemies are potentially numerous but are roughly equal in strength and ability to oneself (and thereby defeasible)—in order to establish a society where one faces the force of the absolute sovereign, whose powers and abilities utterly dwarf one's own.

Hobbes, of course, could respond to Locke's objection by pointing out that while his absolute sovereign does indeed have much more power than any individual in society, individuals are safer living with the potential, yet avoidable threat from the lion than from the likely and unavoidable threats from a myriad of foxes and polecats. After all, Hobbes argues that in the state of nature, every person is enemy to every other person and people must constantly be prepared to do battle, whether they are disposed to do battle or not (see the entries on "State of nature" and "War and peace"). By contrast, in civil society, one can (at least in theory) avoid being the target of the sovereign's power by obeying all of his laws. However, it is doubtful that this response would convince Locke or those inclined to agree with Locke's objection.

Despite such worries and idiosyncrasies, there is no doubt that Hobbes's version of the social contract has been immensely influential in the history of political thought—even if he has served primarily as a figure against whom subsequent contract theorists could rebel.

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SOVEREIGN

The sovereign is the holder of political authority, which is, in Hobbes's commonwealth, absolute authority (see the entry on "Absolutism"). The sovereign serves to unify the commonwealth, and because the subjects agree with each other, in the social contract, to obey the will of one sovereign authority that they become a "real" unity rather than a mere aggregate of wills. Sovereignty can reside in a monarchy, an aristocracy, or a democracy; but, it must be the exercise of a *single* will—even when it is instantiated in an institution such as the House of Lords (see the entries on "Commonwealth" and "Monarchy and other forms of government").

There are two ways in which a person, or group of people, can become sovereign. The first is "sovereignty by institution" as described in Hobbes's narrative about the formation of the commonwealth out of the state of nature (see entries on "Social contract" and "Authorization and alienation"). Although this is his primary and best-known account of the formation of a sovereign, it is intended as a heuristic device: it provides the conceptual machinery for making sense of the kinds of agreements people would enter into to escape the disorder and mayhem of the Hobbesian state of nature. The second way of acquiring sovereign power, "sovereignty by acquisition,"

occurs in the case of parental dominion over children (see entry on "Parental authority") and conquest in war (*Leviathan* XX.10). Whereas sovereignty by institution is a heuristic device, Hobbes thinks sovereignty by wartime acquisition is historical fact. When people gain sovereignty through vanquishing others in war, Hobbes calls it "despotical" and compares it to the rule that a lord or master has over his servants.

In both cases, authority and the obligations of obedience are all established by voluntary agreement. In *The Elements of Law*, Hobbes describes rule that occurs because of conquest in war in terms of "yielding by compulsion" (II.3.2): the choice offered to the vanquished is to obey the conqueror or die and those who yield to the conqueror thereby enter a binding voluntary agreement. Today, this view seems implausible and the idea is rejected by virtually all contemporary commentators. However, the degree of coercion that would render an agreement non-voluntary was, for Hobbes, restricted essentially to loss of physical freedom (see entry on "Subjects"). The choice to survive by yielding to the conqueror was therefore a voluntary one, despite being made under severely restricted circumstances.

For Hobbes, then, the only important difference between sovereignty by institution and sovereignty by acquisition is the source of the threat that impels people to enter the social contract. In the former, people agree to be ruled because they fear each other, whereas in the latter people agree to be ruled because they fear their conqueror. In both cases, people submit to an authority out of fear and, for Hobbes, they do so voluntarily because it is in their interests to escape the source of that fear.

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STATE OF NATURE

Hobbes's analysis of the state of nature is at the heart of his philosophy, and constitutes one of his principal legacies for political theory. "The natural condition of mankind," as he most often calls it, is the condition people find themselves in "without a common power to keep them all in awe" (*Leviathan* XIII.8), that is, when there is no government or sovereign power. The state of nature represents the conditions of anarchy, and Hobbes paints a clear picture of what human life would look like outside of a civil state: famously, he argues that the human condition would be miserable, "solitary, poor, nasty, brutish, and short" (XIII.9).

It is commonplace to understand the Hobbesian state of nature as a pure abstraction—a conceptual tool or heuristic device—employed

by Hobbes in order to make one of the key arguments of his political theory. While ultimately the picture is more complicated, the commonplace reading is understandable—Hobbes invites it when, for example, he asks the reader to imagine men "as if they had just emerged from the earth like mushrooms" (*De Cive* VIII.1). The mushroom analogy encourages us to invoke counterfactual reasoning, asking what people *would have been* like had they sprung up as fully formed individuals outside the confines of civil society. In the famous analysis of the state of nature found in chapter XIII of *Leviathan,* Hobbes posits that such spontaneously formed individuals—and the interactions between them—would have certain characteristics. For example, the chapter begins by arguing that humans are naturally equal. Hobbes points out that people have roughly similar capacities of mind and body, at least in that nobody is so strong or so smart that he or she can enjoy immunity from attack, so that all people are vulnerable to death at the hands of others, either individually or in groups. But the claim about equality is not simply a claim about equality of specific mental and physical capacities; it is also, and more importantly, a claim about equality of status, the lack of natural authority or dominion of any person over any other person. Not only does no one enjoy immunity from attack at the hands of others but also no one is so strong or smart that he or she can naturally rule others. His claim is that the state of nature is a place of equal authority. But it is a place of equal authority because it is a place of *no* authority—no one is subject to anyone else (see the entry on "Equality"). People are not even subject to obligations created by putative covenants or promises because, for Hobbes, in the state of nature, there is nobody with the authority to enforce them.

Not only are men in some important sense natural equals, they also enjoy an equal, and equally unlimited, natural right. His claim is that outside of civil society, people have the "right" to do—meaning they are free or morally permitted to do—whatever they judge most conducive to their own preservation, even if that requires hurting, killing, or stealing from another person, and even another innocent person (see the entry on "Rights"). However, while the state of nature, by definition, lacks civil laws, Hobbes does think that the laws of nature exist, even if they bind only *in foro interno* (see the entry on "Laws of nature").

These intentionally minimal assumptions form the foundation of Hobbes's key argument, namely, that the state of nature is necessarily a state of war. Outside civil society, the human condition is characterized by lack of security and the constant threat of violence. In its strongest form, the argument concludes that life is "solitary, poor, nasty, brutish, and short." But in fact the weaker claim is more important, that is, that peace and all the goods peace fosters are only realizable under a sovereign power (see the entry on "War and peace").

The state of nature argument, then, constitutes a crucial moment in Hobbes's overall political theory. He uses it to show that peace and security are the preconditions for pursuing any of the things that make life worth living, and that peace, and the good things that depend on it, are possible only in civil society. The rule of a sovereign is necessary, therefore, for the enjoyment of any of the goods that are recognizable as goods of a human life: being subject to the sovereign's rule is something to be appreciated, respected, and cherished, not dismissed, undermined, or rejected. While some might have thought man's natural condition is idyllic, Hobbes purports to show

that, on the contrary, it is a loathsome place. Far from being glorified, the state of nature should, in his view, be revealed for the anarchic cesspool of misery that it is.

The conclusion of this argument is that people in the state of nature would find it not only rational to exit this situation, but pressing to do so. The way to exit the state of nature, on Hobbes's account, is to enter into a social contract. In this contract, people give up their unlimited natural right to act according to their own judgment and agree instead to be ruled by the will of a sovereign: they trade natural right and freedom for benefits that depend on the peace and security of the commonwealth. For those lucky enough to be living in conditions of peace and security, Hobbes admonishes them to keep it that way by obeying the commands of their sovereign.

Understood as a thought experiment intended to instill obedience in those who engage with it, the Hobbesian state of nature suggests at least two questions. First, given the conditions he describes, how can people ever *succeed* in exiting Hobbes's horrific state of nature? What he says most directly about the transition from state of nature to commonwealth is frustratingly brief. For the most part, he simply posits that people in the state of nature will come together and form a social contract to institute a sovereign, a "common power to keep them all in awe" by making and enforcing general rules. Civil society on this picture results from what he calls in *Leviathan* "sovereignty by institution." But it is not clear how people could succeed in making such a contract, especially since one of the defining features of the state of nature is the absence of valid, binding contracts. See the entries on "Social contract" and "Sovereign." Many commentators have been skeptical about the success of Hobbes's account on this point, but in some sense it is irrelevant: although his narrative at least aims to tell a consistent anthropological story, doing so is not his primary objective.

Second, one might reasonably wonder whether Hobbes thought the conditions of man's natural state had ever obtained in reality, or whether instead he intended the state of nature to be construed *only* or even *essentially* as a hypothetical scenario. At the end of *Leviathan* chapter XIII, Hobbes says explicitly that he does not think the state of nature was ever "generally so, over all the world. But there are many places where [people] live so now" (XIII.11). Here he gives three examples of "real life" states of nature—first, the "savage people in many places in *America*"; second, the "manner of life" of those for whom their peaceful government has collapsed into civil war; and third, the relations that independent sovereign rulers have with one another. These instances show that Hobbes thought the state of nature could be an actual phenomenon, even if he thought it obtained only in unusual and relatively rare circumstances. The final example of the condition of sovereign states is somewhat of an exception. Since Hobbes did not seem to think that a world government was possible, it follows that there will always exist a state of nature on the global stage. In an important sense, this is not a genuine state of nature for Hobbes's analysis because the actors are sovereign states not individual human beings. And states have different properties than human beings; for example, they are a great deal harder to "kill" (especially before the advent of weapons of mass destruction). So, Hobbes himself did not treat relations between states as an integral part of his analysis of the natural condition of mankind; indeed, he seems to reference it only as an offhand comment. However, in

present-day scholarship, Hobbes looms large in the field of international relations, and there are interesting and important questions to be asked about how much his analysis of the state of nature conceived of in terms of human beings can be generalized or translated into an analysis of the state of nature conceived now in terms of nation-states. See "Further Readings" for representative examples of this literature.

The Hobbesian state of nature, then, should not be understood only as a hypothetical construct to be used in argument, but also as a genuine political possibility and—for an unfortunate few—a political reality. It therefore serves as a warning to those living in civil society that the natural condition is constantly threatening to emerge and so the conditions of peace are constantly imperiled. The full significance of this warning emerges only in the context of Hobbes's aims for his project as a whole: he explicitly seeks to lay out the conditions for "everlasting peace," a commonwealth that will be as close to immortal as possible, meaning that it is only vulnerable to destruction from without—it is entirely internally stable (and prosperous and strong). At the same time, however, he shows an awareness of—and attunement to—the frail and precarious nature of peace. The anarchic horror of the state of nature is not so far away from the peace and stability of civil society; rather, the one constantly threatens to encroach upon the other.

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SUBJECTS

In the most basic terms, subjects are simply members of the Hobbesian commonwealth who are therefore bound by its laws. Indeed, the commonwealth is the result of people uniting in their subjection to a single sovereign power. Unlike Aristotle or the divine right theorists, there is no natural subjection for Hobbes: being ruled by others is not the result of God's command nor the result of a natural hierarchy (nor, indeed, any other status like ethnicity, religion, or sex). Rather, people are naturally free and equal, and can only be subjected to the commands of another by means of an agreement, that is, with consent. Membership in the commonwealth is equally open to all people who are capable of giving agreement, thus excluding only people who have already submitted to another sovereign, and, arguably, children and "madmen."

Subjects are best understood by reference to the ways in which Hobbes distinguishes them (1) from the "masterless men" of the state of nature, and (2) from slaves. For discussion of the former, see the entries on "State of nature" and "War and peace." With regard to the latter, Hobbes seems to have in mind something like chattel slavery, as is suggested by the claim that slaves are in chains. Because of the constraints they are under, slaves are fundamentally different subjects: while both might follow orders, only subjects have an *obligation* to do so. This difference is the result of the slave's lack of physical freedom, which, for Hobbes, means the slave cannot genuinely agree to be ruled. It is not immediately obvious from the text why being in chains precludes the possibility of making a genuine agreement. However, Hobbes takes this as his key contrast, and the distinction between slaves and subjects plays a critical role in Hobbes's articulation of the conditions for subject status. One crucial consequence of this difference is that the slave (like the "masterless man") is not subject to any moral constraints, for he retains his full right of nature (see the entry on "Rights"). Thus Hobbes emphasizes that it is permissible for a slave to escape and even to kill or capture his master. However, if the slave is given his physical freedom, he has the chance to become a subject by giving his consent to be ruled (*De Cive* VIII.4, 9 and *Leviathan* XX.10). It is interesting to note that in Hobbes's analysis although there are no "masterless men" in a commonwealth, slavery can persist within the commonwealth.

Hobbes discusses the distinctions between subjects, slaves, and masterless men to show what it is to be a subject of a commonwealth (also see the entry on "Sovereign"). However, the positive picture that emerges differs in important ways from citizenship as we now understand it. On the one hand, Hobbes does explicitly recommend equal treatment under the law, and some Hobbes scholars have argued that he would advocate religious toleration (see, for example, Ryan (1988), Tuck (1990), and Curley (2008)). In addition, subjects do retain certain rights that we would recognize, such as the right against self-incrimination or the right of self-defense. But even here, these rights are minimal "permission rights," and many other features of civil and political life are left wholly undetermined (see the entries on "Rights," "Resistance and non-resistance," and "Liberty"). For instance, subjects might in principle be granted some of the key rights we associate with citizenship—to voting, free speech, legal representation if charged with a crime, or even the right to own guns—but where such rights exist, they are only granted by the discretion of the sovereign. Since, for Hobbes, the sovereign's overriding duty is to secure peace and stability, such rights should be granted only when and only when they contribute to the preservation of the commonwealth (see the entry on "Duties of subjects and sovereigns").

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TAXATION AND TRADE

Hobbes defends taxation as a necessary part of any commonwealth. He is a defender of the free market, and of people's liberty to work and trade as they see fit. But he is concerned above all with public security, and he recognizes the obvious fact that the armed forces necessary for such security must be paid for. "For the Impositions, that are layd on the People by the Soveraign Power," he says, "are nothing else but the Wages, due to them that hold the publique Sword, to defend private men in the exercise of severall Trades, and Callings."[25]

The need for public security, and thus for public revenue to provide it, was acknowledged by nearly everyone. For Locke and the eighteenth-century Lockeans, however, direct taxation raises a problem. Because there is a natural right to property, a right that many medieval philosophers also recognized, the sovereign must grant the subjects certain liberties in exchange for any direct appropriation of their property. But Hobbes does not have to address this issue, because he denies the existence of any such right. The sovereign is fully empowered to dispose of his subjects' possessions as he sees fit—and thus may seek out whatever sources of revenue he desires. Hobbes lists various seditious doctrines that can provoke people into rebellion, and among them is the view "that subjects have their *meum, tuum*, and *suum*, in property, not only by virtue of the sovereign power over them all, distinct from one another, but also against the sovereign himself, by which they would pretend to contribute nothing to the public, but what they please."[26] Hobbes says that this view is "confuted" by his proof of "the absoluteness of the sovereignty . . . and ariseth from this: that they understand not ordinarily, that before the institution of sovereign power *meum* and *tuum* implied no propriety, but a community, where every man had right to every thing, and was in state of war with every man."[27]

Though Hobbes is content that the basic argument of Leviathan, that an all-powerful sovereign authority is a necessary condition of a stable society, establishes the sovereign's right to tax, he offers certain principles that he thinks a wise sovereign should follow in determining the nature of the tax burden. He says that this burden should be, at least in some sense, equal. "To remove . . . all just complaint," he says, "its the interest of the public quiet, and by consequence it concernes the duty of the Magistrate, to see that the public burthens be equally born. Rulers are by the natural law obliged to lay the burthens of the commonweal equally on their Subjects."[28] This does not on its own answer Aristotle's famous question, however: equality of what? In other words, how should we assess the extent to which people are equal and are to be equally burdened? Hobbes does address this, however. "Now in this place," he says, "we understand an equality, not of money, but of burthen; that is to say, an equality of

reason between the burthens and the benefits. For although all equally enjoy peace, yet the benefits springing from thence are not equal to all; for some get greater possessions, others less; and again, some consume less, others more."[29] As this makes clear, he favors some principle of progressive taxation, whereby certain people pay more than others according to their means.

This leaves yet another question unanswered, however: how is this means to be measured? Hobbes thinks we should assess people's tax burden according to their levels of consumption, or as he puts it: "the Equality of Imposition, consisteth rather in the Equality of that which is consumed, [than] of the riches of the persons that consume the same."[30] And he thinks the taxes themselves should be laid onto consumption. "When the Impositions, are layd upon those things which men consume," he says, "every man payeth Equally for what he useth: nor is the Common-wealth defrauded, by the luxurious waste of private men."[31] Hobbes's suspicion of luxury, and his willingness to see luxury consumption curtailed, was a commonplace of his time. It marks one of the most striking points of divergence between him and Bernard Mandeville, who is in many other respects strikingly Hobbesian, and with whom he was often joined together by opponents as the two great philosophical bugbears of the era.

I have already said that Hobbes generally believes in the free market. That is, he believes that people should be left to work and trade as they see fit—though he thinks such freedom is a grant from a wise sovereign rather than an absolute right. But he makes it clear that when the government acts in the interests of its subjects, it generally steers clear of the economic sphere. He insists that "at home" every man must be "at liberty . . . to buy, and sell at what price he could"—which seems to mean, free both from the monopolies and corporations that governments of the day allowed to interfere with people's trade activities, and free from official attempts to impose price controls.[32] "The value of all things contracted for," he says, "is measured by the Appetite of the Contractors: and therefore the just value is, that which they be contented to give."[33] Hobbes is, however, willing to countenance monopolies in foreign trade, saying that they may be "very profitable for a Common-wealth" since they allow it to maximize the price extracted from foreigners.

Hobbes does endorse several forms of government intervention in the economy. First of all, he says that, where possible, the state may act to encourage those sectors that provide essential goods or that make a special contribution to the general prosperity. "Those laws will be useful," he says, "which countenance the arts that improve the increase of the earth and water, such as are *husbandry* and *fishing*." He also wants the state to ensure that "the *art of navigation* (by help whereof the commodities of the whole world, bought almost by labour only, are brought into one city) and the *mechanics*, (under which I comprehend all the arts of the most excellent workmen) and the *mathematical sciences*, the fountains of navigatory and mechanic employments, are held in due esteem and honour."[34] Second, he says that the state may impose laws to prevent idleness. Finally, he endorses sumptuary legislation. "Those laws are useful," he says, "whereby all inordinate expense, as well in meats as in clothes, and universally in all things which are consumed with usage, is forbidden."[35]

All of these proposals were generally in line with the mercantilist theories of his day. Like the mercantilists, Hobbes thinks the sovereign should do whatever is necessary to maximize the prosperity of the commonwealth. This

means allowing its people generally to work and trade as they see fit—although if they do not work, he wants the sovereign to force them to do so. It also means, with regards to foreign trade, pursuing whatever policies will give the nation an advantage over foreign ones.

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WAR AND PEACE

War, as Hobbes explains in the famous description of the state of nature in *Leviathan*, "consisteth not in battle only, or the act of fighting, but in a tract of time wherein the will to contend by battle is sufficiently known." He defines "Peace" negatively, by contrast, as the absence of war, saying, "All other time is Peace" (*Leviathan* XIII.8). Since he gives war descriptive content, while peace is defined as its absence, it makes sense to examine first what he means by war and then consider his account of peace.

Hobbes explains his definition of war (given above) saying,

> And therefore, the notion of *time* is to be considered in the nature of war, as it is in the nature of weather. For as the nature of foul weather lieth not in a shower or two of rain, but in an inclination thereto of many days together, so the nature of war consisteth not in actual fighting, but in the known disposition thereto during all the time there is no assurance to the contrary. (ibid.)

The idea of something being a tendency over time, without promise of relief, may initially make more sense in the case of weather than it does for war. The state of nature, as Hobbes posits it, is defined merely by the absence of government (see the entry for "State of nature"), and thus, at least initially, appears relatively neutral with regard to the question of war and peace and so with regard to the question of its desirability or undesirability. The key question that Hobbes has to answer, then, is why a condition characterized only by an absence of government is *necessarily* a condition in which there is a "known disposition" to fight.

Hobbes's claim is not meant as an analytic truth; the concept of the state of nature does not contain the concept of the state of war, as the concept of *bachelor* contains the concept of an *unmarried man*. Rather, Hobbes makes an argument for their equivalence based on a combination of claims about human psychology and the requirements of rationality. Given the condition of individuals in the state of nature—namely, their rough equality of mental and physical characteristics and, more importantly, their equal vulnerability to attack from others—their "dominant strategy" (as contemporary game theorists like to call it) will be what Hobbes characterizes as "anticipation" (XIII.4). His idea seems to be that rough equality of ability leads to an equality of hope that people will get the things that they attempt to acquire. In

other words, not only are many people likely to want and need the same things, but their hopes of attaining those things will be relatively similar—and thus, they will be brought into conflict with one another. In particular, Hobbes lists three important causes of conflict in the state of nature: glory, competition, and diffidence (which here means concern for personal security). People are motivated to engage in conflict in service of their reputations, in order to attain more goods, and out of the simple regard for their own safety. It makes sense, Hobbes argues, for individuals in the state of nature either to preemptively attack one another, or at least, always to be ready for preemptive attack and for defense against the attacks of others. This strategy follows from the conditions of state of nature, even if most (or perhaps even virtually all) people in that state actually do not want to fight, and would much rather be left alone to enjoy peace and quiet. Even the diffident will find it rational to engage in preemptive attack—eliminating a possible future threat can serve to increase one's overall safety. And everyone—glory-seeking, competitive, or diffident—will be rationally required to keep a constant vigilance against the attacks of others. As Hobbes says,

> And from this diffidence of one another, there is no way for any man to secure himself so reasonable as anticipation, that is, by force or wiles to master the persons of all men he can, so long till he see no other power great enough to endanger him. And this is no more than his own conservation requireth, and is generally allowed. Also, because there be some that taking pleasure in contemplating their own power in the acts of conquest, which they pursue farther than their security requires, if others (that otherwise would be glad to be at ease within modest bounds) should not by invasion increase their power, they would not be able, long time, by standing only on their defence, to subsist. And by consequence, such augmentation of dominion over men being necessary to a man's conservation, it ought to be allowed him. (XIII.4)

Note that Hobbes's point is that concern for one's own life not only makes it *rational* to wage war on others, but it also serves to make that war *allowable* (i.e. morally permitted) (see the entry on "Rights"). It is, of course, also *possible* for every person to wage war, since, as Hobbes explains, "even the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others that are in the same danger with himself" (XIII.1). Since it is possible, rational, and permissible for every person to do violence whenever he or she thinks it to be advantageous, the state of nature will be a place in which there is a "known disposition to fight"—that is, it will be a state of war.

Rather than a psychological claim about the supposed warlike nature of human beings, Hobbes's identification of the state of nature with a state of war (or, more specifically, his argument that the former leads to the latter) hinges in part on an epistemic claim: if circumstances are such that there *could* be troublemakers, and if we can never know whether there *are* troublemakers, or *who* those troublemakers are, then it is rational never to let down our guard. Hobbes contends that his claims about human nature in this regard are "confirmed by experience" and asks his reader to

> consider with himself—when taking a journey, he arms himself, and seeks to

> go well accompanied; when going to sleep, he locks his doors; when even in his house, he locks his chests; and this when he knows there be laws, and public officers, armed, to revenge all injuries shall be done to him—what opinion he has of his fellow subjects, when he rides armed; of his fellow citizens, when he locks his doors; and of his children and servants, when he locks his chests. Does he not there as much accuse mankind by his actions, as I do by my words? But neither of us accuse man's nature in it. (XIII.10)

Even those of us who claim to trust the vast majority of our fellow citizens and the members of our household nevertheless take certain precautions—locks, passwords, etc.—and we do so *even though* there exists a police force to protect us. Hobbes thus bolsters his claim about what is rational in the state of nature by appealing to readers' intuitions of what is rational in their own, much more certain, circumstances.

More significant than the inevitability of war are its ultimate consequences. These are not simply the lack of personal security that comes from the fact that every person is enemy to every other person, but more importantly,

> there is no place for industry, because the fruit thereof is uncertain, and consequently, no culture of the earth, no navigation, nor use of the commodities that may be imported by sea, no commodious building, no instruments of moving and removing such things as require much force, no knowledge of the face of the earth, no account of time, no arts, no letters, no society, and which is worst of all, continual fear and danger of violent death, and the life of man, solitary, poor, nasty, brutish, and short. (XIII.9)

Hobbes does not spell out his conclusions in this crucial passage, but his reasoning seems to be this: in the state of nature, it is every person for him or herself. The only security you enjoy is what you can provide for yourself by your own strength and wit; there is no one else to protect you. But why, under those conditions, can there be no industry, knowledge, or culture? Well, all of those things require *cooperation* and that is precisely what is impossible when every person is a possible threat to every other person. Each of these—industry, knowledge, culture, and so on—is the result of cooperative endeavors, produced jointly and collaboratively by multiple persons over time. When every person is enemy to every other person, any significant degree of cooperation is impossible.

Consider one of his simpler examples, the claim that in the state of nature it will be impossible to move things that require much force to shift (see the passage just quoted). Why would this be the case? Imagine that there is a large boulder that blocks the way to a key resource—for example, water—so that every person has an interest in seeing the boulder moved out of the way. No one person is strong enough to move the boulder by him or herself, but a group of people working together could easily move it. Hobbes seems to hold that, despite the fact that each person in the group would prefer the boulder to be moved and presumably is willing to put in his or her share of the effort, the boulder is not likely to be moved. In his view, in the state of nature, people will not cooperate for long enough to complete such tasks; indeed, it would be irrational for them to do so. Given how much cooperation is involved in even a simple task like moving a boulder, such things will not get done in the state of nature as Hobbes describes it. Of course, Hobbes emphasizes the lack of "instruments"

(tools) for moving heavy things, but the ability to use tools is itself a result of cooperation—creating, building, or devising them. Moreover, one's motivation to invent tools will be severely lessened if it seems likely that someone stronger will simply come and take them away: devising an instrument to move heavy objects only makes me prey to someone stronger or smarter who wants to take it from me by force.

This dilemma is writ large in the example of industry as a whole. Why would I be industrious in conditions of war? Being industrious turns out not only to be useless but also downright self-destructive. Hobbes says that if anyone were to "plant, sow, build, or possess a convenient seat, others may probably be expected to come prepared with forces united, to dispossess and deprive him, not only of the fruits of his labour, but also of his life or liberty" (*Leviathan* XIII.3). It would be naive to the point of foolishness for me to plant a garden or build a hut, for example, and imagine that I might enjoy the benefits of crops or shelter as a result. Inevitably, these benefits will be coveted by others, who will eventually try to rob me of both. But my naiveté is self-destructive as well as pointless: those who come to take the fruits of my labor may turn their force on me, either enslaving me (to enjoy all future effects of my industry) or kill me outright (to prevent any future retaliation on my part). My efforts are not merely likely to fail to benefit me, they risk leaving me significantly *worse* off than I was initially. There is thus an overwhelming disincentive for any individual in the state of nature to create or innovate at all.

However, this argument faces a potential problem. If any cooperation at all is irrational, then how would these marauding groups cooperate in the way Hobbes seems to describe when he warns that others come "with forces united"? The disincentive itself seems to rely on the possibility of some "honor amongst thieves" and so, Hobbes's threat seems to defy the conditions it is meant to enact. This is problematic, at least for a strong reading of his claim about the dangers of the state of nature. However, he does not necessarily need this point in its strongest form. All Hobbes must show is that the goods of society—culture, arts, navigation, education, commodious living, and so on—are impossible in conditions of war, and there are a couple of different ways he could ground this claim. First, we are all too preoccupied with our own survival to devote any time to improving ourselves or our surroundings. If we were to make such improvements, we make ourselves potential victims. That is certainly a plausible reading of the conditions he describes.

However, Hobbes's best argument for the consequences of war, is the following: societal goods like thriving commerce and higher education are only possible when certain institutions are in place. There have to be laws and those laws have to be enforced. We cannot engage in very much trade, let alone in advanced market transactions, unless there are known and settled rules of property that specify what belongs to whom, and established, public mechanisms for adjudicating the various disputes that inevitably arise when such rules are applied. It might be possible to have isolated, instantaneous acts of barter among individuals or groups who are not governed by a sovereign—here, one might well imagine early American colonialists bartering goods for those of the "natives." But these examples will always be isolated, and any system of trade that emerges will be fragile and faltering. A market economy at any level of complexity necessitates certain stable institutional structures, structures Hobbes

thinks are only possible in civil society, that is, outside the state of nature.

The need for civil society to secure stable conditions for commerce, then, is almost overdetermined, as Hobbes describes it. First, as established above, if there is a "known disposition" to contend by battle, then people are not going to engage in the kinds of cooperative activities that are necessary for mutual benefit. But beyond this initial disincentive, there are no structures in place for them to reap the potential benefits of their labor, individually or otherwise. Why would I grow more corn than I need if there is no market at which I can sell that corn or trade it for other goods? There simply cannot be a market if people are enemies to each other, and always ready to defend themselves with violence. But more importantly, there can be no market—at least of the kind that makes possible commodious living—without law and order. Without a systematic division of labor, people must individually provide not only for their own security but also for all their basic needs. A similar chain of reasoning ensures that there can be no navigation—who will build ships, with what tools, to transport which goods and so on—nor can there be universities or other institutions of human knowledge, culture, and achievement.

Once the drastic consequences of war are realized, Hobbes's definition of peace as simply the absence of war takes on greater meaning. While Hobbes does not give an independent explanation for peace, taking the negative definition to suffice, the richness of Hobbes's story about war offers insight into his understanding of peace. Not only does Hobbes intend by peace the absence of a known disposition to fight, but he takes such an absence to require the presence of a sovereign, as well as all the accompanying institutions and infrastructure that make it possible for conditions of war to be absent, by providing meaningful and enduring security. Furthermore, by the absence of war, Hobbes intends exactly those conditions that make possible the goods of social cooperation and of human life: commerce, arts, letters, society, and exploration.

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Further Reading

Hampton, Jean, 1986, *Hobbes and the Social Contract Tradition*. Cambridge University Press, 1986, chapter 2 entitled "What is the cause of conflict in the state of nature" and chapter 3 entitled "The shortsightedness account of conflict and the laws of nature."

—1985, "Hobbes's State of War," *Topoi*, 4:1: 47–60.

Kavka, Gregory S., 1986, *Hobbesian Moral and Political Theory.* Princeton University Press, chapter 3 entitled "Conflict in the state of nature."

Thivet, Delphine, 2008, "Thomas Hobbes: a Philosopher of War or Peace?" *British Journal for the History of Philosophy*, 16: 701–21.

Vanderschraaf, Peter, 2006, "War or Peace?: A Dynamical Analysis of Anarchy," *Economics and Philosophy*, 22: 243–79.

NOTES

[1] Hobbes, *A Dialogue between a Philosopher and a Student of the Common Laws of England*.
[2] Ibid., 55.
[3] Ibid., 62–3.
[4] Plessy v. Ferguson, 163 U.S. 537 (1896).
[5] Dworkin, *Law's Empire*, ch. 6.
[6] Ibid., 185.

[7] This is only an approximate statement of Hobbes's views on this question, since he does think that statutes bear something like an interpretive relation to natural law, as we shall shortly see.
[8] Hobbes, *A Dialogue between a Philosopher and a Student of the Common Laws of England*, 54.
[9] Hobbes, *Leviathan*, XXVI.2.
[10] Ibid., XXVI.6.
[11] Ibid., XXVI.10.
[12] Ibid., XV.3.
[13] Holmes, "The Path of the Law," 459.
[14] Ibid., XXVI.2.
[15] *See* David Gauthier, "Thomas Hobbes and the Contractarian Theory of Law," *Canadian Journal of Philosophy,* supp. 16 (1990), reprinted in Claire Finkelstein (ed.), *Hobbes on Law* (London: Ashgate, 2005), 63–92.
[16] Hobbes, *Leviathan*, XXVI.8.
[17] Ibid.
[18] Ibid., XXVI.22.
[19] *Leviathan*, XV.23–4.
[20] Ibid., XV.36–7.
[21] By endorsing equitable over common law reasoning, Hobbes is also declaring his allegiance to Chancery over the law courts with their more flexible, more individualized approach to justice.
[22] Hobbes, *A Dialogue between a Philosopher and a Student of the Common Laws of England,* 99.
[23] See Claire Finkelstein, "Excuses and Dispositions in Criminal Law," 6 BUFF. CRIM. L. REV. 317 (2002).
[24] For more on duress, and in particular the suggestion that duress should be treated as a rational excuse, see Claire Finkelstein, "Duress: A Philosophical Account of the Defense in Law," 37 ARIZ. L. REV. 251 (1995). See also Finkelstein, "Self-Defense as a Rational Excuse" 57 UNIV. PITT. L. REV. 621 (1996).
[25] *Leviathan* 2: 30: 238. All references to *Leviathan* are to Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1991).
[26] Thomas Hobbes, *Elements of Law* (hereafter "Elements") VIII.8; *The English Works of Thomas Hobbes*, ed. William Molesworth, 11 vols. (London: Bohn, 1839–45) (hereafter "EW"), 4: 207.
[27] *Elements* XXVIII.8; EW 4: 207.
[28] Thomas Hobbes, *De Cive* XIII.10 (hereafter "DC"); EW 2: 173.
[29] DC XIII.10; EW 2: 173–4.
[30] *Leviathan* II.30.238.
[31] Ibid., 239.
[32] Ibid., II.22.161.
[33] Ibid., I:15.105.
[34] DC XIII.14; EW 2: 177–8. Italics in the original.
[35] DC XIII.14; EW 2: 177–8. Italics in the original.