



# Sovereignty as a Vocation in Hobbes's *Leviathan*

New  
foundations,  
statecraft,  
and virtue

Amsterdam  
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Press

J. Matthew Hoye

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*New Foundations, Statecraft, and Virtue*

*J. Matthew Hoyer*

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# 1. Introduction

This book is about virtue and statecraft in Thomas Hobbes's *Leviathan*. Its overarching argument is that the fundamental foundation of Hobbes's political philosophy in *Leviathan* is wise, generous, loving, sincere, just, and valiant—in sum, magnanimous—statecraft, whereby sovereigns aim to realize natural justice, manifest as eminent and other-regarding virtue. I propose that concerns over the virtues of the natural person bearing the office of the sovereign suffuse Hobbes's political philosophy and define both his theory of new foundations and his critiques of law and obligation. These aspects of Hobbes's thought are new to *Leviathan*, as they respond to limitations in his early works in political theory, *Elements* and *De Cive*—limitations made apparent by the civil wars and the regicide of Charles I. I argue that they, though new, tap into ancient political and philosophical ideas, foremostly the variously celebrated, mystified, and maligned figure of the orator-founder. In short, I argue that for Hobbes, sovereignty is a vocation.<sup>1</sup>

Interpretations of Hobbes can be roughly divided into three groups: ethical egoist, deontological, and virtue ethical, with myriad positions at intermediary points between. The most prominent is the egoist interpretation, with the minority in the deontology camp and only a handful defending the virtue ethics interpretation. This book is in the virtue ethics camp. However, it is also quite unlike existing critiques. One difference—one that generates what I believe is a distinctive account of Hobbes's political philosophy—is that I am not primarily concerned with the virtues or vices of the ruled, but rather those of the ruler.

Irrespective of the focus on virtue, reading Hobbes's political philosophy from the perspective of rulers and statecraft, rather than the ruled or sovereignty in the abstract, is uncommon. There is a vast literature on the theory of sovereignty in Hobbes, of course, but considerations of the natural person who bears the office of the sovereign and must rule effectively are few.<sup>2</sup>

<sup>1</sup> This is, of course, a term indebted to Max Weber's vocation lectures, *From Max Weber*, 77–128.

<sup>2</sup> Notably, most of those studies quickly uncover a series of fascinating puzzles, e.g., Sorell, “The Burdensome Freedom of Sovereigns.”



Hobbes's contribution is to the study of sovereignty's nature; he looks to the office, not the office holder. One good reason for taking this interpretative approach is that Hobbes identifies it as his very purpose in the epistle dedicatory, writing: "I speak not of the men, but (in the Abstract) of the Seat of Power".<sup>3</sup> Perhaps consequently, the few observations on the sovereign's natural person are often assumptions or interpolations of how they should act, based largely on Hobbes's theory of the office. The office is unchecked, and, it follows, so is the natural person who bears it. Alternatively, we see inverted images of what the multitude or subjects supposedly wish to escape from when left without a sovereign. On these accounts, the multitude is terrified, frenzied, vainglorious, or cowardly, and the sovereign is a terrifying, overwhelming, and perhaps monstrous agent. Bearing the person of the state, sovereigns temper the multitude's passions, regulate the teaching of political science in the universities, provide for their subjects' physical security, and wield the sword of state to threaten would-be offenders and punish lawbreakers. In either case, depictions of the sovereign's natural person are thin, and it is the office that is truly being described. We thus need only focus on state power and the rights of the sovereign and can ignore the natural person bearing that office. Indeed, ignoring the natural person of the sovereign becomes something of an imperative, since the near-absolute nature of sovereign power means that there is no need to worry about tactics, strategies, and certainly not the character—the virtues and vices—of the natural person who bears the office of the sovereign. In sum, there is no need to worry much with virtue or statecraft in Hobbes; it is beside the point. Hobbes's political science, on these accounts, is the science of "how to obey".<sup>4</sup>

But this is only half of Hobbes's equation. His purpose is to teach "*both* how to govern, and how to obey".<sup>5</sup> And if we take the perspective of the problems of effective statecraft, an interpretative challenge immediately appears: bluntly stated, Hobbes is clearly very much concerned with the character of the sovereign's natural person. Over and again, from start to finish, and at crucial argumentative junctures, Hobbes returns to the topic of the virtue of the natural person (or persons) who is, or will be, sovereign. Hobbes introduces *Leviathan* as a study of sovereign virtue; when he describes the power of the state, he premises the entire discussion on the character of the natural person who bears that office; when he speaks

3 Hobbes, *Leviathan*, II:THE EPISTLE DEDICATORY. 4 (Latin edition).

4 Hobbes, *Leviathan*, II:XXXI. 574.

5 Hobbes, *Leviathan*, II:XXXI. 574 (emphasis added).

of founders and new foundations, he speaks of leadership and virtue; he concludes the second part of *Leviathan* by stating that it was a study of sovereign virtue—of natural justice—and between these bookends and beyond, he repeatedly returns to the centrality of sovereign virtue. These discussions are neither empty nothings, slips of the pen, echoes of his humanist youth, nor deviations from his “real intention”.<sup>6</sup> They inform core elements of his political theory, they are manifest, and they are both consistent and coherent. Teaching sovereigns “how to rule” is fundamentally important to *Leviathan’s* political philosophy.

And here is where things get interesting. Hobbes’s writings on statecraft are discordant with much of the standard interpretations of Hobbes’s political philosophy. That is really the rub of this book: once we start reading what Hobbes writes about virtue, power, and statecraft, we discover that it is not a simple distillation of theories of sovereignty “in the Abstract”,<sup>7</sup> an inverse picture of how to be ruled, or a personification of a stereotypical Hobbesian agent writ large. Indeed, any sovereign who acts like a stereotypical Hobbesian agent is sure to invite discord, civil war, and perhaps their own destruction, all at their own fault. Restated, Hobbes’s many discussions of virtue and sovereignty are not tangential but elemental to his account of sovereignty. The implications of that argument cascade through Hobbes’s political theory. On a variety of questions of elemental importance to Hobbes—power, rhetoric, religion, new foundations, the social covenant, law, obligation, war—the politics of statecraft are unlike the picture of rule found or presumed in the standard model.

By using the term “standard model,” my aim is to make a very general claim over a broad body of scholarship of exceptional nuance and depth. The general claim regards the loose consensus over the overarching political narrative in *Leviathan*. Namely, that the state of war is experienced as relentless fear and trepidation (real, imagined, or rhetorical, far-off or at-hand). That to exit this condition a social covenant is struck, imposed, imagined, etc., whereby the multitude confers their discrete powers on one person (or assembly) that is thereby sovereign. The sovereign’s creation simultaneously creates a people and a state through the logics of representation. Few scholars take this to be a historical moment, arguing that the social covenant is an ideological intervention, a heuristic, or a rhetorical device. This narrative runs from chapter XIII to XVIII and informs a panoply of considerations save one: the real politics of new foundations.

6 Strauss, *The Political Philosophy of Hobbes*, 57.

7 Hobbes, *Leviathan*, II:THE EPISTLE DEDICATORY. 4 (Latin edition).

For some scholars, that is the whole point: *Leviathan* is not an advice book for founders; it is a text intended to persuade or teach readers to obey. These kinds of accounts treat Hobbes's political theory as a grand inflection in the history of ideas (e.g., Sheldon Wolin<sup>8</sup>) or as an intervention in ongoing political debates (e.g., Quentin Skinner<sup>9</sup>). Others focus on how *Leviathan* serves a more general rhetorical function of convincing subject-readers to remain obedient.<sup>10</sup> Ioannis Evrigenis expresses this idea when he remarks that Hobbes “renders the reader a founder and preserver of the commonwealth.”<sup>11</sup> There is much to recommend these interpretations, but, again, they do not tell us anything about the real politics of new foundations and often deny such considerations.

Deontological critiques of Hobbes often make drastically different claims, but they share the same general narrative structure. Yes, they have more robust accounts of pre-covenantal politics.<sup>12</sup> They assert that there are ethical foundations—reason, natural laws, or God—that prefigure the social covenant and carry forward to post-foundational politics. Nevertheless, these pre-foundational sources of normativity have no bearing on the foundational moment. Instead, they are taken to bear on post-foundational questions (like obligation, law, morality, and duty). Indeed, avoiding the politics of new foundation is seemingly necessary on these accounts, since, as Howard Warrender remarks, “the civil sovereign can never himself provide the moral foundation which is to be used in his own justification.”<sup>13</sup>

Another approach focuses on virtue ethics in Hobbes.<sup>14</sup> The account I will develop amounts to a virtue ethics account. However, those critiques say nothing about new foundations and almost nothing about the virtues of the sovereign in particular.

The standard model disagrees about pretty much everything, except that the narrative arc of the political theory of *Leviathan* starts from XIII. I contest that agreement. The problem is that Hobbes does have a theory of new foundations in *Leviathan*. It is just in XII. There Hobbes sets out a theory of new foundations—and uses the language of new foundations—while also

8 Wolin, “Hobbes and the Epic Tradition of Political Theory.”

9 Skinner, *Visions of Politics*, III: *Hobbes and Civil Science*, chaps. 9–10.

10 Johnston, *The Rhetoric of Leviathan*; Kahn, *Wayward Contracts*; Evrigenis, *Images of Anarchy*.

11 Evrigenis, *Images of Anarchy*, 235.

12 Taylor, “The Ethical Doctrine of Hobbes”; Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*; see also: Lloyd, *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature*; Martinich, *The Two Gods of Leviathan*; Gert, *Hobbes: Prince of Peace*.

13 Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*, 7.

14 Ewin, *Virtues and Rights*; Boonin-Vail, *Thomas Hobbes and the Science of Moral Virtue*.

focusing entirely on the character of the sovereign. XII is titled *On Religion*, and religion ends up being a crucial element that looks backward—for instance, to Hobbes’s theory of curiosity—and forward to all of Hobbes’s political science. As will be seen, there is a great deal to unpack in those pages; and once it is, a new account of Hobbes’s political theory appears.

That being said, my account of Hobbes does not radically upend the standard model and is in most regards conducive to it. Indeed, I will try to show the standard model to be founded upon what I could call the priority of virtue model. In brief, during temperate times free of war, tumult, or sedition, subjects may not pay any attention to the virtues of the sovereign, and they will simply go about their business. However, at moments of political exigency—new foundations, war, revolt, crisis—the virtues of the natural person of the sovereign are of fundamental importance, while in regular times flagrant vice can corrode the entire system and thus bring about crisis. So, Hobbes *appears* to be of two minds about many questions—and my arguments *appear* to be quite unlike those found in the standard model because they are my primary focus—but they are not actually so sharply contrasting. Hobbes is simply explicating different political priorities pertinent to different political moments in the life of a regime. From that perspective, I believe the account of Hobbes defended in this book provides an opportunity for reconciling certain debates in Hobbes scholarship by clarifying the political conditions of seemingly irreconcilable claims. It also allows for incorporating parts of *Leviathan* that are often ignored or explained away as anomalous, giving them interpretative status that reflects their place in the text. For example, XII in general, of *nomos* and the constitutive distribution of property, and the very idea of natural justice all stand awkwardly apart from the standard model. But all these can be shown to be compatible with the rest of *Leviathan*, if we pay heed to the importance of the sovereign’s character.

Although my aim is reconciliation and accommodation between the standard model and my studies of leadership in *Leviathan*, sometimes reconciliation requires considered amendments of the standard model, especially regarding those parts that are taken as near-axioms in the Hobbes scholarship and are categorically inoperable with my thesis. For instance, the idea of natural political equality, the idea that there is no difference between regimes by institution and conquest, since they both distill down to the logics of the “fear of violent death”, and the idea that the social covenant—be that as ideological tool, thought experiment, or theoretical heuristic—is *purely* ahistorical are all incompatible with my argument. And because they are generally accepted, it is on me to engage more closely with them.

More precisely, if I am going to convince readers, I need to do more than just point to claims by Hobbes that seem to disagree with these axioms. That is easy enough; it is a sprawling text after all. Instead, I need to show that the strongest claims made in the standard model are not as decisive as they have been taken to be. In these cases, I treat the standard model as generating crucial counterarguments to my own account, and I address them accordingly. As will be seen, I find the counterarguments wanting—indeed, not only do they fail, but they all fail in a fashion that points in the direction of XII. To be clear, although I find these counterarguments lacking, they are not flatly wrong. Instead, I simply point out that Hobbes was not as strict in his formulations as he is sometimes cast. Hence, by loosening up the *seeming* axioms, my argument can again be treated as more or less compatible with a (suitably tempered) standard model.

Consider just one example regarding the supposed lack of any substantive distinction between regimes by institution and conquest in xx. There Hobbes writes,

And this kind of Dominion [commonwealth by conquest], or Sovereignty, differeth from Sovereignty by Institution, onely in this, That men who choose their Sovereign, do it for fear of one another, and not of him whom they Institute: but in this case, they subject themselves, to him they are afraid of. In both cases they do it for fear[.]<sup>15</sup>

This passage is widely thought of as reducing both kinds of institution to fear. But is Hobbes really collapsing this distinction? Certainly, “in both cases they do it for fear”. However, there is a crucial difference. Whereas conquerors establish a regime and the very willing obedience of the fearful conquered subjects, the fear inherent in the politics of regimes by institution is a mutual fear *of each other* with one singular exception: “him whom they Institute”.<sup>16</sup> That person is specifically designated as someone whom the multitude does *not* fear. Collapsing the distinction means ignoring the distinctive feature of regimes by institution, namely that there is one person whom the multitude does not fear. Who is this figure? This book aims to answer that question.

Of course, the idea of a standard model is a too-blunt frame for a broad and deep literature. And my arguments have affinities—and are informed by—a small but excellent body of scholarship that has picked up on similar

15 Hobbes, *Leviathan*, II:xx. 306.

16 Hobbes, *Leviathan*, II:xx. 306. That said, I will qualify the former claim as well.

ideas. Notably, and surely not by chance, much of this literature has taken Hobbes's arguments in XII to heart. Where above I was keen to signal the compatibility, despite appearances, between my claims and the standard model, let me focus here on the differences. Charles Tarlton pays close attention to XII, only to argue that Hobbes did not actually mean what he said in XII.<sup>17</sup> Tarlton claims that the core lesson for the sovereign is a Machiavellian one: do not be virtuous; learn how to be successfully wicked and have it called virtue. The problem with that account is that Hobbes expressly rejects its implications. In a sense, Tarleton sees the essential importance of XII, recognizes the stark differences between it and what I have called the standard model, but sides with the standard model and therefore argues that XII must mean something other than it appears at face value. Leon Harold Craig reads XII along with the four references to "natural justice" in *Leviathan* as standing in stark contrast to the Hobbesian orthodoxy and as such sees it as the root of pervasive paradoxes within *Leviathan* that esoterically signal Hobbes's true philosophical inclinations.<sup>18</sup> Craig's study is unique in the literature and has greatly influenced my own account—surely more than I am aware—while also emboldening me to carry my own ideas to their conclusion. That said, although I agree with much found in Craig, I see the problems at hand as less philosophical and less internal to Hobbes and more a function of Hobbes being in disagreement with the standard model. So, I do not follow Craig in deriving esoteric implications from XII and the "crucial paragraph" regarding natural justice. My thesis is much simpler: I hope to show that the standard model is mistaken and that the political lessons of XII are what they seem to be (e.g., that founders must be eminently virtuous). Arash Abizadeh argues that XII contains a theory of charismatic religious authority in Hobbes and that it is a necessary source of the ideological face augmenting the sovereign's "brute physical power".<sup>19</sup> Again, I believe that the first move is correct, as the title of this book's riff on Max Weber's vocation lectures attests. However, I believe that the language of virtue provides a more appropriate frame of reference, and I will contest the second conclusion. Skinner notes that XII signals Hobbes's new concern with *pronuntiatio* and new religious foundations but leaves the political implications undeveloped.<sup>20</sup> Much of my critique of rhetoric in Hobbes aims

17 Tarlton, "The Creation and Maintenance of Government: A Neglected Dimension of Hobbes's *Leviathan*."

18 Craig, *The Platonian Leviathan*.

19 Abizadeh, "The Representation of Hobbesian Sovereignty: *Leviathan* as Mythology," 125 and 148.

20 Skinner, *Reason and Rhetoric*, 360.

to show that XII—along with many other passages—signals Hobbes's full engagement with a line of rhetorical practice that is much richer than mere *pronuntiatio*, tapping into a full theory of constitutive rhetorical action. Finally, although they do not focus on XII, Tom Sorell and Noel Malcolm both place *Leviathan* in the “advice to princes” literary tradition.<sup>21</sup> Again, I agree, and although I do not engage with that tradition, I will argue further that XII is the foremost expression of Hobbes's new concern with advising princes and founders in *Leviathan*.

Perhaps a word on how I arrived at this account of Hobbes is in order. The original approach aimed to synthesize disparate critiques of Hobbes to glean new insights. It was, to use Thomas Kuhn's language, a mopping-up operation, but hopefully an interesting one.<sup>22</sup> The idea was to read Hobbes's political philosophy through the lens of his philosophy of language, with the goal of shedding light on the function of fear, violence, and rhetoric in the deployment of sovereign power. I was interested in what I saw as discrepancies between the scholarship on sovereignty in Hobbes and that on language and rhetoric. Combining them would hopefully yield insights into the persuasive aspects of sovereign terror. Initially, this approach appeared promising. However, these disparate literatures proved challenging to reconcile. Resolving antinomies between theories of language, rhetoric, and sovereignty initially led me to believe that the theories of rhetoric were insufficient and thus led me to evermore elaborate formulations of the role of rhetoric in Hobbes's thought: the rhetoric of terror, the spectacle of violence, sovereignty as mythology, etc. This approach bridged the gap between rhetoric and political theory and allowed me to generate my own account of Hobbes's political theory. Under the cumberbarium of the standard model, these arguments felt right.

But those arguments came at a steep price. First, although the conception of rhetoric I deployed was based on firm historical foundations, linking it to the theory of sovereignty required stretching it so much as to make them deformed. So, the hard-won historical work was compromised the moment it was put to analytical use for understanding the sovereignty in Hobbes. The second problem was worse. Although it was possible to graft together the critique of rhetoric with the theory of sovereignty as found in the secondary literature, it was persistently challenging to link it to the text of *Leviathan* in any robust sense. One would expect that the way forward

21 Malcolm, *Leviathan I. Editorial Introduction*, 51–60; Sorell, “The Burdensome Freedom of Sovereigns.”

22 Kuhn, *The Structure of Scientific Revolutions*, 24.

would be obvious, but the weight of the secondary literature, especially on a student new to Hobbes's thought, is real. The result reflected Hobbes scholarship and my own desire of what *Leviathan* should be about but did not reflect *Leviathan*.

The dam broke and the studies upon which this book is based finally started to appear once I stopped forcing a synthesis and instead prioritized the text and context. I therefore began again, reconstructing Hobbes's political philosophy from myriad puzzles I found in *Leviathan* and elsewhere. This approach unearthed limitations in the secondary literature, often in the form of questionable presuppositions which, on closer investigation, revealed gaps in the historical literature, misleading emphases in the rhetoric scholarship, various incorrect interpretations of key passages, or simply ignored passages in *Leviathan* that disagree with the standard model. The approach also unearthed puzzles in Hobbes's thought, some internal to one text and some about differences between texts. This book is my attempt at following these puzzles and their solutions wherever they may lead. I believe they take us to a new account of the political theory of *Leviathan*.

So, this is a practice in puzzle-driven political theory. I look for discrepancies, antinomies, curiosities, or paradoxes—either within the text, between texts, in contexts, or in any of the above in relation to the secondary literature—and then try to understand the nature of the puzzle, consider how it could be solved, then use whatever methods are best suited to analyzing the evidence. That approach sometimes leads to elaborate confirmations of ideas, theories, and interpretations through different means; often it does not lead anywhere. Intermittently, puzzles lead somewhere new and open cascading series of other puzzles with similar solutions. Puzzles are not methods, but a good puzzle delineates what kind of evidence is needed for solving it, and that evidentiary hunch will usually point to a suitable method. Methods follow puzzles, not the other way around. Because this is a puzzle-driven book, it is methodologically diverse. Some puzzles require historical approaches, or historical contextual, hermeneutic, or inter-textual comparison, and many make use of more than one of these. For instance, Chapter Two situates *Leviathan* within a much-neglected historical scholarship on the borough corporation—in Britain and across Europe—in the period leading up to the civil wars. Chapter Three is primarily a work in the history of ideas, the aim of which is to explicate the theory of rhetorical action in relation to the task of new foundations. Chapters Four through Seven are primarily textual studies.

A note on my engagement with the secondary literature is in order. Most chapters engage sparingly with the secondary literature, usually only as a foil



for making a general point. Generally, I keep engagement with the secondary literature to a minimum for the sake of explicating the overarching account of Hobbes as clearly as possible, I also try to keep these engagements to the footnotes as much as possible. Considering the often stark-seeming disagreement between many of the arguments defended here and the standard model, it would have been impossible to get this project off the ground had I engaged with those endless contrasts and disagreements. I hold no illusions that there is not a world of scholarship that disagrees with the arguments that I develop, and my own arguments may have been much improved had I combed through it. This may read as haughty, but it is meant to be humble. Hobbes scholars are a mighty bunch, and I hope merely to explicate a part of Hobbes's political philosophy I believe has been overlooked.

## Outline and major arguments

The book consists of seven chapters, including this introduction. Each substantive chapter stands on its own, addressing certain puzzles and arguing for solutions. However, often those solutions prefigure other puzzles in subsequent chapters and there is a clear order of operations from one chapter to the next. In this book, there is one initial framing chapter (Two) and then two partly overlapping clusters of chapters (Three to Five and Five to Seven). The first cluster addresses constitutive rhetoric and new foundations. The overarching thesis of this cluster is that whereas scholars of rhetoric in Hobbes have focused on the relationship between the text of *Leviathan* and the reader, there is also a mode of rhetoric that pertains to the sovereign in relation to subjects. The second cluster covers the politics of regime creation, maintenance, and collapse. It amounts, in sum, to a thesis on Hobbes's theory of regime cyclicity in *Leviathan*. So, there are many ways to approach this book: as a whole, in part, or chapter by chapter.

Chapter Two, "Leviathan against the Borough Corporation," studies the development of Hobbes's political thought in the context of the English civil wars, with a focus on the problem of urban republicanism. I argue that many of the major political theoretical developments in *Leviathan* respond to the particular threat of urban republicanism. Specifically, I argue that the signature developments in Hobbes's political theory in *Leviathan* can be directly and indirectly triangulated against three compounding versions of urban republicanism. First is the general European idea that cities and boroughs (incorporated or not) are the communal wellsprings of republican

ideas and practices, wellsprings emerging from deep medieval historical and cultural reservoirs. Here I focus on Althusius as a preeminent exponent of these ideas. Second is the particularly British politics of the borough corporation and its relationship to the civil wars. Here I attempt to bring online a world of urban historical scholarship almost entirely absent from Hobbes commentary. Third is Hobbes's own discussions of democracy, specifically what I argue are particularly communal and naturalistic sources of democracy in *Elements*, which are the foundation of all other regimes. Against these three points, I argue that Hobbes's theory of the state, representation, and the social covenant in *Leviathan* can be fruitfully understood as actively denying and undermining the problem of borough democratic and oligarchic republicanism.

Chapter Two concludes with a puzzle: Hobbes may have solved the problem of borough democratic republicanism, but he is (seemingly) left without an account of new foundations. That is, whereas democracy in *Elements* served pivotal historical, epistemic, and institutional functions in the politics of founding new regimes, democracy in *Leviathan* is stripped of these functions. There is a democratic deficit of sorts in *Leviathan*. Whatever the function of the social covenant, it is—as all commentators have noted, including Hobbes—a heuristic, or thought experiment, or ideological justification. But it is not a discussion of the real politics of new foundations. *Leviathan*, in sum, does not *seem* to have a theory of new foundations. That said, the problem itself outlines in the broadest sense what the solution should do: it should amount to a power to facilitate the creation of a new regime but without, or even in antithesis to, the borough. Hobbes needs democratic conditions in terms of bringing the entire multitude on board (a popular and enthusiastic general agreement), without democratic practices (debate, vanity, contention). That is, Hobbes needs something like orator-founder whose eminent deeds persuade without having to engage in discourse or dialogue.

Chapters Three through Five together address the idea of constitutive rhetorical action and the politics of new foundations in *Leviathan*. Chapter Three, “Rhetorical Action and Constitutive Politics,” is a historical reconstruction and theoretical explication of the idea of rhetorical action, an idea (and practice) that has been largely passed over in Hobbes scholarship. I trace the practice and the theory of rhetorical action from its first emergence in the poets, founders, and orators of antiquity through its reconceptualization and domestication in the works of the Greek philosophers and the Roman rhetoricians. Finally, I trace the modern reemergence of the concept in the theatrical and poetic rhetoric of the early modern period. The overarching

argument is that the idea of rhetorical action—especially in its relationship to new foundations—was considered a singularly powerful tool by which leaders of exceptional virtue and magnanimity could command the voluntary allegiance of the many not by engaging in dialogue but by the fact of their virtue. The orator-founder does not simply persuade; their very eminence transforms their audience, transfixing each audience member to a higher ethical-political order beyond pure self-interest, diffidence, and acrimony.

Chapter Three holds out the hope of resolving the puzzle of the democratic deficit in *Leviathan* (the concluding puzzle of Chapter Two), but did Hobbes take notice? Chapter Four, “Rhetorical Action in *Leviathan*,” situates Hobbes and *Leviathan* within the history of rhetorical action, arguing that there are many reasons to believe Hobbes was not just aware of this line of rhetorical practice and theory but deeply engaged with it. It shows how Hobbes is absorbed in this tradition both biographically and contextually and that it is manifest in the rudiments of his political theory from his theory of personation, to the staging of statecraft, to enacting sovereignty, and beyond. That is, the idea of rhetorical action broadly understood, the specific notion of constitutive rhetoric, and the virtues that are the medium through which they are practiced are central to *Leviathan*. Looking forward, these various arguments establish multiple footholds for later studies of Hobbes’s theory of new foundations, his legal philosophy, and the theory of obligation in *Leviathan*.

Chapter Five, “New Foundations in *Leviathan*” explicates Hobbes’s theory of new foundations in *Leviathan*. The chapter addresses two major puzzles briefly sketched above. The first puzzle is that there is a near consensus in Hobbes scholarship that *Leviathan* does not include a theory of new foundations in any robust practical or political sense. Of course, the politics of the social covenant are the bread and butter of Hobbes scholarship, but as a thought experiment or rhetorical device. The closest most scholars get to any practical discussion of new foundations is to note that they all boil down to conquest anyways. The puzzle is that Hobbes *does* have a rather clear account of new foundations in *Leviathan*, but it is set out (primarily) in XII. Notably, that account aligns with the idea of constitutive rhetorical action and therein the place of wisdom, sincerity, love, and divine revelation in the foundation of a new regime. That, of course, prompts the second puzzle: wisdom, sincerity, love, and divine revelation are not what we have come to expect from Hobbes’s sovereigns! Indeed, XII appears to baldly disagree with seeming axioms of Hobbes interpretation. I address three: natural/political equality (XII indicating that there are politically and socially crucial inequalities of persons), that justice cannot exist before the sovereign (XII

indicating that there is something like natural justice), and that there is no real distinction between regimes by institution and conquest, both resting on a pervasive fear (XII attesting to just the opposite: that there is a fundamental distinction and that Hobbes holds tight to it). On each count, I argue that on more or less basic textual grounds, the axioms do not hold, and indeed they fail in ways supporting the theory of foundations found in XII.

Chapter Five bridges the cluster of chapters on constitutive rhetorical action and the cluster focusing on the politics of virtue, rule, and sovereignty in *Leviathan*. In the background, and building up to Chapters Six (on law) and Seven (on obligation and resistance), is a test of sorts, primed further by a background puzzle: Does the argument from Chapter Five carry forward to the crucial political questions of law and obligation? Stated as a challenge: even if one were to concede the argument in Chapter Five, it could still be stated that beyond that foundational moment, the politics of sovereign virtue do not matter. That challenge is bolstered by the academic debates that stake out and strongly defend many different positions but have very little to say about the virtues and vices of the natural person(s) who bear(s) the office of the sovereign. And yet, on both counts there are seemingly compelling textual reasons to identify these topics as significant, or so I argue in Chapters Six and Seven.

Chapter Six, “Law and Natural Justice,” begins with a particular observation that, on its face, seems to yet again disagree with the standard account of law in Hobbes: Why is it that in the concluding passages of Part II of *Leviathan*, Hobbes declares that his goal has always been to teach sovereigns “natural justice”? Not natural law, not that all laws of outputs of sovereign command, but that the natural person who bears the office of the sovereign must be a student of *natural justice*. I argue that this is not a wayward remark or slip of the pen. Hobbes concludes on that point because it is an integral element of his overarching theory of law. Beginning with a critique of natural justice and magnanimity in Aristotle and in Hobbes’s *De Cive*—and then turning to *Leviathan* through analyses of the relationship between natural justice and *nomos* (xxiv), natural law (xxvi), the command theory of law (xxx), and the law of God (xxxI)—I argue that Hobbes’s account of law routinely references the necessity for instantiated and eminent sovereign virtue. I argue that natural and positive law are conditioned by eminent sovereign virtue and that although that condition may be latent during normal times, it is an essential condition for the practical realization of both in moments of emergency and crisis.

Chapter Seven, “Obligation, Resistance, and Sovereign Virtue,” brings the second political set of chapters and the book as a whole to conclusion.

Turning to the perennial question of obligation in Hobbes, it considers whether sovereign vice explains regime collapse. Taken from the perspective of Hobbes's discussions of the obligations of subjects to their sovereigns, there is little to nothing in Hobbes that leaves room for the virtues of the sovereign. "Tyrannophobia" is, memorably, what Hobbes is writing against. However, Hobbes does repeatedly discuss the politics of obligation from the perspective of rulers. And what is striking about those passages is Hobbes's concern with the character and comportment of the natural person of the sovereign. In other words, taken from the perspective of Hobbes's discussion of the subject's obedience, the sovereign can do no wrong. But, taken from the perspective of Hobbes's discussion of that sovereign's character, they most certainly can do wrong, where wrong is a measure of actions that naturally spur subjects to revolt, no matter what the sovereign commands, the state ideology extols, or the science of politics dictates. By taking up this question from the perspective of statecraft, I show that the standard accounts of obligation are impoverished by prioritizing the duties to obey that even the most generous interpreters conclude are strict. However, if read from the perspective of the ruler's practical duties of virtue, we discover something else: they, too, are rather strict, but for radically different reasons. Hobbes's practical advice to sovereigns is that they should be eternally vigilant of how they hold themselves in public and private. The reasons for this are deeply political: when the sovereign strays from virtue to vice, the people will *naturally*—because the vices and virtues at hand are *naturally* compelling or discomfiting—follow suit. Sovereign inequity, cowardice, greed, vanity, rashness, pompousness, arrogance, deference to vain elites, and, most fundamentally, sovereign barbarity—in short, flagrant sovereign vice—are naturally dishonorable. Subjects may not have any right to disobey (at no point do I argue that such a right exists), but they will nevertheless. That is Hobbes's point. There are theories of obligation, and there is natural obligation, and they are both in play. Sovereign vice necessarily undermines the natural obligation that does far more to hold together a people than any book taught in university, or any threat of violence, ever could. Sovereign vice rots out the state. What remains is a real threat of civil war and a pervasive desire by the multitude (informed by experience) for a new founder, a leader of eminent virtue. At least, so I argue.

## Style and referencing

I have kept to the following stylistic conventions. Wherever practical, I use shortened titles (as I have already). I use Ferdinand Tönnies's edition of

*Elements* (1928) and Richard Tuck and Michael Silverthorne's edition of *De Cive* (1998). I use Noel Malcolm's three-volume edition of *Leviathan* (2012). For citations to *Leviathan* and *De Cive*, I reference volume (where appropriate in capitalized roman numerals), chapter number (in small caps roman numerals), then page number (e.g., Hobbes, *Leviathan*, II:VIII. 104). For *Elements* I reference part, chapter, and section (e.g., Hobbes, *Elements*, pt. I. XIX. § 9). For Hobbes's other texts, I use Molesworth editions and follow the same conventions, adding parenthetical clarifications wherever appropriate. Karl Maurer kindly gave me permission for the use of his translation of Hobbes's *Vita Carmine Expressa*. I intermittently footnote definitions, almost always following Malcolm's lead, where appropriate. I make ample references to chapters in *Leviathan* and will almost always refer to them by small caps roman numerals (XII) instead of by chapter and number (chapter XII). All other texts follow standard Chicago Style conventions. One exception regards punctuation and quotations. I am keen to avoid interpolating the text, and one way of unintentionally doing that is to change punctuation to meet stylistic conventions. Hence, punctuation has been kept within quotations when it is true to the original quotations, and moved out where it is not (the exception to this rule is for long quotations which are indented and not in quotation marks, in this case I have marked the punctuation in square brackets to indicate that it deviates from the original). The argumentative approach of this book, along with my awareness of the disagreement between my account and parts of the standard model, generates my use of many long quotations from Hobbes's texts. My intention is to avoid interpolation; my aim is to describe what Hobbes is doing. It may make for clunkier prose, but it gets the job done.

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## 2. *Leviathan* against the Borough Corporation

**Abstract:** This chapter studies the development of Hobbes's political thought focusing on the problem of urban republicanism. I argue that signature developments in *Leviathan* respond to three compounding versions of urban republicanism. First is the general European idea that cities and boroughs are the communal wellsprings of republican ideas and practices. Second are the particularly British politics of the borough corporation and its relationship to the Civil Wars. Third are Hobbes's own discussions of democracy in *Elements*. Against these three points, I argue that Hobbes's theory of the state, representation, and the social covenant in *Leviathan* can be fruitfully understood as actively denying and undermining the problem of borough democratic and oligarchic republicanism.

**Keywords:** borough corporations; urban democracy; oligarchy; civil war; the state

### Introduction

It is generally accepted that Hobbes's account of the state, like his assault on the republican concept of freedom,<sup>1</sup> was intended to undermine the ideology of popular sovereignty.<sup>2</sup> In this interpretation, Hobbes's ideological intervention initially met with mixed success. In the short term, Charles II saw greater advantage in continuing to promote the ideology of divine right. Hobbes's ideas prevailed in the long term, as the idea of the fictional state agent ascended to near hegemony in the nineteenth and twentieth centuries.<sup>3</sup> However, as many have shown, that idea was readily repur-

1 Skinner, *Hobbes and Republican Liberty*.

2 Skinner, "A Genealogy of the Modern State."

3 Skinner, "A Genealogy of the Modern State," 348.

posed to republican ends.<sup>4</sup> Conspicuously, many of today's neorepublicans enthusiastically endorse the idea of the fictional state.<sup>5</sup> If the theory of the fictional state was meant to remedy republican "*Tyrannophobia*", then it appears to have failed.<sup>6</sup> Or perhaps it succeeded, but the context of Hobbes's contribution has been misconstrued, leading to misinterpretations of its intention, effect, and overall significance in understanding the political philosophy of *Leviathan*.

I defend the latter claim. I do so by examining another aspect of Hobbes's historical context, one largely unexplored in Hobbes scholarship. I follow others in showing that Hobbes's usurpation of the popular sovereignty tradition was integral to the development of his theory of the fictional state. However, I further argue that his assault on the ideology of popular sovereignty concealed a more essential attack on the quotidian practices of what is variously called urban republicanism, borough independence, or the politics of the city commonwealth. In my argument, the novelty of Hobbes's fictional state theory is better explained by comparing it with the variant of the popular sovereignty tradition that considers the borough or town as embodying a "people" with ancient claims to autonomy. This contrasts that tradition's national-ideological variant, which defines "the people" as the total population living within the realm. Specifically, I argue that Hobbes appropriated, disassociated, and recast the theory of the fictional borough agent, projecting those ideas in the service of the macroscopic fiction of the state. Further, and on a more practical level, Hobbes advised future sovereigns to monopolize control over the symbolic, charitable, juridical, and social institutions that were the purview of the boroughs and towns, with the intention of simultaneously undermining and counterposing the traditional functions of the boroughs. To this end, Hobbes harnessed the ideology of popular sovereignty to help delegitimize and chasten the root practices of town and borough independence. These kinds of considerations

4 For example, Daniel Lee shows that although Hobbes attempts to chasten popular sovereignty ideology by conjoining the ideas of democracy and state sovereignty, that conjunction was soon adopted by many republicans. Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, chap. 8. Similarly, Richard Tuck shows how many republican and democratic critics of Hobbes readily repurposed his ideas to their own cause. Tuck, *The Sleeping Sovereign*.

5 Philip Pettit asserts that statism is the political equivalent of a law of physics, insofar as it simply has to be accepted as an ontological truth of modern political life. Pettit, *On the People's Terms*, 161. Skinner writes that "we can scarcely hope to talk coherently about the nature of public power without making some reference to the idea of the state as a fictional or moral person distinct from both rulers and ruled". Skinner, "A Genealogy of the Modern State," 362.

6 Hobbes, *Leviathan*, II:XXIX. 508.

have certainly not passed without note—many are fundamental lines of inquiry in the literature—but the urban element has.

Historiographically, I aim to recalibrate the debates about the state, democracy, and popular sovereignty in Hobbes to recent works in sixteenth- and seventeenth-century British urban history. Here, among others, the works of Catherine Patterson, Philip Withington, Robert Tittler, and Paul Halliday are prominent.<sup>7</sup> Some of these scholars, such as Halliday and Withington, do refer to Hobbes, but only to give color to their own studies.<sup>8</sup> However, Hobbes scholarship has yet to take note of these historiographical contributions. I reject this tendency, using these studies to inform an urban contextual history of the development of Hobbes's political thought.

To make my case, I triangulate the theory of the state in *Leviathan* through ideological, historical, and textual coordinates. The broad background for the ideological coordinate is the work of Johannes Althusius. He encapsulates a variant of the popular sovereignty tradition distinct from its national counterpart, one that prioritized the city. The historical coordinate focuses on the politics between town and king in the period up to the outbreak of the civil wars. The textual coordinate is Hobbes's conception of the democratic borough in *Elements* (1640). Together, these three points allow me to characterize, contextualize, and track the developments in Hobbes's thoughts about urban democratic and oligarchic republicanism, borough autonomy, and the state in *Leviathan* (1651).

I conclude the chapter with some very brief reflections on the influence of Hobbes's assault on borough politics, which is followed by a postscript on the puzzle of the democratic deficit in *Leviathan* and the question of new foundations. The puzzle is that borough politics in *Elements* were integral to his theory of new foundations: all regimes emerge out of the state of war and transform into an aristocracy or monarchy by way of urban democratic forms. Consequently, Hobbes's very success in extirpating the democratic republican borough from his political theory is also a blow against his theory of new foundations.

A note on the place of Althusius in the following discussion is in order. He serves two functions in this chapter. First, regarding the genealogy of the

7 Withington, *The Politics of Commonwealth*; Withington, "Urban Citizens and England's Civil Wars"; Withington, *Society in Early Modern England: The Vernacular Origins of Some Powerful Ideas*; Halliday, *Dismembering the Body Politic*; Patterson, *Urban Patronage in Early Modern England*; Tittler, *The Reformation and the Towns in England*; Goldie, "The Unacknowledged Republic: Officeholding in Early Modern England"; Prak, *Citizens without Nations*.

8 Withington, *The Politics of Commonwealth*, chap. 8; Halliday, *Dismembering the Body Politic*, 28.

idea of popular sovereignty, it is widely accepted that Hobbes was abreast of the continental tradition in corporatist thought, a tradition that includes Althusius.<sup>9</sup> I endeavor not to challenge this genealogy but to strengthen it by showing that Althusius has been mischaracterized. This would seem to weaken the case for Hobbes having engaged with Althusius. However, this same mischaracterization also pertains to parts of Hobbes's thought, and when both are amended, the continuities become clearer. Secondly, Althusius allows me to thematize a variant of the popular sovereignty practice, which took the city commonwealth as its core concern. This practice was widespread throughout England and Europe but rarely received the level of polemical ideological expression of other national popular sovereignty variants. As Maarten Prak notes, "Urban republicanism [...] did not produce a systematic political philosophy, nor an authoritative statement of its main features."<sup>10</sup> Althusius, on Prak's account, "was merely systematising a practice that had long before emerged in urban environments and would continue to be practised, even without his theoretical blessings."<sup>11</sup> Perhaps that is why these widespread practices have not been discussed by Hobbes scholars, who have focused on ideological debates manifested at the national level. Regardless, excluding urban politics because of the absence of expressive political theorization on methodological grounds is unnecessary, especially considering the wealth of historical evidence available to be brought to bear on the analysis.

### Althusius and the politics of the city

Althusius's *Politica Methodice Digesta, Atque Exemplis Sacris et Profanis Illustrata* was published in 1603 and enlarged and reprinted in 1610 and 1614. This places it after Jean Bodin's *Les Six livres de la République* (1576) and before Hobbes's *Leviathan*.<sup>12</sup> Born in Diedenshausen in Westphalia circa 1557, Althusius studied Aristotle in Cologne and earned his doctoral degree from Basel in 1586.<sup>13</sup> In 1604, following the publication of *Politica*—and perhaps because of its merits—Althusius was offered the position of syndic

9 This is a speculative point, as there is no evidence of Hobbes having read Althusius.

10 Prak, *Citizens without Nations*, 44.

11 Prak, *Citizens without Nations*, 45.

12 Althusius, *Politica*, Translator's INTRODUCTION. xi. On Althusius, see Gierke, *The Development of Political Theory*; Hueglin, "Johannes Althusius: Medieval Constitutionalist or Modern Federalist?"; Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 230–43.

13 Althusius, *Politica*, Translator's INTRODUCTION. xi.

of Emden, East Friesland, a town “on the frontiers of both the German Empire and the Netherlands”, embroiled in its own regional power struggles.<sup>14</sup> Althusius wrote *Politica* in response to Bodin’s influential defense of absolute sovereignty. Part of Althusius’s strategy is to exploit the gap left by Bodin’s acceptance of the popular (city) state in his otherwise staunch defense of the sovereign absolutism of empire and commonwealth.

For Althusius, people form cities because they are incapable of individually providing either their “requirements of life” or the requirements of a “comfortable and holy life”.<sup>15</sup> The substance of these requirements emerges organically from groups of people living together. Identifying problems, desires, and goals is a communal and communicative practice. Althusius defines politics—he uses the term *symbiotics*—as “the art of associating (*consociandi*) men for the purpose of establishing, cultivating, and conserving social life among them.”<sup>16</sup> To Althusius, politics denotes the communicative, economic, social, and administrative flux of urban life, given order by the manifest compromises, agreements, and concessions necessary for citizens (*symbiots*) to live together in peace. Politics are therefore not architectonic; they are emergent and dynamic properties of communal life. The most important level of symbiotic association for Althusius is the city, because it is the first level of organization that can sustain itself autonomously. It is also the organizational unit people return to in moments of crisis.

For Althusius, the city is a representative agent (*persona repraesentata*). The city “represents men collectively, not individually [...] it takes the place of a person when legitimately convoked and congregated.”<sup>17</sup> This community represents “diverse associations of families and collegia”, which Althusius notes expressly does not represent the people, with “people” being understood as “the individual members of private associations.”<sup>18</sup> Althusius writes that “Whence it appears that the community is different from the individual persons of a community, although it is often considered to be a representational and fictional person.”<sup>19</sup> Although this fiction can take on juridical functions, its agency is not determined by law. Instead, the fictional agency of the city is given personality by the notion of justice emerging from communal life. According to Althusius,

14 Althusius, *Politica*, Translator’s INTRODUCTION. xi–xii.

15 Althusius, *Politica*, I. § 4.

16 Althusius, *Politica*, I. § 1.

17 Althusius, *Politica*, v. § 9.

18 Althusius, *Politica*, v. § 10.

19 Althusius, *Politica*, v. § 27.

[c]oncord is fostered and protected by fairness (*aequabilitas*) when right, liberty, and honor are extended to each citizen according to the order and distinction of his worth and status. For it behooves the citizen to live by fair and suitable right with his neighbor, displaying neither arrogance nor servility, and thus to will whatever is tranquil and honest in the city.<sup>20</sup>

The familial, social, and political dynamism of the city comes to distill the highest ideals (*jus*), which citizens then strive to embody. The city is sovereign, with regard to the creation of notions of justice. The individual, however, is not subordinate to that higher ideal. Althusius sees justice as founded on the reflection of one's status in the community. It is informed by beliefs of one's own worth and the worth of fellow citizens. Sovereign, on this first account, are those communal norms that necessarily and always ground citizens social, political, and religious notions of justice.

But there is also in Althusius a second mode of sovereignty. Cities form realms. For Althusius, another part of sovereignty is an emergent property of a symbiotic universal realm's confederated norm. Althusius writes,

[T]he owner and usufructuary of sovereignty is none other than the total people associated in one symbiotic body from many smaller associations. These rights of sovereignty are so proper to this association [...] that even if it wishes to renounce them, to transfer them to another, and to alienate them, it would by no means be able to do so, any more than a man is able to give the life he enjoys to another. For these rights of sovereignty constitute and conserve the universal association. And as they arise from the people, or the members of the commonwealth or realm, so they are not able to exist except in them, nor to be conserved except by them.<sup>21</sup>

This second account of sovereignty is as a realm-level usufructuary. It is, by Althusius's definition, the confederated power to "conserve the universal association" from external violence and internal discord.

What are we to make of Althusius's two accounts of sovereignty? In some examinations of Althusius's thought—Otto von Gierke's is an influential example—Althusius is presented as presaging Jean Jacques Rousseau's notion of the General Will.<sup>22</sup> Gierke writes that Althusius "accepted the absolutist

20 Althusius, *Politica*, VI. § 47.

21 Althusius, *Politica*, PREFACE TO THE THIRD EDITION (1614), 13.

22 Gierke, *The Development of Political Theory*, 16–18.

idea of sovereignty in all its rigor and transferred this sovereignty to the people.”<sup>23</sup> Alternatively, Althusius is associated with the Monarchomach tradition, as well as the claim that the *populus* is sovereign, and their power cannot be conferred or abdicated.<sup>24</sup> For example, Daniel Lee writes that Althusius “absorbed Bodin’s teachings about the absolute and indivisible nature of sovereignty”, except that for Althusius “sovereignty can only be popular in form, and that is because sovereignty emerges out of what he regards as the essentially ‘consociational’ nature of the state.”<sup>25</sup> There is much to recommend in their interpretations. However, I believe they are mistaken in collapsing two modes of sovereignty in Althusius, one consequence of which is to undervalue the singular and persistent place of the city in Althusius’s understanding.<sup>26</sup>

The key point of clarification concerns the meaning of Althusius’s term “total people.” The first point of clarification regards its antinomy. There is no corresponding counterpoint of a multitude of discrete individuals. Even in the private sphere (in its most restrictive sense), the individual is already subsumed within the more important symbiotic association of the family, and again at the level of various social and economic associations. At the level of the city’s political symbiotic association, the individual is thus removed in any relevant ethical or political sense. The realm is of a collection of cities, not a territorial reign over a population of individuals. Althusius does not prefigure a Rousseauian notion of the General Will; if anything, his claim is antithetical to it.

Second, it appears to follow that Althusius’s symbiotic method of analysis should, in turn, subsume the city into the realm, just as families and other associations are subsumed into the city. However, this is not the case in one crucial aspect, namely the symbiotic formulation of a communal conception of justice. As we have seen—and as Althusius stresses repeatedly—the city is a special unit, exactly insofar as it is the level of association where autonomy is possible and, for the same reasons, the communal idea of justice

23 Gierke, *The Development of Political Theory*, 161.

24 See, for example, van Gelderen, “Aristotelians, Monarchomachs and Republicans: Sovereignty and *Respublica Mixta* in Dutch and German Political Thought, 1580–1650,” 206–7; Skinner, *Visions of Politics, II: Renaissance Virtues*, 291–92; Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 241.

25 Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 228. Tuck makes a similar argument regarding the democratic substrate of Hobbes’s theory of sovereignty in *De Cive*; see Tuck, *The Sleeping Sovereign*, chap. 2.

26 Here and elsewhere, Lee is clear about the place of the city in Althusius’s thought. However, Lee ultimately holds that the city is subsumed within Althusius’s discussion of the realm; see Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 235.



is formed.<sup>27</sup> Sovereignty, as it relates to norms of justice, is an output of the myriad discussions emerging through the constant interaction of citizens in day-to-day urban life. This is expressed as a responsibility for sovereign administrators to organize the defense of the realm and to facilitate inter-city affairs. Cities are the sources of justice in Althusius, and the sovereign magistrate is charged with attending to those common denominators of justice that can be profitably communicated by neighboring towns and cities. The “fundamental law” of the realm, Althusius writes, “is nothing other than certain covenants [...] by which many cities and provinces come together and agree to establish and defend one and the same commonwealth by common work, counsel, and aid.”<sup>28</sup>

The realm, by contrast, can only ever be dependent on city-sovereignty. It can neither generate the conceptions of justice that have brought the realm's various peoples together nor can it commandeer that power. Althusius speaks of the realm and the imperative of its sovereign *administrator* to attend to the well-being of the “people”. The realm's sovereign is usufructuary and related primarily to the “material necessities of life”.<sup>29</sup> Even at this level, the term “total people” is misleading; it would be better rendered as “total peoples”. The strongest evidence of this is found in Althusius's discussion of defensive war. He writes that the sovereign must defend the people: “This right of protection consists in (1) aid and (2) counsel”,<sup>30</sup> where “a province, city, village, or town”<sup>31</sup> needs protection and requests aid and counsel. The defense of the realm is a confederated cities treaty principle, not a federal or proto-national principle.<sup>32</sup> “Universal power is called pre-eminent, primary, and supreme”, Althusius writes, “not because it is above law or absolute, but in respect to particular and special subordinate power that depends upon it, arises and flows from it, returns in time to it, and is furthermore bound to definite places.”<sup>33</sup> For these reasons, Althusius writes that upon the death of a king or magistrate, sovereignty “returns to the estates and orders of the realm”.<sup>34</sup> Ultimately, however,

27 These were ideas that Althusius put into practice as the syndic of Emden; see Hueglin, “Johannes Althusius: Medieval Constitutionalist or Modern Federalist?,” 9–10.

28 Althusius, *Politica*, XIX. § 49.

29 Althusius, *Politica*, XVI. § 1.

30 Althusius, *Politica*, XVI. § 2.

31 Althusius, *Politica*, XVI. § 4.

32 Van Gelderen, “Aristotelians, Monarchomachs and Republicans: Sovereignty and Respublica Mixta in Dutch and German Political Thought, 1580–1650,” 207–8.

33 Althusius, *Politica*, IX. § 27.

34 Althusius, *Politica*, XIX. § 18.

even sovereignty in its usufructuary form returns to the city, since it alone is immortal, “because its generations perpetually succeed one after the other.”<sup>35</sup> The point is that we should not conflate the aggregate claim of many confederated cities as a general popular sovereignty claim. King’s will come and go, but sovereignty always returns to the city because it alone can generate and administer justice.

## English urban republicanism

Debate over empires and free cities on the European continent is one thing. The politics between crown and town in England is another. Recent urban historiography has shown that the difference is primarily at the level of kingdom and empire and that English towns were somewhat more similar to the continental city-states. Hobbes was writing at the tail end of a century-long period of growing urban political consciousness in England and, later, at the outset of a general recalibration of the English political culture toward a national political culture.<sup>36</sup> Scholars usually read Hobbes and his assault on the popular sovereignty tradition through the interpretive lens of the latter history. This section explicates Hobbes’s urban historical milieu, setting the stage to contextualize *Elements* within—then *Leviathan* against—that history.

Prior to the Reformation, boroughs were communal spaces, networks of formal and informal connections encompassing a wide variety of practices including work, religion, and culture, all subordinate to a lord.<sup>37</sup> Although these elements of urban life persisted after the Reformation, they became subject to incremental socio-economic structuration, which would become the foundation of emergent quasi-democratic and oligarchic politics.<sup>38</sup> This transition tracks the emerging importance, post-1540s, of formal borough incorporation.<sup>39</sup> Consequently, while prior to the sixteenth century a borough’s autonomy (often taking the form of borough incorporation) referred to the political relationship between the borough and its lord, afterward the

35 Althusius, *Politica*, PREFACE TO THE THIRD EDITION (1614). 13.

36 Withington, *The Politics of Commonwealth*, 3–15; Halliday, *Dismembering the Body Politic*.

37 Very late in the preparation of this manuscript, I discovered that Jacob T. Levy defends something akin to a general version of the argument I am making regarding Hobbes, specifically in *Rationalism, Pluralism, and Freedom*, chap. 5.

38 Tittler, *The Reformation and the Towns in England*, chaps. 1 and 9. On the use of the term “oligarchy,” see Archer, “Politics and Government 1540–1700,” 241–46.

39 Tittler, *The Reformation and the Towns in England*, 88–96.

politics of borough independence increasingly meant independence from the crown.<sup>40</sup> In turn, lords and other eminent individuals began to play an important role in charter politics as agents of patronage.

The borough corporation was a conglomeration of practices, histories, laws, and authorities partaking in some kind of hierarchy of contestation, but one so muddled and varied as to make untangling that hierarchy or generalizing it all but impossible. As Coke summarized in *Case of Sutton's Hospital*, under the margin heading "What things are the essence of a corporation": "Lawful authority of Incorporation; and that may be by four means, *scil.* by the Common Law, as the King himself, &c. by authority of Parliament; by the King's charter [...]; and by prescription."<sup>41</sup> Whatever their particularly historical claims, by the early seventeenth century, what was most important was that the borough charters were the primary socio-legal instruments by which a town's elite could formalize the means of governance and exercise a measure of autonomy.

Legally, incorporation had five distinguishing marks: the formalization of perpetual succession; legal fictional agency (above and apart from its constitutive members); land rights (against lingering feudal privileges and the church); an official seal demarcating the symbolic continuity of the borough over time; and autonomy to make by-laws (a relatively wide purview in light of the anemic power of the king).<sup>42</sup> Kings created charters—or conferred upon existing charters royal authorization—and charters created a fictional legal persona to instantiate the borough's agency in various political, legal, and commercial contexts.<sup>43</sup> The king's act of creation was important, as it conferred security over time to privileges that were otherwise grounded only in custom and tradition. Incorporation also provided boroughs with the means to give external expression to their local political interests and communal personality. Borough charters, Withington notes,

embed the electoral process firmly within the city commonwealth, so making parliamentary representation an expression of the freemen's

40 Patterson, *Urban Patronage in Early Modern England*, 166.

41 Coke, *The Selected Writings and Speeches of Sir Edward Coke*, "The Case of Sutton's Hospital" (1612).

42 These marks were described in Coke, "The Case of Sutton's Hospital" (1612). Halliday describes this case as "the single most influential writing on corporations in the seventeenth and eighteenth centuries." *Dismembering the Body Politic*, 31. See also Weinbaum, *British Borough Charters*, xxiii–xxviii; Cf. Tittler, *The Reformation and the Towns in England*, 88.

43 Patterson, *Urban Patronage in Early Modern England*, 164–66.

fictional personality and offering a degree of protection from—or at least grounds for negotiation with—external political interests.<sup>44</sup>

This is why incorporation was, Martin Weinbaum notes, “not so much a new extension of the scale of rights, but a concentration and intensification [...] the most comprehensive statement of all attainable privileges.”<sup>45</sup>

The idea of “concentration and intensification” points us toward the extralegal significance of these borough politics, an importance only suggested by formal incorporation. Equally important was that the manifestations of those social practices (symbolic, ceremonial, and economic) in the lives of townspeople conferred an extralegal expression of borough personality beyond formal corporate agency. Historical memory grounded these ideas, while the desire for autonomy and the protection of informal privileges motivated them. But, as Susan Reynolds and others note, the juridical expression of a town’s autonomy was a tool for protecting the more substantive social, cultural, and political practices already long in existence.<sup>46</sup>

Incorporation often catalyzed legal and political innovation. This included the establishment or formalization of local institutions of law and order, whereby town officers were promoted to justices of the peace.<sup>47</sup> The boroughs also increasingly took on the charitable functions left by the Dissolutions, as well as many other social and community services.<sup>48</sup> Formally, these practices were hierarchically subordinate to the king, but they were substantive progenitors of the devolution of justice. Withington describes this period as embodying “New methods of keeping the peace, serving on juries, regulating credit relations, or relieving the poor required, in practice, an unprecedented level of self-governance and discretion both personally and communally.”<sup>49</sup>

These developments weighed heavily on how townsmen came to think about freedom. Fundamentally, at stake for many was a question not of legal non-interference but of freedom, understood as the independence of the freeman and the free borough manifest in communal practices and

44 Withington, *The Politics of Commonwealth*, 40.

45 Weinbaum, *British Borough Charters*, xxi.

46 Reynolds, *An Introduction to the History of English Medieval Towns*, 113–14; found in: Archer, “Politics and Government 1540–1700”; Tittler, *The Reformation and the Towns in England*, 89–90.

47 Rigby and Ewan, “Government, Power, and Authority 1300–1540,” 298–300; Tittler, *The Reformation and the Towns in England*, 179–80.

48 Tittler, *The Reformation and the Towns in England*, 59–74, 75–102; Withington, *The Politics of Commonwealth*, 180–90.

49 Withington, “Public Discourse, Corporate Citizenship, and State Formation in Early Modern England,” 1025.

expressed in law authored by those same communities. That freedom looked back historically to the ancient liberties of towns and cities but was manifest and rehearsed in continuous communal engagement. As Jonathan Barry writes, urban freedom

was explicitly collective in its nature and it emphasized, rather than concealing, the economic and political dimensions of social interaction. But, at the same time, it removed such economic and political dimensions from the realm of necessity and reconciled their force with independence, by presenting them as the rules of an association to which the freeman had voluntarily adhered for the collective as well as his individual good. The ultimate form taken by this reconciliation was that of the law: the law seen not as a form of servitude (as it would be for slaves or in a tyranny), but as the embodiment and guardian of freedoms and liberties, which could not otherwise exist.<sup>50</sup>

I quote Barry at length because it drives home the point regarding local underpinnings of republicanism in the early seventeenth century—a point pertinent to the discussions below—while evoking many of the theoretical claims made by Althusius.

From our vantage point in the wake of *Leviathan*, it appears either paradoxical or politically naïve that the crown would create and foster these corporate entities while often supporting the liberties of the towns and cities. The urban historiography has revealed that this is an anachronistic perspective. Instead, the king and his counsellors understood themselves as *augmenting* their power by conferring corporate borough agency, as the act itself instantiated the king's legitimacy to do so. Until the civil wars, the centralization of power required empowering the boroughs, as codifying measures of autonomy on the town reified the perception of the king as the agent with the power to create these entities. This is not to say that the king did not intermittently attempt to monopolize power. However, those attempts usually failed and sometimes served as examples of the implicit dependency of the king upon the boroughs.<sup>51</sup> Generally, royalists and the king were more concerned with jockeying to have favored figures named

50 Barry, "Civility and Civic Culture in Early Modern England: The Meanings of Urban Freedom," 193–94. See also Withington, "Public Discourse, Corporate Citizenship, and State Formation in Early Modern England."

51 On the politics of quo warranto proceedings in the period, see Patterson, "Quo Warranto and Borough Corporations in Early Stuart England." See also Withington, *Society in Early Modern England: The Vernacular Origins of Some Powerful Ideas*, 130–31.

as borough representatives.<sup>52</sup> Of course, the boroughs were also very much aware of their reliance on the king, as much as the king's reliance on them.

Thus, in the period leading up to the civil wars, the powers and freedoms of the boroughs were incrementally augmented, as were the ideological and social foundations for their claim of being more-than-juridical fictional moral agents. *Simultaneously*, the powers of the king increased. Accordingly, the tensions between the two sides gradually became more pronounced. However, that tension was not immediately apparent, and the revolutionary implications were nowhere to be seen on the intellectual or political horizons. Each party thought themselves to be more secure in their own power, legitimacy, and autonomy. The symbiotic relationship between town and crown until the late 1630s needs to be stressed, as it is usually mischaracterized when presented through the lens of the tumult of the 1640s. As Patterson notes, the typical mischaracterization asserts that

[w]ith little or no sense of national purpose, but rather a strong loyalty to one's county community, gentleman rejected the dictates of the king and defended the rights of their localities. Similarly, urban communities more concerned with their economic well-being and political autonomy, became alienated from the center and stepped more easily into rebellion.<sup>53</sup>

Patterson contends that although "rhetorically powerful, this black-and-white world of independence and dependence, of localism and isolation, did not really exist."<sup>54</sup> This, Patterson explains, was due to robust patronage networks. Concord between these various power centers was structured around the dynamic patronage networks connecting towns, boroughs, lords, and the king. These networks allowed for the constant recalibration of competing forces and interests under a guise of civility and tradition. As long as these networks remained dynamic, the tension between the parties was either unapparent or could be elided even as their discrete powers were augmented.

The intricate balancing of competing powers would not last. The first problem was an upsurge of urban challenges to oligarchic control. Those challenges were multifaceted and born of countervailing pressures. In part, the challenge was a self-inflicted one, whereby oligarchs hoping to augment both their local and national legitimacy expanded the franchise.

<sup>52</sup> Patterson, *Urban Patronage in Early Modern England*, chap. 5.

<sup>53</sup> Patterson, *Urban Patronage in Early Modern England*, 6.

<sup>54</sup> Patterson, *Urban Patronage in Early Modern England*, 6.

More serious were the challenges flowing from the corruption of the town oligarchs and the pilfering of poor relief funds.<sup>55</sup> These challenges were widespread and often matched with challenges to parliamentary elections. But that latter point was by and large a knock-on effect. In most cases, the concerns are related to urban political considerations.<sup>56</sup>

Just as the urban communities were coming under internal stress, Ship Money and the civil wars snapped that synergetic relationship, laying bare two irreconcilable nodes of loyalty and power. Patterson notes that “as the highly charged political situation descended into war in the 1640’s, patronage as it had been practiced in the previous 60 years became a casualty.”<sup>57</sup> Just as the town’s patron facilitated royal grants for the charters—thereby allowing the town’s oligarchs to secure various protections, opportunities, and securities—so, too, did the same patron afford the crown insights into local politics and economics. Ship Money put patrons in a position where they could not placate either party and consequently could no longer mediate their disputes.<sup>58</sup> Ship Money forced town and crown further apart by laying the responsibility of assessing payment on the county sheriff, who then had to decide whether the countryside or the town would bear the burden. Similarly, Ship Money pushed towns to demand ratings from cathedral closes, prompting the clergy to challenge the corporation by asserting their own exclusion from charter privileges.<sup>59</sup> This, in turn, hardened the position of the towns, which now saw their hard-won autonomy under significant strain. With the patronage systems crimped, each subsequent move was antagonistic.

### Cities in *Elements*

Althusius would have recognized this understanding of representation, the localization of justice, the treatment of the king as a useful administrator, and the natural resistance of the city against royal prerogative. As will be

55 Hirst, *The Representative of the People? Voters and Voting in England Under the Early Stuarts*, 44–61.

56 Hirst has tracked these local considerations, and concludes that “For few actors locally, on whichever side of the urban conflict, seemed to view parliamentary franchise *per se* of decisive importance”, and later “In few urban divides do we find challenges to the corporation coinciding with explicit national alignment.” Hirst, *The Representative of the People? Voters and Voting in England Under the Early Stuarts*, 54 and 59.

57 Patterson, *Urban Patronage in Early Modern England*, 237.

58 Patterson, *Urban Patronage in Early Modern England*, 147–49.

59 Patterson, *Urban Patronage in Early Modern England*, 150.

seen, Hobbes attacks these politics in *Leviathan*. However, in *Elements*—penned during the political troubles surrounding Ship Money and privately circulated in 1640, before the total breakdown of the patronage system and the civil wars—Hobbes is polemically mocking and theoretically critical but nevertheless in line with typical practices and accommodating of urban democratic politics.<sup>60</sup> Indeed, Hobbes could be read as coming close to endorsing those politics. Two rather different elements of *Elements* speak to these politics. One element is comprised of his immediate historical reflections on the claims of cities and freemen to independent standing. The other regards Hobbes's theoretical discussions of how commonwealths come into being and the philosophy of history in which it is couched. In different ways, but in essential agreement, both discussions point to the centrality of urban politics in Hobbes's theoretical and practical critiques. I begin with the theoretical discussions, then move to the more polemical and grounded discussions.

At the core of *Elements* is a theoretical account of the creation of a commonwealth. Central to that theory is an account of the city's role in the foundation of new regimes. Hobbes is not particularly eager to explicate the idea of city-republics, which is imprecisely tied to a particular account of democracy in *Elements*—an account which is itself easily conflated with a different one as majoritarian rule. Scholars have avoided Hobbes's discussion of cities and reduced the discussion of democracy down to majoritarian rule (as Hobbes does in *Leviathan*), ignoring the discussion of urban democracy. However, in *Elements*, Hobbes is very much concerned with borough and city politics.

Hobbes concludes the first part of *Elements* by speaking of the congregation of individuals looking for mutual defense. He writes:

This union so made, is that which men call now-a-days a BODY POLITIC or civil society; and the Greeks call it πόλις that is to say, a city; which may be defined to be a multitude of men, united as one person by a common power, for their common peace, defence, and benefit.<sup>61</sup>

Hobbes then calls this union “a city or body politic”.<sup>62</sup> Cities create subordinate corporate bodies to address certain “common actions” necessary to

60 On the composition of *Elements*, see Baumgold, “The Composition of Hobbes's Elements of Law.” See also Martinich, *Hobbes: A Biography*, 121–60.

61 Hobbes, *Elements*, pt. I. XIX. § 8.

62 Hobbes, *Elements*, pt. I. XIX. § 9.



the realization of “some common benefit of theirs, or of the whole city”.<sup>63</sup> These common benefits include governing the city itself, providing counsel, regulating trade, and other functions necessary for the realization of the common benefit. Hobbes concludes this brief discussion on the formation of cities by asserting that some cities (patrimonial and despotic kingdoms) are generally called commonwealths. That definitional move seems to soften his focus on cities as being the integral institutional mode of foundation, all the more so since the following chapter speaks of commonwealths in general, whether democratic, aristocratic, or monarchical. However, a closer examination of Hobbes's subsequent analysis of democracy supports the conclusion that he does have in mind an urban democratic moment of foundation.

Part II begins by delineating the three modes of sovereignty a commonwealth can take—democracy, aristocracy, and monarchy—and distinguishes them only on the basis of the number of people who are sovereign. On this first account, democracies are unrelated to cities and are merely normal arbitrary regimes ruled by the many.<sup>64</sup> However, the following discussion quickly moves past this quantitative categorization of regimes and takes up the crucial qualitative functions of democracy.

The first amendment to the quantitative characterization of democracy situates democracy within a specific temporal juncture, one following the state of war and preceding the election of an aristocracy or monarchy. Hobbes writes with notable nonchalance (for a royalist) that “The first in order of time of these three sorts is democracy, and it must be so of necessity”.<sup>65</sup> The reason for this, Hobbes continues, is

because an aristocracy and a monarchy, require nomination of persons agreed upon; which agreement in a great multitude of men must consist in the consent of the major part; and where the votes of the major part involve the votes of the rest, there is actually a democracy.<sup>66</sup>

Democracy, Hobbes claims, is the source of all arbitrary regimes. I will address the curiosity of what Deborah Baumgold calls Hobbes's “democracy first” thesis in *Elements*, specifically that Hobbes does not register it as having any polemical significance as an endorsement. But

63 Hobbes, *Elements*, pt. I. XIX. § 9.

64 Hobbes, *Elements*, pt. II. I. § 3.

65 Hobbes, *Elements*, pt. II. II. § 1.

66 Hobbes, *Elements*, pt. II. II. § 1.

to understand this, the theoretical function of democracy in *Elements* needs explication.<sup>67</sup>

We must begin by appreciating not only democracy's place at the juncture between the state of nature and an instituted regime but also the particular reasons why democracy and not some other kind of regime must take that place. For that, we need to again emphasize that Hobbes has shifted the terms of the debate and is no longer speaking of a democracy in the numerical sense. Instead, what is distinctive about democracy in *Elements* is its qualities. Hobbes writes,

[T]here passeth no covenant, between the sovereign and any subject. For while the democracy is a making, there is no sovereign with whom to contract. For it cannot be imagined, that the multitude should contract with itself, or with any one man, or number of men, parcel of itself, to make itself sovereign; nor that a multitude, considered as one aggregate, can give itself anything which before it had not. Seeing then that sovereignty democratical is not conferred by the covenant of any multitude (which supposeth union and sovereignty already made), it resteth, that the same be conferred by the particular covenants of every several man; that is to say, every man with every man[.]<sup>68</sup>

Democracies on this account are special, as they are neither natural nor arbitrary regimes. Yes, democracy is "a making", but it is not founded through arbitrary contract nor upheld by an autonomous sovereign power. There is no social covenant, and there is no sovereign power standing apart from the multitude/people, nor can there be. Hobbes's claim is not that politics is natural in Aristotle's sense. Neither is it one regarding the abdication of power to an overarching sovereign authority by way of a social covenant (as it is in *Leviathan*). Instead, "democracy" demarcates a congregational moment—often a recurrent one and therefore extended, albeit intermittently in time—where like-minded but disunited agents overcome the problem of conflicting and irreconcilable differences long enough to act as though they were united.

Although theoretically absolute, the power of democratic sovereignty understood in the sense of the congregated "sovereign demus"<sup>69</sup> in *Elements* is, in practice, contingent on the uncoerced agreement of denizens to abide

67 Baumgold, "The Composition of Hobbes's Elements of Law."

68 Hobbes, *Elements*, pt. II. II. § 2.

69 Hobbes, *Elements*, pt. II. II. § 3.

by the rules that they continually invent for themselves. Democracy, in *Elements*, is a manifestation of denizens who choose to rule themselves, meeting intermittently to do so. It is an example of what Hobbes would later dismiss in *Leviathan* as “Covenants, without the Sword”,<sup>70</sup> with one conspicuous difference: in *Elements* this sort of covenant is a foundational element of regimes by institution, not an absurdity.

From this definition of democracy, the continuity with the previous discussion of the foundation of a city becomes apparent. The urban significance of the earlier discussion of democracy is implied in the theoretical requirement that the multitude assemble in a physical location. That continuity is reiterated in the passage that follows. After the long quotation discussed above, in which Hobbes considers the ancient names for this political congregation, Hobbes writes,

And this is that which giveth being to a democracy; wherein the sovereign assembly was called of the Greeks by the name of *Demus* (*id est*, the people), from whence cometh democracy. So that where, to the supreme and independent court, every man may come that will and give his vote, there the sovereign is called the people.<sup>71</sup>

A decade earlier, in his translation of *The Peloponnesian War* (1629), Hobbes adds a note clarifying the term “*demoi*” to mean “Burroughs”.<sup>72</sup>

Hobbes requires a city-democratic moment, because it solves the problem of collective action during the foundations of new regimes. In *Elements*, as in *Leviathan*, the problem of new foundations is that there are grounds neither for knowing others’ intentions nor for signaling one’s own long-term intentions with certainty. This is because there is no shared measure for doing so. To Hobbes in 1640, democracy’s only virtue is that it solves the problem of shared measure. Democracy is the episodic and overlapping “particular covenants of [...] every man with every man [...] in consideration of the benefit of his own peace and defence”.<sup>73</sup> On this account, democracy is misleadingly called a regime. It is better understood as a particular epistemic-spatial synergy of distilled local interests combined with a shared historical memory and a promise to meet again. None of this is laudatory, and Hobbes certainly does not care

<sup>70</sup> Hobbes, *Leviathan*, II:XVII. 254.

<sup>71</sup> Hobbes, *Elements*, pt. II. II. § 2.

<sup>72</sup> Thucydides, *The Peloponnesian War*, bk. II. § 101.

<sup>73</sup> Hobbes, *Elements*, pt. II. II. § 2. See also Hobbes, *De Cive*, VII.

for democracy, but he does have to solve and explain new foundations, and democracy fits that bill.

Why would a fully arbitrary contract be required at all? This question brings us to the tension within democracy itself, and that tension goes a long way to explain why Hobbes describes a theory of democratic city republicanism in *Elements*. Having established the deliberative grounds for defining *meum* and *tuum*, democracies create a political space for deliberation and, thereby, oratory. Hence, once settled, democratic assemblies tend to concentrate power in the hands of the few most eloquent members of the body politic. Hence, democracy's virtue immediately transforms into a vice. "In a multitude of speakers therefore," Hobbes writes,

where always, either one is eminent alone, or a few being equal amongst themselves, are eminent above the rest, that one or few must of necessity sway the whole; insomuch, that a democracy, in effect, is no more than an aristocracy of orators, interrupted sometimes with the temporary monarchy of one orator.<sup>74</sup>

A democracy becomes at once imprudent and pusillanimous, as it is a regime ruled by opinion and cannot endogenously generate the capacity to order itself.

In *Elements* the transition away from a democracy takes place when the "*Demus*" addresses and overcomes its own irrationality.<sup>75</sup> Observing the degeneration of the *demus* into an arena of oratorical contestation and, Hobbes writes, "growing weary of attendance at public courts, as dwelling far off, or being attentive to their private businesses, and withal displeased with the government of the people",<sup>76</sup> these same people put forward "optimates" to stand as aristocratic sovereigns. The issue is put to a vote and culminates in the final democratic decision: the abdication of sovereignty, through election, to the rational "optimates" or a monarch.<sup>77</sup> "Out of the same democracy," Hobbes writes, "the institution of a political monarch proceedeth in the same manner, as did the institution of the aristocracy (viz.) by a decree of the sovereign people, to pass the sovereignty to one man named, and approved by plurality of suffrage."<sup>78</sup> This is the

74 Hobbes, *Elements*, pt. II. II. § 5.

75 Hobbes, *Elements*, pt. II. v. § 3.

76 Hobbes, *Elements*, pt. II. II. § 6.

77 Hobbes, *Elements*, pt. II. II. § 6.

78 Hobbes, *Elements*, pt. II. II. § 9.

moment of the artificial contract and the creation of the commonwealth proper. Consent is given by a democracy to the optimates, because the many recognize their own irrationality, the rationality of the optimates, and the general inconveniences of having to gather in assembly. In 1640 Hobbes theorized that although intermittent twangs of Aristotelian folly would slow the process, eventually boroughs always relinquish sovereignty to an aristocracy or a monarch, and he believed that they had done so in practice.

Two additional conceptual discussions make apparent Hobbes's understanding of and concern with contemporary urban democracy (or urban republicanism). The first regards Hobbes's discussion of freemen and freedom. The second concerns the fictional person of the commonwealth.

In Part II, iv of *Elements*, Hobbes takes aim at the concept of the "freeman" and the nature of freedom. Hobbes's discussions of freemen and freedom have both been construed as engaging in the popular sovereignty tradition in its national variant and/or with more abstract ideologies of freedom. But there are good reasons to think that these are not the only—and perhaps even not the most important—foils for understanding Hobbes's goal in *Elements*. There is quite a bit to unpack here, so it is worth quoting Hobbes at length. Hobbes begins with a discussion of subjection and the difference between freemen and slaves:

The subjection of them who institute a commonwealth amongst themselves, is no less absolute, than the subjection of servants. And therein they are in equal estate; but the hope of those is greater than the hope of these. For he that subjecteth himself uncompelled, thinketh there is reason he should be better used, than he that doth it upon compulsion; and coming in freely, calleth himself, though in subjection, a FREEMAN; whereby it appeareth, that liberty is not any exemption from subjection and obedience to the sovereign power, but a state of better hope than theirs, that have been subjected by force and conquest.<sup>79</sup>

The idea in the initial sentence is well known: the subjection of citizens is the same as the subjection of slaves, as both are subjects of their sovereign. But a closer examination of this and subsequent passages reads differently when contextualized within the urban politics leading up to the publication of *Elements*.

The first thing to emphasize is the meaning of the term "freeman" prior to 1640. "Freemen", especially in the 1630s, were primarily associated

79 Hobbes, *Elements*, pt. II. iv. § 9.

with the freemen who defended the ancient liberties of their towns and boroughs. As Iain Hampsher-Monk notes, Hobbes's definition of "freeman" meant "freeman of London" or "freeman of Exeter", etc. It had a "double meaning of being entitled to hold office but also of being 'free of' the feudal nexus."<sup>80</sup> It demarcated the freedoms recounted in the urban history discussed above. That point is bolstered by the theoretical framework within which Hobbes situates this passage. Those who may have "subjecteth himself uncompelled" and are "coming in freely" seem to be references to the theoretical democratic foundations Hobbes previously sketched. Hobbes then asserts that this urban account of freedom is not freedom *per se* but a "state of better hope". So, while Hobbes is clearly ramping up his criticism of the language being used by freemen, it is equally important to register what is being conceded to them. The notion of a "state of better hope" should not be dismissed as an ironic description of freemen. Instead, Hobbes seems to hold that this is a substantive difference between freemen and slaves. As we have seen—and as the history of borough incorporation attests—the idea of being recognized as a "freeman" meant *exactly* being in a state of better hope as to one's concrete autonomy in a range of issues.

Undoubtedly, Hobbes adds a strong royalist gloss on the politics of urban autonomy. Thus, he concludes the paragraph by asserting that

[f]reedom therefore in commonwealths is nothing but the honour of equality of favour with other subjects, and servitude the estate of the rest. A freeman therefore may expect employments of honour, rather than a servant.<sup>81</sup>

But even the royalist gloss exemplifies the claim that freemen may *expect* employment of honor—not honorifics, but political and judicial posts of real significance in the life of borough—from the king. Even Hobbes's more polemical claim that the freedom of "freemen" is often simple vainglory reveals the extent to which Hobbes writes in reaction to urban republicanism. What Hobbes calls vainglory Althusius theorized and townsmen understood as justice; and it is, again, that kind of vainglorious recognition, according to Hobbes, that freeman can expect. In other words, Hobbes's strong royalism was not manifest as a denial of the autonomy of the towns

80 Hampsher-Monk, "Liberty and Citizenship in Early Modern English Political Discourse," 107.

81 Hobbes, *Elements*, pt. II. iv. § 9.

but as a particularly strong claim that the charters were acts of creation by the king. Royalist, but otherwise typical of the town/crown dynamism of the day.

Hobbes's engagement with theories of freedom and township republicanism is taken up again in Part II, VIII. There Hobbes writes that "Aristotle saith well" that "*The ground or intention of a democracy, is liberty; which he confirmeth in these words: For men ordinarily say this: that no man can partake of liberty, but only in a popular commonwealth.*"<sup>82</sup> Hobbes then points out that those who proclaim democratic freedom when living under a monarchy are saying two things. They are, perhaps unintentionally, making a seditious claim that monarchy must be overthrown. Hobbes writes that "Whosoever therefore in a monarchical estate, where the sovereign power is absolutely in one man, claimeth liberty, claimeth [...] either to have the sovereignty in his turn [...] or to have the monarchy changed into a democracy."<sup>83</sup> Then—and, importantly for the thesis at hand—Hobbes writes,

But if the same be construed [...] according to the intention of him that claimeth, then doth he thereby claim no more but this, that the sovereign should take notice of his ability and deserving, and put him into employment and place of subordinate government, rather than others that deserve less.<sup>84</sup>

"[H]im that claimeth" are those who demand "employment and place" in a "subordinate government" (that is, in the borough corporation). Hobbes's point is that the people making this claim (i.e., freemen) are using Aristotle to justify claiming more power to rule over their own local affairs. It is within those "subordinate corporations",<sup>85</sup> a gaunt term belying the robust socio-political practices of urban republicanism, that Hobbes understood Aristotle's ideas to be taking hold. It was uniquely in this urban context that Aristotelian theories of freedom became ideologically and politically consequential. In sum, Hobbes's critique of Aristotelian notions of liberty expresses the driving gravamen of this chapter: yes, these ideological debates are unfolding at national and historical levels, but for Hobbes they are manifest and operative in the borough commonwealths.

82 Hobbes, *Elements*, pt. II. VIII. § 3.

83 Hobbes, *Elements*, pt. II. VIII. § 3.

84 Hobbes, *Elements*, pt. II. VIII. § 3.

85 Hobbes, *Elements*, pt. II. VIII. § 7.

A similar ideological/local-contextual procedure informs Hobbes's discussion of the democratic body politic's corporate agency.<sup>86</sup> Hobbes's first claim (really a passing remark) is that the democratic body politic is "a fictitious body, so are the faculties and will thereof fictitious also."<sup>87</sup> Hobbes's discussion of the "fictitious" agency of the "sovereign people" is entirely undeveloped—notably, it is also introduced in a curious discussion of the whether a democracy can pass laws contrary to the laws of nature and, if so, who the unjust party is. But some implications, especially in light of the fundamental importance of fictional persons in *Leviathan*, are worth considering. For instance, regarding the passing of unjust laws, Hobbes seems to hold that democracies can *only* be understood to act as a united body when the laws are contained by the natural laws. Hobbes seems to conflate that fictitious body with the democratic notion of a "sovereign people" while also implying that that body—that borough, perhaps—is likewise the wellspring of the "common good" and tradition are what hold the democracy together between meetings. (Of course, Hobbes may have in mind the ancient fictions sustaining the symbolic and political continuity of the English towns and boroughs over time.)

Later, however, Hobbes takes up the question of corporate agency in more detail. There, while addressing the question of whether sovereign power can be divided, Hobbes writes,

The error concerning mixed government hath proceeded from want of understanding of what is meant by this word *body politic*, and how it signifieth not the concord, but the union of so many men. And though in the charters of subordinate corporations, a corporation be declared to be one person in law, yet the same hath not been taken notice of in the body of a commonwealth or city, nor have any of those innumerable writers of politics observed any such union.<sup>88</sup>

If "hath not been taken notice of in the body of a commonwealth" is meant as a reflection on historical ideological and philosophical debates over the nature of the body politic's agency, it is not clear what Hobbes's claim

86 On Hobbes and fictitious bodies, see Douglass, "The Body Politic 'Is a Fictitious Body': Hobbes on Imagination and Fiction"; Crignon, "Representation and the Person of the State"; Olsthoorn, "*Leviathan Inc.*"

87 Hobbes, *Elements*, pt. II. II. § 4. On the power of fictions in Hobbes's thought see Douglass, "The Body Politic 'Is a Fictitious Body': Hobbes on Imagination and Fiction."

88 Hobbes, *Elements*, pt. II. VIII. § 7.



to originality could be, since many have made similar claims.<sup>89</sup> Noting this purported insincerity, most commentators situate Hobbes in the ideological arc of philosophical contestation over popular sovereignty and the state. That may be true, and perhaps some of Hobbes's readers noticed the philosophical contribution implied by his therefore lame dissimulation. However, I believe a more profitable context for situating Hobbes's claim is the increasingly fraught relations between town and crown. For exactly as Hobbes is writing *Elements*, the social, political, and economic relations between town and crown were unravelling. If so, then the passage reads as a particularly royalist rebuttal to increasingly stringent demands for borough independence. The idea is straightforward. The borough republicans accept and defend their powers to create subordinate entities (corporations), and furthermore they give those corporations personhood in law. Hobbes concedes that point which can be theoretically construed as saying that subordinate corporations are slaves, not equals to the city. However, and this is Hobbes's polemical counterpoint, those boroughs are also agents by the will of the crown *and* by their own concession. Hence, if the "writers of politics" are so quick to defend the former, they must notice and accept the latter. They must, in other words, concede that they are subordinate entities to the monarch. The strength of Hobbes's counterargument is that the boroughs had long bought into that exact agreement. Hobbes's point is that what the borough's described as "concord"—what I described above as dynamic networks of patronage—was in fact a "union." The quid pro quo of conceding to the king the power to grant borough corporate person for increased borough autonomy was a concession of sovereignty. Indeed, the passage may only make sense if read within that urban political context. Otherwise, it would seem to amount to a rather un-Hobbesian claim that the realm or kingdom should be a person *in law*. But that is the opposite of what Hobbes is arguing.

There are biographical aspects to these politics worth noting. Hobbes was employed by the Cavendishes and "helped to promote the policy of raising extra-parliamentary revenues".<sup>90</sup> More importantly, Hobbes—himself a son of the ancient borough of Malmesbury—was nominated by the Earl of Derbyshire to sit in the House of Commons in 1640 to represent the borough of Derby, only to be rejected by the burgesses of Derby, who worried about Hobbes's royalism and were "resolved to give no way to the election of Mr.

89 As many commentators have recognized. See Vieira, *The Elements of Representation in Hobbes*, 160; Skinner, *From Humanism to Hobbes*, 41–44.

90 Skinner, *Reason and Rhetoric*, 224.

Hobs".<sup>91</sup> "The resistance to Hobbes' nomination", Lynn Beats explains, "is an example of urban particularism: the burgesses resented the intrusion of the gentry into their affairs".<sup>92</sup> Notably, and undoubtedly to the great worry of the royalists, Hobbes was not only elected to represent the borough, but the member of parliament elected to represent the county, the eldest son of the royalist Sir John Coke, "promptly lent his active support to the Parliamentary cause".<sup>93</sup> Shortly after this—and after the circulation of *Elements*—Hobbes decided to self-exile to France.<sup>94</sup>

Three general remarks are in order before moving on to *Leviathan*. First, analyzing *Elements* through the lens of the urban historiography seems to pay off. For instance, Hobbes scholars routinely focus on the first abstract theoretical claim regarding Aristotle and then move to place this theoretical claim within the context of nascent national debates over freedom, or alternatively within a long history of contestation over the meaning of freedom. However, the crucial social contexts of these ideological claims are the borough corporations. From the historical perspective, we can see Hobbes engaging in the urban politics of his day, both in terms of abstract quasi-historical considerations of regime formation but also in more concrete and engaged discussions of freedom, freemen, and the (fictional) agency of cities and commonwealths. That interpretative framework is bolstered by the urban historiography, but it is also supported Hobbes's statement that those were indeed the politics with which he engaged.

The second point brings me back to my earlier claim that Hobbes appears to get close to endorsing the politics of borough autonomy. The same urban historical framework allows us to see why, retrospectively, Hobbes *appeared* to but did not believe he was endorsing borough politics at all; just the opposite.<sup>95</sup> Hobbes presumes—and he seems to have thought that his audience would, too—that the demonstrable irrationality of democracy makes it wholly unappealing.<sup>96</sup> That presumption has the effect of making him unguarded in his discussions and description of democracy and freedom in *Elements*. More to the point, Hobbes had few reasons to hesitate. Again,

91 Hobbes, *The Correspondence*, I: 1622–1659:171.

92 Beats, "Politics and Government in Derbyshire 1640–1660."

93 Skinner, *Reason and Rhetoric*, 228. See also Sommerville, "The Elements of Law."

94 Skinner, *Reason and Rhetoric*, 228–29.

95 Richard Tuck makes a similar point about the idea of popular sovereignty in *Elements*, Tuck, *Philosophy and Government 1572–1651*, 309–14. See also Baumgold, "The Composition of Hobbes's Elements of Law."

96 Hoekstra, "A Lion in the House: Hobbes on Democracy," 215–17.

as we have seen, this is quite a typical presumption. Despite the tensions surrounding Ship Money, Hobbes would have had few practical worries in asserting that, in effect, all commonwealths stem from what amounts to democratic urban republicanism. A conflagration certainly followed, driven in large measure by freemen and others who strove to protect and augment the ancient liberties of their towns and cities. But *Elements* landed before that point and was written in the history leading up to the civil wars and the regicide, not the history that followed. Things may have changed quickly thereafter (Hobbes fled for exactly that reason), but the change followed *Elements* rather than framing it.

Third, the ideas found in *Elements* will be revised, extended, and culled in short order, first in *De Cive* and then again in *Leviathan*.<sup>97</sup> Hence—and this is the interpretative tact I will take in the following account of *Leviathan*—what is crucial is not how certain ideas found in *Leviathan* are prefigured in *Elements*, as though Hobbes was simply refining ideas that were not quite clear in *Elements*. Instead, what is important is that those ideas took on different significance retrospectively; they became newly politically charged. To understand the conceptual and theoretical developments in *Leviathan*, we need to assume not a continuity but a reconfiguration intended to both purge democratic borough politics from Hobbes's political philosophy and construct a theoretical, ideological, and institutional alternative that maximally hinders those politics. At least this is what I will argue next.

### ***Leviathan* against the borough corporation**

I can now triangulate *Leviathan* among three points of contextual orientation. Hobbes's attack on the boroughs in *Leviathan* is comprehensive, and part of his attack is polemical. Hobbes's first order of business is to provide an alternative explanation for the multitude's acquiescence to a sovereign power in the context of a theory of regime creation that does not afford a democratic or urban moment. Hobbes put an enormous amount of theoretical and rhetorical work into this project, and in many regards it

97 Philippe Crignon hits on a fourth, more general, but seemingly compatible problem for Hobbes:

Hobbes's pervasive use of the "body politic" in the earlier work mixes theological and legal imports. But it leaves him without means to distinguish between political and sovereign entities, on the one hand, and legal and subordinate associations, on the other hand. (Crignon, "Representation and the Person of the State," 59–60.)

Olsthoorn's work is also notable in this context, see Olsthoorn, "*Leviathan* Inc."

defines the uniqueness of *Leviathan*. Here I focus specifically on the strategic counterpoising of the state against the autonomous borough corporation.

Hobbes's solution begins with ideas of authorization and representation, both of which rely on the concept of agency. "A PERSON," Hobbes writes, "is he, whose words or actions are considered, either as his own, or as representing the words or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction."<sup>98</sup> In this context, persons are agents who represent themselves to the public and are understood as the authors of those words. To be an agent is to enact agency in a way that convinces an audience that you are self-consciously the owner of your words and deeds.<sup>99</sup> A natural person is one who has the capacity to make the claim that their words are "*truly*" their own. A fictional person is one whose words or actions are "*Owned* by those whom they represent"<sup>100</sup> and who is understood by others to be representing as such. A fictional person can represent the authorized words of another person or a fiction (for example, the actions of a hospital are represented by its director<sup>101</sup>).

In cases where the deeds of fictional agents are owned, the artificial person is "the *Actor*; and he that owneth his words and actions, is the *AUTHOR*: In which case the Actor acteth by Authority."<sup>102</sup> An "authority" is the legitimate actor of authorized acts; they have "a Right of doing any act".<sup>103</sup> Authorization entails ownership and responsibility on the part of the author. It "bindeth thereby the Author, no lesse than if he had made it himselfe; and no less subjecteth him all the consequences of the same."<sup>104</sup> The authorized actor is bound by all preconditions placed upon them. Conditional incorporations are acts involving specific deeds that are to be done by the incorporated body, after which the body is dissolved. Unconditional incorporation creates a unit which, *post facto*, can act as it wills and whose actions are regarded as being owned by the authors even if they abjure; if none are placed, the authorization is absolute and the authors "own" every act of the representative unconditionally.

Conceptually, the politics of authorization and representation entail two simultaneous moves, with two agents being created. One move regards the creation of a fictional body of the commonwealth, representing the

98 Hobbes, *Leviathan*, II:XVI. 244.

99 Hobbes, *Leviathan*, II:XVI. 244.

100 Hobbes, *Leviathan*, II:XVI. 244.

101 Hobbes, *Leviathan*, II:XVI. 246.

102 Hobbes, *Leviathan*, II:XVI. 244.

103 Hobbes, *Leviathan*, II:XVI. 244.

104 Hobbes, *Leviathan*, II:XVI. 246.

multitude. The other regards the consent to a thereby authorized sovereign agent (assembly or individual). The sovereign does not represent the multitude but does bear their unqualified authorization. Hobbes then says that it is the sovereign who bears the person of the commonwealth. The unity of a commonwealth derives from the unitary nature of the sovereign's will. Hence, in *Leviathan* the power of the commonwealth is never a function of the multitude's natural community—there is no democratic moment as in *Elements*—nor is it a procedural transfer. Instead, it is a doubly artificial creation. This multitude is “made *One Person*,” Hobbes writes, “when they are by one man, or one Person, Represented; so that it be done with the consent [i.e., authorization] of every one of that Multitude in particular.”<sup>105</sup> By virtue of the creation of the regime (no matter the type), a fictional person is created and the multitude is made one: “For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*.”<sup>106</sup> This representative commonwealth is a new entity in Hobbes's repertoire of ideas. So, he gives it a new name: the state.<sup>107</sup>

How can we understand these theoretical and conceptual advances in light of the problem of democracy in *Elements*? Part of the answer is purely theoretical. Hobbes, in advance of a revised version of the social covenant, does so without need of a democratic moment. But that truism does not tell us much of interpretative interest. Another part of Hobbes's solution is to categorize size-classes of commonwealths. So, yes, there may have been borough democracies, but they trade the supposed values of autonomy with the politically weighty fact that being “very little” makes them incapable of autonomously (without a perpetual threat of invaders) securing peace.<sup>108</sup> By contrast, of course, only large more-than-borough states can secure real peace.

Yet Hobbes does not just demean borough democracy, and he is equally eager to *extrapolate* some elements from his earlier critique of borough

<sup>105</sup> Hobbes, *Leviathan*, II:XVI. 248.

<sup>106</sup> Hobbes, *Leviathan*, II:XVI. 248.

<sup>107</sup> Simultaneously, Hobbes stops using its old term “city”, instead using “civitas”. Hobbes never uses the term “city” in relation to the politics of regime formation in *Leviathan*. As Tuck notes, Hobbes is “scrupulous” in the language he uses to describe the politics of the social covenant and “the English term *City* to refer to this union virtually never occurs in *Leviathan* [...] Hobbes was clearly very sensitive to the modern meaning of *City*.” Tuck, “Warrender's *De Cive*,” 312. The conceptual strain evident in *De Cive*—where Hobbes all but stops using the term “city” and the Greek “polity”, but still uses the term “citizen” although in relation to the “civitas”, “state”, or “commonwealth”—can be understood insofar as it is a transitional text where Hobbes had begun to come to terms with the problem of borough democracy but did not yet have the conceptual or theoretical armaments to undermine it.

<sup>108</sup> Hobbes, *Leviathan*, II:XXV. 412.

democracy and project those ideas to sovereignty in general. For instance, whereas the fictional idea of the democratic body politic in *Elements* was a problematic curiosity, it was also a necessary step in the historical progression from the state of nature to an artificial monarchical regime. In *Leviathan* that fictional agency becomes the vessel for the corporate agency of the people, irrespective of regime type. Hobbes begins by adapting the idea of the *fictive* agent of the body politic, transposing it to the commonwealth itself.<sup>109</sup> All peoples of large states are fictions. That move has the virtue of demoting the importance of democracy in *Leviathan*—insofar as it no longer has unique qualities in comparison to other regime types—but it should be noted for what it is: a drastic expansion of *part* of the theory of democracy in *Elements* to Hobbes's whole theory of regimes in *Leviathan*.

No matter: for Hobbes the trade-offs are agreeable, and despite expanding some aspects of the previous democratic theory, the decisive feature of that move is that it removes borough democracy from being a necessary step along the way. That move entails at least two benefits for Hobbes. One is that it allows him to break off from any cyclical theory of regimes and instead posit a choice between borough independence and certain harm, or statism and potential peace. Simultaneously, it has the added benefit of more accurately encompassing the variations in township politics between both democratic and oligarchic defenses of the towns' independence. Democracies and rotten borough oligarchies are equally corrupt, and both evidently and inevitably fail. But the crucial point regards the synthesis of these ideas: in *Leviathan* their inevitable failure is not a step toward the creation of a monarchy. Instead, they fail by being trounced by enemies. There is no need for democracy in Hobbes's new account of new foundations in *Leviathan*, and indeed there are overlapping reasons to see those kinds of politics as inherently corrupting.

That same move allows Hobbes to undermine the idea of ancient lineages or natural communitarian foundations to the boroughs. Instead, Hobbes asserts that nothing made by humans can be immortal. But if properly understood, “by fiction”, the state person could act as though it were. Unlike in *Elements*, the state in *Leviathan* is a fiction while also being a “reall Unitie”.<sup>110</sup> In *Leviathan* all regimes, including democracies, are artificial regimes, and it is the state that is a fiction. What gives them unity is not any ancient heritage or bottom-up communitarian notion of justice but the

109 Skinner, “Hobbes and the Purely Artificial Person of the State.” See also Runciman, “What Kind of Person Is Hobbes's State?”

110 Hobbes, *Leviathan*, II:xvii. 260.

expressed and instantiated will of the sovereign. There is, in other words, no dynamism in their mutual relations but, instead, a clear hierarchy.

Having picked clean what was the soul of the borough corporation, Hobbes finally moves to dismantle the theory of the borough body politic in XXII. In the first instance, XXII is notable because its length signals a concerted effort on Hobbes's part to confront the phenomenon itself. Where in *Elements* and *De Cive* Hobbes explicated corporate agency in a few brief paragraphs, in *Leviathan* Hobbes sets out a chapter-length exegesis. Hobbes's goal, it seems, is to show that, without exception, corporate agents are either subordinated to sovereigns or rebellious and illegal mobs. Hobbes begins by stating that political systems are either absolute (and therefore sovereign) or subordinate. Subordinate political systems "(otherwise Called *Bodies Politique*, and *Persons in law*), are those, which are made by authority from the Sovereign Power of the Common-wealth."<sup>111</sup> In contrast to *Elements*, Hobbes leaves no room for equivocation on the dependence or tacit endorsement of the independence of borough corporation, city, or town. He goes out of his way to assert that corporate legal personality is absolutely derived from sovereign personhood. Coke's discussions of the various sources of "Lawful authority of Incorporation"<sup>112</sup> (common law, parliament; the King's, and prescription or custom) are distilled to one: sovereign authorization by writ or law.<sup>113</sup>

Hobbes also recasts the five definitive traits of the borough politics as outputs of sovereign power. Borough seals are given with sovereign consent as legal representation. Property is conditionally allotted by sovereign right. Hobbes obviates and thereby deracinates historical claims of ancient privilege, asserting instead the total dependency of boroughs to sovereign authorization.<sup>114</sup> Hobbes's foremost claim is that at no point did these smaller corporate bodies come to endorse (let alone create) the sovereign. If in *Elements* Hobbes tries to convince readers to accept the symbolic unity of the state just as they accept the symbolic unity of the borough corporation, in *Leviathan* Hobbes flips the script. He asserts that one can only recognize the symbolic unity of the borough because one accepts the unity of the state and the will of the sovereign. Instead, these borough corporations exist only to the extent that the sovereign has authorized them to exist. They have no independent fictional agency, only a purposive unity as delineated in

111 Hobbes, *Leviathan*, II:XXII. 348.

112 Coke, *The Selected Writings and Speeches of Sir Edward Coke*, "The Case of Sutton's Hospital" (1612).

113 Hobbes, *Leviathan*, II:XXII. 350.

114 Hobbes, *Leviathan*, II:XXIV. 388.

law and by sovereign command. They are corporate fictions *in law*, nothing more. There is no room in XXII for the fictional body of the urban people.

This is not to say that Hobbes stops using the term “body politic” and “bodies politic” in *Leviathan*. However, conspicuously, he only uses the term as a directly subordinate relation. Political bodies are only subordinate bodies. Notably, whereas in *Elements* the question of the fictitious agency of the sovereign person is only brought up in the context of democratic borough incorporation (and there in the particular context of attributing responsibility where a body politic passes a decree which is against the laws of nature and God), in *Leviathan* Hobbes rehashes that claim. However, appropriately enough, it is not the transgression of the laws of God or nature that is pertinent, but transgression from the strictures of the sovereign’s legal authorization. Thus, Hobbes concludes XXII:

And this is all I shall say concerning *Systemes*, and *Assemblies of People*, which may be compared [...] to the Similar parts of mans Body; such as be Lawfull, to the Muscles; such as are Unlawfull, to Wens, Biles, and Apostemes, Engendered by the unnaturall conflux of evill humours.<sup>115</sup>

Elsewhere, when listing the infirmities of commonwealths, he writes that “Another infirmity of a Common-wealth is the immoderate greatnesse of a Town, when it is able to furnish out of its own Circuit, the number, and expence of a great Army”, and that “As also the great number of Corporations; which are as it were many lesser Common-wealths in the bowels of a greater, like wormes in the entrayles of a naturall man.”<sup>116</sup> (In the Latin edition, Hobbes changes “Corporation” to “incorporated towns”.<sup>117</sup>)

Extirpating the moment of democratic borough foundations from his theory of regime formation affords Hobbes some security against accusations of sympathy with the “democratical gentlemen” of the boroughs. But it does not address the elementary problem itself, which is that the borough is a seedbed of future polities and *naturally* persists through moments of war and peace. The ideology of democracy is one thing; the natural communitarianism of cities is another. Boroughs are inherently vessels for socialization, historical memory, and justice norms.<sup>118</sup> These are traditions

<sup>115</sup> Hobbes, *Leviathan*, II:XXII. 374.

<sup>116</sup> Hobbes, *Leviathan*, II:XXIX. 516.

<sup>117</sup> Hobbes, *Leviathan*, II:XXIX. 517.

<sup>118</sup> David Runciman comes to a similar conclusion, see Runciman, *Pluralism and the Personality of the State*, 30–32.



and practices not easily dispelled by ideological intervention. However, they can be disrupted and, to some extent, usurped.

It may be that this is why Hobbes advises that sovereigns keenly attend to charitable duties so as not to leave citizens wanting poor relief.<sup>119</sup> If so, this is important, as much as it indicates that Hobbes is aware of the tenuous nature of sovereign power and the role of perception therein. Yes, the fear of starvation (for example) undermines the claim of *de facto* legitimacy that Hobbes often refers to as a basis of the sovereign's legitimacy. Hence, the need for charity is a threat to peace. However, it does not follow from that argument that other subordinate organizations should avoid those charitable duties. So, why does Hobbes push on having the state fulfill these duties (and many others)?<sup>120</sup> The answer appears to relate to Hobbes's concern with the emergent local sympathies. The threat is that subordinate boroughs will assume these essential functions and thereby undermine perceptions of the state's legitimacy. Put another way, the strict theoretical dichotomy between the state and the state of nature may do a lot of ideological work as textual rhetoric, but the real lesson is that the sovereign should be concerned with practical considerations, especially where cities may assume duties in the absence of sovereign action. One implication is that whatever the short-term *de facto* legitimacy of those in power, long-term peace requires a broader commitment, whereby subjects turn away from their local affairs toward a more general national purpose.<sup>121</sup>

But the ideological element is nevertheless important. If the people are going to enact the very fiction of being a "people," then there needs to be an ideological apparatus to support such a project. Much of the ideological and symbolic edifice of *Leviathan* can fruitfully be read as undermining the pull of the independent borough commonwealth's political sociology. The most rhetorically powerful example of this is Hobbes's depiction of the state of war and his associated criticism therein on the communalism and political naturalism of Aristotle. Hobbes augments that picture of natural disunity by contrasting it with the macroscopic fiction of the state. The

119 Hobbes, *Leviathan*, II:xxx. 538; xxvii. 468; see also vi. 84.

120 This argument seems to extend to many considerations taken up by Hobbes in xxiv of *Leviathan*.

121 As Runciman writes,

The state will always have more power, in the person of the sovereign, who can command as he sees fit, and so outlaw any association. But loyalty is more than obedience to command (an obedient dog is not necessarily a loyal one). If the state does not generate its own personality, its members will still have to obey their sovereign; but they may place their untapped loyalties elsewhere. (Runciman, *Pluralism and the Personality of the State*, 31.)

silent feature of Hobbes's dichotomous formulation of the state of nature and the awe-inspiring sovereign is that it short-circuits borough thinking in the minds of subjects (and readers).

A different take on the same point is evident in the frontispiece of *Leviathan*. There Hobbes depicts an awe-inspiring fictional state agent given unity of will by a sovereign looming over a small borough. The borough is striking in its lifelessness, save, auspiciously, for a few lingering soldiers still suffering from the malady of urban republicanism. "The people," in their unity, are represented as disassociated from the borough, while the borough is associated with the state of war. Appropriately enough, the people are not only pictured turning toward the sovereign, but their backs are turned on the borough and the battle being waged within. There seems to be a vehement desire depicted in their turning away from the walled borough and eager embrace of the new fictional unity of the state and the natural person who bears it. It is a macroscopic fiction meant to contain a new national communal identity and juridical fictions and contrapose the urban fictions that had, especially since the mid-1540s, been a vibrant source of urban communitarianism against monarchical overreach.

This interpretation of *Leviathan* is supported by Hobbes's reflections on the causes of the civil war in *Behemoth*. As in *Leviathan*, Hobbes asserts that the proper claim to sovereign power goes back to William the Conqueror. However, in *Behemoth* Hobbes assigns historical blame for the present troubles partly to Henry III and Edward I for two related reasons. The first fault lay in accepting the *Magna Carta*, thereby empowering ignoble representatives of the boroughs in "surreptitiously obtaining the King's warrants".<sup>122</sup> Hobbes asserts that those concessions led directly to Ship Money.<sup>123</sup> The second fault was inviting into counsel the borough oligarchs who, unlike the lords, had few historical ties to the king or the conquest.<sup>124</sup> In *Behemoth* the ascarid-like borough commonwealths are an integral element of Hobbes's history of the civil war.

Hobbes also reflects on how the borough took the lead from the revolutionary Low Country corporations, writing,

[T]he city of London and other great towns of trade, having in admiration the great prosperity of the Low Countries after they had revolted

<sup>122</sup> Hobbes, *Behemoth*, 38.

<sup>123</sup> Hobbes, *Behemoth*, 35–40.

<sup>124</sup> Hobbes, *Behemoth*, 78.

from their monarch, the King of Spain, were inclined to think that the like change of government here, would to them produce the like prosperity.<sup>125</sup>

One feature in Hobbes's rendition of the civil war in the third dialogue of *Behemoth* is a close account of the politics of the rebellious boroughs, towns, and cities and the mayors and alderman who mustered denizens to defend their autonomy against both the King and, in turn, Cromwell. These politics were suitable for destroying commonwealths, but they proved incapable of founding new ones. Hobbes's notably anachronistic criticism of the parliamentarians' incapacity to understand the logics of representation (which he had only explicated in *Leviathan*) also implicitly speaks to the striking—and for Hobbes, unfortunate—agreement between *Elements* and the kind of resistance theorized by Althusius and witnessed in the civil war.<sup>126</sup> Hobbes may have been thinking of these politics when he recalls this myth of the Hydra in *Behemoth*. He writes,

B. You have read, that when Hercules fighting with the Hydra, had cut off any one of his many heads, there still arose two other heads in its place; and yet at last he cut them off all.

It is exactly against these politics of patronage that Hobbes then advises:

A. The story is told false. For Hercules at first did not cut off those heads, but bought them off; and afterwards, when he saw it did him no good, then he cut them off, and got the victory.<sup>127</sup>

Hobbes was not alone in this regard. His patron, the Earl of Newcastle, advised Charles II to address the problem directly, writing that the charter corporations “have done your Majesty more mischief in these late disorders with their lecturers than anything else has done” and that “every corporation is a petty free state against monarchy”.<sup>128</sup>

125 Hobbes, *Behemoth*, 3–4.

126 Hobbes, *Behemoth*, 120–21.

127 Hobbes, *Behemoth*, 72; also Hobbes, *Leviathan*, II:xxx. 544. As will be seen in later chapters, there is much more to say about Hercules.

128 Cavendish, *An English Prince. Newcastle's Machiavellian Political Guide to Charles II*; quoted in Withington, *The Politics of Commonwealth*, 232. See also Goldie, “The Unacknowledged Republic: Officeholding in Early Modern England.”

## Debating democracy in Hobbes

I have focused on making my own analytical arguments regarding the development of Hobbes's thought from *Elements* to *Leviathan*. But it follows that, if correct, my argument should be able to lend some clarity to ongoing debates about democracy in Hobbes. I believe it does.

Consider a recent debate between Richard Tuck and Kinch Hoekstra. Examining the ancient lineage of the idea of democracy, Tuck—focusing on *Elements* and *De Cive*—argues that Hobbes grounded his idea of democracy in an Aristotelian notion of radical or extreme democracy.<sup>129</sup> While Tuck advances his thesis quite emphatically, Hoekstra convincingly argues against the Aristotelian argument, showing the deeply anti-democratic core of Hobbes's political philosophy. Hoekstra's critique, which gives *Leviathan* more emphasis, is multifaceted. But two points stand out. First, Hoekstra quotes Hobbes's response to John Bramhall, who Hobbes writes "hath said that I built upon a wrong foundation, namely, 'that all magistrates were at first elective [...] I never said nor thought it.'" <sup>130</sup> Secondly, Hoekstra argues that, even where Hobbes can be seen to take up apparently democratic ideas—such as popular sovereignty—he was anything but original or laudatory.<sup>131</sup> Hoekstra concludes on a strong note: "Because all democracies end up effectively controlled by one or a few, there is in fact no such thing as a democracy."<sup>132</sup>

On its own terms, there is no obvious resolution for resolving this debate. However, viewing the discussion through the lens of borough politics, and the rapid changes they underwent, affords some clarity and allows for a degree of interpretative reconciliation. From that perspective, we can see that the importance of the first claim is not, as Hoekstra argues, in making Hobbes's discussion of democracy in *Elements* anomalous, justifying his later disclaimers. Yes, it is significant that Hobbes claims that he neither "said or thought" that the borough had some legitimate role to play in the creation of a commonwealth. But not because Hobbes is *clarifying* his earlier position. Rather, it is important because he finds himself having to *dissemble* about having placed the borough democracy at the core of his theory of regimes. It is a sign of the radical historical shift in political consciousness that Hobbes, too, must deny having approximated—even critically and abstractly—the

129 Tuck, "Hobbes and Democracy."

130 Hobbes, *The English Works of Thomas Hobbes of Malmesbury*, V:181.

131 Hoekstra, "A Lion in the House: Hobbes on Democracy," 210–13.

132 Hoekstra, "A Lion in the House: Hobbes on Democracy," 201. See also Skinner's summary reflections on this debate Skinner, "Surveying The Foundations: A Retrospect and Reassessment."

position of the rebel towns. Similarly, while we can see how Hoekstra's second claim is correct, it is also evident that Hobbes is anti-democratic in ways that have gone without note. Finally, turning back to Tuck's critique, we can see how Tuck's reflections on the Aristotelian roots of Hobbes's claim are quite justified but may look too far afield for Hobbes's influences when they have deep local roots.<sup>133</sup>

## Conclusion

As noted in the introduction, the national variant of popular sovereignty did, with small amendments, flourish atop the conceptual foundations set by Hobbes. In that regard, Hobbes's efforts to crimp republicanism seem to have been in vain. If, however, Hobbes's intention was also to undermine township democracy or borough republicanism, then his influence may have been immediate and long-lasting. For under the conceptual regime of *Leviathan*, the municipal mode of popular sovereignty defended by Althusius—found in *Elements*, and at the core of the civil wars—is theoretically pushed off the agenda and practically difficult to maintain.

Hobbes could not have struck at a more opportune moment. The revolution put on display the inherent threat that city-commonwealth thinking posed not just to monarchical rule but to peace in the realm. Indeed, the revolution itself also greatly undermined the legitimacy of corporations to anything beyond legal personhood, first by dissociating their claims of ancient liberties from traditional attachment to monarchical endorsement and then by seeking reincorporation under the Lord Protector.<sup>134</sup> In effect, the revolution undermined the historical and symbolic legitimacy of corporate autonomy and reified their dependency on state power, irrespective of who was sovereign. So, although Charles II did not take up Hobbes's language of the fictional state—continuing instead to take refuge in the ideology of divine right—the constitutional and ideological evisceration of the borough charters was imperative. Where parliament had been a field for expressing charter politics, following the Restoration, the charters became fields of contestation for national partisan contests—similar in institutional form but otherwise a radical reconfiguration of priorities. Charles II was eager, if not always consistent or capable, of exploiting these new facts on the ground. These were quite intentional outputs of a program of corporate

<sup>133</sup> Tuck, "Warrender's De Cive."

<sup>134</sup> Halliday, *Dismembering the Body Politic*, 151.

subordination through dismemberment. Ian Roy writes, “One cannot escape the conclusion that corporations throughout England were being punished for their misdeeds during the period of republican rule.”<sup>135</sup> Indeed, they were. The subsequent assault on the independence of the boroughs, grounded juridically in the Corporation Act of 1661, was sustained, programmatic, and a watershed in the history of the urban republicanism.<sup>136</sup>

The borough corporations remained. However, conditional reincorporation, chastened new incorporation, voluntary abdication of the freedoms gained before and during the Interregnum, and, in the 1680s, vigorous *quo warranto* proceedings slowly sapped the boroughs of their autonomy and personality. Whereas the charter politics leading up to 1640 aimed at independence from the king, from 1660 on, charter politics meant instituting their dependence.<sup>137</sup> Where *Elements* landed at the end of one era in the history of borough politics, *Leviathan* landed at the beginning of the next and would have an enormous intellectual appeal to various parties of different political persuasion, sharing the belief that power should be monopolized as much as possible at the state level and denied to the towns and cities.

Having supplanted the ancient conception of democracy with the modern representative fictional state, Hobbes effectively armed future sovereigns with the institutional means to stem the seemingly natural—but surely recurrent and, in England, very much present—pull of democratic and oligarchic communal republicanism that had incessantly undermined the conceptual, political, ideological, economic, and military centralization of powers of the monarchy. Hobbes aimed to short-circuit the supply side of borough democratic republicanism. Simultaneously, Hobbes laid conceptual groundwork for re-architecting the social-political institutions of the realm to short-circuit the demand side of borough democratic republicanism. All those moves were bundled in Hobbes’s “epoch making” theory of the state.<sup>138</sup> But their effectiveness should be measured as much by what was ended as what was started, and as one commentator has recently noted:

Hobbes’s censure of the seventeenth-century corporation has set the tone for nearly all commentaries on the unreformed government of English towns. From the denunciations of the borough regulators of the 1680s

<sup>135</sup> Roy, “The English Republic, 1649–1660: The View from the Town Hall,” 237.

<sup>136</sup> Halliday, *Dismembering the Body Politic*.

<sup>137</sup> Miller, “The Crown and the Borough Charters in the Reign of Charles II.” On the renewal of urban radicalism a century later see Sweet, “Freemen and Independence in English Borough Politics c.1770–1830.”

<sup>138</sup> Skinner, “Hobbes and the Purely Artificial Person of the State.”

to the criticisms of the municipal reformers in the 1830s, this image of autonomy and isolation has coloured national policy and historical opinion.<sup>139</sup>

That, I contest, was one of Hobbes's aims in *Leviathan*. In this regard, his assault was a success.

That Hobbes would have rethought his theory of foundations in the late 1640s can be gleaned from the newly unacceptable account of the politics of creating a commonwealth in *Elements*. The democracy-first theory of new foundations transformed into a seeming endorsement of rebellion. This was neither a celebration nor a cryptic endorsement of democracy on Hobbes's part, but it did come to look like it. Hobbes curtails the discussion of democracy in *De Cive* but did not replace it either. He did this because the problem was not as acute as it would become, because he did not have the theoretical means of doing so at hand, or some combination thereof. In *Leviathan*, however, the problem of borough republicanism was clear and his counterassault comprehensive.

### **Postscript: The democratic deficit and the puzzle of new foundations in *Leviathan***

This chapter has focused entirely on Hobbes's assault on the democratic threat embodied in *Elements*. But in doing so, it has not addressed a singular puzzle that follows from his own success: Hobbes's war on borough democracy and oligarchy was by necessity an assault on his own account of the real politics of new foundations. There appears to be no moment equivalent to the creation of a city in *Elements* to be found in *Leviathan*. In other words, there seems to be an elementally important practical element of his account of new foundations that is entirely missing. There is, so to speak, a democratic deficit in *Leviathan*. In other words, if the argument above is correct, then Hobbes needs a new account of new foundations that does just that: achieves democratic ends without democratic politics.

Adding to the puzzlement are two other compounding concerns. First, the scholarship on the political theory of *Leviathan* does not have an answer to this question and indeed seems to deny that such an answer can exist. No matter how it is cut, the secondary literature does not account for the

139 Gauci, *Politics and Society in Great Yarmouth 1660–1722*, 16.

real politics of new foundations. There are certainly endless discussions of the “state of nature” and the “social contract”—and these discussions are often linked to spectacular accounts of sovereign might—but even the foundational violence critique holds that it is primarily a rhetorical tactic on Hobbes’s part, not the stuff of practical politics. Indeed, most scholars seem to assume that Hobbes was simply uninterested in the real politics of new foundations. The lion’s share of the scholarship treats the whole arc of new foundations from XIII onward as a heuristic to explain why readers should remain obedient. Deontological critiques of Hobbes have more robust accounts pre-covenantal politics. Such critiques assert that there are ethical foundations that prefigure the social covenant and carry forward to post-foundational politics. But these pre-foundational politics have no bearing on the practical politics of new foundations. Instead, they skip from the pre-foundational to the post-foundational, without any discussion of the politics of foundations itself. So, the secondary literature tells us quite a bit about what comes before and after new foundations, but it simply does not contain an account of new foundations.

Second, this theoretical puzzle is again compounded and catalyzed by a far more pressing political consideration; namely the civil wars and, more urgently, the regicide of Charles I on January 30, 1649. The regicide must have weighed enormously on Hobbes—former tutor of the Prince of Wales, now future Charles II—whose consuming focus from the regicide to the restoration in 1660 was the politics of re-foundations. Moreover, we also know that Hobbes was keen to deliver *Leviathan* to Charles II and had a special version made up just for that. So, there are evident political reasons, too, as to why Hobbes must have been very much concerned with the practical matter of new foundations. Yet such a critique is, supposedly, nowhere to be found in *Leviathan*.

Of course, much more remains to be said about both topics; my point here is merely to stylize the background to what I take to be the fundamental question that remains: What, if any, is Hobbes’s theory of new foundations in *Leviathan*? I believe Hobbes has a compelling answer: new foundations are wrought through constitutive rhetorical action carried out by eminently virtuous leaders. That claim may strike readers as doubly impossible: the scholarship on rhetoric in Hobbes does not support the claim, while the standard model of Hobbes’s political philosophy denies its very possibility. So there are two tasks at hand: first, explicating the idea of constitutive rhetorical action and situating it in Hobbes’s thought (Chapters Three and Four, respectively); second, establishing Hobbes’s theory of new foundations (Chapter Five) and its significance (Chapter Six and Seven).



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### 3. Rhetorical Action and Constitutive Politics

**Abstract:** This chapter is a historical reconstruction and theoretical explication of the idea of rhetorical action. I trace rhetorical action from its first emergence in the poets, founders, and orators of antiquity through its reconceptualization and domestication in the works of the Greek philosophers and the Roman rhetoricians. Finally, I trace its modern reemergence in the theatrical and poetic rhetoric of the early modern period. The overarching argument is that the idea of rhetorical action—especially in its relationship to new foundations—is a singularly powerful tool by which leaders of exceptional virtue and magnanimity can command the voluntary allegiance of the many, not by engaging in dialogue but by the fact of their virtue.

**Keywords:** rhetorical action; constitutive politics; magnanimity; command; persuasion

#### Introduction

In this and the following two chapters, I develop what I take to be Hobbes's response to the democratic deficit in *Leviathan* as it relates to the politics of new foundations. To recall, the problem is that Hobbes was entirely successful in his assault on borough politics, but at the cost of scuttling his theory of new foundations as found in *Elements*. Over the long-haul of this chapter and the two that follow, I argue that Hobbes turned to something like the figure of the orator-founders of antiquity as a solution to the democratic deficit and to the real—and very much pressing—imperative to re-found a regime. That overarching argument entails three steps. First, explicate the idea of constitutive rhetoric as it was associated with orator-founders. Second, establish in a broad sense that Hobbes had access to and engaged with that line of rhetorical thinking and practice. Third, establish in a

specific sense Hobbes's deployment of those ideas in *Leviathan*, in terms of a critique of the politics of new foundations. Those are the task of this chapter, Chapter Four, and Chapter Five, respectively. This chapter amounts to a study of the idea and practice of constitutive rhetorical action. There are intuitive reasons why these ideas may be the kind of ideas that Hobbes needed to address the democratic deficit in *Leviathan*, most obviously that constitutive rhetorical action describes situations where a people are constituted by way of a would-be sovereign's persuasive deeds and speech, an idea that gets what Hobbes wants out of democracy (eagerly willful adherence and self-imposed obligation) without the burdens of boroughs, dialogue, or public disputation.

In the next chapter, I situate these arguments within ongoing scholarly debates about rhetoric in Hobbes. But they are worth mentioning here briefly. Hobbes scholars routinely take up study of rhetoric in Hobbes, for very good reason. That scholarship has almost entirely focused on textual modes of rhetoric where it is Hobbes the author who persuades readers by way of the text of *Leviathan*. The scholarship is excellent, but the textual focus is not what I am interested in, because whatever weight one puts on textual rhetoric, it is simply not up to the task of real foundations. Instead, I am interested in how founders and sovereigns persuade the multitude and citizens in practice. That kind of rhetoric is elementally different from the kinds of persuasion focused on by scholars, which explains in large part why this chapter is so sweeping in its descriptive overview.

This chapter reconstructs the concept of rhetorical action (or *actio*) from the ancient to the early modern periods, ending in the mid-seventeenth century. It aims to excavate its original, recurrent, and, for many commentators, discomfiting links to—if not embodiment of—the politics of new foundations. From first to last, philosophers and rhetoricians have struggled with and against *actio*. Plato conflated *actio* with politics and went to philosophical war against the practice. Aristotle noted that delivery “has the greatest force but has not yet been taken in hand”,<sup>1</sup> as far as rhetoricians had not or could not theoretically circumscribe exactly what its power was or how it could be extricated from its allegedly vulgar and popular connections. Cicero described *actio* as a “vast and indeed incredible power” with a capacity to make “any impression on the unlearned crowd”.<sup>2</sup> And while deprecating the idea, Cicero idealized the very notion in the person of the mythical orator-founder. Quintilian begins by asserting the elemental power of

1 Aristotle, *On Rhetoric*, 1403b–4.

2 Cicero, “De Oratore Book III,” 1. 195–97.

*action*, only to avoid explicating it at all. Skipping ahead, by the seventeenth century most rhetoricians had stopped considering *actio* altogether. There are exceptions, but they only deepen the puzzlement surrounding *actio*. For example, John Bulwer's *Chirologia* (1644) takes the subject "in hand", detailing and sketching how orators should use gestures to persuade audiences. But if Bulwer did fulfill Aristotle's desire for a thoroughgoing technical explication of *actio*, he did so at the cost of stripping *actio* in connection to constitutive politics. These signposts are indicative of a tendency for accounts of *actio* to oscillate between the mythic and the mundane, with grandiose but ultimately hollow gestures toward its great political significance, followed by deflated and technical accounts of tempered courtroom exhortation, pronunciation, and gestures that seem unrelated to that power. As will be seen in Chapter Four, Hobbes scholars interested in rhetoric have generally started from the seventeenth-century consensus among rhetoricians that whatever *actio* is, it is a minor and relatively obscure part of the tradition.

I will argue that rhetorical action is the most politically fundamental mode of rhetoric, a point obscured and mutilated by the fact that many philosophers and rhetoricians have been in rather sharp opposition to the idea from the outset. Second, I argue that the seventeenth-century consensus among rhetoricians and the exceptional (and highly technical) accounts of *actio* as mere hand gestures are not representative of the whole period. In the theater, *actio* was experiencing a renaissance, one that recovered the forgotten powers of *action*—the powers that so worried the Greek and Roman philosophers and rhetoricians—and then extended upon and developed those ideas in fresh new ways. To make that argument, I will reconstruct a history of *actio* that prioritizes its connection to constitutive politics.<sup>3</sup> The driving thesis of this chapter is that constitutive politics manifested in rhetorical action are a sort of black hole that philosophers and rhetoricians have struggled against in myriad ways; they are a power that cannot be captured on philosophical grounds yet cannot be denied on political grounds. By "constitutive politics," I mean the politics related to new foundations and the (re)construction of a polity's political identity, often in moments of political emergency and often in ways that allow the people to act in concert to address such crises. The relationship with constitutive politics is a powerful prism for understanding *actio*, yielding insights into both its theory and history.

3 I use the term "constitutive rhetoric" throughout this chapter. There is limited literature on constitutive rhetoric, which focuses primarily on twentieth-century theory and events. For a general overview, see Sloane, "Constitutive Rhetoric"; see also Charland, "Constitutive Rhetoric."



Beyond the general explication of the idea, the chapter's specific contributions are twofold and compounding. The first contribution is to adjust the scope of the typical account of *actio*, pushing it back further into a study of the orator-founders of antiquity and forward to the dramatists of the seventeenth century. Pushing it back reveals the positive account of the connection between rhetorical action and constitutive politics—the politics of new foundations—in the ancient and early modern periods, specifically by the eminent founders and politicians of ancient Greece. Pushing it forward allows me to encompass the early modern dramatists in the critique that, as noted, was going through something of a renaissance of the idea of constitutive rhetorical action.

The second contribution is to highlight the seemingly essential impossibility of tempering *actio* theoretically, which generates a tendency for philosophers and rhetoricians to formulate *actio* negatively *against* the ever-present threat of constitutive rhetorical action to constituted regimes. We see this in Plato's founding philosophical assault on constitutive rhetorical action and more obliquely—but effectively—in Aristotle's criticism of delivery and the magnanimous man. Thereon, rhetoricians understood *actio* in various negative, idealized, or routinized ways, but rarely in terms of its original positive and real (as opposed to mythical) constitutive manifestation. Nevertheless, the political power of *actio* to constitute peoples and polities could not be simply ignored, hence what emerges is a tendency to sing high praises to the overwhelming political power of *actio* while simultaneously avoiding, obfuscating, idealizing, or mythologizing those politics. I argue that this perspective—of an undeniably political form of rhetoric that is enormously attractive to philosophers but simultaneously unacceptable—affords a rather powerful analytical framework for understanding the tradition.

## Political foundations

The history of rhetoric is replete with celebrations of and assaults on a series of ancient political figures, both Greek and Roman. These figures are typically great political actors who deploy what later commentators have broadly stylized as *actio*. Four figures stand out: Solon, Pericles, Themistocles, and Demosthenes.

Consider first Solon, the paragon of non-deliberative exhortation. Plutarch tells of a corrupted Athenian polis that, tired of fighting the Megarians for control of Salamis, passed a law banning all public utterances promoting

a renewal of hostilities. This peace, however, was bought at the price of pride and integrity. Although many wanted to go to war again, none would disobey the law. Solon, Plutarch tells us, “could not endure the disgrace” and then “composed some elegiac verses, and after rehearsing them so that he could say them by rote, he sallied out into the market-place.”<sup>4</sup> Plutarch does not write of Solon’s use of gestures in particular but conveys a more general account of a popular and theatrical spectacle that was essential to the persuasive delivery of the speech. Feigning madness and addressing a large crowd “with a cap upon his head,” Solon stood on the “herald’s stone and recited the poem.”<sup>5</sup> It was a rousing speech. Having won the praise of his friends and fellow citizens for his poem, Solon proceeded to successfully overturn the law against aggression and later went on to command the war against Salamis. “At this point,” Plutarch writes, “the wisest of the Athenians cast their eyes upon Solon. They saw that he was the one man least implicated in the errors of the time.”<sup>6</sup> Solon was viewed as prudent, transcending partisan and economic divisions, and, above all else, committed to the well-being of the polity. Consequently, “their chief men persistently recommended a tyranny to Solon, and tried to persuade him to seize the city all the more confidently now that he had it completely in his power.”<sup>7</sup>

Solon’s deployment of persuasion and his political deeds were synergistic undertakings. James Fredal writes that in Solon, as with Theseus,

we see a similar pattern of elements: the function of the herald gathering a people together into a common space to constitute a united force under arms, a political intervention at a sacred festival, the use of disguise and impersonation [...] for political ends, [and] *the centrality of a performative politics that orchestrates symbolic resources to direct united action.*<sup>8</sup>

Fredal is correct. Solon is recorded as having united a divided and corrupt Athenian society while implementing reforms that, although not immediately effective, would eventually secure the constitutional foundation upon which Athens would flourish in the following centuries.

The story is also interesting because it foretells a modality of social covenanting. Here it suffices to flag Plutarch’s description of the moment:

4 Plutarch, “Solon,” § 8.

5 Plutarch, “Solon,” § 8. See also Demosthenes, *Demosthenes, Speeches 18 and 19*, IX:188–89.

6 Plutarch, “Solon,” § 14.

7 Plutarch, “Solon,” § 14.

8 Fredal, *Rhetorical Action in Ancient Athens*, 41 (emphasis added). See also, Yunis, *Taming Democracy*, 223–24.

When Solon had sung it [his poem], his friends began to praise him, and Peisistratus in particular urged and incited the citizens to obey his words. They therefore repealed the law and renewed the war, putting Solon in command of it.<sup>9</sup>

It is a constitutive moment wherein a corrupt and lethargic established order is overturned, and a new one is established—all on the backs of a persuasively delivered poem. Not only did Solon facilitate the constitution of a new political identity, including a radical reordering of power and property; he constituted a new normative order amounting to the creation of a new constitution (in Aristotle's sense) by creating a new people. The new constitution was not wrought by conquering a people nor through dialogical engagement. It was just the opposite: the nature of Solon's persuasion was so that the people would take *themselves*—independently, but in unison—to be authors of their new identity. The weight of the symbolic reconstruction of Athenian identity was born by the charisma and eminence manifest in Solon's spectacular and ultimately persuasive actions, but it was experienced by the people as an act of their own self-creation.

Solon may have learned his poem by rote, but his persuasiveness was not established upon a mastery of rhetorical theory. Solon's deeds were facilitated by what is variously ascribed to as a "natural gift" of persuasion, without which he would have been unsuccessful. Solon is never portrayed as an especially gifted rhetorician; he is instead shown as having a special gift of character, foresight, and political acumen. Solon's rhetorical deeds were grounded in concrete political acts of great and evident import, conjoined to charismatic leadership and great political deeds. The result was not simply transformative. It was constitutive of a new people.

Themistocles was also depicted as a natural talent who, from his youth, had both the gifts and the inclination to use rhetorical persuasion in the service of great deeds. As with the other orator-founders/leaders, the measure of Themistocles's rhetorical exhortation was his contribution to the well-being of the polis. One particularly rousing encomium of Themistocles is found in Thucydides:

For Themistocles was a man in whom most truly was manifested the strength of natural judgment, wherein he had something worthy admiration different from other men. For by his natural prudence, without the help of instruction before or after, he was both of extemporary matters

9 Plutarch, "Solon," § 8.

upon short deliberation the best discerner and also of what for the most part would be their issue the best conjecturer. What he was perfect in he was able also to explicate, and what he was unpractised in, he was not to seek how to judge of conveniently. Also he foresaw, no man better, what was best or worst in any case that was doubtful. And (to say all in few words) this man, by the natural goodness of his wit and quickness of deliberation, was the ablest of all men to tell what was fit to be done upon a sudden.<sup>10</sup>

Cicero gives a similar rendition to this story. He writes that Themistocles, “whom we know to have been pre-eminent in eloquence as well as in political shrewdness,” was comparable to Pericles, who was “distinguished in every form of excellence, and especially illustrious in this art”<sup>11</sup>—namely, the act of founding a new (or re-founding an old) political order by means of exemplary rhetorical action. Plutarch also remarks that later in his life, Themistocles had won an award as a “theatrical manager.”<sup>12</sup> (The relationship between theater and *actio* would become an enduring point of derision by later philosophers and rhetoricians.)

Pericles is cast in a similar light. Thucydides writes that Pericles epitomized prudential thinking, describing him as “a man of great power both for his dignity and wisdom, and for bribes manifestly the most incorrupt.”<sup>13</sup> Pericles is said to have “freely controlled the multitude and was not so much led by them as he led them.”<sup>14</sup> Pericles’s rhetorical command was so defining that Thucydides would write of Periclean Athens that “It was in name a state democratical, but in fact a government of the principal man.”<sup>15</sup> Pericles transcended regular politics, and the steady decay of Athens in his wake was a direct result of subsequent attic orators who, “being more equal amongst themselves and affecting everyone to be the chief, applied themselves to the people and let go the care of the commonwealth.”<sup>16</sup> Plutarch writes that Pericles deployed a novel form of rhetoric that provided “himself with a style of discourse which was adapted, like a musical instrument, to his mode of life and the grandeur of his sentiments.”<sup>17</sup> This style was noted

10 Thucydides, *The Peloponnesian War*, bk. I. § 138.

11 Cicero, “Brutus,” § 28.

12 Plutarch, “Themistocles,” § 5.

13 Thucydides, *The Peloponnesian War*, bk. II. § 65.

14 Thucydides, *The Peloponnesian War*, bk. II. § 65.

15 Thucydides, *The Peloponnesian War*, bk. II. § 65.

16 Thucydides, *The Peloponnesian War*, bk. II. § 65.

17 Plutarch, “Pericles,” § 8.

for “subtly mingling”<sup>18</sup> the rhetorical arts and the natural sciences. Indeed, Pericles excelled in conjoining rhetorical practice and philosophy. “It was from natural science,” Plutarch continues (quoting Plato), that Pericles “acquired his loftiness of thought and perfectness of execution, in addition to his natural gifts.”<sup>19</sup> Like Themistocles, his was also a highly theatrical style described as “thundering” and “lightening” when he scolded his audience, as if he was “wielding a dread thunderbolt in his tongue.”<sup>20</sup>

Evoking the same kind of rhetorical powers embodied by Solon, Plutarch asserts that Pericles alone could maintain the unity of the otherwise disparate peoples of the empire. He writes,

[H]e alone was so endowed by nature that he could manage each one of these cases suitably, and more than anything else he used the people's hopes and fears, like rudders, so to speak, giving timely check to their arrogance, and allaying and comforting their despair. Thus he proved that rhetoric, or the art of speaking, is, to use Plato's words, ‘an enchantment of the soul,’ [*psychagogia*] and that her chiefest business is a careful study of the affections and passions, which are, so to speak, strings and stops of the soul, requiring a very judicious fingering and striking. *The reason for his success was not his power as a speaker merely, but [...] the reputation of his life and the confidence reposed in him as one who was manifestly proven to be utterly disinterested and superior to bribes. He made the city, great as it was when he took it, the greatest and richest of all cities[.]*<sup>21</sup>

Aristotle tells a similar story in the *Nicomachean Ethics*, where he styles Pericles as a paragon of practical wisdom.<sup>22</sup> The conjunction of natural rhetorical gifts, a philosophical inclination, and a magnanimous concern

18 Plutarch, “Pericles,” § 8.

19 Plutarch, “Pericles,” § 8. Plutarch is paraphrasing Aristophanes here, without noting the critical nature of Aristophanes's portrayal of Pericles. Cf. Aristophanes, “The Acharnians,” 523–48.

20 Plutarch, “Pericles,” § 8.

21 Plutarch, *Lives*, III:Pericles. § 15 (emphasis added).

22 Aristotle writes:

It remains therefore that it is a true and practical state involving reason, concerned with what is good and bad for a human being. For while production has an end distinct from itself, this could not be so with action, since the end here is acting well itself. This is why we think Pericles and people like him are practically wise, because they can see what is good for themselves and what is good for people in general. (Aristotle, *Nicomachean Ethics*, 1140b.)

with the common good are all for naught unless realized in practice. Indeed, none of these attributes exists apart from the political act itself. The symbolic realm is important, but the political realm is decisive. As with Solon, the technique is inseparable from the deed, and the flourishing of the *polis* is the measure of the political actor.

Unlike Themistocles, Demosthenes was not a natural talent. Plutarch begins by noting the difficulty in tracing Demosthenes's rhetorical education, as different sources make contradictory claims concerning the various influences of Plato, Isocrates, Isaeus, and Alcidas.<sup>23</sup> However, Plutarch writes that more important than these influences on Demosthenes's style was the theatrical influence of "Satyrus the actor."<sup>24</sup> Demosthenes advised that rhetors concern themselves with three things above all: "delivery, delivery, and delivery," a dictum endlessly quoted by subsequent rhetoricians. However, Demosthenes's persuasiveness was not simply a question of technique. It was also fundamentally intertwined with his politics. Thus, in *On the Crown*, Demosthenes recounts his own deeds in response to the threat posed by Philip of Macedonia. In the fall of 399 BCE, Philip had successfully taken Elatea, thereby providing him with a route to invade Athens. Having received the news,

the Presiding Officers called the Council to the Council-house while you proceeded to the Assembly, and before the Council could deliberate and endorse a proposal, the entire citizen body was seated up there. After this, the Council entered and the Presiding Officers announced the news they had received, and they produced the messenger to give his report. Then the herald asked, "Who wishes to speak?" but no one came forward. The herald asked many times but to no avail. *No one rose, though all the generals were present and all the politicians too, and the country was calling for a speaker to save it. For the voice of the herald lawfully discharging his task is rightly considered the common voice of the country.*<sup>25</sup>

The response was silence, following which, Demosthenes notes, "*the one who emerged as the right man on that day was I. I stepped forward and addressed you.*"<sup>26</sup> In a moment of constitutional crisis and amidst an existential threat

23 Plutarch, *Lives*, VII:Demosthenes. § 5.

24 Plutarch, *Lives*, VII:Demosthenes. § 7.

25 Demosthenes, *Demosthenes, Speeches 18 and 19*, vol. IX, paras. 170–71 (emphasis added).

26 Demosthenes, *Demosthenes, Speeches 18 and 19*, vol. IX, para. 173.

to the city—and after every other Athenian fell silent—Demosthenes alone spoke, thereby bringing order to a fractious and irrational polity.

For Demosthenes, delivery and the well-being of the democratic polis were co-constitutive. As Kennedy notes, Demosthenes

knew all tricks and rules of rhetoric, but they were to him only means to a far more important end. As his career developed he made that end the preservation of Athenian democracy and institutions as he knew them and recovery of the spirit that had made them.<sup>27</sup>

As the passage suggests, this was a constitutive rhetorical deed insofar as the re-foundation of the polity was inextricable from the delivery. While humanist rhetoricians celebrate Demosthenes, they also interpolate Demosthenes's style in an unduly technical way that occludes the constitutive political aspects of his rhetorical deeds. For his own part, Demosthenes was not looking forward. He was looking back—with urgency—to a tradition of rhetorical action which had not yet been entirely subordinated by the philosophers and rhetoricians.

Each of these figures is exemplary of *actio* still unbound by the philosopher's distinction between theory and practice, therefore unencumbered by their concomitant derision of the popular media and theatrical deployment of rhetorical action. The measure of their greatness is always the flourishing of the *polis*, the highest order of which is the successful establishment of a new polity, the unification of a multitude, and the (re)foundation of a regime. Each figure reacts against the laws, traditions, and norms that define their particular political contextual turmoil—doing so at great personal risk and to the immediate antagonism of the populace—then having those deeds legitimated by subsequent historical events, affirming their prudence and wisdom. These moments of turmoil are inflected by an anarchy of opinion, irrationality, and normative flux. However, there is an underlying unstated unity of desire for something more and an unspoken agreement on the corruption at hand. Lastly, in every case, these acts are resistant to theoretical stylization because they emerge in the context of extraordinary political moments and incorporate those moments into the rhetorical deed itself. They appear miraculous, unthinkable before their appearance and awe-inspiring in their brilliance. These eminently political practices will come under sustained assault by the philosophers and rhetoricians.

27 Kennedy, *The Art of Persuasion in Greece*, 236.

## Philosophical cloisters

At the core of Plato's assault on political life is a comprehensive attack on constitutive rhetorical action. Fundamental to Plato's assault is his critique of the epistemological presumptions of the rhetoricians, a well-known position but one worth quickly rehearsing.<sup>28</sup> For Plato, opinion stands in opposition to the philosophically real, the corollary being that politics stands in opposition to philosophy. The realm of opinion and politics is the realm of language; the realm of philosophy is the realm of thought and the soul. By its very nature, rhetoric turns agents away from truth and the soul while relishing in publicity and opinion. Plato's critique of the rhetorical arts is exhaustive, encompassing critiques of Thrasymachean, Isocratean, and Gorgian rhetoric.<sup>29</sup> For the task at hand, I need only consider Plato's critique of the orator-founders and leaders.

By way of example, consider Socrates's imagined speech to Homer in the tenth book of *Republic*:

*Socrates:* But about the most important and most beautiful things of which Homer undertakes to speak—warfare, generalship, city government, and people's education—about these it is fair to question him, asking him this: "Homer, if you're not third from the truth about virtue, the sort of craftsman of images that we defined an imitator to be, but if you're even second and capable of knowing what ways of life make people better in private or in public, then tell us which cities are better governed because of you, as Sparta is because of Lycurgus, and as many others—big and small—are because of many other men? What city gives you credit for being a good lawgiver who benefited it, as Italy and Sicily do to Charondas, and as we do to Solon? Who gives such credit to you?" Will he be able to name one?

*Glaucon:* I suppose not, for not even the Homeridae make that claim for him.<sup>30</sup>

Though Plato's critique here is explicitly directed at Homer, his praise of the orator-statesman is later revealed as deeply ironic. Where the poets had never proven their capacity to found new cities, in Plato's assessment the

28 On Plato's assault on rhetoric, see Vickers, *In Defence of Rhetoric*, chap. 2.

29 See "Phaedrus"; "Gorgias"; "Republic." See also Asmis, "Psychagogia in Plato's Phaedrus"; Vickers, *In Defence of Rhetoric*, chap. 2.

30 Plato, "Republic," 599d–e.



orator-founders/statesmen have only ever acted as catalysts of corruption. In *Republic* Themistocles is treated in essentially the same way, as are the Seven Sages (including Solon) in the *Protagoras*.<sup>31</sup> In *Gorgias* Plato takes aim at Themistocles, Cimon, Miltiades, and Pericles with rather unpersuasive vigour. In *Phaedrus* Pericles is singled out initially as one of the few practitioners of the rhetorical arts who had “natural ability,” as well having a “lofty point of view” in reference to questions of “universal applicability.”<sup>32</sup> However, as with the founders and poets, this encomium is again eventually revealed as ironic, and the orator-founders are cast as debased sophists who wrought destruction and political disorder. Pericles in particular is cast as a failure because of the fleetingness of his accomplishments, which were scuttled upon his death.<sup>33</sup>

And yet, for Plato there are attributes of rhetorical action—specifically the often great virtues of these statesmen and their capacity to persuade without engaging in debate—which despite his derision he seems to want to appropriate. The most striking example of this is found in Plato’s notion of *psychagogia* (or “directing the soul by means of speech”<sup>34</sup>) necessary for the realization of his political program. *Psychagogia* aims at gaining access to the soul and then ruling over it. Dialogue remains the means through which the philosopher communicates with interlocutors, but only in private and never in the public sphere, for private dialogical rhetoric allows for the consideration of the soul in its individual particularity. However, because the forms accessed through the soul are so thoroughly occluded by opinion, access to the soul requires that Plato begin by addressing opinion, undermining it, and finally transcending it. To achieve this goal, the Platonic method unfolds as an iterative process beginning by enticing the interlocutors with those opinions the *psychagogue* aims to refute. Socrates, for example, uses myth to win over Phaedrus or city-building themes to win over Glaucon in *Republic* (including insincere praise of the founders in the aforementioned coaxing of his interlocutors) and proceeds to incrementally allow the interlocutor to discover for themselves the supposed fallacy of their own opinions. It is not by chance that the most famous instance of this involves founding a polity. The realm of the psychagogue is not the political foundation of a city but its opposite, the foundation of a city in *logos*.

31 Plato, “Protagoras”; Plato, “Gorgias.”

32 Plato, “Phaedrus,” 270a.

33 Plato, “Gorgias,” 515–17.

34 Plato, “Phaedrus,” 261a.

In Plato's hands, constitutive rhetorical action is not criticized so much as it is replaced by its antinomy: stripped of its performativity, theatricality, and publicity. *Psychagogia* demarcates the realm of philosophers, not politicians. Politics do follow, but they are infamously the politics of stasis. Plato's criticism of rhetorical action may seem perfunctory and crude, but the effective undermining of constitutive rhetorical action is all-encompassing and of historical consequence. But so, too, is the discomfort. Like Leontius looking over the North Wall, Plato cannot help but turn back to rhetorical action with seeming awe, whatever his abhorrence of the popularity and vulgarity he sees in it.<sup>35</sup>

Plato may go to war against the idea, but caution is in order. He has, after all, few qualms in appropriating his enemies' weapons to use against them. And he would have known those weapons well, as in his youth he was an aspiring dramatist himself. Plato's dialogues are deeply inflected by the dramatic form, if in idiosyncratic and philosophical ways. We see this throughout *Republic* and stated matter-of-factly in *Laws*. Commenting on Plato's *Laws*, Martin Puchner argues the following:

His city is the "truest" tragedy and the most beautiful "drama," outshining the creations of all other "artists." Not only are the creators of the perfect city-state poets themselves, they are actors, too, acting as "antagonists" in the most perfect drama. After being critical of tragedy in a number of dialogues, most famously so in his demand to banish tragedians from his ideal city in the *Republic*, Plato perhaps remembers here [*Laws*], in his last work, his early occupations as chorus leader and tragedian, his early desire to engage in a competition with other tragedians. He identifies himself as a rival to the tragic poet, a rival who is outdoing them on their home turf.<sup>36</sup>

Plato characterizes Socrates's declared intention in *Gorgias* "of getting the souls of the citizens to be as good as possible and of striving valiantly to say what is best, whether the audience will find it more pleasant or more unpleasant."<sup>37</sup> In *Statesman* Plato argues that although the city must not be ruled by sophists, it is often useful for the philosopher king to deploy rhetorical persuasion for the health of the city. Hence, Plato embraces "that part of rhetoric which in partnership with kingship persuades people of what is just

35 Plato, "Republic," 439e–40.

36 Puchner, *Drama of Ideas*, 9.

37 Plato, "Gorgias," 503a.

and so helps in steering through the business of cities."<sup>38</sup> So, in the service of the good and the just, Plato, too, finds place for a kind of rhetorical action.

Aristotle's turn from Plato's philosophical abstraction to practice entails a guarded move back in the direction of the original political understanding of *actio*, although with great apprehensiveness and caution. Aristotle follows Plato in rejecting and denigrating the vulgar politics of constitutive rhetoric but is keen to redeploy a tempered version of rhetorical action in the service of *constituted* political regimes. For these reasons, we find in Aristotle the sharpest expression of the difficulty of theoretically wrangling the concept of *actio* instead of bluntly rejecting it.

Rhetoric, for Aristotle, is an exceptional art, as it alone takes as its object other arts.<sup>39</sup> The rhetor identifies what is persuasive about a particular art and how to present the proofs suitable for persuading their audience of the truth of the matter. The question of rhetoric, then, is a question of *pisteis*, or proofs. Aristotle delineates two general types of proofs: *atechnic*, those conditions that are outside the control of the rhetorician such as "witnesses, testimony from torture, contracts,"<sup>40</sup> and *entechnic*, to methods that can be prepared and controlled by the rhetorician. The three *entechnic* proofs are the public perceptions of the speaker's character (*ethos*), the emotions of the listener or audience (*pathos*), and the persuasiveness of the argument itself (*logos*).<sup>41</sup> Successful rhetorical persuasion is contingent on the successful manipulation of these three factors in the service of proper syllogistic reasoning. These given conditions are the constituted background against which Aristotelian rhetoric unfolds. But the background conditions themselves are beyond the scope of Aristotelian rhetoric.

It is under these conditions that we can finally speak of *actio* in a theoretically defined sense. In book three of *On Rhetoric*, we find Aristotle's first theoretical reflections on *actio* and its more recognizable variants of *pronuntiatio* and *acting*. Aristotle has little to say on these topics and is indeed quite forthright about the undeveloped state of the theory of *action*. He writes,

The first thing to be examined was naturally that which came first by nature, the facts from which a speech has persuasive effect; second is

38 Plato, "Statesman," 304a.

39 Aristotle, *On Rhetoric*, 1355b.

40 Aristotle, *On Rhetoric*, 1355a.

41 Aristotle, *On Rhetoric*, 1356a–b.

how to compose this in language [*lexis*]; and third is something that has the greatest force but has not yet been taken in hand, the matter of the delivery [*hypokrisis*]. Even in regard to tragedy and rhapsody, delivery was late in coming to be considered; for originally the poets themselves acted their tragedies. Clearly there is something like this in rhetoric, as in poetics.<sup>42</sup>

Aristotle ascribes the theoretical murkiness of the concept of rhetorical action (delivery) to its relative newness as a theoretical concern. However, in retrospect, it seems more correct to say that he hit upon an essential perplexity inherent to the thing itself: the widely noted political power of rhetorical action (“something that has the greatest force”) is a function of its capacity to overturn old orders and constitute new normative political horizons, while rhetorical theorization is circumscribed by constitutional backgrounds and functions under those normative constraints. Rhetorical action is not a practice or a speech that can be learned by rote from within the cloisters of the existing constitution. Rather, it is a practice that takes as its fodder unpredictable political events and fluid social contexts and whose practitioners are always cast as particularly virtuous and eminent. Its great force relates to the transformation of constitutions; it is not carried out within those constitutions.

Perhaps for these reasons, Aristotle follows Plato by conflating his critique of delivery with his criticism of democracy. While Aristotle is clear that *actio* is both undeveloped and under-theorized, he is nevertheless certain that it is the most debased form of rhetoric. Hence, although performers who are noted for their skill in the deployment of *actio* “are generally the ones who win poetic contests; and just as actors are more important than poets now in the poetic contests, so it is in political contests because of the sad state of governments.”<sup>43</sup> For this reason, rhetoricians are advised to study delivery “not because it is right but because it is necessary,” since although the “facts themselves” are the foundation of successful rhetoric, “nevertheless, [delivery] has great power [...] because of the corruption of the audience.”<sup>44</sup>

Aristotle understood delivery as inseparable from acting. Both require a “natural talent” and are “not reducible to artistic rule.” Aristotle writes that

42 Aristotle, *On Rhetoric*, 1403b–4.

43 Aristotle, *On Rhetoric*, 1404a. As Kennedy notes, Aristotle seems to be referencing Plato’s *Gorgias* here; Plato, “Gorgias,” 463a–b.

44 Aristotle, *On Rhetoric*, 1404a.

[w]henver delivery comes to be considered it will function in the same way as acting [...] As a result, prizes go to those who are skilled at it, just as they do to orators on the basis of their delivery; for written speeches [when recited] have greater effect through expression [*lexis*] than through thought.<sup>45</sup>

Yet both are similarly debased insofar as they are public modalities of persuasion. Aristotle immediately flags his distrust of *actio* in its populist and constitutive sense, noting that it was Thrasymachus—who claimed as reported in *Republic* that justice is “nothing other than the advantage of the stronger”<sup>46</sup>—who asserted the importance of emotional appeal through delivery. In this regard, delivery retains for Aristotle the unboundedness and potential power that was one of the defining features in the political variant of the rhetorical tradition, although it is recast as democratic, vulgar, and negative.

In *Poetics* Aristotle's critique of delivery is deeper still. In the discussion of tragedy, Aristotle extends his critique of delivery to poetry more generally. Aristotle defines tragedy as

an imitation of an action of serious stature and complete, having magnitude, in language made pleasing in distinct forms in its separate parts, imitating people acting and not using narration, accomplishing by means of pity and fear the cleansing of these states of feeling.

Tragedy is an imitation of an event. Story and character are that which are imitated. Speech is a means of imitation, while thought, *opsis* (spectacle), and song-making are mimetic objects. Aristotle says that tragedy is an imitation of actions, life, happiness, and wretchedness, but not of human beings. Therefore, actors should not mimic the person, but rather the moral actions—story and character—that convey the moral lessons of what constitutes the higher (or the good) and the lower (or the degraded): “So the actions performed and the story are the end of tragedy, and the end is the greatest of all things.”<sup>47</sup>

Tragedy “draws the soul” (Aristotle, like Plato, uses the term *psychagogia*, though in a broader sense) through “reversals and discoveries” that tell stories with an ethical principle, the transgression of which is recognized as

45 Aristotle, *On Rhetoric*, 1404a.

46 Plato, “Republic,” 338c.

47 Aristotle, *Poetics*, 1450a23–25.

being incongruent with one's own good. "The story, then," Aristotle writes, "is the source and is like the soul of the tragedy, and states of character rank second."<sup>48</sup> Inverting this analysis allows us to uncover Aristotle's critique of spectacle: "Spectacle, while it is able to draw the soul, is the component most foreign to the art and least inherent in poetry."<sup>49</sup> Aristotle's dilemma is that *actio* is manifestly powerful, irrespective of the story. Both in the affairs of the multitude and within the realm of politics, "the art of making masks and set decorations has more control over bringing off the spectacle than does the art of the poets."<sup>50</sup> Here, again, Aristotle's preference for the rhetoric used in forensic rhetoric comes into conflict with the inescapable political fact of the power of constitutive rhetorical action. Having reluctantly assented to the vulgar power of tragedy and *actio*—while denying the actor any *philosophical* power in directing the audience toward truth—Aristotle finally turns to the tragedians themselves. Interestingly, he notes the peculiarity of the tragedians' skill. Unlike other rhetorical techniques, this skill is only found in a "naturally gifted person" or the "insane," the difference being that the gifted poet is capable of conveying the passions, while the madman is bound by them.<sup>51</sup> Hence, even after shifting the theatrical domain, *actio* transgresses the boundaries within which it was supposed to be confined.

Aristotle's domestication of *actio* pushes founders beyond the realm of the normal and the natural. The political aspects previously associated with rhetorical action (eminence, rarity, and an inherent resistance to theoretical capture) lose their naturalism and take on mystical and mythical notes. Although that move adds a large measure of obscurity to Aristotle's account of founders, it does afford a reprieve of sorts from Plato's framing of the debate as a pitched battle, by allowing Aristotle to avoid the rudimentary, vulgar, and potentially revolutionary aspects and instead discuss the idea in an idealized form of the superlative virtue: the magnanimous man.

The magnanimous man is rarely discussed in terms of Aristotle's rhetorical considerations, but he should be. The discussion of magnanimity in *On Rhetoric* is limited because Aristotle's concern is with the role of persuasion in constituted regimes, where the rhetoricians need to learn how to best navigate pre-given or constituted norms and institutions. But the magnanimous man is a paragon of virtue whose actions, not speech, are

48 Aristotle, *Poetics*, 1450a35–39.

49 Aristotle, *Poetics*, 1450b16–19.

50 Aristotle, *Poetics*, 1450b17–20.

51 Aristotle, *Poetics*, 1455a35–36.

the sources of persuasion. Thus, in *On Rhetoric* magnanimity is presented only as an other-regarding concern.<sup>52</sup> In *Nicomachean Ethics* and *Politics*, however, a more developed account of the persuasive power of magnanimity as enacted virtue is offered.

In *Politics* Aristotle takes up the question of magnanimity amid a discussion regarding the three correct constitutions. Aristotle observes a singular problem: "In the case of the best constitution," Aristotle writes, "there is a considerable problem, not about superiority in other goods, such as power or wealth or having many friends, but when there happens to be someone who is superior in virtue."<sup>53</sup> The issue is that there is a kind of virtue that supersedes all constituted norms, namely magnanimity. Aristotle speaks of "one person or more than one" who is "so outstanding by reason of his superior virtue that neither the virtue nor the political power of all the others is commensurable with his."<sup>54</sup> Aristotle notes that "such men can no longer be regarded as part of the city-state"<sup>55</sup> and would "*reasonably be regarded as a god among human beings*."<sup>56</sup> (To be clear, Aristotle does not use the term magnanimity here, but the attributes of the person's character are by and large those of the magnanimous person.) Magnanimity, in short, naturally transcends political norms and has the natural power to constitute new political orders. It is an embodied constitutive rhetoric quite unlike deliberative, forensic, or epideictic modes. Aristotle writes that "people would not say that such a person should be expelled or banished, but neither would they say that they should rule over him."<sup>57</sup> Therefore, "The remaining possibility—and it seems to be the natural one—is for everyone to obey such a person gladly, so that those like him will be permanent kings in their city-states."<sup>58</sup> Not a foundational moment or a re-foundation, nor a city in *logos*, but something nearly miraculous that compels a kind of natural obedience. The character of the magnanimous man is one of public display and persuasive virtue.

Commentators are often flustered by Aristotle's account of magnanimity because it seems to be inconsistent with much of Aristotle's political philosophy. They may have been misled by assuming that Aristotle had, or could, come to grips with the idea. Instead, we could read the discussion

52 Aristotle, *On Rhetoric*, 1366b–67.

53 Aristotle, *Politics*, 1284b25–28.

54 Aristotle, *Politics*, 1283b40–4a17.

55 Aristotle, *Politics*, 1283b40–4a17.

56 Aristotle, *Politics*, 1284a10 (emphasis added).

57 Aristotle, *Politics*, 1284b25–34.

58 Aristotle, *Politics*, 1284b25–34.

of magnanimity as an inflection point in the history of *actio*, one that disaggregates the idea into its various parts, clarifies the notion in some regards—by disaggregating the theatrical elements from the virtue ethics and by defining and describing each—and mystifies it in others by, for example, pushing the figure of the magnanimous man outside the realm of normal everyday politics while treating those politics as superhuman. Then, we can at least come to a better explanation as to why it is so fraught. Aristotle himself is struggling to explain a rhetorical-political phenomenon that functions primarily as a constituting phenomenon, inexplicable within the settled norms of a constituted regime. The similarities between the mode of action criticized by Aristotle in *Poetics* and the kind of politics valorized in *Nicomachean Ethics* and *Politics* speaks to the challenge if not the impossibility of theoretically grasping rhetorical action.

As a response to Plato, Aristotle may have allayed many of Plato's concerns by disaggregating constitutive rhetorical action into its various parts, construing them in seemingly antithetical ways and ultimately treating them as entirely different topics. But as the proximity between his accounts of theatrical action and magnanimity seems to attest, he was not entirely successful, and the core problem remains unresolved. Ultimately, this theoretical paradox turns out to accurately reflect the practical paradox, whereby it is perhaps impossible to differentiate seeming magnanimity from practiced hypocrisy until after the fact. In that regard, Aristotle's seeming confusion is itself analytically meaningful.

In Aristotle's hands, *actio* retains a measure of its inexplicable socio-political power exemplified in the politics of new foundations. But because Aristotle follows Plato's lead in boxing out constitutive politics while nevertheless aiming to incorporate aspects of rhetorical action within constituted political situations, he finds himself having to parse the concept two different ways. On one side, Aristotle embarks upon a path of de-mystification, whereby mundane aspects like delivery and hand gestures can be studied and theorized. On the other side, other aspects—like the sheer power of rhetorical action to constitute new identities and the eminent virtue of the persons who do the work of rhetorical action—are set in a way that points to their increasing mystification. However, both remain parsed in anxiety about the popularity or vulgarity of a rhetorical practice attuned to mobs and moments of exceptional politics. The subsequent history of rhetorical action is replete with shifts, reversals, and various conceptual mutations. But this moment marks a distinct fork in the conceptual history of rhetorical action.



## Roman reconfigurations

Beginning from Aristotle's *Rhetoric*, but moving decisively beyond it, Cicero develops the textual-technical elements of rhetoric while expanding its scope to include figures and tropes. Cicero's emphasis is on the means and methods of rousing emotional and moral response and support, while simultaneously marking a continuation and acceleration of Aristotle's bifurcation of the concept into regular (proper) and irregular (vulgar) rhetoric. In *De Oratore* Cicero formalizes five aspects of the rhetorical arts: *inventio*, *dispositio*, *elocutio*, *memoria*, and *actio*. In the first instance, *actio* is defined as the art of *pronuntiatio*—that is, as a technique for using the body to convey to an audience the appropriate emotion accompanying the argument. Extending Aristotle's claim that rhetoric is the mother of all arts, and taking heed of his discussion in *Poetics*, Cicero asserts that *pronuntiatio* is the foremost of all the rhetorical techniques, as far as its proficient use is a necessary condition for successful persuasion. All other techniques, Cicero writes, "are but parts of a building as it were; the foundation is memory; that which gives it light is delivery."<sup>59</sup> Following his exposition of the other rhetorical techniques, Cicero writes in *De Oratore*, "the effect of all of these oratorical devices depends on how they are delivered."<sup>60</sup> Delivery "is the dominant factor in oratory; without delivery the best speaker cannot be of any account at all."<sup>61</sup>

The apparent reprieve of delivery from its condemnation by Plato and, to a lesser extent, Aristotle is partly a function of the importance of the emotions for Cicero and, in turn, the unique capacity of delivery to connect directly with the emotions. The "vast and indeed incredible power" that Cicero ascribes to *actio*—demonstrated in its capacity to make "any impression on the unlearned crowd"—is derived from the theory that *actio* directly accesses core emotional truths "rooted deep in the general sensibility, and nature has decreed that nobody shall be entirely devoid of these faculties."<sup>62</sup> However, this is not a question of ephemeral or superficial emotional responses. Rather, emotions reflect the natural force of the topic at hand. As well as being the most important and powerful of the rhetorical techniques, *actio* is the most plebeian. "All the factors of delivery," Cicero writes,

59 Cicero, "De Optimo Genere Oratorum," § 2.

60 Cicero, "De Oratore Book III," § 56.

61 Cicero, "De Oratore Book III," bk. III. § 56.

62 Cicero, "De Oratore Book III," bk. III. § 50.

contain a certain force bestowed by nature; which moreover is the reason why it is delivery that has most effect on the ignorant and the mob and lastly on barbarians; for words influence nobody but the person allied to the speaker by sharing the same language, and clever ideas frequently outfly the understanding of people who are not clever, whereas delivery, which gives the emotion of the mind expression, influences everybody, for the same emotions are felt by all people and they both recognize them in others and manifest them in themselves by the same marks.<sup>63</sup>

For Cicero, delivery, in conjunction with style, gives the orator direct access to the passions of the multitude. Delivery is unique in this regard, insofar as it is the only universally understood rhetorical technique.

Unlike Aristotle's criticism of *actio* in its theatrical mode, Cicero sees *actio* as revelatory, not deceptive or occluding. The purpose is not dissimulation or distraction but simulation of the emotional weight of the topic at hand through the instantiation of those emotions. This explains why Cicero is so concerned with the resemblance between history and metaphorical ornamentation, and why proportionality and fit are crucial to the successful use of *actio*. Nature and truth are inherently better than their opposite; the role of the rhetor is to make this palpable and thereby actionable. Rhetorical extenuation or diminution must be calibrated with truth and effective communication.

Cicero generally adheres to Plato's anti-theatricalism, with some notable reservations. This is most clear in his retention of the conceptual distinction between orators, and actors and sophists. The difference, to Cicero, is between emotional authenticity and inauthenticity, or between the natural and the phantasmal. However, unlike Plato and Aristotle, Cicero is primarily concerned not with the fact that the theater privileges actors and feigned emotions instead of truth and character but with the fact that the passions displayed in the theater are themselves not true representations of the agent's emotions. Cicero's worry seems to be that an overly enthusiastic purging of theatrical rhetoric from the orator's repertoire could impede the successful deployment of true emotional appeals in the service of the truth. Cicero therefore sets out to temper what he sees as the overextended anti-theatricalism of Plato and Aristotle: "My reason for dwelling on these points," Cicero writes, "is because the whole of this department has been abandoned by the orators, who are the players that act real life, and has been taken over by the actors, who only mimic reality."<sup>64</sup> And later:

63 Cicero, "De Oratore Book III," bk. III. § 59.

64 Cicero, "De Oratore Book III," bk. III. § 56.

because emotion, which mostly has to be displayed or else counterfeited by action, is often so confused as to be obscured and almost smothered out of sight, we have to dispel the things that obscure it and take up its prominent and striking points.<sup>65</sup>

It is because emotions can be mimicked and reshaped through theatrics that rulers must deploy the rhetorical arts to foreground *true* emotions: “there can be no doubt that reality beats imitation in everything; and if reality unaided were sufficiently effective in presentation, we should have no need at all for art.”<sup>66</sup>

All this opens the discussion of simulation and dissimulation. For Cicero, the actor must necessarily dissimulate, because the actor neither knows his topic nor is truly invested in the consequences of its publicity. The orator, by contrast, is invested in bringing to light both the reason and the corresponding passions of his subject; the orator’s primary concern is philosophical understanding. It is for this reason that Cicero writes that actors are not taken as seriously, or judged as harshly, as the orator. Both are judged by the virtues of their respective endeavors in the first instance and by the quality of their acting/*actio* in the second. However, unlike the orator, the actor has no stake in his endeavor.<sup>67</sup>

Alongside Cicero’s discussion of *actio* is a discussion of the orator-founder. Cicero’s celebrated discussion of this figure is found in *De Inventione*. In an anthropological account of these figures, Cicero writes,

[I]f we wish to consider the origin of this thing we call eloquence—whether it be an art, a study, a skill, or a gift of nature—we shall find that it arose from most honourable causes and continued on its way from the best of reasons.

For there was a time when men wandered at large in the fields like animals and lived on wild fare; they did nothing by the guidance of reason, but relied chiefly on physical strength [...] And so through their ignorance and error blind and unreasoning passion satisfied itself by misuse of bodily strength, which is a very dangerous servant.

At this juncture a man—great and wise I am sure—became aware of the power latent in man and the wide field offered by his mind for great achievements if one could develop this power and improve it by

65 Cicero, “De Oratore Book III,” bk. III. § 57.

66 Cicero, “De Oratore Book III,” bk. III. § 57.

67 Cicero, “De Oratore Book I,” § 27.

instruction. Men were scattered in the fields and hidden in sylvan retreats when he assembled and gathered them in accordance with a plan; he introduced them to every useful and honourable occupation, though they cried out against it at first because of its novelty, and then when through reason and eloquence they had listened with greater attention, he transformed them from wild savages into a kind of gentle folk.<sup>68</sup>

Just as the extraordinary, but not rare, politics of new foundations for the Greeks has transformed into a singular mythical act of foundation for the Romans, the idea of rhetorical action and new foundations has transformed from an elementally political and extraordinary form of rhetoric for the Greeks into a mythical, almost magical form of rhetoric for Cicero. Cicero's orator-founder is an outstanding figure in the history of the rhetorical arts, and early modern rhetoricians enthusiastically picked up this passage.

The first polities, Cicero argues, were founded through great rhetorical feats, creating a community of shared meaning bound by institutional forms. Indeed, Cicero's orator-founder achieves this extraordinary feat in exclusion from politics and violence. "Certainly," Cicero writes,

only a speech at the same time powerful and entrancing could have induced one who had great physical strength to submit to justice without violence, so that he suffered himself to be put on a par with those among whom he could excel, and abandoned voluntarily a most agreeable custom[.]<sup>69</sup>

This orator-founder is characterized as acting through oratorical persuasion alone, without resorting to violence, spectacle, power, or pre-established authority. If Aristotle opened the door to the mystification of the eminent rhetor and orator-founder, Cicero pushes through all the way to the realm of myth.

This account of rhetorical action would resonate through the tradition from this point on.<sup>70</sup> However, it is important to register just how radical a reconfiguration of the politics involved is. The ancient orator-founders had the guide of historical experience to anchor their understanding of *actio*, and Aristotle still had a clear vision of the politics at hand (however much he struggled to wrangle it theoretically). In Cicero rhetorical action in its

68 Cicero, "De Inventione," bk. 1. § 1–2.

69 Cicero, "De Inventione," bk. 1. § 2.

70 Skinner, *Reason and Rhetoric*, 93.

relation to foundations had, like the Roman foundation itself, been relegated to the realm of myth.<sup>71</sup> The mythologization of *actio* in Cicero's writings is exemplified negatively by the limited scrutiny it actually receives. Cicero may praise *actio*, but he affords only a few pages to the explication of the technique, paying much more attention to *inventio*, *dispositio*, and *elocutio*.

From Cicero onward, the conceptual fork established by Aristotle becomes a truism. One prong conceives of *actio* as mere pronunciation and then hand gestures. The other focuses on the orator-founder, whose practice becomes essentially fully mythical and, in some instances, magical.<sup>72</sup> It is a remarkable display of an idea mutating, subdividing, then continuing to mutate until these conceptual kin look so dissimilar as to be seemingly unrelated. Nevertheless, both still carry the weight of the original dilemma that marked action from the outset, as both pull away from constitutive rhetorical action in the ancient sense while remaining persistently discomforted by the potential of those politics.

For Quintilian, *actio* remains formally an important part of the rhetorician's arsenal, and the bifurcated and somewhat paradoxical characterization of the concept is retained. However, the emphasis shifts decisively away from the orator-founder figure toward an increasingly technical analysis of the concept itself (at least, what is left of it). Quintilian begins, much in line with Cicero, in Book XI of *Institutio Oratoria*, writing that *actio*

has an extraordinarily powerful effect in oratory. For the nature of the speech that we have composed within our minds is not so important as the manner in which we produce it, since the emotion of each member of our audience will depend on the impression made upon his hearing. Consequently, no proof, at least if it be one devised by the orator himself, will ever be so secure as not to lose its force if the speaker fails to produce it in tones that drive it home. All emotional appeals will inevitably fall flat, unless they are given the fire that voice, look, and the whole carriage of the body can give them.<sup>73</sup>

For Quintilian, the power of *actio* is a function of the relationship between gestures and the voice, and sight and hearing, respectively, which are the

71 Arendt, *On Revolution*, 207–11.

72 In the *Euthydemus*, Plato describes some public rhetors in ways that characterize the rhetor as an “enchanter” and the people as exceptionally vulgar and eager to be enchanted; Plato, “Euthydemus,” 289e–90. On this point see Vickers, *In Defence of Rhetoric*, 137–38.

73 Quintilian, *Institutio Oratoria*, vol. IV, bk. XI. III. § 2.

two senses most strongly linked to the passions.<sup>74</sup> Quintilian also loosens Cicero's link between philosophy and rhetoric, affording a higher standing to acting and praising the power of actors to supply substantial emotive force to arguments they may not understand or believe. Actors, Quintilian notes, "add so much to the charm even of the greatest poets, that the verse moves us far more when heard than when read, while they succeed in securing a hearing even for the most worthless authors."<sup>75</sup> Quintilian cites Demosthenes's praise of *actio* and the value Demosthenes gained "under the instructions of the actor Andronicus,"<sup>76</sup> notably saying nothing of Demosthenes's political deeds. Quintilian advances a distinction between "true emotion" and "false and fictitious emotion." "The former," Quintilian writes, "breaks out naturally, as in the case of grief, anger, or indignation, but lacks art, and therefore requires to be formed by methodical training." "The latter," he continues, "does imply art, but lacks the sincerity of nature."<sup>77</sup> Quintilian therefore breaks from the anti-theatricalism introduced by Plato.<sup>78</sup>

The most important observation, however, is that Quintilian's concern with *actio* is fleeting. Grandiloquence aside, it speaks not to the continued importance of *actio* but rather to its successful subordination to the *vita contemplativa*. Quintilian says almost nothing more about *actio* beyond the long quotation above, except in the form of gestures. One is left with the impression that Quintilian understands *actio* as a capstone to a rhetorical performance, as opposed to the keystone it was for Cicero. In sum, it speaks to the success of Plato's agenda-setting assault, a success so thorough that the original contestation is nearly invisible.

## Reformation and Renaissance rhetoric

As the historical practice of new foundations and constitutive rhetoric receded ever further into historical memory, the idea of rhetorical action became both more mundane and more fantastically mythological. Early modern rhetorical theory marks the apex of this long historical trend.

Scholars of seventeenth-century rhetoric tend not to concern themselves with the idea of rhetorical action. Their focus is on the three classical

74 Quintilian, *Institutio Oratoria*, vol. IV, bk. XI. III. § 14.

75 Quintilian, *Institutio Oratoria*, vol. IV, bk. XI. III. § 4.

76 Quintilian, *Institutio Oratoria*, vol. IV, bk. XI. III. § 7.

77 Quintilian, *Institutio Oratoria*, vol. IV, bk. XI. III. § 61–62.

78 See, for instance, Quintilian, *Institutio Oratoria*, vol. II, bk. VI. I. § 26–27.

rhetorical techniques: *inventio* (“the devising of matter, true or plausible, that would make the case convincing”<sup>79</sup>); *dispositio*, or “arrangement” (“the ordering and distribution of the matter, making clear the place to which each thing is to be assigned”<sup>80</sup>); and *elocutio*, or “style” (“the adaptation of suitable words and sentences to the matter devised”<sup>81</sup>). The other two are *memoria* (“the firm retention in the mind of the matter, words, and arrangement”<sup>82</sup>) and *pronuntiatio*, or “delivery” or “*actio*” (“the graceful regulation of voice, countenance, and gesture”<sup>83</sup>), which are of far less concern. (*Memoria* is not my concern here, and I leave it aside.)

There are good reasons why scholars would focus on *inventio*, *dispositio*, and *elocutio*. A brief survey of seventeenth-century classical rhetorical theory quickly reveals that it pays scant attention to *pronuntiatio*—due in large measure to that era’s focus on pedagogy, philosophy, and theology (where the author is the rhetor and the reader the audience)—wherein *pronuntiatio* serves a limited function. Those rhetoricians of the early modern period who do address *pronuntiatio* tend to isolate elements that can be drawn and schematized, for example hand gestures, facial expressions, or posture.<sup>84</sup>

Studies of the rhetorical arts in this period concern the private teaching of moral philosophy or formal courtroom disputation. For example, Thomas Wilson’s *The Art of Rhetoric* (1560), the first Ciceronian work of rhetoric printed in English, is exemplary in this regard. Wilson limits his explication of *actio* to pronunciation and gestures and to a total of four paragraphs in the conclusion to the third book of his lengthy study.<sup>85</sup> More often, *actio* is absent, as in Henry Peacham’s *The Garden of Eloquence* (1577). Alternatively, *actio* is treated in a stylized accounting of gestures, as in John Bulwer’s *Chirologia: Or the Natural Language of the Hand* (1644).

Surprisingly, this is true as well for the Ramist rhetorical tradition. *Actio* sees something of a revival in the hands of Pierre de la Ramée (Petrus Ramus) and Omer Talon, who reassert the Roman understanding of *actio* as hand gestures forming an integral element of *elocution* (or “striking expression”), therein subdivided into voice and gesture.<sup>86</sup> For Ramus and Talon, *actio* was intended to constitute one of the two major parts of rhetoric. However, the

79 [Cicero], *Rhetorica Ad Herennium*, bk. 1. § 2.

80 [Cicero], *Rhetorica Ad Herennium*, bk. 1. § 2.

81 [Cicero], *Rhetorica Ad Herennium*, bk. 1. § 2.

82 [Cicero], *Rhetorica Ad Herennium*, bk. 1. § 2.

83 [Cicero], *Rhetorica Ad Herennium*, bk. 1. § 2.

84 The shining Renaissance example of this is John Bulwer’s *Chirologia*.

85 Wilson, *The Art of Rhetoric*, 218–21.

86 Ong, *Ramus, Method, and the Decay of Dialogue*, 273.

diagrammatic promise was belied by a lack of substantive consideration, as it was with Cicero and Quintilian. The Ramist rhetorician Dudley Fenner would—first anonymously in 1584, then under his own name in 1588—attempt to address this lacuna in his *The Artes of Logike and Rhetorike* (the first work of Ramist rhetoric published in English<sup>87</sup>). However, Fenner's influence was limited to the church and the pulpit. Far more influential were the original works of Ramus and Talon, who afforded the majority of their attention to textual rhetorical practices. For this reason, Walter Ong writes that “the irreducibly vocal and auditory phenomena of actual spoken delivery, which the second part of rhetoric purportedly taught, escape the diagrammatic apparatus somehow intrusive in all explanatory approaches to communication.”<sup>88</sup> The result is that “the Ramist ‘plain style’ is a manner of composition, not of voice and gesture.”<sup>89</sup> So, *actio* continued to resist the philosophers' grasp, two millennia after Aristotle remarked that it was likely due to the novelty of the technique that *actio* had not been properly considered.

If Bulwer's *Chirologia* positively exemplifies the transformation of *actio* into a study of hand gestures, by that same token it negatively exemplifies the fact that by the mid-seventeenth century, the concept of *actio* in its full constitutive political sense had been all but lost. In its place were two highly stylized versions of *actio*, both stemming from Cicero. The first was that of *pronuntiatio*. The second was derivative of Cicero's ideal orator, whose powers are understood as near magical.<sup>90</sup> The ancient conception of rhetoric as constitutive politics—expressed as great political actions—is effectively gone or perfectly mystified. Consequently, studies of *inventio*, *dispositio*, and *elocutio* dominate the age. Certainly, one must flag the expansion of the scope of *elocutio* in the era to include approximations of what was once *actio*. As Vicker's notes, “All the power and skill of the ancient orators was claimed by Renaissance writers, so that the ability to move the affections through language—now written—became a fundamental property of literature.”<sup>91</sup> *Oratio* had become part of the literary genre “intended for the reader, not for a live audience.”<sup>92</sup> Of course, the shift to the written word is paramount in understanding why *actio*, and the political phenomenology previously associated with it, took the form that it did. Yet the overarching

87 Wilson, “Fenner, Dudley.”

88 Ong, *Ramus, Method, and the Decay of Dialogue*, 273.

89 Ong, *Ramus, Method, and the Decay of Dialogue*, 273.

90 Skinner, *Reason and Rhetoric*, 87–93.

91 Vickers, *In Defence of Rhetoric*, 286.

92 Vickers, *In Defence of Rhetoric*, 287.



point stands: by the seventeenth century, *actio* had reached its nadir, rid of politics and transformed into an ossified version of its original.

### *Theatrum Rhetoricum*

At that same moment, and against the weight of the philosophical and rhetorical tradition that had always been effectively against *actio* in its constitutive and essentially political form, the practice of rhetorical action reappears with remarkable vigor in the theater. From this perspective, the seventeenth century was not the nadir of the idea of *actio* but its renaissance. The story that needs to be told is that of the poets and, more importantly, the dramatists.

The incubator of the *actio*'s rebirth was the stage and the political opportunities it presented. Heinrich Plett writes,

Rhetorical dissembling manifests itself in words and actions, that is, in the media of *elocutio* and *actio*. In the first case there is a staging of language, in the second a staging of the body. The rhetorical illusion of the play of the body falls under the competence of the orator as an actor (and vice-versa), that of the play of language under his competence as a poet (and vice-versa).<sup>93</sup>

Plett concludes that “the *theatrum rhetoricum* becomes the arena of social and political action.”<sup>94</sup> For Plett, one of the distinctive features of the early modern theater was the remarkable explosion in interest in rhetorical action in the early modern period, rising from underneath and against two millennia of philosophical and theological restraints.

From the mid-sixteenth to the mid-seventeenth century, the theater went through multiple phases of expression and repression.<sup>95</sup> Throughout this period, numerous tracts were published both in support of and in opposition to acting and the theater. In this respect, the seventeenth-century theatrical debate is something of a re-enactment of the ancient contest between Plato and the founders and politicians. The later sixteenth- and seventeenth-century versions of this battle were carried out between puritan anti-theatricalism—bolstered by royal censure—and the early

93 Plett, *Rhetoric and Renaissance Culture*, 252.

94 Plett, *Rhetoric and Renaissance Culture*, 252.

95 The classic work on this is Barish, *The Antitheatrical Prejudice*.

modern dramatists. The puritans took up the Platonic critique with fanatic enthusiasm. For example, in *A Treatise Against Dicing, Dancing, Plays, and Interludes, with Other Idle Pastimes* (1577), John Northbrooke had “Age” tell “Youth” the following:

I am persuaded that Satan has not a more speedy way and fitter school to work and teach his desire, to bring men and women into his snare of concupiscence and filthy lusts of wicked whoredom, than those places, and plays, and theaters are: and therefore it is necessary that those places and players should be forbidden and dissolved and put down by authority, as the brothel houses and stews are.<sup>96</sup>

In *School of Abuse* (1579), Stephen Gosson makes no less colorful an attack. He writes,

Let us but shut up our ears to poets, pipers, and players; pull our feet back from resort to theaters, and turn away our eyes from beholding of vanity; the greatest storm of abuse will be overblown, and a fair path trodden to amendment of life. Were not we so foolish to taste every drug, and buy every trifle, players would shut in their shops, and carry their trash to some other country.<sup>97</sup>

Similar condemnations are repeated throughout later decades, taking a most vitriolic form in William Prynne’s *Histriomastix: The Player’s Scourge* (1633).<sup>98</sup>

What is striking about these attacks is that the highly technical understanding of *actio* is of marginal concern. Instead, one finds a concern with theater as real political power—one that has a wide audience and can undermine established political institutions through mere rhetorical persuasion. It is indicative of the perception that theatrical rhetoric had a role in upending and supplanting moral, social, and political norms. The theater was viewed as destructive of the moral and political order, with critics railing that identities were being peddled like drugs, a critique stoked by the increasing powerlessness of the pulpit in shaping public opinion.<sup>99</sup>

96 Northbrooke, “A Treatise Against Dicing, Dancing, Plays, and Interludes, with Other Idle Pastimes [1577],” 2–3.

97 Gosson, “School of Abuse [1579],” 28.

98 William Prynne, “Histriomastix: The Player’s Scourge [1633],” in *Shakespeare’s Theater: A Sourcebook*, ed. Tanya Pollard (Malden: Blackwell Publishing, 2004), 279–86.

99 Gosson, “School of Abuse [1579],” 28.

The exception to this critical rule was, of course, dramatists and poets themselves. Against the state- and church-supported attacks leveled against them, the dramatists defended their art. At the core of that defense was a defense of *actio*. One of the earliest defenses of the theater is found in George Puttenham's *The Art of English Poesie*, published in 1589 but likely written in the 1560s. Puttenham was no radical, but against the staunchest anti-theatrical criticisms, he redeploys Aristotle's guarded defense in *Poetics* of the potential utility of poetry in creating and sustaining constituted norms inherent to the political and moral affairs of the regime. In 1595 Philip Sidney published *An Apology for Poetry*, written in response to Gosson's earlier attack. Following Puttenham, Sidney emphasizes the potential of theatrical mimesis as a tool for disciplinary moral pedagogy through the spectacular re-enactment of the true and the good. Sidney goes further than Puttenham or Aristotle in extending his defense of poetry to the techniques of invention and ornamentation, with an emphasis on metaphors and analogies, to bring out poetry's moral and aesthetic potential. Echoing Cicero, Sidney writes that "Nature never set forth the earth in so rich tapestry as diverse poets have done," continuing that, "neither with so pleasant rivers, fruitful trees, sweet smelling flowers, nor whatsoever else may make the too much loved earth more lovely. Her world is brazen, the poets only deliver a golden."<sup>100</sup> And later: "Now therein of all sciences [...] is our poet the monarch. For he doth not only show the way, but giveth so sweet a prospect into the way as will entice any man to enter into it."<sup>101</sup> Unlike Cicero, Sidney argues that the power of poetry and the poet is to make the truth of nature more evident than it appears.

Political expediency constrained the dramatists to less-than-revolutionary experiments in the use of *actio*. But by focusing on criticizing tyranny, they could nevertheless deploy the idea with some ingenuity. Indeed, the dramatists understood tragedy as especially well-attuned to countering the danger of tyranny because, through *actio*, the poet "openeth the greatest wounds and showeth forth the ulcers that are covered with tissue, that maketh kings fear to be tyrants, and tyrants manifest their tyrannical humors."<sup>102</sup> Sidney gives the example of "how much it can move" by recalling Plutarch's story of the

abominable tyrant Alexander Pheraeus, from whose eyes a tragedy well made and represented drew abundance of tears, who without all pity

100 Sidney, "An Apology for Poetry [1595]," 149.

101 Sidney, "An Apology for Poetry [1595]," 149.

102 Sidney, "An Apology for Poetry [1595]," 151.

had murdered infinite numbers, and some of his own blood: so as he that was not ashamed to make matters for tragedies, yet could not resist the sweet violence of a tragedy.<sup>103</sup>

Theatrical mimesis—including the use of rhetorical ornamentation and amplification, but actualized in *actio*—was, for Sidney, a great tactical advantage conferred only on the theater, since it allowed for a depiction of nature at once clearer and more assertive than nature itself.<sup>104</sup>

In *An Apology for Actors* (1612), Thomas Heywood took up a similar defense while focusing on the mimetic potential of theater. Heywood's contention is that the theater could augment regal power instead of undermining it. Heywood is also notable for his use of the theatrical set as a medium of symbolic representation. For Heywood, dramatists should not adopt the minimalist *mise en scène* of the Greeks (and advocated by Aristotle) but instead adopt elaborate set designs to advance the mimetic experience. He argues that the court could be legitimated through the spectacle of great acts of regal glories and that *actio*—in conjunction with elaborate staging—was the most effective rhetorical mode for representing the court's grandeur. Theatrical representation of the ancient "worthies" was to be deployed to "effect the like wonders in the princes of our times," which, Heywood continues, "can no way be so exquisitely demonstrated, nor so lively portrayed, as by action?"<sup>105</sup> *Actio* is needed because

[a] description is only a shadow received by the ear, but not perceived by the eye; so, lively portraiture is merely a form seen by the eye, but can neither show action, passion, motion, or any other gesture, to move the spirits of the beholder to admiration. But to see a soldier shaped like a soldier, walk, speak, act like a soldier; to see a Hector all besmeared in

103 Sidney, "An Apology for Poetry [1595]," 151.

104 Although there is some continuity between Sidney's praise of poetics and the theater, we should be careful not to project this praise of the stage too far. As Barish notes, Sidney was often dismissive of the "naughtie Play-makers and Stage-keepers." Barish, *The Antitheatrical Prejudice*, 117. Concerning this same episode, Plett writes,

The perfected art of acting, which manifests itself in the *movere* of the spectator, depends on a realistic *imitatio vitae* [...] 'Realistic' in this context means 'energetic,' a rhetorical term to which English dramas of the Renaissance often appeal with such phrases as 'acted to life' or 'lively action.' An energetic performance is characterized by a mimesis that is not only true to reality but above all effective. This is the essence of rhetorical realism. (Plett, *Rhetoric and Renaissance Culture*, 266.)

105 Heywood, "An Apology for Actors [1612]," 220. (This quotation was originally styled as a rhetorical question. I have adjusted the punctuation.)

blood, trampling upon the bulks of kings [...] oh, these were sights to make an Alexander.<sup>106</sup>

For Heywood, the theater is a place of productive mimetic description and re-description, where identities can be constituted and stabilized. “[S]o bewitching a thing is lively and well spirited action,” Heywood writes, “that it hath power to new mold the hearts of the spectators and fashion them to the shape of any noble and notable attempt.”<sup>107</sup> The question for Heywood is not one of authentic versus inauthentic identities like Aristotle or Cicero—to Heywood, identities are always enacted—but rather one of power and politics and of controlling the means through which identities are enacted, adjudicated, and reified.

Heywood collapses Cicero’s distinction between the actor and the orator, and he does so against the humanist rhetoricians’ downplaying of *actio* as mere pronunciation. Thus, he writes,

These wise men of Greece (so called by the oracle) could, by their industry, find out no nearer or directer course to plant humanity and manners in the hearts of the multitude than to instruct them by moralized mysteries what vices to avoid; what virtues to embrace; what enormities to abandon; what ordinances to observe; whose lives (being for some special endowments in former times honored) they should admire and follow; whose vicious actions (personated in some licentious liver) they should despise and shun: which, borne out as well by the wisdom of the poet as supported by the worth of the actors, wrought such impression in the hearts of the plebe that in short space they excelled in civility and government, insomuch that from them all the neighbor nations drew their patterns of humanity, as well in the establishing of their laws as the reformation of their manners.<sup>108</sup>

Indeed, Heywood considers *actio* as a sixth form of rhetoric, presumably because of the sharp discrepancy between what *actio* meant for the ancients and what it came to mean in Heywood’s time. He writes,

Tully, in his book *Ad Caium Herennium*, requires five things in an orator: invention, disposition, elocution, memory, and pronunciation, yet all are imperfect without the sixth, which is action. For be his invention never

106 Heywood, “An Apology for Actors [1612],” 220–21.

107 Heywood, “An Apology for Actors [1612],” 221.

108 Heywood, “An Apology for Actors [1612],” 225–26.

so fluent and exquisite, his disposition and order never so composed and formal, his eloquence, and elaborate phrases never so material and pithy, his memory never so firm and retentive, his pronunciation never so musical and plausible; yet without a comely and elegant gesture, a gracious and a bewitching kind of action, a natural and a familiar motion of the head, the hand, the body; and a moderate and fit countenance suitable to all the rest, I hold all the rest as nothing.<sup>109</sup>

Heywood's focus was not only on the orator-founders and poets but more broadly on the great virtuous acts found in the annals of antiquity. The stage enabled the power of spectacle (*opsis*) in the molding of identity and in the undertaking of great political acts. As with the representatives of the political variant of *action*, eminent virtue joins with rhetoric in a sovereign-conducted, power-augmenting, awe-inspiring spectacle. "If we present a tragedy," Heywood writes, "we include the fatal and abortive ends of such as commit notorious murders, which is aggravated and acted with all the art that may be, to terrify men from the like abhorred practices."<sup>110</sup> And later, "If a moral, it is to persuade men to humanity and good life, to instruct them in civility and good manners, showing them the fruits of honesty, and the end of villainy."<sup>111</sup>

Unlike many of his theatrical contemporaries, Ben Jonson was distrustful of the theater as a philosophical and pedagogical medium.<sup>112</sup> Like Aristotle, Jonson was concerned that irrespective of the depth of his philosophical understanding of the topic at hand, the success of the play was ultimately contingent on the playgoers, over whom Jonson had little control. Due to the fickle power of the playwright over the audience, Jonson held ample suspicion of the theater as a medium to communicate the basic moral truths of nature. Nevertheless, Jonson joins Heywood in acknowledging the significant normative potential of the theater in its public capacity in the regulation and fortification of agency and political life. Hence, Jonson did not dismiss or resist spectacle and rhetorical *actio* as Aristotle counseled. Jonson, instead, set to put it under his control.<sup>113</sup>

Jonson rejected Aristotle's appeal to minimalist *mise en scène*. Rather than setting his plays in Rome or Athens, Jonson's innovation was to use

109 Heywood, "An Apology for Actors [1612]," 227.

110 Heywood, "An Apology for Actors [1612]," 241.

111 Heywood, "An Apology for Actors [1612]," 241.

112 Barish, *The Antitheatrical Prejudice*, 135.

113 Aristotle, *Poetics*, 1450b.

London as their backdrop, which allowed the setting to become an essential element of the play.<sup>114</sup> For example, in *Bartholomew Fair*, Jonson complicates the *polloi/aristoi* distinction to show the essential debasement that marks the equality of men, while the “Paul’s Walk” scene of *Every Man out of His Humour*, Helen Ostovich notes, “demonstrates that the hungry predators and parasites lurk in all classes and occupations.”<sup>115</sup> These social and moral criticisms are not of another society; they take place within the *mikrokosmos* of St. Paul’s Cathedral. There the characters interact and negotiate their relative socio-political lives “as an obsessively competitive dance.”<sup>116</sup> St. Paul’s stands “as a rhetorical *locus communis*,”<sup>117</sup> a site where meaning is contended, asserted, reified, and displaced. Had Jonson set these plays in Athens or Rome, the critique would be projected onto an alien community. In using London, Jonson turns the critical moral reflections back on the audience. Jonson was trying to incorporate what Aristotle saw as the *atechnic* elements of the theatrical experience—the morally, politically, philosophically, and aesthetically depraved multitude—into the play itself. The representation of the polity is thereby made an *entechnic* aspect of theatrical rhetoric, and the multitude—at least, the immanent representation of the multitude—could be partially placed under the control of the playwright. The theater house opened a space for political and moral perspectivism, and thereby political and moral judgment. The play-within-a-play technique and the power of rhetorical mimesis provided Jonson with a venue to stake his humanist claims.

Jonson held that dramatists should not deploy simulation and dissimulation in the service of deception. Rather, Jonson presupposes a basic universal morality that will be evident to the audience throughout. His works are not philosophical exegeses on the good and the true; they are spectacles of that which is obviously and naturally virtuous and that which is obviously debased. Jonson assumes the task of the pedagogue, of guiding his audience to that which they know already. As one commentator noted, for Jonson

the poet’s task is to strengthen that intuition by leading it from such simple evaluations to far more complex moral judgments; and that the aesthetic recognition to which poetic logic appeals is also present in every

114 Jonson, *Every Man Out of His Humour*, EDITOR’S INTRODUCTION. 41–42.

115 Jonson, *Every Man Out of His Humour*, EDITOR’S INTRODUCTION. 59.

116 Jonson, *Every Man Out of His Humour*, EDITOR’S INTRODUCTION. 59.

117 Jonson, *Every Man Out of His Humour*, EDITOR’S INTRODUCTION. 60.

man, because it is the twin of that moral recognition the poet activates, both born of the impulse toward the Good which makes man human.<sup>118</sup>

The goal was moral pedagogy, and the intention was to enable a mimetic play to coax the multitude into a sort of proxy humanism. This was, for Jonson, the special burden of the poet.

In sum, in stark contrast to the emaciated theory of *actio* found in the early modern rhetoricians, early modern dramatists took up *actio* with partisan verve against staunch puritan opposition. Their enthusiastic adoption of *actio*—including critical reconsiderations of its place and potential—can be accounted for by the categorical differences between the place of the schoolroom (or the church) and the stage. But more fundamentally it can be accounted for by the differences between the text and the stage. Dramatists are inherently interested in what Aristotle found so debased about *actio*, namely its emotional and populist power and radical capacity for moral reconstruction against established norms. In the history of *actio*, this period marks a decisive resurgence of an idea long sullied by philosophers and rhetoricians.

### Constitutive rhetoric, enacted and exceptional

I leave the survey there, with Hobbes on the horizon, and turn now to consider some traits that have proven remarkably persistent across the two millennia of its development. The continuity of these ideas and tensions over time may allow us to speak instead of a sociology of rhetorical action, or perhaps in more appropriate language in the essential connection to politics and human nature. Aristotle touched upon an essential characteristic of *actio* when he observed the distinction between rhetorical *actio* and those rhetorical arts amenable to theoretical schematization. He remarked that only the rhetoric of everyday politics is suitable for theoretical exegesis, for the rhetoric deployed at moments of crisis and (re)foundation are unpredictable and presuppose the failure of normal rhetorical practice. In what follows, I will outline what I will call *the rhetoric of the norm* and *the rhetoric of the exception*.

The rhetoric of the norm functions within a bounded community and during regular political moments. It addresses the politics of the everyday, what Aristotle delineated as judicial, deliberative, and epideictic modes

<sup>118</sup> Jackson, *Vision and Judgment in Ben Jonson's Drama*, 161.



of rhetoric.<sup>119</sup> George Kennedy described these three modes of normal rhetoric as follows: “If a judge of past actions, the species is *judicial*”; “If a judge of future action, the species is *deliberative*”; and “If an observer of the speech, not called on to take action, the species is *epideictic*.”<sup>120</sup> These definitions convey an essential truth: Aristotelian rhetoric takes action as its subject, not its object. As such, the rhetoric of the norm is concerned with institutionalized speech acts undertaken within established cultural and social normative frameworks. It takes its audience as a given community and its location as a defined institutional space. It assumes, in other words, a stable political architecture. These relatively stable background conditions allow for the emergence of a corresponding mode of rhetoric that can be modulated to those conditions. Over time, these practices allow for the schematization and categorization of a rhetorical art that in turn can be taught by the rhetoricians.

However, the rhetoric of the exception is most clearly seen in the positive light of the political and the theatrical variants and is concerned with moments of political beginnings, (re)foundations, and crisis. These moments are usually moments of great existential portent regarding external enemies, internal tumult, or future threats. The rhetoric of the exception is invariably concerned with the corruption of the polity and the necessity of instilling virtue anew. Exceptional rhetorical deeds take these dilemmas as their fodder, while the founders, leaders, and statespersons are nodal points wherein virtue and vice can be made manifest and instructive. In every case, we find the figure of the orator-founder/statesman who is unusually prudent and exceptionally wise, is hyperaware of the existential threats facing the city, and incorporates these threats into their rhetorical project. Where Cicero's ideal orator supposed a constitutive speech act completely exclusive of politics, institutions, force, violence, and spectacle, looking at the actual deeds of these figures reveals that every significant representative of the orator-founder/statesmen tradition weaves these various circumstantial conditions into the rhetorical deeds themselves. Foremost, what we find are figures of eminent and acknowledged virtue. In times of political calm, they may not stand out at all. However, in times of crisis they are turned to with vigor and enthusiasm by all classes of society as standing apart and of having gone uncorrupted by the general vice that marks moments of crisis. There is a natural gravity that pulls that multitude to them.

119 Aristotle, *On Rhetoric*, 1358b–1359a.

120 Aristotle, *On Rhetoric*, EDITOR'S INTRODUCTION. 20.

In contrast to the rhetoric of the norm that functions within pre-given bounded cultures or textual rhetoric that must necessarily presuppose an amenable community, the rhetoric of the exception binds multitudes by *making* a political culture. The rhetoric of the exception is, to borrow the language of modern rhetorical studies, rule-making rather than rule-governed.<sup>121</sup> That is why constitutive rhetoric is a mode of “constructing and providing its addressed audience with an identity.”<sup>122</sup> As Sloane notes,

Constitutive rhetoric simultaneously presumes and asserts a fundamental collective identity for its audience, offers a narrative that demonstrates that identity, and issues a call to act to affirm that identity. This genre warrants action in the name of that common identity and the principles for which it stands [...] It arises as a means to collectivization, usually in the face of a threat that is itself presented as alien or other.

As a theory, constitutive rhetoric accounts for the process of identity formation that this genre depends upon, where audiences are called upon to materialize through their actions an identity ascribed to them.<sup>123</sup>

This mode of rhetoric is, appropriately enough, contrasted with that of Aristotle, which always presupposed that the identity of the audience was prefigured. This distinction allows us to see why Aristotle’s remarks that *actio* was under-theorized was unintentionally a deep insight into the thing itself: exceptional rhetorical action cannot be subject to fixed theorization or categorization to be used within given political communities, as it is always innovative in constituting new norms and new facts in its very deed.

The rhetoric of the exception requires power and influence, but not violence. Ergo, it is inseparable from politics, which in turn explains why in every case the effective orator-founder is taken to be an exceptional politician. In turn, it explains why Plato and Quintilian were so opposed to it, while Aristotle and Cicero were both perplexed but enthralled. That is why, at root, constitutive rhetoric cannot be overdetermined by theory or pre-existing social, political, or cultural conditions, but is situated, tactical, and formed by (and against) contingent political circumstances. Successfully deployed, it is overdetermining of all that follows. It is also strategic and prudential, but in a historical frame, taking into account political logics that transcend normal political affairs.

121 Sloane, “Constitutive Rhetoric.”

122 Sloane, “Constitutive Rhetoric.”

123 Sloane, “Constitutive Rhetoric.”

Rhetorical action, in its highest form, amounts to a capacity to deconstruct and reconstruct the normative order of a multitude in a fashion that forges them into a political community. Its medium is human plurality and the public spheres that emerge where people congregate. At its core, this is a question of parameters. Rhetorical *actio* is a parameter-creating mode of rhetoric. Rhetorical theory, by contrast, functions within those parameters. It is for that reason, I believe, that *actio* has often been seen as being the singular mode of rhetoric, yet it has avoided theoretical subordination and technical refinement.

Lastly, the practitioners of the rhetoric of the exception are also subject to a different measure than the positive delineations of justice and injustice that imbue the rhetoric of the norm. From the position of rulers, the positive laws, and social norms, such founders will always appear as harbingers of injustice—and they may be just that. But the justice of the deed, if successful and if manifestly just in turn, obviates such considerations, not only by manifesting just new foundations but by obviating the very status of previous polity. Successful foundations carry nothing forward; they are new. The measure is not simply peace; instead, the measure of the rhetoric of the exception is its success or failure to secure the flourishing of the polity. For these reasons, the quintessential moments of exceptional rhetoric are moments of foundation and re-foundation that unite a disparate multitude into a united polity that persists over time.

Constitutive rhetorical action is politically unique, as far as it is essentially anti-democratic—at least insofar as democracy relates to public debate—but it is simultaneously deeply democratic insofar as it is radically popular. First, the people persuaded by constitutive rhetoric do so in large measure because the incessant moral and political din of the public sphere has geared the observer internally to turn away from the demos. Yet simultaneously and for that same reason, it pertains to the people in their generality. Second, it is anti-democratic because its target is single individuals, yet uniformly so. Third, and most importantly, it is uniquely anti-democratic as far as the rhetoric of the exception excludes debate; instead, it is a monological program that is accepted by all and indeed is experienced by all as being *self*-authored. Rhetorical action persuades without being subject to public contest.

## Conclusions

Western political philosophy was inaugurated in part as an assault upon constitutive rhetorical action, and a world of mystification, degradation, and

abuse has followed. And yet, as weighty as Plato's war against the idea was on the tradition, the thing itself is not something that can be entirely snuffed out by ideological and philosophical contestation. Plato concedes as much by appropriating the city-building metaphor in the service of philosophy. Still, the original assault was of enduring significance, and the historical shift away from politics and toward textual modes of persuasion conspired to sunder the formal accounting of *actio* into mythical, magical, vulgar, mundane, and technical concerns. We see this struggle in Aristotle, who signaled the importance of rhetorical action but conceded that it remains an essentially untheorized and only partially understood form of persuasion. Many others, from Cicero onward, proclaimed the importance of rhetorical action, but most failed to develop it. We see this negatively in the renaissance accounts of rhetoric as either magical or as mundane hand gestures. It was only at that period that Bulwer's *Chirologia* could finally give a thoroughgoing technical account of *actio* only to reveal that its technical nature had little to do with its promised power. If the early modern rhetoricians finally overcame the paradox of the persistent resistance of *actio* to theoretical subordination, they did so only because the idea had become petrified, and they had to start anew. Consequently, rhetoricians (and pedagogues and theologians) of the early modern period adhered to an emaciated theory of rhetorical action. Indeed, they were flummoxed by the ancients' persistent warnings regarding the immense power of *actio* to found cities and persuade the vulgar masses. That account makes up the lion's share of historical reflections on early modern accounts of rhetorical action.

It was only once the political space of the theater was opened anew that the constitutive function of rhetorical action was revived. This is not by chance, I believe. The theater is not only a public place; it is a microcosm for constituting new political spaces allowing for experimentation in parameter creation and the world of politics that follows. When the dramatists looked for precursors, they would have certainly paid attention to the technical discussions of hand gestures in the early modern period. But when they followed those ideas back to their source, they found a groundswell of far more vibrant theories and practices. Indeed, the dramatists and poets not only revived the ancient notion but updated it and pushed it into new directions. As both the dramatists and poets—and their legion of adversaries—agreed, the emergence of the theater as a social and public space stripped the tradition of its mystifications by revealing that *actio* in public could command significant ethical, social, and political power. It could constitute new political identities. If the standing theories of *actio* evoked fantastic notions of great rhetorical power but presented mundane accounts

of hand gestures, theatrical practices afforded *actio* new and concrete meaning, and very quickly its constitutive potential as an elemental political power was rediscovered.

In his survey *Rhetoric and Renaissance Culture*, Plett depicts the early modern theatrical return to *actio* as amounting to the return of *psychagogia*, but on a mass scale. Plett describes the early modern *psychagogue* as an orator-actor whose aim is “extreme pathos,” for whom combining “fictiveness, artificiality, and affectivity in the act of dissembling is the foundation for a *theatrum rhetoricum*, in which the orator is a psychagogue, the listener an empathetic spectator, the presentation a dramatic illusion.”<sup>124</sup> The media through which *theatrum rhetoricum* operates are poetry, spectacle, set, and action, and its exemplary model is tragedy and the heroic poem. Spectacle, described by Aristotle as a powerful but vulgar *psychagogic* tool, here loses this vulgar tinge. Plett writes that during the Renaissance, the *theatrum rhetoricum* “becomes the arena of social and political action.”<sup>125</sup> The orator is an actor and the actor is an orator.<sup>126</sup> These “critical innovations” were adaptive mutations of the rhetorical arts that emerged at a moment of political crisis, and the result is a complete reappraisal of *actio* as the definitive political rhetorical technique.<sup>127</sup>

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124 Plett, *Rhetoric and Renaissance Culture*, 252.

125 Plett, *Rhetoric and Renaissance Culture*, 252.

126 Plett, *Rhetoric and Renaissance Culture*, 272.

127 Plett, *Rhetoric and Renaissance Culture*, 251.

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## 4. Rhetorical Action in *Leviathan*

**Abstract:** This chapter situates Hobbes and *Leviathan* within the history of rhetorical action. It argues that there are many reasons to believe Hobbes was not just aware of this line of rhetorical practice and theory, but he deeply engaged with it. It shows how Hobbes is absorbed in this tradition both biographically and contextually and that it is manifest in the rudiments of his political theory, from his theory of personation, to the staging of statecraft, to enacting sovereignty, and beyond. That is, the broadly understood idea of rhetorical action, the specific notion of constitutive rhetoric, and the virtues that are the medium through which they are practiced are all central to *Leviathan*.

**Keywords:** rhetorical action; personation; statecraft; sovereignty; founders

### Introduction

Chapter Three reconstructed the history of rhetorical action. It highlighted a rich seam of rhetorical history and theory, explaining why those ideas were excluded from consideration by scholars who only focus on textual rhetoric. That history of rhetorical action ended in seventeenth-century England, but if we wind the clock forward to contemporary scholarship on rhetoric in Hobbes, we find that much of the scholarship replicates these deep structural divisions. The debate is framed over which particular school of rhetoric Hobbes returned to (or not), but it is really more constrained than that; it is a debate over which school of textual rhetoric is returned to (or not). The very nature of that debate precludes the question opened by the historical examination in the previous chapter. So, the question for this chapter is whether Hobbes took notice of the bundle of ideas and practices associated with rhetorical action.

This chapter investigates Hobbes's engagement with those ideas and finds that they are pervasive and robust. Biographically, Hobbes had a deep education in the ancient ideas of rhetorical action. He also had close personal connections to the contemporary poets and playwrights who were exploring

these ideas. *Leviathan* is replete with references to the same figures, ideas, and politics that were common currency in discussion of rhetorical action. Most importantly, many of the core conceptual developments in Hobbes's thought—including the theatrical nature of agency, the discussion of counsellors and commanders, founders and sages, and others—are all revealed as substantively shaped by the notion of (constitutive) rhetorical action whether that be in the ancient or early modern theatrical senses.

I begin by situating my arguments within ongoing debates about rhetoric in Hobbes. The aim is not to contest that literature but to show my argument is a logical and seemingly agreeable extension of many lines of thought. Indeed, I try to show that scholars who are otherwise in rather sharp disagreement about rhetoric in Hobbes would seem to *agree* on the importance of rhetorical action in *Leviathan*.

I then turn to my argument, which comes in three stages. To begin, I briefly consider some biographical elements of Hobbes's life that strongly suggest that he was newly engaged with these ideas during the period in which he was working on *Leviathan*. Next, I focus on Hobbes's theory of agency—including individual agency, public agency, the agency of the artificial person of the state, and the agency of the natural person bearing the office of sovereign, each developed in separate sections—to show that the idea of rhetorical action is not a rhetorical technique but a constitutive element or essential part of how Hobbes understands human nature. Finally, I survey the references in *Leviathan* to consider if—and if so, how—the eminent figures in the history of *actio* are characterized. To be clear, my focus is only on showing the links between rhetorical action and *Leviathan* in a general sense, as it relates both to the text and concepts, in order to establish Hobbes's broad engagement with the idea. In Chapters Five through Seven, I deepen and specify those arguments to address new foundations, law, and obligation, respectively.

## Rhetoric in the Hobbes scholarship

Leo Strauss (1952) was the first modern scholar to note the importance of Hobbes's engagement with humanist rhetoric, arguing that Aristotle's rhetoric was a constant point of engagement as Hobbes worked through his ideas.<sup>1</sup> Beginning with David Johnston's *The Rhetoric of Leviathan* (1989), and in tandem with Quentin Skinner's methodological and historiographical criticism

1 Strauss, *The Political Philosophy of Hobbes*.

of esotericism, the question of rhetoric was broached anew.<sup>2</sup> Hobbes's focus, Johnston argued contra Strauss, was not trans-historical philosophical debates but rather a "transformation in the popular culture of his contemporaries"<sup>3</sup> through philosophy as a "speaking picture"—that is, through the promulgation of a rhetorical *Leviathan*.<sup>4</sup> First in *Rhetoric, Prudence, and Skepticism in the Renaissance* (1985) and later in *Wayward Contracts* (2004), Victoria Kahn argued that Hobbes should be understood as responding to the threat of Pyrrhonist skepticism and early seventeenth-century romance fiction, and consequently, *Leviathan* should be understood as an elaborate "contract of mimesis."<sup>5</sup> In *Reason and Rhetoric in the Philosophy of Hobbes* (1996), Skinner argued that Hobbes's work was not a response to Pyrrhonist skepticism but should be understood in relation to classical humanist rhetoric, wherein Hobbes, having turned away from such practices in *De Cive*, returned to them with some urgency in *Leviathan*.<sup>6</sup> Ted Miller (2004) argued that stylistic developments could be traced to the company he was newly keeping.<sup>7</sup> In *Saving Persuasion* (2009), Bryan Garsten argues that Hobbes's rhetorical turn was not, as Skinner argued, a general return to humanist rhetoric but instead a guarded and selective return to rhetoric in the service of Hobbes's moral and political science, or "rhetoric against rhetoric",<sup>8</sup> as Garsten writes. Don Paul Abbott argues that Hobbes's aim was to refashion rhetoric, attacking its public political manifestations but embracing its private utility in council.<sup>9</sup> In *Images of Anarchy* (2014), Ioannis Evrigenis argues against Skinner asserting that Hobbes was working in a rhetorical mode all along.<sup>10</sup> Timothy Raylor (2018) argues against Skinner's and others' account of Hobbes having turned to, from, and back to rhetoric, while also dispelling Evrigenis's argument that Hobbes held a special place for rhetoric all along. By advancing a sophisticated Aristotelian critique of Hobbes's thoughts, Raylor aims to show that Hobbes's account of rhetoric was essentially unchanged throughout his mature writings and that it was of only stylistic importance.<sup>11</sup> For Raylor, Hobbes consistently maintained that rhetoric and philosophy were two different and incommensurable arts.

2 See Skinner, *Visions of Politics*.

3 Johnston, *The Rhetoric of Leviathan*, xx.

4 Johnston, *The Rhetoric of Leviathan*, chap. 3.

5 Kahn, *Wayward Contracts*, 147–51.

6 Skinner, *Reason and Rhetoric*, 299–301. See also Skinner, *Reason and Rhetoric*, 40–65.

7 Miller, "The Uniqueness of Leviathan: Authorizing Poets, Philosophers, and Sovereigns."

8 Garsten, *Saving Persuasion*, chap. 1.

9 Abbott, "'Eloquence Is Power': Hobbes on the Use and Abuse of Rhetoric."

10 Evrigenis, *Images of Anarchy*.

11 Raylor, *Philosophy, Rhetoric, and Thomas Hobbes*.

I will not engage in particular critiques of each but wish to simply note a realm of rhetoric that has been largely—though not entirely—left without comment, namely rhetorical action both in its most grand constitutive sense and in its tempered sense of gestures and exhortation, and then again in its theatrical sense. Why? I believe that two interpretative obstacles hinder the investigation of rhetorical action in *Leviathan*. The first is that the literature has focused almost entirely on textual modes of rhetoric. There is, of course, good reason to focus on the written word; recall Vicker's claim (from Chapter Three) that "All the power and skill of the ancient orators was claimed by Renaissance writers, so that the ability to move the affections through language—now written—became a fundamental property of literature"<sup>12</sup> and that *oratio* had become part of the literary genre "intended for the reader, not for a live audience."<sup>13</sup> Hobbes scholars follow suit, and when they speak of rhetoric, they are focused almost entirely on the relationship between the reader of *Leviathan* and on the text itself (informed by considerations of Hobbes's biography and context). That seems to me to be an important task, and one worth the efforts that have gone into it.

Secondly, and very much related to the first, there is an overriding concern with what I have called "constituted rhetoric" as opposed to "constitutive rhetoric." That is, the assumption is that the state has been founded, but readers need only be taught or convinced to abide. On these accounts, *Leviathan* is to be read by the elite and taught in the universities. It is meant, in other words, to be a handmaiden to established power, to scare into submission, or to explain—or explain through scaring (depending on the account of rhetoric on offer)—the nature of sovereign power, the "social contract," law, obligation, the "state of nature," etc. The goal is to shore up support, not found a new regime. Obviously, these kinds of concerns are broadly and deeply important in *Leviathan*. However, I am not concerned with how Hobbes convinces his reader. I am interested in how Hobbes advises would-be sovereigns to found new regimes and reigning sovereigns to rule effectively through persuasive deeds.

Despite that broad categorical distinction, there are notable overlaps between some ideas raised by Skinner and Raylor that point in the direction of rhetorical action. To show how, I must very briefly summarize Skinner's argument. In *Reason and Rhetoric*, Skinner argues that Hobbes's thought can be divided into three periods. The first period is typically humanist in nature, encompassing studies of Greek and Roman history, literature,

12 Vickers, *In Defence of Rhetoric*, 286.

13 Vickers, *In Defence of Rhetoric*, 287.

philosophy, rhetoric, and poetry. Hobbes exemplifies the ethos of that tradition, as evinced by his translation of Thucydides's *History of the Peloponnesian War*.<sup>14</sup> The second period is marked by Hobbes's turn away from humanism toward science sometime in the mid-1630s. Hobbes's scientific period writings (*Elements* and *De Cive*) reject the humanist tradition's core assertion regarding the rudimentary importance of rhetoric for moral, social, and political life. Against that tradition, Hobbes stakes a claim for truth as correct syllogistic reasoning founded in perspicuous definitions calibrated to sense experience, arguing that this approach would not invite disputation.<sup>15</sup> On Skinner's account, Hobbes believes science and rhetoric to be incompatible as a stylistic concern and, relatedly, as an epistemological fact.

The reason for Hobbes's turn away from rhetoric is often understood, following Aubrey, to have been prompted by Hobbes's reading of Euclid's *Elements* in 1630, although whether this marked a truly schismatic break is debatable.<sup>16</sup> Skinner proffers various better explanations. For instance, Hobbes's correspondences from the 1630s indicate his more general interest in various scientific pursuits.<sup>17</sup> Skinner also notes that Hobbes's introduction to Marin Mersenne in 1635 and the Mersenne Circle (capped by a meeting with Galileo in Florence, presumably in 1636<sup>18</sup>) would have surely piqued Hobbes's obsession with physics, motion, and scientific method.<sup>19</sup>

Then, Skinner argues, Hobbes turned back to rhetoric in *Leviathan*. Skinner argues that Hobbes's position changed at some point between the first publication of *De Cive* (1642) and *Leviathan* (1651), and most likely after completing the additional notes for the second edition of *De Cive* in early 1646 (published in 1647).<sup>20</sup> Hobbes had already begun work on *De Corpore* before writing the notes for the second addition of *De Cive* and had intended to return to it. Instead, Skinner argues that sometime after May 1646, Hobbes's focus turned back to politics, and it was then that he began writing *Leviathan*.<sup>21</sup> Skinner's explanation for this follows Hobbes's explanation in his *Vita*, namely that in July of 1646, Charles and his retinue

14 Skinner, *Reason and Rhetoric*, 215–49.

15 Skinner, *Reason and Rhetoric*, 250–93.

16 Aubrey, *Brief Lives*, I:332; Skinner, *Reason and Rhetoric*, 250; Martinich, *Hobbes: A Biography*, 84–86.

17 Skinner, *Reason and Rhetoric*, 251–52, 426–37.

18 Skinner, *Reason and Rhetoric*, 252–54.

19 Skinner, *Reason and Rhetoric*, 252–53.

20 Skinner, *Reason and Rhetoric*, 330.

21 Skinner, *Reason and Rhetoric*, 330.

arrived in Paris “evidently full of news about the latest royalist defeats and the growing disposition of their enemies to regard their successes as signs of God’s providence”,<sup>22</sup> prompting Hobbes to put aside his work on *De Corpore* (which was almost complete<sup>23</sup>) and take up writing *Leviathan*. It is a somewhat thin political explanation, as Skinner’s argument rests primarily on the description of the stylistic shifts in Hobbes’s thought, not on his account of the political circumstances. But whatever the reason, Hobbes, Skinner argues, shifted his rhetorical strategy, tempering his belief in the persuasive power of the moral sciences (and conversely the purely destructive nature of rhetoric) and reconsidered the value of rhetorical persuasion in *Leviathan*.

Skinner is concerned with Hobbes’s return to—and redeployment of—classical humanist rhetorical practices. Skinner’s focus is on the three classical forms most clearly suited to texts: *inventio*, *dispositio*, and *elocutio* and their manifestations in *Leviathan*. These three techniques were fundamental to the seventeenth-century humanist rhetorical tradition within which Hobbes received his education. So, there are evidently good reasons to focus on them.

Recalling the postscript to Chapter Two and the puzzle of democratic deficits and new foundations in Hobbes, we could ask if Skinner’s account of Hobbes’s rhetorical turn—specifically *inventio*, *dispositio*, and *elocutio*—addresses the problems of agency and new foundations. That is, can the techniques of *inventio*, *dispositio*, and *elocutio* do the concrete work of founding—not lending legitimacy to or justifying, but *founding*—a new regime? The answer appears to be “no,” for the reasons sketched above—namely, that the focus is on the text in relation to the reader, and therefore textual rhetorical persuasion vis-à-vis moral science.

However, Skinner does address *pronuntiatio*, and although it is a brief account, it leaves the door open to the arguments I will develop. Skinner begins by noting the following:

It is true that, like the classical rhetoricians themselves, Hobbes finds little to say about *pronuntiatio*, but it is noteworthy that even in this case he speaks without a trace of his former hostility. He had initially discussed the concept in his paraphrase of Aristotle’s *Rhetoric*, at which point he had observed—in an addition to Aristotle’s text—that it encompasses an ability to match our utterances not merely with apt

22 Skinner, *Reason and Rhetoric*, 330.

23 But see Skinner, *Reason and Rhetoric*, 331. n. 36.

gestures, but with the most appropriate ‘*Magnitude, Tone, and Measure of the Voice*’.<sup>24</sup>

Skinner then goes on to show that the new discussions of delivery in *Leviathan* are of the utmost political importance. Focusing on xxv, Skinner writes,

Hobbes focuses on the situation in which someone with a right to issue orders may have a reason for wishing to avoid so far as possible the tone and language of command. The example he gives is that of a military leader who finds it necessary to call for some ‘soure labour’ to be performed. In such circumstances it will sometimes be a dictate of necessity, and will always be a requirement of humanity, that the orders be issued in such a form that they can be taken not as acts of commanding but rather of counselling and offering advice. The way to achieve this effect is by practising the art of *pronuntiatio* or ‘delivery’, the art by means of which the bitter pill of obeying orders can be ‘sweetned’. This can best be done by using what Hobbes had described in his paraphrase of Aristotle as the right ‘tone and measure’, and what he now describes as the most suitable ‘tune’ of voice. He now wishes to claim, in short, that in these circumstances a mastery of rhetorical *pronuntiatio* becomes imperative: those in a position to issue orders must understand how to modulate their words to convey the impression that they are speaking ‘in the tune and phrase of Counsell rather than in harsher language of Command’.<sup>25</sup>

I quote this passage at length to make three points reflecting my own intended contribution. First, Skinner notes that Hobbes was *extending* Aristotle’s discussion. Specifically, the discussion being extended speaks exactly to those passages where Aristotle wrote of the great power of “*oratorical action*”<sup>26</sup> and its seeming imperviousness to being subordinated to the structures of rhetorical theory. Second, this (along with the aforementioned discussion) is essentially the extent of Skinner’s exegesis of *pronuntiatio* in *Leviathan*. In light of the historical reconstruction of *actio* in Chapter Three, it can be said that Skinner’s account of *pronuntiatio* is an exemplary account of *part* of the tradition of *actio* as it was passed down to Hobbes: the anemic version. Third, Skinner is exactly right to note that this kind of

24 Skinner, *Reason and Rhetoric*, 358; citing Hobbes, *English Works [Dialogue, Behemoth, Rhetoric]*, VI:487.

25 Skinner, *Reason and Rhetoric*, 359.

26 Hobbes, *English Works [Dialogue, Behemoth, Rhetoric]*, VI:487.



rhetoric is not the rhetorical artistry of a writer convincing the reader. It is of politics and rule and command. When Skinner speaks of the relationship between *pronuntiatio* and the dictates of necessity that “will always be a requirement of humanity”<sup>27</sup>—or more accurately, when he identifies these in Hobbes—he hits on a fundamental trait of rhetorical action and its importance to statecraft in exceptional moments.

Skinner's critique has been challenged by many, the most thoroughgoing being Raylor's recent study *Philosophy, Rhetoric, and Thomas Hobbes*. Raylor argues against Skinner that Hobbes's critique of rhetoric did not change—there were no turns, per se—and moreover that the proper foil for thinking about rhetoric in Hobbes is not Cicero but Aristotle.<sup>28</sup> It is a powerful counterargument and would appear by extension to be a strong challenge to mine, insofar as I have already stressed the continuity between Skinner's account of *pronunciation* and my account of rhetorical action. Strikingly, however, despite Raylor's otherwise deep disagreement with Skinner about rhetoric in Hobbes, on the question of *pronuntiatio*, they are not only in agreement, but Raylor's studies lend significant confirmation to the claim that Hobbes was very much concerned with *actio* in all its forms.

For instance, Raylor shows that in Hobbes's early translation of Aristotle's *Rhetoric*, Hobbes set out to extend and supplement Aristotle with his own more robust inflection to *actio*.<sup>29</sup> Specifically, Raylor notes,

To Aristotle's dismissive treatment of delivery at III. I [of Aristotle's *Rhetoric*], for example, Hobbes adds a comment, recommending what he presents as a general rule of *actio* or *pronunciatio* that, to avoid confusing an audience, the orator's diction, tone, volume, gesture, and countenance be harmonized to represent a single passion[.]<sup>30</sup>

Raylor concludes, “Such additions to the text reveal a striking concern with practical oratory.”<sup>31</sup> Hobbes's focus at this stage is on the use of *pronuntiatio* in public deliberation, but what matters here is not the intended context but the observation that Hobbes was from the outset actively thinking about and contributing to the theory of rhetorical action. What then of Hobbes's (and Skinner's) discussion of the place of exhortation in successful

27 Skinner, *Reason and Rhetoric*, 359.

28 Raylor's study was preceded by studies by Karl Schuhmann and Lodi Nauta, among others, Schuhmann, “Skinner's Hobbes”; Nauta, “Hobbes the Pessimist?”

29 Raylor, *Philosophy, Rhetoric, and Thomas Hobbes*, 160–61.

30 Raylor, *Philosophy, Rhetoric, and Thomas Hobbes*, 160–61.

31 Raylor, *Philosophy, Rhetoric, and Thomas Hobbes*, 161.

command? Raylor does not address that weighty example—of which I will argue there are many more similar examples in *Leviathan*—focusing only on the problem of exhortation used by councilors.

The point is that my thesis does not depend on deciding between Skinner and Raylor on the question of textual rhetorical practices. On the question of the importance of *actio* in Hobbes's thought, they both lend support to the thesis I will develop here and in the coming chapters: that Hobbes returned to the topic of rhetorical action.

What does propose a challenge to my thesis is Skinner's timeline for Hobbes's decision to write *Leviathan*. It would certainly support my thesis if Hobbes became engaged with *actio* after the regicide in January of 1649 and not in 1646 (as Skinner argues), when, although things were looking grim for the Royalists, their head of state still had his head. Why would Hobbes at that moment take up the question of new foundations with such vigor in 1646 (as opposed to 1649, as I will argue he does), and why would he have *De Cive* republished in 1647 if he did?<sup>32</sup> One could imagine some answers, but not great ones. By contrast, it would follow naturally that Hobbes—like nearly everyone, republican or royalist—was shocked by the regicide of Charles I and that it would prompt Hobbes to think with great urgency about the question of new foundations. There is no evidence (that I know of) recording Hobbes's reaction one way or another. However, there is evidence indicating that Skinner's timeline is wrong. Specifically, Noel Malcolm's study of the writing of *Leviathan* convincingly argues for it being started in May or June of 1649, after the reissuing of *De Cive* in 1647 and after the regicide.<sup>33</sup> Malcolm notes that it is possible that pieces of *Leviathan* were drafted earlier in the 1640s while carrying out his other duties, the foremost of which being the tutorship of Prince Charles. Whether as a response to the regicide or informed by his tutorship of a future sovereign (or most likely, both), such a timeline lends seemingly weighty support to the thesis that *Leviathan* was meant not only for those who are ruled to be better subjects, but it was also meant to teach rulers better statecraft.

In light of that, I can state my answer to the rhetorical (re)turn debate in Hobbes: it is beside the point. The particular casting of the debate—foremostly its focus on textual rhetorical practices—has steered it toward considerations of how Hobbes as an author tries to persuade readers and

32 Note that this timeline also problematizes Skinner's timeline, too, as Raylor has also noted; Raylor, *Philosophy, Rhetoric, and Thomas Hobbes*, 8. n. 31.

33 Malcolm, *Leviathan I. Editorial Introduction*, 1–13. If this is true, then it also follows that Raylor's critique of Skinner's timeline (see note above) is moot.

away from how sovereigns should persuade subjects. Of course, there are reasons to focus on the former, as the vibrant scholarship on that question shows. However, I am concerned with the latter. Consequently, not only do I not need to commit to one model or another, as it pertains to textual rhetorical practices, and I see some interpretative risk in being tethered to that debate. This is certainly not to say that this present study is not informed by these studies, as I have noted much of the debate lends itself to my approach. Certainly, *Leviathan* may reflect a change in Hobbes's understanding of rhetorical arts, but what is indisputable is that the political content and context have changed. And when focusing on those changes, it becomes clear that where the real politics of persuasive statecraft are concerned, so too is Hobbes focused on rhetorical action.<sup>34</sup> The kind of rhetoric and politics I am interested in—the politics of new foundations and everything that follows—were on Hobbes's agenda in *Elements* but in a radically different (democratic) form (see Chapter Two), unclearly expressed in *De Cive* and, as I will argue here and in subsequent chapters, fundamentally important to the political theory of *Leviathan*.<sup>35</sup> I am concerned with those twists and turns in Hobbes's theory of new foundations and then what rhetorical tools Hobbes suggests should be mustered in the service of new foundations in *Leviathan*. My assumption is that Hobbes's singular priority was the real politics of new foundations, and that guided his looting of various rhetorical traditions for anything that could be put to the service of that end, to which I now turn.

## Hobbes and Davenant

In 1656 William Lucy, writing under the pseudonym W. Pike, published *Examinations, Censures, and Confutations of Divers Errours in the Two First Chapters of Mr. Hobbes His Leviathan*.<sup>36</sup> Lucy's pun was immediately tripped up over an alternative pun. Thus, in a note to Hobbes in July of 1656, the English poet Edmund Waller quipped, "it is ominous that he will prove but a pike to a leviathan, a narrowe river fish to one w<sup>ch</sup> deserves the whole ocean for his theater".<sup>37</sup> Waller's own analogy directs our attention to the

34 Raylor gets close to this kind of argument; see *Philosophy, Rhetoric, and Thomas Hobbes*, 262.

35 See Chapter Two.

36 Lucy ('W. Pike'), *Examinations, Censures, and Confutations of Divers Errours in the Two First Chapters of Mr. Hobbes His Leviathan*.

37 Hobbes, *The Correspondence*, I: 1622–1659:295. This reference was found in Hillyer, *Hobbes and His Poetic Contemporaries*.

place of theatrical rhetoric, and thereby rhetorical action more generally, in *Leviathan*. In this section, I consider Hobbes and Davenant, then turn to the specific discussion of personation, the staging of the state, enacting sovereignty, exhortation and dehortation, and Hobbes's references to founders and sages in *Leviathan*.

A core element of the *studia humanitatis* is the study of classical drama and poetry, and Hobbes pursued this aspect of his education with interest.<sup>38</sup> From an early age, Hobbes was fond of poetry, drama, and the theater. John Aubrey notes that at the age of fourteen, Hobbes “had turned Euripidis Medea out of Greeke into Latin Iambiques, which he presented to his master”,<sup>39</sup> a story that features in every one of Hobbes's major political works.<sup>40</sup> There is evidence that Shakespeare's *Hamlet* was performed at Oxford while Hobbes was a student there in 1607. However, it is not known whether Hobbes attended any of these performances.<sup>41</sup> Aubrey also notes,

[B]efore Thucydides, he spent two yeares in reading Romances and playes, which he haz often repented and sayd that these two yeares were lost of him—wherein perhaps he was mistaken, too. For it might furnish him with copie of words.<sup>42</sup>

Hobbes records this in his *Vita Carmine Expressa*.<sup>43</sup> Aubrey also reports that “Mr. Benjamin Johnson, Poet-Laureat was his loving and Familiar friend and acquaintance.”<sup>44</sup> The capstone of Hobbes's love of poetry was his translation of Homer's *Iliad* and *Odyssey*, including a preface *Concerning the Virtues of an Heroic Poem* published in 1675, shortly before his death on December 4, 1679, at the age of 91.<sup>45</sup>

Had Hobbes even wanted to rid these elements of rhetoric from his thoughts, these debates were newly forced upon him at exactly the moment he began working on *Leviathan*, by way of Sir William Davenant. In 1649 Davenant, at the time Britain's poet laureate, began working on his epic poem *Gondibert*. Despite Hobbes's own intense work on *Leviathan* during

38 Skinner, *Visions of Politics*, III: *Hobbes and Civil Science*, 42–43.

39 Aubrey, *Brief Lives*, I:328–29.

40 Vieira, *The Elements of Representation in Hobbes*, 76.

41 Martinich, *Hobbes: A Biography*, 18.

42 Aubrey, *Brief Lives*, I:361.

43 Hobbes, “Vita Carmine Expressa [1673],” 75–84.

44 Aubrey, *Brief Lives*, I:365.

45 Hobbes, *English Works* [*Iliads and Odysseys*].

that period, Davenant tells us that Hobbes gave it “daily examination”.<sup>46</sup> Later Hobbes again took time away from his own work to write a response to Davenant’s preface to *Gondibert* (1650).<sup>47</sup>

Davenant’s *Preface* and Hobbes’s *Answer* evince Hobbes’s engagement with the debates over poetic rhetoric in the context of seventeenth-century England. Hobbes begins by setting out his understanding of the relationship between social order and those prophets and ancient poets who had the status of divinities. The ancient poets, Hobbes tells us,

exercised amongst the People a kind of spiritual Authoritie; would be thought to speak by a Divine spirit; have their works which they writ in Verse (the Divine stile) pass for the Word of God, and not of man; and to be hearkened to with reverence.<sup>48</sup>

Hobbes’s praise of the ancients stands in contrast to his critique of some modern poets, who

should think it an ornament to his Poem; either to profane the true God, or invoke a false one, I can imagin no cause, but a reasonless imitation of Custom, of a foolish custom, by which a man enabled to speak wisely from the principles of nature, and his own meditation, loves rather to be thought to speak by inspiration, like a Bag-pipe.<sup>49</sup>

The poets were the stewards of the mythological realm that anchored and ordered the political realm.

Next, Hobbes turns to a critique of rhetoric (and rhetorical action) with a summary of his epistemology, including the interconnectedness of experience, memory, judgment, the power of fancy and the fundamental misunderstanding of the ancient philosophers thereof, the socio-political importance of language and clear reasoning, and the role of poetry and rhetoric in the service of philosophy, finally hinting toward a larger theatricality of experience in general.<sup>50</sup> Following the summary, he addresses

46 Davenant, “Preface to Gondibert,” 1. On Hobbes and Davenant, see Miller, “The Uniqueness of Leviathan: Authorizing Poets, Philosophers, and Sovereigns”; Jacob and Raylor, “Opera and Obedience”; Hillyer, *Hobbes and His Poetic Contemporaries*, chap. 2; Martinich, *Hobbes: A Biography*, 210–15; Raylor, *Philosophy, Rhetoric, and Thomas Hobbes*, 271–74.

47 Hobbes, “Answer,” 62.

48 Hobbes, “Answer,” 56.

49 Hobbes, “Answer,” 56–57.

50 Hobbes, “Answer,” 57–58.

the problem at hand. Despite numerous scientific advances, Hobbes writes that philosophers “have hitherto failed in the doctrine of moral Virtue.”<sup>51</sup> For these reasons, “the Architect (*Fancy*) must take the Philosophers part upon her self.”<sup>52</sup> That is, the poet has the twofold difficulty of needing to speculate about an ideal future, without that speculation remaining lost in the clouds. Ergo, “He therefore that undertakes an Heroick Poem (which is to exhibit a venerable and amiable Image of Heroick virtue) must not onely be the Poet, to place and connect, but also the Philosopher, to furnish and square his matter.”<sup>53</sup>

This new form of poetry sets strict restrictions on the fancy of the modern poet who, unlike the ancients, must be bound by the known limits of nature. “There are some that are not pleased with fiction,” Hobbes writes,

unless it be bold; not onely to exceed the *work*, but also the *possibility* of Nature [...] Against such I defend you (without assenting to those that condemn either *Homer* or *Virgil*) [...] For as truth is the bound of Historical, so the Resemblance of truth is the utmost limit of Poetical Liberty.<sup>54</sup>

The imperative is fundamentally political and pedagogical. The purpose of the poet must be peace, which is a derivative of the exemplary moral virtues of great historical figures. “As the description of Great Men and Great Actions, is the constant design of a Poet,” Hobbes writes, “so the descriptions of worthy circumstances are necessary accessions to a Poem, and being well performed, are the Jewels and most precious ornaments of Poesie.”<sup>55</sup> The brevity of Hobbes’s *Answer* belies its importance in situating his thought within the early modern debate regarding the nature and role of poetry and drama and as a contribution to that debate.<sup>56</sup> At the very least, it evinces not just Hobbes’s awareness of the long history of the idea, going back to the very start of the tradition, but also his re-engagement with those ideas just as he was writing *Leviathan*. Far more important than these evocative discussions are the manifestations or related ideas in certain core theoretical elements of the political philosophy of *Leviathan*, to which I now turn.

51 Hobbes, “Answer,” 58.

52 Hobbes, “Answer,” 58.

53 Hobbes, “Answer,” 58.

54 Hobbes, “Answer,” 59.

55 Hobbes, “Answer,” 59–60.

56 Martinich, *Hobbes: A Biography*, 210.

## Personation

"A PERSON," for Hobbes, "is he, *whose words or actions are considered, either as his own, or as representing the words or actions of an other man*".<sup>57</sup> What does it take to have one's words considered as their own? The act of vocalizing the words is insufficient, as children and the insane also state their own thoughts, but, as they are not assumed to be rational agents, they are not considered as personating themselves.<sup>58</sup> The simple rationality of those words is insufficient, as rational claims in *Leviathan*, unlike *Elements*, need to be socially recognized as such. Hence, effective personation requires a social acknowledgement of the claim that one is, indeed, personating oneself and not making absurd claims. Similar criteria also define whether an act is that of a natural person ("when they are considered as his owne"<sup>59</sup>) or when they are of an artificial person ("when they are considered as representing the words and actions of an other"<sup>60</sup>). Agency therefore turns on the concept of self-representation as enacting a claim, not as a pre-given attribute. Effective personation is contingent on the expressive ability of the agent.

Hobbes traces the concept of the *person* back to its Latin roots, and there its theatrical essence. The Latin "Person," Hobbes notes, is different from its Greek equivalent, which means simply "*Face*." The Latin further signifies "*disguise*" and "*outward appearance*," that is, "counterfeited on the Stage". Persons are always personated as though wearing a "Mask or Visard". Hobbes continues,

And from the Stage, hath been translated to any Representer of speech and action, as well in Tribunalls, as Theaters. So that a *Person*, is the same that an *Actor* is, both on the Stage and in common Conversation<sup>61</sup>; and to *Personate*, is to *Act*, or *Represent* Himselfe, or an other; and he that acteth another, is said beare his *Person*, or act in his name[.]<sup>62</sup>

Hobbes further develops the idea by quoting Cicero's dictum: "*Unus sustineo tres Personas; Mei, Adversarii, & Judicis*, I beare three Persons; my own, my Adversaries, and the Judges."<sup>63</sup> However, Hobbes pushes Cicero's argument

57 Hobbes, *Leviathan*, II:XVI. 244.

58 Hobbes, *Leviathan*, II:XVI. 248.

59 Hobbes, *Leviathan*, II:XVI. 244.

60 Hobbes, *Leviathan*, II:XVI. 244.

61 Conversation = "social behavior", *OED*, 'conversation' n., 2, 5–6.

62 Hobbes, *Leviathan*, II:XVI. 244.

63 Hobbes, *Leviathan*, II:XVI. 244; Cicero, "De Orator Book II," § 24. Hobbes is also indebted to Quintilian here; see Skinner, *From Humanism to Hobbes*, 12–16.

further. Agents manifest their agency insofar as they can own their own words and actions, but doing so is neither a legal nor a formal procedure; it is simultaneously and necessarily a persuasive enactment of one's words and actions. In practice, this requires constant recalibration to shifting social standards and measures and thus a measure of reflective oscillation between one's comportment and social world, requiring introspection and judgment in equal measure. Hobbes is critical of Cicero's claim that the purpose of *actio* was not dissimulation or distraction but simulation of natural emotions and true feeling. Where Cicero presupposes a distinction between agent, actors, and rhetors, Hobbes sees no substantive difference. Personating and acting are synonymous for Hobbes. Where Cicero understood rhetorical action as "rooted deep in the general sensibility, and nature has decreed that nobody shall be entirely devoid of these faculties,"<sup>64</sup> Hobbes extends this claim as representing not an inherent understanding of the rhetorical arts but an inherent aspect of agency.

One example of Hobbes's reconsideration and reconfiguration of Cicero and returning to the broad history of *actio* is found in his political anthropology. Here, a comparative account of Hobbes's thought yields insights into the extent to which his thought has changed on these matters. In *Elements* Hobbes considered the invention of names to be the distinctive epistemological turning point in human anthropology because it conferred upon humans the capacity for scientific thought. "By the advantage of names," Hobbes wrote,

it is that we are capable of science, which beasts, for want of them, are not; nor man, without the use of them: for as a beast misseth not one or two out of her many young ones, for want of those names of order, one, two, three, &c., which we call number; so neither would a man, without repeating orally, or mentally, the words of number, know how many pieces of money or other things lie before him.<sup>65</sup>

The contrast to *Leviathan* is striking in its sociality:

But the most profitable invention of all other, was that of SPEECH, consisting of *Names* or *Appellations*, and their Connexion; whereby men register their Thoughts; recall them when they are past; and also declare them one to another for mutuall utility and conversation; without which, there had

64 Cicero, "De Oratore Book III," § 50.

65 Hobbes, *Elements*, pt. I. v. § 4.



been amongst men, neither Common-wealth, nor Society, nor Contract, not Peace, no more than amongst Lyons, Bears, and Wolves.<sup>66</sup>

Skinner notes that this is a “conventional paeon to the power of speech”, certainly so.<sup>67</sup> But it is also a convention that goes to the problem of new foundations at the heart *action*, harkening directly to Cicero’s discussion of rhetorical action in the constitution of human polities.

Hobbes’s understanding of agency generates a spectrum of agency in *Leviathan* between extremes of those who are exceptionally gifted at modulating their actions vis-à-vis a clear-minded analysis of their social conditions and personal experience and those who cannot modulate their inner lives and public personas. In VII Hobbes gives examples of both, and both are tellingly dramatic in nature. The latter’s extreme is the madman and the fool. Hobbes describes madness as “nothing else, but too much appearing Passion, may be gathered out of the effects of Wine [...] For the effect of the wine, does but remove Dissimulation; and take from them the sight of the deformity of their passions.”<sup>68</sup> Monica Brito Vieira writes,

There are good reasons to believe that Hobbes was familiar with these various early modern discourses on dis/simulation. But his countenancing of dis/simulation comes with a difference. Hobbes does not prescribe simulation and dissimulation as exceptional conduct, limited to rare state occasions, government business or the closed world of courtly politics. Instead, he refers to them as being an essential part of the regulation of ordinary social life, if society is to be truly civil.<sup>69</sup>

Vieira is quite right. Hobbes is not commenting on exceptional moments in a person’s presentation of themselves. He is making a universal claim regarding human agency.

66 Hobbes, *Leviathan*, II:iv. 48. Compare this passage to Cicero:

At this juncture a man—great and wise I am sure—became aware of the power latent in man and the wide field offered by his mind for great achievements if one could develop this power and improve it by instruction. Men were scattered in the fields and hidden in sylvan retreats when he assembled and gathered them in accordance with a plan; he introduced them to every useful and honourable occupation, though they cried out against it at first because of its novelty, and then when through reason and eloquence they had listened with greater attention, he transformed them from wild savages into a kind of gentle folk. (Cicero, “De Inventione,” bk. 1. § 2.)

67 Skinner, *Reason and Rhetoric*, 358.

68 Hobbes, *Leviathan*, II:viii. 114.

69 Vieira, *The Elements of Representation in Hobbes*, 91.

Like in his comments on *Gondibert*, Hobbes also brings his own epistemology to bear on the long debate regarding *actio* in the rhetorical tradition. Hobbes's point is that the "true-nature" revelatory tradition of *actio* of Cicero is at root an epistemological error carried over by the Greek philosophers. To recall the history of *actio* in Chapter Three, Hobbes is in disagreement with the anti-theatrical writers, all of whom take the authentic expression of one's self as the most rudimentary of moral imperatives, a position that Hobbes conflates with drunkenness. Dissimulation here bears no relationship to the dissimulation of, say, Machiavelli, as there are no conspiratorial or deceptive intentions.<sup>70</sup> Instead, it is a matter of properly enlightened and friendly social comportment. Hobbes concludes,

[S]ober men [...] would be unwilling the vanity and Extravagance of their thoughts at that time should be publiquely seen: which is a confession, that Passion unguided, are for the most part meere Madnesse.<sup>71</sup>

Stated abstractly, philosophical realism of the epistemological kind defended by Aristotelians is itself a sort of recipe for madness. It is a madness that Hobbes believes pervades the elite culture and has corrupted Western politics for two millennia.

This is not to say there is no such thing as human nature in Hobbes. There is, but it is simply not to be found in forms or Aristotelian essences. Hence, the hope for respite, for Hobbes, is popular, if not vulgar: "The common sort of men," Hobbes writes, "seldome speak Insignificantly, and are therefore, by those other Egregious persons counted Idiots."<sup>72</sup> It is an outstanding claim on Hobbes's part, something like a populist epistemology wherein the great mass of people who have never been inculcated into Aristotelianism (except by their preachers) are ready to receive a (suitably popular) version of Hobbes's political science, if delivered not by *Leviathan* as a text—Hobbes bears no illusions that the "greatest part" of the population will ever read *Leviathan*—but by a suitably able leader.

So, madness is ineluctably socio-political in nature. One striking illustration of this is found in Hobbes's description of a public showing of Euripides's *Andromeda* (to whom he often turned). Following a public showing of Euripides's *Andromeda* in Abdera, where, "a great many of the spectators falling into Fevers, had this accident from the heat, and from the Tragedy together, that

70 Machiavelli, *The Prince*, chap. 16.

71 Hobbes, *Leviathan*, II:VIII. 114.

72 Hobbes, *Leviathan*, II:VIII. 122; see also XXX. 524.

they did nothing but pronounce Iambiques".<sup>73</sup> The passions expressed were not those of the vital drives at all: "this madnesse was thought to proceed from the Passion imprinted by the Tragedy."<sup>74</sup> Here, again, we have an example of agents who are incapable of separating their autonomous capacity to authorize their own words. Extending this claim, Hobbes writes that

there raigned a fit of madnesse in another Graecian City, which seized onely the young Maidens; and caused many of them to hang themselves. This was by most then thought an act of the Diuel. But one that suspected, that contempt of life in them, might proceed from some Passion of the mind, and supposing they did not contemne also their honour, gave counsell to the Magistrates, to strip such as so hang'd themselves, and let them hang out naked. This the story sayes cured that madnesse.<sup>75</sup>

The conspicuous feature of this example is not the reference to Euripides's tragedy (although that is significant); it is the thoroughgoing theatricality of the event being described. At no point are basic human vital drives the definitive concern (although they are in the background, for example the heat), and most importantly, it is not the "fear of violent death"—a notion I will return to in much detail in Chapter Five—that brought the crowd to sanity. Instead, it was the potential shame of being strung up naked after one's suicide that, for Hobbes, was the foundation of civility. Instead, "supposing they did not contemne also their honour," the magistrates preceded to publicly shame the maidens. It was their sense of honor, Hobbes asserts, that broke their "fit of madnesse".<sup>76</sup> What ultimately brought peace was their concern with honor, and it was the threat of social dishonor that "cured that madnesse."<sup>77</sup> To invert the point, the fear of physical violence is not the basis of human agency or the foundation of clear-thinking social and political realism; just the opposite: the prospect of public violent death proceeded from the "Passion of the mind" and was invited with great enthusiasm.<sup>78</sup> The fear of violent death is not the antidote to vainglory; it is its foil.

Opposite to extreme madness are those rare persons of exceptional wit and wisdom. Those individuals are marked by what Hobbes calls "NATURALL WIT," consisting of "*Celerity of Imagining* [...]" and *steddy direction* to some approved

73 Hobbes, *Leviathan*, II:VIII. 116.

74 Hobbes, *Leviathan*, II:VIII. 116.

75 Hobbes, *Leviathan*, II:VIII. 116.

76 Hobbes, *Leviathan*, II:VIII. 116.

77 Hobbes, *Leviathan*, II:VIII. 116.

78 Hobbes, *Leviathan*, II:VIII. 116.

end.”<sup>79</sup> These natural wits are bolstered by good fancy (the capacity to identify similitude) and good judgment (the capacity to identify dissimilitude). Hobbes speaks in the same way of the combined good judgment and fancy at the core of good poems, epics, dramas, effective exhortation, and, ultimately, prudence.<sup>80</sup> (I will consider many examples of this found in *Leviathan* below.) Between these extremes is the “greatest part” of humanity, who go about their daily lives personating their various selves and corporations.

The point is that Hobbes is not returning to this line of rhetoric as a technique for furthering his argument so much as he is returning to it for insights into the *substance* of his political theory. In *Leviathan* Hobbes does not recognize a significant difference between the enacting of agency and acting on stage, precisely because dissimulation and simulation are inherent to the representation itself; it is a background condition for being a person, not an affected stance. These aspects of Hobbes’s critique of agency are not ornamental; they are essential, a necessary result of the socially reflective, intersubjective nature of human agency. Agency is a social play of simulation and dissimulation wherein an agent’s “true self” is neither revealed nor revealable. Instead, it is always modulated to one’s audience. As Vieira writes, “For Hobbes, there can be no politics, no organized society and no state outside representation.”<sup>81</sup> Had Hobbes not had access to a theory of rhetorical action, he would have had to create one.

Restated in contrast to the stereotype of the individual mechanistic agent in Hobbes, it could be said that that account is a ruinous interpretative venture. Hobbes’s references to actors and the stage in *Leviathan* are not mere analogies or metaphors, adorning what is at root a mechanistic theory of human agency. Hobbes’s claim is that the elemental fact of political agency is simultaneously privately introspective and publicly dramatic in nature and in ways that no mechanistic account could plausibly grasp. The irony of the strongly mechanistic interpretation of agency in Hobbes—rarely defended anymore—is that for him, this mode of agency would be incapable of personation.

## Staging the state

Having zoomed in on agency in general, I now want to zoom out to consider the state and the sovereign as specific agents. To exit from the state of war

79 Hobbes, *Leviathan*, II:VIII. 104.

80 Hobbes, *Leviathan*, II:VIII. 108.

81 Vieira, *The Elements of Representation in Hobbes*, 237.

means to found a new regime. To Hobbes, that creates two agents who did not exist before. One is the purely fictional person of the state. The other is the sovereign who bears the person of the commonwealth.<sup>82</sup> That act of creation transforms the multitude into a people. Where agents are like actors, the state and the sovereign are for Hobbes peculiar kinds of agents. However, the state is a peculiar kind of stage, one both embodied itself as an agent, giving unity of many agents, and born by yet another sovereign agent. That, of course, is depicted in the frontispiece and evoked in the opening sentences of *Leviathan*:

For by Art is created that great LEVIATHAN called a COMMON-WEALTH, or STATE, (in Latine CIVITAS) which is but an Artificiall Man; though of greater stature and strength than the Naturall, for whose pretection and defence it was intended; and which, the *Soveraignty* is an Artificiall *Soul*[.]<sup>83</sup>

These ideas—the stage as the state, the sovereign as a soul writ evidently large—seem to have clear, if not eminent, precursors in the tradition of constitutive rhetorical action. Specifically, Hobbes appears to have tapped directly into two ready-at-hand models: Plato's city/soul analogy specifically and Ben Jonson's playhouse more generally.

To characterize the stakes, let me first briefly recall the argument from Chapter Two. As shown there, Hobbes's theory of the state did not only emerge in response to long-standing ideological debates over the nature of the state—although, it clearly was that, too—but as an answer to the immediate imperative of counteracting the persistent corrupting pull of the borough corporation. Among the various countermeasures Hobbes introduces, one that I listed but did not expand upon at length was the state of an *ideological* counterpoint. There “ideology” was really a placeholder for what I think is a deeper, and contextually more appropriate, discussion of rhetorical action. We are now positioned, in light of Chapter Three, to flesh out that claim.

Clearly, Plato's city/soul analogy is in the background.<sup>84</sup> Plato turns to the city/soul analogy because his earlier rebuke of the Thrasymachus's

82 On the genealogy of this idea, see Skinner, “A Genealogy of the Modern State.”

83 Hobbes, *Leviathan*, II:INTRODUCTION. 16.

84 As Arash Abizadeh and Leon Harold Craig, among others, have shown, there are many reasons to think that Platonic ideas suffuse *Leviathan*, including the notion that the idea of the state was modeled upon Plato's city/soul analogy. See Craig, *The Platonian Leviathan*; Abizadeh,

claim “that justice is nothing other than the advantage of the stronger”<sup>85</sup> was ineffective in convincing Glaucon and Adeimantus that justice is more than the rule of the strong.<sup>86</sup> To convince his interlocutors, and to abate the threat of violence and its sway over his interlocutors, Plato turns to consider the nature of the properly ordered soul. For that, Plato has Socrates propose a thought experiment of founding a new city to “find out what sort of thing justice is in a city and afterward look for it in the individual; observing the ways in which the smaller is similar to the larger.”<sup>87</sup> Working from the emergence of the first community on the grounds of necessity, through the creation of the “city for pigs”<sup>88</sup>—which provides only for the base functions of the populace—through the healthy “*luxurious city*,”<sup>89</sup> Plato ultimately has Socrates assert the virtues of the *callipolis*, a city in which each of its constitutive parts can flourish and whose unity and direction is assured by the rule of the philosopher-statesman. Plato’s city/soul analogy is a thought experiment designed to teach through approximation and speculation that there is an eternal good and that such a good must act as a measure for the good life.

Hobbes would have seen Jonson’s stage—itsself inflected by Platonic ideas—as a more powerful political heuristic. To recall, among Jonson’s contributions to theatrical rhetoric is his novel deployment of the city of London as the backdrop to his plays. Jonson understood himself as a pedagogue and moralist above all; his plays and the place of the theater itself were means to greater philosophical ends. Aware of Aristotle’s lament that “the art of making masks and set decorations has more control over bringing off the spectacle than does the art of the poets,”<sup>90</sup> Jonson uses London as a mimetic apparatus for critical moral pedagogy. By situating plays in London, and often by using the technique of a play-within-a-play, Johnson prompts the audience to reflect on their own moral and political conditions. “The stage presented an opportunity equalled by no other show place of poetry for construction of both the metaphysical and practical scaffolding of Jonson’s universe”, writes one Jonson scholar,

“The Representation of Hobbesian Sovereignty: Leviathan as Mythology,” 135–48. This section is broadly indebted to their studies.

85 Plato, “Republic,” 338c.

86 Plato, “Republic,” 367b–e.

87 Plato, “Republic,” 369a.

88 Plato, “Republic,” 372d.

89 Plato, “Republic,” 372e.

90 Aristotle, *Poetics*, 1449a–50.

Since the poet is to the play as Nature is to the world, if he makes the laws of his creation the same which he has perceived in the universe, his little world will be a sure guide to the greater—provided he can get his audience to accept it. In part, the visible microcosm of the stage serves that function: *it renders the poet's conceptual microcosm persuasive*. The solid boards reinforce a poetic concept of the workings of the universe.<sup>91</sup>

Within the protected space of the theater, the stage would focus the rabble's attention and thereby function as a heuristic for moral pedagogy and as a platform for their respective rulers. Both must convey a unity of purpose while conveying a single moral truth, and both should do so without equivocation or dissimulation. The benefit of Jonson's heuristic over Plato's was essentially one of quantity: Plato's city/soul analogy is demanding; it requires a philosophical soul to guide the interlocutor. Jonson's is less so, leaning on the unique apparatus of the stage to isolate each theatergoer as an audience to the moral play on stage.

Jonson's innovation would have appealed to Hobbes in part but was also problematic for reasons discussed already. The city was exactly the problem, not the solution. Hobbes instead circumvents it by asserting a yet larger stage: the state. In a sense, Hobbes is merging Jonson and Plato. Whereas the stage is in microcosmic representational relation to the audience, the state, for Hobbes, stands in macrocosmic relation to the subject. The heuristic of the state has analogous advantages over the stage, as Jonson's stage has advantages over public fora. Jonson's concern regarded the democratic boisterousness that surrounded his stage, which was only with great difficulty brought under the influence of the actors, and by proxy the playwright. Jonson addressed those difficulties by making the very tumult of the public sphere part of the play itself, thereby forming a heuristic loop enclosing audience and state and thus partly putting that tumult under the playwright's control. Confined to the playhouse, the tumult of the audience could be tempered—it could not be excluded, as the playhouse itself was a rowdy place—and juxtaposed with competing images of disorder and corruption and order and virtue. Hobbes may have recognized that by shifting from the stage to the state, the problems of public gatherings (perhaps of borough politics specifically) would be yet further dissociated from the moral and political messages he needed to convey. Hence, Hobbes, instead of using the discursive heuristic of soul/city analogy or the constrained space of the theater, could reimagine a macrocosmic heuristic: a larger-than-city,

91 Jackson, *Vision and Judgment in Ben Jonson's Drama*, 57 (emphasis added).

massive fiction, one that encompasses the unitary will of each individual discretely and then in tandem as a commonwealth. Instead of cloistering the theater from the city (Jonson) or logos from the agora (Plato), Hobbes's intention was to cloister the borough within the state, thereby creating a mimetic dialectic between the individual and the abstract fiction of the state agent.<sup>92</sup>

If that was Hobbes's solution, then it effectively reintroduced the question of the philosopher king, but now on a different level. I will focus on the differences with Plato, but the similarities in their mutual descriptions are, as Craig has shown, both striking and evident. As Hobbes writes in the conclusion Part II,

I am at the point of believing this my labour, as uselesse, as the Commonwealth of *Plato*; For he also is of opinion that it is impossible for the disorders of State, and change of Governments by Civill Warre, ever to be taken away, till Sovereigns be Philosophers. But when I consider again, that the Science of Naturall Justice, is the only Science necessary for Sovereigns, and their principall Ministers [...] and that neither *Plato*, nor any other Philosopher hitherto, hath put into order, and sufficiently, or probably proved all the Theoremes of Morall doctrine, that men may learn thereby, both how to govern and how to obey[.]<sup>93</sup>

Compare to Plato:

Until philosophers rule as kings or those who are now called kings and leading men genuinely and adequately philosophize, that is, until political power and philosophy entirely coincide, while the many natures who at present pursue either one exclusively are forcibly prevented from doing so, cities will have no rest from evils [...] nor, I think, will the human race.<sup>94</sup>

There is much more to say on this topic, and I will return to this quotation many times, but let me focus only on the dramaturgical elements here. Hobbes's conflation of the stage and state is a political model and a prescription for constraining the socio-political attitudes of subjects and thereby orienting them. But as we know, it is an agent who exists only insofar as

92 Kahn makes a structurally similar argument; see Kahn, *Wayward Contracts*.

93 Hobbes, *Leviathan*, II:XXXI. 574.

94 Plato, "Republic," 473d.



there is a sovereign to bear it. The people in their unity are also unified in their observance of the sovereign and, inescapably, the *natural person* who bears the office. That is ultimately where both Plato's and Jonson's models prove insufficient. The dramatic microcosmos of Jonson's stage is both moral heuristics, commanded by the philosopher and the playwright, respectively. However, Hobbes's sovereign is more than a playwright (just as Ben Jonson saw himself as far more than a playwright), but he is also more than a philosopher king (in Plato's sense). For Hobbes, purely philosophical *psychagogia*—through interlocution or as mediated by a text—cannot achieve the goal of realizing justice and peace, because neither text nor dialogue can carry that burden. The commonwealth may be writ large, but for Hobbes it is its soul, the sovereign (and ultimately the natural persons who bear that person), that gives it life. Hobbes's sovereign must be a student of "Naturall Justice", and must also learn "how to govern".

Hence the difference in Hobbes's, Plato's, and Jonson's respective accounts of the philosopher king. To concretely manifest natural justice requires that the sovereign enact it in speech and action. As an agent (or a collection of agents in an aristocracy or a democracy), a sovereign is more closely observed by the populace than any other figure and is therefore more tightly constrained by the social normative order of agency. The inverse of the near-total political and legal powers conferred on the natural person who bears the office of the sovereign is a uniquely totalizing subjection of that sovereign to the judgment of subjects. The frontispiece of *Leviathan* depicts those constraints, whereby the naturally curious masses are in perpetual judgment of the character of the sovereign. Their every deed is seen, considered, and evaluated as a function of simply being the public figure par excellence. Hobbes often criticizes subjects who question the dictates or actions of a sovereign—he calls on sovereigns to ban those texts that teach that all sovereigns are tyrants and democracy is the regime of maximal freedom (see all of XXI)—but that is different from the necessity of addressing the challenges of curiosity and judgment that is a function of simple cognition. Judgement is a natural, inevitable, and perpetual check on the status of the natural and artificial persons of the sovereign and state, respectively. Ideological bans steadied by laws and braced in universities cannot dispel the inevitability of judgment (as we have seen in the section above, social judgment is the very foundation of agency). Nor would Hobbes desire such a world, as the state's artificial agency exists only insofar as the multitude adhere to the fiction of its unity. That requires judgment, and hence, yet again, the burden is on the natural person of the sovereign to give the state its unity of action. Restated, it is not enough that the sovereign by

“industrious meditation”<sup>95</sup> philosophizes. They must instead be political agents *also* versed in the study of natural justice (more on *how* they should lead below).

In sum, the seemingly curious Platonism that is barely in the background of *Leviathan* is less curious when contextualized within the theatrical rhetorical debates and practices of Hobbes’s day. Indeed, that context may explain the affirmative use of Plato as a theorist of rhetorical action, since, as we have seen in Chapter Three, many English dramatists were engaged in philosophical reflections over Plato and Platonism. That context helps to mollify the seeming strangeness of Hobbes’s return to Plato, the supposed archenemy of rhetorical action, in the service of recovering the theatrical elements of political life, as that is exactly what many of Hobbes’s contemporaries were also trying to do.<sup>96</sup> It is not insignificant that in the preface to *Gondibert*, in a discussion of the ecclesiastics’ critique of poetry as the source of political disorder and their tendency to cite Plato as an authority, Davenant speaks out in Plato’s defense:

This Authority [...] is from *Plato*; and him some have maliciously quoted; as if in his feign’d Common-wealth he had banish’d all Poets. But *Plato* says nothing against Poets in general; and in his particular quarrel (which is to *Homer*, and *Hesiod*) onely condemns such error[s].<sup>97</sup>

Sidney mounts the same defense.<sup>98</sup> So, not unlike some of his contemporaries, Hobbes’s Platonism *aligns* him with the dramatists who were returning and revitalizing the theory of rhetorical action. Hobbes’s deployment of these ideas is idiosyncratic but not exceptional.

95 Hobbes, *Leviathan*, II:xxx. 522.

96 Indeed, the confusion at hand may be a reflection of our own incorrect understanding of Plato as an enemy rather than a critic of the theater. As Martin Puchner has argued,

It is true that Plato was extremely critical of the entire theater system just as he sought to dislodge Homer and the poets more generally from their cultural position as educators. His critique, however, must be understood not as that of an outsider but as that of a rival; he was not an enemy of theater but a radical reformer. (Puchner, *Drama of Ideas*, 5.)

Puchner goes on to show that it was in large part due to Plato’s success that dramatists came to see Platonism as enemies and philosophers came to see the theater as non-philosophical. That prejudice, as I have tried to show, was not nearly so polarizing in the seventeenth century, and Hobbes’s engagement with Plato’s theatrical philosophy seems on that account not particularly novel but instead an astute account of both Plato and his theatrical contemporaries. (My thanks to Andrew Corsa for directing me to Puchner’s work.)

97 Davenant, *Gondibert*, 49.

98 Sidney, “An Apology for Poetry [1595].”

## Enacting sovereignty: Oration, exhortation, and dehoration

The sovereign is the actor who bears the person of the state and gives it its “reall Unitie” and singular will.<sup>99</sup> The agent who bears the person of the state is more tightly constrained by the logics of the rhetoric of agency than any other figure in the commonwealth. Indeed, the theory of agency and its implications are all the more apparent when we turn to the person of the state exactly, insofar as the stakes are so much higher. The burdens of sovereignty, to use Sorell’s apt terminology, are weighty.<sup>100</sup> Indeed, considering the dramaturgical and philosophical burdens above, it is fair to say that they are far weightier than even Sorell argues. In this section, I address Hobbes’s discussion of the techniques of persuasive leadership focusing on exhortation and dehoration. In the next, I consider examples of such figures strewn throughout *Leviathan*.

Hobbes begins in VIII by distinguishing between oratory and hortatory. “In Orations of Prayse, and in Invectives,” Hobbes writes,

the Fancy is praedominant; because the designe is not truth, but to Honour and Dishonour; which is done by noble, or by vile comparisons. The Judgement does but suggest what circumstances make an action laudable, or culpable.<sup>101</sup>

Hobbes is often critical of oration, but primarily because he typically speaks of oration in the context of discussions of democracy, where he is keen to deride the actions of individuals in the public sphere who regale the imprudent with empty phrases for their own vain enjoyments, to the detriment of the commonwealth. However, on simple definitional grounds, Hobbes’s claim is not inherently critical. Indeed, Hobbes notably distinguishes between orations by those of rare intellectual virtue who “by the rarity of their invention” can direct auditors “to their End; that is to say, to some use to be made of them.”<sup>102</sup> The opposite extreme “is one kind of Madnesse”.<sup>103</sup> (A distinction we have seen already.) Hobbes’s critique of hortation follows suit. “In Hortatives, and Pleadings,” Hobbes writes, “as Truth, or Disguise

99 Hobbes, *Leviathan*, II:XVII. 260. As Johan Olsthoorn has shown, the same sovereign bears the person of the church, too; see Olsthoorn, “The Theocratic Leviathan: Hobbes’s Arguments for the Identity of Church and State.”

100 Sorell, “The Burdensome Freedom of Sovereigns.”

101 Hobbes, *Leviathan*, II:VIII. 106.

102 Hobbes, *Leviathan*, II:VIII. 106.

103 Hobbes, *Leviathan*, II:VIII. 106.

serveth best to the Designe in hand; so is the Judgement, or the Fancy most required."<sup>104</sup> Exhortation and dehortation are sometimes necessary where it pertains to truth and the "Design in hand", but that design depends on the person (auspiciously, but indirectly, Hobbes implies that the foremost of these figures are magnanimous agents striving for power<sup>105</sup>).

In xxv ("*Of COUNSELL*"), Hobbes defines exhortation and dehortation as "Counsell, accompanied with signes in him that giveth it, of vehement desire to have it followed; or to say it more briefly, *Counsell vehemently pressed*."<sup>106</sup> Exhortation is a call to action, and its end is prompting that action, not necessarily the consequences of those actions. The rhetor who "exhorteth" does not "tye himselfe therein to the rigour of true reasoning; but encourages him he Counselleth, to Action".<sup>107</sup> As with Plato, Aristotle, and Cicero, Hobbes regards this modality of rhetoric as essentially popular, amenable only to public oratory, and attuned to "the common Passions, and opinions of men".<sup>108</sup> For this reason, these counsellors supplant reasoned argument with "Similitudes, Metaphors, Examples, and other tooles of Oratory, to perswade their Hearers of the Utility, Honour, or Justice of following their advise."<sup>109</sup> However, by the very fact of their reliance on similitudes and metaphors as opposed to rational argument, Hobbes infers that exhortation and dehortation are meant not for the good of the person being counseled but rather the good of the counsellor. Ergo, Hobbes concludes, exhortation and dehortation

is contrary to the duty of a Counsellour; who [...] ought to regard, not his own benefit, but his whom he adviseth. And that he directeth his Counsell to his own benefit, is manifest enough, by the long and vehement urging, or by the artificiall giving thereof; which being not required of him, and consequently proceeding from his own occasions, is directed principally to his own benefit, and but accidentally to the good of him that is Counseled, or not at all.<sup>110</sup>

Hobbes therefore arrives at the seemingly paradoxical conclusion that to exhort is to counsel, but that counsel must not include "vehement urging".<sup>111</sup>

104 Hobbes, *Leviathan*, II:viii. 106.

105 Hobbes, *Leviathan*, II:viii. 110.

106 Hobbes, *Leviathan*, II:xxv. 400.

107 Hobbes, *Leviathan*, II:xxv. 400.

108 Hobbes, *Leviathan*, II:xxv. 400.

109 Hobbes, *Leviathan*, II:xxv. 400.

110 Hobbes, *Leviathan*, II:xxv. 402.

111 Hobbes, *Leviathan*, II:xxv. 402.

As well as being bad for the sovereigns being counseled, exhortation is bad for commonwealths. Hobbes decries exhortation in assemblies as instrumental in the coddling of the assembled. He writes,

For the Passions of men, which asunder are moderate, as the heat of one brand; in Assembly are like many brands, that enflame one another, (especially when they blow one another with Orations) to the setting of the Common-wealth on fire, under pretence of Counselling it.<sup>112</sup>

This mode of oratory is antithetical to clear deliberation on complex issues and leaves the assembly “rather astonied, and dazled” instead of “informed of the course he ought to take.”<sup>113</sup> “Besides,” Hobbes continues,

There cannot be an Assembly of many, called together for advice, wherein there be not some, that have the ambition to be thought eloquent, and also learned in the Politiques; and give not their advice with care of the businesse propounded, but of the applause of their motley orations, made of the diverse colored threds, or shreds of Authors; which is an Impertinence at least, that takes away the time of serious Consultation, and in the secret way of Counselling apart, is easily avoided.<sup>114</sup>

Hobbes thus infers that democracies and aristocracies are institutionally incapable of promoting *good* counsel, because counsel requires “serious Consultation”,<sup>115</sup> whereas these assemblies only invite oration and vain contestation.

In the concluding paragraph of xxv—following a delineation of the best, second best, and third best ways for using counsel—Hobbes writes that when the “final Resolution is in one man,” the monarch ought simply to ignore counsel altogether,

because many eyes see the same thing in diverse lines, and are apt to look asquint towards their private benefit; they that desire not to misse their marke, though they look about with two eyes, yet they never ayme but with one.<sup>116</sup>

112 Hobbes, *Leviathan*, II:xxv. 408–10.

113 Hobbes, *Leviathan*, II:xxv. 410.

114 Hobbes, *Leviathan*, II:xxv. 410.

115 Hobbes, *Leviathan*, II:xxv. 410.

116 Hobbes, *Leviathan*, II:xxv. 412.

This brings us to the strangeness of xxv. Where Hobbes's claims about counsel are not paradoxical, they are dismissive: the chapter does not appear to be about counsel at all, at least as far as counsel concerns advising sovereigns.<sup>117</sup>

However, there is more to Hobbes's discussion of exhortation and dehortation, as quickly becomes apparent in the two crucial exceptions set out to his otherwise critical analysis of hortative speech. The first exception concerns the moment leaders must address the multitude. The "use of Exhortation and Dehortation lyeth onely," Hobbes writes,

where a man is to speak to a Multitude; because when the Speech is addressed to one, he may interrupt him, and examine his reasons more rigorously, than can be done in a Multitude; which are too many to enter into Dispute, and Dialogue with him that speaketh indifferently to them all at once.<sup>118</sup>

The use of *multitude* instead of people, citizens, or subjects reveals the context of Hobbes's advice. Hobbes is no longer referring to counsel given to a sovereign or even an assembled body—that is, to a constituted body—but rather counsel directed to a multitude either in times of emergency or before the creation of a commonwealth. In those situations, heterogeneous opinions regarding a topic are too varied, and exhortation and dehortation are singularly powerful tools for addressing "them all at once" and without deliberation. In these situations, exhortation is a skill of the highest political importance. *Counsel is experienced as command*, and the multitude willingly decides—privately, individually, and without discussion, but together and in unison—that what they have been exhorted to do is what they have internally wanted all along. It is a moment of constitutive rhetorical action.

Hobbes's second exception is found in those moments when sovereigns cannot rule directly and, more importantly, in moments of emergency, for example, "a Leader in an Army"<sup>119</sup> during battle. Here "his Exhortations and Dehortations, are not onely lawfull, but also necessary, and laudable."<sup>120</sup> In answer to the question of whether or not this is a moment of counsel at all, Hobbes states that the "Execution of soure labour; sometimes necessity, and always humanity requireth to be sweetened in the delivery, by encouragement," in which case, again, "they are no more Counsells, but Commands."<sup>121</sup>

117 Raylor has come to a similar conclusion; see Raylor, *Philosophy, Rhetoric, and Thomas Hobbes*, 248.

118 Hobbes, *Leviathan*, II:xxv. 402.

119 Hobbes, *Leviathan*, II:xxv. 402.

120 Hobbes, *Leviathan*, II:xxv. 402.

121 Hobbes, *Leviathan*, II:xxv. 402.

Certain situations demand the coaxing of obstinate individuals to act. In these cases, when the higher order values are in play, the oration may take the form of counsel, "rather than in harsher language of Command".<sup>122</sup> But it is command, to the extent that the auditor or viewer themselves take it as a command. The multitude may not see their private interests in play, or a soldier may fear violent death, but with assisted introspection and reflection upon public honors they can see the generality of their interests and the honor in that cause. Persuasion is best achieved when the subject is an active agent in persuading themselves.

These exceptions bear on the task of leadership. The discussion regarding the burdens of the sovereign begins with a reflection on the onerous intellectual, political, and religious demands placed on those required to give political counsel. Hobbes notes that counsellors counsel sovereigns, but sovereigns must rule with an eye to the good of the commonwealth. Good counsellors must have what Hobbes had in VIII called good wit, namely "great knowledge of the disposition of Man-kind, of the Rights of Government, and of the nature of Equity, Law, Justice and Honour",<sup>123</sup> all of which requires a unique mix of great experience and great study. Hobbes frames this as a critique of counsel and counsellors, but implicitly (especially in light of Hobbes's discussions above), this means that while counsellors could shirk their duties, and may benefit from doing so, the sovereign cannot. Simply because of the nature of the office, it is upon the sovereign to master both the theory and practice of good rulership.

Dehortation and exhortation are unsuited to dialogue, regular counsel, and normal political situations. However, dehortation and exhortation are not only suitable but *necessary* rhetorical techniques to be enacted in exceptional political moments. Command, regardless of the official or previous status of the person giving command, requires *in practice* the use of dehortation and exhortation. Compelling exhortation functions as the realization of a received and urgent truth, where it is in fact the creation of a new normative order. At that moment, Hobbes writes, if "he should covenant to follow it, then is the Counsell turned into the nature of a Command."<sup>124</sup>

122 Hobbes, *Leviathan*, II:xxv. 402.

123 Hobbes, *Leviathan*, II:xxv. 406.

124 Hobbes, *Leviathan*, II:xxv. 400. Hobbes may have again taken his lead from Cicero, who writes of *hortatio* within the framework of what I have called the rhetoric of the exception in Chapter Three. In *De Oratore* Cicero writes,

'And so,' continued Antonius, 'those matters which often demand fluent expression, and which just now, in my praise of eloquence, I asserted to be within the part of the orator, have no special place in the formal classification of the branches of rhetoric,

It may seem that these arguments do not square with Hobbes's own criticisms of rhetoric in *Leviathan*. However, on closer inspection, no squaring is needed, as Hobbes repeatedly carves out an exception to his otherwise staunch criticisms of rhetoric. Take, for instance, Hobbes's first discussion of speech and its abuses in IV. There Hobbes discusses four abuses of speech: inconsistent signification of words resulting in phantasmal conceptions, metaphor, deception, and, finally:

when they use them to grieve one another: for seeing nature hath armed living creatures, some with teeth, some with horns, and some with hands, to grieve an enemy, it is but an abuse of Speech, to grieve him with the tongue.<sup>125</sup>

This is followed by a seemingly decisive exception: “unlesse it be one whom wee are obliged to govern; and then it is not to grieve, but to correct and amend.”<sup>126</sup> The point, though rarely remarked upon, strikes at the very nature of sovereignty, and in particular the nature of the natural person(s) who is/are uniquely “obliged to govern”.<sup>127</sup> Hobbes is saying that rulers will not only have need to deploy “speech and action” but that it may be the *only* modality for driving home such political corrections in exceptional political moments.<sup>128</sup>

Hobbes's critique of exhortation signals, if not a return to rhetoric, a new field of political concern that requires a different account of rhetoric unneeded in his earlier works. The kind of exhortation Hobbes writes against is the same one discussed by Aristotle when he writes of the role of exhortation in deliberative proceedings. Hobbes sees nothing of real value here, and much to be concerned with, to which criticism of counsel and democracy under normal conditions attest. Similarly, political scientific treatises do not—and presumably cannot—stir the multitude to action. By contrast, exhortation can “perswade their Hearers of the Utility, Honour, or Justice

nor any particular code of rules, and yet they must be handled quite as skilfully as arguments at the Bar: I am speaking of rebuke, encouragement, and the giving of comfort, each of which topics calls for the finest graces of diction, while such subjects ask no directions from theory.' 'I am in complete agreement with you,' said Catulus. (Cicero, “De Orator Book II,” § 12.)

<sup>125</sup> Hobbes, *Leviathan*, II:IV. 50.

<sup>126</sup> Hobbes, *Leviathan*, II:IV. 50.

<sup>127</sup> Hobbes, *Leviathan*, II:IV. 50.

<sup>128</sup> Note as well the exceptional nature of the concept of being “obliged to govern”. We are used to speaking of the “obligation to obey” in Hobbes, but Hobbes also speaks of the “obligation to govern”.



of following their advise."<sup>129</sup> To be clear, that quotation precedes Hobbes's programmatic criticism of exhortation (sketched above), but it nevertheless also informs Hobbes's few, but all politically crucial, positive claims.

The risks that follow are real (and, in light of Chapter Three, familiar): the great orator may be a great dissimulator, a dullard, or a madman, or their high moral pronouncements may hide real vice. But that is a risk that, as we have seen, is seemingly inherent to the task at hand, which Hobbes, like all other commentators, is unable to evade.

Hobbes's curious discussion of counsel is, I believe, comprehensible when read as a discussion of the importance of orator-founders and great leaders in persuading the multitude to act in unison. The reasons why it is such a conflicted discussion are the same as those that made the whole tradition of rhetorical action so conflicted. For now, the takeaways are, first, that Hobbes's account of the person of the state as represented by the person bearing the office of sovereignty is understood by Hobbes as essentially theatrical. Second, when Hobbes is pushed to describe *how* that person should act, the language that he turns to is that of rhetorical action.

## Founders and sages

In this last section, I round out the discussion by surveying Hobbes's more general engagement with the tradition of rhetorical action by considering references to the major figures from the political variant of *action* by Hobbes. It follows from the arguments above that if Hobbes had indeed been eager to return to the idea of constitutive rhetorical action, then he would likewise exalt or at least evoke many of the major figures in that tradition. I believe he does.

Before considering specific examples, let me return momentarily to Hobbes's *Answer* to Davenant, as it gives us some indication of the character of said philosopher sovereign. Hobbes writes, "For as truth is the bound of Historical, so the Resemblance of truth is the utmost limit of Poetical Liberty."<sup>130</sup> The historical truths that Hobbes is referring to here are those "great Romans"<sup>131</sup> and "Great Men and Great Actions"<sup>132</sup> who inspired the first poets and dramatists. History, however, is not the ideal model from which

129 Hobbes, *Leviathan*, II:xxv. 400.

130 Hobbes, "Answer," 59.

131 Hobbes, "Answer," 55.

132 Hobbes, "Answer," 59.

to depict heroic deeds, for history is only the register of experience, not the experience itself. Unlike Virgil (Hobbes's example), who had experienced the great deeds of the Romans and could therefore write of the great historical deed of the foundations of Rome, Davenant—and indeed all moderns—“are not acquainted with any great man.”<sup>133</sup> Yet it is exactly such a figure that Hobbes believes is required. In his *Answer*, Hobbes writes that “For there is in Princes, and men of conspicuous power (anciently call'd *Heroes*) a lustre and influence upon the rest of men, resembling that of the Heavens”.<sup>134</sup> It is for this reason that Davenant is called on by Hobbes to take the position of the ideal observer of virtue in the abstract, for there were no seventeenth-century figures to serve as a model (an indictment of the times in general, which is of some import). Hobbes may have urged Davenant to act as an ideal observer. But in his own work, he often advises the sovereign to heed the teaching of rhetorical action. That includes intermittent reference to iconic figures in that tradition.

Consider some examples. At least two references to Solon are found in *Leviathan*. The first is made in the context of a discussion regarding the relationship between the exception and law. Exemplifying Hobbes's remarks on the place of hortative speech and ornamental language by those who govern where its aim is to “correct and amend”,<sup>135</sup> Hobbes mentions Solon's rhetorical ruse as an example of the requirement, at certain exceptional times, for the citizens to break the law. Hobbes writes,

The people of *Athens* bound themselves but from one onely Action; which was, that no man on pain of death should propound the renewing of the warre for the Island of *Salamis*; And yet thereby, if *Solon* had not caused to be given out he was mad, and afterwards in gesture and habit of a madman, and in verse, propounded it to the People that flocked about him, they had had an enemy perpetually in readinesse, even at the gates of their Citie: such damage, or shifts, are all Common-wealths forced to that have their Power never so little limited.<sup>136</sup>

Such a passing reference to Solon would not be particularly significant, if it were not for how antithetical the whole idea is to the standard model of

133 Hobbes, “Answer,” 55.

134 Hobbes, “Answer,” 53.

135 Hobbes, *Leviathan*, III:IV. 50.

136 Hobbes, *Leviathan*, II:XXIX. 500. Compare to the discussion of Matthew 11:12 in Chapter Five.

Hobbes's interpretation. Hobbes describes a formally illegal act—indeed, it amounts to a usurpation of the regime—whereby one citizen upends the sovereign regime's decision by way of persuasive, dramatic speech. Solon breaks the standing laws through “acting out” and using the “gestures and habits of a mad man,” without care of the standing threat of death. Following the war, and in response to the factionalism and moral decay of Athens, Solon was elected archon.<sup>137</sup> In other words, it was a foundational moment wherein counsel became command. Solon accomplished this by persuading the Athenians that they were being pusillanimous, that their pusillanimity was detrimental to their well-being, and that he could both restore their honor and protect them. Solon is also referenced (though not acknowledged) in xxvii, where Hobbes paraphrases Plutarch's discussion of Solon and the “cobweb of law.”<sup>138</sup>

Another allusion to the orator-founder tradition is to Camillus, the second founder of Rome, which occurs at the very outset in the epistle dedicatory to Francis Godolphin. Hobbes writes,

I speak not of the men, but (in the Abstract) of the Seat of Power, (like to those simple and unpariall creatures in the Roman Capitol, that with their noyse defended those within it, not because they were they, but there,) offending none, I think, but those without, or such within (if there be any such) as favour them.<sup>139</sup>

This is in reference to the Capitoline Geese, and it is an instructive parable for understanding the status of *Leviathan* in the Mirrors for Princes tradition. The parable tells of the defense of Rome mustered following the alarm raised by resident geese of the temple of Juno, which squawked in response to the Gauls scaling the walls of the citadel, an event instrumental in emboldening the besieged, disheartening the besiegers, and setting the stage for Camillus's victory and, ultimately, the second foundation of Rome.<sup>140</sup> Plutarch writes of this moment that

Camillus decided that the question [the refoundation of Rome] should be debated and settled in council. He himself spoke at great length, in

137 Plutarch, “Solon,” § 14.

138 This reference was found in Skinner, *Visions of Politics*, III: *Hobbes and Civil Science*, chap. 6, n. 162. See also *De Corpore*, *English Works [De Corpore]*, vol. I, pt. I. iii. 8.

139 Hobbes, *Leviathan*, II: THE EPISTLE DEDICATORY. 4.

140 Plutarch, “Camillus,” § 32.

exhortation to preserve their common country, and every one else who wished did likewise. Finally, he called upon Lucius Lucretius, to whom custom gave the first vote, and bade him declare his opinion first, and then the other senators in the order due. Silence fell, and Lucretius was on the point of beginning, when it chanced that a centurion with a squad of the day watch passed by outside, and calling with a loud voice on the man who led with the standard, bade him halt and plant his standard there, for that was the best place to settle down and stay in. The utterance fell at the crisis of their anxious thought for the uncertain future, and Lucretius said, with a devout obeisance, that he cast his vote with the god. The rest, one by one, followed his example.<sup>141</sup>

The effect on the multitude was transformative: “Then the inclinations of the multitude were marvellously changed,” Plutarch writes. “They exhorted and incited one another to the work, and pitched upon their several sites, not by any orderly assignment, but as each man found it convenient and desirable.”<sup>142</sup> “Within a year’s time,” Plutarch concludes, “it is said, a new city had arisen, with walls [*sic*] to guard it and homes in which to dwell.”<sup>143</sup> The structure of this argument is by now familiar: political crisis is met with popular tumult, timidity, inaction, trepidation of future wars gathering like clouds on the horizon, and the silence of formal sovereign powers. In this context, an actor who had previously secured a reputation for moral and political virtue appears, a catalytic event follows, and without terror—indeed, without any threat of violence—that individual assumes the role of sovereign.<sup>144</sup> Council, matched with great and persuasive rhetorical action, functions as an uncommanded command, so to speak, in exactly the same way that Hobbes describes in his positive discussions of exhortation. It is a constitutive rhetorical moment. Hobbes alludes to Camillus again in xxxi

141 Plutarch, “Camillus,” § 32.

142 Plutarch, “Camillus,” § 32.

143 Plutarch, “Camillus,” § 32.

144 Craig argues that Hobbes’s reference to the Capitoline Geese is a signal that Hobbes’s *Leviathan* is a cryptic second foundation of Plato’s *Republic*. See Craig, *The Platonian Leviathan*, 348–53. Craig argues that Hobbes is trying to set up an analogy between himself (as a squawking goose) and Socrates (as the gadfly). I am arguing that what is important is Camillus as a model founder. The geese were incidental in saving the city; Camillus was instrumental in re-founding the commonwealth. Hobbes seems to repeat this point in the concluding paragraph of *Leviathan*. Foucault gives the same interpretation as Craig; see Foucault, *Society Must Be Defended*, 99.

and perhaps in the REVIEW AND CONCLUSION.<sup>145</sup> If the concluding remark is an allusion to Camillus, it means that from first to last—and pointedly in the final paragraph of the political part of *Leviathan*—Hobbes's political philosophy, at least insofar as it was meant to advise sovereigns, advises them to study the constitutive politics and new foundations.

Hobbes refers to other founders and orators in other texts, as well. Early modern humanists consistently referenced Demosthenes, and Hobbes is no different.<sup>146</sup> He refers to Demosthenes in the forward to his translation of Thucydides's *Eight Books in the History of the Peloponnesian War*.<sup>147</sup> There, while extolling the greatness of Thucydides' historical writings, Hobbes compares him to

Homer in poesy, Aristotle in philosophy, Demosthenes in eloquence, and others of the ancients in other knowledge, do still maintain their primacy: none of them exceeded, some not approached, by any in these later ages.<sup>148</sup>

Hobbes also refers to Demosthenes in *De Cive*; there, however, Demosthenes is acclaimed not for his rhetorical prowess but for his prudential leadership.<sup>149</sup> Hobbes does not directly reference Demosthenes in *Leviathan*, but in a

<sup>145</sup> Recall, in xxxi Hobbes writes,

There wants onely, for the entire knowledge of Civill duty, to know what are those Lawes of God. For without that, a man knows not, when he is commanded any thing by the Civill Power, whether it be contrary to the Law of God, or not: and so, either by too much civill obedience, offends the Divine Majesty, or through feare of offending God, transgresses the commandements of the Common-wealth. To avoyd both these Rocks, it is necessary to know what are the Lawes Divine. (Hobbes, *Leviathan*, II:xxxI. 554.)

The structure of the concluding paragraph of *Leviathan* appears to evoke the same idea:

And though in the revolution of States, there can be no very good Constellation for Truths of this nature to be born under, (as having an angry aspect from the dissolvers of an old Government, and seeing but the backs of them that erect a new;) yet I cannot think it will be condemned at this time, either by the Publique Judge of Doctrine, or by any that desires the continuance of Publique Peace. And in this hope I return to my interrupted Speculation of Bodies Naturall; wherein, (if God give me health to finish it,) I hope the Novelty will as much please, as in the Doctrine of this Artificiall Body it useth to offend. For such Truth, as opposeth no mans profit, nor pleasure, is to all men welcome. (Hobbes, *Leviathan*, III:A REVIEW AND CONCLUSION. 1141.)

I am assuming that the concluding remark is an allusion to the introductory discussion of the offense that *Leviathan* was bound to prompt.

<sup>146</sup> Hobbes, *Three Discourses: A Critical Modern Edition of Newly Identified Work of the Young Hobbes*, 107.

<sup>147</sup> On Hobbes's and Thucydides, see Johnston, *The Rhetoric of Leviathan*, chap. 1.

<sup>148</sup> Hobbes, *English Works [The Peloponnesian War, Vol. I]*, VIII:vii.

<sup>149</sup> Hobbes, *De Cive*, XIII. 8.

crucial passage on the necessity for the wise sovereigns to master both the practice of statecraft and the science of politics, he seems to paraphrase him.<sup>150</sup> Davenant also mentions Demosthenes in the *Preface to Gondibert*, where he writes that

[it] appears that Poesie hath for its natural prevailings over the Understandings of Men [...] been very succesful in the most grave and important occasions, that the necessities of States or Mankinde have produc'd.<sup>151</sup>

Continuing, he writes, "For it may be said that *Demosthenes* sav'd the *Athenians* by the Fable or Parable of the Doggs and Wolves, in answer to King *Philip's* Proposition; And that *Menenius Agrippa* sav'd the Senate, if not *Rome*, by that of the Belly and the Hands".<sup>152</sup> Though not Hobbes's claim, Davenant writes under the influence of Hobbes. It is also noteworthy that Davenant is implicitly endorsing a rhetorical conception of *actio* optimized for "the most grave and important occasions, that the necessities of States or Mankinde have produc'd."<sup>153</sup> Published two years after *Leviathan*, Davenant's *Proposition for Advancement of Morality, by a New Way of Entertainment of the People* (1653) has Davenant again recalling how "*Demosthenes* and *Menenius Agrippa* [...] did pleasantly procure their Countreys safety."<sup>154</sup>

Themistocles is not mentioned by name in *Leviathan*, but Hobbes alludes to him several times. Hobbes celebrates the Battle of Salamis and the expulsion of the Persians, knowing that Themistocles alone was reputed to have rallied the Athenians to do so.<sup>155</sup> Hobbes mentions Themistocles's rival Aristides in a passage on the power of the sovereign to execute or banish citizens.<sup>156</sup> The story is representative of both the power and necessity of charismatic individuals to steer the polis for its own glory and serves as a clear warning about the power of misguided opinions to corrupt an otherwise stable commonwealth.<sup>157</sup> Hobbes broaches the topic of sovereignty and its fickleness by noting the changing fortunes of both Themistocles and Aristides, and

<sup>150</sup> Hobbes, *Leviathan*, II:v. 76.

<sup>151</sup> Davenant, "Preface to Gondibert," 47.

<sup>152</sup> Davenant, "Preface to Gondibert," 47; Plutarch, *Lives*, IV:Coriolanus. vi.

<sup>153</sup> Davenant, "Preface to Gondibert," 47.

<sup>154</sup> Davenant, "Proposition," 245.

<sup>155</sup> Hobbes, *Leviathan*, III:XLVI. 1056.

<sup>156</sup> Hobbes, *Leviathan*, II:XXI. 330.

<sup>157</sup> In *A Dialogue between a Philosopher and a Student of the Common Laws of England*, Hobbes says essentially the same thing about Solon. Hobbes, *English Works* [*Dialogue, Behemoth, Rhetoric*], VI:10.

through the subsequent history of Aristides's return to Athens, his service under Themistocles, and Themistocles's own eventual banishment.

What of Pericles? In *De Cive* Hobbes cites Pericles's "thundering" oratory as an example of the seditious nature of the rhetorical arts.<sup>158</sup> By contrast, as Skinner notes, Hobbes removed all the caustic references to Pericles in *Leviathan*, while implicit references were added.<sup>159</sup> We see this where Hobbes discusses the character traits appropriate to sovereigns by institution, when Hobbes writes that "Reputation of Prudence in the conduct of Peace or War, is Power; because to prudent men we commit the government of our selves, more willingly than to others."<sup>160</sup> Similarly, "To be Conspicuous, that is to say, to be known, for Wealth, Office, great Actions, or any eminent Good, is Honourable; as signe of the power for which he is conspicuous."<sup>161</sup> Recall, too, the concluding statement in his study of counsel:

They that desire not to misse their marke, though they look about with two eyes, yet they never ayme but with one; And therefore no great Popular Commonwealth was ever kept up; but either by a forraign Enemy that united them; or by the reputation of some *one eminent Man*[.]<sup>162</sup>

Most tellingly, however, is when Hobbes appears to paraphrase Plutarch's description of Pericles in the introduction to *Leviathan*. Plutarch had written of Pericles that he had to address "all sorts of distempers," and that

he alone was so endowed by nature that he could manage each one of these cases suitably, and more than anything else he used the people's hopes and fears, like rudders, so to speak, giving timely check to their arrogance, and allaying and comforting their despair.<sup>163</sup>

158 Hobbes, *De Cive*, v. § 5; see also *Elements*, pt. II. II. § 5.

159 Skinner, *Reason and Rhetoric*, 357–59.

160 Hobbes, *Leviathan*, II:X. 134. By comparison, Thucydides describes Pericles as follows: "So much was in Pericles above other men at that time that he could foresee by what means the city might easily have outlasted the Peloponnesians in this war." Thucydides, *The Peloponnesian War*, bk. II. § 65.

161 Hobbes, *Leviathan*, II:X. 140.

162 Hobbes, *Leviathan*, II:XXV. 412. On a speculative note, consider the similarity between the exception to Hobbes's fourth criticism of oratory ("unlesse it be one whom wee are obliged to govern; and then it is not to grieve, but to correct and amend"; Hobbes, *Leviathan*, III:iv. 50) to Thucydides' characterization of Pericles ("Therefore, whensoever he saw them out of season insolently bold, he would with his orations put them into a fear; and again, when they were afraid without reason, he would likewise erect their spirits and embolden them"; Thucydides, *The Peloponnesian War*, bk. II. § 65).

163 Plutarch, "Pericles," § 15.

Plutarch continues that Pericles's foremost concern was the "careful study of the affections and passions, which are, so to speak, strings and stops of the soul."<sup>164</sup> Hobbes writes,

He that is to govern a whole Nation, must read in himself, not this, or that particular man; but Man-kind: which though it be hard to do, harder than to learn any Language, or Science; yet, when I shall have set down my own reading orderly, and perspicuously, the pains left another, will be onely to consider, if he also find not the same in himself. For this kind of Doctrine, admitteth no other Demonstration.<sup>165</sup>

Plutarch's analogy is a musical instrument, while Hobbes's is an automaton ("For what is the *Heart*, but a *Spring*, and the *Nerves*, but so many *Strings*"<sup>166</sup>), but they agree on substantive issues.

Consider one final piece of evidence in supporting the conjunction of the ancient figure of the orator-founder/leader and the sovereign in *Leviathan*. In XXI, in a passage crucial to his exposition of sovereign power, Hobbes writes,

But as men, for the atteyning of peace, and conservation of themselves thereby, have made an Artificiall Man, which we call a Common-wealth; so also have they made Artificiall Chains, called *Civill Lawes*, which they themselves, by mutuall covenants, have fastned 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. These Bonds in their own nature but weak, may neverthelesse be made to hold, by the danger, though not by the difficulty of breaking them.<sup>167</sup>

This passage encompasses all the major conceptual advances in Hobbes's political philosophy in *Leviathan*, including the concepts of representation and authorization and his reconsideration of democracy, all while situating these concerns within the logics of the artificiality of the commonwealth and the laws. As Skinner notes, it is an allusion to Hercules. Specifically, it alludes to the power Hercules garnered through oratorical persuasion.<sup>168</sup> Hobbes may have found reference to Hercules from Wilson's *Arte of Rhetorique* or Puttenham's

164 Plutarch, "Pericles," § 15.

165 Hobbes, *Leviathan*, II:INTRODUCTION. 20.

166 Hobbes, *Leviathan*, II:INTRODUCTION. 16.

167 Hobbes, *Leviathan*, II:XXI. 328.

168 Skinner, *Reason and Rhetoric*, 390.



*Arte of English Poesie*.<sup>169</sup> However, unlike Wilson and Puttenham's guarded appropriation of the story of Hercules as an orator, Hobbes makes clear that he understands this figure as an exceptional political actor as well. Thus, Hobbes writes in xxx that the contention between the sovereign rulers and an ambitious citizen is "like that of *Hercules* with the Monster *Hydra*."<sup>170</sup> Lastly, these references are notable insofar as they are, as Skinner notes, "grotesquely at odds with Hobbes's usual expository style, but it draws on a *topos* much favoured by the rhetorical writers of his youth".<sup>171</sup> Elsewhere, Skinner notes,

According to Lucian, the ancient Gauls thought of Hercules as a venerable and exceptionally prudent orator, symbolising his gifts of persuasion by picturing him as drawing men along by fetters attached at one end to his tongue and at the other end to his followers' ears.<sup>172</sup>

He explains further that

Hobbes's original readers might perhaps have been surprised to come upon this classical flourish, especially as Hobbes boasts in the REVIEW AND CONCLUSION that he has deliberately left *Leviathan* unencumbered with such conventional references to ancient authorities. But Hobbes would undoubtedly have expected his original readers to recognise the allusion and to grasp its relevance, especially as Lucian's claim that men can be 'led by the ears' had already become a favourite *topos* among humanist writers on rhetoric by the end of the sixteenth century.<sup>173</sup>

Skinner is right, but in focusing on Hobbes's style and his ways of persuading readers, he does not register the political lesson for sovereigns embedded in

169 Skinner, *Reason and Rhetoric*, 92–93; Hobbes, *Leviathan*, II:XXI. 329 footnote d. See also Raylor's discussion; Raylor, *Philosophy, Rhetoric, and Thomas Hobbes*, 133–37.

170 Hobbes, *Leviathan*, II:XXX. 544 (Latin edition). Davenant would later write of Hercules in a similar fashion. After gesturing toward Menenius Agrippas's fable of the body and the stomach and noting the shift from the city to the state, Davenant writes,

To work these to the best advantage, and make their touches strengths and heights, not only for delight but instruction, there can be no better way then by bringing all into the channell of *Morality*; for the scandalous and extravagant parts being cut off, there will remaine an entire body, full of grace and proportion, able to allure and overcome the variety of Spectators: This will be the great commander of mindes, and like *Hercules* in the Embleme draw all by the Eares. (Davenant, "Proposition," 245.)

See also Hobbes, *English Works [Dialogue, Behemoth, Rhetoric]*, VI:254.

171 Skinner, *Reason and Rhetoric*, 330.

172 Skinner, *Visions of Politics*, III: *Hobbes and Civil Science*, 224.

173 Skinner, *Visions of Politics*, III: *Hobbes and Civil Science*, 224 (citations omitted).

the same allusion. The life of the commonwealth depends on the capacities of its leaders to persuade subjects through great rhetorical actions. As such, the content of the character of those leaders defines whether the polity will flourish or decay.

I have focused on the constructive role of rhetorical action in Hobbes, but as has been noted in Chapter Three, that entire tradition is marked by an ineluctable problem: rhetorical action is not inherently constructive and can be put in the service of tumult, too. Hobbes discusses this in *Leviathan* but perhaps his clearest statement to this is in *Behemoth*. Hobbes begins by discussing how the gentlemen of London and the major market towns had long defended their local oligarchies as democratic bastions of liberty against tyranny but had been placated and subordinate to the rule of the monarch under the reign of Elizabeth.<sup>174</sup> He then notes the following:

And first, for the manner of their preaching; they so framed their countenance and gesture at their entrance into the pulpit, and their pronounciation both in their prayer and sermon, and used the Scripture phrase (whether understood by the people or not), as that no tragedian in the world could have acted the part of a right godly man better than these did; insomuch that a man unacquainted with such art, could never suspect any ambitious plot in them to raise sedition against the state, as they then had designed; or doubt that the vehemence of their voice (for the same words with the usual pronounciation had been of little force) and forcedness of their gesture and looks, could arise from anything else but zeal to the service of God. And by this art they came into such credit, that numbers of men used to go forth of their own parishes and towns on working-days, leaving their calling, and on Sundays leaving their own churches, to hear them preach in other places, and to despise their own and all other preachers that acted not so well as they. And as for those ministers that did not usually preach, but instead of sermons did read to the people such homilies as the Church had appointed, they esteemed and called them *dumb dogs*.<sup>175</sup>

Countenance, gesture, pronounciation, and posture vehemently and vain-gloriously deployed, when not tethered to the command and person of the sovereign, will necessarily corrupt the commonwealth. When Hobbes reflects on the kind of rhetoric that had rotted out the commonwealth, it was rhetorical action above all else that was in play. It is an archetypal idea and an ineluctable

<sup>174</sup> Hobbes, *Behemoth*, 23–24.

<sup>175</sup> Hobbes, *Behemoth*, 23–24.

dilemma going back to the very foundations of the rhetorical tradition, and it is seemingly inescapable. Hobbes describes the power of rhetorical action by charismatic leaders as having taken “charge of souls both by the manner and matter of their preaching, [they] applied themselves wholly to the winning of the people to a liking or their doctrines and good opinion of their persons.”<sup>176</sup> Hobbes, in other words, hit on a core principle of rhetorical action known and puzzled over since the start of the tradition: *psychagogia*, the power to take charge of souls, is an ineluctable element of authority.

What then is the difference between rhetorical action that builds and corrupts the commonwealth? Hobbes's answer brings us to the place of virtue in the economy of honor within the state and in maintaining the peace, and it again taps directly into a central theme in the long history of rhetorical action. Hobbes begins by diagnosing the nature of the problem:

For their learning, it amounts to no more than an imperfect knowledge of Greek and Latin, and an acquired readiness in the Scripture language, with a gesture and tone suitable thereunto; but of justice and charity (the marrow of religion) they have neither knowledge nor practice, as is manifest by the stories I have already told you.<sup>177</sup>

The problem, in other words, boils down to the virtues of the person doing the work of rhetorical action. Here Hobbes focuses on the virtues of justice and charity that are the “marrow” of religion and the source of the sovereign's authority. Justice for the many is to obey the law and the virtues of the many are not to be derived from any Aristotelian mean but by the conformity of those virtues to the law.<sup>178</sup> However, we are not speaking here of subjects who must conform themselves to the laws but of the natural persons who bear the office of the sovereign and make the laws. For them, the question is one of equity and charity not between subjects but as a universal virtue “in all men whatsoever.”<sup>179</sup> That kind of justice is manifest in the “maintenance of peace at home, and to the resistance of foreign enemies”<sup>180</sup> and realized through the “royal” virtues of fortitude, frugality (of the sovereign manifest as generosity in the care of the commonwealth), and liberality—in other words: magnanimity.

<sup>176</sup> Hobbes, *Behemoth*, 23–24.

<sup>177</sup> Hobbes, *Behemoth*, 172.

<sup>178</sup> Hobbes, *Behemoth*, 44.

<sup>179</sup> Hobbes, *Behemoth*, 44.

<sup>180</sup> Hobbes, *Behemoth*, 44–45.

## Conclusion

Did Hobbes engage with the tradition of rhetorical action set out in Chapter Three? Hobbes's early work shows either brief and politically insignificant engagements with these ideas or critical denunciations of them. By contrast, *Leviathan* is replete with these ideas, from first to last. For Hobbes, politics is a field of representation, signification, and action stretching from the resolute unit of the citizen to the compositive person of the state. Plett writes of the period within which Hobbes wrote that "Not only is this the cultural epoch that ushers in the drama of modernity, it also interprets reality and its manifestations as theater. The world as a stage, man as an actor—this notion like no other dominates the age of the Renaissance."<sup>181</sup> Hobbes, I believe, was an exemplary case of this. *Rhetoricum theatricum*, like the political variant of *actio*, does not delineate specific acts or formal replicable modes of persuasion. Rather, what Plett is getting at, and the position endorsed by Hobbes, is that theatricality and rhetorical action are the essence of politics, including the politics of rule. Hobbes was well suited to grasp the concept of *actio* in its various permutations and understand its elemental political power beyond the stage. In turn, Hobbes appears distinctly aware that the sovereigns of his day had neglected these powers. Hobbes was well versed in the debates of both ancient and contemporary theater, as well as the debates surrounding them. Hobbes was able to perceive the tradition of rhetorical action anew. The evidence I have presented suggests that Hobbes did not cleave to any one tradition but plundered them all with abandon in the service—as so many of the examples above attest—of the politics of new foundations and effective statecraft. Seemingly endless theoretical political puzzles relating to core principles of Hobbes's political theory follow. Those puzzles are the subjects of Chapters Five through Seven.

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<sup>181</sup> Plett, *Rhetoric and Renaissance Culture*, 251.

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## 5. New Foundations in *Leviathan*

**Abstract:** This chapter explicates Hobbes's theory of new foundations in chapter XII and, therein, the place of wisdom, sincerity, love, and divine revelation. XII appears to baldly disagree with seeming axioms of Hobbes's interpretation: the idea of natural/political equality (XII indicating that there are crucial inequalities of persons), that justice cannot exist before the sovereign (XII indicating that there is something like natural justice), and that there is no real distinction between regimes by institution and conquest, as both rest on a pervasive fear (XII attesting that it is a fundamental distinction). On each count, this chapter shows that the axioms do not hold, and each fails in ways that support the theory of foundations found in XII.

**Keywords:** new foundations; virtue; equality; justice; fear

### Introduction

There is almost no dispute regarding the basic outlines of Hobbes's theory of new foundations in *Leviathan* (1651). The descriptive arc typically runs from the state of war (XIII) through the discussion of the natural laws (XIV and XV), representation (XVI), and the causes and generation of new commonwealths (XVII) and concludes with the discussions of different kinds of regimes (XVIII–XX). Conspicuously, the standard model does not register that Hobbes's discussion of new foundations starts in XII, not XIII. That is the lynchpin of this chapter, and I will argue that it is no small oversight. For one, XII contains Hobbes's first and most detailed reflections on the politics of new foundations. More importantly, that account appears to disagree with the standard model positing that new foundations depend on exceptionally wise, sincere, loving, and revelatory leaders who can unite the multitude into a commonwealth without threatening violence, instead instantiating justice before the creation of a commonwealth. Hobbes's founder is strikingly un-Hobbesian. The first goal of this chapter is to explicate this theory of new foundations in XII.

But the puzzles only deepen if we take XII at face value. Three counter-arguments grounded in three near-axioms of Hobbes's interpretation attest

to XII being aberrational and not carrying forward to the rest of *Leviathan*. They are: (1) natural equality; (2) that justice cannot exist before the creation of a commonwealth; and (3) that the distinction between commonwealths by institution and conquest is insignificant, both reduced to the common denominator of fear of violent death. Either XII is aberrational and the axioms hold—and thus XII should be set apart from the standard model—or it is integral and the axioms do not hold. If the latter, then fundamental aspects of *Leviathan*—including the very nature of sovereignty, justice, morality, and regimes—need to be reconsidered. I will argue that the text of *Leviathan* supports the latter.<sup>1</sup>

### The standard model

The standard model runs roughly as follows: The “state of nature,” a term Hobbes does not use in *Leviathan*, is experienced as a period of relentless fear and trepidation. To exit this condition, a “social contract,” another term Hobbes does not use in *Leviathan*, is forged whereby the multitude confers their power on one person (or group of persons) who is thereby sovereign. This bundle of ideas informs a panoply of considerations save one: the real politics of new foundations. For some scholars, that was the point: *Leviathan* is not an advice book for founders; it is a text intended to persuade readers to become or remain obedient. These kinds of accounts treat Hobbes’s political theory as a grand inflection in the history of ideas (e.g., Sheldon Wolin<sup>2</sup>) or as an intervention in ongoing political debates (e.g., Skinner<sup>3</sup>). Others focus on how *Leviathan* serves a more general rhetorical function of convincing subjects to remain obedient.<sup>4</sup> Ioannis Evrigenis expresses this idea when he remarks that Hobbes “renders the reader a founder and preserver of the commonwealth.”<sup>5</sup> There is much to recommend these interpretations, the most important of which being that Hobbes himself states that he intended *Leviathan* to be read in the universities in the service of teaching readers why they should obey. Notably, these critiques do not address Hobbes’s discussion of new foundations in XII, and in general their concern is overwhelmingly with post-foundation topics related to justifying

1 Other puzzles follow, and Chapters Six and Seven will address questions related to Hobbes’s legal philosophy and critique of obligation, respectively.

2 Wolin, “Hobbes and the Epic Tradition of Political Theory.”

3 Skinner, *Visions of Politics*, III: *Hobbes and Civil Science*, chaps. 9–10.

4 Johnston, *The Rhetoric of Leviathan*; Kahn, *Wayward Contracts*; Evrigenis, *Images of Anarchy*.

5 Evrigenis, *Images of Anarchy*, 235.

existing regimes. Notable as well, and recalling the arguments in Chapter Three, is that these critiques of Hobbes assume that the text of *Leviathan* will be doing the heavy lifting, not the would-be sovereign.

Deontological critiques of Hobbes have more robust accounts of pre-covenantal politics.<sup>6</sup> They assert that there are ethical foundations—reason, natural laws, or God—that prefigure the social covenant and carry forward to post-foundational politics. Nevertheless, these *pre*-foundational considerations have no bearing on the foundational moment. Instead, they are taken to bear on *post*-foundational questions (like obligation, law, morality, and duty). They attend to pre-foundational and post-foundational politics, but not the politics of new foundations itself. Consequently, these critiques often further occlude the politics of new foundations by prioritizing pre-political universal norms instead of a leader's unique abilities. Indeed, avoiding the politics of new foundation is seemingly necessary on these accounts, since as Howard Warrender remarked, “the civil sovereign can never himself provide the moral foundation which is to be used in his own justification.”<sup>7</sup> Again, these texts are usually silent regarding XII.

Another approach focuses on virtue ethics in Hobbes.<sup>8</sup> The account I will develop amounts to a virtue ethics account. Hence, one would expect some overlap. But, like the others, the virtue ethics interpretations have not registered XII or considered the virtues of sovereigns (or founders), focusing only on the virtues of the ruled.

This brief survey is meant merely to establish two points. First, the real politics of new foundations are rarely considered as a topic of study in the scholarship and in most regards are foreclosed as a topic of concern. Second, the chapter on new foundations in *Leviathan* rarely garners attention as a topic of fundamental political importance. Of course, these are mutually confounding presuppositions. The account I will defend here disagrees with both the implicit and explicit accounts of new foundations provided in the standard model.

There are exceptions. Charles Tarlton pays close attention to XII, only to argue that Hobbes did not actually mean what he said in XII.<sup>9</sup> Tarlton claims that the core lesson for the sovereign is a Machiavellian one: do not be

6 Taylor, “The Ethical Doctrine of Hobbes”; Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*; see also: Lloyd, *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature*; Martinich, *The Two Gods of Leviathan*; Gert, *Hobbes: Prince of Peace*.

7 Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*, 7.

8 Ewin, *Virtues and Rights*; Boonin-Vail, *Thomas Hobbes and the Science of Moral Virtue*.

9 Tarlton, “The Creation and Maintenance of Government: A Neglected Dimension of Hobbes's Leviathan.”

virtuous; learn how to be successfully wicked and have it be called virtue. The problem with that account is that Hobbes expressly rejects its implications. In a sense, Tarleton sees the essential importance of XII, recognizes the stark differences between it and the standard model, but sides with the standard model and therefore argues that XII must mean something other than it appears at face value. Leon Harold Craig reads XII as standing in stark contrast to the Hobbesian orthodoxy—what I have called the standard model—and as such sees it as the root of pervasive paradoxes within *Leviathan* that esoterically signal Hobbes's true philosophical inclinations.<sup>10</sup> I agree with the former and have found Craig's acute reading of the text invaluable in developing my own ideas. But I do not follow Craig through to derive any esoteric implications. My thesis is much simpler. I hope to show that the orthodoxy is mistaken and that the lessons of XII are what they attest to be. Abizadeh argues that XII contains a theory of charismatic religious authority in Hobbes and that it is a necessary source of the ideological face augmenting the sovereign's "brute physical force."<sup>11</sup> Again, I believe the first move is correct—although, I believe the language of virtue provides a more appropriate frame of reference—but I will contest the second conclusion. Skinner, as we have seen, notes that XII signals Hobbes's new concern with *pronuntiatio* and new religious foundations but leaves the political implications undeveloped.<sup>12</sup> Although they do not focus on XII, Tom Sorell and Noel Malcolm place *Leviathan* in the "advice to princes" literary tradition.<sup>13</sup> Again, I agree, and I will argue further that XII should be considered the foremost expression of that stylistic shift, to which I now turn.

## XII

XII (OF RELIGION) opens with the claim that curiosity is the peculiar trait of human nature. "All men," Hobbes writes, "search of the causes of their own good and evill fortune."<sup>14</sup> Upon observation of things that have begin-

10 Craig, *The Platonian Leviathan*.

11 Abizadeh, "The Representation of Hobbesian Sovereignty: Leviathan as Mythology," 125 and 148.

12 Skinner, *Reason and Rhetoric*, 360.

13 Malcolm, *Leviathan I. Editorial Introduction*, 51–60; Sorell, "The Burdensome Freedom of Sovereigns."

14 Hobbes, *Leviathan*, II:XII. 164. On the cognitive foundations of theology in Hobbes, including a brief account of the politics of new foundations in XII, see Lupoli, "Hobbes and Religion Without Theology," 455–63. See also Craig *The Platonian Leviathan*, 29–50.

nings, curiosity compels consideration of antecedent causes. Humans have memories of (apparent) previous causal chains, having observed “how one Event hath been produced by another”.<sup>15</sup> Because the complexities of the world outstrip the cognitive capacities of all observers, the causes of political events—themselves immensely complicated and steeped in emotions—are never self-evident. Ultimately, “the causes of good and evill fortune for the most part are invisible”.<sup>16</sup> The infinite cascade of causality and the explanatory regress that follows result in a condition whereby the greatest part of humanity “cannot assure himsele of the true causes of things”.<sup>17</sup> Looking into the void of the future, those same confusions conspire with imaginations and fantasies to imbue fear, trepidation, and vainglory at the endless dangers and abundance that emerge when vanity and fantasy are let loose to flail as they may. Left to its own devices, curiosity is an engine of thoroughgoing psychological doubt.

Curiosity is rarely left to its own devices. For Hobbes, curiosity is naturally brought to heel by some cause that is taken to have “no former cause, but is eternall”.<sup>18</sup> That “Eternall cause of all things”,<sup>19</sup> however understood, is what humans come to call “God”.<sup>20</sup> It is the absolute referent that makes the world, one’s place in it, and one’s very self-identify comprehensible. Memory and staid curiosity compose the building blocks of social and political self-consciousness, whereby humans necessarily evaluate their past, present, and future conditions.

There are two available sources for what comes to be called God. Either individuals autonomously construct their cognitive order by orienting their imaginations to their own fantasy they call “God”, or they accept an order proffered by a trusted authority “such as he thinks to be his friends, and wiser than himselfe”.<sup>21</sup> That cognitive apparatus is what Hobbes calls “religion”. For the vast majority of humans—Hobbes’s favored terms is the “greatest part” of mankind—religion is an explanation comprehensive enough to correspond with the concrete conditions and fortunes of their lives and persuasive enough to dissuade further speculation. Religion is the bundle of explanations convincing people they can temper their search for causes, or cloister that search within a sustainable scope of inquiry. In

15 Hobbes, *Leviathan*, II:XII. 164.

16 Hobbes, *Leviathan*, II:XII. 164.

17 Hobbes, *Leviathan*, II:XII. 164.

18 Hobbes, *Leviathan*, II:XI. 160.

19 Hobbes, *Leviathan*, II:XII. 166.

20 Hobbes, *Leviathan*, II:XI. 160.

21 Hobbes, *Leviathan*, II:XII. 164, also XI. 156.

sum, curiosity means that “the most part, or generality of the people”<sup>22</sup> are “in an estate like to that of *Prometheus*”<sup>23</sup>; religion is the natural palliative that allows curiosity to come to rest for these agents.

Prometheus points us toward his liberator Heracles (Hercules), and Hobbes will soon follow suit. But Hobbes starts by laying out a general account of new foundations. Public religions can be founded in two ways. “[T]hese seeds have received culture from two sorts of men”, Hobbes begins. “One sort have been they, that have nourished, and ordered them, according to their own invention. The other, have done it, by Gods commandement, and direction”.<sup>24</sup> In the Latin edition of *Leviathan*, the former is described as having “set themselves up as authors of religions, according to their own invention”.<sup>25</sup> The foundational politics of the ancients teach the “humane Politiques” of effective obligation, and “Divine Politiques” teach sovereigns how to hold themselves.<sup>26</sup> These are not different kinds of foundings, and they are not incommensurable; they are different perspectives on the founder. Both have the same core motivation: “to make those men that relyed on them, the more apt to Obedience, Lawes, Peace, Charity, and civill Society.”<sup>27</sup> Hobbes writes that

the first Founders, and Legislators of Common-wealths amongst the Gentiles, whose ends were only to keep the people in obedience, and peace, have in all places taken care; First, to imprint in their minds a beliefe, that those precepts which they gave concerning Religion, might not be thought to proceed from their own device, but the dictates of some God [... ] or else that they themselves were of a higher nature than mere mortalls, that their Lawes might the more easily be received[.]<sup>28</sup>

It is a classic discussion of the lawgiver, harkening back to Cicero’s discussion of the orator-founder and further back to Solon, inflected by the revealed teachings of “Divine Politiques”.

Hobbes then provides specific examples of what he has in mind. One is of Numa, the second king of Rome and the founder of the Roman religion.<sup>29</sup>

22 Hobbes, *Leviathan*, II:XII. 174.

23 Hobbes, *Leviathan*, II:XII. 164.

24 Hobbes, *Leviathan*, II:XII. 170.

25 Hobbes, *Leviathan*, II:XII. 170–71.

26 Hobbes, *Leviathan*, II:XII. 170.

27 Hobbes, *Leviathan*, II:XII. 170.

28 Hobbes, *Leviathan*, II:XII. 176.

29 Hobbes, *Leviathan*, II:XII. 176.

To recall, after Romulus's disappearance, Rome was without a sovereign and had quickly decayed into an internecine "struggle for the coveted kingship."<sup>30</sup> That "interregnum" was a fruitless period of increasing violence yielding no sovereign conqueror, despite manifest internal and external fear. Instead, the leader chosen by his confederates was Numa, renowned for his "great reputation for justice and piety",<sup>31</sup> who then created the Roman religion. Where Romulus was the founder of the city of Rome, Numa was the founder of the commonwealth. Plutarch summarizes his study of Numa by assigning his greatness to his powers of persuasion:

Nevertheless, this remains a great feature in Numa's career, and one really divine, that he was a stranger, and yet was summoned to the throne, where he changed the whole nature of the state by force of persuasion alone, and mastered a city which was not yet in sympathy with his views; and that he accomplished this without appeal to arms or any violence (unlike Lycurgus, who led the nobles in arms against the commons), but by his wisdom and justice won the hearts of all the citizens and brought them into harmony.<sup>32</sup>

Note that this is not persuasion through speech or text; it is persuasion through deed and character.

Similarly striking are Hobbes's references to Heracles, which are pre-figured in the reference to Prometheus. In Hesiod, Prometheus is freed when Hercules kills the vulture sent by Zeus as punishment for his pride.<sup>33</sup> Hobbes refers to Hercules multiple times in *Leviathan*. Some of Hobbes's references are critical. Those references pointing to the classic account of Hercules as a figure of fantastic strength all tend toward criticisms, but with important nuance. In II, during a discussion of memory and compound imagination, Hobbes refers to people who are not Hercules-class leaders but vaingloriously fantasize that they are.<sup>34</sup> In XII Hobbes refers to Hercules as one of the "mongrill Gods" and is quick to describe those who foolishly take themselves to be like Hercules and who vainly take their strength to be affirmation that they should be sovereign.<sup>35</sup> Thus, one image of Hercules is of mimetic vainglory.

30 Livy, *Livy*, vol. 1, Books 1–2, bk. I. § xvii.

31 Livy, *Livy*, vol. 1, Books 1–2, bk. I. § xviii.

32 Plutarch, "Numa," § 4.

33 Hesiod, "Theogony," 520–34.

34 Hobbes, *Leviathan*, II:II. 28–30.

35 Hobbes, *Leviathan*, II:XII. 174.



But there is a second image of Hercules in *Leviathan* reserved for rulers. The other is implied in Hobbes's discussion of "Artificiall Chains, called *Civill Lawes*".<sup>36</sup> The reference here is to the Gallic Hercules, who was a great orator and leader as well as wise. As Malcolm observes, this was a popular image in Hobbes's day "associated with the ruler in French political iconography".<sup>37</sup> Another is in xxx, where Hobbes writes of rulers who must contend with upstart "Popular men"<sup>38</sup> who prioritize their own ends over those of the commonwealth and quickly come to dream of usurping sovereignty. Here Hobbes implies that these threats pose a hydra-like problem and must be dealt not by buying off each upstart but by cutting to the root of the problem.<sup>39</sup>

Numa and Hercules are evocative, but Hobbes's aim in XII is more direct. How are the multitude persuaded to unite in a state of war before the formal institution of this agent as sovereign? Hobbes's answer is developed negatively through a discussion of the collapse of regimes. Hobbes begins by characterizing a subject's faith in the founder—"in some one person"<sup>40</sup>—as based on the belief that the founder will "labour to procure their happiness,"<sup>41</sup> as the author of the religion. He then turns to the reasons why regimes fail. Each of Hobbes's answers involves the subjects' evaluation of the sovereign's conduct. "It followeth *necessarily*," Hobbes writes, that

when they that have the Government of Religion, shall come to have either the *wisdom* of those men, their *sincerity*, or their *love* suspected; or that they shall be unable to shew any *probable token of Divine Revelation*; that the Religion which they desire to uphold, must be suspected likewise; and (without the feare of the Civill Sword) contradicted and rejected.<sup>42</sup>

These four traits—*wisdom*, *sincerity*, *love*, and *divine revelation*—all turn on the character of the founder. Let me consider each in turn.

What makes a founder wise? In one sense, they are simply philosophically inclined and willing to invite the psychological doubt that follows from

36 Hobbes, *Leviathan*, II:XXI. 328; see Skinner, *Reason and Rhetoric*, 389–90.

37 Hobbes, *Leviathan*, II:XXI. 329 editorial note d. See also Chandran, "Hobbes in France, Gallican Histories, and *Leviathan*'s Supreme Pastor."

38 Hobbes, *Leviathan*, II:XXX. 526.

39 I will argue in Chapter Seven that this is far easier said than done and indeed that the solution has less to do with cutting and more to do with instantiating the second image of Hercules.

40 Hobbes, *Leviathan*, II:XII. 180.

41 Hobbes, *Leviathan*, II:XII. 180.

42 Hobbes, *Leviathan*, II:XII. 180 (emphasis added).

unconstrained curiosity. In a passage from XI that recalls Plato's allegory of the cave, Hobbes speaks of the vast majority of mankind who are blind and, though warmed by a fire, only have vague opinions about the origin of the heat; they "cannot imagine what it is like; nor have an Idea of it in his mind, such as they have that see it".<sup>43</sup> The wise few who are curious enough to investigate, those who engage "profoundly in the pursuit of causes",<sup>44</sup> discover that God is simply the "First Mover"<sup>45</sup> of the material world, unknowable in its totality. These founders are not purely speculative philosophers; they are political philosophers of an architectonic casting who understand the public necessity for their being a religious reprieve to doubt. They astutely observe the real political situation, the nature of the state of nature, so to speak. They understand the causes and contexts of political events and the practical ways in which political chaos can be transformed and structured.

Hobbes also reflects on why and how these *political* philosophers are exceptional. Hobbes writes that "Good successe is Power; because it maketh reputation of Wisdome, or good fortune; which makes men either fear him, or rely on him."<sup>46</sup> Good success is naturally honored by the multitude, because "To agree with in opinion, is to Honour; as being a signe of approving his judgement, and wisdom."<sup>47</sup> These are precarious politics, highly demanding upon the executor and enormously appealing to the vainglorious. Elsewhere, Hobbes writes,

Men that have a strong opinion of their own wisdome in matter of government, are disposed to Ambition. Because without publique Employment in counsell or magistracy, the honour of their wisdome is lost. And therefore Eloquent speakers are enclined to Ambition; for Eloquence seemeth wisdome, both to themselves and others.<sup>48</sup>

There are two messages here. One regards the threat to an established regime of vainglorious upstarts who imagine themselves as Herculean figures. These are politically corrosive and eminently irrational figures. In the state of war, the lesson is the opposite. Someone with both strong and *correct*

43 Hobbes, *Leviathan*, II:XI. 160. On Hobbes's assimilation of Plato's allegory of the cave see Craig, *The Platonian Leviathan*, chap. 1. Craig's discussion of curiosity in Hobbes is deeply insightful, and I have learned much from it.

44 Hobbes, *Leviathan*, II:XII. 166.

45 Hobbes, *Leviathan*, II:XII. 166.

46 Hobbes, *Leviathan*, II:X. 134.

47 Hobbes, *Leviathan*, II:X. 138.

48 Hobbes, *Leviathan*, II:XI. 156.

opinions about the science of governance, especially during emergencies, is called upon to rule. Hence, Hobbes writes earlier in XI,

Eloquence, with flattery, disposeth men to confide in them that have it; because the former is seeming Wisdome, the later seeming Kindnesse. Adde to them Military reputation, *and it disposeth men to adhaere, and subject themselves to those men that have them.* The two former, having given them caution against danger from him; the later gives them caution against danger from others.<sup>49</sup>

As well as exemplifying Hobbes's discussion of exhortation, it is a claim of the highest political importance for anyone concerned with founding (or re-founding) a commonwealth.<sup>50</sup> The basic principle is that effective obedience relates to the sovereign's capacity to acquire "friends" because their wisdom makes them trustworthy ("given them caution against danger from him) and kindness "*Love of Persons for society*"<sup>51</sup>). Both can be feigned, and both wisdom and kindness can really just be eloquence and flattery, but that does not take away from the essential importance of wisdom and kindness.

Political wisdom must be manifest in public actions and recognized as such. The rudiments of real political rule requires that the multitude recognize that wisdom, and founders of religions and new commonwealths will invariably have their wisdom assessed. One mode of assessment is rationality. Hobbes makes this claim negatively. Irrational deeds "taketh away the reputation of Wisdome" and subsequently "discredits him in all things else he shall propound as from revelation supernaturall."<sup>52</sup> We can again see the political significance of Hobbes's early reference to Hercules and its various descriptions throughout *Leviathan*. The difference between Hercules in the vainglorious and glorious senses is both great success and recognition by the multitude that those successes were won by the eminent political wisdom of the leader, as opposed to, say, mere fortune.<sup>53</sup>

49 Hobbes, *Leviathan*, II:XI. 156 (emphasis added).

50 See the discussion of command and exhortation in Chapter Four.

51 Hobbes, *Leviathan*, II:VI. 86.

52 Hobbes, *Leviathan*, II:XII. 182.

53 Here I am in close agreement with Craig, who writes of inequality in Hobbes that [a] minuscule class of men, epitomized by Hobbes himself, aware not merely of the great natural inequalities mankind manifests, but of the virtual chasm that separates minds and spirits such as theirs from those of the vast majority—minds and spirits capable, for example, of designing a *just* political architecture that can

Another trait of the founder is “Love”. Hobbes speaks of love in two ways. He uses love to refer to description of the deeds of the rulers, and to the responses to those deeds by the ruled. “That which taketh away the reputation of Love,” Hobbes writes, “is being detected of private ends”.<sup>54</sup> What, we must therefore ask, confers upon an individual a “reputation of Love”? Hobbes’s claim is that those who acquire “Dominion, Riches, Dignity, or secure Pleasure, to themselves onely, or specially”<sup>55</sup> will have their political legitimacy undermined. “For that which men reap benefit by to themselves, they are thought to do for their own sakes, and not for love of others”.<sup>56</sup> The positive contrasting position is that a founder should facilitate the joint creation of dominion and the general increase of wealth, support the dignity of all, and institute a system that increases the quotidian pleasures and general human flourishing for the population. To be clear, Hobbes does not describe a person who is seeking simply the *reputation* for love. They are not seeking fame; they are someone whose deeds secure such a reputation in the minds of the “greatest part”, based on manifest actions and deeds. It is a practiced “goodnesse” of the great figures, who do not measure their deeds by those good acts but whose actions are nevertheless measured as good by the multitude.<sup>57</sup> The virtues of founders are manifest in other-regarding public actions.

Earlier in XI, Hobbes reflects on the problem of unloving and insincere sovereigns who, having established the rule of law internally and defended the commonwealth from external threats, move on to new desires of “Fame from new Conquest”, “ease and sensuall pleasure” or “of admiration, or being flattered for excellence in some art, or other ability of the mind”,<sup>58</sup> desires that invariably lead to needless wars benefiting the natural person of the

accommodate this vast diversity—have their own reasons for accepting a regime seemingly founded on the presumption that all humans are by nature equal. (Craig, *The Platonian Leviathan*, chap. 21.)

My only disagreement is that I do not take Hobbes to be the exemplary figure; instead I believe that Hobbes has in mind the kind of eminent political leaders surveyed throughout this chapter and Chapter Three.

54 Hobbes, *Leviathan*, II:XII. 182.

55 Hobbes, *Leviathan*, II:XII. 182.

56 Hobbes, *Leviathan*, II:XII. 182.

57 Note the contrast between this discussion of love and Hobbes’s discussion of Platonic love in *Elements*. In *Elements* Hobbes dismisses Platonic love depicted in Socrates’s “charity, or desire to assist and advance others” as being simply “an honourable pretence for the old to haunt the company of the young and beautiful”; Hobbes, *Elements*, pt. I. IX. § 17. In *Leviathan* Hobbes removes the criticism and seemingly thereby returns to the substantive core of the Socratic imperative.

58 Hobbes, *Leviathan*, II:XI. 152.

sovereign and harming the commonwealth. Hobbes then characterizes the person who must found a new regime. In a section subtitled "*Love of Vertue, from love of Praise*", Hobbes writes,

Desire of Praise, disposeth to laudable actions, such as please them whose judgement they value; for of those men whom we contemn, we contemn also the Praises. Desire of Fame after death does the same. And though after death, there be no sense of the praise given [...] *yet is not such Fame vain*; because men have a present delight therein, from the foresight of it, and of the benefit that may redound thereby to their posterity: which though they now see not, yet they imagine; and any thing that is pleasure in the sense, the same also is pleasure in the imagination.<sup>59</sup>

Located immediately after Hobbes's description of failed (unloving, insincere, unwise) sovereigns—who prioritize vainglorious conquests, gluttonous consumption, and sycophantic praise—and before Hobbes's discussion of new foundations in XII, this passage stands out, as it bucks the well-trodden critique of vainglory in Hobbes. These people consider themselves to be Hercules-class agents and may in fact be that. The sovereign may rule over the proud, but Hobbes also holds that the sovereign who is proud *in a specific way* rules best.

Whose judgment are great leaders and future sovereigns to value? So far, only negative answers have been addressed: it cannot be the multitude, it cannot be the leader's retinue of councilors. Hobbes already alludes to his positive answer in his discussion on laughter in VI. Hobbes begins with a general remark on the vanity inherent in the "*Sudden Glory* [...] called LAUGHTER" by those who are "conscious of the fewest abilities in themselves; who are forced to keep themselves in their own favour, by observing the imperfections of other men."<sup>60</sup> Then Hobbes describes the wise exception to the rule: "*For of great minds, one of the proper workes is, to help and free others from scorn; and compare themselves onely with the most able.*"<sup>61</sup> It is a striking discussion of the psychology of the would-be founder. When looking for praise, Hobbes's seeker of posthumous glory has in mind other "great minds" who are also the "most able". Again, it is pride, but of a special kind. It is self-interested in the sense that great leaders and founders

59 Hobbes, *Leviathan*, II:XI. 152 (emphasis added).

60 Hobbes, *Leviathan*, II:VI. 88.

61 Hobbes, *Leviathan*, II:VI. 88 (emphasis added). See also Corsa, "Thomas Hobbes: Magnanimity, Felicity, and Justice."

compare themselves with others who have achieved or aspired to achieve the highest political ambitions, the foremost of which is founding a stable commonwealth.<sup>62</sup> And although self-interested, it simultaneously includes the positive other-regarding imperatives that adhere to these figures who, in a state of war, task themselves with freeing others from scorn, presumably by aiding them in being conscious of their abilities. It is, in classic terms, the crowning virtue of magnanimity.<sup>63</sup>

Subjects also evaluate the *sincerity* of the founder. “That which taketh away the reputation of Sincerity,” Hobbes writes “is the doing, or saying of such things, as appeare to be signes, that what they require other men to believe, is not believed by themselves”.<sup>64</sup> Not only must founders promulgate political words and deeds that are wise and other-regarding; they must also be judged to sincerely believe in those ideas themselves. The founder cannot be revealed to be a moral or political hypocrite, or Machiavellian in some vulgar or duplicitous sense. Hobbes does speak of reputation; however, there is no evidence at all that Hobbes thinks that founder-sovereigns should only superficially be *thought* to be sincere or feign sincerity. Just the opposite: Hobbes is concerned with the actual words and deeds of the natural person who is to found the commonwealth and bear the office of the sovereign. Sincerity is a judgmental measure of the relationship between deeds (and, to a lesser extent, words) and religious exhortation and dehortation. Of course, one cannot know the secret thoughts of anyone else, so the question is ultimately one of judgment on the part of the subjects (or would-be subjected) and character on the part of the founder. Founders must not simply herald the other-regarding virtues but must always avoid self-interested deeds (in the vulgar sense) that would undermine those

62 The contrast with the “greatest part” of mankind and their mundane fields of comparison is evident.

63 Skinner has come to a similar conclusion, *Skinner, Visions of Politics, III: Hobbes and Civil Science*, 142–76. In the *Nicomachean Ethics*, Aristotle describes the magnanimous man as someone who

thinks himself worthy of great things—and is indeed worthy of them (anyone who thinks like this when he is not worthy is a fool, and no one who lives in accordance with virtue is foolish or senseless) [...] the great-souled person, then, is an extreme with regard to the grandness of his claims, but a mean with regard to their correctness; for he reckons his own worth in accordance with real merit, while the others are excessive and deficient. (Aristotle, *Nicomachean Ethics*, 1123b.)

In *Politics* Aristotle describes a figure (who I take to be magnanimous) as “so outstanding by reason of his superior virtue that neither the virtue nor the political power of all the others is commensurable with his”; Aristotle, *Politics*, 1284a. I discuss magnanimity in more detail in both Chapters Six and Seven.

64 Hobbes, *Leviathan*, II:XII. 182.

proclamations. Hobbes catalogues the signal “sinful” character traits of flagrant vice: “Injustice, Cruelty, Prophanesse [changed to “hypocrisy” in the Latin edition], Avarice, and Luxury”.<sup>65</sup> Note, too, that the sincere and loving other-regarding practices that Hobbes is depicting here show neither a trace of arrogance or haughtiness on the part of the founder-sovereign nor deference or partiality to any one subject.

Fourthly, the question turns to how sovereigns can continue to instantiate evidence of their “divine Calling”.<sup>66</sup> It is politically crucial they do so, for if sovereigns cannot evince their special calling—either by “Miracles”, “true Prophecy,” or “extraordinary Felicity”<sup>67</sup>—then the declared moral values of the commonwealth risk being unmoored or left instead to conventions, “Custome, and Lawes of the places, in which they be educated”.<sup>68</sup> Founders must persuasively instantiate (give a “probable token of Divine Revelation”<sup>69</sup>) their divine calling. But the veracity of that miracle is only partly under the control of the sovereign-to-be. Ultimately, the veracity or sincerity of the action is decided upon only by individuals. Laws can dictate obedience, and universities can teach; but if the citizens do not revere the natural person bearing the office of the sovereign, then the regime will be forever prone to collapse.

The ability to create a people and then rule a people on the basis of one’s individual compartment is, for Hobbes, a miracle. “The first Rainbow that was seen in the world, was a Miracle,” Hobbes writes, “because the first; and consequently strange; and served for a sign from God, placed in heaven, to assure his people, there should be no more an universall destruction of the world by Water.”<sup>70</sup> Miracles, for Hobbes, are simply new and portentous. Presumably, these same logics apply to new foundations, a phenomenon often lost to history, marked by failure and yet more tumult, but if successful, a wondrous and awe-inspiring event. But fundamentally for Hobbes, what is miraculous is the person who does the founding, not the foundation itself. As Hobbes writes elsewhere, “great miracles, or (which is equivalent to a miracle) great abilities, or great felicity in the enterprises of their Governours”.<sup>71</sup> Civil wars and regicide require the politics of new

65 Hobbes, *Leviathan*, II:XII. 182. On the burdens of the natural person of the sovereign, see Sorell, “The Burdensome Freedom of Sovereigns.”

66 Hobbes, *Leviathan*, II:XII. 182.

67 Hobbes, *Leviathan*, II:XII. 182.

68 Hobbes, *Leviathan*, II:XII. 182.

69 Hobbes, *Leviathan*, II:XII. 180.

70 Hobbes, *Leviathan*, III:XXXVII. 684.

71 Hobbes, *Leviathan*, III:XL. 754.

foundations to be revisited and subject to the deep contemplation of would-be founders and future sovereigns. That poses real pedagogical challenges, but it also confers significant political advantages as far as the potential founder has the unique opportunity to appear to be miraculous. To paraphrase Hobbes, it will appear as unheralded and serve as a popular sign from God to assure the people that there will be no more “universall destruction”, a destruction that itself lays the psychological grounds for a yearning for a “God” that is a cognitive foundation for one’s private, social, and political agency.<sup>72</sup> The miracle representative of a “divine calling” is, in effect, the fact of successful new foundations, and the “miracles” of both the eminent leader and the social covenant they facilitate.

### Three counterarguments

Wisdom, sincerity, love, and divine revelation? What happened to the Monster of Malmesbury? If this is a fair account of XII, then a cascade of puzzles follows. XII is not simply unlike the standard model of Hobbes; it is seemingly antithetical. Three axioms of Hobbes’s interpretation stand as compelling counterarguments to the political science found in XII. The first is the notion of *natural equality* underwriting Hobbes’s political philosophy, which seems to exclude the possibility of there being a special role for leaders of extraordinary wisdom and virtue in Hobbes. The second is the idea that there can be *no justice without sovereignty* categorically excludes the notion that the multitude could recognize someone as being eminently just preceding and independent of the sovereign definition. The third is the claim that Hobbes’s distinction between regimes by conquest and institution is an *insignificant distinction* and that both are reducible to the fear of violent death—to the logics of conquest—which again categorically excludes the notion that a wise, sincere, loving, and revelatory leader could be instrumental in the founding of a new commonwealth (indeed, the virtues listed in XII would imply the inherent *incapacity* of such a person to found a commonwealth). If all or any of these axioms hold, then XII is anomalous.

I consider each in turn and argue that there are good textual reasons to be dubious of these supposed axioms and indeed that those reasons all point toward the kind of new foundations found in XII. That is, not only do these counterarguments fail, but they fail in ways that lend substantial support to the argument.

72 Hobbes, *Leviathan*, III:XXXVII. 684.



## Natural equality

The *natural equality* axiom holds that, for Hobbes, humans—though different in myriad ways—are effectively equal. In the natural condition, and in relation to who could be sovereign, their differences in physical and mental abilities vanish under a real political analysis (the strongest can be felled by the weakest and the smartest can be tricked by the slowest, etc.). Jean Hampton expresses the basic idea when she writes that Hobbes, “refuses to recognize any qualitative or significant quantitative differences in ability, either mental or physical, among people.”<sup>73</sup> Or, as David Runciman remarks on equality and rule, “there are no meaningful limitations on *who* can be sovereign.”<sup>74</sup> Kinch Hoekstra has argued that Hobbes’s claim is primarily one of political equality where everyone ought to treat each other as equals in the service of peace.<sup>75</sup>

To begin, consider first just how sharp the disagreement is between the standard model and XII.<sup>76</sup> The whole of XII, as we have seen, acknowledges fundamental differences among agents, differences that are of elemental political importance; those natural and politically crucial *inequalities* are significant *before* the construction of a sovereign state. What is politically paramount in XII is the *inequality* between the multitude and the rare person of eminent virtue, and the recognition of that inequality by the multitude. Both positions cannot stand. If the equality axiom holds, it is incompatible

73 Hampton, *Hobbes and the Social Contract Tradition*, 24.

74 Runciman, “The Sovereign,” 359.

75 Hoekstra, “Hobbesian Equality.” See also Evrigenis, *Images of Anarchy*, chap. 5. The argument presented here may not ultimately disagree with Hoekstra’s. Hoekstra’s conclusion is that conceptions of natural equality must ultimately be asserted for political reasons, a point I agree with. My concern here is actual inequality in the moment of foundation. Note, too, that Hoekstra stands out among commentators in noting the peculiarity of Hobbes’s parenthetical remark in XIII (see below); Hoekstra, “Hobbesian Equality,” 83–84. Indeed, Hoekstra, discussing Giuseppe Sorigi’s concerns with the peculiarity of this claim, remarks that “[c]riticism of this kind should prompt the further enquiry of whether Hobbes’s aim in offering such arguments has been adequately identified”; Hoekstra, 84, n. 40. The argument I am developing aims to do so. Similarly, although my account of Hobbes seems to contrast with Evrigenis’s, it is in certain regards compatible. Evrigenis’s focus is on how the *text* persuades its readers, for example, to believe in effective human equality. My focus is only on how Hobbes advises sovereigns (or would-be sovereigns) to *act*. Hence, my only point of contention is that Evrigenis is eager to bundle Charles II (and by extension, all founders and sovereigns) in with the “greatest part” of mankind, whereas I keep to that fundamental distinction. It seems implausible that Hobbes would have been concerned with teaching Charles II “how to obey” but entirely plausible that Hobbes would want to teach him “how to rule”.

76 On natural inequality in Hobbes, see Craig, *The Platonic Leviathan*, 418–44; Herbert, “Thomas Hobbes’s Counterfeit Equality.”

with XII. If so, scholars are right to ignore XII and Hobbes's discussion of the wisdom, love, and the sincerity of founders.

For now, let me assume that XII is aberrational. Are there any other points in *Leviathan* that prompt a more critical evaluation of the equality axiom? There are, indeed. Perhaps the most striking reason to doubt that Hobbes held to a strict account of equality is found in XIII. Strangely, one of the strongest passages *against* it is found in the passage most often referenced *for* it. In XIII after having asserted the physical equality claim (that even the weakest can slay the strongest), Hobbes writes,

And as to the faculties of the mind, (setting aside the arts grounded upon words, and especially that skill of proceeding upon generall, and infallible rules, called Science; which very few have, and but in few things; as being not a native faculty, born with us; nor attained, (as Prudence,) while we look after somewhat els,) I find yet a greater equality amongst men, than that of strength.<sup>77</sup>

This is the keystone paragraph of the equality argument said to establish the equality axiom. It is often presented as stating that in terms of mental capacities, humans are even more naturally equal than they are in physical capacities. However, to arrive at that reading interpreters must ignore Hobbes's own parenthetical exception, which is neither cryptic nor esoteric nor particularly subtle. As an equality claim, Hobbes is saying that the vast majority of humans *are* equal, but there are exceptions. The exceptional figure mentioned in XIII is presumably an outstandingly curious soul interested in the science of politics and perhaps a naturally gifted orator (presumably of the same kind discussed at length in VIII). The rest of the paragraph seems to further undermine the equality claim it is usually said to make. For instance, Hobbes mentions the vanities of people who hold themselves to be more intelligent than all others: "For they see their own wit at hand, and other mens at a distance. But this proveth rather that men are in that point equall, than unequall."<sup>78</sup> This may look like an equality claim, but it is strictly speaking a statement of the equality of vanity among the vainglorious. Such a claim has no bearing on the natural inequality of minds, like those discussed in XI and XII, save insofar as providing for a juxtaposition to help understand the exceptional qualities of the person not bound by such vainglory.

<sup>77</sup> Hobbes, *Leviathan*, II:XIII. 188 (emphasis added).

<sup>78</sup> Hobbes, *Leviathan*, II:XIII. 188 (emphasis added).

Another pillar of the equality claim is its standing as a law of nature. The ninth law of nature is “*That every man acknowledge another for his Equall by Nature. The breach of this Precept is Pride.*”<sup>79</sup> Indeed, just prior to that passage, Hobbes writes an apparent direct rebuttal to my argument, stating: “The question who is the better man, has no place in the condition of meer Nature; where, (as has been shewn before,) all men are equall. The inequallity that now is, has bin introduced by the Lawes civill.”<sup>80</sup> Do these passages (and others like them) scuttle my argument? Not on Hobbes’s own terms of critical reflection. Thus, Hobbes concludes the section by noting that what he meant when he speaks of equality and the laws of nature is not a pre-political normative (or theological) principle, or some natural fact, but a political principle. For Hobbes, natural laws are

dictates of Reason, men use to call by the name of Lawes; but improperly: for they are but Conclusions, or Theoremes concerning what conduceth to the conservation and defense of themselves; whereas Law properly is the word of him, that by right had command over others.<sup>81</sup>

Hence, to some extent, the equality as a law of nature argument, at least insofar as it relates to equality, is a normative—or better, a strategic—principle for achieving political order.<sup>82</sup> Moreover, that strategic principle aligns with those mapped in XII, or, as Hobbes writes in the conclusion of xv, “But yet if we consider the same Theoremes [laws of nature], as delivered in the word of God, that by right commandeth all things; then are they properly called Lawes.”<sup>83</sup>

How then are we to explain the other numerous assertions in *Leviathan* of effective equality in the state of war? There are many, but as has been

79 Hobbes, *Leviathan*, II:xv. 234. I will argue against the English language version of this passage because they appear to be the most formidable counterpoints to my argument. However, in the Latin edition of *Leviathan*, Hobbes replaces “who is the better man” with “of rank among men” (Hobbes, II:xv. 234), strongly but not decisively indicating that he is speaking of formal ranks. If Hobbes was trying to clarify his intended meaning in these passages, it means that Hobbes was not talking about “better” in the sense of eminent figures of great virtue but simply of formal rank. If that is indeed the case, then this passage simply speaks to a truism regarding formal rank being an output of governance structures and says nothing about the kind of inequality that I am interested in here. The subsequent discussion of Aristotle seems to support the clearer account provided in the Latin edition.

80 Hobbes, *Leviathan*, II:xv. 234.

81 Hobbes, *Leviathan*, II:xv. 242.

82 Hoekstra, “Hobbesian Equality.”

83 Hobbes, *Leviathan*, II:xv. 242.

noted here and in the previous chapter, there are just as many reflections speaking equally clearly to there being natural inequalities of fundamental political significance. What is needed is *not* a decision to side with one or the other but an interpretative framework for reconciling these seemingly irreconcilable claims. The interpretative solution, it seems, is already at hand. As Tarlton, Craig, Abizadeh, and Hoekstra have all argued (though in rather different ways), *Leviathan* speaks to both those who will rule and those who will be ruled, and although those lessons are often theoretically incommensurable, they are *politically* commensurable, and long-term peace may be dependent on sustaining this seeming paradox.<sup>84</sup>

Such an interpretative framework is not interpolative in the least; it is Hobbes's stated view on the matter. Thus, returning to the ninth law of nature, we zoom out only slightly to see that Hobbes makes exactly that point in xv. Hobbes writes that

[i]f Nature therefore have made men equall, that equalitie is to be acknowledged: or if Nature have made men unequall; yet because men that think themselves equall, will not enter into conditions of Peace, but upon Equall termes, such equalitie must be admitted. And therefore for the ninth law of Nature, I put this, *That every man acknowledge other for his Equall by Nature*. The breach of this Precept is pride.<sup>85</sup>

That, it seems, is the gist of it. Nature *has* made people unequal.

It certainly may be a political imperative that subjects cleave to an idea of equality—as Hobbes makes clear over and over, it is a political imperative of the highest order—but it is simultaneously imperative that founders and sovereigns differentiate between ideology and fact. So, there are no real inconsistencies when Hobbes speaks *both* of natural equality and natural inequality. Indeed, it provides for significant interpretative reconciliation of seeming textual inconsistencies. However, holding strictly to the natural equality axiom results in textual contradictions, if not paradoxes, political nonsense, and a necessary silence on the real politics of new foundations.

Another textual pillar of natural equality argument is said to be found in the introduction, which is said to establish a baseline for what David

84 Tarlton, "The Creation and Maintenance of Government: A Neglected Dimension of Hobbes's *Leviathan*"; Craig, *The Platonian Leviathan*; Abizadeh, "The Representation of Hobbesian Sovereignty: *Leviathan* as Mythology"; Hoekstra, "Hobbesian Equality."

85 Hobbes, *Leviathan*, II:xv. 234.

Runciman calls the “true radicalism of Hobbes’s conception of politics”, namely

that there are no meaningful limitations on who can be sovereign. Anyone can do it. That is, anyone or anything possessed of a will has the capacity needed to exercise sovereign power. So all arguments to the effect that some people are disqualified—whether by aptitude or origin or ‘form’—are invalid.<sup>86</sup>

Radical, indeed, but what does the introduction actually say? It begins by evoking the ancient dictum “*Nosce teipsum, Read thy self*” urging future subjects to

looketh into himself, and considereth what he doth, when he does *think, opine, reason, hope, feare, &c.* and upon what grounds; he shall thereby read and know, what are the thoughts, and Passions of all other men, upon the like occasions.<sup>87</sup>

This is followed by a political testament of astounding *inequality*:

But let one man read another by his actions never so perfectly, it serves him onely with his acquaintance, which are but few. He that is to govern a whole Nation, must read in himself, not this, or that particular man; but Man-kind: which though it be hard to do, *harder than to learn any Language or Science*; yet, when I shall have set down my own reading orderly, and perspicuously, the pains left another, will be onely to consider, if he also find not the same in himself. For this kind of Doctrine, admitteth no other Demonstration.<sup>88</sup>

Runciman references the same passage. How did he get from that passage to a radical theory of human equality? By truncating the passage to exclude “which though it be hard to do, *harder than to learn any Language or Science*”.<sup>89</sup> Thus, on Runciman’s construal, the call to “read in himself, not this, or that particular man; but Man-kind” is a call to find the average Joe in all of us. However, that is exactly the opposite of Hobbes’s claim. *Leviathan*

86 Runciman, “The Sovereign,” 359.

87 Hobbes, *Leviathan*, II:INTRODUCTION. 18.

88 Hobbes, *Leviathan*, II:INTRODUCTION. 20 (emphasis added).

89 Hobbes, *Leviathan*, II:INTRODUCTION. 20 (emphasis added).

is not introduced with a radical equality claim; it begins by heralding a figure of exceptional and *unequal* aptitude. I focus on Runciman's use of a truncated quotation because it drives home an interpretative point that I am trying to make. My argument is not esoteric, it is based primarily on a straightforward textual account of the real politics of foundation in *Leviathan*.

I have focused on the major textual pillars of the human equality claim, but they are far from exceptional. If we take a broader perspective of the *Leviathan*, we also find that Hobbes speaks of leadership by exceptional agents throughout. Leaving aside all the evidence surveyed in Chapter Four and all of XII, consider yet more. In the epistle dedicatory, Hobbes writes that his concern is "(in the Abstract) of the Seat of Power," only to immediately gesture toward Camillus, the second founder of Rome, as his model.<sup>90</sup> In xv Hobbes writes of the creation of a commonwealth, comparing the process of putting together various kinds of people to the various shapes of stones used (or discarded) when building a wall.<sup>91</sup> In xxv he writes of the requirements of sovereigns to have "great knowledge of the disposition of Man-kind, of the Rights of Government, and of the nature of Equity, Law, Justice and Honour".<sup>92</sup> In xxix Hobbes assigns sole responsibility for the descent into civil war *not* to the ruled, whom Hobbes calls the "*Matter*" of the commonwealth, but to the "*Makers, and orderers of them*".<sup>93</sup> Elsewhere in xxix, he evokes the figure of a "very able Architect"<sup>94</sup> to compile the people who have theretofore been assembled together like a "crasie building, such as hardly lasting out their own time" and which will surely "fall upon the heads of their posterity."<sup>95</sup> (To hold tight to the natural equality axiom is to hold that bricks can build walls.) And in xxxi, a chapter that continues the discussion started in XII, Hobbes writes that the power of founders and sovereigns depends ultimately on the natural virtues of the founder or sovereign ("Equity, Justice, Mercy, Humility, and the rest of the Morall Vertues"<sup>96</sup>), and that effective rule is irreparably compromised by conspicuous vice ("Contumely").

90 Hobbes, *Leviathan*, II:THE EPISTLE DEDICATORY. 4. The discussion of xxv and the survey of founders and sages in *Leviathan* in Chapter Four supports this claim, too.

91 Hobbes, *Leviathan*, II:xv. 232.

92 Hobbes, *Leviathan*, II:xxv. 406.

93 Hobbes, *Leviathan*, II:xxix. 498. Aristotle similarly characterized lawgivers like Solon as *dēmiourgoi*; Aristotle, *Politics*, 1273b32–34; Duke, *Aristotle and Law: The Politics of Nomos*, 42.

94 Hobbes, *Leviathan*, II:xxix. 498.

95 Hobbes, *Leviathan*, II:xxix. 498.

96 Hobbes, *Leviathan*, II:xxxI. 560.

In sum, the natural equality counterargument fails to prove that either XII is anomalous or the political theory of new foundations in XII does not carry forward. Just the opposite: the many reasons why the counterargument fails all support the positive conclusion that XII carries forward.

### No justice without sovereignty

XII appears to contradict the axiom that there is *no justice without sovereignty*, as it attests to the capacity of some eminent individuals to instantiate justice *before* they are made sovereign. The foundation of this counterargument is the claim that “just” and “unjust” are outputs of sovereign command and thus cannot exist before the creation of a commonwealth. Therefore, there is a widespread belief that Hobbes is a legal positivist of one sort or another. Hobbes makes exactly that claim in the conclusion of XIII (“To this warre of every man against every man, this also is consequent; that nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice have there no place”<sup>97</sup>). Or consider the discussion of the “Originall of Justice”.<sup>98</sup> “But because Covenants of mutuall trust,” Hobbes writes,

where there is a feare of not performance on either part [...] are invalid; though the Originall of Justice be the making of Covenants; yet Injustice actually there can be none, till the cause of such feare be taken away; which while men are in the naturall condition of Warre, cannot be done. Therefore before the names of Just, and Unjust can have place, there must be some coërcive Power, to compell men equally to the performance of their Covenants [...] and such power there is none before the erection of a Common-wealth.<sup>99</sup>

The conclusion that Hobbes draws is that “where there is no Common-wealth, there nothing is Unjust.”<sup>100</sup> The standard model appears to be on good footing here. But as Hobbes’s discussion of justice develops, and as the hyperbolic rhetoric of the state of war abates, the lesson becomes less stark.

One sign that something is amiss with this interpretation stems from Hobbes’s distinction between the “Originall of Justice” and the legal validity of “just” and “unjust”. One distinction is temporal. Hobbes writes that “So that

97 Hobbes, *Leviathan*, II:XIII. 196.

98 Hobbes, *Leviathan*, II:XV. 220.

99 Hobbes, *Leviathan*, II:XV. 220.

100 Hobbes, *Leviathan*, II:XV. 220.

the nature of Justice [not the name], consisteth in keeping of valid Covenants: but the Validity of Covenants begins not but with the Constitution of a Civill Power, sufficient to compell men to keep them”.<sup>101</sup> This indicates that the problem of the state of war is specifically that *injustices* are not codified and punished, and so there can be no *injustice*. However, the claim is not strictly that *justice* cannot be instantiated where there is no external party to enforce the terms of agreement should one party waver. But in those situations, just depends on mutual good will alone. So, there can certainly be valid covenants. The “Originall of Justice” precedes sovereign command, but sovereign command confers upon those covenants their validity.

To clarify the point, Hobbes turns to the discussion of justice and the fool.<sup>102</sup> Before considering the specificities of the discussion, it is worth pointing out just what Hobbes’s discussion of the fool is substantively about. The discussion of the fool is usually treated as a curiosity for no other reason than that on the mainstream view of Hobbes it seems pointless, if not problematic. Frank Lovett hits the nail on the head: “For the main argument in *Leviathan* to carry through, no answer to the fool is obviously needed, since the sovereign can force prudence into a degree of correspondence with morality that is sufficient for practical purposes.”<sup>103</sup> By “main argument,” Lovett means more or less what I have called the standard model. There are, however, many reasons to think that the standard model is not the appropriate model for understanding this passage. I will address the details of that claim momentarily, but consider first two thematic points.

First, it is always observed that Hobbes’s discussion of the fool is about justice and the keeping of covenants or the problem of self-interest and covenant breaking in general. That may be, but the focus on the abstract or general theoretical critique of covenants and justice lends to the demotion of the crucial thematic focus of the discussion, the “fool”—namely, that from first to last it is a discussion of covenants and justice *in relation to the problem new foundations specifically*. The fool, after all, is a sovereign! And not just a sovereign, but a new sovereign. The discussion tracks the development of not one abstract theory but the entire cycle of new foundations and regime decay. If Hobbes were simply talking about rationality, self-interest, and covenant-keeping, then why take as the example for this discussion the

101 Hobbes, *Leviathan*, II:xv. 220. In the Latin edition, Hobbes writes of the “essence” of justice. Hobbes, *Leviathan*, II:xv. 220–21.

102 Consistent with the novelty of XII in *Leviathan*, there are no discussions like Hobbes’s discussion of the fool in either *Elements* or *De Cive*.

103 Lovett, “Hobbes’s Reply to the Fool and the Prudence of Self-Binding,” 235.



politics of new foundations? Of all the possible example that Hobbes could have used to discuss the problem of the fool, why use an example that, at least from the perspective of the standard model, is so deeply problematic for it? *Any other example* would have been more appropriate to a general discussion of covenanting, self-interest, and justice.

Second, although it is routinely stated that the discussion of the fool stands awkwardly apart from the rest of Hobbes's political theory in *Leviathan*, that seems to be incorrect. The entire discussion follows rather elegantly from XII. Indeed, it would be curious if the discussion of the person who said in their heart that "there is no God"<sup>104</sup> was unconnected to XII (OF RELIGION) and, as will be seen shortly, also directly tied to XXXI (*Of the KINDOME OF GOD BY NATURE*). Of course, these are synthetic thematic observations: as we have seen, XII is not just about religion; it is about new foundations. More important than these thematic continuities are the substantive continuities, to which I now turn.

"The Foole," Hobbes writes, paraphrasing Psalms 14:1, "hath sayd in his heart, there is no such thing as Justice". This same fool "said in his heart there is no God".<sup>105</sup> Why does the fool say this to himself? There are many ways to diagnose this predicament, but there are good reasons to start from Hobbes's discussions of exactly these matters in XI and XII.

First, recall that curiosity and religiosity are natural human traits. For the greatest part of mankind, unabated curiosity is agonizing, and religion naturally serves as a palliative heuristic to dampen that anxiety. For them, two options are available: (i) idiosyncratic fantasies that get called "God", or (ii) the acceptance of the public "God". The former prevails in the state of war, the latter in a functioning commonwealth. For exceptional individuals, (iii) individuals who bravely delve into the endless regress of causality and still keep their wits about them, "God" represents a philosophical way of life in search of "first causes". Or, (iv) for those who are also politically inclined, an imperative to think about politics in the grandest sense *and* establish a political "God" to both assuage the multitude and facilitate peace and human flourishing founders. What this schema allows us to see is that for the vast majority of people (i & ii), belief in a "God" is natural (everyone believes) and, crucially, *apostasy is unnatural*; it is the output of a political failure.

Any account of the fool in Hobbes that is to be consistent with Hobbes's own theory of religion must begin from the observation that apostasy is unnatural. Hobbes is not primarily interested in discussing the problem of

<sup>104</sup> Hobbes, *Leviathan*, II:XV. 222.

<sup>105</sup> Hobbes, *Leviathan*, II:XV. 222.

the fool for abstract reasons or in the service of speculative moral philosophy, nor does the argument appear to stand apart from his overarching discussion of justice in *Leviathan*. Instead, it is the political question of why the fool became foolish under practical conditions. Specifically, it points our attention toward a specific moment in the life of a commonwealth, where the public religion has collapsed but no other (idiosyncratic or systemic) religion has yet been established.

So, why is the fool foolish to begin with?<sup>106</sup> XII provides an answer: the sovereign who heralds the religion and defines “God” comes to have their wisdom, sincerity, and love doubted.<sup>107</sup> When that happens, the public religion no longer serves as a palliative heuristic against the regress of curiosity. Instead, it serves as a quiet heuristic of cognitive rebellion against the political order.<sup>108</sup> Hobbes writes of this phenomenon in XII. Recalling Samuel 8:1, he writes,

Again, when the sons of *Samuel*, being constituted by their father Judges in *Bersabee*, received bribes, and judged unjustly, the people of Israel refused any more to have God to be their King, in other manner than he was King of other people; and therefore cryed out to *Samuel*, to choose them a King after the manner of the Nations. So that Justice fayling, Faith also fayled: Insomuch, as they deposed their God, from reigning over them.<sup>109</sup>

The Latin edition is clearer still: “the holiness of the rulers failing, the faith of the people failed with it.”<sup>110</sup> The point is clear. The problem of the fool is not an abstract question. It is a moral question prefigured by a political failure.

So, Hobbes’s remarks on subject foolishness direct us necessarily towards the question of sovereign foolishness, which is where Hobbes immediately turns. He begins by addressing the problem of sovereign foolishness and the founders who attain sovereignty by “unjust violence”.<sup>111</sup> Their “Successfull wickednesse” was not only successful but succeeded (at

<sup>106</sup> As will be seen in Chapters Six and Seven below, this is not a slight concern on Hobbes’s part. Indeed, to summarize those chapters in a sentence, the legitimacy of the law and the regime both depend in practice—ideological questions are a different matter—on the virtues of the sovereign. Civil wars are not ahistorical voids; they are political moments following the collapse of a regime from internal corruption.

<sup>107</sup> I will expand upon this idea in Chapter Six.

<sup>108</sup> On this point, see Abizadeh “The Representation of Hobbesian Sovereignty: *Leviathan* as Mythology.” See also Chapter Seven.

<sup>109</sup> Hobbes, *Leviathan*, II:xv. 184.

<sup>110</sup> Hobbes, *Leviathan*, II:xv. 184.

<sup>111</sup> Hobbes, *Leviathan*, II:xv. 222.

least, in the short term) because of hypocritical proclamations of virtue. Hobbes notes that many have endorsed that line of reasoning—one thinks of Machiavelli, of course, but also most sovereigns by conquest—but Hobbes rejects it.<sup>112</sup> This is because, as we have seen, insincere founders sow doubts in their subjects regarding the reality of justice (well-founded doubt, it should be added). That is, predatory sovereigns undermine the perceived validity of covenants. Again, the “greatest part” all naturally believe in God and justice. It is not for any reason that their subjects become justice-denying fools. That can only happen because of sovereign foolishness, such as when those who found their power upon “unjust violence”, but also flagrantly corrupt regimes where what is *called* justice is disassociated from intuitions of what is naturally just and virtuous. When subjects cannot keep faith in sovereigns, they will neglect the “power of other men”<sup>113</sup> and slowly fall back on their own stock of imaginations and fantasies, or religious doctrines and philosophies controlled by foreign sovereigns or dead philosophers. Barbarous sovereigns, the kind Hobbes laments in *Leviathan's* introduction, are fools who beget subject foolishness.<sup>114</sup>

With accounts of both subject and sovereign foolishness in hand, Hobbes then turns to the foundational role of justice in the creation of a regime. Hobbes begins by restating the rhetorically charged claim from XIII that there can be neither covenant nor justice in the “natural condition of man, where there is no power that compels”,<sup>115</sup> only (and also in line with XIII) to insert a hedge. The hedge is not subtle: wherever a promise has been made and “one of the parties has performed already” or “where there is a power to make him perform” (a power other than a sovereign). Putting aside hyperbolic enmity and focusing on the rudiments of promises and power, then the question of keeping to one’s covenants, of justice *before* the commonwealth, is paramount. (At this juncture, what “justice” actually means is still not stated.)

Hobbes then sharpens the discussion by situating the question of justice and the fool within the intermediary moment of confederacy between the state of war and the institution of a new commonwealth (again, it is not an

112 On a purely speculative note, the kind of successful wickedness that Hobbes has in mind seems to speak to the fratricide of Remus by Romulus and thus may set up a juxtaposition to Numa.

113 Hobbes, *Leviathan*, II:XV. 222.

114 Hobbes, *Leviathan*, II:INTRODUCTION. 18. See also Chapter Seven.

115 Hobbes, *Leviathan*, II:XV. 224–45 (Latin edition).

only an abstract discussion but is also a practical one related to the politics of new foundations).<sup>116</sup> Hobbes writes,

[T]hat in a condition of Warre, wherein every man to every man, for want of a common Power to keep them all in awe, is an Enemy, there is no man can hope by his own strength, or wit, to defend himselfe from destruction, without the help of Confederates; where every one expects the same defence by the Confederation, that any one else does[.]<sup>117</sup>

The problem with foolishness at this intermediary stage is that it inhibits regime creation. Hence, Hobbes continues,

He therefore that breaketh his Covenant, and consequently declareth that he thinks he may with reason do so, cannot be received into any Society, that unite themselves for Peace and Defence, but by error of them that receive him; nor when he is received, be retayned in it, without seeing the danger of their error; which errors a man cannot reasonable reckon upon as the means of his security[.]<sup>118</sup>

Here the point is entirely negative. Justice—keeping covenants where there is no instituted power to enforce compliance—is the “means of his security”, and it is for this reason that Hobbes did not write that the fool denies the existence of justice. For in the moment of confederacy—before the foundation of a new regime—the *name* “justice” is unimportant; however, just actions are definitive.<sup>119</sup>

I will return to just actions momentarily, but me pause to speculate what the confederates are doing. Hobbes is unclear, but it could be ventured that they are acting as a loosely assembled collective agent, coordinating some actions, sometimes keeping mutual covenants, and organizing for mutual defense and aggression. They are not a commonwealth, nor is it anarchy, but it is a social field of acting, displaying, judging, and evaluating the comportment of oneself and fellow confederates. It is an economy of fear but also of honor and virtue.

116 Hence Hobbes’s discussion of “confederates” and “confederacy,” not subjects and social covenants. On confederates, see Tarlton, “The Creation and Maintenance of Government: A Neglected Dimension of Hobbes’s *Leviathan*.” However, as will be shown, Hobbes’s foremost concern here is specifically the politics of new foundations by institution.

117 Hobbes, *Leviathan*, II:xv. 224.

118 Hobbes, *Leviathan*, II:xv. 224.

119 Hobbes repeats this same point in xxx, Hobbes, *Leviathan*, II:xxx. 522.

Hobbes then closes the circle by considering whether unjust violence could be used in the creation of a commonwealth. He asks: What about commonwealths established through rebellion? Hobbes's answer is that this kind of new foundation is eminently irrational because it teaches others "to gain the same in like manner" and is thus against reason.<sup>120</sup> In sharp disagreement with the *de facto* theory of obligation in Hobbes, it signals that whatever the formal legitimacy of the law, the natural legitimacy of the law is contingent upon the perceived "righteousness" of the sovereign. Note also that in striking disagreement with the idea defended by some natural law accounts of Hobbes that the character of the sovereign simply does not matter, Hobbes is, in fact, saying exactly the opposite: memories of a sovereign's foolishness—vice, cruelty, hypocrisy—before they were sovereign begets their subjects' foolishness. Hobbes therefore implies that in the pre-sovereignty moment of confederation, the breaking of covenant reveals the vice of the now-sovereign ruler, thereby simultaneously undermining the subjects' evaluation of the status of the natural person of the sovereign while also stoking—and to some extent justifying—their worst tendencies.<sup>121</sup> (There is more to say about the fool, but it directly pertains to the next axiom, so I will continue the discussion in the next section.)

120 Hobbes, *Leviathan*, II:xv. 224.

121 The problem of the fool vis-à-vis the question of sovereignty is deeper still. We are accustomed to thinking about the paradox as an abstract disagreement between private or short-term interests against public or long-term interests, whereby Hobbes defends the latter here but elsewhere asserts that the former will always prevail. It is also assumed that being sovereign is something that all individuals will profit from. That is, it has been assumed that if it is not rational for heirs to the throne to murder their father, it is certainly rational to wait in line to become sovereign and, generally, want to be sovereign. However, for Hobbes, bearing the office of the sovereign is, to use Sorell's apt language, more burdensome than profitable. It is a psychologically burdensome office, whereby one's goal is (domestically) other people's flourishing and (internationally) one lived in the state of nature. It is also onerously public, entailing subjection to constant evaluation (as the frontispiece depicts and the discussion of the fool presupposes). These burdens combine so that the natural person of the sovereign must forego any and all the opulence often associated with the office. It is an austere office demanding a life of unrequited duty to others, both in terms of holding to the highest standards of virtue and affability in social relations, but also materially demanding liberality and leadership in war (see Chapter Seven). If not, it is a life beset by ruin and often cut short. It is enormously demanding, intellectually, practically, and in terms of both civil and ecclesiastical affairs. If that is true, then it follows that desiring sovereignty is wanting something that the greatest part would find ultimately unprofitable. This, it seems to me, points us to the deeper problem of the fool: it is foolish for almost everyone, including and especially heirs to the throne with firsthand knowledge of the burdens at hand, to want actual sovereignty. Hobbes's ideal monarch exemplifies the cardinal virtue of temperance, a rare virtue indeed. One needs to be a herculean moral and political leader to take up the office not only to succeed but to benefit from it (in the idiosyncratic way that this class of leaders benefit). In his

The discussion of the fool tells us something about the (public) irrationality of injustice before and during the foundational moment but still leaves unexplored the question of what, exactly, *justice* could mean in a state of war (or confederation) when there is no sovereign to define justice *and* the language used to describe the virtues has been corrupted. Hobbes does have an answer to that question in XIII and it is seemingly stark: outside the commonwealth there is no justice.<sup>122</sup> So, promising signals aside, we seem to be back at square one.

However, Hobbes's answer in XV is unlike the one offered at the conclusion of XIII, and the difference is important. Hobbes writes (quoting from the Latin edition of *Leviathan*),

The names of Just and Injust, when they are attributed to Men, signifie one thing; and when they are attributed to Actions, another. When they are attributed to Men, they signifie their behaviour or disposition, insofar as it is a virtue or a vice. Thus a person who has a constant will of giving to every man his own, even if his actions may sometimes have been unjust, is nevertheless himself just, provided that he loves justice, condemns what he has done unjustly (even though the action is unknown to others), wishes he had not done it, and repairs any harm that came of it, so far as he can. An unjust person, on the other hand, is someone who cares nothing for justice, even if—out of fear, or for some other low reason—he has never done injury to anyone. That which usually makes *true justice*, and gives it its relish is a certain Noblenesse of Gallantnesse of courage, by which a man scorns to be beholding for anything to fraud, or breach of promise.<sup>123</sup>

This answer is unlike XIII but quite clearly similar to the one offered in XII. In other words, the answer is that great political deeds and sincerity are naturally just. These qualities of enacted “true justice” by a person who

piece on the burdens of sovereignty, Sorell remarks with puzzlement on why any natural person would ultimately take on those burdens (“The Burdensome Freedom of Sovereigns,” 195–96.) My argument may resolve the puzzle: they are compelled to out of an individual vocational drive.

<sup>122</sup> Hobbes is seemingly strict here. He writes,

To this warre of every man against every man, this is also consequent; that nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law: where no Law, no Injustice. Force, and Fraud, are in warre the two Cardinall vertues. Justice, and Injustice are none of the Faculties neither of the Body, nor Mind. (Hobbes, *Leviathan*, II:XIII. 196.)

<sup>123</sup> Hobbes, *Leviathan*, II:XV. 226–68 (Latin edition, emphasis added).

“loves justice”<sup>124</sup> are “rarely found”.<sup>125</sup> Hobbes concludes by writing that “This Justice [...] is that which is meant, where Justice is called a Vertue; and Injustice a Vice”.<sup>126</sup> The opposite to the fool that “hath sayd in his heart, there is no such thing as Justice”<sup>127</sup> is not the compliant rule-following subject or the committed rule follower. They are not the agents with whom Hobbes is concerned here. It is either the person who instantiates the natural virtues in the state of war, the person who holds to them even in times of general moral corruption, or, most importantly, the sovereign who stands outside the commonwealth. That kind of justice precedes the commonwealth and cannot be snuffed out by it.

The rarity of this agent seems to be crucial for understanding their nature. In some regards, they must be rare, for if they were common, then Hobbes's general political theoretical framework would collapse, since the problems of war, animosity, diffidence, and fear would not follow. For the same reasons, the fact of regime decay and collapse—the whole problem of the fool—would not pertain. The collective action problem thus remains. However, a sketch of the solution of that problem seems to be discernible. Reversing the order of operations in the discussion of the fool, it follows that the person who says in their heart “there is true justice” is also prepared to look onto the figure who instantiates it—who “loves justice”<sup>128</sup> as Hobbes writes—and to say “that leader is divinely inspired”. Indeed, in the REVIEW AND CONCLUSION, Hobbes indicates that this core inner dialogue is a call “not onely for peace, but also for Truth”.<sup>129</sup> The implication seems to be that the drive for peace is not simply driven by fear but also by a kind of abhorrence of the previous sovereign's hypocrisy and vice, which generates a longing for its opposite.

To summarize, the *no justice without sovereignty* counterargument does not hold, save for under rather austere interpretative conditions. Yes, in XIII Hobbes claims that there is no justice in the state of war, but that is also self-evidently his most hyperbolic casting of his claim and nevertheless speaks to justice where justice is understood strictly as an output of legal systems. Moreover, in XV (and XII, XXXI, and in many other places), Hobbes states that there *can* be a kind of justice in the state of war: where justice is understood as a virtue. Indeed, the discussion of the fool puts in stark relief the extent to which carrying forward the *no justice without sovereignty* and

124 Hobbes, *Leviathan*, II:XV. 226–68 (Latin edition).

125 Hobbes, *Leviathan*, II:XV. 228.

126 Hobbes, *Leviathan*, II:XV. 228.

127 Hobbes, *Leviathan*, II:XV. 222.

128 Hobbes, *Leviathan*, II:XV. 226–28 (Latin edition).

129 Hobbes, *Leviathan*, III:A REVIEW AND CONCLUSION. 1139.

the *natural equality* axioms corrupts analyses of the text. Hobbes repeats, over and over, that the discussion of the fool pertains specifically to the sovereign (or would-be-sovereign). The discussion aligns with Hobbes's overall discussion of new foundations in *Leviathan*. Justice in a state of war may be rare, but that is another matter. Again, the discussion of foundations in XII is not aberrational and does carry forward.

### Insignificant distinction between regime types

I turn now to the *insignificant distinction* axiom. The axiom holds that Hobbes's distinction between commonwealths by institution and conquest (Hobbes also uses the term "acquisition" and "by force") is insignificant, since both are grounded in fear. Fear, some assert, is the *summum malum* that drives and defines both modes of foundation.<sup>130</sup> Again, if this counterargument holds, it seems to clearly speak against any claim that love, sincerity, wisdom, and miracles could have any bearing on the politics of new foundations, and therefore XII should be treated as an aberration unimportant for understanding the political theory of new foundations in *Leviathan*. I will argue that the axiom is wrong. Specifically, I will develop two critiques focusing on the two touchstone passages used to support the insignificant distinction claim. However, I will start by returning momentarily to the discussion of the fool to pick up on a theme that was not addressed above.

I have argued that Hobbes's discussion of the fool is in fact a discussion of new foundations. If so, it should follow that that discussion would include commentary on the different ways by which a new regime can be founded. That is in fact the case, and Hobbes's reference to Matthew 11:12—"The Kingdom of God is gotten by violence: but what if it could be gotten by unjust violence?"<sup>131</sup>—speaks very strongly to it. Before explaining why, I need to first note that most scholars characterize Matthew 11:12 as a commanding endorsement of the priority of violence in Hobbes and thus by implication a rather powerful verification of the collapsed distinction axiom. For instance, Springborg states that "Not only does the kingdom of God suffer violence, but all kingdoms are gotten in violence, as Machiavelli says."<sup>132</sup> Hoekstra

130 For example, Strauss, *The Political Philosophy of Hobbes*; Evrigenis, *Images of Anarchy*. Foucault makes a similar claim to the extent that sovereignty by institutions and acquisition are functionally identical, "the mechanisms at work are at bottom identical [...] will, fear, and sovereignty". Foucault, *Society Must Be Defended*, 96. But see Johnston, *The Rhetoric of Leviathan*, 98–101.

131 Hobbes, *Leviathan*, II:xv. 222.

132 Springborg, "Hobbes's Fool the Insiapiens, and the Tyrant-King," 97.



describes these politics as “The scenario of assaulting heaven” and “an act of explicit foolishness”.<sup>133</sup> Hayes agrees with Hoekstra.<sup>134</sup> Alan Ryan describes this passage as a claim on Hobbes’s part that “persons possessed of sufficient power can simply force others to subscribe to their authority”.<sup>135</sup> On these accounts, the distinction appears to collapse again.

The problem with these interpretations is that they get the meaning of the passage wrong. Matthew 11:12 reads, “And from the days of John the Baptist until now the kingdom of heaven suffereth violence, and the violent take it by force.” Perhaps to some—and perhaps especially to those committed to the notion that Hobbes’s political theory can be distilled to the *summum malum* of violent death—the meaning of the passage is clear. However, the terms “violence” and “violent” in this passage have nothing to do with physical violence. Instead, what they describe is the vehement desire of the multitude to accede to the teaching of John the Baptist. John’s sincerity and fidelity, it is said, was so compelling as to garner a rush of followers. The violence is not a measure of physical harm; it is a measure of an abrupt and drastic reorientation of one’s ethical political orientation away from one’s, and one’s neighbor’s, pride, vanity, and conceit toward the instantiated word of God. It is an internal revaluation of one’s system of values, perhaps invisible to the outsider, but of elemental importance to that person’s own social and political being. It is a *metaphorical* “violence” and a metaphorical “siege” upon the city of God; it is devoid of—and indeed antithetical to—physical violence. It is a psychological “violence” whereby the multitude experiences a radical transformation of their own self-understanding en masse and at once. In his commentary, Calvin writes of Matthew 11:12,

The meaning therefore is, A vast assembly of men is now collected, as if men were rushing *violently* forward to seize *the kingdom of God*; for, aroused by the voice of one man, they come together in crowds, and receive, not only with eagerness, but with vehement impetuosity, the grace which is offered to them [...] Let us also learn from these words, what is the true nature and operation of faith. It leads men not only to give a cold and indifferent assent when God speaks, but to cherish warm affection toward Him, and to rush forward as it were with a violent struggle.<sup>136</sup>

133 Hoekstra, “Hobbes and the Foole,” 632.

134 Hayes, “Hobbes’s Silent Fool,” 228.

135 Ryan, “Hobbes’s Political Philosophy,” 230. See also, Newey, *The Routledge Guidebook to Hobbes’ Leviathan*, 102.

136 Calvin, *Commentary on a Harmony of the Evangelists, Matthew, Mark, and Luke*, 2:14–15.

Later Ellicott notes in his commentaries that “There is no thought of hostile purpose in the words.”<sup>137</sup> It is unlikely that Hobbes’s readers would have interpreted this passage literally and highly unlikely that Hobbes would have assumed so. In fact, just the opposite. (Note, too, that Matthew 11:12 is a paradigmatic example of rhetorical action in the service of new foundations found in the Christian tradition.<sup>138</sup>)

Hobbes continues his discussion of the fool in xxx and extends the same critique explicated above. Hobbes’s first move is to assert that theretofore most sovereigns—including Charles I—had been foolish in their rule and for that reason incapable of establishing a lasting peace. One sign of that foolishness is that “there has not hitherto been any Common-wealth, where those Rights have been acknowledged, or challenged.”<sup>139</sup> What does Hobbes mean by “acknowledged” and “challenged”? Hobbes immediately tells us. By “acknowledged”, he means that sovereignty has been acceded to not by external compulsion (physical violence) but by internal (popular and private) reverence. He calls this “popularity” and writes that “To have a known Right to Sovereign Power, is so popular a quality, as he that has it needs no more, for his own part, to turn the hearts of his Subjects to him”.<sup>140</sup> By “challenged”, Hobbes here means vigorously “demanded” in the same sense that “The Kingdom of God is gotten by violence”.<sup>141</sup>

137 Ellicott, *A New Testament Commentary for English Readers*, I:66. Ellicott’s commentary is clearer still:

*The kingdom of heaven suffereth violence.*—The Greek verb may be either in the middle voice, “forces its way violently,” or passive, as in the English version, but there is little doubt that the latter is the right rendering. The words describe the eager rush of the crowds of Galilee and Judaea, first to the preaching of the Baptist, and then to that of Jesus. It was, as it were, a city attacked on all sides by those who were eager to take possession of it.

*The violent take it by force.*—The Greek noun is without the article, “men who are violent or use force.” The meaning is determined by the preceding clause. The “violent” are men of eager, impetuous zeal, who grasp the kingdom of heaven—*i.e.*, its peace, and pardon, and blessedness—with as much eagerness as men would snatch and carry off as their own the spoil of a conquered city. Their new life is, in the prophet’s language, “given them as a prey” (Jeremiah 21:9; Jeremiah 45:5). There is no thought of hostile purpose in the words. (Ellicott, *A New Testament Commentary for English Readers*, I:66.)

138 Compare to Plutarch’s account of Solon: “the wisest of the Athenians cast their eyes upon Solon. They saw that he was the one man least implicated in the errors of the time.” Plutarch, “Solon,” § 14.

139 Hobbes, *Leviathan*, II:xxx. 522.

140 Hobbes, *Leviathan*, II:xxx. 550. There is more to say about xxx, which I address in Chapter Six.

141 Hobbes, *Leviathan*, II:xv. 222. There is more to say about popularity, which I address in Chapter Seven.

Under the correct interpretation of Matthew 11:12, we can now also see that Hobbes's distinction between "violence" and "unjust violence" is categorical. It is not a distinction between some kinds of physical violence that could be seen as just and others that would be unjust, where violence is understood as physical harm. Instead, and as noted, the distinction is between a metaphorical violence that categorically excludes physical violence and physical violence. In turn, that seems to mean that Hobbes's assignment of the latter as being "unjust" speaks strongly to the implication that the former is inherently "just".

So, at least regarding Hobbes's discussion of the fool, the insignificant distinction counterargument fails, and fails in a way that supports my thesis. It attests that individuals of moral righteousness are integral to Hobbes's understanding of regimes by institution and thus that the distinction between kinds of foundations is substantive.

I turn now to those passages more often referenced to collapse the distinction. Two passages in *Leviathan* are touchstones for this axiom. First, in XIV:

The force of Words, being [...] too weak to hold men to the performance of their Covenants; there are in mans nature, but two imaginable helps to strengthen it. And those are either a Feare of the consequences of breaking their word; or a Glory, or Pride in appearing not to need to breake it. This later generosity too rarely found to be presumed upon, especially in the pursuers of Wealth, Command, or sensuall Pleasure; which are the greatest part of Mankind. The Passion to be reckoned upon, is Fear; whereof there be two very generall Objects: one, The Power of Spirits Invisible; the other, The Power of those men they shall therein Offend.<sup>142</sup>

On a simple descriptive account, the passage clearly delineates a substantive distinction between these "two very generall Objects" of fear. Nevertheless, that is not how the passage has been presented in much of the commentary.

To begin, we need to consider how the distinction has been avoided. The most prominent interpretative approach is to ignore the distinction and focus only on the claim that "The Passion to be reckoned upon, is Fear" and to derive a foundational point therefrom.<sup>143</sup> For instance, Evrigenis notes that "death is the supreme evil because it deprives one of the power to do anything else."<sup>144</sup> Another move is to address the distinction but to argue

<sup>142</sup> Hobbes, *Leviathan*, II:XIV. 216.

<sup>143</sup> Hobbes, *Leviathan*, II:XIV. 216.

<sup>144</sup> Evrigenis, *Images of Anarchy*, 138.

that one prong of the distinction is not substantive and therefore that the distinction is hollow.<sup>145</sup> Specifically, the question there regards whether Hobbes's discussion of the power of invisible spirits is a substantive claim and, if so, whether it is a different kind of fear than the "Power of those men they shall Offend."<sup>146</sup> One example of this approach is found in Strauss, who addresses the passage head-on (because it presents a strong textual counterargument to his thesis regarding the *summum malum* in Hobbes). However, Strauss's rebuttal is thin, amounting to simply a statement that these passages mark "a deviation from Hobbes's key-thought",<sup>147</sup> namely that everything political in Hobbes can be reduced down to the fear of violent death and ergo can be ignored. Similarly, Skinner flags the passage as well but claims that Hobbes must not mean what he says because, for Hobbes, "God is completely incomprehensible" and "we cannot possibly know that the Scriptures are the word of God."<sup>148</sup> However, this critique is equally unsatisfactory. Skinner may be correct that philosophically speaking, "God is completely incomprehensible" for Hobbes, but politically speaking, that is the wrong conclusion. For Hobbes, as we have seen, the natural condition of the vast majority of humanity is theism, taking whatever public idol is on offer.

These interpretative difficulties disappear when read as following upon Hobbes's discussion of religion in XII. To begin, and to reiterate a point made above, it makes some interpretative sense to read a passage about "that Invisible Power, which they every one Worship as God"<sup>149</sup> as following from XII (OF RELIGION). More importantly, that self-evident continuity, when followed through, generates substantive interpretative clarity free of seeming paradoxes and inconsistencies. When we do, we can see that Hobbes is consistent and insistent that the distinction between types of regimes is substantive. Regimes by institution are established through the "greater Power", namely the fear of one's own God. Regimes by conquest are established through "the greater Feare", the fear of the other in battle.<sup>150</sup>

Hobbes then overlays atop the first distinction another temporal qualification between the "greater Power" and the "greater Feare", further delineating the difference between the two kinds of institutions. Hobbes

145 For example, Ahrens Dorf, "The Fear of Death and the Longing for Immortality," 582.

146 Hobbes, *Leviathan*, II:XIV. 216.

147 Strauss, *The Political Philosophy of Hobbes*, 25.

148 Skinner, *Visions of Politics*, III: *Hobbes and Civil Science*, 218.

149 Hobbes, *Leviathan*, II:XIV. 216.

150 Hobbes, *Leviathan*, II:XIV. 216. For an alternative account of Hobbes's discussion of the "greater power", see Lupoli, "Hobbes and Religion Without Theology," 464–66.

writes that the former “hath a place in the nature of man *before Civill Society*”<sup>151</sup> in the moment of confederacy. The latter fear “hath not so; at least not place enough, to keep men to their promises”.<sup>152</sup> The reason for this latter uncertainty is that the fear of the conqueror can only be discerned “by the event of Battell”.<sup>153</sup> The implication, which Hobbes then develops, is that the greater power—fear of God—may be able to “keep men to their promises”<sup>154</sup> in the pre-civil state without there being a battle to define by force who will be sovereign and who subject. Hobbes says just that

before the time of Civill Society, or in the interruption thereof by Warre, there is nothing can strengthen a Covenant of Peace agreed on, against the temptations of Avarice, Ambition, Lust, or other strong desires, *but the feare of that Invisible Power, which they every one Warship as God.*<sup>155</sup>

That “Invisible Power” of religion confers upon oaths made between confederates a measure of dependability in the eyes of the parties swearing an oath. Agents in the state of war swear oaths to each other, but one’s own action is regulated by one’s own faith. What makes those oaths more than mere words on the part of the oath-giver is that they are conjoined with a promise that “*unlesse he performe, he renounceth the mercy of his God, or calleth to him for vengeance on himselfe*”.<sup>156</sup>

Presumably, the reason these passages are explained away is that they do not accord with the standard model. However, situated within an argumentative arc starting at XII, as opposed to XIII, the passage can be explained following upon the discussion of the greater fear/greater power, God, and religion from XII. Specifically, Hobbes has in mind that regimes by institution require the instantiation (in action) of a power evident and eminent enough to transform the self-interested fear of others into a more general self-interested obligation and obedience to the founder/sovereign. Those founders do not terrify their audience; they awe them through eminent virtue (other-regarding, wise, sincere, and just actions).<sup>157</sup> Moreover, as we

151 Hobbes, *Leviathan*, II:XIV. 216 (emphasis added).

152 Hobbes, *Leviathan*, II:XIV. 216.

153 Hobbes, *Leviathan*, II:XIV. 216.

154 Hobbes, *Leviathan*, II:XIV. 216.

155 Hobbes, *Leviathan*, II:XIV. 216 (emphasis added).

156 Hobbes, *Leviathan*, II:XIV. 216.

157 Here I am in close agreement with Abizadeh, “The Representation of Hobbesian Sovereignty: Leviathan as Mythology.”

have seen, that theoretical arc extends forward to the discussion of the fool that follows only a few pages later.

The second textual touchstone for the collapsed distinction argument is in xx. There Hobbes writes,

And this kind of Dominion [commonwealth by conquest], or Sovereignty, differeth from Sovereignty by Institution, onely in this, That men who choose their Sovereign, do it for fear of one another, and not of him whom they Institute: but in this case, they subject themselves, to him they are afraid of. In both cases they do it for fear[.]<sup>158</sup>

Even more than the previous passages discussed, this passage is interpreted as collapsing the distinction between different types of regimes by reducing them both to fear.<sup>159</sup>

But is Hobbes really collapsing this distinction? It is evident that though “in both cases they do it for fear”, there is a crucial difference. Yes, Hobbes asserts that fear plays a role in both kinds of regime. Terrifying conquerors can establish a regime and force the very willing obedience of the conquered. However, by contrast, the fear inherent in the politics of regimes by institution is a mutual fear of the future subjects *of each other* and with one singular exception: “*him whom they Institute*”.<sup>160</sup> That person, in exact contrast to regimes by conquest, is specifically designated as someone whom the multitude—or confederates—does *not* fear. Collapsing the distinction means ignoring the distinctive feature of regimes by institution, namely that there is one person of whom the multitude is not afraid.

But we should push harder on this idea. Who is this figure? Why does the multitude not fear this particular figure in the same way that they fear everyone else? What is so exceptional about this figure that singles him or her out as the leader and potential future sovereign? These questions are never asked, presumably because when the distinction is collapsed, the questions themselves would seem inapt, if not simply nonsensical.

158 Hobbes, *Leviathan*, II:xx. 306.

159 For example, Evrigenis states that “the two allegedly distinct processes [are] effectively the same”; Evrigenis, *Images of Anarchy*, 114. Evrigenis’s claim in the text specifically references *De Cive*, but in n. 153 he makes clear that he holds the same opinion of *Leviathan*. See also Douglass, *Rousseau and Hobbes: Nature, Free Will, and the Passions*, 181; Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*, 124–25; Pettit, “Liberty and Leviathan,” 143; Tarlton, “The Creation and Maintenance of Government: A Neglected Dimension of Hobbes’s Leviathan,” 318–19; Hampton, *Hobbes and the Social Contract Tradition*, 120–21.

160 Hobbes, *Leviathan*, II:xx. 306 (emphasis added).

Unsurprisingly, and by necessity perhaps, if they were asked, the standard model could not muster any answers. The reason for this is that the agent cannot be overwhelmingly terrifying or even threatening in the sense of threatening physical violence; if they were, we would simply be talking of regimes by conquest. The agent cannot be chosen at random, as they would be indistinguishable from the greatest part of mankind and a typical agent of routine fear. These traits, whatever they may be, could not be normal or widely shared, for if they were, there would be no general fear of one to another. Finally, this person could not be elected in any democratic sense, either in the sense *Elements* or *Leviathan*,<sup>161</sup> for various reasons, the foremost being that Hobbes is not describing a deliberative moment. Of course, there is now an answer at hand. It is someone who has great power, not one who can generate the greatest fear. Hobbes is not collapsing any distinctions in this or the previously noted examples; he is stressing them, giving them color, and signaling to the reader just how important the distinction is.

This interpretative approach does not muddy the waters but provides significant clarity to particularly challenging arguments and coherence regarding the overall structure of Hobbes's arguments. Defenders of the standard model often find themselves having to save Hobbes from himself because of seeming incoherence. However, Hobbes can be saved from such incoherence if we follow him instead of the standard model and read his theory of new foundations as having started in XII. From that perspective, Hobbes is quite consistent with himself. As we have seen, Hobbes cuts out room for exceptional figures, "first Founders",<sup>162</sup> and "very able Architect[s]",<sup>163</sup> who even prior to a social covenant are considered *natural* "authorities" because of their eminent political wisdom. He writes that political successes make the multitude naturally "rely on him."<sup>164</sup> "For let a man (as most men do,) rate themselves at the highest Value they can; yet their true Value is no more than it is esteemed by others."<sup>165</sup> These eminently virtuous agents, who "love justice"<sup>166</sup> and enact "true justice",<sup>167</sup> are identified as manifesting what Hobbes calls elsewhere the "first Elements of Power" (wisdom, sincerity, etc.), as they convert people to obey "out of Reverence, not by Obligation".<sup>168</sup> One

161 See Chapter Two.

162 Hobbes, *Leviathan*, II:XII. 176.

163 Hobbes, *Leviathan*, II:XXIX. 498.

164 Hobbes, *Leviathan*, II:X. 134.

165 Hobbes, *Leviathan*, II:X. 134.

166 Hobbes, *Leviathan*, II:XV. 226–68 (Latin edition).

167 Hobbes, *Leviathan*, II:XV. 226–68 (Latin edition, emphasis added).

168 Hobbes, *Leviathan*, III:XLVII. 1114.

can be in awe of such an individual, but in the sense of being astonished, not terrified. It follows that the founders of regimes by institution are different from conquerors and the “greatest part”; they are morally and politically unique, not equal. Which is why the multitude—as with Numa, as in Matthew 11:12—stood in awe of their virtue and justness, not in terror.

Does this idea run against Hobbes’s rejection of there being a universal “utmost ayme” or “greatest Good”?<sup>169</sup> It is often claimed that Hobbes rejected the idea of there being a *summum bonum tout court* and that in the absence of a positive absolute on which to ground ethics and politics, he turned to the *summum malum* of violent death.<sup>170</sup> Violent death is said to be universally motivating because of its corporeal, as opposed to intellectual, basis, which cuts through the layers of vanity and linguistic ambiguity that make up so much of our mental and social lives, thereby revealing, however fleetingly, the common denominator of human nature. There are good reasons to think that the claim regarding the normative universality of violent death does not hold in general and certainly does not hold in the particular case of new foundations by institution and the question of justice.<sup>171</sup> I focus here on the particular case. Consider first the pertinent paragraph:

By MANNERS, I mean here [...] those qualities of man-kind, that concern their living together in Peace, and Unity. To which end we are to consider, that the Felicity of this life, consisteth not in the repose of a mind satisfied. For there is no such *Finis ultimus*, (utmost ayme,) nor *Summum Bonum*, (greatest Good,) as is spoken in the Books of the old Morall Philosophers.<sup>172</sup>

The question is specifically whether Hobbes’s rejections of the “utmost ayme” and “great Good” entail a paradoxical rejection of Hobbes’s own concern with felicity.

It seems from the sentence construction and the earlier (and later) discussions of felicity that Hobbes is *not* doing two things. First, Hobbes is not claiming that there are no positive human universals (as we have seen, Hobbes’s entire theory of religion rests on the universal human trait of curiosity). Instead, he is making a specific claim about the absurdity of the ancient philosophers’ metaphysics (and the popularization of Aristotelian metaphysics in Christian dogma). Second, Hobbes is also not rejecting felicity

169 Hobbes, *Leviathan*, II:XI. 150.

170 Strauss, *The Political Philosophy of Hobbes*, 6–29; Evrigenis, *Images of Anarchy*, 137, 125–55.

171 Recall also the discussion of Euripides in Chapter Four.

172 Hobbes, *Leviathan*, II:XI. 150.



tout court but expressly juxtaposing its universal value for prosperity *in this life* against the fantasies of the confused ancients and corrupted church. Hobbes's criticism is of the epistemology that transforms the *summum bonum* into an essence, not felicity in this life, which is something else altogether.

Indeed, the idea of felicity turns out to be of recurrent interest for Hobbes.<sup>173</sup> Consider further the idea of "extraordinary Felicity."<sup>174</sup> Felicity, for Hobbes, means "continuall prospering" in this life, "For there is no such thing as perpetuall Tranquillity of mind".<sup>175</sup> Hobbes highlights this point again in xxxvi in a cognate discussion of miracles and prophets. People should be wary of false prophets,

[f]or he that pretends to teach men the way of so great felicity, pretends to govern them; that is to say, to rule, and reign over them; which is a thing, that all men naturally desire, and is therefore worthy to be suspected of Ambition and Imposture; and consequently, ought to be examined, and tryed by every man, before hee yeeld them obedience[.]<sup>176</sup>

The passage posits an affinity between evaluations of a would-be founder's virtues and the relationship therein to the idiosyncratic (and internal) choice to subordination and obedience. Notably, Hobbes associates the expression of "great felicity" with the capacity to "pretend" to establish rule, and thereby to acquire real obedience of the many. This is a fundamental threat in a commonwealth in which the sovereign fails to secure the prospering of its subjects. But it is also a crucial political lesson for someone trying to found a new commonwealth and then maintain it.<sup>177</sup>

Hobbes repeats this same claim in xl. There he writes,

Notwithstanding the government both in Policy and Religion, were joined, first in the High Priests, and afterwards in the Kings, so far forth as concerned the Right; yet it appeareth by the same Holy History, that the people understood it not; but there being amongst them a great part, and probably the greatest part, that no longer than they saw great miracles, or (which is equivalent to a miracle) great abilities, or great felicity in the enterprises of their Governours[.]<sup>178</sup>

173 On felicity in Hobbes, see Corsa, "Thomas Hobbes: Magnanimity, Felicity, and Justice."

174 Hobbes, *Leviathan*, II:XII. 182.

175 Hobbes, *Leviathan*, II:VI. 96.

176 Hobbes, *Leviathan*, III:XXXVI. 674.

177 This threat is a recurrent one in the history of *actio*; see Chapter Three.

178 Hobbes, *Leviathan*, III:XL. 754.

Sweeping aside the question of the *right* of the sovereign to rule and focusing on the actual politics of rule, Hobbes asserts that peace and prosperity were ensured by the “greatest part” who looked up to their governor’s miracles of “great abilities” and “great felicity”. Hobbes goes on to point out that the real political conditions for the “ability” of sovereigns to be “uncontrolled in the use of”<sup>179</sup> sovereign power—that is, the very principle of sovereign absolutism in Hobbes—were, in this period of uncertainty, only afforded to those “as were gracious<sup>180</sup> for their own naturall abilities, or felicities.”<sup>181</sup> Not only was absolute sovereignty granted in effect, but it was realized without any ideological or educational support, and in total ignorance of the rights of sovereignty or any trade-offs between fear and obligation.

Hobbes is thus not clearing a path for asserting the foundational importance of the fear of violent death as the universal normative touchstone for his political philosophy. Yes, Hobbes holds that fear plays an important role in his political science. But it is wrong to conclude, that the only virtues that matter to Hobbes are those that lead to the creation of the state and which are, in turn, founded in the fear of violent death.<sup>182</sup> XII and a range of other central passages in the text attest to the opposite conclusion: that the founding virtues are those realized in the actions of the rare individuals who rise above the fear of violent death. Indeed, the long quotation above makes clear that when Hobbes writes, he is working to transform the debate over the virtues, not overturn it.

What, then, of the frontispiece? The frontispiece is rightly seen as a heuristic for Hobbes’s theory of representation and the state, but those ideas are also said to be themselves braced by or grounded upon the terror of the fearsome monster-sovereign that looms over the people. Evrigenis provides a lucent account of this interpretation. Tying the frontispiece to the rhetorical casting of *Leviathan* as a whole, Evrigenis writes,

The difficulties involved in reading correctly the motives of others, and in interpreting the significance of their actions and postures, leaves individuals unsure as to the extent to which someone constitutes a threat. For this reason, in examining the consequences of effective equality, Hobbes argued that even moderate individuals will be compelled to

179 Hobbes, *Leviathan*, III:XL. 756.

180 Gracious = “Characterized by or exhibiting kindness, courtesy, or generosity of spirit; courteous, considerate, tactful; generous”, *OED*, ‘gracious’, adj. 2a.

181 Hobbes, *Leviathan*, III:XL. 756.

182 Strauss, *The Political Philosophy of Hobbes*, 18.

exercise prudence. Hobbes describes this condition of uncertainty as a war of all against all because it lacks the “assurance” that something that appears threatening is, in fact, not. His explanation thus casts the frontispiece of *Leviathan* under a different light. The multiple evidence of a disposition to fighting, as evidenced in the sovereign’s posture, the numerous fortifications, drills, and men of war, and symbolized aptly by the clouds of foul weather over the sovereign’s head, show that the eerily peaceful scene below is not simply one of peace, but that war—as defined by Hobbes—is in fact all around.<sup>183</sup>

This is a sophisticated account of the frontispiece. And if indeed it is the message Hobbes intended to convey, it has been enormously successful. However, there is a puzzle here, and it is already manifest in Evrigenis’s observation that the scene of the frontispiece is “eerily peaceful”. Magnus Kristiansson and Johan Tralau note something similar: “Despite the fact that Hobbes named his sovereign state for a Biblical sea monster, there appears to be nothing monstrous and nothing aquatic in the giant sovereign depicted in the frontispiece.”<sup>184</sup> Kristiansson and Tralau solve this puzzle by redoubling on the monstrous-sovereign narrative, arguing that it is hidden in the background, implied yet still looming over the commonwealth. Where Evrigenis sees war everywhere, Kristiansson and Tralau find the true monster lurking behind the stage.

But that is only half of the story. As important as what the multitude turns away from is what they turn *to*. Is that figure so monstrous? Does it evoke the fear of violent death? Skinner has recently argued that this is not the case at all. Skinner shows that the monstrous account of the frontispiece of *Leviathan* rests on an ahistorical misunderstanding of the frontispiece, and writes,

The gesture with which the head of state brandishes his crozier appears to be straightforwardly affirmative. But if we turn to the sword of justice in his right hand, we come upon a more complex message about the character of sovereign power. He is not shown flourishing the sword aloft, as the figure of *Imperium* does in the frontispiece of *De cive*. Nor is the sword poised or pointed as if ready to strike. Rather it is tilted backwards from the landscape towards the sea and the sky beyond. The head of state is

<sup>183</sup> Evrigenis, *Images of Anarchy*, 143–44.

<sup>184</sup> Kristiansson and Tralau, “Hobbes’s Hidden Monster: A New Interpretation of the Frontispiece of *Leviathan*,” 299.

shown, in other words, holding back the sword of justice, ‘staying his hand’ in a gesture of mercy[.]<sup>185</sup>

Skinner argues that the reference is to the Old Testament, and that may be the case. However, the evidence presented above strongly suggests that, just as the frontispiece is a heuristic for the idea of representation and the state, it is also a heuristic for the would-be-sovereign reading *Leviathan* to embody “true justice”.<sup>186</sup> That interpretation is bolstered if we consider more closely the people who make up the body of the commonwealth. They are not cowed by fear but are instead standing tall and eagerly turning to the sovereign. It seems to evoke the politics of Matthew 11:12. What “violence” is depicted in the frontispiece seems like the “violence” of a people turning, individually but in unison and with force, toward the large soul of the sovereign.

To summarize, the text of *Leviathan* does not support the *insignificant distinction* axiom. Inversely, but to the same end, to maintain the insignificance of Hobbes’s distinction between regimes requires ignoring or discounting Hobbes’s various attendant claims and discussions. Moreover, the reasons it does not hold lend further substantive textual support to the idea expressed in XII, that what defines commonwealths by institution is one eminent individual rising above the tumult and fear so fully that the multitude confers on that individual their collective powers. The axiom stands not simply on a misreading of the relevant passages but on compounding the misreading informed by the two other misleading axioms. However, as I have argued, those axioms do not hold either. Indeed, when corrected, they generate a need for a precise distinction between conquerors and founders, which Hobbes duly provides. Again, XII proves not to be an aberration but a foundational part of Hobbes’s political science.

### **Beyond monarchy?**

Even accepting the arguments above, it could still be asserted that new foundations of the kind sketched in XII are nevertheless exceptionally rare and that most regimes are established by conquest. It could be further added that the kind of foundation outlined above also focuses only on individual founders and thus excludes foundations by aristocracies or democracies, so

<sup>185</sup> Skinner, *From Humanism to Hobbes*, 287 (citations omitted).

<sup>186</sup> Hobbes, *Leviathan*, II:xv. 226–28 (Latin edition).

it is not just rare but exceptionally rare.<sup>187</sup> I want to argue next that there are good textual reasons for believing that Hobbes's position was just the opposite: that even regimes by conquest must ultimately comport with the logics of regimes by institution.

Let me start by reconsidering the character of the conqueror. In the service of argumentative clarity, I have so far in this chapter highlighted the character of the founder, saying nothing about the character or the conqueror. That move facilitates clearly distinguishing between the two modes of regime creation. As we have seen, Hobbes is often quite clear that the conqueror is one who is feared. However, there are seemingly important complications that are worth considering.

To see why, consider the act of conquest more closely. First, when faced with the threat of violent death, submission is, all things considered, a serious decision. That is obvious enough, and Hobbes is eager to have the point accepted at face value, most especially when he is prompting readers to reflect abstractly on the nature of obligation. However, when shifting analytical registers from readers of *Leviathan* to individuals submitting to a conqueror, the actual decision seems less obviously simple.

Note that natural right discussions do not get us very far in understanding the decision to submit. Most radically, the fear of violent death *alone* gets us nowhere analytically. The fear of violent death is present in war, both as a far-off potentiality and when swords are swinging. But so are other drives. More importantly, each instance of fear does not produce submission (and certainly not consent). Just the opposite: when people are in fear of violent death, the last thing they want to do is to give their swords to their enemies and then stick out their necks. Moreover, when faced with sheer direct violence, the natural laws similarly get us nowhere, as they are all conditional on joint commitments (as Hobbes also notes). So, both the right and the law of nature as much push the individual to *continue* to fight than to submit. Indeed, the very framing seems misleading. Conquests are outcomes of wars. Wars are not single events—those are battles—and the “event of Battell”<sup>188</sup> is an entirely insufficient foundation for real obligation on conqueror countries to conquering sovereigns.

On what grounds—in light of what information—will the individual willfully submit? The only other possibility is that the practical experience gained over the course of the war is used as a guide, the only available

187 Note that this question is not particularly relevant to the arguments in this chapter but are significant for the arguments in Chapters Six and Seven.

188 Hobbes, *Leviathan*, II:XIV. 216.

guide, to submit or not. Wars are yearslong iterations of many battles, from which much is learned on all sides. As will be seen in Chapter Seven, a large part of the equation pertains to one's own sovereign's (or commanders) virtues. Focusing here only on the conqueror, it seems that the (would-be) conquered learns quite a bit about the character of the invading commander. If the (would-be) conquered believes that the conqueror will continue to barbarically threaten one's life, the country will not submit, because they will rightly believe that the war will continue nevertheless. In that scenario, natural right and law compel *continued* war against barbaric conquerors. Promises of peace are as flaccid as all other would-be conquerors' assertions of righteous intent. It is only where the conqueror can persuade—by deeds, and sincere words—the would-be conquered multitude that they can safely and profitably lay down their arms that a multitude will concede. Hence: yes, submission to a conqueror is granted out of fear. And yes, Hobbes is clear that the obligations *that follow* are theoretically near-absolute no matter the mode of submission. But regarding the moment of submission itself, the would-be conquered must choose between slavery or servitude, which can only be decided by way of evaluating the character of the would-be master.<sup>189</sup>

The same critique applies when the conquering commonwealth is a democracy or aristocracy. The reasons for this have nothing to do with the nature of assemblies and everything to do with the nature of conquest: countries are conquered by armies that are led by commanders. Those commanders may be appointed by assemblies, but they act beyond the practical reach of sovereign control. When a state is invaded, and if a state is destroyed, it is invaded and destroyed by one commander. If a democracy or aristocracy conducts wars of conquest, the (would-be) conquered experience it, materially on the battlefield, in terms of a confrontation with a single quasi-monarchical person, and it is to them they must submit (or not). The only information of actionable weight is the character of that commander. That information is not certain, but it is far more certain than notions of natural right, natural law, or political science.

It could be that that is the end of the story: a conquered people submit to a seemingly virtuous, or, at least, not eminently cruel commander and then are made full members of the polity. However, it is possible—indeed, it is almost certain—that the country was merely subdued by force and for spoils, not out of some abstract desire to expand the commonwealth. How are cases of popular imperialism to be considered?

<sup>189</sup> Hobbes, *Leviathan*, II:XX. 312.

The first thing to note is that, for Hobbes, in those cases, just as with the moment of conquest, the conquered country is not in fact ruled by an assembly but by a monarchy representing the assembly. Indeed, assemblies cannot maintain a conquest of foreign peoples but by monarchy. Hobbes writes,

[I]f a Popular, or Aristocraticall Common-wealth, subdue an Enemies Countrie, and govern the same, by a President, Procurator, or other Magistrate; this may seeme perhaps at first sight, to be a Democraticall, or Aristocraticall Government. But it is not so. For Elective Kings, are not Soveraignes, but Ministers of the Soveraigne; nor limited Kings Soveraignes, but Ministers of them that have the Soveraigne Power: Nor are those Provinces which are in subjection to a Democracie, or Aristocracie of another Common-wealth, Democratically, or Aristocratically governed, but Monarchically.<sup>190</sup>

The conquered country seems—Hobbes does not explicate these points in any depth—to have the status of a slave, not a servant. In the Latin version, Hobbes clarifies the nature of their consent, noting that the conquering commonwealth “force it to obey”, implying that, absent of force, the union will immediately dissolve.<sup>191</sup> But then another problem immediately arises: Is this even a commonwealth? Again, Hobbes is unclear, but it seems to be an example of what Hobbes elsewhere calls “united conquests”,<sup>192</sup> which he compares to a festering boil (which, notably, stem from sovereign vice).

If that is correct, then Hobbes's remarks entail further vexing practical considerations pregnant with implications for how we understand regimes by conquest. For instance, it implies that the assembly has effectively chosen *not* to accept the consent of the would-be subject. Those subjected *may* have wanted to become subjects, but the assembly has chosen to give them the status of slaves, in which case the war never really ended. Furthermore, it raises questions regarding when a conquered “country”—Hobbes's own term that seems to manifest the inaptness of “people” or “multitude” in this context—*joins* the assembly (where it was an assembly that conquered

190 Hobbes, *Leviathan*, II:XIX. 294. Or, as Hobbes says elsewhere, “yet when they are governed by an Assembly, not of their own choosing, 'tis a Monarchy; not of *One* man, over another man; but of one people over another people” (Hobbes, *Leviathan*, II:XIX. 298).

191 Hobbes, *Leviathan*, II:XIX. 294–95.

192 Hobbes, *Leviathan*, II:XXIX. 518.

them). Even granting a social covenant by force, we would nevertheless have to understand how covenant by other-determination (pure force) becomes a social covenant of self-determination (institution). It is as though regimes by conquest—although theoretically clear insofar as they express abstract considerations of a hypothetical moment of consent to a looming violent assailant—are ultimately dependent on a yet further covenantal moment wherein an ununited commonwealth, split between an assembly's citizens and slaves, unites. Slavery is war by other means; slaves *can* consent and become subjects or citizens, but only if they are accepted into the commonwealth. As Hobbes writes,

It is not therefore the Victory, that giveth the right of Dominion over the Vanquished; but his own Covenant. Nor is he obliged because he is Conquered; that is to say, beaten, and taken, or put to flight; but because he commeth in, and Submitteth to the Victor; Nor is the Victor obliged by an enemies rendring himselfe, (without promise of life,) to spare him for this his yeelding to discretion; which obliges not the Victor longer, than in his own discretion hee shall think fit.<sup>193</sup>

The same must apply to the process of uniting ununited conquests. What *kind* of foundation is that? Hobbes does not develop the point. However, he does not appear to have any options. It cannot be conquest *again*, as that would not resolve anything; it must, so it seems, be by institution.

What then of post-foundational politics for the conquering monarch? Assuming that the conquest is successful, are they subject to the same considerations set out in XII? In other words, there are many reasons why someone may submit, so do they have to be the same kind of conditions (eminent virtue) set out in XII? I see no way in which Hobbes could deny this as a matter of political practice (he always denies it as being legitimate ground for resistance, but that is another question altogether<sup>194</sup>). The reason is as follows. The sovereign cannot rule in the realm of theology willy-nilly and certainly cannot choose not to. Religious power is not a subordinate office (as it was in *De Cive*) of which some subordinate can be made the head. And recall, Hobbes had the theoretical means to treat the church in exactly that way, for that is what he essentially did to the borough corporation.<sup>195</sup> Johan Olsthoorn has shown that same point in a more general sense in his

193 Hobbes, *Leviathan*, II:xx. 312.

194 See Chapter Seven.

195 See Chapter Two.



study of the revised theory of subordinate corporations in *Leviathan*.<sup>196</sup> Instead of subordinating the church, as Olsthoorn shows, Hobbes does something radically different: in *Leviathan* he makes religion an essential attribute—not simply half but a necessary attribute—of embodied sovereign power. As Hobbes writes in XII,

But where God himselfe, by supernaturall Revelation, planted Religion; there he also made to himselfe a peculiar Kingdome; and gave Lawes, not only of behaviour towards himselfe; but also towards one another; and thereby in the Kingdome of God, the Policy, and lawes Civill, are a part of Religion; and therefore the distinction of Temporall, and Spirituall Domination, hath there no place.<sup>197</sup>

Amy Chandran drives home a similar point (contextualizing it within the French debates over religious authority swirling around Hobbes while he wrote *Leviathan*).<sup>198</sup> Chandran shows that Hobbes's approach to religion is not the Erastianism of *De Cive*. It is a full-scale incorporation of ecclesiastical and civil power.<sup>199</sup> And that is the whole point. *All* sovereigns—including conquering new sovereigns who gained their office by sheer force—have no choice but to bear the office, to be authoritative, and thus to manifest love, sincerity, wisdom, and divine revelation in the service of effective rule. To not do so is to give up on a full half of sovereignty, which is to give up on the whole. To reject the idea that the natural person who bears the office of the sovereign is at once the natural person who bears the burdens of religious rule is to mangle the architecture of the political philosophy of *Leviathan*. So, must conquerors assume the study of virtue and vice? Yes, they have no choice. And it follows that renegeing on that duty is to inflict self-harm by abandoning an essential duty of the office.<sup>200</sup>

Let me now bring the point home. These observations force me to confront an implication of my own argument that I have so far avoided: Does my argument for keeping the distinction between kinds of foundations—of not collapsing the distinction between regimes by institution and conquest into the simple logic of the fear of violent death—ultimately imply that the distinction *should* be collapsed, just in a different way, toward a primacy

196 Olsthoorn, "The Theocratic Leviathan: Hobbes's Arguments for the Identity of Church and State."

197 Hobbes, *Leviathan*, II:XII. 180. See also Hobbes, *Leviathan*, II:XXIX. 510–12.

198 Chandran, "Hobbes in France, Gallican Histories, and *Leviathan*'s Supreme Pastor."

199 Chandran, "Hobbes in France, Gallican Histories, and *Leviathan*'s Supreme Pastor."

200 Hobbes, *Leviathan*, II:XIX. 288.

of virtue? The answer seems to be “yes,” necessarily. New foundations are, seemingly, *always* the stuff of individual founders, and irrespective of whether that founder appears as a conqueror or a peer, the question of virtue is of central importance.

I have argued that (i) all new foundations by either institution or conquest are carried out by one person, and so they are, in effect, monarchical and (ii) post-conquest democratic regimes must also act virtuously, or at least be virtuous enough to appoint honorable commanders and avoid flagrant vice. Is it not yet another bridge too far to assert that for Hobbes *democracies* must be virtuous regimes? At no point does Hobbes state that this is a formal condition. However, as a practical point, the simple answer reiterates the points above: they have no choice.

That said, noting that assemblies are bound by the same conditions is different from saying that they are equally able to meet those conditions. And on this count, Hobbes is pleased to pounce on democracy. Hobbes turns to this very point in XIX. He begins, as always, by stating that there is no difference in the power of the regimes, reiterating his claim that tyranny is merely a slanderous, not substantive, claim and other essentially *de facto* justifications. Then Hobbes’s critique takes a substantive turn. He notes that although there is no difference in their power, there is a crucial difference “of Convenience, or Aptitude to produce the Peace, and Security of the people; for which end they were instituted.”<sup>201</sup> To understand those differences, Hobbes asserts, the most important thing to note is that “whosoever beareth the Person of the people, or is one of that Assembly that bears it, beareth also his own natural Person.”<sup>202</sup> Those natural persons must tend to the public good but will also tend to their own private good. Then, Hobbes gets to the question of character. The passage is worth quoting at length:

Now in Monarchy, the private interest is the same with the publique. The riches, power, and honour of a Monarch arise *onely* from the riches, strength and reputation of his Subjects. For no King can be rich, nor glorious, nor secure; whose Subjects are either poore, or contemptible, or too weak through want, or dissention, to maintain a war against their enemies: Whereas in a Democracy, or Aristocracy, the publique proserperity conferres not so much to private fortune of one that is corrupt, or ambitious, as doth many times a perfidious advice, a treacherous action, or a Civill warre.<sup>203</sup>

<sup>201</sup> Hobbes, *Leviathan*, II:XIX. 288.

<sup>202</sup> Hobbes, *Leviathan*, II:XIX. 288.

<sup>203</sup> Hobbes, *Leviathan*, II:XIX. 288 (emphasis added).

Hobbes catalogues many functional differences between monarchs and assemblies, but he seems to hold that the fundamental problem with democracy is that it invites the corruption of vanity, pomp, and vice. On this particular count, at least, his critique of democracy has not changed at all since *Elements*, and he was eager to hammer home the point.

## Conclusion

The soul of Hobbes's theory of new foundations is found in XII. In it he describes the essential and immutable role of the (would-be) sovereign's character in founding and maintaining regimes. Those ideas do not align with the standard model and, presumably, that is why critiques of Hobbes's political theory often ignore XII. Conspicuously, if XII and the wealth of ideas flowing from it are not ignored, they are usually described as aberrational and unrepresentative of Hobbes's thought. But XII should not be ignored, and the more we become aware of the interpretative costs of prioritizing Hobbes's "real intention"—that is, ignoring a whole chapter, misrepresenting key passages, disrupting the otherwise clear cadence of Hobbes's argumentation—the more that interpretative move becomes implausible. Cleaving to *Leviathan* yields a stronger and more coherent account of Hobbes's political theory than conjuring his "real intention." Fundamentally, what it reveals is a fuller and more practical account of the politics of new foundations. That account is seemingly problematic, if not simply impossible, insofar as it is in stark disagreement with many foundation interpretations of Hobbes's thought. I have addressed three major counterarguments, and I have shown that they all fail. Indeed, the reasons why they fail lend further support to the argument that XII is of general importance. The standard account is misleading, and it is wrong to assume that Hobbes's theory of new foundations starts in XIII; it starts in XII.

Lastly, allow me to return to the overarching puzzle of new foundation in terms of what I have called the democratic deficit in *Leviathan*. Recall that the problem was that borough democracy did crucial and necessary work in Hobbes's theory of new foundations in *Elements*, but by 1651 it was resoundingly clear that this was a fundamental problem (theoretically, historically, and personally for Hobbes). So, I argued that *Leviathan* went to war against that idea but did not *seem* to have a replacement (a seeming absence implicitly accepted in the standard model). I have argued that the replacement theory of new foundation is located in XII. Notably, that theory solves the problem of the democratic deficit. XII ticks all the boxes,

so to speak. It gets us a theory of new foundations that is antithetical to practiced democracy; indeed, it inverts the entire system by asserting that all regimes must be founded by individual figures. However, it also gets Hobbes the general and uniform consensus that democracy provided in *Elements*, only this time by way of constitutive rhetorical action. Like democracy, the foundational moment is an intermediary moment between (civil) war and an artificial state. However, it resolves in the person of the monarch or conqueror, not the borough. Finally, and necessarily, Hobbes's understanding of the cycle of regimes is also inverted, as here all regimes begin as monarchies, from which, with the monarch's clear will to do so, other regimes may follow.

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## 6. Law and Natural Justice

**Abstract:** This chapter is a study of natural justice in *Leviathan*. Beginning with a critique of natural justice and magnanimity in Aristotle and in Hobbes's *De Cive*, and then turning to analyses of the relationship between natural justice and nomos, natural law, the command theory of law, and God's law in *Leviathan*, I argue that Hobbes's account of law routinely references the necessity for instantiated and eminent sovereign virtue. I argue that natural and positive law are conditioned by eminent sovereign virtue, and that although that condition may be latent during normal times, it is an essential condition for the practical realization of both in moments of emergency and crisis.

**Keywords:** natural justice; law; natural law; divine law; virtue

### Introduction

I now turn to consider the significance of Hobbes's politics of new foundations to his legal philosophy. One of the counterarguments I addressed in Chapter Five was the idea that justice cannot exist before the existence of a commonwealth. I addressed that argument by discussing various signals in the text indicating that Hobbes's critique was in fact not so stringent and that justice could be manifest before the commonwealth. My aim there was minimal, simply to consider whether on basic textual grounds there were reasons to believe that this seemingly absolute claim was not so. This chapter develops the positive critique of that claim.

I will argue that *Leviathan's* crowning lesson is that sovereigns should commit themselves to the study of "natural justice", because it is the ultimate normative foundation of both the civil and natural laws. Likely, this claim strikes the student of Hobbes's legal and political philosophy as absurd. The term "natural justice" evokes the political and ethical philosophies of the ancients—specifically Aristotle's virtue ethics—while Hobbes's contribution to legal philosophy is said to be, in one way or another, turning away from



these categories. The scholarly debate regards whether Hobbes defended some form of command or natural law theory (or a combination). Those defending the “command theory of law” interpretation of Hobbes hold that individuals can speak of subjective attractions as “good” and aversion as “evil” but that “just” and “unjust” are contrivances of artificial sovereign power manifested in the civil laws. This is the “orthodox”, “traditional”, or “standard” view of Hobbes as a forefather of legal positivism.<sup>1</sup> Internal to this critique are important questions regarding the nature of that command and its ultimate source.<sup>2</sup> But in any case, the idea of natural justice is held as oxymoronic, and it is never entertained that the legitimacy of sovereign command is rooted in the virtues of the natural person bearing the office of sovereignty. Natural law interpretations often agree that justice is an output of sovereignty. However, they reject that Hobbes’s discussion of the natural law is insignificant, holding instead that the natural laws give pre-political normative grounding to the civil law.<sup>3</sup> These normative motivations are variously ascribed to rational or theological sources but never to natural justice. Many intermediary positions have tried to reconcile these seemingly incompatible interpretations, but not in a fashion that addresses the question of natural justice.<sup>4</sup>

1 See Kavka, *Hobbesian Moral and Political Theory*; Hampton, *Hobbes and the Social Contract Tradition*. Perhaps the clearest statement to this effect is found in Norberto Bobbio, who writes:

What is valid for the truth in logic is also valid for justice in politics: there is no eternal or natural justice. “Just” is what human beings have agreed to call by this name. In order to leave the state of nature, human beings have agreed to subject their wills to that of a third person, who is the beneficiary of their agreement. “Just” is therefore, in the last instance, what the sovereign wills. (Bobbio, *Thomas Hobbes and the Natural Law Tradition*, 96.)

See also Olsthoorn’s forthcoming *Hobbes on Justice*.

2 Throughout I will refer to this general school of thought as the “command theory.” But a note on the difficulties of that term is in order. Hobbes is neither a positivist, in H. L. A. Hart’s sense (Hart, “Positivism and the Separation of Law and Morals.”), nor a command theorist, in John Austin’s sense (Austin, *The Province of Jurisprudence Determined*.) In both cases, the reason is that the ultimate source of civil law’s legitimacy is the social contract. Contrary to Austin, the force of law only appears for Hobbes in the second order as coercion, with its primary institutional force deriving from the social covenant. Austin expresses this criticism himself; see Austin, *The Province of Jurisprudence Determined*, 229–34, n. 22. Contrary to Hart, Hobbes makes clear that where the civil laws are antithetical to the natural laws, then the civil laws lose their force, and although they are still promulgated as laws, they are in fact simple coercion. These core issues with construing Hobbes as either a positivist or a command law theorist are addressed by various intermediary interpretations of Hobbes’s philosophy of law; see note 4 below.

3 Taylor, “The Ethical Doctrine of Hobbes”; Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*; Martinich, *The Two Gods of Leviathan*.

4 Lloyd, *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature* (although Lloyd ultimately asserts that the natural laws are “self-effacing” and subsumed within the civil

Which brings me to the puzzle. The seemingly impossible claim that sovereigns must be philosophers of natural justice is not mine but rather comes almost verbatim from Hobbes's concluding claim of the second part of *Leviathan* ("the Science of Naturall Justice, is the only Science necessary for Sovereigns"<sup>5</sup>). What are we, then, to make of the fact that in the final paragraph of the second part of *Leviathan*, Hobbes gives pride of place to an idea that appears incompatible with his own ideas regarding the nature of law (civil and natural)? Deepening the puzzle, in *De Cive* Hobbes expressly rejects natural justice, setting his own accounts of the civil and natural laws—indeed, setting his whole civil science—against this ancient idea.<sup>6</sup> And yet, in *Leviathan* Hobbes removes each negative reference to natural justice and adds four positive references and multiple affirmative allusions to it.

Scholars have rarely commented on the significance of natural justice in *Leviathan*, so a preliminary word on this subject is in order. Presumably, scholars could use one of three explanations to dismiss natural justice. First, they could claim that it is synonymous with natural law. Secondly, natural justice could be dismissed as an inconsequential slip of the pen in *Leviathan*. As I will show, neither of these claims withstands scrutiny. Hobbes does not conflate the ideas of natural law and natural justice, and he is precise and consistent in his deployment of the idea. The third explanation is that Hobbes is merely referring to his schema of science, whereof "just" and "unjust" are a branch of contracts, which is a branch of speech, which is ultimately a branch of "natural science".<sup>7</sup> Hence, natural justice refers to the study of contracts. However, Hobbes never uses the term "natural justice" to refer to the justice of contracts (though Hobbes certainly uses the term "justice" in contracts both as an output of a law of nature and as made practicable by the arbitrary power of the state).<sup>8</sup> As I will show, Hobbes only uses the phrase in regard to sovereigns, who are not bound by

laws and sovereign command); Zagorin, *Hobbes and the Law of Nature*; Fox-Decen, "Hobbes's Relational Theory: Beneath Power and Consent"; Dyzenhaus, "Hobbes and the Legitimacy of Law"; Dyzenhaus, "Hobbes on the Authority of Law"; Cuffaro, "On Thomas Hobbes's Fallible Natural Law Theory."

5 Hobbes, *Leviathan*, II:XXXI. 574.

6 In *A Minute or First Draught of the Optics* (1646), Hobbes remarks that his *De Cive* was the first true science of natural justice; Hobbes, *The English Works of Thomas Hobbes of Malmesbury*, VII:471. He appears to mean that it is a science of virtues and vice, stripped of its ancient connotations.

7 Hobbes, *Leviathan*, II:IX. 130–32.

8 Furthermore, to hold this position would not resolve the seeming paradox but only invert it and make Hobbes's rejection of natural justice in *De Cive* incomprehensible.

any contractual relations or their deputies in situations where there are no contracts to guide their actions.<sup>9</sup>

What follows is a study of natural justice in *Leviathan* and its implications for understanding Hobbes's legal philosophy. I make three arguments. First, I argue that the natural laws are, in political practice, contingent on instantiated natural justice. And unlike the negative duties delineated in natural law, which apply to all, natural justice speaks to a positive moral duty of the natural person of the sovereign.<sup>10</sup> The natural laws do not make reference to natural justice, but they are practically—that is, politically—contingent upon the instantiation thereof. Second, I argue that although the positive laws formally derive from the command of the sovereign, their ultimate legitimacy is sourced in the character of the natural person (or persons) who bear the office. Third, extending and uniting the first two arguments, I argue that the shared determination of the political legitimacy of the natural and civil laws by instantiations of natural justice (as found in the exemplary moral character of the natural person of the sovereign) is made evident in Hobbes's discussion of law in the exceptional moments in a commonwealth's life.<sup>11</sup>

Hobbes only uses the term “natural justice” four times in *Leviathan*, so I should say something about that before proceeding. I will argue that natural justice is essential to a full account of Hobbes's philosophy of law. What, then, explains the discrepancy between Hobbes's apparently sparse treatment and my strong claim? A part of it, I believe, has to do with intended

9 The only comprehensive account of natural justice's significance in *Leviathan* is Craig's *The Platonian Leviathan*. Craig argues that the idea of natural justice, among many other paradoxes in *Leviathan*, esoterically signals Hobbes's philosophical affinities with Plato. My critique differs from Craig's in two ways. First, I am not taking Platonism as a primary interpretative guide, instead asserting a more direct link to Aristotle. Second, the puzzles I address are not essential to the text of *Leviathan* (like those paradoxes that generate Craig's exegesis). Instead, they only appear to be paradoxes between the idea of natural justice in *Leviathan* and the standard model. Those kinds of puzzles are not paradoxes in Craig's sense, since my argument is that the standard model is mistaken.

10 On the natural person of the sovereign, see Slomp, “The Inconvenience of the Legislator's Two Persons and the Role of Good Counsellors”; Sorell, “Hobbes and the Morality beyond Justice”; Sorell, “The Burdensome Freedom of Sovereigns.” See also Chapters Three, Four, and Five.

11 Many have argued that Hobbes's intention was to pivot political philosophy away from virtue ethics; see Strauss, *The Political Philosophy of Hobbes*; Bagby, *Thomas Hobbes*; McClure, “War, Madness, and Death.” Others disagree; see Boonin-Vail, *Thomas Hobbes and the Science of Moral Virtue*; Ewin, *Virtues and Rights*; Skinner, *Reason and Rhetoric*, 11. On modesty specifically, see Cooper, “Vainglory, Modesty, and Political Agency in the Political Theory of Thomas Hobbes.” On magnanimity, see Corsa, “Thomas Hobbes: Magnanimity, Felicity, and Justice.” On the moral virtues as an output of natural law, see Gert, “The Law of Nature as the Moral Law”; Gert, *Hobbes: Prince of Peace*.

audiences. I am assuming a political reading of Hobbes, one that assumes Hobbes was concerned with both the politics of ruling and the politics of being ruled.<sup>12</sup> The politics of natural justice are usually in the background. And in the day-to-day life of a regime, neither the law nor the people are much concerned with the character of sovereign's natural person. However, in exceptional moments (foundations, emergencies, war, international crises, civil tumult, or other exigencies putting the natural person of the sovereign front and center of politics), these politics are crucial. Those different politics must be kept separate. Rulers need to prepare for the latter, and the ruled need to be disciplined to abide during the former. More importantly, as will be seen, although the specific term only appears four times, the politics of natural justice are discernable across *Leviathan*.

I begin with an account of natural justice in Aristotle and Hobbes's rejection of it in *De Cive*. I then consider Hobbes's return to the idea of *Leviathan*. Therein I will consider Hobbes's discussion of *nomos* and new foundations in xxiv, the relationship between natural justice and natural law in xxvi, the relationship between natural justice and command in xxx, and natural justice and the law of God in xxxi. I conclude with some brief observations on how to reconcile my argument with alternative accounts of Hobbes's legal philosophy.

## Natural justice in Aristotle and *De Cive*

Aristotle's discussion of natural justice is found primarily in book v of *Ethics* and book III of *Politics*.<sup>13</sup> Justice, Aristotle begins in *Ethics*, can be broadly understood as anything that "tends to produce or to preserve happiness and its constituents for the community of a city."<sup>14</sup> Justice is a "complete virtue,"<sup>15</sup> realized both in relation and with regard to others. Aristotle then proceeds to carry out an examination of the different manifestations of justice. The discussion opens with a consideration of "geometric" (or distributive) and "arithmetic" (or rectificatory) forms of justice. These forms of justice pertain to justice of transactions and, broadly speaking, the private sphere, or household justice. These forms of justice turn on questions of equity, and

12 This is the interpretative frame that I have defended in both Chapter Four and Five.

13 The idea of natural justice in Aristotle has been a constant point of contention in the literature; see Kraut, *Aristotle*, 125–32; Collins, *Aristotle and the Rediscovery of Citizenship*, 81–90; Duke, "Natural Justice and Natural Law."

14 Aristotle, *Nicomachean Ethics*, 1129b19–21.

15 Aristotle, *Nicomachean Ethics*, 1129b30–34.

their logics apply universally. Insofar as it is a virtue, justice as equity is a function of finding the mean (in the arithmetic sense). Hence, the role of judges is as mediators of private disputes.<sup>16</sup>

Political justice refers to the justice of constitutions. For Aristotle, constitutions represent the socio-political normative order of the governing class. As a political virtue, justice relates to relationships between ruled and rulers and can only be manifested by those who rule, as they must attend to the polity.<sup>17</sup> Virtuous rulers rule for the sake of all, while a corrupt ruler “exercises his wickedness in relation to himself and in relation to his friends”.<sup>18</sup> Uncorrupted regimes manifest the highest virtues of the governing class in an other-regarding concern for the people as a whole (polities, aristocracies, monarchies). Corrupted regimes tend to the vices of the rulers alone (democracy, oligarchy, or tyranny).<sup>19</sup>

Political justice comes in two types: legal justice and natural justice. Legal justice refers to conventional justice, a broad idea that delineates both constitutions and laws. This is the realm of the civil laws. Natural justice, Aristotle writes, refers to that which is universally just, which “is what has the same force everywhere and does not depend on people’s thinking.”<sup>20</sup> Natural justice is not the justice of equity and reciprocity standing as a universal model for the evaluation of situations of exchange or private relationships.<sup>21</sup> It is a universal “force”, a virtue of action. Aristotle notes that this idea is itself curious, as legal justice is patently different from one city to the next, while natural justice purports to speak to that which is unchanging.<sup>22</sup>

If natural justice is, as Aristotle writes, everywhere the same, why is it not practiced everywhere? And why does legal justice differ so markedly from one polity to the next? Aristotle’s answer is that natural justice is not a universally normative force, because it requires special human instantiation. What makes natural justice universal (like fire, to use Aristotle’s analogy<sup>23</sup>) is not that it is manifest in written laws or logically true in mathematical laws, or because of any transcendent moorings.<sup>24</sup> He writes, “things that are not just by nature, but are just for a particular group of people, are not

16 Aristotle, *Nicomachean Ethics*, 1132a20–25.

17 Aristotle, *Nicomachean Ethics*, 1129b35–30a8.

18 Aristotle, *Nicomachean Ethics*, 1130a9–10.

19 Aristotle, *Nicomachean Ethics*, 1134a33–b2.

20 Aristotle, *Nicomachean Ethics*, 1134b22–3.

21 Aristotle, *Nicomachean Ethics*, 1130a17–34a20.

22 Aristotle, *Nicomachean Ethics*, 1134b20–39. See also Aristotle, *On Rhetoric*, 1373b–74.

23 Aristotle, *Nicomachean Ethics*, 1134b30.

24 Duke, “Natural Justice and Natural Law,” 130.

the same everywhere, since political systems are not the same either".<sup>25</sup> To Aristotle, natural justice is universal because it is the only form of virtuous rule that "is naturally the best everywhere."<sup>26</sup> It is best because it promotes a general human happiness obtainable by all communities, irrespective of the *particular* virtues of each uncorrupted regime type.

In *Politics* Aristotle states that it is in the nature of every regime to evolve toward the type of justice entailed in their respective constitutions. Justice, on this first account, is defined by the virtues that demarcate the ends of the city. Aristotle writes,

[P]olitical communities must be taken to exist for the sake of noble actions, and not for the sake of living together. Hence those who contribute the most to *this* sort of community have a larger share in the city-state than those who are equal or superior in freedom or family but inferior in political virtue, and those who surpass in wealth but are surpassed in virtue.<sup>27</sup>

Having reflected on the nature of correct and corrupt regimes, Aristotle writes "that those who dispute about constitutions all speak about a *part* of justice."<sup>28</sup> The problem at hand is that the constitutional basis of every regime type is only a part of justice, specifically the part that relates to the limited virtues of those who rule. Hence, Aristotle arrives on the constitutional register at the analogous ethical problem of just citizens and just men found in *Ethics*: the figure of exemplary virtue who stands in dissonance to all constitutional orders, and yet whose justice is unparalleled. This is the constitutional backdrop of Aristotle's discussion of the magnanimous man.<sup>29</sup>

The magnanimous man poses obvious problems for corrupt regimes. But they pose far more interesting problems for correct regimes. "In the case of the best constitution," Aristotle writes, "there is a considerable problem, not about superiority in other goods, such as power or wealth or having many friends, but when there happens to be someone who is superior in virtue."<sup>30</sup> The problem is that the conventional justice of the regime cannot encompass the extraordinary virtue of the magnanimous man. Aristotle speaks of "one person or more than one" who is/are "so outstanding by reason

25 Aristotle, *Nicomachean Ethics*, 1135a1–7.

26 Aristotle, *Nicomachean Ethics*, 1135a6–7.

27 Aristotle, *Politics*, 1281a2–6.

28 Aristotle, *Politics*, 1281a9–10.

29 I discuss magnanimity again in Chapter Seven in relation to obligation. Here I focus only on those aspects pertinent to questions of law.

30 Aristotle, *Politics*, 1284b25–8.

of his superior virtue that neither the virtue nor the political power of all the others is commensurable with his".<sup>31</sup> This figure transcends and gives definition to their regime: "such men can no longer be regarded as part of the city-state".<sup>32</sup> Aristotle writes that this person (or "*these persons*", as it is not merely a discussion of kingship but also a discussion of rule) would "*reasonably be regarded as a god among human beings*";<sup>33</sup> whereas the law regulates the actions of the greatest part of humanity. For "the other sort," Aristotle writes, "*there is no law, since they themselves are law*."<sup>34</sup> Aristotle appears to hold that the superlative virtues of this ruler (or these rulers) are of a different order than the virtues of the polity that takes its orientation from the conventional mean. The two groups of virtues stand apart.

This form of regime is neither an unlisted seventh species of the six delineated regime types outlined by Aristotle nor is it a variant of monarchy. It is of a different genus.<sup>35</sup> The difference lies in the moral hierarchy of constitutions, rulers, laws, and ruled. Under all six regime types, Aristotle understands rulers are subordinate to constitutions, and the ruled subordinate thereto. By contrast, the rule of the magnanimous man speaks to a different hierarchy between laws, constitutions, and rulers. If a particularly virtuous agent is recognized as surpassing the virtues of all others combined, "people would not say that such a person [or persons] should be expelled or banished, but neither would they say that they should rule over him."<sup>36</sup> Thus, Aristotle speculates as to what this regime would look like: "The remaining possibility—and it seems to be the natural one—is for everyone to obey such a person gladly, so that those like him will be permanent kings in their city-states."<sup>37</sup> This figure—who stands apart from the commonwealth and is not bound by the law but from whom both conventional conception of justice as well as the constitutional norms are derived—establishes

31 Aristotle, *Politics*, 1283b40–4a17. On the exceptional nature of this regime, see Newell, "Superlative Virtue: The Problem of Monarchy in Aristotle's 'Politics'"; Lindsay, "The 'God-Like Man' versus the 'Best Laws': Politics and Religion in Aristotle's 'Politics'."

32 Aristotle, *Politics*, 1283b40–4a17. On the exceptional nature of this regime, see Newell, "Superlative Virtue: The Problem of Monarchy in Aristotle's 'Politics'"; Lindsay, "The 'God-Like Man' versus the 'Best Laws': Politics and Religion in Aristotle's 'Politics'."

33 Aristotle, *Politics*, 1284a10 (emphasis added).

34 Aristotle, *Politics*, 1283b40–4a17 (emphasis added).

35 Rosler, "Civic Virtue: Citizenship, Ostracism, and War," 155–56.

36 Aristotle, *Politics*, 1284b25–34.

37 Aristotle, *Politics*, 1284b25–34. Many commentators have framed this issue as one of kingship only; see Collins, *Aristotle and the Rediscovery of Citizenship*, 132–46; Bartlett, "Aristotle's Science of the Best Regime." However, Aristotle is clear that this is a general problem transcending the six regime-type schema.

their power by way of their exemplary virtue. Indeed, Aristotle holds that everyone would take it to be naturally just that these individuals rule over the constituted polity. It is political ostracism *in reverse*: the people banish themselves from ruling so as to be ruled.<sup>38</sup>

In *De Cive* (1642), Hobbes flatly rejects the idea of natural justice. Indeed, he casts his own political science as intending to confront and supplant the idea. Hobbes mentions natural justice twice in *De Cive*. Each offers different accounts of the term. In the epistle dedicatory, Hobbes addresses the concept of natural justice as passed down by the Aristotelians. In v he addresses the natural justice of some animals. Each of these discussions informs a different critique, each speaking to different manifestations of natural justice also found in Aristotle: the first as it pertains to rule, the second as it pertains to being ruled.

Hobbes states in *De Cive* that he began his own studies by following the classical humanist path and “*turned my thoughts to the inquiry of natural justice*”.<sup>39</sup> However, breaking from those humanist moorings, Hobbes’s interest turned away from natural justice to the nature of justice. Hobbes discovered that justice was indeed, as some of the ancients asserted, “*a constant will to give every man his right*”.<sup>40</sup> However, it “*did not originate in nature but in human agreement*”, specifically consent to sovereign power.<sup>41</sup> Justice, to Hobbes, is an artifice. This discovery allowed Hobbes to see that natural justice was an oxymoronic idea built upon the “false and empty semblance”<sup>42</sup> of “aristotelity” and as such an unsuitable foundation upon which to construct moral and legal philosophies (let alone commonwealths). Instead, “there are no authentic doctrines of just and unjust, good and evil, except the laws established in each commonwealth”.<sup>43</sup>

Hobbes’s second criticism of natural justice, in v of *De Cive*, speaks directly to Aristotle’s discussion of the “justice” of some animal communities. Hobbes asserts that Aristotle’s model is grounded upon another epistemological confusion. Although the “government” of bees and ants is a type of consent, it is based on the natural correspondence of their individual desires and the desires of the whole. “But it is otherwise,” Hobbes writes, “with men.”<sup>44</sup>

38 Recall Polybius’s account of Numa being “summoned to the throne”, Plutarch, “Numa,” § 4. 8.

39 Hobbes, *De Cive*, EPISTLE. 5.

40 Hobbes, *De Cive*, EPISTLE. 5.

41 Hobbes, *De Cive*, EPISTLE. 5.

42 Hobbes, *De Cive*, PREFACE TO THE READERS. 9.

43 Hobbes, *De Cive*, PREFACE TO THE READERS. 9–10.

44 Hobbes, *De Cive*, v. 71.



History begins with the invention of words. Words are anthropologically transformative because they constitute the epistemological foundation for mediated socialization, thereby enabling vainglory, disagreement, and public contestation.<sup>45</sup> It is because of the invention of words that natural justice has no bearing on human justice. Hobbes writes that “the accord of those brute creatures is natural; but accord between men is based on agreement, i.e. is artificial; it is not therefore surprising that something more is needed if men are to live in peace.”<sup>46</sup> Thus, Hobbes continues,

No *accord*, therefore, or *association* [*societas*] based on agreement can give the security required for the practice of *natural justice*, without some common power to control individuals by instilling fear of punishment.<sup>47</sup>

Hobbes's point is that whatever the nature of human covenants, they depend upon sovereign power, and natural justice is neither its basis nor its output. Justice does not have an ontological standing outside the law: “*Just* and *unjust* did not exist until commands were given; hence their nature is relative to a command; and every action in its own nature indifferent.”<sup>48</sup> Justice is an output of sovereign command.

### Natural justice in *Leviathan*

In *Leviathan* Hobbes removes every negative mention of natural justice and asserts positively that future sovereigns should commit their studies to natural justice above all else. Hobbes does this while reasserting elements of both the positive and natural law claims, augmenting the criticism of Aristotelian metaphysics and its ideological offshoots and retaining his anthropological critique of Aristotle's claim that humans are naturally political.<sup>49</sup> Hobbes uses the term “natural justice” four times over three chapters in *Leviathan* (XXVI, XXX, and XXXI), each at crucial intervals and

45 Hobbes, *De Cive*, v. 71–72.

46 Hobbes, *De Cive*, v. 72.

47 Hobbes, *De Cive*, v. 72.

48 Hobbes, *De Cive*, XII. 132. The quotation continues,

Legitimate kings therefore make what they order just by ordering it, and make what they forbid unjust by forbidden it. When private men claim for themselves a knowledge of *good* and *evil*, they are aspiring to be as Kings. When this happens a commonwealth cannot stand. (Hobbes, XII. 132.)

49 Hobbes, *Leviathan*, II:XVII. 258–60.

speaking to different permutations of the same idea. These permutations correspond to the relationship between natural justice and natural law, civil law, and sovereignty, respectively.

#### XXIV: Natural justice and nomos

Before considering the direct discussions of natural justice in *Leviathan*, consider one eminently peculiar discussion of new foundations, law, and justice, which follows upon the arguments in XII and prefigures those in XXVI, XXX, and XXXI. The discussion is found in XXIV (*Of the NUTRITION, and PROCREATION of a Common-wealth*) and turns around yet another standard-model denying claim by Hobbes:

From whence we may collect, that the Propriety which a subject hath in his lands, consisteth in a right to exclude all other subjects from the use of them; and not to exclude their Sovereign, be it an Assembly, or a Monarch. For seeing the Sovereign, that is to say, the Common-wealth (whose Person he representeth,) is understood to do nothing but in order to the common Peace and Security, this Distribution of lands, is to be understood as done in order to the same: And consequently, whatsoever Distribution he shall make in prejudice thereof, is contrary to the will of every subject, that committed his Peace, and safety to his discretion, and conscience; *and therefore by the will of every one of them, is to be reputed voyd*. It is true, that a Sovereign Monarch, or the greater part of a Sovereign Assembly, may ordain the doing of many things in pursuit of their Passions, contrary to their own consciences, which is a breach of trust and of the Law of Nature; but this is not enough to authorize any subject, either to make warre upon, or so much as to accuse of Injustice, or any way to speak evill of their Sovereign; because they have authorized all his actions, and in bestowing the Sovereign Power, made them their own. But in what cases the Commands of Sovereigns are contrary to Equity, and the law of nature is to be considered hereafter in another place.<sup>50</sup>

“Reputed voyd”? It is a perplexing passage. Like many passages discussed in this chapter, this one has been neglected by Hobbes scholars.<sup>51</sup> The reason is presumably a version of that described by Malcolm, namely that it seems

<sup>50</sup> Hobbes, *Leviathan*, II:XXIV. 390 (emphasis added).

<sup>51</sup> Exceptionally, see Van Apeldoorn, “Hobbes on Property: Between Legal Certainty and Sovereign Discretion.”

“impossible” since “the resulting meaning would conflict both with the sense of the passage and with Hobbes’s basic theory.”<sup>52</sup> To make sense of this claim, it helps to situate it within the discussion of natural justice broadly, and specifically in terms of the politics of new foundations. Let me focus now on the latter.

XXIV begins with a discussion of new foundations. It is about “The NUTRITION of a Common-wealth,” which Hobbes writes, “consisteth, in the *Plenty*, and *Distribution of Materials* conducing to Life”.<sup>53</sup> This, for Hobbes, is the first and foremost—the foundational—legal imperative of a regime, because it demarcates the very legality of the regime by defining the “constitution of *Mine*, and *Thine*, and *His*; that is to say, in one word *Propriety*”.<sup>54</sup> The creation of propriety is indistinguishable from the creation of the commonwealth and consists in the elemental distribution of land in the commonwealth. It is an ancient account of new foundations, as Hobbes immediately signals: “And this they well knew of old, who called that *Νόμος*, (that is to say, *Distribution*,) which we call Law; and defined Justice, by *distributing* to every man his *own*.”<sup>55</sup>

This preamble to the “reputed voyd” paragraph only makes Hobbes’s claim even more difficult to reconcile with the standard model, exactly because it addresses the question of justice in a rather particular war. Hobbes’s reference to the ancients who “well knew” what was meant when they spoke of *Νόμος* underlines that none of this was a slip of the pen. Of course, the reference is also interesting on its own. Hobbes may be referencing Plato’s discussion of justice in Book 1 of *Republic*. There Plato does indeed discuss the notion of justice as being something like “*distributing* to every man *his own*”,<sup>56</sup> as Hobbes says. However, as Hobbes may have recalled, that idea immediately transforms into a rejection of the Thucydidean claim that justice is the will of the stronger. Instead, Plato argues that the multitude is in need of direction from the ruler regarding justice, the ruler’s attentiveness must always be on justice, and the ruler will only rule reluctantly, as they rule not for money or honor but because they have a compulsion to, as “a true ruler doesn’t by nature seek his own advantage but that of his subject.”<sup>57</sup> Indeed, Plato concludes that this form of rule would be realized as a kind of ostracism in reverse: “in a city of good men, if it came into being, the citizen

52 Hobbes, *Leviathan*, II:XXIV. 391 (editorial note m).

53 Hobbes, *Leviathan*, II:XXIV. 386.

54 Hobbes, *Leviathan*, II:XXIV. 388.

55 Hobbes, *Leviathan*, II:XXIV. 388.

56 Hobbes, *Leviathan*, II:XXIV. 388.

57 Plato, “Republic,” 347d.

would fight in order *not to rule*, just as they do now in order to rule.”<sup>58</sup> Of course, Hobbes and his readers may also have had another ancient founder in mind: Solon, whose foundational politics amounted to a reconfiguration of the “Distribution of lands” in the service of “common Peace and Security”.<sup>59</sup>

To be clear, Hobbes signals that, whatever the distribution, it is to be called “equity” and it is an arbitrary decision on the founders’ parts. As Hobbes writes,

In this Distribution, the First Law, is for Division of the Land it self: wherein the Sovereign assigneth to every man a portion, according as he, and not according as any Subject, or any number of them, shall judge agreeable to Equity, and the Common Good.<sup>60</sup>

The de factoist elements seem clear, but they also read like a thin veneer. Undoubtedly, there is a decisionistic element here: the sovereign is he who decides on the equitable, so to speak. But Hobbes is also clear that the decision itself does not *make* equity or the common good. Hobbes only states that it is on the sovereign to judge what equity and the common good are and then declare them as such, two different things entirely. Second, it is equally clear that although it is not for the subjects to evaluate *declared* equity and *declared* common good, they are quite capable of coming to their own judgments thereof. Whether they are to act upon those judgments is a complicated matter (see Chapter Seven), but the point here is merely to establish this one distinction. Notably, that distinction has the benefit of making subsequent note in the “Reputed voyd” paragraph that “But in what cases the Commands of Sovereigns are contrary to Equity, and the law of nature is to be considered hereafter in another place.”<sup>61</sup>

So, the *nomos* of the regime establishes the proximity between the sovereign’s judgment, then decision, on the nature of justice and subjects’ personal notions of justice. Abstractly speaking, the purpose of new foundation is that every individual realizes their naturally deserved share, bestowed by the sovereign in their name and by their authorization. (As Hobbes wrote earlier in XIX, “where the publique and private interest are most closely united, there is the publique most advanced.”<sup>62</sup>) It is a radical popular imperative

58 Plato, “Republic,” 347d–e.

59 Hobbes, *Leviathan*, II:XXIV. 390. Matthew 11:12 comes to mind too.

60 Hobbes, *Leviathan*, II:XXIV. 388.

61 Hobbes, *Leviathan*, II:XXIV. 390.

62 Hobbes, *Leviathan*, II:XIX. 288.

that Hobbes places at the core of all regimes. This applies to regimes by institution but also to the moment of acquiescence to a conqueror.

Note that this is a foundational legal order in an essential sense. It is the basic structure on top of which the whole legal regime functions. As Hobbes writes, it is the "First Law".<sup>63</sup> It is not a question of just transactions; it is a question of the justness of the initial distribution of property in the regime. The difference, the proximity between sovereigns and subjects, seems to be between what is authorized for the common good and what is reputed as the common good, and the real possibility that what was authorized and why is not realized. The example of perfect correspondence is found prospectively in the philosopher king evoked by Plato and Hobbes (see Chapter Three and Four, and see also below in terms of natural justice) and the sovereign fool (see Chapter Five). The implication is that *radical* distributive injustice is nearly equivalent to war, but one brought on by the sovereign against their subjects.<sup>64</sup>

I stressed the extreme version of this claim to clarify the principle, but Hobbes's focus is on practical and historically prescient slow-burning inequities. Here Hobbes's first concern is with the initial and subsequent distribution of land to the people and the public and the problem of consigning some part of the territory to the natural person who bears the office of the sovereign. Formally, the sovereign can do as they please, but the practical and crucial question is how the natural person of the sovereign should distribute property to avoid the "dissolution of Government".<sup>65</sup> The example that Hobbes uses to make this point ties the foundational moment to Charles I and thus reiterates a not particularly subtle criticism of Charles' rule. Hobbes writes,

And whereas in *England*, there were by the Conquerour, divers Lands reserved to his own use [...] and divers services reserved on the Land he gave his Subjects; yet it seems they were not reserved for his Maintenance

63 Hobbes, *Leviathan*, II:XXIV. 388.

64 This discussion has parallels in xv. There Hobbes writes that the nature [in the Latin edition "essence"] of Justice, consisteth in keeping valid Covenants: but the Validity of Convenants begins not but with the Constitution of a Civill Power, sufficient to compell men to keep them: And then it is also that Propriety begins. (Hobbes, *Leviathan*, II:XV. 220–21.)

It may follow that if the nomos of the new regime disagrees with the essence of justice that at that moment the people may find it "contrary to the will of every subject, that committed his Peace, and safety to his discretion, and conscience; and therefore by the will of every one of them is to be reputed voyd" (Hobbes, *Leviathan*, II:XXIV. 390).

65 Hobbes, *Leviathan*, II:XXIV. 390.

in his Publique, but in his Naturall capacity: For he, and his Successors did for all that, lay Arbitrary Taxes on all Subjects Land, when they judged it necessary.<sup>66</sup>

There are multiple concerns at play to which I will turn momentarily, but perhaps the most important is to note that this description of the monarch is exactly the opposite of that discussed by Plato, signaled by Hobbes just a few paragraphs prior, and expressly criticized as being antithetical to monarchical rule in XIX. There, in XIX, Hobbes writes that

[n]ow in Monarchy, the private interest is the same with the publique. The riches, power, and honour of a Monarch arise *onely* from the riches, strength and reputation of his Subjects. For no King can be rich, nor glorious, nor secure; whose Subjects are either poore, or contemptible, or too weak through want, or dissention, to maintain a war against their enemies[.]<sup>67</sup>

If a monarchy is defined as a regime where the private interest and the public are same and the monarch's power, wealth, and glory derive from its people, what are we to make of Hobbes's discussion of a kingdom in which the founding nomos was established not for the common good but to enrich the natural person who bears the office?

Back to the passage. One concern signaled in the passage is ideological. By delineating public and private lands, the founder risks making the subjects believe that subjects are not themselves also committed to the protection of the commonwealth but simply recipients of protection, thereby reducing the commonwealth to a simple protection racket. Another is political, as it quickly becomes self-evident that the public lands were never meant to empower the sovereign to better protect the people but instead to serve as a trough for their personal consumption. Yet another is practical: even if the lands had been reserved for serving the public good, they were self-evidently "contrary to the scope of the Institution"<sup>68</sup> as far as they proved insufficient and required that the sovereign make demands of private property during times of political crisis. These concerns compounded and can lead to the collapse of the regime. It is not a problem regarding the sovereign's right to tax; none of this disputes that principle. It is a problem

66 Hobbes, *Leviathan*, II:XXIV. 392.

67 Hobbes, *Leviathan*, II:XIX. 288 (emphasis added).

68 Hobbes, *Leviathan*, II:XXIV. 392.

of poorly enacted sovereignty, whereby sovereigns have both subjected themselves to a particular distribution (with the status of "First law") and asserted their sovereign right to "demand, of take any thing by pretence of his Power".<sup>69</sup> It is unwise, insincere, unloving, and hypocritical.

This kind of political wisdom and other associated virtues are fundamentally about power. As Hobbes writes in x, "Riches joynd with liberality [magnanimity], is Power; because it procureth friends, and servants: Without liberality, not so; because in this case they defend not; but expose men to Envy, as a Prey."<sup>70</sup> From the perspective of the founding *nomos*, it manifests as a self-imposed structuration of hypocrisy that must perpetually gnaw at the legitimacy regime. It will be latent for the most part, but inflamed during the exigencies of sovereignty, which is exactly when it is most harmful. William the Conqueror and Charles I allowed their public persona to be corrupted by their private vice, instead of embodying the public interest. That fissure was established in the founding *nomos* of the state.

Hobbes only develops the negative point, but the positive point follows: first, collapse the public and private distinction and assert that all lands and resources can be used by the sovereign as the exigencies of sovereignty demand, second, avoid any public adornment of what is obviously to all private vice. Hobbes's is not arguing that there are any formal limitations on sovereign power or that rebellion is justified in these cases. He is, instead, reiterating that sovereigns have a free hand to do as they will and reasserting that there is no right to rebellion, while *simultaneously* signaling the real burdens of leadership.

In summary, we can situate Hobbes's discussion within the particular moment of foundations, preceded by the rampant vice and civil war, followed by—but not defined by—normal politics, and informed by Hobbes's own discussion of the foundation of new regimes. We can then untangle this perplexity in Hobbes's thought and once again encompass a seeming deviation within a unified and coherent interpretation. The *nomos* of the state—not simply property rights, but the fundamental distribution of property and goods that is the foundation of social and political relations—is by necessity established at the foundation of new regimes. That elemental political decision cannot be determined by the dictates of reason or theology and must always be conditioned by an evaluation of the people, geography, economy, and received norms. The only guide available to the sovereign, as I will argue momentarily, is natural justice. The multitude will select their

69 Hobbes, *Leviathan*, II:XXI. 342.

70 Hobbes, *Leviathan*, II:x. 132.

would-be sovereign on their own evaluations of that person's virtues. The creation of the nomos of the state is the first and most consequential point of collective evaluation of their own decisions. And it is one that Hobbes indicates is so momentous as to warrant an exception—one that he is evidently not keen to promote—to the logics of authorization; they can choose for it to be “reputed voyd”, preferring the protection of confederates over the rule of a manifestly deficient sovereign.

## XXVI: Natural justice and natural law

The first direct reference to natural justice in *Leviathan* is in XXVI, where Hobbes turns his attention to the authority of the civil laws in relation to the natural law.<sup>71</sup> In XIV and XV, Hobbes writes of natural laws as prudential (sometimes seemingly deontic) rationalizations regarding the means to achieve peace. There Hobbes frames the discussion within the state of nature/civil society binary, the function of which is to stylize his core claims. In XXVI Hobbes's concern is more concrete and pragmatic. Hobbes begins by restating his earlier claim that the force of law stems neither from custom nor tradition but from the express will of the sovereign. He also revisits his position that law is command (not counsel) and that this force encompasses the laws of nature.<sup>72</sup> All of this prefigures the so-called containment thesis:

The Law of Nature, and the Civill Law, contain each other, and are of equall extent. For the Lawes of Nature, which consist in Equity, Justice, Gratitude, and other morall Vertues of these depending, in the condition of meer Nature [...] are not properly Lawes, but qualities that dispose men to peace, and to obedience.<sup>73</sup>

The containment thesis has always been held as problematic, if not paradoxical, and much depends on whether one prioritizes positive or natural laws in Hobbes. Notably, it is in light of the seeming paradox that Hobbes first comes to endorse the idea of natural justice.

To arrive there, the elements of the containment thesis must be considered more closely, and specific attention must be paid to the seemingly simple

71 I believe that the first allusion to natural justice is in the last paragraph of the INTRODUCTION.

72 Hobbes, *Leviathan*, II:XXVI. 416–18.

73 Hobbes, *Leviathan*, II:XXVI. 418. See also Harrison, “The Equal Extent of Natural and Civil Law.”



question of how the laws (natural or civil) are known at all and then known to contain each other. I focus in this part on natural law, but a quick note on the civil law is in order to frame the discussion. The civil law must be made manifest. “[T]he Law is a Command,” Hobbes writes,

and a Command consisteth in declaration, or manifestation of the will of him that commandeth, by voyce, writing, or some other sufficient argument of the same, we may understand, that the Command of the Common-wealth, is Law onely to those, that have means to take notice of it.<sup>74</sup>

Part of this claim concerns the capacity of the audience. Those without the natural capacities to understand the law—“naturall fooles, children”, “mad-men”, “brute beasts”<sup>75</sup>—cannot be bound by the laws, because they are incapable of internalizing the commands of the sovereign. Therefore, there is a rudimentary requirement of rationality on the part of the receiver, which entails a measure of rationality on the part of the lawgiver. To that extent, the positive laws are bound by natural law, but only insofar as we reduce natural law to rationality (at which point the claim is essentially circular and not particularly interesting). This claim also regards cognizance; laws cannot be passed in secret and must be promulgated and propagated.<sup>76</sup>

It is less clear how the natural laws are promulgated. In XIV Hobbes writes that the natural laws are precepts

found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which he thinketh it may be best preserved.<sup>77</sup>

In this early exposition of natural law, it appears that all agents could deduce the laws of nature by way of reason and their private desire to secure their own well-being. In these chapters, and in both *Elements* and *De Cive*, the natural laws are characterized as being deducible by way of one’s own reason (assuming the same basic rationality provisos as above). This explication is rhetorically augmented by the overarching framework of the

<sup>74</sup> Hobbes, *Leviathan*, II:XXVI. 422.

<sup>75</sup> Hobbes, *Leviathan*, II:XXVI. 422.

<sup>76</sup> Hobbes, *Leviathan*, II:XXVI. 422. On this idea, see Dyzenhaus, “Hobbes on the Authority of Law.”

<sup>77</sup> Hobbes, *Leviathan*, II:XIV. 198.

state of nature/civil state frame. In xxvi Hobbes shifts the explication away from the hyperbolic casting of the state of nature/civil society problematic and in doing so sheds significant light on the practical meaning of the term. Hobbes advances the discussion by showing that there are three ways (and an implied fourth) in which the laws of nature can inform the actions of agents in the commonwealth, depending on their status in the commonwealth's legal apparatus. The first speaks universally to subjects in general, the second specifically to judges, and the third to those ambassadors who, as exceptional agents, must act where the civil laws do not speak (I return to the fourth, the natural person of the sovereign, in explication of xxxi below).

Hobbes's first claim is that citizens cannot deduce natural laws from convention or by way of reflections on their own subjective egoism. Instead, citizens arrive at the laws of nature by reflecting upon their own place in the world in relation to others. It is a thought experiment wherein one puts oneself in another subject's place and considers how they should act.<sup>78</sup> Doing so checks subjective egoism by prompting agents to consider what another agent could do to make collective action possible.<sup>79</sup> This does not presuppose a natural moral communitarianism. It simply prompts the individual to consider the egoism of people in general.<sup>80</sup> In temperate times, the outcome should tend toward equal treatment and forbearance. It is the thought experiment of the silver rule, "*Do not that to another, which thou thinkest unreasonable to be done by another to thy selfe.*"<sup>81</sup> Hobbes calls the resulting outputs "convenient Articles of Peace, upon which men may be drawn to agreement."<sup>82</sup> At this level the civil laws and natural laws "contain" each other, but it is a rather pedestrian point—so pedestrian as to make one think that the paradox is not resolved at all, but simply avoided. That being said, the extent to which it is pedestrian is notable. What Hobbes is describing is not really law *sensu stricto* but social norms and daily dispute

78 On this idea see Lloyd, "Hobbes's Self-Effacing Natural Law Theory."

79 Hobbes, *Leviathan*, II:xxvi. 424.

80 See also the discussion of reciprocity in Hobbes in Lloyd, "Hobbes's Self-Effacing Natural Law Theory."

81 Hobbes, *Leviathan*, II:xxvi. 424; see also xv. 240. Zagorin perhaps mistakenly calls this the golden rule. A golden rule is an affirmative rule to act irrespective of how others act. What Zagorin is referring to is the silver rule, to withhold from acting. Contrastingly, Gregory Kavka takes note of this principle—"do unto others as they do unto you"—and likewise identifies it as the golden rule, only to say that it is better described as the "copper rule." Kavka, *Hobbesian Moral and Political Theory*, 347. See also Boonin-Vail, *Thomas Hobbes and the Science of Moral Virtue*, 139–45.

82 Hobbes, *Leviathan*, II:xiii. 196.

resolution. Here the containment thesis appears to fall apart again; as the normative order of the society is not an autonomous or sociological given, it, too, is cast in light of the sovereign's presence that the very question presupposes.<sup>83</sup>

Turning to exceptional agents charged with undertaking indeterminate duties—e.g., judges, ambassadors—while upholding the “Sovereigns interest”,<sup>84</sup> Hobbes broaches the topic of natural justice for the first time. For agents who do not have the civil law to guide their actions, Hobbes proposes a different thought experiment that gives the laws of nature far more prominence. Instead of imagining what another *subject* should do, these agents must consider the abstract ends of the commonwealth. For instance, judges, who must apply general laws to specific cases, must assume equity as their guiding principle and indeed must prioritize those principles ahead of other extralegal signs made by the person bearing the office of the sovereign.<sup>85</sup> As David Dyzenhaus notes, “Hobbes regards subordinate judges as under a duty to the sovereign to interpret his positive law as if it complied with the laws of their nature.”<sup>86</sup> In the interpretation of laws, the judge interpolates cases through the negative duties of natural law. At this juncture, it is more evident how the positive law and the natural law could “contain” each other, as all laws are themselves restrictions of some natural right. In a situation where the written law seems unclear, equivocal, or absurd, it is upon the judge to interpolate into those words a measure of rationality as understood through the prism of the common good. This is not a sheer application of equity in some Aristotelian sense.<sup>87</sup> To Hobbes, it is the judge's duty to apply the idea of equity to clarify the civil laws as delineated by the formal offices of sovereignty. It is an act of generous interpretation, not interpolation. But, of course, that is the source of the problem. Hence, the question of “containment” is not, in fact, resolved, because the ultimate referent for judges remains the artificial institutions of sovereignty.

This brings me to Hobbes's important discussion of ambassadors who are duty bound to obey the sovereign but who (unlike judges) have no official

83 Indeed, as argued in Chapter Two, one important purpose of Hobbes's theory of the state as a representative fiction in *Leviathan* was to counteract the sociological pull of borough life that had so corrupted the commonwealth.

84 Hobbes, *Leviathan*, II:XXVI. 424.

85 On equity as an overarching principle in Hobbes, see Zagorin, *Hobbes and the Law of Nature*; Klimchuk, “Hobbes on Equity”; May, *Limiting Leviathan*, chap. 6; May, “Hobbes, Law, and Public Conscience”; cf. Sorell, “Law and Equity in Hobbes.”

86 Dyzenhaus, “Hobbes on the Authority of Law,” 197.

87 See Olsthoorn, “Hobbes's Account of Distributive Justice as Equity.”

duties ascribed to them or laws to guide them. Hobbes writes that ambassadors “take for Instruction that which Reason dictates to be most conducing to his Sovereigns interest; as so of all other Minsters of the Sovereignty, publique and private.”<sup>88</sup> This is where Hobbes broaches the discussion of natural justice for the first time. Hobbes begins by describing the unique thought experiment performed by ambassadors and other ministers. He describes it as following the special “Instructions of naturall Reason” that he calls “*Fidelity*”, which “is a branch of *naturall Justice*.”<sup>89</sup>

What does natural justice mean here? Consider three points. First, in contrast to the role of judges and the institutionally circumscribed thought experiments they use to guide the administration of civil justice, ambassadors are expected to reflect upon the positive “interests” of the sovereign. This, by itself, is notable, because it marks a conspicuous shift away from the basic cognitive process through which the natural laws are established. It is interpolation, not interpretation. The second point regards the identity of those interests. Here Hobbes supplies two answers. One is in his clarification of his claim in the Latin edition of *Leviathan*. There Hobbes distinguishes between natural justice as “the good” of the commonwealth and natural law as “equity.”<sup>90</sup> In this example, natural law is again depicted as a universal *negative duty*, in contrast to natural justice as an exceptional *positive duty* defined by its other-regarding motivations (these motivations will be taken up in the next section). The logics of equity are defined by “the good” of the commonwealth.<sup>91</sup>

Third, the term “fidelity” points us to a broader consideration of these exceptional figures throughout *Leviathan*. For now, note that fidelity is the quality of being faithful and devoted to a person, not a principle. Hobbes uses the term “fidelity” four times in *Leviathan*, each referring to exceptional moments outside civil society where agents must interpolate what is good for the commonwealth.<sup>92</sup> In each case, specific agents—counsellors, “Potent Subjects,”<sup>93</sup> public ministers, commanders, ambassadors—are charged

88 Hobbes, *Leviathan*, II:XXVI. 424.

89 Hobbes, *Leviathan*, II:XXVI. 424 (emphasis added).

90 Hobbes makes this point even more clearly in the Latin edition:

[A]n ambassador is to take for his instructions the good of the commonwealth, and a judge to take what he thinks equitable. For the commonwealth is understood to wish both good for itself, and equity for its citizens. (Hobbes, *Leviathan*, II:XXVI. 425.)

91 Sorell develops a similar argument on this, but he does not make the link to natural justice or virtue ethics; Sorell, “Law and Equity in Hobbes.”

92 Hobbes, *Leviathan*, II:XXV. 410; XXVI. 424; XXIX. 516; XXX. 550. On fidelity, see Chapter Seven.

93 Hobbes, *Leviathan*, II:XXX. 524.

with considering not the negative duties that reason stipulates as means of living together in peace but the manifest, yet undefined, interests of their sovereign as they are deemed by the agent.

None of the above tells us anything directly about the identity of natural justice. However, it does differentiate it from natural law and provides some clarity regarding the contours or structure of their relationship. Specifically, the above indicates that the ultimate reference of the natural laws is not simply pure rationality, pre-political theological considerations, or pure self-interest, but rather the character of the person who bears the office of the sovereign.

Before moving on, let me address one likely counterargument to this discussion. Some may argue that by “natural justice”, Hobbes simply means natural law. The explication of this one instance of Hobbes’s discussion of natural law defeats that counterargument (as do all the others that I will discuss below). Hobbes is not speaking here of “a Precept, or general Rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life”.<sup>94</sup> Instead, Hobbes holds that natural law is a branch of (and subordinate to) natural justice. Natural law may apply to all equally, but in every instance in which Hobbes uses the term natural justice, it refers to unique figures in the commonwealth’s political apparatus who are charged with implementing the sovereign’s will but have not been commanded one way or the other. The only exception is when the term is used in reference to the present or future sovereign. The difference is the one between instilling and not violating faith. Few can muster the first; all are bound to the latter.<sup>95</sup> The difference is between instilling in people the will to do what the natural law dictates, and what Hobbes calls the “weak reason”<sup>96</sup> of the greatest part, which alone oscillates between vanity and fear. There are thus many overlaps between the virtues that Hobbes discusses when he speaks of natural laws and the virtues of the founder and magnanimous sovereigns, but they are not exactly the same, and their different political positions—in the state of war, the would-be sovereign is someone of exceptional and instantiated virtue, and in a commonwealth, the sovereign stands apart from the commonwealth—dictate different challenges.<sup>97</sup> It is the particular burden of the sovereign that they alone must manifest the moral virtues without external compulsion. The consequences for not doing so are institutionally

94 Hobbes, *Leviathan*, II:XIV. 198.

95 Hobbes, *Leviathan*, III:XL. 750. See also the subsection on XXXI below.

96 Hobbes, *Leviathan*, II:XL. 754.

97 On magnanimity in Hobbes see Chapter Seven.

corrosive, leaving the public, and in particular judges and ambassadors, anchorless and leaving their consideration of the natural laws and nature of justice to their own curiosity.

### **XXX: Natural justice and the command theory of law**

Natural justice prefigures the civil law as well and seems to be a precondition for effectiveness. Of course, Hobbes also states just the opposite in *Leviathan*, so let us begin there. In xv Hobbes writes that “Law, properly is the word of him, that by right hath command over others.”<sup>98</sup> However, as noted, it would be disingenuous to categorize Hobbes as merely claiming that the law’s identity stems from the coercive power implied by the sovereign’s command.<sup>99</sup> Generally, it is accepted that there must be some foundation to the civil laws beyond mere command. Hobbes offers a few possible explanations: the social covenant, the problem of the state of war, and, prominently, the idea of “obedience for protection”. Broadly speaking, these “standard” interpretations all reduce to the egoistic thesis that it is in one’s self-interest to submit to the law, because behind the law is a sovereign who bears the sword of violence, and behind them war (one of the strengths of Hobbes’s argumentation regarding the legitimacy of the law is exactly that it provides so many overlapping self-interested reasons for obeying the law). As xviii makes clear, the point of the social covenant is peace and the laws keep the peace; no matter how oppressive the laws may feel, they are themselves self-authored, and any condition within a civil society is better than life outside it. This is the essence of the de facto theory of obligation in Hobbes, and it, along with the contractual logics it presupposes, are the foundations for the Hobbesian version of the command theory of law. None of these arguments, or any variants thereof in the literature, make logical or necessary reference to natural justice or, more generally, the virtues of the sovereign.

And yet, despite all of this, Hobbes admits in xxx to another fundamental condition, a deeper premise that lurks behind the de facto rule, which points repeatedly to considerations of the character of the natural person of the sovereign and ultimately points directly at natural justice.<sup>100</sup> Hobbes begins by restating his earlier claim regarding the priority of safety. “The OFFICE of the Sovereign,” Hobbes begins,

98 Hobbes, *Leviathan*, II:xv. 242.

99 See footnote 2 of this chapter.

100 Hobbes, *Leviathan*, II:xvii. 254.

consisteth in the end, for which he was trusted with the Sovereign Power, namely the procuration of *the safety of the people*; to which he is obliged by the Law of Nature, and to render an account thereof to God, the Author of that Law, and to none but him.<sup>101</sup>

However, Hobbes continues, “by Safety here, is not meant a bare Preservation, but also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt to the Common-wealth, shall acquire to himselfe.”<sup>102</sup> Hobbes’s definition, so late in *Leviathan*, is a somewhat surprising claim, at least insofar as it is seemingly incompatible with the command or contract theories of the laws legitimacy (though, notably, in agreement with his discussion of *nomos*).

Having expanded, if not transformed, the concept of safety that had, up to that point, done so much (and such different) work, Hobbes then turns to substantiate what that new concept implies in terms of our understanding of the positive laws. Turning away from a simple focus on laws and “protection from injuries, when they [citizens] shall complain”, Hobbes takes up the question of “general Providence” as contained in “publique Instruction, both of Doctrine, *and Example*; and in the making, and executing of good Lawes”.<sup>103</sup> Specifically, Hobbes’s concern is providential instruction vis-à-vis the vexing relationship between the “essential Rights of Sovereignty”,<sup>104</sup> the law, and the instantiated example of the sovereign that teaches and informs subjects. That instruction is crucial, as Hobbes notes, because far more than the fact of law, it is the example of the sovereign that subjects reflect upon—judge, evaluate, consider—and “apply to their own cases.”<sup>105</sup>

Hobbes begins by returning to the essential rights of the sovereign that, as he notes, he had already explicated in XVIII. However, unlike that earlier exposition where Hobbes writes of the powers “annexed” to the sovereign or of the “markes, whereby a man may discern in what Man, or Assembly of men, the Sovereign Power is placed”,<sup>106</sup> Hobbes instead writes of the essential rights of the sovereign as a set of *duties* that the natural person who bears the sovereign

101 Hobbes, *Leviathan*, II:xxx. 520.

102 Hobbes, *Leviathan*, II:xxx. 520. Compare to Aristotle: “It comes to be for the sake of living, but it remains in existence for the sake of living well”; Aristotle, *Politics*, 1252b28–29. Or Plato: “a true ruler doesn’t by nature seek his own advantage but that of his subject”; Plato, “Republic,” 347d.

103 Hobbes, *Leviathan*, II:xxx. 520 (emphasis added).

104 Hobbes, *Leviathan*, II:xxx. 520.

105 Hobbes, *Leviathan*, II:xxx. 520.

106 Hobbes, *Leviathan*, II:xviii. 278.

must carry out. Abstractly, those duties include not abandoning, transferring, or laying down any of the offices or responsibilities that are the marks of sovereignty, as doing so would be to abandon the ends of sovereignty but also the means.<sup>107</sup> Concretely, those duties include fighting necessary wars, acting as “Supreme Judicature”, “levying Mony, and Souldiers”, “appointing Teachers, and examining what Doctrines are conforming, or contrary to the Defence, Peace, and Good of the people.”<sup>108</sup> Fundamentally, however, it is the duty of the sovereign to teach the people the grounds and reasons of those essential rights; as Hobbes writes, it is against the sovereign’s duty “to let the people be ignorant”.<sup>109</sup> It seems that much is riding on that public pedagogical duty.

Questions regarding sovereign didactics and the essential rights of the sovereign are then tied directly to the practical legitimacy of the law. Hobbes begins by addressing the question of the legitimacy of the laws by broaching a curious observation of whether a sovereign can pass a law commanding citizens against rebellion. The example is curious, because laws against compromising “essential rights” are de facto vacuous. The reason for this is that “the grounds of these Rights [the essential rights of sovereignty], have the rather<sup>[110]</sup> need to be diligently, and truly taught; because they cannot be maintained by any Civill Law, or terrour of legall punishment.”<sup>111</sup> The reason is, Hobbes continues, because

[f]or a Civill Law, that shall forbid Rebellion [...] is not (as a Civill Law) any obligation, but by vertue onely of the Law of Nature that forbiddeth the violation of Faith; which naturall obligation if men know not, they cannot know the Right of any Law the Sovereign maketh.<sup>112</sup>

This passage has implications for both the essential attributes of sovereignty and for how we are to understand the practical legitimacy of the positive laws in Hobbes. I address the implication of rebellion and war-making in Chapter Seven, but here I focus on the idea that to “know the Right of any Law”, one must first consider the question of faith.

107 Hobbes, *Leviathan*, II:xxx. 520.

108 Hobbes, *Leviathan*, II:xxx. 520. In the previous chapter, I remarked upon the enormous burdens placed on the shoulders of the natural person who bears the office of the sovereign. As this section shows, that list of burdens grows ever longer as the second part of *Leviathan* unfolds.

109 Hobbes, *Leviathan*, II:xxx. 520.

110 Rather = “Primary, prior; of greater importance”, *OED*, ‘rather’, adj., 2.b.

111 Hobbes, *Leviathan*, II:xxx. 522.

112 Hobbes, *Leviathan*, II:xxx. 522.



Hobbes's initial framing of question looks like a version of the containment thesis, where the natural laws are said to contain the positive laws, but equally clear is that that gesture is simply a waypoint for a much different discussion. The real question—one that the very idea of a threat of rebellion entails—is, of course, faith *in whom*? Natural obligation and faith are transitive. They are contingent on having faith in someone. And as the passages preceding and following this one show, Hobbes's fundamental interest is in the duties and the character of the sovereign who one is supposed to have faith in. So even before considering the topic in detail, we can at least conclude that what is being “taught” are not the natural laws.

Before considering what “natural obligation” could mean in some positive sense, let me also note that the same formulation seems to also entail rejecting the idea that natural obligation—faith and, later, natural justice—is an output of the subject's natural right or the fear of violent death. State terror does not strengthen the status of the laws; it undermines them (and, simultaneously, the sovereign themselves). Whatever it is that needs to be “taught”, its pedagogical medium is not fear or violence.

If not law (positive or natural), what is being taught? And how does it garner “natural obligation”? First, consider faith and natural obligation more closely. Hobbes's discussion of this conjunction changed from *De Cive* to *Leviathan*. In *De Cive* Hobbes writes that natural obligation stems from our physical impediments to actions and “awareness of one's own weakness”.<sup>113</sup> Natural obligation was a function of comparative might where the weak were compelled to follow the strong. In contrast, in *Leviathan* the “weaknesse” that Hobbes has in mind is not defined by its relationship to fear. Instead, it refers to another natural power that is somehow related to faith and in turn is a measure of hope in a person. In *Leviathan*'s account, “natural obligation” is the function of the hope that a person has that another will empower them.

But again, who is this person? What attributes do they have that instill faith? Violence and fear aside, Hobbes's first partial answer to the question of what “natural obligations” are is to point to the natural laws, but fleetingly and ultimately in a way that points right past them. Those obligations, Hobbes writes, are “but by vertue onely of the Law of Nature, that forbiddeth the violation of Faith”.<sup>114</sup> I refer readers to XII and Chapter Five for a comprehensive account. Here let me simply quote Hobbes's definition of faith:

113 Hobbes, *De Cive*, xv. 174–75.

114 Hobbes, *Leviathan*, II:xxx. 522.

When a mans Discourse beginneth not at Definitions, it beginneth either at some other contemplation of his own, and then it is still called Opinion; Or it beginneth at some saying of another, of whose ability to know the truth, and of whose honesty is not deceiving, he doubteth not; and then the Discourse is not so much concerning the Thing, as the Person; And the Resolution is called BELEEF, and FAITH: *Faith*, in the man; *Beleefe*, both of the man, and of the truth of what he says. So that in Beleefe are two opinions; one of the saying of the man; the other of his vertue.<sup>115</sup>

That, it seems, is a rather clear answer. Citizens have faith in someone (just as fidelity is fidelity *to* something), and in this case the question rests on one's faith in the natural person of the sovereign—not the office—whose commands constitute the laws of the land. Once again, both the civil laws and the natural laws both take their ultimate legitimacy from the virtues of the sovereign.

To flesh out these ideas, consider Hobbes's theory of punishment. The nexus of faith and curiosity is the person who is, is called on to be, or aspires to be sovereign. Hence, as it relates to law, it is a question, ultimately, as to whether the sovereign is hostile or, to use the language of XII, wise, loving, and sincere. The stakes are high. If the sovereign models themselves on the former, punishment of the weaker by the powerful using violence is experienced by subjects "but for an act of Hostility; which when they think they have strength enough, they will endeavour by acts of Hostility, to avoyd."<sup>116</sup> Such punishment would amount, it is implied, to a veritable declaration of civil war by the sovereign against subjects. Faith and natural obligation are the ground of the law's social and practical legitimacy at the moment of punishment both in terms of righting the conduct of the criminal and setting a public example.

Hobbes rounds out the discussion by rehashing the discussion of the fool. Hobbes starts by declaring a direct equivalence to the discussion of the nature of justice with those "essentiall Rights" of the sovereign:

As I have heard some say, that Justice is but a word, without substance; and that whatsoever a man can by force, or art, acquire to himselfe, (not onely in a condition of warre, but also in a Common-wealth,) is his own, which I have already shewed to be false: So there be also that maintain,

<sup>115</sup> Hobbes, *Leviathan*, II:vii. 100.

<sup>116</sup> Hobbes, *Leviathan*, II:xxx. 522.

that there are no grounds, nor Principles of Reason, to sustain those essentiall Rights, which make Sovereignty absolute.<sup>117</sup>

Hobbes does not develop the point—because he already has in xv, xii, and elsewhere—but it follows upon his rehashing of Plato's criticism of Thrasymachus (discussed above) and, appropriately enough, sets up a juxtaposition of that rare person who “loves justice”<sup>118</sup> and is a wise, sincere, revelatory, and loving leader with the very idea of justice itself. As Hobbes wrote in xv, and harking directly back to Matthew 11:12, “As for the Instance of gaining the kingdom of Heaven by injustice; it is frivolous: there being but one way, which is by justice.”<sup>119</sup> I have quoted from the Latin version here because the English is less clear, but readers may reasonably interpret the English differently. No matter. Even on the Latin account, the significance is murky. Hence, perhaps, Hobbes's discussion of the “Principles of Reason” that sustain the “essentiall Rights”<sup>120</sup> of sovereignty may fairly be described as pointing to natural law (not natural justice). Yet, in the same paragraph Hobbes refutes that. Directly ascribing substantive legitimacy of the civil laws to the effective legitimacy of the person of the sovereign,<sup>121</sup> Hobbes writes that the fact that this sort of recognition has never been observed—as the perpetual revolution of regimes attests<sup>122</sup>—does not mean that such a form of justice is impossible, only that it has not yet been realized.<sup>123</sup> Noting further that this is true for the sovereigns of his day, he insists that if a *future* sovereign learns the principles laid out in *Leviathan*, then perhaps an end to the revolutions of states is possible. Strikingly, whatever the lessons are, they are neither the pedestrian version of the natural laws discovered by the many through silver rule reflections—“seek Peace”, “defend ourselves”—nor the more demanding version of the natural laws arrived at by judges and ambassadors. They are “Principles of Reason”<sup>124</sup> to be found out by “industrious meditation”.<sup>125</sup>

117 Hobbes, *Leviathan*, II:xxx. 522.

118 Hobbes, *Leviathan*, II:xv. 226–68 (Latin edition).

119 Hobbes, *Leviathan*, II:xv. 224 (Latin edition).

120 Hobbes, *Leviathan*, II:xxx. 522.

121 The English version leaves room for equivocation as to whether it is the office or the person of the sovereign, but in the Latin edition, Hobbes corrects it to say “the power of rulers of commonwealths”; Hobbes, *Leviathan*, II:xxx. 523.

122 Hobbes will return to this idea again in the conclusion. Hobbes, *Leviathan*, III:A REVIEW AND CONCLUSION. 1141.

123 Hobbes, *Leviathan*, II:xxx. 522.

124 Hobbes, *Leviathan*, II:xxx. 522.

125 Hobbes, *Leviathan*, II:xxx. 522.

Hobbes then turns to consider the impediments to having faith in one's sovereign. Although the discussions are cast in domineering teachings, they all gesture (some subtly, some blatantly) toward a real concern with the character of the sovereign. For instance, Hobbes advises future sovereigns to disallow citizens from loving their neighbors' form of governments, as though this were a matter of instruction.<sup>126</sup> Hobbes advises sovereigns not to allow potent citizens undue popularity and honor, as honor would obfuscate their sovereigns' love,<sup>127</sup> indicating that the perception (and surely practice) of the sovereign's love for the people is politically important.<sup>128</sup> Hobbes advises rulers to forbid public disputations regarding any aspects of the sovereign's power or to use "his Name irreverently".<sup>129</sup> Finally, Hobbes asserts that sovereigns should set aside a day for reminding subjects of the written laws,<sup>130</sup> despite the fact that Hobbes will shortly claim that the true intention of the law is always measured by sovereign actions.

Hobbes then arrives again at the idea of natural justice. No matter what one makes of formal obligations to follow sovereign command, in the real world of legal and political life, the people do not ultimately take their guidance directly from either philosophies or ideologies of obligation, and only a few will ever learn the science of politics. Instead, the people naturally evaluate the legitimacy of the law by proxy of their evaluations of the person they (should) have faith in. They do so because the greatest part of humanity is incapable, unwilling, or simply too caught up in the daily grind to generating those cognitive foundations themselves. Hobbes writes,

They whom necessity, or covetousnesse keepeth attent on their trades, and labour; and they, on the other side, whom superfluity, or sloth carrieth after their sensuall pleasures, (which two sorts of men take up the greatest part of Man-kind,) being diverted from the deep meditation, which the learning of truth, not onely in the matter of Naturall Justice, but also of all other Sciences necessarily requireth, receive the Notions of their duty, chiefly from Divines in the Pulpit, and partly from such of their Neighbours, or familiar acquaintance, as having the Faculty of discoursing readily, and plausibly, seem wiser and better learned in the cases of Law, and Conscience, than themselves.<sup>131</sup>

<sup>126</sup> Hobbes, *Leviathan*, II:xxx. 524–26.

<sup>127</sup> Hobbes, *Leviathan*, II:xxx. 526.

<sup>128</sup> Hobbes, *Leviathan*, II:xxx. 526.

<sup>129</sup> Hobbes, *Leviathan*, II:xxx. 526.

<sup>130</sup> Hobbes, *Leviathan*, II:xxx. 528.

<sup>131</sup> Hobbes, *Leviathan*, II:xxx. 532 (emphasis added).

The passage is loaded with significance. First, adding to the typical distinction between rulers and the ruled, Hobbes is adding that their condition is not merely one of position within the system but of capacities. The ruled are not philosophical souls but bound up in their daily routines and basic desires. They ground their notions of legitimacy by way of religion and, presumably, the head of that religion. By contrast, the rulers who are the fount of religious and secular authority are prompted to “meditate” on natural justice. Second, Hobbes is clearly stating that simply teaching his political science in the universities will not be sufficient for grounding the general legitimacy of the laws, because the greatest part has neither the interest nor the capacity to study that science. Third, “natural justice”—whatever it is—can at least be differentiated from “all other Sciences”. And finally, the sovereign must actively maintain eternal vigilance regarding the instantiation of natural justice, for the moment that it fails, faith fails, and the greatest part will search among their neighbors and acquaintances for those who are “better learned” on matters not only of law but conscience, too. All sovereigns may not be political philosophers (most will not), but the task is one of the burdens of the office no matter.

Reiterating his teaching to sovereigns in *Leviathan*, Hobbes next reasserts the importance of equity required in the administration of law,<sup>132</sup> after which—speaking directly of the natural persons who bear the office of sovereignty—he writes,

The honour of great Persons, is to be valued for their beneficence, and the aydes they give to men of inferiour rank, or not at all. And the violences, oppressions, and injuries they do, are not extenuated, but aggravated by the greatnesse of their persons; because they have least need to commit them.<sup>133</sup>

The Latin edition makes the point even more clearly: sovereigns like the barbaric and vainglorious biblical king Rehoboam and nobles like the “Beggars” who backed the Dutch revolt necessarily invite popular revolt.<sup>134</sup> None of this is to say that the sovereign is obliged to follow the law. Instead, it has everything to do with the comportment of the sovereign to embody justice despite there being no law applicable. It is an ever-present test of character for those who live without external hedges to “keep them in the way.”<sup>135</sup>

<sup>132</sup> Hobbes, *Leviathan*, II:xxx. 534.

<sup>133</sup> Hobbes, *Leviathan*, II:xxx. 536.

<sup>134</sup> Hobbes, *Leviathan*, II:xxx. 536.

<sup>135</sup> Hobbes, *Leviathan*, II:xxx. 540.

These various considerations are then brought to bear directly on the question of the legitimacy of the civil laws again. All laws are just, but not all laws are good. Good laws, Hobbes writes, are those that are “*Needfull, for the Good of the People, and withall Perspicuous.*”<sup>136</sup> Needful laws are laws put in place “not to bind the People from all Voluntary actions; but to direct and keep them in such a motion, as not to hurt themselves by their own impetuous desires, rashnesse, or indiscretion”.<sup>137</sup> Following this, Hobbes writes that “Unnecessary Lawes are not good Lawes; but trapps for Mony: which where the right of Sovereign Power is acknowledged, are superfluous; and where it is not acknowledged, insufficient to defend the People.”<sup>138</sup> If the standard of good laws is not simply that they derive from sovereign command (braced by degrees of rationality), what is the standard? One answer, Hobbes tells us, is to conceive the goodness of laws to be a function of their benefit to the sovereign, even though that law is not “Necessary for the People”.<sup>139</sup> Hobbes, however, rejects this claim, “For the good of the Sovereign and People, cannot be separated.”<sup>140</sup> Similarly, Hobbes writes that “It is a weak Sovereign [in the Latin edition: “wretched prince”], that has weak Subjects; and a weak People, whose Sovereign wanteth Power to rule them at his will”.<sup>141</sup> Later, in an even more biting comment, Hobbes writes that “To be severe to the People, is to punish that ignorance, which may in great part be imputed to the Sovereign, whose fault it was, they were no better instructed.”<sup>142</sup> No measure of de factoism can assuage the problem of sovereign ignorance or iniquity.<sup>143</sup>

<sup>136</sup> Hobbes, *Leviathan*, II:XXX. 540.

<sup>137</sup> Hobbes, *Leviathan*, II:XXX. 540.

<sup>138</sup> Hobbes, *Leviathan*, II:XXX. 540.

<sup>139</sup> Hobbes, *Leviathan*, II:XXX. 540; see also the APPENDIX. 1202.

<sup>140</sup> Hobbes, *Leviathan*, II:XXX. 540.

<sup>141</sup> Hobbes, *Leviathan*, II:XXX. 540.

<sup>142</sup> Hobbes, *Leviathan*, II:XXX. 544.

<sup>143</sup> Hobbes’s discussion of Uriah and David in xx1 seems to stand in stark contrast to this idea. There, Hobbes writes that

nothing the Sovereign Representative can doe to a Subject, on what pretence soever, can properly be called Injustice, or Injury; because every Subject is Author of every act the Sovereign doth; so that he never wanteth Right to any thing, otherwise, than as he himself is the Subject of God, and bound thereby to observe the laws of Nature. (Hobbes, *Leviathan*, II:XXI. 330.)

Hobbes then goes on to mention Jephtha’s sacrifice of his daughter, the killing of Uriah by David, and the ostracization of Aristides by the Athenian democracy. My argument does not agree with the theoretical point. It does, however, point to the political effects that follow irrespective of the theoretical claims being made. On that note, the subsequent histories of violence and revolt

Hobbes concludes xxx with the third reference to natural justice and another clear statement on the sovereign virtue ethics he has thus far alluded to is not reducible to command, egoism, or natural law. The discussion does not pertain to the legitimacy of the laws directly—it pertains to the field of inter-sovereign affairs—but in light of Hobbes's earlier conflation of the comportment and duties of sovereigns on questions of essential rights, and the relation between those questions and the law it is appropriate to bring it up. Hobbes notes that in the field of interstate affairs,

the same Law, that dictateth to men that have no Civil Government, what they ought to do, and what to avoyd in regard of one another, dictateth the same to Common-wealths, that is, to the Consciences of Sovereign Princes, and Sovereign Assemblies; there being no Court of Naturall justice, but in the Conscience onely[.]<sup>144</sup>

The international stage is sometimes cast by scholars as affording Hobbes's sovereign the opportunity to display their terrific might, a type of mega-heuristic of the natural condition and the fearsome sovereign. But of the few reflections on international relations in *Leviathan*, there is only really one passage that supports that interpretation.<sup>145</sup> Most passages are reminiscent of Hobbes's reflections on ignorant sovereigns passing bad laws. Instead, Hobbes describes the stage of international relations as a place for the possible enactment of the dictates of natural justice, not natural right. Anarchy is indeed what one makes of it, and what Hobbes indicates is that it is a test of the sovereign's moral character.<sup>146</sup> Hobbes's claim that there is no court for natural justice is not a claim that natural justice is nonsense. Just the opposite. It is that it is especially demanding on the "Consciences of Sovereign Princes"<sup>147</sup> in particular who, like

that followed the murders, and Aristides's later return to Athens followed by his appointment as commander maps comfortably on to my general thesis.

144 Hobbes, *Leviathan*, II:xxx. 552. There is a version of this claim found in *De Cive*, as well, which would appear to contradict my argument; Hobbes, *De Cive*, III. 53–54. However, on closer examination, two crucial differences stand out. First, Hobbes does not write of natural justice (presumably for the reasons addressed already, namely that *De Cive* was written against the idea). He writes of natural law. Second, he is writing of the consciences of the ruled, not rulers.

145 Hobbes, *Leviathan*, II:xiii. 196.

146 This is Alexander Wendt's phrase (but of course coming to a radically different understanding of Hobbes); "Anarchy Is What States Make of It." Or, to recall one of Aristotle's favored proverbs, the "Office will reveal the man", in Aristotle, *Nicomachean Ethics*, 1130a.

147 Hobbes, *Leviathan*, II:xxx. 552.

individuals “that have no Civil Government”,<sup>148</sup> are bound only by the natural laws but radically unlike them are charged with “procuring the safety of his People”,<sup>149</sup> a safety that, as we have seen is an expansive one. The burden of the sovereign is to weather the storms of interstate affairs while simultaneously attending to the other-regarding duties of the sovereign for the totality of the people.<sup>150</sup>

In sum, throughout xxx and in various ways, Hobbes repeatedly gestures to the civil laws requiring an anchor in natural justice. Whatever the theoretical or ideological standing of the claim that the positive laws are simply legitimate because they express the will of the sovereign, or de facto legitimate (for whatever reason), their *effective* political legitimacy is grounded on natural obligation which requires an upstanding and virtuous sovereign. That may be a background concern for the most part, but not always, and in moments of emergency, not at all. Restated, it could be said that xxx finishes what Hobbes only hinted at (though, strongly) in xv regarding justice and sovereignty. In xv Hobbes argued that sovereign foolishness—sovereign vice—generated foolish and rebellious subjects.<sup>151</sup> In xxx Hobbes finishes the thought, arguing that the example of sovereign virtue—of wise, sincere, and loving example—is the foundation of peace, flourishing, and good laws. Rule following is easier when the rule-maker is held in high esteem.

### XXXI: Natural justice and the law of God

It would follow from my argument that in *Leviathan* there should be discussions regarding the role of virtue and natural justice in the maintenance of the political systems housing legal systems. This is exactly the topic with which Hobbes closes out the second part of *Leviathan* in xxxi.<sup>152</sup> In bringing his line of argument to an end, he also clarifies the functions of “faith” and “fidelity” and their role in mediating the powers of sovereigns and citizens.

Summarizing his claims regarding both natural and civil laws, Hobbes writes, “That Subjects owe to Sovereigns, simple Obedience, in all things, wherein their obedience is not repugnant to the Lawes of God, I have sufficiently proved, in that which I have already written.” Continuing, Hobbes writes,

148 Hobbes, *Leviathan*, II:xxx. 552.

149 Hobbes, *Leviathan*, II:xxx. 552.

150 See also the discussions of conquest in Chapter Five and command in Chapter Seven.

151 Hobbes, *Leviathan*, II:xv. 224.

152 This section is broadly indebted to Craig, *The Platonian Leviathan*, chap. 13.



There wants onely, for the entire knowledge of Civill duty, to know what are those Lawes of God. For without that, a man knows not, when he is commanded any thing by the Civill Power, whether it be contrary to the Law of God, or not: and so, either by too much civill obedience, offends the Divine Majesty, or through feare of offending God, transgresses the commandements of the Common-wealth. To avoyd both these Rocks, it is necessary to know what are the Lawes Divine.<sup>153</sup>

Before considering the specific meaning of the claim, allow me to pause to reflect on its general significance. First, this claim is (again) incompatible with the orthodox interpretations of Hobbes's legal philosophy, as it clearly signals a source of normativity that prefigures *both* the natural and civil laws. Second, and complicating matters further, the question is not simply about securing obedience to the laws but about "too much[!] civill obedience". Lastly, the language that Hobbes uses—"To avoyd both these Rocks"—was used in the epistle dedicatory to *Leviathan*, perhaps indicating that Hobbes's concern with natural justice is not marginal but in fact circumscribes all his reflections on law. Hobbes may only use the term natural justice four times, but its significance is pervasive.

Back to the passage. How does one "know what are the Lawes Divine"? The "knowledge of all Law," Hobbes makes clear, "dependeth on the knowledge of the Sovereign Power".<sup>154</sup> The answer therefore must turn on how the sovereign's "power" makes eminent the "Lawes Divine". However, this knowledge clearly cannot be derived from sovereign command. Hence, the question seems to turn on what kind of "knowledge" and what kind of "power" Hobbes is referring to when he speaks of subjects knowing the power of the sovereign.

XXXI provides an answer to these questions (as do X and XI, which I address in the next chapter). Knowledge of divine law is contingent upon the representation and instantiation of those laws by the sovereign. God rules through the sovereign's words,<sup>155</sup> and to "rule by Words," Hobbes writes, "requires that such Words be manifestly made known".<sup>156</sup> God's words can be made manifest by way of "*Naturall Reason, by Revelation, and by the Voyce of some man, to whom by the operation of Miracles, he procureth credit with the rest.*"<sup>157</sup> These aspects of God's power are heard by way of "*Right Reason,*

153 Hobbes, *Leviathan*, II:XXXI. 554.

154 Hobbes, *Leviathan*, II:XXXI. 554.

155 Hobbes, *Leviathan*, II:XXXI. 554.

156 Hobbes, *Leviathan*, II:XXXI. 556.

157 Hobbes, *Leviathan*, II:XXXI. 556.

*Sense Supernaturall*, and *Faith*.<sup>158</sup> Natural reason and right reason refer to the natural laws and the “naturall Duties of one man to another”.<sup>159</sup> “*Sense Supernaturall*” and “Revelation” “have not been any Universall Lawes so given, because God speaketh not in that manner, but to particular persons, and to divers men divers things.”<sup>160</sup> Hence, they are beyond the scope of codified law. This leaves “Faith” in the “*Voyce of some man, to whom by the operation of Miracles, he procureth credit with the rest.*”<sup>161</sup> Putting the natural laws and revelation to the side, “It remaineth therefore that we consider, what Praecepts are dictated to men, by their Naturall Reason onely, without other word of God, touching the Honour and Worship of the Divine Majesty.”<sup>162</sup>

How are natural honors and worship procured? “The End of Worship amongst men, is Power”, Hobbes writes,

For where a man seeth another worshipped, he supposeth him powerfull, and is the readier to obey him; which makes his Power greater. But God has no Ends: the worship we do him, proceeds from our duty, and is directed according to our capacity, by those rules of Honour, that Reason dictateth to be done by the weak to the more potent men, in hope of benefit, for fear of dammage, or in thankfulnessse for good already received by them.<sup>163</sup>

On first assessment, these principles can all be reduced to the old dictum of “protection for obedience” to the sovereign. For despite all that has been said about faith and supernatural sense, the word of God takes definition only by way of sovereign power. It thus appears that we arrive, yet again, back at the *de facto* thesis as the normative basis for the civil laws. Indeed, later Hobbes writes that “it followeth, that those Attributes which the Sovereign ordaineth, in the Worship of God, for signes of Honour, ought to be taken and used for such, by private men in their publique Worship.”<sup>164</sup> Citizens should observe state-ordained signs of worship.

However, Hobbes *further* distinguishes between what is honorable for good citizens (artificial honors) but different in different commonwealths and what is naturally honorable and honorable everywhere.<sup>165</sup> It is natural

158 Hobbes, *Leviathan*, II:XXXI. 556.

159 Hobbes, *Leviathan*, II:XXXI. 560.

160 Hobbes, *Leviathan*, II:XXXI. 556.

161 Hobbes, *Leviathan*, II:XXXI. 556 (some emphasis added).

162 Hobbes, *Leviathan*, II:XXXI. 560.

163 Hobbes, *Leviathan*, II:XXXI. 564.

164 Hobbes, *Leviathan*, II:XXXI. 570.

165 Cf. Aristotle, *Politics*, 1276b29–35.

honor that Hobbes is really interested in. Those natural honors are derived from character traits that cannot be conferred or circumscribed by artificial sovereign dictate or law. Moreover, they are character traits that universally and naturally command honor.<sup>166</sup> Hence, we need to separate the formal honors taking their definition from the office of the sovereign from the natural honors conferred on natural persons (including the natural person of the sovereign).

Honor, Hobbes writes, “consisteth in the inward thought, and opinion of the Power, and Goodnesse of another”.<sup>167</sup> Worship is the act of signifying one’s opinion regarding the power or goodness of another agent, which Hobbes tells us is part of the meaning of the Latin term *cultus*.<sup>168</sup> *Cultus* is fostered in two ways. One way is artificially by force and education, and it is this sense that Hobbes seems to be referring to when he speaks of his *Leviathan* being taught to the elite in the universities. The other way is naturally, “where mens wills are to be wrought to our purpose, not by Force, but by Compleasance, it signifieth as much as Courting, that is, a winning of favour by good offices”.<sup>169</sup> This, Hobbes tells us, is the proper meaning of the term “worship”. Worship is rendered to those deserving of honor (*Love, Hope, and Fear*) as expressed in *Praise, Magnifying, and Blessing*. Hobbes writes that these are the people we call “Good, or Great” and whom the people will obey.<sup>170</sup> This kind of worship is entirely natural; it is free worship that rests on the subjects’ “opinion of the beholders”.<sup>171</sup>

Hobbes confirms that these are character traits by putting yet more stress on the impossibility for artificially commanding such honors. Like his argument that the rebellion cannot be made illegal, Hobbes implies that it is self-defeating for sovereigns to artificially force the recognition of natural honors. Enforced worship cannot reflect the “words, or gestures” of the subject (which are shallow displays deployed out of fear).<sup>172</sup> Instead, the measure of enforced honor is the practice of obedience. Enforced honors amount to sovereign self-worship “because a signe is not a signe to him that giveth it, but to him to whom it is made; that is, to the spectator.”<sup>173</sup> It

166 Hobbes, *Leviathan*, II:XXXI. 562.

167 Hobbes, *Leviathan*, II:XXXI. 560.

168 Hobbes, *Leviathan*, II:XXXI. 560.

169 Hobbes, *Leviathan*, II:XXXI. 562.

170 Hobbes, *Leviathan*, II:XXXI. 562.

171 Hobbes, *Leviathan*, II:XXXI. 562.

172 Hobbes, *Leviathan*, II:XXXI. 562.

173 Hobbes, *Leviathan*, II:XXXI. 562.

is the height of vanity: a false estimation of one's own power bolstered by the hollow "flattery of others".<sup>174</sup> It is a wellspring of sovereign foolishness.

The same kind of argument is found in XVIII. There Hobbes concludes with a strong *de facto* statement even in the presence of vicious sovereigns: "But a man may here object, that the Condition of Subjects is very miserable; as being obnoxious to the lusts, and other irregular passions of him, or them that have so unlimited a Power in their hands [the sovereign]."<sup>175</sup> Hobbes goes on to conclude that those subjects need to be taught, by way of moral and civil science, that life in the state of war is immeasurably worse. And yet that passage is prefigured by Hobbes's assertion that not just the power but the "Honour of the Sovereign, ought [!] to be greater, than that of any, or all the Subjects."<sup>176</sup> It is a claim that is exacting in this vast inequality—an inequality where the sun outshines the stars so fully to make them invisible—that the effective equality within the state is so evident. Of course, it follows that as the "Fountain of Honour", the natural person who bears the office of the sovereign risks corrupting the commonwealth economy of dignity when they manifest natural vice or act in a way that shows their declared and formal honors to be insincerely conferred.

Which brings me to the fourth mention of natural justice. At the very conclusion to Part II, summarizing his findings, Hobbes writes,

And now, considering how different this Doctrine is, from the Practise of the greatest part of the world, especially of these Western parts, that have received their Morall learning from *Rome*, and *Athens*; and how much depth of Morall Philosophy is required, in them that have the Administration of the Sovereign Power; I am at the point of believing this my labour, as uselesse, as the Common-wealth of *Plato*; For he also is of opinion that it is impossible for the disorders of State, and change of Governments by Civill Warre, ever to be taken away, till Sovereigns be Philosophers. But when I consider again, that the Science of Naturall Justice, is the only Science necessary for Sovereigns, and their principall Ministers [...] and that neither *Plato*, nor any other Philosopher hitherto, hath put into order, and sufficiently, or probably proved all the Theoremes of Morall doctrine, that men may learn thereby, both how to govern and how to obey[.]<sup>177</sup>

<sup>174</sup> Hobbes, *Leviathan*, II:vi. 88.

<sup>175</sup> Hobbes, *Leviathan*, II:xviii. 282.

<sup>176</sup> Hobbes, *Leviathan*, II:xviii. 280.

<sup>177</sup> Hobbes, *Leviathan*, II:xxxI. 574. Cf. Aristotle, *Politics*, 1288a26–9.

At this point we have moved beyond question of law precisely to topics related to the very architectonics of *Leviathan's* political theory, and I will expand upon some of them in the next chapter. Nevertheless, let me simply note that the capstone of Hobbes's various discussion of law—natural, positive, divine—conclude with this keystone remark of the first half of *Leviathan*, amounting to a clear statement to the effect that the point all along (at least, the point as it relates to teach “how to govern”) has been to teach “Naturall Justice”. In other words, sovereigns aiming to found or re-found a regime—perhaps a regime torn apart by religious rivalries and rebellious borough corporations—need to commit themselves not just to the study but to the instantiation of natural justice. The very practical legitimacy of the positive laws and the very condition of the natural law's social and political effectiveness depends upon it.

## Conclusion

I have argued that in *Leviathan* Hobbes appropriates and redeploys Aristotle's understanding of virtue ethics when he writes of natural justice. I have also argued that Hobbes's new attentiveness in *Leviathan* to the virtues of the sovereign has significant bearing on his legal philosophy. Specifically, I have tried to show that the primordial political foundation of Hobbes's legal philosophy is neither command nor natural law (or any conjunction of the two). Instead, both are grounded on the instantiation of great virtue in the natural person of the sovereign. In the routine application of law, this connection need not be overt. However, as the case of bad laws in Hobbes makes clear, sovereign vice (and conversely by extension, virtue) does inform the people's perception of the law's legitimacy. Moreover, in moments of emergency, the usually subtle dynamic between legal regimes, legal norms, and the natural person of the sovereign becomes foregrounded. Then the functioning of natural laws and justice are realized as dynamic. It is a complex legal/philosophical dynamic, but there is a clear hierarchy and order to it. This complexity is why Hobbes often appears to be defending contradictory claims regarding the nature of law. My arguments have not attempted to dispel these contradictions. Indeed, I believe that one of the strengths of this argument is in demonstrating that the appearance of conflict between competing critiques of Hobbes's legal philosophy disappears when subsumed under the idea of natural justice.

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## 7. Obligation, Resistance, and Sovereign Virtue

**Abstract:** This chapter is on obligation and resistance in *Leviathan*. The chapter turns on six exceptions to the de facto rule in *Leviathan*, all of which direct our attention to the sovereign's character and the citizens' judgment thereof. They are: (i) the inner consent, (ii) inner resistance, (iii) fortitude and fidelity, (iv) magnanimity, (v) war, and (vi) barbarism and natural punishment. I argue that each expresses a version of a fundamental political fact in *Leviathan*, namely that when the sovereign strays from virtue to vice, the natural basis of obligation collapses. Sovereign inequity, cowardice, greed, vanity, rashness, pompousness, arrogance, deference to vain elites, and, most fundamentally, sovereign barbarism are naturally dishonorable and will invariably undermine the regime.

**Keywords:** obligation; resistance; magnanimity; war; natural punishment; barbarism

“The common people should not be provoked even by kings[.]”<sup>1</sup>

### Introduction

Obligation is a central aspect of Hobbes's political theory and a touchstone concern of Hobbes scholarship. The sovereign virtue critique I have defended sinks or swims by whether it bears on the question of obligation and, more decisively, of resistance. The first evaluation of those prospects is not promising. Taken up from the perspective of those who are ruled, Hobbes does not give an inch on the question of obligation and is a staunch critic of any and all justifications for resisting the powers of the sovereign. As the

<sup>1</sup> Hobbes, *Leviathan*, II:xxx. 536–37 (Latin edition).

extensive secondary literature shows, Hobbes rallies a series of different arguments, all persuasive in their own right, regarding the rationality and necessity of a rather thoroughgoing obligation to the sovereign. There are many different routes to the same conclusion regarding the liberties of subjects and the rights of sovereignty: obedience for peace. However, as the previous chapters have already noted, there are exceptions. As this chapter will show, there are many, and they strike at questions of essential political importance: freedom, self-preservation, resistance, war, and revolution. Cataloguing and considering those exceptions reveals that they all point in the same direction: the fact of sovereign virtue or vice defines the fact of natural obligation and resistance.

The debate regarding obligation and resistance in Hobbes has been between variants of natural right/egoist interpretations and natural law/deontological interpretations. Natural right interpretations make the argument that the primary human motivation is the self-interested drive for "Power after power,"<sup>2</sup> that the greatest evil in life is war and death, and hence that the *sine qua non* of politics is obedience to whatever power provides peace, up until the point that the sovereign physically threatens one's life. There are many variations on this argument, but whether by way of the social covenant or because of the existence of the sovereign, citizens in this reading are obliged to follow the commands of the sovereign, securing protection by giving obedience.<sup>3</sup> Ethical motivation (if it is to be called that) is imparted by natural human egoism, and the natural laws are understood as prudential maxims without independent motivational force.<sup>4</sup> As a result, even the most generous interpreters of the right to resistance in Hobbes like Susanne Sreedhar conclude that "by appropriating the language of resistance rights, Hobbes undermines actual political resistance."<sup>5</sup>

Deontological interpretations contest that Hobbes's discussion of the natural laws are not simply prudential; they are primary concerns, as they provide the pre-political ethical motivations that ground obligation before

2 Hobbes, *Leviathan*, II:XI. 150.

3 Strauss, *The Political Philosophy of Hobbes*; Hampton, *Hobbes and the Social Contract Tradition*; Kavka, *Hobbesian Moral and Political Theory*; Gauthier, *The Logic of Leviathan*; Nagel, "Hobbes's Concept of Obligation." Others have asserted that the right to self-preservation in Hobbes is far more robust than is generally afforded and entails significant duties on the part of the sovereign. See Steinberger, "Hobbesian Resistance"; Curran, *Reclaiming the Rights of the Hobbesian Subject*. Steinberger's argument has affinities with the argument that I will develop here. See also Hallenbrook, "Leviathan No More: The Right of Nature and the Limits of Sovereignty in Hobbes."

4 Watkins, *Hobbes's System of Ideas*.

5 Sreedhar, *Hobbes on Resistance*, 171.

and after the social covenantal moment.<sup>6</sup> Different natural law interpretations pull in different directions, but all identify certain foundational autonomous normative forces (reason or some transcendent God) as being pre-politically motivating. Here the claim is that because these motivational forces allow for a real decision—as opposed to deriving from Hobbes’s mechanistic physiology a deterministic egoism—Hobbes can be said to hold a significant moral philosophy.<sup>7</sup> These readings never call into question that Hobbes’s egoistic claims *lack* motivational force. However, they often argue that these postulates cannot in and of themselves explain either the problem of entry into the social covenant or how the social covenant is maintained (to which the egoist reading may respond that the deontological reading cannot explain why the natural condition of mankind is conflictual in the first place or, accepting that it is, why a monolithic sovereign and a social covenant are the only viable solutions). No matter. Regarding obligation, the conclusion is just as strict as the egoist account, if not even more so due to being laden by yet further justifications for the claim that subjects must on almost all matters simply obey. If anything, they should obey with zeal. Both the egoist/natural right and the deontological/natural law interpretations reach a shared explanatory dilemma at the problem of war, as neither interpretation appears to allow for citizens to put their lives on the line for the public good, a problem that is sometimes cast as speaking to an essential paradox in Hobbes’s thought.<sup>8</sup>

These disagreements are similarly manifest in the expressly ideological debates surrounding obligation in Hobbes.<sup>9</sup> Reflecting on that debate, Hoekstra convincingly argues that we are well served by focusing instead on Hobbes’s political naturalism—what he calls “the fact of power and the facts of human nature”<sup>10</sup>—as doing so reveals the shared underlying logic informing royalist, contractualist, and de factoist ideologies of obligation.<sup>11</sup>

6 Taylor, “The Ethical Doctrine of Hobbes”; Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*; Martinich, *The Two Gods of Leviathan*; Zagorin, *Hobbes and the Law of Nature*.

7 Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*, 6.

8 Strauss, *The Political Philosophy of Hobbes*, 114; Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*, 188–99; Bagby, *Thomas Hobbes*, 125–35. Though Sreedhar does develop her own theory of obligation which, when appended to Hobbes, saves Hobbes from himself; Sreedhar, *Hobbes on Resistance*.

9 Skinner, “The Ideological Context of Hobbes’s Political Thought”; Skinner, *Visions of Politics*; Malcolm, *Leviathan I. Editorial Introduction*.

10 Hoekstra, “The de Facto Turn in Hobbes’s Political Philosophy,” 72. For a more recent account of this debate, see Malcolm, *Leviathan I. Editorial Introduction*, 65–81.

11 Hoekstra, “The de Facto Turn in Hobbes’s Political Philosophy.” Hoekstra sets out a similar argument against John Deigh’s argument for the independence of Hobbes’s ethics and psychology

Importantly for my argument, Hoekstra also brings into focus another common trait in all these interpretations, both analytical and ideological: the politics of obligation are usually read from the perspective of Hobbes (to crudely stitch together two disparate quotations) teaching those “that contend, on one side for too great Liberty”<sup>12</sup> “how to obey.”<sup>13</sup>

But Hobbes also has a second audience and a second set of goals in mind: those who contend “for too much Authority”<sup>14</sup> must be taught “how to govern.”<sup>15</sup> This brings me to my intended contribution. From that perspective, another discussion of obligation that refers to a different set of natural facts emerges. These facts have not necessarily gone without note, but their unity has not been made apparent. Instead, they have generally been dismissed as being divergences, anomalies, non-essential, or not representative of Hobbes’s true intentions. However, as exceptions add up, one begins to wonder just how exceptional they are. And when their analysis reveals clear conceptual and theoretical continuities between them, then it stands to reason that there may be more to say about obligation in Hobbes’s *Leviathan*. What they reveal, positively, is a contiguous set of reflections on the politics of obligation that pivot on the character of the sovereign and the citizens’ judgment thereof, which have little in common with the analytical and ideological discussions of obligation. Negatively, they reveal the relationship between the failure to manifest those virtues and effective obligation, and the natural punishments to which pusillanimous and barbaric sovereigns will succumb. That is, they speak to an understanding of obligation that turns on sovereign virtue ethics.<sup>16</sup> At least, so I will argue.

in his “Hobbes on Law, Nature, and Reason.” For an alternative explanation, see Baumgold, “The Difficulties of Hobbes Interpretation.”

12 Hobbes, *Leviathan*, II:THE EPISTLE DEDICATORY.

13 Hobbes, *Leviathan*, II:XXXI. 574.

14 Hobbes, *Leviathan*, II:THE EPISTLE DEDICATORY.

15 Hobbes, *Leviathan*, II:XXXI. 574.

16 There is a case to be made that Hobbes was generally concerned with virtue. I make such a case in this book, but see also Boonin-Vail, *Thomas Hobbes and the Science of Moral Virtue*; Ewin, *Virtues and Rights*; Skinner, *Reason and Rhetoric*, 11; on modesty Cooper, “Vainglory, Modesty, and Political Agency in the Political Theory of Thomas Hobbes”; on magnanimity, Corsa, “Thomas Hobbes: Magnanimity, Felicity, and Justice”; Gert, “The Law of Nature as the Moral Law”; Gert, *Hobbes: Prince of Peace*. Boonin-Vail’s is the most robust account of virtue ethics in Hobbes. It is curious that Boonin-Vail does not address the virtue of magnanimity and only fleetingly addresses the question of obligation. Andrew Corsa’s studies of magnanimity do not focus on sovereignty specifically, but many of his arguments are about human conduct in general and so carry over; see “Thomas Hobbes: Magnanimity, Felicity, and Justice”; “Thomas Hobbes on Civility, Magnanimity, and Scientific Discourse.” Corsa and I agree on the general outlines of Hobbes’s account of magnanimity, including the connection to fidelity, and I have

My argument turns on a series of exceptions and qualifications to the de facto rule in *Leviathan*, all of which direct our attention to the moral character of the sovereign and the judgment of citizens thereof. I begin by considering the inner consent of citizens as a form of judgment of sovereign virtue and vice, a consideration that is then extended in the next section with a discussion of inner resistance. I then consider fortitude and fidelity. Next I consider magnanimity vis-à-vis the facts of power and human nature. I then reconsider the paradox of war as it has been cast in the natural right and natural law interpretations, focusing instead on what Hobbes writes about honor. I next consider Hobbes's critique of barbarism and the discussion of natural punishment. In conclusion, I reflect more broadly on obligation, resistance, and virtue in Hobbes.

### Inner consent

Discussions of obligation and resistance in *Leviathan* usually begin with his writings on the natural condition of mankind in XIII. From that point on, Hobbes sets out the idea of the social covenant, the basic elements of the de facto claim, the laws of nature, and different forms of institution. Whether or not one reads Hobbes as a natural right or a natural law theorist, his discussions of obligation are roundly concerned with showing that both point toward robust obligations and few, if any, valid reasons to resist. The benefit of this approach is clarity and precision: clear accounts of human egoism or rationality, clear juxtapositions against the fear of death and irrationality, respectively, and thus precise grounds for a thoroughgoing obligation and certainly no right of resistance to sovereign power. This approach is fine, and I do not ultimately contest it, but it is evidently apolitical. Most importantly, it accepts—and Hobbes clearly puts real rhetorical weight behind it being accepted—that the state of war is “solitary, poore, nasty, brutish, and short”<sup>17</sup> and thus reducible to rudimentary drives. Much follows from starting from XIII, but much is lost. For instance, it tells us nothing about the reason why the previous polity had dissolved—that is, why subjects abjured their obligation to the sovereign—leaving the distinct impression that Hobbes

learned much from his study. Geoffrey Vaughan hits upon a few important themes as well but leaves many issues unexplored. See Vaughan, “Hobbes on Magnanimity and Statesmanship: Replacing Virtue with Science.”

<sup>17</sup> Hobbes, *Leviathan*, II:XIII. 192.

is beginning from a sort of ahistorical and unconditioned void and thus boxing out practical questions related to obligation and resistance.

However, XII provides just such an account, so to begin, I want to briefly return and review Hobbes's argument, this time focusing on losing, not establishing, consent. In XII Hobbes sets out an account of the process of regime collapse that corresponds with the incremental emergence of what can be fairly termed inner resistance. First, Hobbes explains the politics of new foundations and the processes founders use to command the faith of subjects. Having declared that the natural laws and the positive laws contain each other, Hobbes then turns to the decay of faith and the undermining of obligation. Hobbes begins by characterizing a subject's faith in the sovereign-founder as based on the belief that he or she will "labour to procure their happiness,"<sup>18</sup> turning then to the reason regimes fail. Each of Hobbes's answers involves the citizens' evaluation of sovereign conduct. "It followeth necessarily," Hobbes writes, that

when they that have the Government of Religion, shall come to have either the *wisdom* of those men, their *sincerity*, or their *love* suspected; or that they shall be unable to shew any *probable token of Divine Revelation*; that the religion which they desire to uphold, must be suspected likewise; and (without the feare of the Civill Sword) contradicted and rejected.<sup>19</sup>

Four conditions, then, all of which turn on the character of the sovereign: *wisdom*, *sincerity*, *love*, and *revelation*. (I will return to the subordinate clause regarding the fear of the civil sword.)

Hobbes links the reputation for wisdom with the logical coherence of promulgated doctrine. Whatever the symbolic content of religious creeds ("Men, Women, a Bird, a Crocodile, a Calf, a Dogge, a Snake, an Onion, a Leeke"<sup>20</sup>), their attendant ethical-political claims must not be absurd. Indeed, variation in symbolic content notwithstanding, all religions must meet the conditions of staunching curiosity and thereby establishing a general psychological foundation for the flock's worldview and thus sense of self. Founders of religions and new state doctrines will invariably have their wisdom assessed by way of the internal (in)coherency of the regime. This is because an irrational claim necessarily "discredits him in all things else he shall propound as from revelation supernaturall: which revelation a man may indeed have of many things above, but nothing against naturall reason."<sup>21</sup>

18 Hobbes, *Leviathan*, II:XII. 180.

19 Hobbes, *Leviathan*, II:XII. 180 (emphasis added).

20 Hobbes, *Leviathan*, II:XII. 172.

21 Hobbes, *Leviathan*, II:XII. 182.

As well as assessing the rationality of the sovereign, citizens also judge the sincerity of the natural person bearing the office of the sovereign. Hobbes writes that “That which taketh away the reputation of Sincerity, is the doing, or saying of such things, as appeare to be signes, that what they require other men to believe, is not believed by themselves”.<sup>22</sup> Whatever the formal marks of sovereignty, in practice there is an imperative for sovereigns to abide by their own ideological claims and by the laws of nature. That practical duty becomes stricter as these claims become clearer—when codified as law, for example. Those duties are not merely one of the intentions behind the law (or religious doctrine); it is an ongoing duty against which subjects observe and evaluate the public actions of the sovereign. Of course, Hobbes does not describe manifest insincerity as law-breaking—because it is not—but he does describe that sovereign’s insincerity as “sinful,” a character trait flagged by flagrant vice: “Injustice, Cruelty, Prophanesse, Avarice, and Luxury.”<sup>23</sup>

Hobbes also advises that sovereigns abstain from doing evil and instantiate other-regarding love. “That which taketh away the reputation of Love,” Hobbes writes, “is the being detected of private ends”.<sup>24</sup> Sovereigns who direct the state apparatus to fulfill their own egoistic desires undermine their claim to securing equity and general flourishing, the very reasons the commonwealth was founded.<sup>25</sup> “For that which men reap benefit by to themselves, they are thought to do for their own sakes, and not for love of others.”<sup>26</sup> These moral transgressions are all the more flagrant where the ideological apparatus of the state claims other ideals. Note that this claim does not turn, as the laws of nature generally do,<sup>27</sup> on the silver rule of negative reciprocity (“do not unto others as you would have them not do unto you”), which Hobbes routinely advises for the great majority. Instead,

22 Hobbes, *Leviathan*, II:XII. 182.

23 Hobbes, *Leviathan*, II:XII. 182.

24 Hobbes, *Leviathan*, II:XII. 182. Cf. Nagel: “Not once in *Leviathan* does he appeal to concern for others as a motive, but always to self-interest”; Nagel, “Hobbes’s Concept of Obligation,” 81.

25 On equity in Hobbes, see Zagorin, *Hobbes and the Law of Nature*, 84–98. Zagorin does not note that the foundation of the commonwealth is based on the formalization of the inequality, and more importantly that uncoerced equitable conduct is perhaps the most unequally distributed character trait of them all. Zagorin’s study also ends where many natural law arguments do, namely by presupposing an inherently motivational quality to reason to arrive at just conclusions without aid. Note that this critique does not scuttle my argument but simply means that equitable conduct is conditional on the charity (“free gift”) of sovereigns (or future sovereigns). Here I believe I am in agreement with Gert on the idea of sovereignty as a “free gift”; see Gert, “The Law of Nature as the Moral Law.”

26 Hobbes, *Leviathan*, II:XII. 182.

27 As Gert writes, “[a]lthough Hobbes talks about the laws of nature as prescribing the virtues, it is easier to think of them as proscribing the vices.” Gert, “The Law of Nature as the Moral Law,” 43.



it relies on the golden rule (“do unto others as you would have them do unto you”) and indeed pushes this to the realm of charity, as there are no express requirements to requite.

Finally, the question turns to how sovereigns can continue to instantiate evidence of their “divine Calling”.<sup>28</sup> It is politically crucial that they do so, for if sovereigns cannot evince their special calling—either by “true Prophecy”, “extraordinary Felicity”, or the “operation of Miracles”<sup>29</sup> (by which Hobbes always means *perception* of “miracles”, etc.<sup>30</sup>)—then the declared moral values of the commonwealth risk appearing (and being) unmoored, left instead to conventionalism, “the Custome, and Lawes of the places, in which they be educated.”<sup>31</sup> Hobbes’s answer is that the operative distinction is between religion, superstition, and what Hobbes calls “TRUE RELIGION”: “Feare of power invisible, feigned by the mind, or imagined from tales publicly allowed, RELIGION; not allowed, SUPERSTITION. And when the power imagined, is truly such as we imagine, TRUE RELIGION.”<sup>32</sup> If the “tale publicly allowed” corresponds with “TRUE RELIGION,” all the better. But Hobbes’s emphasis is on the latter. It is no small ask; the sovereign must persuasively instantiate (give a “probable token of Divine Revelation”<sup>33</sup> to) divine calling. But the veracity of that miracle—that is, its status as pertaining to a “true religion”—is wholly independent of the sovereign’s office (on the “marks” of sovereignty) and is an output of the natural person who bears the office, *their* personal persuasiveness and sincerity, and the judgment of individual citizens thereof.

The implication of each of the four traits of the sovereign is that subjects are naturally and necessarily in constant judgment of the sovereign’s words and actions and that the legitimacy of those doctrines is, at least internally for the subject, automatically evaluated and considered. Such evaluations may be in the background during normal political times—times when the person of the sovereign and their doctrine comport with the subject’s conception of religion—but they become the effective grounds of practiced obligation in moments of emergency (a point that I will expand upon shortly).

28 Hobbes, *Leviathan*, II:XII. 182.

29 Hobbes, *Leviathan*, II:XII. 182.

30 The major problem with the claim that God’s power gives pre-political normativity to the natural laws is that whatever God is in the world, it must be represented by an agent; see Abizadeh, “The Representation of Hobbesian Sovereignty: Leviathan as Mythology.” See also Chapter Five.

31 Hobbes, *Leviathan*, II:XII. 182.

32 Hobbes, *Leviathan*, II:VI. 86.

33 Hobbes, *Leviathan*, II:XII. 180.

We are still far from a justification for rebellion, but it does speak to the freedom of the citizen to evaluate, internally, the person who is supposed to both represent their own interests and wield state power.

Hobbes summarizes his discussion of the four faults undermining sovereignty with what I take to be a crucial insight regarding the effective grounds of obligation: “For as in naturall things, men of judgment require naturall signes, and arguments; so in supernaturall things, they require supernaturall, (which are Miracles,) before they *consent inwardly*, and from their hearts.”<sup>34</sup> Here, in one of Hobbes’s clearest discussions of regime collapse and the economy of responsibility thereof, he claims that the core problem is the collapse of inner consent. Moreover, Hobbes assigns to the sovereign the responsibility to maintain and foster inner consent by way of his or her (or their) own virtue. Among the many striking features of XII, one is the surprising extent to which the effective political legitimacy of the sovereign turns on subjects’ private judgment of the sovereign’s—or the would-be sovereign founder’s—character. Indeed, that inner consent to evaluate the virtues of the natural person of the sovereign is the central concern, the pivot around which Hobbes’s forthrightly discusses the real politics of rebellion. Taken seriously, XII implies that no matter how formidable the sovereign’s coercive power—indeed that kind of power goes unmentioned in XII—and no matter how pervasive the sovereign’s concomitant ideological apparatus may be, subjects retain the inner freedom to judge the character of the sovereign. Regardless of social contractual or de factoist claims regarding the legitimacy of the state, maintaining the fiction of the state is contingent upon subjects judging that his or her personifying sovereign is representative of his or her will.<sup>35</sup>

### Inner resistance

This brings us back to the subordinate clause: “(without the feare of the Civill Sword)”.<sup>36</sup> Inner consent implies the possibility for inner resistance, whereby disagreement transforms into subjectivity-forming disgust, distrust,

34 Hobbes, *Leviathan*, II:XII. 182. Teresa M. Bejan comes to a more or less similar analysis of Hobbes’s discussion of what I have called “inner consent” but comes the opposite conclusion, namely that such consideration—including considerations of natural honors—are immaterial to the political project of public adherence to the power of the sovereign. See Bejan, *Mere Civility: Disagreement and the Limits of Toleration*, 94–95.

35 See Chapter Four.

36 Hobbes, *Leviathan*, II:XII. 180.

and dismay, and then, perhaps, resistance. Hobbes is not keen to broach the topic, but in his later discussion of sinful and blasphemous sovereigns, he is compelled to address it.<sup>37</sup> Blasphemous sovereigns are those who command a belief in a god other than the “true God”,<sup>38</sup> manifest as justice, modesty, honor, and equity. Recounting the biblical story of the prophet Elisha and Naaman (the Syrian slave and Christian convert who was compelled to bow in the house of Rimmon), Hobbes writes, “This the Prophet approved, and bid him *Goe in peace*. Here Naaman *beleevd in his heart*; but by bowing before the Idol Rimmon, he denyed the true God in effect, as much as if he had done it with his lips.”<sup>39</sup> Following this, Hobbes asks, “what shall we answer to our Saviours saying, *Whosoever denyeth me before men, I will deny him before my Father which is in Heaven?*”<sup>40</sup> Hobbes’s answer is that one can supplicate and genuflect in the face of sovereign vice and duress, but in that case the subject’s actions are “not his, but his Sovereigns; nor is it he that in this case denyeth Christ before men, but his Governour and the law of his countrey.”<sup>41</sup> Hobbes seems to be implying that in these situations, the sovereign reverses the social contractual logics of authorization: it is the sovereign who authors the public actions of the subjects (compelling genuflection), revealing both the ephemeral nature of their obligation as well as the corrupt character of that sovereign. Hobbes had earlier declared it absurd to resist sovereigns, as it is akin to resisting one’s own will. However, this critique cannot stand where faith is coerced, as it removes a final lingering critique of resisting a sovereign’s *authorized* commands. Yes, breaking the social covenant is an absurdity and against the laws of nature, but what Hobbes is describing here is different. It is, at least, an inner vehement disagreement. At most, it inverts the critique, ascribing absurdity to the sovereign while allowing subjects to retain, at least in private, a measure of rationality.<sup>42</sup>

Later Hobbes extends his discussion to cases where sovereigns use terror to enforce idolatrous prayer. Hobbes’s conclusion is, again, striking. He writes,

[I]f a King compell a man to it [seeming idolatry] by the terrour of Death, or other great corporall punishment, it is not Idolatry: For the Worship which the Sovereign commandeth to bee done unto himself by terrour

37 On this topic see Martinich, *The Two Gods of Leviathan*, 297–98; Lloyd, *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature*, 283–87.

38 Hobbes, *Leviathan*, II:XVI. 248.

39 Hobbes, *Leviathan*, III:XLII. 784 (emphasis added).

40 Hobbes, *Leviathan*, III:XLII. 784.

41 Hobbes, *Leviathan*, III:XLII. 784.

42 See also Lloyd, “Hobbes’s Self-Effacing Natural Law Theory,” 298–303.

of his Laws, is not a sign that he that obeyeth him, does inwardly honour him as a God, but that he is desirous to save himselfe from death, or from a miserable life; and that which is not a sign of internall honor, is no Worship; and therefore no Idolotry. Neither can it bee said, that hee that does it, scandlizeth, or layeth any stumbling block before his Brother; because how wise, or learned soever he be that worshippeth in that manner, another man cannot from thence argue, that he approveth it; but that he doth it for fear; *and that it is not his act, but the act of his Sovereign.*<sup>43</sup>

This is a potentially subversive statement on Hobbes's part, one that strikes at the core of the ideological claims of various theories of obligation. In substance, it is another qualification of the theory of authorization. Hobbes's claim is that in cases where the sovereign uses fear to force obedience, he or she may garner short-term success, but at the cost of undermining the foundations for long-term peace.

This discussion has implications for the practice of obligation and political self-consciousness in times of "too much Authority".<sup>44</sup> It implies that sovereigns who act without virtue and in contradiction to the laws of nature create subjects who reflectively construct a critical subjectivity in inner discordance with society's "conversation" (the small morals signaling deference to sovereign power) and the sovereign's will (instantiated, declared, and suspected). Hobbes will later call this "inward, and hearty detestation".<sup>45</sup> While Hobbes does not allow for the public rebuke of sovereigns, he surely recognizes the inevitability of private disgust at greed, iniquity, insincerity, and infidelity as a form of internal freedom. Indeed, it is a fact of human nature that public hypocrisy and sovereign vice will generate inner disgust on the part of subjects. Thus, Hobbes continues,

For an unlearned man, that is in the power of an Idolatrous King, or State, if commanded on pain of death to worship before an Idoll, *hee detesteth the Idoll in his heart:* he doth well; though if he had the fortitude to suffer death, rather than worship it, he should do better.<sup>46</sup>

43 Hobbes, *Leviathan*, III:XLV. 1034 (emphasis added).

44 Hobbes, *Leviathan*, II:THE EPISTLE DEDICATORY. 4.

45 Hobbes, *Leviathan*, II:XLV. 1038.

46 Hobbes, *Leviathan*, III:XLV. 1038 (emphasis added).

Obedience wrought through the fear of violent death, Hobbes continues, is a sin on the part of those who should know better.<sup>47</sup> It may secure temporary obedience, but only of the most superficial and undependable kind.

There are three corollaries to this argument that relate specifically to the “unlearned man” (in the next section, I will address the implied fortitudinous learned person who risks suffering death). The first is that subjects who resist internally prepare for the prospective acceptance of a suitably virtuous sovereign replacement. Inner resistance is not armed rebellion, it may be entirely invisible, but it does set the psychological foundations to adhere to and give natural consent to some eminent alternative, if one ever becomes prominent. Secondly, these subjects will begin to reflect on the actions of their fellow subjects and consider whether they, too, are only feigning observance to the sovereign while dutifully abiding to the sovereign’s command. Susurrations of discontent can hollow out regimes that from the outside appear rapt by doctrines of obligation. There is, in other words, an unregistered problem embedded in the notion that Hobbes leaned toward the support of any doctrine so long as that doctrine promotes the peace (what Hoekstra calls the “doctrine of doctrines”<sup>48</sup>). Namely, if the sovereign goes all-in on the ideology of obligation, they risk neglecting the inner facts of natural obligation. The former is visible but ephemeral and easily feigned. The latter is far more difficult to ascertain (except in states of emergency, when it matters most) but substantive. Thirdly, and in advance of the discussion of war, all the above tells us something important about the psychology of civil war. Civil war is not a monological condition of fear and terror, though both are operative. The psychology of civil war is also informed by an overriding disappointment in the sovereign, in fellow subjects, and perhaps in one’s own hypocritical words and deeds. It is a state of omnipresent vice and a yearning for its antithesis.<sup>49</sup>

### Fortitude and fidelity

Who, then, are the exceptional figures whom Hobbes describes as having the “fortitude to suffer death, rather than worship it”?<sup>50</sup> To examine this idea, we can start by tracking a similar exception to Hobbes’s discussion of citizens

47 Hobbes, *Leviathan*, II:XLV. 1038.

48 Hoekstra, “The de Facto Turn in Hobbes’s Political Philosophy.”

49 In Hobbes’s technical sense of “dishonour,” Hobbes, *Leviathan*, II:X. 136.

50 Hobbes, *Leviathan*, III:XLV. 1038.

who do not sin by genuflecting. Extending his discussion of founders from XII, in the second half of *Leviathan*, Hobbes refers to the sovereign as “that one chief Pastor [...] the Civill Sovereign”.<sup>51</sup> Later, in a discussion of the role of the pastor in the directing and teaching of the multitude, Hobbes writes reverently of the time when “Kings were Pastors, or Pastors Kings.”<sup>52</sup> There, in contrast to his discussion of the duties of the subject under a blasphemous sovereign, Hobbes finally takes an overtly critical line against the sovereign.

Hobbes begins by considering the exception to the rule of inner consent. The exception pertains only to those “whose actions are looked at by others, as lights to guide them by”.<sup>53</sup> Hobbes does not afford this eminent figure the same luxury of quietism he affords to the “greatest part” of mankind. Hobbes writes that if pastors (or present or future sovereigns)

of whose knowledge there is a great opinion, doe externall honor to an Idol for fear; unless he make his feare, and unwillingness to it, as evident as the worship; he Scandalizeth his Brother, by seeming to approve Idolatry. For his Brother arguing from the action of his teacher, or of him whose knowledge he esteemeth great, concludes it to bee lawfull in it selfe. And this Scandall, is Sin, and a *Scandal given*.<sup>54</sup>

The implication is that while the many may be afforded a reprieve for genuflecting to false gods, for certain figures no exceptions are made, because they make no exceptions for themselves and, more importantly, because they have a reputation in the eyes of the many for not making excuses for themselves. Inner resistance alone is expressly denied to eminent figures whose social position and natural disposition confers a popular audience and a natural drive to honorable actions. (To be clear, Hobbes does not deny them that allowance, they will deny it to themselves). Hobbes concludes that “if a Pastor [...] has undertaken to teach Christs Doctrine to all nations, should doe the same”—i.e., suffer silently instead of resisting and inviting the punishment of a standing sovereign—“it were not onely a sinfull Scandall, in respect of other Christian mens consciences, but a perfidious forsaking of his charge.”<sup>55</sup> These special individuals have a calling to resist (outwardly)

51 Hobbes, *Leviathan*, III:XXXIX. 734.

52 Hobbes, *Leviathan*, III:XLII. 812. As Craig notes, “That formula sounds familiar somehow.” Craig, *The Platonian Leviathan*, 353.

53 Hobbes, *Leviathan*, III:XLV. 1038.

54 Hobbes, *Leviathan*, III:XLV. 1038. For more on “*Scandal given*,” see Malcolm’s remarks at Hobbes, *Leviathan*, III:1039 editorial footnote bn.

55 Hobbes, *Leviathan*, III:XLV. 1038.

precisely because they are self-conscious of their eminence and know that their actions have influence over the multitude. It is a moral imperative that transcends sovereign command where command proves egregiously and recurrently incompetent, irrational, and vengeful.

I have surveyed the character traits of the virtuous sovereign elsewhere, but what are the character traits that define a person called to *counterpose* iniquitous sovereigns? Part of the answer is given in xv, in a discussion of the difference between agents and actions and how the terms “just” and “unjust” are attributed to each naturally, irrespective of the positive law. For the most part, whether an action is just or unjust is measured by whether those actions conform to reason and manners. However, there are exceptional moments where actions anchor rationality and give definition to the manners. “That which gives to humane Actions the relish of Justice,” Hobbes writes,

is a certain Noblesse or Gallantnesse of courage, (rarely found,) by which a man scorns to be beholding for the contentment of his life, to fraud, or breach of promise. This Justice of the Manners, is that which is meant, where Justice is called a Vertue; and Injustice a Vice.<sup>56</sup>

Hobbes's claim here is that justice is a natural virtue, no matter its name. Certain eminent individuals—that is, individuals marked by “Noblesse” and “Gallantnesse”—will have the wisdom, the courage, and the calling to identify and defend “true justice”<sup>57</sup> and to do so through their actions (note the parallels between the concepts of, “true justice,” “true religion,” and “true God”).<sup>58</sup>

How are the many to distinguish the vainglorious, imposters, and false prophets from eminent individuals?<sup>59</sup> Certainty is impossible, but Hobbes points toward some often dependable character traits. One such answer revolves around Hobbes's understanding of the fortitude of the person who will “suffer death.”<sup>60</sup> Fortitude does not simply mean courage in the face of

56 Hobbes, *Leviathan*, II:xv. 226–28.

57 Hobbes, *Leviathan*, II:xv. 226–28 (Latin edition).

58 Hobbes, *Leviathan*, II:xv. 226–28.

59 Hobbes, *Leviathan*, III:xxxvi. 660. Or, as Hobbes writes elsewhere:

For they that see any strange, and unusuall ability, or defect in a mans mind; unlesse they see withal from what cause it may probably proceed, can hardly think it naturall; and if not naturall, they must needs thinke it supernaturall; and then what can it be, but that either God, or the Divell is in him? (Hobbes, *Leviathan*, II:viii. 118.)

60 Hobbes, *Leviathan*, III:xlvi. 1038.

adversity; it is the particular, indeed cardinal, virtue of *moral* strength and *moral* courage in the face of adversity. Hobbes uses the term fortitude three other times in *Leviathan*. One is in reference to magnanimity (to which I will return), and another speaks of fortitude with regard to “the meanes of peaceable, sociable, and comfortable living”.<sup>61</sup> The other reference echoes Hobbes’s discussion of the prophetic role of founders in XII and clarifies the conceptual affinities between Hobbes’s discussions of fortitude and new foundations. There, in a discussion of the “*extraordinary gifts of the Vnderstanding*”<sup>62</sup> (a trait that corresponds to the discussion of religious founders<sup>63</sup>), Hobbes examines the relationship between wisdom and the “*Spirit of God*,” which he describes as “extraordinary Understanding [...] the *Gift of God*”.<sup>64</sup> Hobbes cites similar passages from Exodus and quotes Isaiah:

[W]here the Prophet, speaking of the Messiah, saith, The Spirit of the Lord shall abide upon him, the Spirit of wisdom and understanding, the Spirit of counsell, and fortitude; and the Spirit of the fear of the Lord. Where manifestly is meant, not so many Ghosts, but so many eminent graces that God would give him.<sup>65</sup>

These graces manifest as natural gifts of eminent individuals whose knowledge exceeds what is normally attainable by either prudence or sapience. They are what Hobbes had earlier called a “probable token of Divine Revelation”.<sup>66</sup>

But fortitude can be feigned; indeed, that is the indelible uncertainty at the heart of rhetorical action.<sup>67</sup> So, how can vainglory be distinguished from fortitude? Hobbes’s answer turns on the concept of fidelity.<sup>68</sup> The first use of the term is in a discussion of counsel. Hobbes writes that “great Assemblies are necessitated to commit such affaires to lesser numbers, and of such persons as are most versed, and in whose fidelity they have the

61 Hobbes, *Leviathan*, II: XV. 242.

62 Hobbes, *Leviathan*, III: XXXIV. 614 (margin heading).

63 See also the discussion of human equality in Chapter Five.

64 Hobbes, *Leviathan*, III: XXXIV. 614.

65 Hobbes, *Leviathan*, III: XXXIV. 614.

66 Hobbes, *Leviathan*, II: XII. 180.

67 On rhetorical action, see Chapter Three.

68 Hobbes, *Leviathan*, II: XXV. 410, XXVI. 424, XXIX. 516, XXX. 550. Hobbes does not use the term in either *Elements* or *De Cive*.



most confidence.”<sup>69</sup> The second occurrence is in a discussion of natural laws that should guide the actions of the sovereign’s subordinates when they must make independent decisions. Hobbes writes that the “Instructions of naturall Reason may be comprehended under one name of *Fidelity*; which is a branch of naturall Justice.”<sup>70</sup> I have addressed counsel in Chapter Four and natural justice in Chapter Six, and so I will focus on the third and fourth references here.

The third reference to fidelity speaks directly to the problem of vainglorious upstarts:

[The] Popularity<sup>71</sup> of a potent Subject, (unlesse the Commonwealth have very good caution of his fidelity,) is a dangerous Disease; because the people (which should receive their motion from the Authority of the Sovereign,) by the flattery, and by the reputation of an ambitious man, are drawn away from their obedience to the Lawes, to follow a man, of whose vertues, and designes, they have no knowledge.<sup>72</sup>

The criticism is important, but the basic reflection on the nature of power is crucial. Hobbes’s observations speak to what he takes to be a natural and indelible mode of power: the political attraction of the many to people of eminence. The same cautionary note implies an injunction upon which rulers should model sovereign power. The example speaks to the faithfulness of that potent figure to the commonwealth, not of the sovereign, but it hits on a truth about faith. When transposing this idea to the sovereign, it could be said that fidelity to natural justice justifies the multitude in following a popular and potent leader of virtue and design when that leader’s fidelity is eminent. What makes a leader popular is not honorifics or office but experience. Certainly, one can have been vaingloriously feigning virtuous behaviors all along—as Hobbes signals—but without another measure, the multitude has no other recourse.

69 Hobbes, *Leviathan*, II:XXV. 410.

70 Hobbes, *Leviathan*, II:XXVI. 424.

71 Malcolm clarifies the meaning of the term. “Popularity”, he notes “seems at least partially to combine the meaning ‘being liked by the people’ with the meaning ‘cultivating the favour of the people.’” Hobbes, *Leviathan*, II:x. 132, editorial note c (definitions drawn from *OED*, ‘popularity’). Earlier in x, Hobbes writes, “Reputation of power, is Power; because it draweth with it the adhaerence of those that need protection [...] So is Reputation of love of a mans Country, (called Popularity,) for the same Reason.” Hobbes, *Leviathan*, II:x. 132.

72 Hobbes, *Leviathan*, II:XXIX. 516.

The final reference to fidelity in *Leviathan* is in a discussion of the threat of popular commanders that takes us full circle, back to the question of war and virtue. “[This] love of Souldiers, (if caution be not given of the Commanders fidelity),” Hobbes writes, “is a dangerous thing to Sovereign Power.” It is, but it is also central to the manifestation of sovereign power. The significance of this passage—and of Hobbes’s discussion of fortitude and fidelity more generally—is made clear in the next paragraph: “To have a known Right to Sovereign Power”—not simply *de facto* sovereign power, but the *known right* to it—“is so popular a quality, as he that has it needs no more, for his own part, to turn the hearts of his Subjects to him”.<sup>73</sup> And what is the “known right”? For reasons discussed already, it cannot be ideology or political science, or natural law or natural right. The “known right” of sovereign power is a determination to be made on the part of subjects. It is a *popular* judgment on the rightful supremacy of a natural person, irrespective of the formal titleholder of sovereign power. Lasting peace—sustained, and founded on more than fortunes, brute force, and ideology—is secured by way of reverence and love. Here Hobbes claims unequivocally that “But when the Sovereign himselfe is popular; that is, revered and beloved of his People, there is no danger at all from the Popularity of a Subject.”<sup>74</sup> (I will return to the notion of popularity in the crucial context of war and honor.)

Perhaps for these reasons, in *Behemoth* Hobbes distinguishes between two sets of virtues: the virtues of subjects and the virtues of sovereigns. The virtue of subjects, Hobbes writes, “is comprehended wholly in obedience to the laws of the commonwealth”,<sup>75</sup> meaning that the ethics and science of the commonwealth concern the just and unjust. By contrast, “The virtues of the sovereigns are such as tend to the maintenance of peace at home, and to the resistance of foreign enemies.”<sup>76</sup> The “royal” virtues that Hobbes cites are fortitude, frugality in private affairs (“for it increases the public stock, which cannot be too great for the public use, nor any man too sparing of what he has in trust for the good of others”<sup>77</sup>), and liberality in public expenditures (“for the commonwealth cannot be well served without extraordinary diligence and service of ministers, and great fidelity to their Sovereign; who ought therefore to be encourage, and especially those that

73 Hobbes, *Leviathan*, II:xxx. 550. The idea of “turning hearts” may be a reference to the storming of the city of God by violence in Matthew 11:12; see Chapter Five.

74 Hobbes, *Leviathan*, II:xxx. 550.

75 Hobbes, *Behemoth*, 44.

76 Hobbes, *Behemoth*, 44–45.

77 Hobbes, *Behemoth*, 45.

do him service in wars”<sup>78</sup>). Hobbes concludes the discussion, writing that “In sum, all actions and habits are to be esteemed good or evil by their causes and usefulness in reference to the commonwealth, and not by their mediocrity, nor by their being commended.”<sup>79</sup>

### Magnanimity, power, and the causes of war

I turn now to obligation as it relates to the facts of power and human nature, as brought out in relation to the question of magnanimity. Before proceeding, I need to pause to belatedly consider a counterargument. I have developed a panoply of arguments regarding virtue in *Leviathan* and repeatedly asserted that they are sometimes Aristotelian in nature. Those arguments seem to run afoul of Hobbes's own critique of Aristotelian virtue ethics (as signaled in Hobbes's criticism of “their mediocrity” above). To see why Hobbes can criticize Aristotelianism while still tapping into core Aristotelian ideas, we need to attend to the questions of mediocrity and to its exceptions in Aristotle.

Hobbes's criticism of virtue ethics is more or less as follows. “Writers of Morall Philosophie,” Hobbes writes,

though they acknowledge the same Vertues and Vices; Yet not seeing wherein consisted their Goodnesse; nor that they come to be praised, as the meanes of peaceable, sociable, and comfortable living, place them in a mediocrity of passions: as if not the Cause, but the Degree of daring, made Fortitude; or not the Cause, but the Quantity of a gift, made Liberality.<sup>80</sup>

It is clearly a criticism of Aristotelian virtue ethics, but it surely is not a denunciation of virtue ethics *in toto*, and importantly, it is not complete in its account of the virtues delineated by Aristotle, most conspicuously leaving out the virtue of magnanimity.<sup>81</sup> To see how Hobbes can both criticize the

78 Hobbes, *Behemoth*, 45.

79 Hobbes, *Behemoth*, 45.

80 Hobbes, *Leviathan*, II:xv. 242.

81 Leo Strauss first noted that magnanimity is newly prominent in *Leviathan*; Strauss, *The Political Philosophy of Hobbes*, 55. This was something of a puzzle for Strauss, as Hobbes's account of magnanimity contradicted his interpretation of Hobbes as discursive founder of liberal natural right theory. Hobbes, we are told, was writing against the virtue ethics tradition, not returning to it. Unable to reconcile this contradiction, Strauss dismissed Hobbes's discussion of magnanimity as anomalous, asserting that Hobbes was temporarily “confused as to his own real intention”; Strauss,

virtue ethics defended by the Aristotelians while also extolling some virtues, we are well served by focusing on magnanimity, its place in *Leviathan*, and its idiosyncratic nature for Aristotle.

I touched on magnanimity in Aristotle in Chapters Three and Six. Let me here focus only on the signpost attributes. Recall first the uniqueness of magnanimity for Aristotle. Magnanimity is a puzzling virtue in Aristotle's thought, bridging both his ethical and political philosophies while also seemingly standing apart from both.<sup>82</sup> In *Ethics* magnanimity is characterized variously as "Greatness of soul", and a "[concern] with great things".<sup>83</sup> The magnanimous man "is thought to be great-souled if he thinks himself worthy of great things—and is indeed worthy of them".<sup>84</sup> He is "an extreme with regard to the grandness of his claims, but a mean with regard to their correctness; for he reckons his own worth in accordance with his real merit, while the others are excessive and deficient" and is "concerned with honours and dishonours in the right way."<sup>85</sup> Elsewhere Aristotle writes,

The great-souled person, since he is worthy of the greatest things, must be the best person of all. For the better a person is, the greater the things he is worthy of, and the best will be worthy of the greatest things; so the truly great-souled person must be good.<sup>86</sup>

To that, Aristotle adds that "The great-souled person looks down on others with justification, because he has the right opinion of himself, but the masses do so capriciously."<sup>87</sup>

In *Politics* the magnanimous man is described as "so outstanding by reason of his superior virtue that neither the virtue nor the political power of all the others is commensurable with his".<sup>88</sup> Aristotle writes,

But if there is one person or more than one [...] then such men can no longer be regarded as part of the city-state. For they would be treated

*The Political Philosophy of Hobbes*, 57. The confusion was likely on Strauss's part. For a more recent account of magnanimity in Hobbes, see Corsa, "Thomas Hobbes: Magnanimity, Felicity, and Justice."

82 On magnanimity in Aristotle, see Hardie, "'Magnanimity' in Aristotle's *Ethics*"; Howland, "Aristotle's Great-Souled Man."

83 Aristotle, *Nicomachean Ethics*, 1123b.

84 Aristotle, *Nicomachean Ethics*, 1123b.

85 Aristotle, *Nicomachean Ethics*, 1123b. "He" is Aristotle's language, but it is not necessarily so for Hobbes.

86 Aristotle, *Nicomachean Ethics*, 1123b.

87 Aristotle, *Nicomachean Ethics*, 1124b.

88 Aristotle, *Politics*, 1284.

unjustly if they were thought to merit equal shares, when they are so unequal in virtue and political power. For anyone of that sort would reasonably be regarded as a god among human beings. Hence it is clear that legislation too must be concerned with those who are equals both in birth and in power, and that for the other sort there is no law, *since they themselves are law*.<sup>89</sup>

Magnanimity describes the natural rule of a person whose virtue gives meaning to the constitutional order.

So, magnanimity in Aristotle is a unique virtue, because unlike other virtues, it is *not* defined by convention (“For they would be treated unjustly if they were thought to merit equal shares, when they are so unequal in virtue and political power”<sup>90</sup>) and thus by a mediocrity defined by the extremes outlined by convention. This was a puzzle for Aristotle, because it entailed that magnanimity did not pertain to the doctrine of the mean, as magnanimous leaders naturally stand above the multitude and thus above convention.<sup>91</sup> Magnanimity is, as Aristotle wrote of natural justice, “naturally the best everywhere.”<sup>92</sup>

Hobbes writes of magnanimity in similar ways. “*Contempt of little helps, and hindrances, MAGNANIMITY [...] Magnanimity, in danger of Death, or Wounds, VALOUR, FORTITUDE [...] Magnanimity in the use of Riches, LIBERALITY.*”<sup>93</sup> Magnanimity proceeds “from the conscience of Power.”<sup>94</sup> Hobbes, like Aristotle, contrasts the “Crooked Wisedome” of pusillanimous agents who use “unjust, or dishonest means” with the wisdom of magnanimous agents who have “contempt of unjust, or dishonest helps.”<sup>95</sup> Like Aristotle, Hobbes sees magnanimity as something like a crowning natural virtue that naturally transcends artificial honors.

Magnanimity in Hobbes thus has striking similarities to magnanimity in Aristotle, but Hobbes is eager to drive home that it is fundamentally about power, for which we must turn to X. Hobbes discusses power in X (*Of POWER, WORTH, DIGNITY, HONOUR, and WORTHINESSE*). There Hobbes

89 Aristotle, *Politics*, 1284 (emphasis added).

90 Aristotle, *Politics*, 1284.

91 Aristotle, *Nicomachean Ethics*, 1106b. As Boonin-Vail has noted, this is not an entirely accurate account of the doctrine of the mean on Hobbes's part; *Thomas Hobbes and the Science of Moral Virtue*, 182.

92 Aristotle, *Nicomachean Ethics*, 1135a6–7.

93 Hobbes, *Leviathan*, II:VI. 86.

94 Hobbes, *Leviathan*, II:X. 140.

95 Hobbes, *Leviathan*, II:VIII. 110.

discusses both the structure and modes of power. Regarding the structure of power, Hobbes writes that power is either natural or instrumental. Natural power is “the eminence of the Faculties of Body, or Mind: as extraordinary Strength, Forme, or Prudence, Arts, Eloquence, Liberality, [and] Nobility.”<sup>96</sup> Instrumental powers function as “means and Instruments to acquire more.”<sup>97</sup> “The Greatest of humane Powers”,<sup>98</sup> however, is the commonwealth, which Hobbes describes as a compound of the united power of “most men” with “one person” (natural or civil, but of course the civil person is represented by a natural person) “that has the use of all their Powers depending on his will”, namely the sovereign.<sup>99</sup> The commonwealth is an instrumental power to be wielded by the sovereign, whose own natural powers are not obviated but compounded into that artificial creation. Thus, the “fact of power”, as it relates to the commonwealth, is ultimately directed by some natural person’s natural powers. Coercive power is instrumental, but its valuation depends entirely on perceptions of the coercer. Hobbes writes,

And as in other things, so in men, not the seller, but the buyer determines the Price. For let a man (as most men do), rate themselves at the highest Value they can; yet their true Value is no more than it is esteemed by others. [...] The manifestation of the Value we set on one another, is that which is commonly called Honouring, and Dishonouring. To value a man at a high rate, is to *Honour* him; at a low rate, is to *Dishonour* him. But high, and low, in this case, is to be understood by comparison to the rate that each man setteth on himselfe.<sup>100</sup>

Power, for Hobbes, only functions through an economy of honor and dishonor, which brings us directly to considerations of the actions of the sovereign therein.

It is within that economy of honor and dishonor that the power of the magnanimous man is manifest. A magnanimous person is rich but liberal and has a “Reputation of power”<sup>101</sup> that naturally draws adherents. They are *popular*, where popularity is gained through demonstrated love of country.<sup>102</sup> They are successful and therefore reputed to be wise, to such an extent

96 Hobbes, *Leviathan*, II:x. 132.

97 Hobbes, *Leviathan*, II:x. 132.

98 Hobbes, *Leviathan*, II:x. 132.

99 Hobbes, *Leviathan*, II:x. 132.

100 Hobbes, *Leviathan*, II:x. 134–36.

101 Hobbes, *Leviathan*, II:x. 132.

102 Hobbes, *Leviathan*, II:x. 132.

that others “commit the government of our selves, more willingly than to others.”<sup>103</sup> They are also eloquent and beautiful with similar effects.<sup>104</sup> Power here means having a “Reputation of Prudence in the conduct of Peace and War”.<sup>105</sup> These honors are natural, distinct from civil honors, and generate their own normativity—natural obligation—irrespective and therefore potentially against civil honors. Hobbes is equally clear about all things that are naturally dishonorable. Any leader who manifests such vice, no matter the prevalent ideology, is undermining their own power. Hobbes's discussion in x is not only of leaders and sovereigns, but much of it is, and those discussions point in the same direction.

Conspicuous in x is how rare discussions of violence are. Fear is mentioned, but never in any absolute way (certainly not in any way that could be conceived as generative of the entire normative apparatus of a commonwealth). Just the opposite, Hobbes's discussion of power in x is problematic for any interpretation that prioritizes the politics of fear and violence in *Leviathan*. Fear is only mentioned after liberality, reputation, and love of country. Good success is described as a power that stokes either fear (of future harm) or reliance (on future protection), but not both, suggesting that sovereignty grounded in fear trades off against the very idea of protection. Hence, magnanimity is in no way discordant with Hobbes's theory of power but is, perhaps, *the* exemplary expression of power.

XI rounds out the discussion of power and virtue by squarely situating it in terms of the well-being of the commonwealth and the everyday practices of obligation. XI is on “manners”, which Hobbes defines as qualities that concern “living together in Peace, and Unity.”<sup>106</sup> Hobbes begins by situating the discussion within transhistorical epistemological debates and rejecting any idea of the “*Finis ultimus*” or “*Summum Bonum*”, understood as metaphysical categories toward which humans can orient themselves. Hobbes is, of course, writing against the idea of the *summum bonum*, but it is worth getting right what exactly he is against. It is sometimes assumed that he is setting himself against the *summum bonum* to set the stage for explicating a *summum malum*. But that is not the case. Hobbes's concern is, in the first instance, philosophical and only then political. The counterpoint to Aristotelian metaphysics, simply put, is Hobbes's materialist ontology (and related nominalist epistemology) *following* which he takes up the

103 Hobbes, *Leviathan*, II:x. 134.

104 Hobbes, *Leviathan*, II:x. 132.

105 Hobbes, *Leviathan*, II:x. 134.

106 Hobbes, *Leviathan*, II:xi. 150.

expressly political conditions under which “living together in Peace, and Unity”<sup>107</sup> is possible. That philosophical priority tells us something about Hobbes’s criticism of the *summum bonum*. Its meaning is the opposite of defending the *summum malum*; Hobbes, instead, aims to reveal that behind what is called the *summum bonum* is a philosophy of death. That point is crucial, because it is upon those philosophical grounds of materialism and nominalism that Hobbes defends his alternative normative position, a position muddled by discussion of a *summum malum*. Namely, that the very point of the commonwealth is *felicity*, that is, the “continuall progresse of the desire, from one object to another; the attaining of the former, being still but the way to the later”,<sup>108</sup> *in this life*. In sum, the counterpoint to the *summum bonum* is not a clear-eyed acknowledgement of the nasty, brutish, and short “truth” of the human condition, but also its opposite: a political philosophy of life.

Within that overarching philosophical framework, Hobbes then asserts in XI that the “generall inclination of all mankind” is the perpetual and restless “desire of Power after Power”.<sup>109</sup> Baldly considered, the rhetoric seems ominous, seemingly dispelling my claim regarding the philosophy of life and returning us to fear, force, short-term interests, and protection. (In other words, it returns us by proxy to the core tradeoff of protection for obedience.) Yet that bald consideration is textually unsupported. (It is also misleading because X, as we have seen, simply does not allow for such a bald account of power). Instead, and appropriately enough, Hobbes’s leading discussion of that dilemma is “Power after Power” as it relates to the “generall inclination of all mankind”.<sup>110</sup> However, the question is motivated not by a universal problem of limitless consumption and avarice, but specifically, Hobbes writes, “because he cannot assure the power and means to live well, which he hath present, without the acquisition of more.”<sup>111</sup> So felicity is contingent on protection, the question is how.<sup>112</sup>

It is in the midst of that striking paradox between felicity and the need for protection, that Hobbes turns to a discussion of leadership. Kings, Hobbes writes, “whose power is greatest”,<sup>113</sup> focus on

107 Hobbes, *Leviathan*, II:XI. 150.

108 Hobbes, *Leviathan*, II:XI. 150.

109 Hobbes, *Leviathan*, II:XI. 150.

110 Hobbes, *Leviathan*, II:XI. 150.

111 Hobbes, *Leviathan*, II:XI. 150.

112 For a full account of felicity see Chapter Five.

113 Hobbes, *Leviathan*, II:XI. 150.



assuring it at home by Lawes, or abroad by Wars: and when that is done, there succeedeth a new desire; in some, of Fame from new Conquest; in others, of ease and sensuall pleasure; in others, of admiration, or being flattered for excellence in some art, or other ability of the mind[.]<sup>114</sup>

As the passages following this quotation confirm, Hobbes's discussion is not simply an abstract reflection on human nature, it is primarily a reflection on most leaders and the problem of *their* restless desires (fame, conquest, ease, sensual pleasures, admiration, and flattery) which are deeply corrosive to manners. Competition for riches and honors lead to civil enmity and war. Desire for sensual delight is a fundamentally corrosive trait in a leader because it is ultimately an expression of the desire to be ruled, not rule. Those who vaingloriously strive for glory in war do so to the promotion of more war and ultimately their own demise. Even the desire to be flattered for excellence—distinctly different from real excellence—includes tendencies that lend to being ruled, as they are ultimately benign demands for leisure and someone else's protection. On that count, the latter manifestation of a sovereign's striving for power after power are, when considered on the level of the commonwealth (which is the very subject of XI), ultimately measures of powerlessness.

The overarching takeaway from Hobbes's initial discussion of such leaders is that they are equals, not excellent, and for that very reason they will usually drive their kingdoms into the ground. Moreover, even if such sovereigns manage to keep the ship of state afloat their mediocrity necessarily drives the people to resent their rule. For, Hobbes writes,

To have received from one, to whom we think our selves equall, greater benefits than there is hope to Requite, disposeth to counterfeit love; but really *secret hatred*; and puts a man into the estate of a desperate debtor, that in declining the sight of his creditor, tacitly wishes him there, where he might never see him more. For benefits oblige; and obligation is thraldome; and unrequitable obligation, perpetual thraldome; which is to ones equall, hatefull. But to have received benefits from one, whom we acknowledge for superiour, enclines to love; because the obligation is no new depression: and cheerfull acceptation, (which men call *Gratitude*,) is such an honour done to the obliger, as is taken generally for retribution.<sup>115</sup>

114 Hobbes, *Leviathan*, II:XI. 152.

115 Hobbes, *Leviathan*, II:XI. 154 (emphasis added). Here "retribution" = "Repayment or recompense for a service, good deed". *OED*, 1.a. Compare this passage to Aristotle: "The remaining

These are the psychological foundations of the sovereign's natural legitimacy (or "known right") and its relation to natural obligations by subjects. It is not a theory of legitimate political revolution—Hobbes never justifies revulsion at the sovereign's character as a legitimate grounds for political revolt—but he is quite clear that political upheaval is in the cards when sovereigns act in such ways.

The sword of state is no salve for such mediocre leadership. Hence, in the next paragraphs, Hobbes notes that sovereigns who have "done more hurt to a man, than he can, or is willing to expiate"<sup>116</sup>—which, Hobbes just told us, is the hurt that follows from equals ruling over equals (that is, when the sovereign is anything but an exceptional person of natural power)—"enclineth the doer to hate the sufferer. For he must expect revenge, or forgiveness, both of which are hatefull."<sup>117</sup> That cycle of distrust and hatred leads directly to the search for allies to resist, even pre-emptively, whatever harms may be seen to follow on the side of subjects. "Fear of oppression, disposeth a man to anticipate, or to seek ayd by society [in the Latin edition "allies"]": for there is no other way by which a man can secure his life and liberty."<sup>118</sup> This resistance is the first step toward the collapse of a regime. What Hobbes calls "*secret hatred*", which "puts a man into the estate of a desperate debtor, that in declining the sight of his creditor",<sup>119</sup> is the antithesis of the public and awe-inspiring theory of sovereignty depicted in the frontispiece of *Leviathan*. And the hatred is mutual, subjects secretly hating sovereigns who secretly hate subjects. Sovereigns inclined to respond with yet more violence will soon find that it is no solution at all.

Ideology is similarly an inadequate salve because consciousness of shameful weakness is so present, immediate, and visceral that no ideology could plausibly assuage it. In x Hobbes describes this condition as the private yet ever-nagging dishonor of "Pusillanimity, Parsimony, Fear, [and] Diffidence."<sup>120</sup> It is not peace, felicity, or "manners"; it is latent war. Certainly, one can build a commonwealth on fear, but it is a poor foundation that garners no loyalty but instead deep diffidence—both in the senses of lacking faith in someone and of doubting one's own abilities<sup>121</sup>—and disdain. At most, the sovereign

possibility—and it seems to be the natural one—is for everyone to obey such a person gladly, so that those like him will be permanent kings in their city-states." Aristotle, *Politics*, 1284b25–34.

116 Hobbes, *Leviathan*, II:XI. 154.

117 Hobbes, *Leviathan*, II:XI. 154.

118 Hobbes, *Leviathan*, II:XI. 154.

119 Hobbes, *Leviathan*, II:XI. 154 (emphasis added).

120 Hobbes, *Leviathan*, II:X. 140.

121 *OED*, 'diffidence', n. 1–2.

alone will be convinced of the truth of their favored doctrine of obedience. The people did not spark this latent war. The foolish sovereign did.

These discussions of power put the political psychology of the particular greatness of the magnanimous man in clear resolve. The magnanimous man is a natural ruler, not in the sense of a parent over a child, but in Hobbes's (and Aristotle's) sense of what is naturally honorable, what is naturally seen by those who will be ruled as superlative and worthy of obligating oneself to. The magnanimous man's standing is not just a measure of virtue but itself a kind of constitutive politics. It is what I have called ostracism in reverse, whereby the multitude obligate themselves not by direct election but instead by opting out of rule. It is paradoxically—but practically—a recognition of general equality through recognition of exceptional inequality. That matters for concrete matters of war, because the particular nature of the magnanimous man's virtue is recognized by all as being naturally—even rightly and agreeably—superior and thus not generative of comparison and competition. The liberality of the magnanimous man is *not* patronizing charity but security and flourishing; their valour is *not* demeaning of others but empowering; their glories are *not* ostentatious and private but public and loving. In other words, and in terms of Hobbes's discussion of the causes of war in XIII, their being is uniquely *not* a generator of competition, diffidence, and vainglory.<sup>122</sup> The fundamental problem of the state of war is not one that *more fear* can resolve, because violence alone does nothing more than aggravate the conditions of war. It is a *moral* problem insofar as only instantiated, awe-inspiring virtue—in the correct account of awe—can overcome the problems of competition, diffidence, and vainglory.<sup>123</sup> The solution to the problem of war is not more or different kinds of terror; it is eminent virtue.

Finally, let me return to the puzzle of Hobbes's engagement with Aristotle. It is by way of the uniqueness of magnanimity in Aristotle that Hobbes's otherwise staunch criticism of Aristotle's critique of virtue can be reconciled. The key idea is that Hobbes's criticism of conventionalist virtue ethics and therein the doctrine of the mean does not encompass Aristotle's notion of magnanimity, for magnanimity is not defined by the mean; it is instead universal and defines the very measure. It is, as we have seen, a kind of constitutive politics that grounds the normative constitution. That was a perplexing *problem* in Aristotle, but, I contest, Aristotle's problem was for

122 Hobbes, *Leviathan*, II:XIII. 190–92.

123 Roy Tsao was instrumental in helping me frame my argument in this fashion. The term “moral problem” is his.

Hobbes a *solution* to the problem of political order. What was for Aristotle a different type of political rule beyond the three virtuous and three corrupt options was for Hobbes a model of sovereignty in general. *Sovereign* magnanimity anchors convention, and magnanimous actions are exemplary (they are “the Cause”), embodying the natural values that the polity always and naturally orient themselves to. So, the paradox disappears: Hobbes can extol magnanimity while criticizing Aristotelian doctrines of the mean because they are categorically different.<sup>124</sup>

### Self-preservation, honor, and war

I turn now to war-making and self-preservation, topics that are more typical to discussions of the “right of resistance” and the limits of obligation in Hobbes. In Hobbes the first and most recognizable limit on sovereign power is the right to self-preservation. Based on this natural right, Hobbes posits the right to resist a sovereign’s violation thereof.<sup>125</sup> Much has been made of this argument, and for good reason. However, there are also good reasons to be wary of generalizing too much from it. At the core of this discussion is Hobbes’s claim that there are

some Rights, which no man can be understood by any words, or other signes, to have abandoned, or transferred. As first a man cannot lay down the right of resisting them, that assault him by force, to take away his life[.]<sup>126</sup>

While Hobbes holds that it is impossible for one to give up one’s right to self-preservation, he surely does not develop that right into a full-fledged theory of resistance. Hobbes discusses, for example, subjects resisting executioners. But the axe falls no matter what, and compatriots are forbidden to step in. It is for that reason, more or less, that Sreedhar concludes that “we can expect legitimate resistance to be not only relatively rare [...] but to be entirely unthreatening to the maintenance of the political order”<sup>127</sup> and that “by appropriating the language of resistance rights, Hobbes undermines actual

124 Hobbes, *Leviathan*, III:XLVI. 1074. See also Boonin-Vail, *Thomas Hobbes and the Science of Moral Virtue*, chap. 5.2.

125 Hobbes, *Leviathan*, II:XIV. 202.

126 Hobbes, *Leviathan*, II:XIV. 202.

127 Sreedhar, *Hobbes on Resistance*, 169.

political resistance."<sup>128</sup> From this perspective, no matter how one frames the right of resistance in Hobbes, one comes to the same political conclusion. By extension, on this account, the arguments about inner consent, inner resistance, fortitude, fidelity, and magnanimity can be conceded, but for naught, as they do not translate into legitimate resistance.

War seems to present the same problem as capital punishment, insofar as when a sovereign threatens one's life, one has the natural right to resist. It follows that when a sovereign sends someone to war and thus risks their life, the soldier will avoid battle. Hobbes seems to make exactly that point when he writes that "When Armies fight, there is on one side, or both, a running away[.]"<sup>129</sup> Yet, where it seems intuitive to accept the idea of that natural right will generate automatic resistance to the executioner, when transposed to war-making the claim seems intuitively wrong. After all, everyone resists the executioner, but many eagerly invite death in war. Hence, Hobbes's "running away" claim is sometimes framed as a core paradox in *Leviathan*, if not simply a flagrant problem with Hobbes's political science. An architectonic political theory that cannot explain war seems to be fundamentally flawed. I do not believe that Hobbes made such an error.

To begin, let me back up. The paragraph preceding the "running away" claim reads as follows:

No man is bound by the words themselves [i.e. "Consent of a Subject to Sovereign Power"], either to kill himselfe, or any other man; And consequently, that the Obligation a man may sometimes have, upon the Command of the Sovereign to execute any dangerous, or dishonourable Office, dependeth not on the Words of our Submission; but on the Intention; which is to be understood by the End thereof. When therefore our refusall to obey, frustrates the End for which the Soveraignty was ordained; then there is no Liberty to refuse: otherwise there is.<sup>130</sup>

So, the question of war is, appropriately enough, an admittedly radical question for Hobbes. It is a question that strips away all the complications of positive and natural law, ideology, and the social covenants and gets to the root question of the very ends of sovereignty.

Hobbes cites two considerations for not executing sovereign command (dangerous office and dishonorable office) and one condition (whether that

128 Sreedhar, *Hobbes on Resistance*, 169.

129 Hobbes, *Leviathan*, II:XXI. 338.

130 Hobbes, *Leviathan*, II:XXI. 338.

office is directed toward the ends of sovereignty). I start with the condition. The foremost condition regards the affinity (or lack thereof) between the command and “the End for which the Soveraingty was ordained”.<sup>131</sup> What is the “end”? Surely it includes security and peace, but as we have seen, security also includes justice, commodious living, and felicity. Those ends *can* align with sovereign war-making, but they are not indistinguishable. But that baseline is only that: a baseline for the more important question of whether the proposed war aligns with those ends. Substantively, what Hobbes is describing is a judgment on the part of the soldier leading to a decision. Would-be soldiers have come to their own evaluations about the existential threat to the commonwealth (not their egoistic self-preservation, but their communal self-preservation) and, further, whether the ends of the commonwealth are judged as being upheld by the standing sovereign actions. In situations where subjects conclude in the affirmative that the war is one serving the ends of the commonwealth, then, Hobbes writes, there is in fact no liberty to refuse at all, and vice versa.<sup>132</sup>

But how is that decision to be made? This refers to the average soldier: not the elite in the universities, not judges or ambassadors, and not the rich—none of whom make for good soldiers anyway—but the people. How do they come to any clear eyed—clear enough to make them fight—conception of the “end” of sovereignty and its relation to the sovereign’s commands? Neither natural law nor right get us very far in explaining that judgement. However, if we start instead with the “fact of power” and the “fact of human nature” (that is, if we start from X, XI, and XII, as discussed above) and command (in the sense of rhetorical action, exhortation, and command discussed in Chapter Four), then compelling answers quickly appear: either the sovereign has a reputation for acting out of manifest love of one’s country or out of love of themselves. The former entails the natural obligations that compel the citizen to fight despite likely harms. The latter, by contrast, commands resistance to going to war and is extenuated by those potential harms, which, if carried out *en masse*, is inseparable from resistance to the state.

Returning to the two considerations: Does either countenance “running away”? Regarding dangerous office, the answer is clearly that it does not. Hobbes’s claim is not that the fear of a “dangerous office” naturally trumps sovereign command. Instead, he posits that there are conditions

131 Hobbes, *Leviathan*, II:XXI. 338.

132 For an alternative account of war-making in Hobbes see Deborah Baumgold, “Subjects and Soldiers: Hobbes on Military Service.”

for evaluating whether one should carry out a sovereign's dangerous commands—a question of judgment on the part of the subject.

What of dishonorable office? This question seems to turn primarily on the kind of (dis)honor that the sovereign commands. To recall, Hobbes distinguishes between two kinds of honor:

[T]hings Honorable by Nature; as the effects of Courage, Magnanimity, Strength, Wisdome, and other abilities of body and mind: Others made Honorable by the Common-wealth; as Badges, Titles, Offices, or any Other singular marke of the Sovereigns favour.<sup>133</sup>

Which kind of honor is Hobbes referring to when he speaks of honor and war? I do not see how it could be the latter. Badges, titles, and offices cannot be dishonorable by definition. That implies that Hobbes must understand the citizens' measure of (dis)honor in terms of things that are naturally (dis)honorably. If so, then Hobbes's claim is that there is both a natural inclination for resisting or refusing sovereign commands when they would bring about dishonor to the soldier. Indeed, the soldier has a natural *obligation* to not carry out orders when they are judged as dishonorable.<sup>134</sup> Of course, that same move is ultimately an affirmation of the abstract ends of the commonwealth, yet manifest as a rejection of the natural person(s) who bear(s) the office of the sovereign. Inversely, the duty to carry out honorable offices are *substantively* defined not by the command (and certainly not by the *legality* of the command) but by the very honorability of the office.

This is not to say that everyone will resist or everyone will fight. Hobbes's first claim is that "a man that is commanded as a Souldier to fight against the enemy, though his Sovereign have Right enough to punish his refusall with death, may neverthesse in many cases refuse, without injustice".<sup>135</sup> This passage is sometimes taken as an essential statement regarding Hobbes's radical individualism and the limits of sovereignty when confronted with the facts of human nature. However, that seems to be an interpretative bridge too far. Instead, this kind of cowardice only applies to "many cases," not all (dialed down further to "in some cases" in the Latin edition). Moreover, Hobbes then describes one of those cases: "As when he substituteth a sufficient Souldier in his place: for in this case he deserteth

<sup>133</sup> Hobbes, *Leviathan*, II:XXVIII. 490.

<sup>134</sup> David Dyzenhaus comes to a similar conclusion, in "Hobbes and the Legitimacy of Law."

<sup>135</sup> Hobbes, *Leviathan*, II:XXI. 338.

not the service of the Common-wealth."<sup>136</sup> The only other cases Hobbes mentions are the "allowance to be made for naturall timorousnesse, not onely to women, (of whom no such dangerous duty is expected,) but also to men of feminine courage."<sup>137</sup>

We are now in a better position to evaluate Hobbes's "running away" claim. It reads:

When Armies fight, there is on one side, or both, a running away; yet when they do it not out of trechery, but fear, they are not esteemed to do it unjustly, but dishonourably. For the same reason, to avoyd battell, is not Injustice, but Cowardise.<sup>138</sup>

Does this represent Hobbes's "uncompromising commitment to the individual",<sup>139</sup> as one commentator observed? I do not believe so. It is an acknowledgement that an allowance needs to be made for cowards. That people sometimes run from battle is not a deep insight on Hobbes's part or some manifestation of the core truth at the heart of his political theory. It is just a truism, nothing more.

Here one could leave it well enough alone. Hobbes does not. "But he that inrowleth himselfe a Souldier,"<sup>140</sup> Hobbes continues, following the discussion above, "or taketh imprest mony, taketh away the excuse of a timorous nature; and is obliged, not onely to go to the battell, but also not to run from it".<sup>141</sup> Yes, some people may run away. However, those who have enrolled are taken by Hobbes as obliged to fight on essentially contractual grounds:

And when the Defence of the Common-wealth, requireth at once the help of all that are able to bear Arms, every one is obliged; because otherwise the Institution of the Common-wealth, which they have not the purpose, or courage to preserve, was in vain.<sup>142</sup>

So when one lives in a political society, Hobbes tells us, one must have the "courage" and "purpose" to protect it in times of danger not merely for the sake of protection, not because they have been commanded and not only

<sup>136</sup> Hobbes, *Leviathan*, II:XXI. 338.

<sup>137</sup> Hobbes, *Leviathan*, II:XXI. 338.

<sup>138</sup> Hobbes, *Leviathan*, II:XXI. 338.

<sup>139</sup> Slomp, "The Liberal Slip of Thomas Hobbes's Authoritarian Pen," 363.

<sup>140</sup> Hobbes, *Leviathan*, II:XXI. 338.

<sup>141</sup> Hobbes, *Leviathan*, II:XXI. 338–40.

<sup>142</sup> Hobbes, *Leviathan*, II:XXI. 340.



because of the dictates of the laws of nature, but substantively for the sake of honor. As we have seen, that kind of disposition can only manifest where there is a sovereign to model it on.<sup>143</sup> So there are cases where subjects do fight and die for their commonwealth, and in every case Hobbes argues that they do so not out of fear of the sovereign or a desire for material gain but because it is the honorable thing to do. Thus, the “running away” claim is not really a commentary on human nature in general or a paradox in Hobbes; it is a reflection on sovereign virtue and vice, and the challenge of leadership.

The argument is stronger still when we pay attention to those passages where Hobbes describes war-making and winning. Thus, in xxx Hobbes writes,

A commander of an Army in chiefe, if he be not Popular, shall not be beloved, nor feared as he ought to be by his Army; and consequently cannot performe that office with good successe. He must therefore be Industrious, Valiant, Affable, Liberall and Fortunate, that he may gain opinion both of sufficiency, and of loving his Souldiers. This is Popularity, and breeds in the Souldiers both desire, and courage, to recommend themselves to his favour; and protects the severity of the Generall, in punishing (when need is) the Mutinous, or negligent Souldiers.<sup>144</sup>

Again, without equivocation Hobbes is attesting to the primacy of individual virtue manifest in eminent agents in maintaining the commonwealth against existential threats. The soldiers commit themselves to the natural person of the sovereign, or in the field the general, not the office or the rank. The serious threat here is that the commander's love of the people will threaten the foundations of sovereign (monarchies in particular<sup>145</sup>) power. As addressed above, Hobbes's answer to that threat is: “But when the Sovereign himself is Popular; that is, revered and beloved of his People, there is no danger at all”.<sup>146</sup> (Unsurprisingly by this point, the virtues of the commander and the sovereign—“Industrious, Valiant, Affable,<sup>[147]</sup> Liberall

143 Cf. McClure, “War, Madness, and Death.”

144 Hobbes, *Leviathan*, II:xxx. 550.

145 Hobbes, *Leviathan*, II:xxx. 550.

146 Hobbes, *Leviathan*, II:xxx. 550.

147 “Affable” here does not mean as it does today simply “a quality or characteristic: indicating or suggestive of affability; friendly; benign, pleasant. Of an action: characterized by affability”. It means: of a person, or a person's character or bearing: easy to approach and converse with; courteous and kind in relations with others, formerly esp. when dealing with people of equal or lower status; friendly, good-natured; approachable. *OED*, ‘affable’, adj. Aristotle describes the magnanimous man in a similar way. The magnanimous man is “unassuming towards people at the middle level” and “speaks self-deprecatingly to the masses”; Aristotle, *Nicomachean Ethics*, 1124b–25.

and Fortunate”<sup>148</sup>—reiterate Hobbes’s own account of magnanimity and amount to a summary of Aristotle’s discussion of the magnanimous man in the *Ethics*.<sup>149</sup>) It follows that to not support a sovereign—for example, the fame-, pleasure-, ease-, admiration-, and flattery-seeking sovereign whom Hobbes describes in XI<sup>150</sup>—is to allow them to be killed, subdued, and supplanted.<sup>151</sup> That may not be direct resistance, but it is not far off.

In summation, Hobbes’s “running away” claim supports the strong natural right/egoist thesis only on the condition that there is no visible virtuous sovereign (or commander). Where soldiers do run away, it is often because the cause of the war itself has been evaluated as unjust and dishonorable. The inverse pertains: sovereign virtue motivates a collective “running towards.” That is exactly that kind of “soure labour” that “sometimes necessity, and always humanity requireth to be sweetened in the delivery, by encouragement, and in the tune and phrase of Counsell, rather than in the harsher language of Command.”<sup>152</sup> The problem of war cannot be addressed by way of either natural law or natural right interpretations of obligation alone. However, read as a subset of the problem of sovereign virtue, it can be solved.

## Barbarism and natural punishment

This brings us to the final puzzle: How can any of the above be accepted in light of Hobbes’s comments on tyrannicide? In xxix and xxx, Hobbes criticizes the republican discourse that re-describes regicide as tyrannicide, thus obscuring the meaning and significance of the act while stoking the passions of the vainglorious usurper. Hobbes concludes that

the name of Tyranny, signifieth nothing more, nor lesse, than the name of Sovereignty, be it in one, or many men, saving that they use the former word, are understood to bee angry with them they call Tyrants.<sup>153</sup>

Fundamentally, he condemns any discussion of a right to kill sovereigns. The challenge to my argument could be stated as follows: during Hobbes’s discussions of inner consent, inner resistance, magnanimity in general, and

<sup>148</sup> Hobbes, *Leviathan*, II:xxx. 550.

<sup>149</sup> Aristotle, *Nicomachean Ethics*, 1123b–25.

<sup>150</sup> Hobbes, *Leviathan*, II:xi. 152.

<sup>151</sup> Hobbes, *Leviathan*, II:xi. 152.

<sup>152</sup> Hobbes, *Leviathan*, II:xxv. 402.

<sup>153</sup> Hobbes, *Leviathan*, III:REVIEW AND CONCLUSION. 1136.

honor, virtue, and war in particular, at no point does he endorse outright resistance, with his uncompromising critique of “tyrannophobia”<sup>154</sup> seeming to attest to that. So, are we back at square one? Are these claims as absolutely in defense of sovereign impunity as they appear? Almost, but not completely.

The exception to Hobbes's criticism of “tyrannophobia” is his criticism of sovereign barbarity. Where Hobbes sets out to defend the ancient institution of tyranny as a once-lauded description of sovereignty (or more correctly, defend the sovereign against now slanderous republicanism), he freely uses the term “barbaric” to attack brutal, vengeful, violent, wretched, and petty sovereigns. Hobbes repeatedly refers to barbaric sovereigns whose eminent corruption necessarily brings about a cascade of natural punishments resulting in the collapse of the regime.

Hobbes opens *Leviathan* with just such a critique. Alluding to the Capitoline Geese, in the epistle dedicatory of *Leviathan*, Hobbes characterizes himself as defending the seat of power against barbarians both internal and external to the republic.<sup>155</sup> In the introduction, Hobbes notes that *nosce teipsum* (used in reference to the “*Artificer*” of a commonwealth) should not be used “to countenance [...] the barbarous state of men in power, towards their inferiors”.<sup>156</sup> In similar tones, Hobbes asserts that although the language of the tumult is found in the books of the philosophers, the *fault* for that barbarous language falls squarely on the sovereigns, whom he calls “accessaries to their own, and the Publique damage”.<sup>157</sup> “I blame those,” Hobbes continues,

that in the beginning, when their power was entire, by suffering such Doctrines to be forged in the Universities of their own Dominions, have holden to Stirrop to all the succeeding Popes, whilst they mounted into the Thrones of all Christian Sovereigns, to ride, and tire, both them, and their people, at their pleasure.<sup>158</sup>

Final responsibility for political upheaval falls on those sovereigns who ride roughshod over the people. Hobbes blames vicious founders for inviting vicious rebellion (or what he called “unjust violence”<sup>159</sup> in the discussion of

154 Hobbes, *Leviathan*, II:XXIX. 508.

155 A point Hobbes alludes to twice more at crucial junctures; Hobbes, *Leviathan*, II:XXXI. 554; Hobbes, *Leviathan*, III:A REVIEW AND CONCLUSION. 1141.

156 Hobbes, *Leviathan*, II:INTRODUCTION. 18.

157 Hobbes, *Leviathan*, II:XLVII. 1112–14.

158 Hobbes, *Leviathan*, II:XLVII. 1114.

159 Hobbes, *Leviathan*, II:XV. 222.

the fool and Matthew 11:12). And his advice to future founders—in agreement with XII—is to focus on what he calls “the first Elements of Power”, namely “Wisdom, Humility, Sincerity, and other vertues of the Apostles, whom the people converted, obeyed out of Reverence, not by Obligation”.<sup>160</sup>

Hobbes makes a similar point in his discussion of the “right application of Punishments, and Rewards.”<sup>161</sup> Punishment, Hobbes writes, is not a form of revenge or even relief but a form of “correction” for the individual and education for the public. The severity of the punishment is calibrated primarily to the harm of the crime to the body politic, in particular crimes committed by persons associated with the sovereign whose actions could appear to signal authorization on the part of the sovereign. Such seeming insincerity risks sparking public indignation directed at the sovereign then cascades to the state:

For Indignation carrieth men, not onely against the Actors, and Authors of Injustice; but against all Power that is likely to protect them; as in the case of *Tarquin*; when for the Insolent act of one of his Sonnes, he was driven out of *Rome*, and the Monarchy itself dissolved.<sup>162</sup>

As with Hobbes’s discussion of fools and new foundations, if this were simply a discussion of punishment theory, almost any other example would be less problematic. Instead, Hobbes’s example of the consequence of vicious sovereign punishment, followed by the total collapse of *the monarchy* which was followed by the *establishment of the first Roman republic*. There is no equivocation here. Proud, arrogant, and barbarous sovereigns—foolish sovereigns—breed republicanism whether or not that critique is theoretically justifiable.

Notably, although here Hobbes does not use the term “barbarism,” Hobbes also speaks of the importance of not acting barbarously even in cases of great political upheaval and civil war. Certainly “The Punishment of the Leaders, and teachers in a Commotion” is allowed. However, Hobbes continues,

To be severe to the People, is to punish ignorance, which may in great part be imputed to the Sovereign, *whose fault it was, they were no better instructed*.<sup>163</sup>

160 Hobbes, *Leviathan*, III:XLVII. 1114; see also Abizadeh, “The Representation of Hobbesian Sovereignty: Leviathan as Mythology.”

161 Hobbes, *Leviathan*, II:XXX. 542.

162 Hobbes, *Leviathan*, II:XXX. 544.

163 Hobbes, *Leviathan*, II:XXX. 544 (emphasis added).

Hobbes routinely attacks the philosophers, preachers, teachers, and republicans for the civil war. But here, at least, he lays final blame on the sovereign themselves for failing in their duties.

Hobbes's clearest expression of criticism of barbarism is found in the penultimate paragraph of Part II. Hobbes writes,

There is no action of man in this life, that is not the beginning of so long a chayne of Consequences, as no humane Providence, is high enough, to give a man a prospect to the end. And in this Chayne, there are linked together both pleasing and displeasing events; in such manner, as he that will do any thing for his pleasure, must engage himselfe to suffer all the pains annexed to it; and these pains, are the Naturall Punishments of those actions, which are the beginning of more Harme than Good. And hereby it comes to passe, that Intemperance, is naturally punished with Diseases; Rashnesse, with Mischances; Injustice, with the Violence of Enemies; Pride, with Ruine; Cowardise, with Oppression; Negligent government of Princes, with Rebellion; and Rebellion, with Slaughter. For seeing Punishments are consequent to the breach of Lawes; Naturall Punishments must be naturally consequent to the breach of the Lawes of Nature; and therefore follow them as their naturall, not arbitrary, effects.<sup>164</sup>

Hobbes had already announced that this discussion concerns the honors sanctioned by the sovereign.<sup>165</sup> Nevertheless, at first glance, these vices and the natural punishments that follow could be taken as a general statement, not only one pertaining to Hobbes's advice to sovereigns. However, on closer examination, Hobbes's concern does seem to be with the ramifications for sovereigns specifically. It is only sovereign egoism in particular that is naturally punished with rebellion. Sovereign intemperance—a vice that Hobbes had earlier identified as akin to drunkenness “reckoned amongst those things which the Law of Nature hath forbidden”<sup>166</sup>—is alone punishable with regime-corroding disease. Sovereign injustice is punished with the violence of enemies. Similarly, pride that begets ruin seems to be a sovereign-specific concern for much the same reason. The “King of the proud” rules over prideful people, not by eliminating pride but by corralling and directing pride in a way that does not bring ruin. A leviathan does not eliminate pride, but tempers pride and protects naturally prideful

<sup>164</sup> Hobbes, *Leviathan*, II:XXXI. 572. Cf. Aristotle, *Politics*, 1287a28–32.

<sup>165</sup> Hobbes, *Leviathan*, II:XXXI. 570.

<sup>166</sup> Hobbes, *Leviathan*, II:XV. 238.

people from ruin. However, the sovereigns alone must control their own pride and rule virtuously without the bannisters of law to guide them. Only sovereigns—and thereby the commonwealth—can be “ruined” by pride. The discussion of cowardice also appears geared toward sovereigns. As we have seen, Hobbes had earlier stated that cowardice was a natural response to war in cowardly citizens. But no such allowance is made for the person of the sovereign. The same holds for “rashness”. Recall, Hobbes had defined the purpose of the law as a tool “to direct and keep them [citizens] in such a motion, as not to hurt themselves by their own impetuous desires, rashness, or indiscretions”.<sup>167</sup> “Intemperance” looks like an exception. However, within the context of the discussion—from XXIX through XXXI, wherein Hobbes is surveying the diseases afflicting the artificial person of the commonwealth—it seems fair to assume he is writing specifically of sovereign intemperance. Recall, too, that in XXIX (as in XI) Hobbes lists one of the causes of dissolution as stemming from sovereign avarice. He writes,

We may further adde, the insatiable appetite, or *Bulimia*, of enlarging Dominion; with the incurable *Wounds* thereby many times received from the enemy; And the *Wens* of ununited conquests, which are many times a burthen, and lesse danger lost, then kept; As also the *Lethargy* of Ease, and *Consumption* of Riot and Vain Expense.<sup>168</sup>

Not only is this sovereign intemperance a vice; it is of vice so eminent and public in its selfishness as to undermine the regime. Avaricious colonial expansion, private gain, dimwitted decisions, and gluttonous sovereign expense resulting in “*ununited conquests*”<sup>169</sup> that tear the regime apart are the antitheses of the loving, generous, wise, and sincere rule—to which we can now also add the cardinal virtue of temperance—that Hobbes sets at the foundations of his theory of politics.

True, Hobbes calls these destructive consequences the natural outcomes of breaching the “laws of nature”. Conspicuously, however, it is hard to know which laws of nature Hobbes is referring to. Instead, they seem to be a special category of natural laws that pertain only to one person: the sovereign. Hobbes signaled such a category much earlier in *Leviathan* where following the delineation of the laws of nature in xv he notes that: “There

<sup>167</sup> Hobbes, *Leviathan*, II:xxx. 540.

<sup>168</sup> Hobbes, *Leviathan*, II:xxix. 518.

<sup>169</sup> Hobbes, *Leviathan*, II:xxix. 518. Compare the discussion of “ununited conquests” to the discussions of *nomos*, new foundations, and law in Chapter Six.

be other things tending to the destruction of particular men; as all kinds of Intemperance; but because they concern *individual nature*, and are not relevant to our argument they may be omitted."<sup>170</sup> That is to say, Hobbes is referring to special laws of nature that do not speak to general negative duties but, instead, to specific individual duties of virtue.

Ultimately, Hobbes's discussion of barbaric sovereigns boils down to curiosity and thereby faith, as it must. The foundation of faith is ultimately grounded in a subject's evaluation of the character of the natural person(s) bearing the office of the state. Not in any purported social contractual thought experiment, but in the ruler's reputation. Hobbes writes exactly that

[w]hen a mans Discourse beginneth not at Definitions, it beginneth either at some other contemplation of his own, and then it is still called Opinion; Or it beginneth at some saying of another, of whose ability to know the truth, and of whose honesty in not deceiving, he doubteth not; and then the Discourse is not so much concerning the Thing, as the Person; And the Resolution is called BELEEF, and FAITH: *Faith*, in the man; *Beleeve*, both *of* the man, and *of* the truth of what he sayes. So that in Beleeve are two opinions; one of the saying of the man, the other of his vertue. To *have faith in*, or *trust to*, or *beleeve a man*, signify the same thing; namely, an opinion of the veracity of the man: but to beleeve what is said signifieth onley an opinion of the truth of the saying.<sup>171</sup>

For Hobbes, civil war is a likely—perhaps inevitable—and natural outcome of the failure of faith. A failure that is ultimately not a failure of the person who has faith but the person in whom they are supposed to have faith. For this reason, Hobbes writes,

the nature of their Institution [...] are designed to live, as long as Man-kind, or as the Lawes of Nature, or as Justice it selfe, which gives them life. Therefore when they come to be dissolved, not by externall violence, but intestine disorder, the fault is not in men, as they are the *Matter*, but as they are the *Makers*, and orderers of them.<sup>172</sup>

“Justice it selfe,” Hobbes writes, gives life to the laws of nature and provides the commonwealth its motivation.

<sup>170</sup> Hobbes, *Leviathan*, II:xv. 238–39 (Latin edition, emphasis added).

<sup>171</sup> Hobbes, *Leviathan*, II:vii. 100.

<sup>172</sup> Hobbes, *Leviathan*, II:xxix. 498.

Once we view these topics from the perspective of statecraft, all this bears on the political reality of the *de facto* thesis and how politically fragile the social covenant is. The reason for Hobbes's pointed criticism of corrupt sovereigns is that the ideology of *de facto*ism—however well reinforced by social contract theories, bolstered in the universities, and scientifically understood—cannot be maintained against the manifest insult of sovereign vice. Hence, Hobbes writes that

[t]he examples of Princes, to those that see them, are, and ever have been, more potent to govern their actions, than the Lawes themselves. And though it be our duty to do, not what they do, but what they say; yet will that duty never be performed, till it please God to give men an extraordinary, and supernaturall grace to follow that Precept.<sup>173</sup>

Whether one holds to a theory of consent or a *de facto* theory of obligation, one can only do so, Hobbes seems to be saying, under conditions where the sovereign's vice, if it exists, is not evident.

In xxx of the Latin edition, Hobbes makes this same claim even more strongly while further specifying the root cause of popular discontent. "It belongs to the sovereign," Hobbes writes,

to see that the common body of citizens are not oppressed by the great ones, and much more that he himself does not oppress them on the great ones' advice, bearing in mind the example of Rehoboam. For the common people are the strength of the commonwealth. He must also take care that the great citizens do not provoke the ordinary people with insults. He who has authority in the commonwealth can indeed rightly reproach a disreputable citizen with his wickedness; but to revile him for his lowly status is both iniquitous and dangerous to the commonwealth. If the great citizens, because they are great, demand reverence on account of their power, why should not the common people be revered, because they are many, and much more powerful? The sedition of the so-called "Beggars" in Holland should be a warning of how dangerous to the commonwealth it is to despise the ordinary people. The superior status of some citizens has arisen not from some real excellence in them, but from the will of the sovereign ruler, that is, from the will of the commonwealth; so much the less should they affect an uncivil disdain. The common people should not be provoked even by kings; much less by fellow-citizens (however

<sup>173</sup> Hobbes, *Leviathan*, II:xxvii. 476.



powerful they may be), lest the common people, while desiring to take its revenge on them, attack the commonwealth at the same time, because it did not prohibit their behaviour.<sup>174</sup>

Feigned excellence, pomp, and vice described as virtue, if endorsed by the sovereign (and worse, if practiced by the sovereign), signal a social endorsement to equally corrosive behavior by the people. In the economy of esteem undergirding the power of the sovereign, to manifest vice is to manifest dishonor and then powerlessness.<sup>175</sup> It is not clear how much weight Hobbes is putting on the term “prohibit”, but at the least, it means a social prohibition of the corrosive vain and corrupt practices of the elite which can be perceived as being endorsed by the sovereign. At the most, it means that the formal rights of sovereignty have been abdicated and the march to civil war has already begun. The rot of a leviathan begins in its head.

In sum, Hobbes's critique of “tyrannophobia” is one thing and his critique of sovereign barbarity another. Hobbes is certainly very much concerned with how republicans were using the language of tyranny. But his concern was in no way to endorse the vices of sovereigns. His concern was that many were using the term to sully the office of monarchy in general by using what had become a derogatory term. Sovereigns, Hobbes is arguing, can do just as much harm to the office of sovereignty through their actions as the multitude can do through their words. These are not incommensurable critiques. One relates to statecraft, the other to ideology.

Which brings us full circle to the moment of new foundations. After the regime collapses, after the slow cascade of corruption stemming from sovereign vice transforms into civil war, the tasks of rebuilding and identifying a new sovereign begins again. On any realistic account it is a far cry from the ahistorical void or a so-called state of nature. Instead, civil wars are inflected by the experience of eminent corruption of one's fellow subject, perhaps one's self, and above all the previous sovereign. That lesson carries

174 Hobbes, *Leviathan*, II:xxx. 536–37 (Latin edition).

175 This discussion is prefigured in the account of power in x:

Gravity, as farre forth as it seems to proceed from a mind employed on some thing else [in the Latin edition “business”], is Honourable; because employment is a signe of Power. But if it seem to proceed from a purpose to appear grave, it is Dishonourable. For the gravity of the former, is like the stedinesse of a Ship laden with Merchandise; but the later, like the steddinesse of a Ship ballasted with Sand, and other trash. (Hobbes, *Leviathan*, II:x. 140.)

forward and what Hobbes describes is not a blank slate, but moments of general moral yearning:

For men, as they become at last weary of irregular jostling, and hewing one another, and desire with all their hearts, to conformance themselves into one firme and lasting edifice; so for want, both of the art of making fit Lawes, to square their actions by, and also of humility, and patience, to suffer the rude and combersome points of their present greatnesse to be taken off, they cannot without the help of a very able Architect, be compiled, into any other than a crasie building, such as hardly lasting out their own time, must assuredly fall upon the heads of their posterity.<sup>176</sup>

It is a war of all against all, where alongside fear there is a universal desire for a reorientation toward the four internal, universal, and overriding desires for wisdom, sincerity, love, and divine revelation manifest in public action.

It is on this point that Hobbes brings Part II to a close. He writes,

And now, considering how different this Doctrine is, from the Practise of the greatest part of the world, especially of these Western parts, that have received their Morall learning from *Rome*, and *Athens*; and how much depth of Morall Philosophy is required, in them that have the Administration of the Sovereign Power; I am at the point of believing this my labour, as uselesse, as the Common-wealth of *Plato*; For he also is of opinion that it is impossible for the disorders of State, and change of Governments by Civill Warre, ever to be taken away, till Sovereigns be Philosophers. But when I consider again, that the Science of Naturall Justice, is the only Science necessary for Sovereigns, and their principall Ministers [...] and that neither *Plato*, nor any other Philosopher hitherto, hath put into order, and sufficiently, or probably proved all the Theoremes of Morall doctrine, that men may learn thereby, both how to govern and how to obey[.]<sup>177</sup>

Here Hobbes neatly summarizes what I take to be his essential argument: there will be no end to the revolution of regimes, to war, until the natural person administering sovereign power engages deeply in the study of moral philosophy. The object of that study is not found in the Platonists or the Aristotelianism promulgated by the church and pseudo-philosophers, but

<sup>176</sup> Hobbes, *Leviathan*, II:XXIX. 498.

<sup>177</sup> Hobbes, *Leviathan*, II:XXXI. 574. Cf. Aristotle, *Politics*, 1288a26–29.

it does have roots in Plato, Aristotle, and the ancient founders. It is found in the science of natural justice, in magnanimous statecraft, in virtue. Thus, Hobbes concludes *Leviathan* by looking forward to a time when the cyclical revolution of regimes would be brought to an end by such a person. The question left to those future founders reading *Leviathan* “will be onely to consider, if he also find not the same in himself. For this kind of Doctrine, admitteth no other Demonstration.”<sup>178</sup>

## Conclusion

*Leviathan* bolsters various ideologies, with the ends of all to convince subjects of their obligations to the sovereign. That is, it is meant to teach citizens “how to obey”.<sup>179</sup> Those ideological programs all turn on basic presuppositions regarding power and human nature. Hobbes, however, also teaches sovereigns “how to govern”,<sup>180</sup> and from this perspective, the politics of obligation look quite different. Here Hobbes speaks to a different set of facts of human nature and facts of power. Regarding the facts of human nature, it is not merely human egoism that is operative. Instead, sovereigns need also take into account additional aspects of human nature: the facts of natural curiosity, natural judgment, and natural honor. The “fact” of power is that it is fickle. “Awe,” the power to create and maintain a flourishing commonwealth, is grounded on the instantiation of sovereign virtue. Awe is ephemeral, but it founds regimes, legitimates punishment, and helps win wars. Awe, at its best, makes ideological defenses of sovereignty superfluous and obedience to the natural and positive laws easy. By contrast, force and terror are also fickle, but for different reasons. Though force is necessary for punishing unlawful behavior, in the absence of sovereign virtue—where a sovereign’s sincerity is in doubt, where their own affairs have priority, and where they speak and act absurdly—force becomes a poor basis of protection from external violence and, internally, itself a plausible threat to citizens. Here ideologies of obligation are a salve for deficiencies in sovereign character, but they are not a cure.

The sovereign virtue thesis appears to solve certain problems inherent in each ideology, thereby assuring their sustainability. Thus, the foremost benefit of the natural right argument is its grounding of Hobbes’s theory

178 Hobbes, *Leviathan*, II:INTRODUCTION. 20.

179 Hobbes, *Leviathan*, II:XXXI, 574.

180 Hobbes, *Leviathan*, II:XXXI. 574.

of obligation in natural egoistic postulates. One of the problems inherent to that argument, similar to the problem with de factoism, is that it makes it difficult to see why any agent would submit to a sovereign in the first place. Similarly, it cannot account for how states fight and win wars. The problem here derives from the limited account of human nature provided and then extending it to the sovereign as well. On that account, it would be a system of slavery, not servitude, a continuation of war by other means. The sovereign virtue argument agrees that this system is untenable but makes two further assertions. First, it posits a distinction between the character of the “greatest part” and the character of the *successful*—that is, peace-securing—sovereign. Second, the argument extends the repertoire of human nature to focus on judgment, curiosity, and power in Hobbes’s more expansive understanding. It thereby allows the natural right interpretation of obligation to hold during normal periods while also accounting for the exceptional moments in the life of a state.

The sovereign virtue argument can likewise sustain, more or less, the deontological and natural law readings by similar means. It shows how silver rule ethics are motivating where the sovereign does the heavy ethical lifting of instantiating the golden rule ethics. Here neither reason nor God must be understood as having autonomous normative power to compel the many to act justly. Instead, both rationality and religiosity can be practiced in their popular forms (that is, in the form discussed by Hobbes in X, XI, XII, and elsewhere). However, the sovereign does need to be acknowledged as a representative of “God” by standing as a mortal god who substantiates the highest virtues, a foundation for which common curiosity can come to rest. In this reading, sovereigns are not obliged by the natural laws; they instantiate a life lived as though obliged. That is both a necessary condition and a motivating factor in fostering a citizenry that considers itself obliged by the natural laws. Peace is an output of the functional correspondence of those systems, both of which are formally legitimate as a point of sovereign right but substantively legitimate as a point of sovereign virtue.

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This book is about virtue and statecraft in Thomas Hobbes's *Leviathan*. Its overarching argument is that the fundamental foundation of Hobbes's political philosophy in *Leviathan* is wise, generous, loving, sincere, just, and valiant—in sum, magnanimous—statecraft, whereby sovereigns aim to realize natural justice, manifest as eminent and other-regarding virtue. I argue that concerns over the virtues of the natural person bearing the office of the sovereign suffuse Hobbes's political philosophy, defining both his theory of new foundations and his critiques of law and obligation. These aspects of Hobbes's thought are new to *Leviathan*, as they respond to limitations in his early works in political theory, *Elements* and *De Cive*—limitations made apparent by the civil wars and the regicide of Charles I. Though new, I argue that they tap into ancient political and philosophical ideas, foremostly the variously celebrated, mystified, and maligned figure of the orator founder.

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