



Resisting the Scaffold: Self-Preservation and Limits of Obligation in Hobbes's *Leviathan*

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Abstract

The degree to which Hobbes's citizenry retains its right to resist sovereign power has been the source of a significant debate. It has been argued by a number of scholars that there is a clear avenue for legitimate rebellion in Hobbes's state, as described in the *Leviathan* – in this work, Hobbes asserts that subjects can retain their natural right to self-preservation in civil society, and that this represents an inalienable right that cannot, under any circumstances, be transferred to the sovereign. The conclusion frequently drawn from this feature of Hobbes's account is that it places a considerable limit on sovereign authority. The right to self-preservation has been taken as proof that Hobbes sought to ensure that the sovereign's power relies upon the continual consent of the individuals that make up his or her constituency. I want to examine Hobbes's account of this civil right in *Leviathan* in order to show that this line of interpretation is ultimately unfounded. While self-preservation results from the individual's own judgment of threats to her personal safety, it is justified in only the most strictly delineated contexts. Judgments regarding the *overall* peace and security of the state do not, and cannot, fall to individual experiences and judgments. Hobbes is quite adamant that individuals are not appropriate judges of right and wrong action in matters the sovereign legislates.

Keywords

Authorization, natural right, self-preservation, punishment, conscientious objection

A central feature of Hobbes's political theory is his view that the stability of a commonwealth depends upon the absolute authority of the state. According to Hobbes, the sovereign's power is "unlimited" and "as great as possibly men can imagine to make it." (2.20, 107)¹ The Hobbesian state requires that subjects "submit their wills, every one to his will, and their judgments, to his

¹ All in-text references are to: Hobbes, T., *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett Publishing Company, 1994). The references are set out as follows: (Part.Chapter, pagination from the first (1651) edition).

judgment.” (2.17, 87) The sovereign is, literally, the singular embodiment of the wills of his or her subjects.

Yet, the submission of individual wills to the sovereign would not seem to be total: Hobbes also holds that every subject in the civil state retains the inalienable right of self-preservation. This amounts to a right on the part of each individual citizen to resist sovereign commands – in fact, the individual retains the “liberty to disobey” if the sovereign’s commands threaten her life. (2.21, 112) It has struck many commentators that the right to self-preservation places a considerable and potentially fatal limit on sovereign authority. Howard Warrender, for example, argues that Hobbes’s preservation of this right in the civil state indicates that individual subjects ultimately decide for themselves ‘the point at which ... overall obligation to the sovereign is terminated’.² Alan Ryan argues, along similar lines, that Hobbes has left the individual the ‘right to decide whether obedience is worth it’.³ According to John Simmons the right to self-preservation means citizens ‘may without wrongdoing ignore the commands of political superiors’.⁴ And, Yves Charles Zarka has likewise concluded that “the political subject ... is very different from that of the submitted subject ... the individual begins to constitute a subject from the moment he resists power.”⁵ In his own day, Hobbes’s critics expressed similar worries about the revolutionary implications of Hobbes’s right to self-preservation. Bramhall famously remarked that *Leviathan* might more accurately be titled the “*Rebel’s Catechism*”.⁶

Less charitably, perhaps, there are some critics who have seen this avenue for rebellion as signaling a serious flaw in Hobbes’s theory. A.P. Martinich suggests what we have here is a “basic incoherence in Hobbes’s theory.”⁷ Thomas Schrock writes that it “precipitates a crisis in Hobbes’s political theory”.⁸ And Peter Steinberger has written that any reader of the *Leviathan* must be struck

² Howard Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation* (Oxford: Clarendon Press, 1957), 149.

³ Alan Ryan, “Hobbes and Individualism” in *Perspectives on Thomas Hobbes*, eds. G.A.J. Rogers and Alan Ryan, (Oxford: Clarendon Press, 1988), p. 81-105: 98.

⁴ Donald Rutherford, *The Cambridge Companion to Early Modern Philosophy* (Cambridge: Cambridge University Press, 2006), 256.

⁵ Yves Charles Zarka, “The Political Subject” in *Leviathan: After 350 Years*, edited by T. Sorell and L. Foisneau (Oxford: Oxford University Press, 2004), 182.

⁶ John Bramhall, “The Catching of Leviathan, or the Great Whale”, in Hobbes, Thomas, *Leviathan*, ed. A.P. Martinich (Peterborough, Ontario: Broadview Press, 2002), 565.

⁷ A.P. Martinich, *Hobbes: A Biography* (Cambridge: Cambridge University Press, 1999), 233.

⁸ Thomas S., Schrock, “The Rights to Punish and Resist Punishment in Hobbes’s *Leviathan*”, in *The Western Political Quarterly*, 44.4 (Dec., 1991), 853-890: 853.

by this “contradiction”, which is “so central and substantial as to raise serious doubts about the cogency of Hobbesian political thought in general.”⁹

Does Hobbes’s theory include a fatal inconsistency, or was he, perhaps, making room for conscientious objection within the civil state? Many commentators have taken Hobbes’s upholding of this civil liberty as the grounds for a liberal-individualist reading of the *Leviathan*. Leo Strauss charges Hobbes with being the “founder of liberalism”.¹⁰ Stephen Lukes writes that for Hobbes “Leviathan, or the sovereign power, is an artificial contrivance constructed to satisfy the requirements (chief among them survival and security) of the component elements of society.”¹¹ In making his case Lukes cites Otto Grierke, who characterizes Hobbes’s state as an “aggregate – a mere union, whether close or loose – of the wills and powers of individual persons.”¹² Frank Coleman draws the connection between the right to resist and individualism in Hobbes as follows: “the authority of the sovereign to employ the sword derives from the independent acts of authorization of the members of political society. The covenant which confers authority on the sovereign also reserves, on the part of the subject, a right to resist the sovereign when the sovereign employs the sword against his person. There will always be some element of fear in the consent of subjects to the rule of the sovereign, Hobbes allows, but the authority of the sovereign is derived from the consent of the governed and not the power which he wields”.¹³ These interpretations understand Hobbes’s state as answerable to the interests of its individual subjects. The right to self-preservation is taken as a clear indication that Hobbes sought to ensure that the sovereign’s power stands or falls with the sustained consent of the individuals that make up his or her constituency.

If this were Hobbes’s meaning, then it would be clear that the commonwealth is a fundamentally individualist state. However, the individualist reading requires that Hobbes’s ‘right to disobey’ functions as a basis for individual endorsement of civil law. I want to examine Hobbes’s account of this civil right in order to show that this line of interpretation is ultimately unfounded. While self-preservation results from the individual’s own judgment of threats

⁹ Peter Steinberger, “Hobbesian Resistance”, in *American Journal of Political Science*, 46.4 (Oct., 2002), 856-865: 856.

¹⁰ Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1965), 182.

¹¹ Deborah Baumgold, *Hobbes’s Political Theory* (Cambridge: Cambridge University Press, 1988), 8.

¹² Stephen Lukes, *Individualism* (Oxford: Basil Blackwell, 1973), 70.

¹³ Frank M. Coleman, “The Hobbesian Basis of American Constitutionalism” in *Polity*, 7.1 (Autumn, 1974), p. 57-89: 71

to her personal safety, it is justified in only the most strictly delineated contexts. Judgments regarding the *overall* peace and security of the state do not, and cannot, fall to individual experiences and judgments. Hobbes is quite adamant that individuals are not appropriate judges of right and wrong action in matters the sovereign legislates. In order to make this case, however, it will be useful to consider what Hobbes says regarding individual liberty and self-determination. The basic textual support for the individualist reading of Hobbes is found in Chapter xxi of *Leviathan, Of the Liberty of Subjects*. However, in order to appreciate some of the issues surrounding this interpretation, it is helpful to look a bit earlier in the text, where Hobbes outlines the rise of the political state.

Personation – Natural and Artificial

It is well known that Hobbes starts with a depiction of human beings in the state of nature as rationally self-interested, individually interpreting natural law with a view to personal safety and peaceful coexistence. The political state arises out of a common desire for peace and security – and, as the familiar story goes, the collection of individuals contract with each other to establish a common power that will ensure peaceful coexistence. Hobbes's self-determining individuals, therefore, agree to submit themselves to the will of a superior, who will, in turn, use the iron fist of central authority to ensure stability and peaceful coexistence. This illustrates what C.B. Macpherson famously refers to as the “paradox of Hobbes's individualism”.¹⁴ And yet, it really only seems to be a paradox if we think that Hobbes means to suggest that sovereign authority is merely superimposed onto a multitude of self-determining individuals. But, Hobbes did not actually see the civil state in this way.

In the state of nature individuals *are* completely self-determining. Each rational individual acts according to her own will and acts in the best interests of her own livelihood and survival. This is the exercise of natural rights in the state of nature – in the endeavor to survive, individuals are not limited in their actions by any external laws or by any obligation to relinquish their rights in the interests of others. Each individual has license to do anything “which, in his own judgment and reason, he shall conceive to be the aptest means [for the preservation of his own nature]”. (1.14, 64)

¹⁴ C.B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1964): 106.

Hobbes elaborates on this notion of individual self-determination by introducing his somewhat curious concept of the *person* as a separate category from the self-determining individual. Hobbes defines a *person* as follows: “he *whose words or actions are considered either as his own, or as representing the words or action of another man, or any other thing to whom they are attributed, whether truly or by fiction.*” (1.16, 80) Note that, for Hobbes, a person can be someone who speaks or acts by her own authority and thereby acts on her own behalf – and this is what he calls a “natural” person – or a person can be someone who represents the words or actions of another and thereby acts on the behalf of others – and this is what he calls an “artificial” person. The *person*, for Hobbes, is the outward expression of an individual’s will, whether by herself or by someone else. Interestingly, the person responsible for the actions and the person doing them need not be identical on this account. For Hobbes, *person* suggests a kind of public façade, or act, that individuals put forward to represent their interests. They can do so by representing, or personating, themselves, or they can authorize someone else to do the acting in their name. As he explains in Chapter xvi, “a *person* is the same that an *actor* is, both on the stage and in common conversation; and to *personate* is to *act*, or *represent*, himself to another.” (1.16, 80) Philip Pettit, in his recent book *Made with Words*, considers Hobbes’s unique conception of personhood at some length, observing quite aptly that “persons [for Hobbes] are distinguished not by their metaphysical nature but by the things they can do, the roles they can play.”¹⁵ This is a useful way of thinking about personation in Hobbes: For Hobbes, personhood is attributed to the actor and not to the willing agent. The individual personates herself if she acts according to her will. If someone else acts as she wills, then she is the *author*, but the *person* in this case is whoever does the acting. This representative, like an actor in a play (to use Hobbes’s analogy), can speak for one author or for several, but is not herself responsible for what she says or does in that representative role – the words or actions are the author’s alone – the author is the agent and is the one responsible for the words or actions. The author has authority through ownership, in the way that an owner of material goods is said to have possession through ownership. And just as someone can borrow property, and it is put into someone else’s hands by agreement or license from the owner, so an actor can speak my words or act in my name by an analogous kind of license or “commission”. (1.16, 81)¹⁶

¹⁵ Philip Pettit, *Made with Words: Hobbes on Language, Mind, and Politics* (Princeton: Princeton University Press, 2008): 55.

¹⁶ In fact, the parallel between property and authorization is a clear one for Hobbes. Quentin Skinner has pointed out that Hobbes appears to be drawing his inspiration in part from

An interesting feature of this account is what it entails regarding group identity. A multitude of individuals can be one *person* if they have consented to representation by a single individual. Once such consent has been granted, then the representer has authority from each of the people comprising the multitude. There are as many authors as there are individuals in this multitude, each one “owning”, as Hobbes puts it, “all the actions the representer doth.” (1.16, 82)

In the state of nature, there is a pretty certain one-to-one correlation between authors and persons, since each individual will usually be personating herself by actions and words that reflect her own will, and what she considers to be in her own best interests (of course, it must be noted that the degree to which each individual understands and realizes the best or most efficient route to achieving their interests is highly tenuous in the state of nature). In this regard, Hobbes is a fairly clear individualist with regard to *natural* personhood and the unimpeded self-determination that it entails. However, two considerable things happen in the establishment of sovereign power, and together they have a significant impact on the degree of self-representation in the civil state.

Giving over Personation to the Sovereign and the Transfer of Right

When the multitude agree to institute sovereign rule, they appoint the sovereign to “bear their person” (2.17, 87) – that is, the sovereign personates them insofar as he or she represents their wills, with his or her own thoughts and actions, in matters regarding the peacefulness and safety of the state. It is worth noting that when we start to examine the central role of personation in Hobbes’s account of state authority, it becomes clear that the playwright/actor analogy is a misleading way to think about what actually happens when a sovereign *personates* the multitude. In the case of a play, to take Hobbes’s analogy literally, the author actually composes the words spoken by the actor. But, there is an important difference in the way the multitude authorizes the

the *Digest* of Roman Law (with which he was familiar). Book 14 of the *Digest* stipulates that owners of property (e.g. ships and shops) can appoint others to oversee or manage their property. As Skinner explains: The law describes a number of circumstances in which you may be liable for the consequences of whatever actions are performed on your behalf when you agree *praepone* – that is, to appoint someone to serve as your agent. Although you will not have performed the actions yourself, you will be legally obliged *praestare* – that is, to stand by the actions and accept responsibility for them as your own.” (Quentin Skinner, *Visions of Politics* (Cambridge: Cambridge University Press, 2002), 179. Skinner quotes the *Digest* as stipulating “I who have appointed that person ought to stand by their actions.” (Skinner, 179, fn13.)

sovereign. Each individual is the author of the sovereign's words or actions, but only in a peculiarly, Hobbesian, sense of the word *author*. In fact, the sovereign acts in our interests *as he or she determines them*. As Hobbes explains, each individual authorizes the sovereign to make the best decisions necessary, "therein to submit their wills, every one to his will, and their judgments, to his judgment." (2.17, 87) The wills, and judgments, of the multitude are thus wholly subsumed by the solitary will and judgment of the sovereign. The sovereign's subjects have given over their independent decision-making with respect to their safety and well-being. As Hobbes writes, each individual effectively says: "I authorize *and give up my right of governing myself* [author's italics] to this man". (2.17, 87) In other words, the sovereign does all the thinking for his or her subjects – regarding specific issues, of course. As Hobbes is careful to stipulate, the sovereign represents the multitude in matters regarding "the common peace and safety." (2.17, 87) This does not necessarily amount to much of a restriction on sovereign authority, however, since what counts as a matter of civil peace and safety is very broadly construed on Hobbes's account – and, the decisions regarding what matters are relevant to these concerns are left entirely to the judgment of the sovereign. Hobbes makes this very clear when he writes that the sovereign can make use of the "strength and means" of the individuals comprising the citizenry "as he shall think expedient, for their peace and common defence." (2.17, 87) Sovereign judgment is far-reaching on this account – in fact, it lies with the sovereign alone to determine which ideas can be expressed in the commonwealth and which ones threaten peace and security: "It belongeth therefore to him that hath the sovereign power to be judge ... of opinions and doctrines, as a thing necessary to peace." (2.18, 91) The sovereign decides what can be written or said, what actions people may do, and what goods people may enjoy. In agreeing to sovereign rule, therefore, each individual must agree to the absolute representation of their persons by the sovereign – all of which amounts to forfeiting self-determination in matters legislated by the sovereign.¹⁷

¹⁷ This is not meant to imply, however, that the sovereign is in any way authorizing his or her own actions. The sovereign is, as Skinner puts it, a purely artificial person when acting in his or her political capacity. As Skinner explains, those who appoint the representative are responsible for the consequences of any actions undertaken on their behalf, and "the actions in question will actually count as theirs, not as those of the representative carrying them out." (Skinner, *Visions of Politics*, 200). David Runciman takes issue with Skinner's depiction of the sovereign as a purely artificial person, arguing that it is a distortion of Hobbes's own description of the sovereign as a 'person by fiction'. Runciman's argument does not challenge the point made here regarding authorization and representation. What Runciman does, however, seek to underscore is that the state is not pure invention or something unreal, but, for Hobbes, a "fiction with a real presence

What Hobbes requires is, technically-speaking, that each individual ‘transfer’ their rights to the sovereign. We start out, in the state of nature, with what Hobbes calls the “right to everything” (1.14, 64), which is the individual’s right to act according to his own “judgment and reason” (1.14, 64) – also more accurately described by Hobbes as the “right of doing anything he liketh” (1.14, 65) in the interest of self-preservation. In the establishment of a sovereign, each citizen rationally determines it beneficial to establish a sovereign power who has complete and uninhibited freedom to act in the interest of self-preservation (on the grand scale of the state itself) and thereby to obligate herself not to interfere with the rights of this individual or group of individuals to ‘act according to their ‘judgment and reason’ in matters regarding preservation of civil peace and security. To transfer a right is not to give some new or extra right to another person, but is rather a kind of stepping out the picture: to “[s]tandeth out of his way”. (1.14, 65) This action is accompanied by an obligation on the part of the transferer to allow the transferee to enjoy her rights unimpeded. In the establishment of a common sovereign power, each individual lays down their natural right to everything, thereby allowing the sovereign to act unimpeded; in the process, each individual is obligated to allow the sovereign to act unimpeded.¹⁸ Warrender makes a great deal of this notion of transference of right in Hobbes in his attempt to make a case for Hobbes’s individualism. He points out that the act of transferring natural rights is one that is undertaken by the individual according to her interpretation of natural law. As Warrender reads Hobbes, each individual acts according to her own conscience, determining that her obligation to natural law demands that she transfer her natural rights to the sovereign. Warrender

in the world that real persons inhabit.” (David Runicman, “Debate: What Kind of Person is Hobbes’s State? A Reply to Skinner” (*The Journal of Political Philosophy*, Volume 8, Number 2, 2000: 268-278), 278). I will not pursue this debate in any detail here, as both Skinner and Runicman both agree on the aspects of Hobbes’s account relevant to the present discussion, namely that Hobbes wants to ensure ownership on the part of those represented by the state.

¹⁸ The discussion at this stage regards the question of individual consent as a limit on sovereign authority. A second perceived limit on Hobbes’s authority is the natural right to self-preservation. I take this up further on in the paper, beginning on page 17, where I discuss the degree to which the preservation of this natural right in the civil society represents a genuine source of rebellion (what Yves Charles Zarka refers to as the “limits of civil obedience ... [that] imply the possibility of being in conflict with the sovereign.” (Yves Charles Zarka, “The Political Subject”, 181)). Zarka points to protection as being a powerful limit on the subject’s obedience to the state – if the state fails to provide basic protections, and necessities of life, the subject can legitimately revolt. As I will show further on, this route to rebellion is bounded by some fairly extensive conditions.

concludes that for Hobbes any obligation one has to obey civil law is ultimately founded on a prior obligation to natural law. The result is that the civil law has no effective authority regarding the bare obligation of its citizenry to obey civil laws. As Warrender explains: “This prior obligation ... cannot itself be laid down by the command of the civil sovereign because it is what gives that command authority and distinguishes it from the non-obligatory commands of other persons.”¹⁹

There may be some grounds for accepting Warrender’s version of events, though this is a disputed interpretation.²⁰ But, for the sake of argument, even if we are prepared to grant with Warrender, and others who take this individualist line of interpretation, that there is some sense in which the obligation to sovereign authority is based in individual acts of consent, does this then entail that individuals in the civil state decide on the basis of conscience the tenure of their obligation to the sovereign? Warrender certainly thinks so: “The fact that political obligation, in Hobbes’s system, depends ultimately upon an individually interpreted natural law, bears also this consequence that the individual subject must decide for himself the point at which his overall obligation to the sovereign is terminated.”²¹ Warrender paints a stridently individualist picture of the Hobbesian state from this observation, remarking, in his conclusion, the “appalling weakness” of Hobbes’s sovereign.²² As Warrender understands Hobbes, the sovereign is, at every turn, trying to act in accordance with the will of his subjects and striving thereby to maintain conditions such that his subjects “regard themselves as having a duty to obey him.”²³ The sovereign power is entirely dependent on the “reluctance of his subjects to break natural law.”²⁴ Ryan reiterates this conclusion when he suggests that the true power in the Hobbesian state is tipped in favor of private individuals who make up the citizenry. The individual subjects, he concludes, “must surely spend much of their time watching the performance of the government in crucial respects.”²⁵ On this account, the obligation to obey the sovereign is

¹⁹ Warrender, 149.

²⁰ One major obstacle to the viability of Warrender’s view is his characterization of what happens in the state of nature when individuals follow their reason. Warrender’s interpretation suggests that humans are obliged to the sovereign will of God and act according to God’s commands. But, the more common view is that individuals in the state of nature employ instrumental reasoning with the sole end of survival. See note 22.

²¹ Warrender, 149.

²² Warrender, 317.

²³ Warrender, 317.

²⁴ *Ibid.*

²⁵ Ryan, 99.

determined by individual conscience, and sovereign authority stands or falls with the support of its individual subjects.

But what of Hobbes's unequivocally dictatorial requirement that the individual subject 'give up' the right of governing herself to the sovereign? *Is* there a "tension" here, as Ryan suggests?²⁶ Is Hobbes's sovereign effectively weak? In order for this interpretation to be accurate, we should be able to point to clear avenues for individual self-determination or conscientious objection in the Hobbesian state. This seems hard to reconcile with such descriptions of the relationship between state and individuals as Hobbes gives us in Chapter xxi: "as men have made an artificial man . . . so also they have 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." (2.21, 108) While it is plausible to suggest that the creation of the state rests upon individual consent, the idea that the state is in some sense answerable to individual conscience for the obligatory force of its authority is a more difficult case to make. I want begin with the most straightforward cases of individual liberty in Hobbes's civil state and consider what, if any, implications such cases of self-determination have for sovereign authority.

Liberty of Subjects: Individual Self-determination in the State

The kind of liberty that individuals have in the civil state is what Hobbes calls *liberty from covenants*. In such cases, the individual is under no obligation to obey any authority but their own conscience; this liberty is of two kinds: liberty in matters not legislated by the state, and liberty with regard to rights that cannot be contracted away. With regard to the first, Hobbes explains that since it is impossible that the state could legislate every aspect of peoples' lives, individuals in the state will, on some matters, act according to their own judgment rather than that of the state. Hobbes clearly thinks that this level of individualism and his political authoritarianism can happily coexist. For Hobbes, the natural state is one in which individuals are guided by their reason to achieve safety and security. For Hobbes, there is no overarching moral order guiding the actions of individuals – anything goes, since we each have a right to everything we deem necessary for our survival. The civil state imposes what Hobbes calls 'artificial' limits – and these become our civil *and* moral

²⁶ Ryan, 97.

laws. Whatever stands outside these artificial limits is entirely up to the judgment of individuals. If the sovereign does not legislate, for example, regarding homosexual marriage, then individual citizens are free to act however they deem appropriate for their own happiness and well-being. As Hobbes explains “The liberty of a subject lieth, therefore, only in those things which, in regulating their actions, the sovereign hath praetermitted (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 their children as they themselves think fit; and the like).” (2.21, 109) The sovereign’s laws represent the introduction of a moral authority other than individual conscience. Before the institution of civil authority, each individual is answerable only to their own judgment regarding their individual interests. In other words, if there is no sovereign law governing an act (and in the state of nature there is none; in the civil state they are specified by the sovereign) then do as you will. J.W.N. Watkins summarizes Hobbes’s position on civil morality nicely when he writes, “*Pace* Warrender, the sovereign’s role *is* to create a public system of moral rules out of a moral vacuum.”²⁷ Brian Barry agrees, writing, “the sovereign not merely creates a new kind of obligation; he creates the only kind there is.”²⁸ This liberty on the part of subjects, therefore, in no way limits the authority of the sovereign or her power over her subjects.²⁹ The key to a smooth coexistence of individual and sovereign wills is the common understanding that in matters of sovereign legislation, his or her command is absolute: “the commands of them that have the right to command are not by their subjects to be censured, nor disputed.” (2.20, 106) The citizenry are under an

²⁷ J.W.N. Watkins, *Hobbes’ System of Ideas* (London: Hutchinson and Co., 1965): 138.

²⁸ Barry, Brian, “Warrender and His Critics” *Philosophy*, Vol. 43, No. 164 (Apr., 1968), pp. 117-137: 122

²⁹ The interpretation I am suggesting here takes literally Hobbes contention that in the state of nature humans use their judgment and reason in the interests solely of self-preservation, and not, as Warrender has contended, in the interests of fulfilling natural obligations to God’s divine commandments. Although Hobbes does refer to the precepts of reason regarding peaceful coexistence and the keeping of covenants, their obligatory force does not seem to have the same foundation in sovereign authority as civil laws do. I would argue, along with Barry and Watkins, that in the state of nature individuals are answerable to their own reason in the interests of survival and do not understand themselves as being under an obligation to any higher authority. Warrender’s interpretation of Hobbes relies heavily on the idea that individuals are under a natural obligation to God in the state of nature. However, as Brian Barry has very clearly argued, Hobbes is explicit in the *Leviathan* that obligations arise from contracts, and contracts alone. As Barry points out, Warrender’s derivation of natural obligations in Hobbes relies on earlier texts and has no textual support in the *Leviathan* itself. If we take the *Leviathan* as our guide, Hobbes, by this time at least, sees human judgment as being informed, naturally, by interests in self-preservation.

obligation to respect sovereign commands and to abide by them; if the sovereign legislated as such, then this must be in the interest of public security. This is the central term of the contract, and it actually involves no real sacrifice of individual interests (if the conditions for transfer of right are kept in mind). Since the sovereign is authorized by her subjects, legislation represents, in effect, the wills of the multitude: “This is more than consent or concord; it is a real unity of them all, in one and the same person, made by covenant of every man with every man.” (2.12, 87) So, Hobbes wants us to see this as a win-win situation – individuals follow their judgment in matters passed-over by the state, and they follow the judgment of someone who represents their will in the case of sovereign legislation. As Hobbes points out, if an individual subject fails to respect the commands of the sovereign, she is effectively questioning her own judgment. By the same reasoning, blaming the sovereign for causing harm to oneself would have to rest on a mistake – if the sovereign is acting on my authority, then I am the one responsible for those acts, not the sovereign.

Sovereign authority would seem to be unimpeachable on Hobbes’s account. Not only does his theory of authorization make it difficult to censure legislative decisions, but the very notion of injustice, on Hobbes’s view, is something that can only be imputed to subjects, not sovereigns. In the state of nature, there is no injustice, according to Hobbes, because there are no covenants and no rights have been transferred. However, once a covenant has been agreed upon, then it is an injustice not to perform according to the covenant. Hobbes writes of justice and injustice as follows: “when a covenant is made, then to break it is *unjust*; and the definition of INJUSTICE is no other than *the not performance of a covenant*. And whatsoever is not unjust is just.” (1.15, 71) The last line serves to elaborate on the point I raised above regarding liberty in the state – if an act is not legislated by the state, then one’s choosing to perform that act is not, and cannot be, deemed unjust. There is no robust positive conception of justice on Hobbes’s account – if there is no contravention of a contract, then everyone is within their rights to act as they see fit (no injustice, in other words). As such, the sovereign is never acting unjustly, since she cannot be guilty of contravening the conditions of a contract. The sovereign does not covenant with the subjects, but oversees, or acts as a kind of guarantor, for the covenant *between* subjects. As Hobbes explains, “the right of bearing the person of them all is given to him they make sovereign by covenant only of one to another, and not of him to any of them, there can happen no breach of covenant on the part of the sovereign.” (2.18, 89) Hobbes makes explicit in Chapter 18 that subjects have literally no grounds for opposing the sovereign will, or for seeking to depose the sovereign. Since the people have covenanted to obey the sovereign, they are bound to the sovereign will, and

“cannot lawfully make a new covenant amongst themselves to be obedient to any other, in any thing whatsoever, without his permission.” (2.18, 88) This seems to be a decisive blow for Warrender’s position – there is no authority to appeal to apart from the sovereign authority. While Warrender wants to say that individuals have a prior and standing obligation to God’s sovereign will, Hobbes explicitly says otherwise: “Where some men have pretended for their disobedience to their sovereign a new covenant made (not with men, but) with God, this also is unjust; for there is no covenant with God but by mediation of somebody that representeth God’s person, which none but God’s lieutenant, who has the sovereignty under God.” (2.18, 89) And a claim to any such covenant is, Hobbes writes, “so evident a lie, even in the pretender’s own consciences, that it is not only an act unjust, but also of a vile and unmanly disposition.” (2.18, 89) Granted, Warrender speaks of a *prior* obligation to God’s laws, but considering Hobbes’s characterization of the degree to which people are bound to sovereign authority once the state has been instituted, it is extremely difficult to see how such a prior obligation could justly be invoked. As Hobbes puts it, no one “can be freed from [the sovereign’s] subjection.” (2.18, 89) Except it might seem, in certain specific circumstances – and this brings us to the second kind of civil liberty that Hobbes introduces, which he describes as the “liberty in all those things the right whereof cannot by covenant be transferred.” (2.21, 111).

Hobbes explains that there is a single natural right that is non-transferable, and that is the right to save oneself from “death, wounds, and imprisonment.” (1.14, 69) Each subject retains the natural right to protect herself from a physical threat, even if that threat comes from the sovereign. Hobbes’s inclusion of this liberty in the civil state seems to represent the single explicit avenue for justifiable resistance to state authority in Hobbes’s system, and the individualist interpretation of Hobbes arises primarily from Hobbes’s preservation of this natural right in the civil state. Philip Pettit, for example, writes that subjects “retain a right of resistance” in Hobbes’s state and as a result, the sovereign “would do well not to trigger the exercise of that right on the part of the subjects”.³⁰ John A. Simmons makes a similar connection between this particular civil liberty and popular dissent: “If we have a natural liberty-right to preserve ourselves (as Grotius and Hobbes believed), then we may without wrongdoing ignore the commands of political superiors.”³¹

³⁰ Pettit, 129.

³¹ John A. Simmons, “Theories of the State” in *The Cambridge Companion to Early Modern Philosophy*, ed. Donald Rutherford (Cambridge: Cambridge University Press, 2006), p. 250-273: 256.

Does the retention of this right to self-preservation constitute a limit on sovereign authority?

Specifically, Hobbes is identifying the natural right to defend oneself from physical harm, and since this is a right that is not transferable, any covenant promising that one will *not* try to defend one's physical safety is void. Subjects each have the right to defend their lives, which includes the freedom to resist the threat of harm even from those "that *lawfully* invade them" (2.21, 111 [*note in margins*]). This amounts to a limit on subjects' obligations to the state. In a key passage Hobbes enumerates those things that the sovereign is strictly barred from requiring of his or her subjects: "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 ..." (2.21, 111) In these cases, the individual can justly disobey sovereign command and act as she personally deems fit for her own survival. While it seems fair and reasonable that subjects should not be obligated to do something as frightening and difficult as inflicting fatal harm on themselves, does this freedom from obligation on the part of subjects amount to a limit on state authority? And, further, does it present an avenue for popular revolt? Bearing in mind that the state's laws are, in the main, unassailable, does the right to self-defense constitute some possibility for resisting the authority of the state's laws?

In order to make a case that it does, the assertion of this natural right would have to amount to something more than one individual's fearful resistance to the threat of personal injury or death. If this is all it amounts to, then it is a politically impotent civil right. Bearing in mind that rights, for Hobbes, do not entail duties, the sovereign is under no obligation to his or her subjects arising from their rights to self-defense.³² Thus, the sovereign is not required to modify his or her penal actions because a subject exercises their right of self-preservation. The right of self-preservation, on its own does not affect the

³² Richard Tuck provides an excellent discussion of radical rights theories like Hobbes's, which he explains in terms of active and passive rights. In the case of passive rights, the notion of rights itself effectively evaporates, the issue amounting to no more than that of the obligations we have to one another arising from some overriding moral order. The case of active rights, however, offers up a much more robust positive notion of rights, as the dominion of the individual over her or his moral world. In the more radical manifestations of this view, as we find in Hobbes, rights presume no obligations, for the very reason that they presume no overriding moral laws. As Tuck points out, active-rights theorists, such as Grotius and Selden, traditionally tended in a more authoritarian direction for this reason, though generally credited with being the progenitors of classical liberal theory. As Tuck writes, "An important conclusion to which one is forcibly led is that most strong rights theories have in fact been explicitly authoritarian rather than liberal." (Tuck, *Natural Rights Theories* (Cambridge: Cambridge University Press, 1979): 3)

actions or decisions of the sovereign. The exercise of this right seems, therefore, to carry no threat to the sovereign's enforcement of civil law, but does the exercise of this right present any challenge to sovereign authority in making the law?

Hobbes insists on the fact that the “[l]iberty of the Subject [is] consistent with the unlimited power of the Sovereign.” (2.21, 109 [*note in margins*]) Elaborating on this point, he explains that in thinking about the liberty of subjects “we are not to understand that ... the sovereign power of life and death is either abolished or limited.” (2.21, 109) As Hobbes seems to understand them, civil liberties are *justly* exercised *only* in the event that they present no inconsistency with state authority, even in the case that the sovereign has decided to punish an individual with physical pain or death. In fact, Hobbes makes it quite clear that resistance to life-threatening punishments has nothing to do neither with questions regarding the appropriateness of the law itself nor with the justness of the punishment being meted out. In one particularly telling passage, Hobbes observes the following: “they lead criminals to execution and prison with armed men, notwithstanding that such criminals have consented to the law by which they are condemned.” (1.14, 70) Note the last sentence – the criminal has *consented* to the law. The criminal is acting within his rights here, *because* he is not questioning sovereign authority – the only problem is his lack of willingness to go peacefully to his death. In Chapter xxi, Hobbes clearly establishes the boundaries of the right to self-preservation when he writes that each subject authorizes *all* the sovereign's actions, even those that involve killing his or her subjects: Hobbes explains that when each individual enters the political state, she effectively authorizes the sovereign to kill her in the name of civil security, saying however “by allowing him to kill me, I am not bound to kill myself when he commands me.” (2.21, 112) What is important to note here is the clear assumption that each subject has authorized death sentences to herself or others, and that the sovereign's use of capital punishment is not at issue. In fact, *justified* resistance to the sovereign seems to require an acceptance of state authority. What Hobbes seems to have in mind is a situation in which the individual under threat fully appreciates the state's reason for punishing him or her – fully accepting its laws and its sanctions but cannot under any conditions promise to do harm to herself by her own hand nor to peacefully face the imminent threat of pain or death. As Hobbes explains, “though a man my covenant thus *unless I do so, or so, kill me*, he cannot covenant thus *unless I do so or so, I will not resist you when you come to kill me*.” (1.14, 70) Hobbes specifies that, in the cases he is considering, of resistance of this kind to the state, the criminal has “consented to the law by which they are condemned” but resists anyway. (1.14, 70) For Hobbes, there would

seem to be two kinds of resistance to sovereign command, the first being the kind that is justified by the natural right of self-preservation and which, as I have shown, Hobbes does not consider inconsistent with a basic respect for sovereign law. The second kind involves the improper appeal to private judgment, which Hobbes describes in chapter xxix, *Of Things that Weaken a Commonwealth*.

Here he identifies what he sees as the main threats to the stability of the political state, or what he refers to as “diseases of the commonwealth”. (2.29, 168) The first is a weak administration, and the second involves private judgment and erroneous conscience – in other words, the voicing of popular dissent. He explains, further, that one of the most seditious doctrines is “*That every private man is judge of good and evil.*” (2.29, 168) This is patently false, he explains, because in a commonwealth it is the sovereign’s civil law that determines “the measure of good and evil.” (2.29, 168) When subjects start believing that they are justified in questioning the law, the stability of the commonwealth is seriously weakened. Hobbes writes, “From this false doctrine men are disposed to debate with themselves, and dispute the commands of the commonwealth, and afterwards to obey or disobey them, as in their private judgments they shall think fit. Whereby the commonwealth is distracted and weakened.” (2.29, 168) Hobbes continues in this vein, explaining that while in the state of nature an individual sins “in all he does against his conscience”, this is not the case in the political state. He explains that in the commonwealth “the law is the public conscience, by which he hath already undertaken to be guided.” (2.29, 169) If this is not properly understood, then “in such a diversity as there is of private consciences, which are but private opinions, the commonwealth needs be distracted, and no man dare to obey the sovereign power farther than it shall seem good in his own eyes.” (2.29, 169) Questioning the law itself, and its coherence with the individual’s personal judgments of good and evil, is politically threatening, but what is especially interesting about this chapter is that Hobbes is silent on the disobedience manifest in the exercise of the right of self-preservation. This simply never surfaces as something that weakens the commonwealth.

The right to self-preservation represents a kind of disobedience for Hobbes, but of a particularly innocuous nature. Hobbes is explicit that this kind of resistance is not permitted if it presents any real threat to the authority of the sovereign, and he is clear on the limits on my expression of this natural right. For example, I am not required to kill myself or to do something dishonorable like killing someone else, but “when ... our refusal to obey frustrates the end for which the sovereignty was ordained, then there is no liberty to refuse.” (2.21, 112) This does not mean Hobbes is backtracking on his insistence that

subjects have a natural right to defend their bodies. Rather, it means subjects only have this right if they are doing so strictly in the interests of personal self-defense and not in the name of questioning the laws and authority of the state. Hobbes distinguishes political disloyalty from fear in making this very point. Soldiers may well run from battle if they are scared for their lives. While not honourable it is *just*, because it is done out of a natural instinct for self-preservation – it is done, as Hobbes puts it “not out of treachery, but fear”. (2.21, 112) However, if he flees because he doesn’t agree with the war that is being fought, then the same act becomes an injustice – he is now breaking his covenant and questioning the authority of the state. In cases where personal safety is at risk, the justness of the subject’s refusal to obey depends on her intentions. If she is scared for her life, that is one thing, if she is conscientiously objecting to the law of the sovereign, that is another entirely: Hobbes writes, “the obligation a man may sometimes have, upon the command of the sovereign, to execute any dangerous or dishonorable office, dependeth not on the words of our submission, but on the intention, which is to be understood by the end thereof.” (2.21, 112)³³ Hobbes offers the telling example of the group of rebels who are sentenced to death. Although they are justly sentenced to death for their crimes, they can, in justice, defend themselves and the others and seek to be freed. However, if any of them are pardoned then this makes “their perseverance in assisting or defending the rest unlawful.” (2.21, 113) In the former case it is, as Hobbes puts it, “*only* to defend their persons” (2.21, 113 (my italics)), in the latter it involves an attempt to interfere with the enforcement of the sovereign’s laws, and this amounts to making a private judgment regarding good and evil.

We are left, at this point, with a nagging question, however. What is the significance of this natural right to self-preservation for Hobbes’s political theory? It does not seem to carry any special significance vis-à-vis limitations on state authority, but does it still represent a form of liberalism lying at the foundation of Hobbes’s political views? The fact is that for Hobbes, self-preservation is the one right that is non-transferable, and as such it is an inalienable right. Thus Hobbes has, it would seem, retained a single inalienable right in the civil context, but one that has no political teeth at all.

³³ This is especially so when it comes to cowardice in battle. It does not count as treachery if a soldier runs away out of fear, *but* if the soldier has taken money to fight or has voluntarily enlisted *or* has been conscripted in a battle of national urgency, then “every one is obliged.” (21.16) So, we can see that even in the case of fearfulness in battle, the conditions under which a subject can justly invoke the right to self-preservation is highly circumscribed.

I want to argue that this is not actually a conundrum for Hobbes, but only appears so if we read Hobbes's account of natural right through an overly-liberal lens. First of all, the notion of natural right itself bears some examination. I want to argue that Hobbes's notion of the right to self-preservation is not a right, *per se*. As I hope to show, this has implications for the way we might interpret the political significance of self-preservation in the civil state. Further, I want to suggest that Hobbes's theory assumes a greater consistency if we appreciate his general conception of what it means to live well within the civil context.

Self-preservation as a Right

There is a curious feature of Hobbes's account of self-preservation that is worth exploring in some detail, and that is the status of self-preservation as a right. Though Hobbes calls it a right, self-preservation ends up being, as Richard Tuck puts it, "a right which looks more like a duty."³⁴ The problem arises when we closely examine Hobbes's distinction of law and right in the *Leviathan*: a law, Hobbes writes, forbids a person from doing anything that is "destructive of his life" (1.14, 64) while a right is the liberty each person has to use his own power for the "preservation of his ... own life". (1.14, 64) Hobbes elaborates on this by specifying that a right consists in the liberty "to do or to forbear", while a law determines and binds the individual to "one of them". (1.14, 64) Thus, having a right means having complete freedom in determining whether, or how, to act. It is for precisely this reason that people in the state of nature can transfer all of their natural rights – rights by their very nature are things that individuals can choose not to exercise. Yet, this is not the case for self-preservation. As we have seen, Hobbes specifies that individuals can willingly divest themselves of any liberty, except for the liberty to resist assault, death or anything that poses an immediate harm to that individual's security and well-being.

Tuck offers an interesting account of Hobbes's language of rights with respect to self-preservation. He points to Hobbes's use of rights language in his earlier works, notably the *Elements of Law*, in which the right to self-preservation was treated, by Hobbes, as something that *could* be renounced. As such, the distinction between right and law was unproblematic with regards

³⁴ Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979), 153.

to self-preservation.³⁵ If so, why did Hobbes retain this rights language in later works like *Leviathan*, in which self-preservation is treated as inalienable? Tuck's answer raises some interesting points, and hints at what I believe is the central feature of Hobbes's approach to the notion of self-preservation. For one thing, Tuck points out, Hobbes had already "publicly committed himself to treat self-preservation as a right and not a duty."³⁶ To change his terminology would have drawn attention to a position that was decidedly controversial, particularly amongst the Tew Circle who had launched a vociferous attack on Henry Parker for suggesting a similar view.³⁷ Further, making self-preservation a duty rather than a right would, Tuck points out, have made it difficult for Hobbes to portray the state of nature in terms of rights. As Tuck writes, "He would have had to postulate a primary law, from which both rights and further laws could be derived."³⁸

While these are compelling answers regarding Hobbes's choice of 'rights' language in the case of self-preservation, I believe we can find a fruitful grounds for explaining the inalienability of this right by turning to a somewhat unlikely source – Descartes. Tuck mentions that the Dutch Hobbesians cast self-preservation as a kind of biological imperative, along the lines of Descartes's account in the *Passions of the Soul*.³⁹ Without going into a detailed account of the Dutch Hobbesians and their specific political views, I think it is interesting to pause and examine the connection between Descartes and Hobbes in so far as it might illuminate what Hobbes has in mind. In *The Passions*, Descartes provides the following account of human motivation: "The function of all the passions consists solely in this, that they dispose our soul to want the things which nature deems useful for us, and to persist in this volition; and the same agitation of the spirits which normally causes the passions also disposes the body to make movements which help us to attain these things."⁴⁰ It is interesting to consider what Hobbes says about self-preservation in light of Descartes's naturalistic account. Hobbes identifies our chief end as that of our "own conservation" (1.13, 61). In his *Elements of Law*, Hobbes writes that humans have

³⁵ Tuck, *Natural Rights Theories*, 129.

³⁶ Tuck, *Natural Rights Theories*, 131.

³⁷ Tuck, *Natural Rights Theories*, 102.

³⁸ Tuck, *Natural Rights Theories*, 131.

³⁹ For example, Lambert Velthuysen was influenced in this direction; he is paraphrased in Tuck as follows: "It is clear...from a consideration of our biological make-up and our passions, that self-preservation is the prime function of the organism." (Tuck, *Natural Rights Theories*, 139)

⁴⁰ Rene Descartes, *The Passions of the Soul* in J. Cottingham, R. Stoothoff, and D. Murdoch (eds), *The Philosophical Writings of Descartes, Volume I* (Cambridge: Cambridge University Press, 1985), 349.

a “high degree of fear” regarding those things that threaten pain or death to ourselves. As he puts it, we avoid such perceived threats “by natural necessity”, and it is for this reason that “we cannot expect but a man will “provide for himself either by slight, or fight.”⁴¹ No one can be bound to perform what he terms “impossibilities”, and therefore cannot be duty-bound to endure them. In the *Leviathan*, he reprises this point in Chapter xv, where he writes “every man, not only by right, but also *by necessity of nature* [author’s italics], is supposed to endeavour all he can to obtain that which is necessary for his conservation”. (1.15, 76) We do not merely have the natural freedom to preserve ourselves, therefore, but a natural imperative to do so – self-preservation is a liberty we are biologically incapable of promising not to exercise. For Hobbes, since we are driven by the passion of fear, it is no great leap to suggest that self-preservation is a fear-response, and as such is going to be a dominating passion in life-threatening situations. It seems plausible, therefore, to suggest that it is in this sense that Hobbes thinks people, *by their very nature*, will meet death with resistance rather than without resistance.

Political Obligation

If the reading offered above is correct, then Hobbes’s view of self-defense cannot be interpreted as an avenue for individual rebellion. The ‘liberal’ reading of Hobbes on this issue takes the right to self-defense to represent the possibility for individuals, in the state, to withdraw their consent, and thereby discard their obligations, to the state. I have suggested that this is an overly-liberal reading of the state. However, we might say, more accurately, that Hobbes is offering a strictly liberal, contractarian view, which is uncompromising in its conception of political obligation. For Hobbes, the state’s authority derives from the autonomous consent of individuals. This consent is fundamental for Hobbes, and it is made binding by the fact that with consent each individual is effective author of the state’s legislative decisions. In effect, individuals are obligated by an initial consent, but more importantly, their obligations to the state arise from the fact that state laws reflect the will of each person. It is thus self-defeating for any individual to oppose the will of the state. Our obligations to the state are obligations each one of us owns, and authors – they are

⁴¹ This quote is taken from the 1651 edition, for which the citation is as follows (with original title): Thomas Hobbes, *Philosophical Rudiments Concerning Government or Society*, 1651, 2.18, 30

self-imposed.⁴² Hobbes pays little mind to the dissenting factions of a society, as raising any legitimate challenge to the notion that political obligation is necessary and absolute. The multitude stand in equal obligation to the laws of the state, and all laws carry the same degree of obligation. The fact is that individuals are untrustworthy in some important sense, for Hobbes. Each of us has the rational capacity to rethink our contracts in light of present interests, and it is for this reason that contracts are unstable in the absence of an overarching authority.

David Gauthier has rightly pointed out that the problem with Hobbes's theory lies not in his political theory, *per se*, but in the psychology on which it is founded. As Gauthier explains, it seems reasonable to suppose that the interests of others constitute obligations for the obliged agent, even if doing so does nothing to advance the agent's own interests. This supposition, he writes, "requires us to reject Hobbes's theory of human nature, in so far as that theory maintains that all motivation is selfish, that all men are psychologically necessitated to seek only their own good."⁴³ For Hobbes, the power of the sovereign cannot be limited by considerations of the plurality of interests that motivate individual members of the society. Hobbes recognizes this plurality of interests, but thinks it a fair sacrifice to give up our liberty to act on specific interests in consideration of the difficulties that inevitably arise when individuals with competing, and changing, specific interests attempt collective action. An alternative account of political obligation must include some account of human motivation that makes room for naturally cooperative inclinations – like a commitment to common good or some recognition of natural moral duties.

It is not within the scope of this paper to engage in an extended discussion of alternative accounts of political obligation. What I have attempted to do here is show that the right to self-preservation does not function, for Hobbes, as a means for political dissent or any mitigation of political obligation.

⁴² Skinner makes a similar point. He explains that Hobbes's theory effectively accomplishes two tasks: Hobbes manages to derail the divine right theorists, by placing the genesis of the state in the hands of the people, and he challenges the Parliamentary cause by clarifying just what is entailed when the people authorize the sovereign's power. As authorizers of sovereign power, the members of the multitude have a duty to own the actions of the sovereign whenever the sovereign undertakes to secure their safety and peacefulness. As such, it becomes actually self-contradictory for individuals to oppose the decisions of the sovereign. Hobbes's account of the political covenant is not, Skinner writes, "a means of limiting the powers of the crown; properly understood, it shows that powers of the crown have no limits at all." (Skinner, *Visions of Politics*, 208)

⁴³ David Gauthier, *The Logic of Leviathan* (Oxford: Clarendon Press, 1969), 172.