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Review

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icism of functional explanation in Marx's theory of history and his review of my 1981 Marx book (2nd ed., 2004) in which Jerry, along with paying the book some very generous compliments, defends at some length (against what the texts say) the thesis that Marx attacks capitalist exploitation because he thinks it unjust. Finally, there is Jerry's memorable critical essay commenting on Christine Korsgaard's *Sources of Normativity*.

I have said that these lectures contain a number of philosophical "gems." I have quoted only one or two of them but will end by quoting my favorite, which is tossed out in the middle of his lectures on Plato: "Consider Quine's plea for the naturalization of epistemology. He said, contemplating the historic disagreements regarding criteria of knowledge and rational belief: 'Why not settle for psychology?' But how do we get a psychology save by practicing science under canons of right reasoning on whose rightness science is impotent to comment? It is our criteria that endow science with its warrant. Science could thus never impugn our status as normative, warrant-giving, creatures. It is thus important to know ourselves, as producers of the criteria of validity" (24). Reading (and rereading) these lectures may be as close as any of us who knew Jerry will ever again come to having a philosophical discussion with him and as close as those who never knew him will ever be able to come to having known him. That's a sad thought, but it makes me grateful to Jonathan Wolff for having guided this memorable book into print.

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Dyzenhaus, David, and Poole, Thomas, eds. *Hobbes and the Law*. Cambridge: Cambridge University Press, 2012. Pp. 254. $90.00 (cloth).

Hobbes has come to occupy a peculiar role in the history of philosophy. He wrote at a time of violence and religious fervor, when most accepted the legitimacy of natural hierarchies—between king and subjects, nobles and commoners, men and women; in that context his belief in the possibility of a secular state, based on a rational contract between free and equal individuals, is both radical and compelling. But Hobbes also has a well-known darker side: his insistence on absolute undivided and unlimited sovereignty, his defense of a sovereign accountable only to God and not to his people, his enthusiasm for monarchy, and his denial of almost all rights to resist or disobey political power. As a result we tend to emphasize his radical starting points and his influence on later, more attractive thinkers, while avoiding any real consideration of his conclusions about how actual political institutions should be structured.

Hobbes and the Law includes ten essays on juristic aspects of Hobbes's philosophy set in context by a short introduction. Despite local disagreements, all the essays reject the familiar and simplistic caricatures of Hobbes's substantive views. This is the second anthology on the subject of Hobbes and law. *Hobbes on Law* (ed. Claire Finkelstein [Aldershot: Ashgate, 2005]) is an excellent collection of previously published papers representing much of the best work to that date. In contrast, the current anthology consists of specially commissioned papers,

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and the fact that these authors are in dialogue with one another makes the book useful to read as a whole, not just piecemeal.

The first three essays expound what the editors refer to as "the orthodox view" of Hobbes as an early legal positivist, but they do so in ways that generate new observations or give a new meaning to this traditional view. Martin Loughlin's "The Political Jurisprudence of Thomas Hobbes" calls attention to the uneasy fit of natural law rhetoric in the Hobbesian project. Acknowledging that the received account of natural law does not lend itself to Hobbes's project, Loughlin asks why Hobbes relies so heavily on it philosophically. Loughlin's answer is that he had strategic rhetorical reasons to do so. Since natural law was being used by those trying to justify revolution, Hobbes focused on natural law "in order to expose its errors and to rework its precepts for the purpose of rebuilding the authority of sovereign will" (12). Focusing on contractual aspects of Hobbes's legal thought, Michael Lobban's essay, "Thomas Hobbes and the Common Law," also connects the innovations in Hobbes's philosophy with the historical context in which he wrote. Ross Harrison's "The Equal Extent of Natural and Civil Law" is a careful analysis of the passage in which Hobbes makes the puzzling claim that "the law of nature and the civil law contain each other, and are of equal extent" (*Leviathan*, chap. 26, para. 8). Unusually, this piece does not contain a single reference to the vast secondary literature on this topic. However, this has the virtue of stepping around the screen of secondary commentary that risks pushing nonspecialists away from interpreting these texts; instead, it invites everyone to participate in trying to understand this deceptively complex thinker.

Even when the impressive coherence of this volume fails, as with Daniel Lee's acknowledged outlier "Hobbes and the Civil Law: The Use of Roman Law in Hobbes's Civil Science," the variance contributes to the overall depth of analysis. Rather than engage broader theoretical, historical, or interpretive questions, as do most of the authors, Lee focuses on a specific and narrow task: tracing in meticulous detail the complicated role played by Roman civil and private law in Hobbes's thought. Despite its differences, the editors contend that this essay "shares with all others the aim of displaying the depth of Hobbes's juristic thought" (4). That is perhaps an excessively broad criterion for inclusion, but Lee's contribution is nonetheless important as a simply excellent piece of scholarship.

The pieces that make up the bulk of the volume—by Poole, Ristroph, Vinx, Klimchuk, Fox-Decent, and Dyzenhaus—proceed, as the editors put it, by "softening considerably Hobbes's reputation for authoritarianism" (3). An example of this "softening" occurs in Alice Ristroph's "Criminal Law for Humans," which recasts Hobbes's account of punishment in criminal law as "grounded in an appreciation of the humanity of all involved" (109). Ristroph shows that Hobbes is surprisingly sensitive to the humanity of lawbreakers, noting, for example, that "criminal law is structured to give incentives to thinking bodies—to rational and embodied beings capable of responding to incentives but also driven at times by irrational passions" and that Hobbes gives every criminal the right to resist lawful punishment (103). Along the way, Ristroph makes a number of insightful comments about Hobbes's view of human psychology. For example, she points

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out that Hobbes does not "depend on a criminological portrait of 'the' typical offender. [Rather] Hobbes identified several frequent causes of crime, but he also emphasized the great variety of criminals and offences" (106–7). I worry that it is slightly misleading to characterize Hobbes as concerned with the humanity of punishment, insofar as that makes it sound like he was compassionate or concerned with rights violations. It would be more accurate, I think, to say that he is a detached observer who "appreciates humanity" from a certain distance: Hobbes is keenly aware of what we can and cannot expect of people. After all, his appreciation of the plight of criminals (and so his insistence on their right to resist their punishment) grounds the observation that this is why we lead the condemned to the gallows in chains (and, presumably, the endorsement of that practice). That being said, Ristroph's essay alone makes the volume worth buying. It is one of the clearest, most interesting, and plausible readings of Hobbes on punishment that I have encountered.

Lars Vinx's "Hobbes on Civic Liberty and the Rule of Law" continues the "softening" trend, arguing that Hobbes does have a conception of, and concern with, subjects' need to be free from arbitrary power. This position is commonly associated with republicanism, which often uses Hobbes as a foil. But Vinx aims to show that Hobbes shares the republican concern with freedom from arbitrary uses of power and that this concern motivates Hobbes's emphasis on the rule of law. This interesting idea is hard to evaluate because Vinx does not fully develop his positive view; this is largely because the argument is framed as a critique of Phillip Pettit, giving this chapter a scholarly insularity that is unusual in the volume.

It is worth noting that both of these attempts to "soften" Hobbes explicitly acknowledge the limitations of that aspiration. Ristroph notes, for instance, that he "must sacrifice an account of punishment as fully legitimate. Ultimately, Hobbes recognized the limits of consent-based authority, and his account of criminal law and punishment is correspondingly chastened" (117). Vinx concludes by admitting that what we learn from Hobbes is that "the scope of a feasible notion of nondomination is rather limited" (164) and that Hobbes's "solution may strike the republican as too thin and undemanding to be very interesting" (163). These qualifications speak to the difficulty of winning Hobbes over for contemporary liberalism.

In "Hobbes on Equity" Dennis Klimchuk tackles a notoriously tricky concept in Hobbes's legal theory: the roles of equity. He identifies a "unifying idea" underlying these roles, namely, "a conception of equality before the law" that judges must uphold (185). Hobbes uses the term "equity" in several different ways, and it is unclear how those uses are related, if at all. Klimchuk ably sets out these complications and offers a clear pathway through them, insofar as such a thing is possible. His analysis of Hobbes's discussion of the courts of Chancery is especially valuable, teasing out an unusually substantive and coherent Hobbesian theory of equity. In this way Klimchuk also manages to mitigate the dauntingly absolute Leviathan to some extent.

Thomas Poole's essay, "Hobbes on Law and Prerogative," explores the extent to which the formal structure of law constrains the Hobbesian sovereign. He points out that while "there can be no legal limits to the sovereign's authority [nonetheless] law can provide some sort of brake on sovereign power" (79). For

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example, the requirement that law be public and prospective means that if the sovereign gives a command that retroactively makes something criminal, that simply does not count as a law. Poole also emphasizes the possibility of legal challenges to sovereign power and notes the importance of judges in this process. On the other hand, the Hobbesian sovereign must be able to override legal restraints whenever he deems it necessary for the public interest. The example Poole uses is Hobbes's suggestion that if the king had simply killed hundreds of seditious Presbyterian ministers, the civil war would not have happened. This prerogative to act outside the law is crucial; for Poole, it is prerogative which makes it possible for civil society to function according to the rule of law. In fact, "the availability of force on this scale, behind the operation of normal law, makes the sovereign feel secure and so more likely to exercise power through normal legal channels" (90). The authoritarian aspect of Hobbes's theory thus makes the sovereign less likely to act in an authoritarian manner.

The most philosophically ambitious papers are Evan Fox-Decent's essay, "Hobbes's Relational Theory: Beneath Power and Consent," and David Dyzenhaus's essay, "Hobbes on the Authority of Law." These two papers are distinctive both because they offer general reinterpretations of the fundamental tenets and nature of Hobbes's political theory and because their accounts are the furthest from the "orthodox," or even just the familiar, Hobbes.

Evan Fox-Decent defends the bold thesis that Hobbes's account of authority is best understood as a fiduciary model. An attractive feature of fiduciary authority is that it "can arise without the beneficiary doing anything (or being presumed to do anything) to bring [it] about," and so avoids the problems with consent-based notions of authority and obligation (127). As Fox-Decent explains, "[in] fiduciary circumstances, the main duty of the power holder is to act without regard to her own interests and in what she reasonably perceives as the best interests of the beneficiary. When there are multiple beneficiaries subject to the same power, the basic duty is to act *selflessly, even-handedly*, and *with due regard for the beneficiaries' legitimate interests*" (128; italics added). We can grant that Hobbes would agree with "even-handedly" and "with due regard for the beneficiaries' legitimate interests." However, it is not quite right to say that the Hobbesian sovereign is required to act "selflessly." Part of Hobbes's explanation for the superiority of monarchy over aristocracy or democracy depends on the claim that the sovereign's interests are not different from those of the subjects. The sovereign office is charged with acting for the common good, but on Hobbes's view this converges with acting for the good of the sovereign herself. So Fox-Decent's use of "selflessly," which is a crucial link to the fiduciary model, seems ill suited for Hobbes. Fox-Decent's Hobbesian sovereigns resemble Plato's philosopher kings, who are characterized by their ability to act selflessly (although Plato characterizes it as an ability to act for the common good in opposition to their private good). But Hobbes does not expect so much, even of the sovereign: his project is precisely to build a political theory that does not require people to act against their fundamental self-interest.

In "Hobbes on the Authority of Law" David Dyzenhaus aims to show "why [Hobbes's] reputation for authoritarianism is not well deserved" (188). On his view, there are limits or constraints on sovereign power, and these limits are necessary because they are built into the structure of law as Hobbes understands it.

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I can only sketch Dyzenhaus's subtle and impressive account here—and I would encourage readers to work through the essay itself—but the idea seems to be as follows. We start with the "limit" cases, where the commands of the sovereign are sufficiently problematic that they fail to count as law in some way. In various places, Hobbes claims that pronouncements of the sovereign can fail to count as genuine laws, and Dyzenhaus analyzes the details of these assertions to reconstruct the logic behind them. For civil pronouncements to count as law, he suggests, they must satisfy both a "validity proviso"—that for something to count as a law it has to fulfill some set of formal requirements, like publicity—and a "legality proviso," according to which a law must be interpretable in light of the laws of nature. When they apply a (putative) law, judges must, so far as possible, interpret it in a way which satisfies these provisos. In the "limit" cases, however, it will be impossible for judges to find an interpretation of a putative law which meets these requirements, and then they have the right and the duty to overturn or void such commands. As Dyzenhaus explains,

> the content of enacted law [is] in part dependent on its compliance with the laws of nature. Before one gets to the limit case in Hobbes's civil society, judges will have the opportunity to try to interpret the law in such a way as to make it conform to the moral commitments of the political community, expressed in the laws of nature. Hence, because the laws of nature protect our interest in liberty and equality in a way that makes it rational for us in the first place to authorize the sovereign, the content of the enacted law will reflect those interests until the sovereign chooses explicitly to undermine those interests, in which case he ceases to act as sovereign, even if no judge has the legal resource to make a declaration to this effect. (209)

Dyzenhaus, thus, proposes a way to generate meaningful limits on Hobbes's sovereign without sacrificing any important Hobbesian commitments along the way. This argument is impressive because the resulting limitations on sovereignty are both substantive and authentically Hobbesian. Indeed, this sophisticated and compelling account of how to understand the Hobbesian sovereign as genuinely limited has caused me to revisit and revise my own thinking on the subject.

The picture of Hobbes painted by these essays is one for which many readers will feel affinity. Of course, there are still alien aspects to his views that cannot be dismissed. But Ristroph shows us that Hobbes can be seen as a humane and reluctant punisher, Klimchuk demonstrates that he had substantive aspirations to equity, Vinx provides a revitalized conception of civic liberty, Fox-Decent argues that Hobbesian sovereign is a trustee bound to selflessly serve our interests, and Dyzenhaus shows that there are genuine constraints on sovereignty arising from the very structure and justification for that power. The kinder, gentler, non-authoritarian (or not-so-authoritarian) Hobbes emerges as a patchwork of these various themes, which overlap and connect in interesting ways. Hobbes does not make this patchwork easy to construct—repeatedly insisting, as he does, that the sovereign could never be subject to the civil law and is only accountable to God—but this book is a valiant attempt to pull off this difficult task.

The editors motivate the volume by lamenting the neglect in the secondary literature of Hobbes's extensive discussions of law and legal topics. Despite the

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recent resurgence of interest in Hobbes in philosophy, political science, and history, they say, "there is surprisingly little engagement with Hobbes as a jurist or legal thinker." This is despite the fact that "there has been a turn in legal scholarship towards political theory in a way that engages recognizably Hobbesian themes, for example: the law and politics of security; the law and politics of fear; and the relationship between security and liberty. It might even be the case that the scholarly surge and the turn to Hobbesian themes are connected in that Hobbes's focus on security and order as foundational values of civilized society seems particularly apt in unsettled times" (1). However, the essays never return to contemporary discussions of familiar Hobbesian themes. In fact, there is perhaps a surprising lack of attention to some topics one might expect to see; for example, there is no essay devoted to international relations or international law, and there is only scarce mention of these topics within the essays.

What bearing might these essays have on contemporary legal scholarship? The first three essays and the last one help to set the historical record straight (or at least complicate received wisdom). The middle six essays explore the potential inherent in Hobbes's work, contributing to a more interesting view for contemporary legal scholars to address. While I'm sympathetic to the project of reimagining Hobbes in a more liberal light, however, some questions remain: What is the purpose of retooling Hobbes in this way? That is, what do we want from a kinder, gentler Hobbes? If the interest is in showing how a Hobbesian framework could enrich contemporary legal scholarship, the reader will likely come away a bit disappointed since there is little direct engagement with this scholarship. If, however, the goal is to show the enduring interest and importance of Hobbes for our general understanding of law and the limits of political authority, then this collection succeeds admirably. *Hobbes and the Law* is an important contribution to Hobbes studies and is to be roundly recommended.

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Gardner, John. *Law as a Leap of Faith.*
Oxford: Oxford University Press, 2012. Pp. 314. $68.00 (cloth); $30.00 (paper); $45.49 (ebook).

John Gardner holds the chair of jurisprudence at Oxford, having followed H. L. A. Hart and Ronald Dworkin into the position. As such, he is perhaps uniquely positioned to garner attention for his pronouncements about the nature and operation of law in general. This book is a collection of papers mostly previously published and delivered on topics relating to general jurisprudence. Two chapters, "The Supposed Formality of the Rule of Law" and "Law in General," have not previously been published. Gardner explicitly disavows any overt intent to advance a novel theory here, saying instead that many of the papers were conceived as a way to correct misconceptions on the part of students (vi).

The first essay, bearing the same title as the book, might at first blush appear to be out of place in that it begins with a treatment of the Euthyphro problem: Does God love the good because it is good (in which case God seems to be ir-

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