

Eleanor Curran, *Reclaiming the Rights of the Hobbesian Subject*, Palgrave / Macmillan, 2007, 205 pp., ISBN 9780230001497 (hardback).

Eleanor Curran's new book, *Reclaiming the Rights of the Hobbesian Subject*, is a fresh look at a subject that is widely taken to have been 'resolved' in Hobbes scholarship: Hobbes's view of rights. According to Curran, the orthodox view surrounding this issue consists of two related claims: first, Hobbes was undeniably a royalist (both in his personal loyalty to Charles I and II, and in his adherence to the principles of royalist political thought); and second, Hobbes has no meaningful theory of rights. The received wisdom, according to Curran, has been that the rights afforded Hobbesian subjects are barely worth the name, for they offer no protection at all against the absolute power of the sovereign. Although the literature is surely more complicated than Curran portrays, this has no doubt been a prominent trend in Hobbes scholarship. Curran's project is to question this received wisdom and to ultimately disabuse us of it. In this way she hopes to "reclaim" Hobbesian rights from those who mischaracterize and disparage them. The view that emerges is likely to be unfamiliar. This is a Hobbes that deliberately advocates limited sovereign power and who has a substantive theory of protected rights; a Hobbes that gives subjects the right to rebel if they judge that the sovereign is not fulfilling the duties of the office to which he has been entrusted. While I am not entirely convinced that Curran has found the 'real' Hobbes (or no more so than I am convinced by the Hobbes of 'received wisdom'), this book is thought provoking, well-argued, and original. Curran's book is an ambitious project on a crucial and understudied topic in Hobbes scholarship.

The first third of the book examines the question of whether or not Hobbes can properly be called a royalist. While contemporary scholars take Hobbes's royalism for granted, Curran adduces historical evidence to show that the answer to this question is not so straightforward. In appealing to the reception of Hobbes's work by his contemporaries, Curran shows that many of the prominent royalists in the seventeenth century reacted to it with horror; Hobbes was accused of disseminating "false and evil Doctrines [which are] pernicious to the Sovereign Power of Kings" and *Leviathan* was called a "Rebells catechism" (Clarendon 1676 and Bramhall 1658 in Curran, p. 2). On the basis of this evidence, Curran suggests that these seventeenth century critics may have seen something that the contemporary orthodoxy does not.

Through a detailed, sophisticated, yet relatively brief survey of the historical evidence (ranging from Hobbes's autobiographies, to his letters and associations), Curran shows the difficulty of stating Hobbes's personal political loyalties with any certainty. The evidence is simply inconclusive. Of course, many of Hobbes's closest associates, including his employer, were staunch royalists and close allies of Charles I both before and during the Civil War. But, Curran compellingly argues that although many have assumed that Hobbes's own allegiances were with the royalist cause, this has been an unjustified claim of "royalism by association" (p. 15). Hobbes took the 'Engagement' signifying his loyalty to Cromwell's government; but after the Restoration, he declared his support for Charles I and denied having supported Cromwell. While she admits that Hobbes might have simply changed his mind, Curran thinks it more likely that he was political savvy, skilled at creating "the impression among different groups who were enemies to one another that he was their friend and supporter"

(p. 24). This is by no means to disparage Hobbes's character; rather Curran argues that this is a testament to his talent at surviving in a politically volatile and dangerous time.

Having shown that we cannot ascertain the true nature of Hobbes's own political loyalties, Curran turns to the political positions expressed in his published work. She argues that Hobbes's views on controversial issues of the time (e.g., Hobbes's insistence on natural equality, his belief that sovereignty originates in the people, and his claim that subjects retain rights against the king) contradicted fundamental tenets of royalist thought and instead aligned him philosophically with some of the most adamant critics of monarchy and absolutism. Here, Curran's discussion is illuminating and convincing; however, in covering a vast amount of material in only a few pages, she, at times, glosses over important distinctions. For example, Curran likens Hobbes to Henry Parker because both believed that subjects retain the right of self-defense. It is true that Hobbes's position on rights is different from the traditional royalist position, which denied that subjects retained any rights. However, it is misleading to equate Hobbes's views on the right of self-defense with those of Parker, who invoked the right of self-defense to justify rebellion against the King—an action about which Hobbes showed clear disapproval. Indeed, Hobbes took it as one of his primary goals to show that rebellion against one's king was both irrational and unjustifiable. So, Hobbes, himself, would likely be unhappy by the comparison to Henry Parker (and also to the Levellers).

Throughout the book Curran is quick to take Hobbesian rights to include or even to entail a right of rebellion, a point to which I return below. However, Curran provides a wealth of interesting information, compiled in a way that gives the reader a real sense of the complexities and ambiguities in the debate over Hobbes's royalism. Even if some important details are lost in the discussion, Curran demonstrates that Hobbes's political positions are far more complex than they are often assumed to be; and, this is enough to cast doubt on the received view that takes Hobbes to be a royalist of an obvious sort.

In the remainder of the book, Curran turns her attention to Hobbes's views on rights. Here too, Curran argues against the dominant interpretation. The received wisdom concerning Hobbes's view of rights, according to Curran, has three parts: first, the only rights that Hobbes affords to individuals are the 'bare liberties' that Wesley Hohfeld calls 'liberty rights' (i.e., rights that are not accompanied by correlative duties to respect the exercise of these rights); second, the only right that people retain in the commonwealth is the narrow right of self-defense (i.e., the right to protect oneself against imminent deadly threats); and third, the rights of Hobbesian subjects are too feeble to be meaningful at all, amounting only to what James Martel once described as the right to "kick and scream on the way to the gallows".⁷

In contrast to this received wisdom, Curran argues that not all Hobbesian rights are mere liberty rights; some are also 'claim rights' and are accompanied by correlative duties on the part of others to respect the exercise of these rights. Curran argues that Hobbes's understanding of laying down a right commits him to the existence of some claim rights. As she correctly points out "anyone who transfers or renounces a right is therefore under an obligation and has a duty to refrain from any action that would hinder the recipient in her

⁷ James R. Martel, "The Radical Promise of Thomas Hobbes: The Road not taken in Liberal Theory", *Theory & Event* 4:2, 2000.

exercise of her right” (p. 75). Given that Hobbes’s second law of nature requires people to lay down their rights, it follows that there must also be Hobbesian claim rights. That said, Curran ultimately rejects the Hohfeldian classification scheme, suggesting that we should understand the right of nature as an ‘unprotected freedom’ and the rights which are correlated with duties on the part of someone else as ‘protected freedoms’.

Curran next turns to Hobbes’s doctrine of ‘inalienable rights’—rights that individuals cannot give up and so retain as subjects in a commonwealth. Contrary to the received view, Curran argues that Hobbesian subjects do not retain simply the narrow right of self-defense; rather, they retain what she calls the ‘right to *full preservation*’ (p. 105). Hobbes routinely invokes quality of life considerations when discussing the purpose of the social contract and the rights retained therein. For example, Hobbes states that the reason people form a commonwealth is “the foresight of their own preservation, and of a more contented life thereby” (*Leviathan* 17.1 quoted in Curran p. 109); moreover, he claims that subjects retain the right to “all things without which a man cannot live, or live well” (*Leviathan* 15.22 quoted in Curran p. 108). Curran’s right to full preservation is an aggregate right consisting of the specific rights people need in order to, as Hobbes says, “live well”. Curran follows Hobbes in listing the right to govern our bodies, the right to air, water, freedom of movement, the right to engage in commerce, the right to make certain lifestyle decisions for ourselves (including the right to decide how we want to dress, eat, earn a living, and name our children), the right to equity, and, of course, the right of self-defense. Curran sums up the right to full preservation saying that it is the right to “what is needed for us to live a life that will be worth living” (p. 109).

According to Curran, this broad right to full preservation is fundamentally different from the rights possessed by individuals in the state of nature. Curran argues that it is protected not only by the duties of other subjects not to interfere with the exercise of this right, but more importantly, it is protected by the *duties of the sovereign*. Given that the sovereign is instituted in order to provide subjects with peace, protection, and the means necessary for them to “live well”, he has a responsibility to do just that. Thus, Curran says that the sovereign is obligated “to protect the subjects and secure and maintain the peace, and provide the freedoms necessary for subjects to pursue a commodious life” (p. 179). Of course, for Hobbes, the sovereign is not a party to the social contract, so has no duties *to* his subjects; however, Curran argues that the sovereign does have duties *with regard to* his subjects as a result of the office that he occupies. While these are not contractual duties, they are duties nonetheless.

Consider the “right to freedom of movement”, Curran’s most frequently used example. In the state of nature, this is an unprotected freedom, meaning that a person has complete liberty to move however she sees fit in an effort to preserve herself. No one is obligated to refrain from interfering with her movement; no one is obligated to help her as she moves about. Indeed, everyone else has this same freedom of movement. When people enter into civil society, this right is “protected by the correlated duties of other individuals, which come to be encoded and enforced by the sovereign” (p. 182). Curran argues that “If the sovereign were to, say, write and enforce a law that stated that all subjects must hold identity papers and not be allowed to move out of their own district, then the sovereign would be failing in her duties as sovereign and the subjects would be unable to exercise their right to freedom of movement” (p. 114). So, in civil society, a subject’s right to freedom of movement is protected both in the sense that it is protected indirectly by the duty of the sovereign

to make and enforce laws protecting freedom of movement and in the sense that others have a direct duty to obey those laws. On Curran's story the subjects' right to free movement serves as a check on the sovereign power and could presumably under certain conditions serve to void subjects' obligation to obey the sovereign.

This brings me to Curran's last, and boldest claim that the right to full preservation serves as a limit on the sovereign power. Hobbes claims that subjects are obligated to obey the sovereign only as long as they are protected. On this basis, Curran infers that if the sovereign fails to fulfill the duties of his office, the subjects are not obligated to obey him. Moreover, Curran argues that it is up to the subjects to judge whether or not the sovereign is fulfilling his duties. Curran, thus, concludes that Hobbesian subjects can legitimately rebel against sovereigns who they see as neglecting their duties (p. 186). This is a far cry from the received wisdom that Hobbesian subjects only have the right to kick and scream on the way to the gallows.

Given her interpretation of Hobbesian rights, Curran argues that Hobbes's theory does not fit comfortably into any existing theory of rights. It is not a natural rights theory, a Hohfeldian theory, or a modern will theory. Hobbes's view comes closest to Neil MacCormick's interest theory, according to which rights are "*goods which ought to be secured/protected, rather than claims which must by definition be protected by directly correlated duties*" (p. 178). But even MacCormick's theory does not capture all the intricacies of Hobbes's account, and so Curran concludes by noting that "much more would be needed to set out in detail a Hobbesian theory of rights and to see whether such a theory could stand up to philosophical scrutiny and whether and how it can be reconciled with the rest of his argument" (p. 183).

While I am convinced that Hobbes has a category of rights that fits Curran's description in that they both make reference to quality of life (rather than simply physical survival) and they are related in some way to, but not correlated with, the responsibilities associated of the office of the sovereign, I am left with two lingering concerns.

First, in describing the nature of the right to full preservation and the duties of the sovereign, Curran is not as clear as one might hope. While it is clear that she sees both as substantive, it is unclear exactly what they mean. For example, what does Hobbes mean by "live well", "happiness", "contentment" or any of the other vague quality of life descriptors he uses? If the right to full preservation is a right to be happy, does the Hobbesian sovereign have a duty to ensure that his subjects lead happy lives? Unfortunately, Curran does not answer these questions and her own descriptions (e.g., "a life worth living") preserve almost all of the ambiguity of Hobbes's original descriptions. Curran characterizes one of the sovereign's duties as the duty to "provide the freedoms necessary for subjects to pursue a commodious life" (p. 179), but she does not tell us exactly what this duty entails. In my view, this duty requires the establishment of a system of private property and the protection of property rights. According to Hobbes, property is only possible in civil society. Only the sovereign can make stable possession of property possible by assigning and enforcing titles to property. Indeed, Hobbes implies that protection of property rights is the *only* duty a sovereign has besides providing security. "For supreme commanders can confer no more to their [subjects'] civil happiness than that being preserved from foreign and civil wars, they may quietly enjoy that wealth which they have purchased by their own industry" (*De Cive* 13.6). So, while Hobbes does insist that sovereigns must do more for subjects than simply

provide for their continued physical survival, it seems likely that what the sovereign must provide is simply the protection of property rights. But given that this is the case, it is not clear how substantive a duty the sovereign has or whether it would violate his duty to require identity cards and restrict travel within the commonwealth, as Curran thinks it does.

Second, Curran spends little time on what Hobbes calls the “true liberties of subjects”. I find this omission surprising since these are the rights that Hobbes is concerned to discuss. Although she does mention these rights, they are not discussed in much detail since her focus is on what Hobbes has to say about this right to “live well”. More importantly, I am not sure that they can be fit into her description of the right to full preservation. There are important differences between the true liberties of subjects and the rights Curran takes as paradigmatic. First, the true liberties of subjects are *resistance rights*; that is, they are the rights subjects have to resist the sovereign, most often by disobeying his commands. These resistance rights include the right to resist arrest and punishment and the right to refuse to testify against oneself or someone one cares about (or to lie under oath). Subjects can also refuse to obey dangerous and dishonorable commands, including the command to fight in battle. Hobbes defines these as rights to act against the sovereign. Not so with Curran’s rights. Consider the right to freedom of movement. It is not a right to act against the wishes of the State, even if it can be grounds for resistance to the State where it is denied.

Moreover, these resistance rights have a different moral status than Curran’s rights. They are what Kavka calls “permission rights”: if you have a right to Φ , you are morally permitted to Φ , and you have not committed a wrong if you Φ . This is precisely how Hobbes describes them, as commands that subjects can refuse to obey “without injustice”. Such rights are defined by lack of normative constraints. As a result, they stand in a different relationship to the sovereign duties. Hobbes is clear that the right of a subject to resist punishment in no way affects the right of the sovereign to punish him. When he describes conditions under which a subject can rightly disobey the sovereign’s commands, he adds that the sovereign is justified in “punishing his refusal with death” (*Leviathan* 21.16). Curran’s rights are protected (if indirectly) by the sovereign duties: the sovereign has a duty to establish the conditions under which subjects can exercise them. In contrast, the resistance rights give subjects permission to refuse to comply with the commands that the sovereign gives by his right.

I do not see how such rights can be incorporated into Curran’s model as it stands. For how would the duties of the sovereign provide protection for these rights? How can the sovereign be obligated to protect the right of a subject to refuse to submit to her own punishment, for example? Granted, Curran’s project is elsewhere – she is interested in the right to “live well; however, for her theory to be a viable theory of Hobbesian rights, these permission rights must be incorporated into her theory. Perhaps the further developments that she gestures towards at the end of the book could do the trick. In this case, the final theory of Hobbesian rights will have to be significantly more complicated than the view advanced here by Curran.

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