

Leviathan No More: The Right of Nature and the Limits of Sovereignty in Hobbes

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Abstract: This article challenges the prevailing interpretations of Hobbes's thought as providing only minimal protection for the natural right of individuals in political society. Natural right requires the protection of not just the subjects' lives, but their ability to live commodiously, and as a result the protection that natural right receives in political society places substantive constraints on the actions of the sovereign. When those entrusted with sovereign power overstep this constraint, they cease to be sovereign and the former subjects are returned to the state of nature to seek protection as each judges fit. I develop the substance of commodious living more thoroughly than similar analyses and demonstrate that this understanding is not limited to *Leviathan* but can be found in Hobbes's earlier political work as well.

The tension between absolute authority and conditional obedience central to Hobbes's political philosophy is also of the utmost importance to any interpretation of his thought. This tension stems from the relationship between protection and obedience that Hobbes says is the focus of *Leviathan* (L 1141).¹ Many modern scholars emphasize the obedience half of the equation and thereby downplay the conditionality of obligation. They acknowledge conditionality in theory, but minimize the set of circumstances in which it applies in practice. Since the subjects' political obligation is conditional on receiving protection from the sovereign, this interpretation rests on a minimal definition of protection as simply keeping the subjects

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¹All references to Hobbes works use initial (L = *Leviathan*, DC = *De Cive*) and page number. The editions used are *Leviathan*, ed. Noel Malcolm (New York: Oxford University Press, 2012); *On the Citizen*, ed. Richard Tuck and Michael Silverthorne (New York: Cambridge University Press, 1998).

alive.² Emphasizing that any stable existence is superior to life in the state of nature, this thin definition of protection allows scholars to conclude, as Martinich does, that Hobbes “intended to give the sovereign *carte blanche* to do with his subjects as he will.”³ On this reading of Hobbes the absoluteness of authority renders the conditionality of obligation a nearly moot point.

Yet this interpretation has not always been the dominant one. Hobbes’s philosophy was widely criticized almost from the moment it was published, and “all critics were unanimous that the *Leviathan* was utterly subversive.”⁴ Most critics focused on Hobbes’s treatment of religion, and the assault upon his theology was wide and varied.⁵ As for his political teaching, while many royalists joined Sir Robert Filmer in criticizing Hobbes for abandoning the divine right of kings, it was not this element of Hobbes’s theory that led royalist Bishop John Bramhall to denounce *Leviathan* as “a rebel’s catechism.”⁶ Edward Hyde, first Earl of Clarendon, and especially Bramhall were alarmed that the obedience subjects owe to the sovereign is conditional on protection.⁷ Bramhall viewed this as dangerously close to the position of a number of parliamentary writers, particularly Henry Parker, and was joined by Clarendon in denouncing conditionality as undermining the stability of sovereignty.⁸ Whereas modern scholars often see the absolutism as minimizing the importance of conditional obligation, Hobbes’s royalist critics viewed his absolutism as cheap talk in light of the consequences of the conditionality of obligation.

Recently, two scholars in particular revitalize the concerns of Hobbes’s contemporaries and challenge traditional interpretations where the power to protect fails only in “extreme and unlikely circumstances” involving a direct threat to a subject’s life.⁹ Steinberger establishes the framework I build on and extend to *De Cive*. In its absence of protection leads to cessation of obligation at the individual level. Analyzing solely *Leviathan*, Steinberger demonstrates that because the commonwealth is created in order to secure protection for the subjects, when protection is not provided

²E.g., John Laird, *Hobbes* (London: Ernest Benn, 1934); D. J. C. Carmichael, “Hobbes on Natural Right in Society: The *Leviathan* Account,” *Canadian Journal of Political Science* 23, no. 1 (1990): 3–21; Patricia Sheridan, “Resisting the Scaffold: Self-Preservation and the Limits of Obligation in Hobbes’s *Leviathan*,” *Hobbes Studies* 24 (2011): 137–57; Andrew Levine, *Engaging Political Philosophy* (New York: Blackwell, 2002).

³A. P. Martinich, *The Two Gods of “Leviathan”* (New York: Cambridge University Press, 1992), 173.

⁴John Bowle, *Hobbes and His Critics* (New York: Barnes & Noble, 1951), 13.

⁵Samuel I. Mintz, *The Hunting of Leviathan* (New York: Cambridge University Press, 1962).

⁶Edwin Curley, introduction to *Leviathan, with selected variants from the Latin edition of 1668*, ed. Curley (Indianapolis, IN: Hackett, 1994), xxxviii.

⁷Jon Parkin, *Taming the Leviathan* (New York: Cambridge University Press, 2007).

⁸*Ibid.*

⁹Levine, *Engaging Political Philosophy*, 44.

for, the commonwealth no longer exists and individuals are returned to the state of nature. This occurs on an individual level, with each specific individual being returned to the state of nature when one judges that one is no longer being protected. Moreover, Steinberger's framework allows for situations in which some individuals are still obligated to obey the sovereign, while others are not and the sovereign is, properly speaking, no longer a sovereign in relation to the latter individuals.¹⁰ While Steinberger does hold that protection is more robust than mere physical existence, Curran uses commodious living to argue for an interpretation she terms "full preservation."¹¹ On her account, which I argue falls short of the full extent of Hobbes's understanding of preservation, Hobbes is being sincere when he makes statements, such as in chapter 30 of *Leviathan*, that "by safety here is not meant a bare preservation, but also all other contentments of life, which every man by lawful industry, without danger or hurt to the commonwealth shall acquire to himself" (L 520). Accordingly, if the sovereign fails to protect the individual's ability not just to live but also to prosper, then preservation has not been provided. She agrees with Steinberger that individual subjects judging this absence to exist can end political obligation, and "at the point of critical mass, the sovereign loses the right to rule."¹²

One major way I move beyond this literature is by demonstrating that the opportunity for commodious living is significantly more expansive than either Steinberger or Curran indicates. I flesh out the substantive details of commodious living well beyond Curran's "minimum freedoms ... required for an active and full life,"¹³ and Steinberger's "plausible array of creature comforts."¹⁴ I demonstrate that Hobbes's expanded definition of protection requires the sovereign to protect the subjects' liberty so long as it does not endanger the state. Moreover, the sovereign must provide the background conditions for commercial society and pursue policies, such as a stable and simple legal order, that will promote the subjects' ability to acquire and use property. I thereby advance this new literature by providing far more detail of the substance of preservation than existing treatments of the topic.

My second major addition to this literature is demonstrating Hobbes's larger philosophical consistency through my engagement with *De Cive*. Curran argues this formulation of preservation is unique to *Leviathan* and represents a distinct break from Hobbes's previous works.¹⁵ By applying my

¹⁰Peter J. Steinberger, "Hobbesian Resistance," *American Journal of Political Science* 46 (2002): 858.

¹¹Eleanor Curran, "Can Rights Curb the Hobbesian Sovereign?," *Law and Philosophy* 25 (2006): 245.

¹²*Ibid.*, 257.

¹³*Ibid.*, 250.

¹⁴Steinberger, "Hobbesian Resistance," 857.

¹⁵Eleanor Curran, *Reclaiming the Rights of the Hobbesian Subject* (New York: Palgrave Macmillan, 2007).

extended version of Steinberger's framework to *De Cive*, I show that Curran misinterprets *De Cive's* presentation of preservation and the place of this formulation in Hobbes's thought as a whole. The fuller definition of preservation is not a late change in Hobbes's thought. The wider set of circumstances in which there is no obligation to obey is central to multiple iterations of Hobbes's political philosophy, indicating that it is not an artifact of the presentation in *Leviathan*, but is instead a core element of his thought.

Natural Right Begets the Sovereign

Natural right is able to serve as the standard for determining which of the sovereign's actions are legitimate because the Hobbesian sovereign is a creation of individual human beings in the furtherance of their natural right. In the state of nature, individuals possess no obligation to one another. Each has the same claim to natural right, a right to self-preservation, pursued by whatever means necessary in accordance with one's personal judgment (L 198). Owing to this freedom of action, individuals have every reason to view each other as potential threats, and therefore live in "continual fear and danger of violent death," which makes life in the state of nature "solitary, poor, nasty, brutish, and short" (L 192). Individual natural right undermines itself when interacting with others because the very acts individuals take to preserve themselves make them less secure, causing individuals to exercise their natural right by exiting the state of nature in order to create a more effective way of safeguarding their preservation.

But right is not universally agreed to be the basis of political obligation for Hobbes. Some scholars argue the first law of nature's exhortation to seek peace and the second law's instruction to relinquish total discretion whenever others will do likewise obligate all individuals to enter into civil society. Such a conception makes the natural law "logically antecedent" to all other sources of obligation,¹⁶ with the result being that after the first and second laws of nature force individuals into political society, the third law's requirement of honoring one's covenants keeps the individuals, now subjects, obliged to the sovereign in all instances.¹⁷ While it is beyond the scope of this paper to resolve the active controversy between the proponents of these interpretations and those such as Strauss who emphasize natural right,¹⁸ it is not necessary to do so for my argument to hold. The first three laws of nature all involve a significant level of individual judgment regarding preservation

¹⁶Howard Warrender, *The Political Philosophy of Thomas Hobbes* (New York: Oxford University Press, 1957).

¹⁷Martinich, *Two Gods of "Leviathan"*; S. A. Lloyd, "Hobbes's Self-Effacing Natural Law Theory," *Pacific Philosophical Quarterly* 82, no. 3–4 (2001): 285–308.

¹⁸Leo Strauss, *The Political Philosophy of Hobbes* (Chicago: University of Chicago Press, 1952).

because, as Kavka observes in his analysis of the extent to which natural law is obligatory, the requirements of the natural law are always qualified by the actions of others.¹⁹ The first two laws of nature, which involve exiting the state of nature, instruct each individual to seek peace “as far as he has hope of it” and to relinquish his freedom of action as much as “he shall think it necessary” to ensure self-preservation (L 198–200). So even if these first two laws of nature are what accounts for the origins of obligation, “your obligation to obey the laws of nature *in foro externo* depends on the willingness of others to be reasonable and obey them also.”²⁰ In the absence of cooperation by others, blind obedience to the law of nature could be detrimental to preservation by making one vulnerable to those who do not obey it, and “since these are prudential rules, not categorical imperatives, every individual is bound to comply with them only if, by doing so, he is confident that he will reach the desired end.”²¹ Therefore, knowing when obeying these laws of nature is and is not conducive to preservation requires that the individual recognize the actions and intent of others, as well the consequences of these dispositions for one’s own safety. Such recognition is a matter of judgment because, as Kavka recognizes, the aforementioned confidence and by extension the applicability of the laws of nature to one’s actions in a specific interpersonal interaction “cannot be determined except by careful analysis of the specific features present in each case.”²² The centrality of such analysis to determining when to obey the laws of nature makes the preeminent consideration individual judgment concerning the most effective means to self-preservation.

The third law of nature, used by Lloyd to maintain the subjects’ obligation,²³ is “that men perform their covenants made” (L 220). Since the sovereign is tasked with enforcing this law (L 220), it may appear that at this point individual judgment must cease. However, Kavka’s examination of Hobbes’s treatment of covenants reveals that individuals are only bound to keep their covenants when there is “reasonable assurance” of compliance by those one covenants with.²⁴ Although this is merely suggestive that the third law is subject to individual judgment, since the existence of a sovereign to punish noncompliance could be argued to fulfill the requirement of reasonable assurance, there is nonetheless a clear role for individual judgment in the commonwealth because Hobbes explicitly says individual subjects should judge whether the actions of the sovereign are conducive to the end for which the office was established (L 470). Under certain circumstances subjects

¹⁹Gregory S. Kavka, *Hobbesian Political and Moral Philosophy* (Princeton, NJ: Princeton University Press, 1986).

²⁰F. S. McNeilly, *The Anatomy of Leviathan* (New York: St. Martin’s, 1968), 250.

²¹Norberto Bobbio, *Thomas Hobbes and the Natural Law Tradition*, trans. Daniela Gobetti (Chicago: University of Chicago Press, 1993), 45.

²²Kavka, *Hobbesian Political and Moral Philosophy*, 374.

²³Lloyd, “Hobbes’s Self-Effacing Natural Law Theory.”

²⁴Kavka, *Hobbesian Political and Moral Philosophy*, 345.

may act on their judgment because while they are required to obey the sovereign when it misjudges, when the mistake is so egregious as to threaten self-preservation, then the social contract is dissolved and following one's judgment does not violate the third law of nature.²⁵

So regardless of whether natural right or natural law is the origin of political obligation, because individuals voluntarily create the commonwealth, the preservation of the subjects is the most profitable focus for analysis of the origin of sovereignty and political obligation. Individuals will only surrender the full scope of their right to act in order to further their own preservation:

since to undertake an obligation is always done to perform a voluntary act of self-denial, it must always be done in the hope of some benefit. No man can voluntarily "despoil" himself of any part of his unconditional right knowing that it will be to his disadvantage. And the only "good" any man can recognize is the satisfaction of his wants and the avoidance of that greatest of all dissatisfactions, death.²⁶

Accordingly, the individuals who enter into political society renounce their right to act as individuals and pledge their power to the sovereign, thereby giving it the power to enforce the social contract and protect the newly created subjects of the commonwealth (L 260–62). In creating the commonwealth individuals aim to create an institution that will secure their natural right of self-preservation in a more effective manner than each acting alone.

²⁵The entirety of this argument about the natural law is predicated on the natural law being rational guidelines instead of divine commands. Hobbes leaves open the possibility that they are the word of God, in which case individuals would have an obligation to obey the natural law at all times, when he writes of the natural law, "These dictates of Reason, men use to call by the name of Lawes, but improperly; for they are but Conclusions, or Theorems, concerning what conduceth to the conservation of themselves; whereas Law, properly is the word of him, that by right hath command over others. Yet if we consider the same theorems, as delivered in the word of God ... then are they properly called Lawes" (L 242). Martinich (*Two Gods of "Leviathan"*) takes the latter position and argues that Hobbes does consider the laws of nature to be divine commands, and therefore these laws are binding even in the state of nature. However, this position is problematic because Hobbes is unequivocal that there is "no obligation on any man which ariseth not from some act of his own" (L 336). The only kind of law that springs from individual action is positive law, originating from the sovereign that individuals empower, not divine law. Accordingly, it is more congruent with Hobbes's argument to find Hobbes's position in the first part of the aforementioned quote from chapter 15 and state that "if the laws of nature are to become obligatory, they must be imposed by a civil law. It therefore follows that it is the civil law which makes a natural law obligatory" (Bobbio, *Thomas Hobbes*, 129). For this reason I treat the natural law as prudential maxims.

²⁶Michael Oakshott, *Hobbes on Civil Association* (Indianapolis, IN: Liberty Fund, 1937), 71.

Obedience Is Conditional on Protection

The subjects' political obligation is conditional because they are only required to obey the sovereign if it is protecting them. Hobbes is explicit that because "the end of obedience is protection" (L 344), obedience need not outlast the protection for which it is granted. In fact, "the obligation of subjects to the sovereign is understood to last as long, and *no longer*, than the power lasteth by which he is able to protect them" (L 344, emphasis added). Hobbes's example of conditions that would satisfy this criterion is when the sovereign has suffered a total defeat in battle that destroys the sovereign's power, for when "the forces of the commonwealth keeping the field no longer, there is no farther protection of subjects in their loyalty, then is the commonwealth DISSOLVED, and every man at liberty to protect himself by such courses as his own discretion shall suggest unto him" (L 518). With the cessation of protection come both the cessation of obligation and the right to resist a former sovereign who interferes with the former subjects' pursuit of preservation.

The inability to protect is not the only way the commonwealth is dissolved; the same situation occurs when the sovereign fails to exercise its power, thereby depriving subjects of protection. During his discussion of "In what Cases Subjects are absolved of their obedience to their Sovereign," which establishes the purpose of obedience, Hobbes remarks: "though sovereignty, in the intention of them that make it, be immortal, yet it is in its own nature, not only subject to violent death by foreign war, but also through the ignorance and passions of men it hath in it" (L 344). He thereby makes explicit that the incompetence of those invested with the office of the sovereign can dissolve sovereignty and with it the commonwealth. If the sovereign fails to properly use its power to protect, the effect is the same as when that power fails. In both cases the subjects are left without the protection they left the state of nature to procure. In the absence of protection, the situation proceeds as described above, with the commonwealth being dissolved and individuals returned to the state of nature where they can seek protection by whatever means they judge appropriate (L 518). In this pursuit they can legitimately resist, or even attack, anyone they perceive to be a threat to their preservation, including the former sovereign, meaning each individual may rightfully resist the former sovereign as the individual could anyone else in the state of nature.²⁷ Obedience to the Leviathan is thus conditional not only on the possession of the power to protect but also on the proper use of it.

In either circumstance, the termination of obedience returns the former subjects to the state of nature as individuals who are no longer tied to each other, restoring their full freedom of action vis-à-vis natural right. Each individual may now seek protection from any source (L 518). Each has the option to

²⁷See also Steinberger, "Hobbesian Resistance."

choose to join another commonwealth or band together with other individuals in the state of nature to form a new commonwealth(s) and with it a new sovereign(s) to facilitate their self-preservation. Since these individuals are in the state of nature until they have subjugated themselves to a new commonwealth, if anyone attempts to prevent them from pursuing self-preservation, each of these individuals would have the right to oppose that person owing to their natural right. Accordingly, if the former sovereign attempted to compel these individuals to obey it, each one would be able to legitimately resist the former sovereign. So when the power to protect fails, a right of individual resistance emerges.

The coexistence of absolutism and individual judgment that can lead to such resistance led Hampton to criticize Hobbes's thought as internally incoherent. She assails Hobbes's concepts of absolutism and the right of self-defense as a logical contradiction. She recognizes that by allowing an inalienable right of self-defense, Hobbes introduces private judgment into the commonwealth, and argues this ability to judge undermines absolutism by allowing individuals to disobey the sovereign they have authorized to act for them.²⁸ Authorization is an oft-discussed component of *Leviathan*, serving to explain obligation by making the subjects the authors of the sovereign's actions (the claim that authorization itself is fatal to my interpretation will be addressed below). Hampton argues that authorization is an essential feature of Hobbes's absolutism, and that by incorporating individual judgment into the commonwealth Hobbes inadvertently weakens authorization and in effect replaces it with the principal-agent relationship that he is inimical to throughout *Leviathan*.²⁹ Because Hobbes argues that absolute power is a necessary condition for stability, this apparent tension lies at the core of his theory, causing Hampton to claim that "the problem is so serious that it renders the entire Hobbesian justification for absolute sovereignty invalid."³⁰

As a result of Hampton's rigorous critique, those who seek to examine the relationship between the absolutism of sovereignty and the inalienability of self-defense have felt compelled to engage with both Hobbes's text and Hampton's objection. For this reason Sreedhar seeks to reconcile Hobbes's claims by going beyond his text, utilizing Raz's conception of authority and the individual's decision-making process to show that Hobbes's position is tenable.³¹ Reworking Hobbes's arguments is useful if one seeks to reformulate a Hobbesian theory in order to make it more defensible than Hobbes's own positions, but that is not my goal. I seek to explore how Hobbes himself understood the nuances of the relationship between absolute power and an

²⁸Jean Hampton, *Hobbes and the Social Contract Tradition* (New York: Cambridge University Press, 1986), 199.

²⁹*Ibid.*, 202–3.

³⁰*Ibid.*, 197.

³¹Susanne Sreedhar, *Hobbes on Resistance* (New York: Cambridge University Press, 2010); Joseph Raz, *The Morality of Freedom* (New York: Oxford University Press, 1986).

Inalienable right to self-preservation. Such understanding requires setting aside analytic frameworks that are exogenous to Hobbes's thought³² and focusing on Hobbes's conceptual relationships.

Conditional obedience and legitimate individual resistance are consistent with Hobbes's arguments about the need for the sovereign to possess absolute power—as well as the yielding of individual judgment to the judgment of the sovereign and the sovereign's ability to destroy rebels as enemies by whatever means he desires—because “the right men have by nature to protect themselves, when none else can protect them, can by no covenant be relinquished” (L 344). The social contract thus contains an implicit exit clause that, regardless of how the individuals entering the commonwealth shape the rest of the contract, dissolves the commonwealth when the sovereign is unable to perform the *raison d'être* of its office by providing the subjects with the protection that, in an exercise of their natural right, they created the commonwealth in order to receive. Accordingly, when the individual or individuals who have been granted the office of sovereign are able to fulfill the end of the office and provide for the protection of the subjects, then all of Hobbes's statements regarding the illegitimacy of rebellion and the right of the sovereign to brutally punish rebels without any restrictions on method apply. However, when the sovereign does not provide this protection, it ceases to be a sovereign because it cannot perform the purpose it was created for. In this latter scenario, the subjects are free to pursue their self-preservation without hindrance. So while Hobbes does not allow for any legitimate resistance to a sovereign properly speaking, he does allow for resistance to someone who, having been granted the office of sovereign, is unable to provide the end for which the subjects created the office. This framework does not make the sovereign any less absolute, in contrast to Curran's suggestion,³³ rather it means that a sovereign has incentives to use its power in certain ways.

³²Not only is Raz not providing an interpretation of Hobbes when he articulates his framework, but by using a Hohfeldian understanding of rights Raz's model rests on assumptions contrary to Hobbes's. Although some scholars use a Hohfeldian framework when analyzing Hobbes's conception of right (e.g., Arthur Yates, “A Hohfeldian Analysis of Hobbesian Rights,” *Law and Philosophy* 32 [2012]: 405–34), I do not do so here. Hohfeld's conception of rights and duties defines them as correlatives (Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions* [New Haven: Yale University Press, 1919]), whereas Hobbes denies this and says that right and duty are as different as liberty and obligation (L 198). Since Hobbes allows rights to exist without corresponding duties and there are significant questions regarding the soundness of applying a framework for juridical relations to a prepolitical definition such as Hobbesian right (Eleanor Curran “Lost in Translation,” *Hobbes Studies* 19 [2006]: 58–76; Curran, *Reclaiming the Rights*), whenever I discuss right I am using Hobbes's definition.

³³Curran, “Can Rights Curb.” See also Curran, *Reclaiming the Rights*.

Individual-Level Cessation of Obedience

Since the social contract was entered into by individuals, subjects can exit it only in their capacity as individuals. Hobbes argues that individuals who are captured in war, or otherwise placed in a situation where a foreign sovereign is the most effective source of preservation, can legitimately cast off their allegiance to their sovereign and pledge obedience to the sovereign who protects them (L 344). Moreover, any subject who does so “because he had no other way to preserve himself” becomes obliged to obey the sovereign who was the recipient of this change in loyalty (L 344). This example demonstrates it is possible for the obligation of an individual subject to end when the power to protect that specific individual fails. It also indicates that “in some circumstances only he [the individual subject] can know what his duties are,”³⁴ meaning each subject can only know obligation is no longer required when his or her judgment determines protection is not being provided.³⁵

Examination of how Hobbes views individuals’ decision-making process shows individual judgment is legitimately used to determine if political obligation is still in force not only in cases of isolation from the sovereign, but in all instances of life in the commonwealth. A fundamental component of Hobbes’s psychology is that human beings are rational actors, meaning they pursue perceived benefits and seek to avoid harms, so when human beings act, “of the voluntary acts of every man the object is some *good to himself*” (L 202). Since all acts proceeding from the will are voluntary and the will is “the last appetite or aversion immediately adhering to the action,” all actions individuals take are voluntary and directed at achieving some good (L 92). Individual judgments regarding self-interest are the base of all human actions for Hobbes.

Even the actions of the sovereign are subject to the judgments of individual subjects. At first allowing this judgment seems problematic because Hobbes is explicit that the sovereign is created to judge the most effective means of preserving the subjects and all those who enter into the commonwealth submit to its judgment (L 264–66, 270–72). However, as Jaume is forced to concede while arguing against the claim that Hobbes originated the liberal tradition,

³⁴Warrender, *Political Philosophy of Thomas Hobbes*, 118.

³⁵While it could be argued that this conclusion conflates the fact of preservation with the perception of it, Hobbes recognizes that when individuals determine how to act, perception is reality. Hobbes conceives of individuals as rational actors who seek to maximize benefits (L 202). However, he also differentiates between the world as it exists and the world as human beings perceive it through their senses (L 22–24). Individuals can only act on the basis of the world as they perceive it, not how it objectively is; the perception of protection thus carries more weight for individuals than the reality of it. Accordingly, the conflation of the ontological state (the absence of protection) with the epistemological state (the perception of an absence of protection) is an inevitable consequence of Hobbes’s assumptions.

through close examination of the relationship between sovereign and subject “we find, contrary to common opinion, that Hobbes has strengthened the citizen’s judgment as much as he has reinforced the state.”³⁶ This strengthening may appear to run afoul of the law of nature because the seventeenth law of nature is that “no man is a fit arbitrator in his own cause” (L 238), and the eighteenth law specifies that no one should serve as a judge if they have reason to side with one party to the dispute. But neither of these provisions precludes judging when one’s self-preservation is endangered. In the state of nature individuals have unlimited judgment regarding what actions are necessary to preserve themselves. This judgment is not in conflict with the seventeenth law because the laws of nature are grounded on preservation; one does not have to act in accordance with them if to do so would cause one to “make himself a prey to others” (L 240). Through the social contract individuals renounce significant levels of judgment, however, because self-preservation is inalienable some judgment regarding one’s own circumstances is retained, otherwise the right to resist “wounds, chains, and imprisonment” could not be exercised. When the individual living in society judges that a highwayman is going to shoot him or the hangman is about to drag her to the gallows, said individual is a judge in his own cause. However, as with the state of nature, this does not violate the seventeenth law because failure to judge makes oneself vulnerable to harm from others. The same logic applies to the judgment that protection is no longer being provided and obedience is no longer obligatory. Although it could be objected that judging the sovereign is a completely different category, if judging the actions of the sovereign was automatically a violation of the natural law it would not be possible for Hobbes to urge subjects to bring laws that will be detrimental to the commonwealth to the attention of the sovereign as he does in *Leviathan* (L 470).³⁷

As part of strengthening individual judgement, Hobbes indicates the subjects not only can but should apply their own judgment to the laws and commands of the sovereign to ensure they really do provide protection, “for he [the subject] *ought* to take notice of what is inconsistent with the sovereignty, because it was erected by his own consent and for his own defense” (L 470, emphasis added). When a subject judges the sovereign’s actions not to be

³⁶Lucien Jaume, “Hobbes and the Philosophical Sources of Liberalism,” in *The Cambridge Companion to Hobbes’s “Leviathan,”* ed. Patricia Springborg (New York: Cambridge University Press, 2007).

³⁷A related objection is that this system lacks a method of impartially judging the sovereign. However, for Hobbes judgment can never be impartial. He defines will and deliberation solely in terms of the individual’s appetites (L 90–92), and judgment in terms of our understanding of the past and future (L 98), which are themselves defined in terms of good and evil (L 98), which are little more than appetite and aversion (L 80–82). Therefore, since any judge will be partial in Hobbes’s view, the partiality inherent to such an interpretation does not preclude it from being Hobbes’s position.

conducive to protection, the subject must still obey, but should call the mistake to the attention of the sovereign so it can be rectified (L 470). This avenue of appeal presents subjects with a wider array of responses to a sovereign that acts in ways unconducive to preservation than simply determining whether to submit to the law, attempt to evade detection while not complying, or seek protection elsewhere, which are the only options in Steinberger's formulation.³⁸ The role of individual judgment is more nuanced, and more essential, than these three options because Hobbes provides a process for individual subjects not only to judge whether or not the sovereign is fulfilling its function, but also to seek redress when not in imminent peril.

Hobbes grants these judgments can in some circumstances justify disobeying the commands of the sovereign. Hobbes counts among the liberties of subjects noncompliance with any command "to kill, wound, or maim himself, or to not resist those that assault him, or to abstain from the use of food, air, medicine, or any other thing without which he cannot live" (L 336). While the straightforward nature of these allowances leaves little room for subjects to interpret the situation, he provides more ambiguous permissions. In particular, he says any subject may refuse to "execute any dangerous or dishonorable command" (L 338). This is a critical concession. Hobbes conceives of honor and dishonor as social constructs to a significant degree, meaning what is honorable in one time and place could be dishonorable in another (L 138–40). However, he also recognizes natural forms of honor that are beyond the control of society, including imitation (L 138). Because certain actions will always be considered honorable regardless of what society they occur in, honor is not simply what the sovereign, speaking for the commonwealth, says it is. Consequently, only the specific individual in question can truly know when the sovereign's command will be life threatening or dishonorable, meaning individual judgment lies at the heart of the right to disobey that Hobbes allows when the command of the sovereign does not "frustrate the end for which the sovereign was ordained" (L 338). Since this judgment justifies a specific individual in resisting, but not those unaffected by the sovereign's command, one is forced to conclude that Hobbes's theory allows for situations in which, as Steinberger explains,

the contract has been abrogated for me whereas for you it has not, my obligations are now dissolved while yours are still in force, and I find myself plunged back into the condition of mere nature while you are still living comfortably in political society. The entity that threatens me is, at best, a dominant power in the state of nature, something to which I have no obligation whatsoever, while the entity that protects you—the very

³⁸Steinberger, "Hobbesian Resistance."

same entity—is a state, something to [be] obeyed absolutely and unquestioningly.³⁹

In highlighting the distinction between a sovereign properly speaking and one that, having failed to fulfill its *raison d'être*, is no longer a sovereign, Steinberger uses *Leviathan* to demonstrate the crucial conceptual distinction that makes individual judgment regarding the actions consistent with Hobbes's absolutism. This understanding of the cessation of obedience illustrates the individual nature of the mechanism through which obligation is terminated by demonstrating how the same power can simultaneously be both sovereign and nonsovereign, a framework I find in both *Leviathan* and *De Cive*.

From Individual-Level Noncompliance to the Fall of the Commonwealth

No matter how many subjects are freed from obligation, in each instance the process occurs via a series of individual-level invalidations. For example, consider an instance in which a sovereign decides to exterminate a minority group. When the sovereign directly acts against members of this group, the protection for which they entered into the commonwealth no longer exists, and these individuals might be safer in the state of nature. While Hobbes presents the state of nature as the worst environment in *Leviathan*, consistency would require him to concede that systematic killing is even worse because the *summum malum* is violent death⁴⁰ and the probability of violent death is even higher when one is simultaneously being targeted for it by state power, lacking the protection of a sovereign, and having relinquished some of one's natural right than when one is pursuing self-preservation through the full scope of one's judgment and abilities. Hobbes's account of human psychology requires that subjects be able to make this judgment because, as Locke notes, it is contradictory to claim rational actors would "take care to avoid what Mischiefs may be done them by *Pole-Cats*, or *Foxes*, but are content, nay think it Safety, to be devoured by *Lions*."⁴¹ Instead, as Hampton recognizes in discussing instances of extreme oppression by the state, "a threatened Hobbesian person's concern for his self-preservation will clearly cause him to prefer the misery of war and the risk of death [in the state of nature] to an even more miserable subjugation and an even greater risk of death" at the hands of the state.⁴² Those subjects who are treated in this fashion are released from political obligation simply because

³⁹Steinberger, "Hobbesian Resistance," 861.

⁴⁰Thomas Hobbes, *On the Citizen*, ed. Richard Tuck and Michael Silverthorne (New York: Cambridge University Press, 1994 [1642]), epistle dedicatory.

⁴¹John Locke, *Second Treatise of Government*, ed. C. B. Macpherson (Indianapolis, IN: Hackett, 1980 [1689]), 50.

⁴²Hampton, *Hobbes and the Social Contract Tradition*, 195.

when the power to protect fails, obligation ends. But this group of subjects cannot be released from obligation in their capacity as a group. Just as it would be inaccurate to speak of Hobbesian subjects as a “people” because the social contract does not create a corporate entity (L 248), so too Hobbes considers it to be improper speech to give a subgroup of subjects any sort of corporate capacity; the sovereign is the only corporate capacity the subjects can have. Therefore members of the targeted group can only be freed from obligation when each subject applies individual judgment to the situation and recognizes the entity created to provide protection is no longer doing so.

Applied more broadly, individual cessations of obligation can lead to the complete dissolution of the commonwealth. In the example of an abused minority, the potential exists for individuals who are not part of the targeted group to be released from obligation as well. Such a circumstance would occur when the individuals observing the destruction of the minority group determine it makes their preservation insecure as well. Living in a reasonable fear of this state apparatus being turned against them in the same way they are witnessing it being used against others would make the preservation of these individuals insecure and could make the state of nature a preferable alternative. If any individual makes this judgment, that subject is returned to the state of nature and “from this moment, they have as much right to resist, attack, and if necessary kill the Sovereign as the Sovereign has the right to attack and if necessary kill them.”⁴³ A recognition of the danger the precedent of destroying one group of subjects poses to all other subjects can thereby lead to the end of obligation for all subjects.

While I have presented this individual-level mechanism through hypothetical examples, it is also present in the examples Hobbes uses in *Leviathan*. His primary example of the termination of the social contract for all subjects is a military defeat that prevents the sovereign from being able to deploy military force against the enemy, thereby depriving the subjects of the protection for which they entered the commonwealth (L 518). In such circumstances rational individuals will judge that it is no longer possible to receive protection from the sovereign and therefore political obligation is at an end. Regardless of the number of subjects released from obligation, because Hobbes holds a multitude of individuals can only become a collective entity through the creation of the sovereign (L 256), subjects are only ever released as individuals, never as groups. As a result, the commonwealth is not dissolved by the actions of a group of subjects; the sovereign is only removed from power when a great number of individuals (1) suffer from a failure of the power to protect, (2) judge this failure to have occurred, and (3) successfully undermine or oppose their former sovereign through actions they each individually deem necessary for their preservation and take in the state of nature.

⁴³Richard E. Flathman, *Thomas Hobbes* (Newbury Park, CA: Sage, 1993), 121.

The obvious objection to this argument is Hobbes's discussion of authorization and authorship in *Leviathan*. Hobbes unambiguously maintains that individuals authorize the sovereign to act for them, and as a result each individual subject of the commonwealth is the author of each and every action the sovereign takes (L 246). This section of the text can, and has, been used to close off all avenues to disobedience.⁴⁴ The basic argument is intuitive. Since Hobbes argues that the subjects each authorize the sovereign and its actions through the social contract, and uses this point to describe each subject as the author of the sovereign's actions, any resistance to the sovereign's commands will be "self-contradictory."⁴⁵ After all, how can one have a right to resist one's own actions? Skinner's reading supports the argument made by Sheridan that any attempt to find a right of legitimate resistance to the sovereign of any meaningful sort is a product of reading Hobbesian natural right "through an overly-liberal lens."⁴⁶ It is necessary to guard against making an overly liberal reading of Hobbesian right. However, using caution does not require rejecting the right of individual resistance central to Hobbes's political philosophy.

The objection that authorship and authorization preclude the type of resistance I describe is not insurmountable. Skinner concedes authorization precludes resistance "except in instances of self-preservation."⁴⁷ This again speaks to the very purpose of entering into political society. In the exercise of natural right "the individual contracts himself into a political society in order to provide more effectively for his security and his self-preservation and cannot be supposed thereby to have obliged himself to anything inconsistent with this purpose."⁴⁸ As a result, "we cannot authorize self-destruction—that contradicts the very reason for entering society in the first place."⁴⁹ Since individuals cannot renounce their natural right to self-preservation and they authorize the sovereign to provide preservation, it would be a contradiction if individuals could be the author of actions destructive of their self-preservation, even via authorization. Such a contradiction is avoided when one considers that failure of the power to protect terminates obligation by returning the individual to the state of nature. As a result, any resistance is to someone who is not a sovereign vis-à-vis the individual in question, meaning authorization would not apply. However, as long as preservation is provided, the sovereign must be considered as such and

⁴⁴Quentin Skinner, "Hobbes on Persons, Authors and Representatives," in *The Cambridge Companion to Hobbes*, ed. Tom Sorrell (New York: Cambridge University Press, 2007); Quentin Skinner, *Hobbes and Republican Liberty* (New York: Cambridge University Press, 2008).

⁴⁵Skinner, *Hobbes and Republican Liberty*, 164.

⁴⁶Sheridan, "Resisting the Scaffold," 154.

⁴⁷Skinner, *Hobbes and Republican Liberty*, 164.

⁴⁸Warrender, *Political Philosophy*, 114.

⁴⁹Conal Condren, *Thomas Hobbes* (New York: Twayne, 2000), 46.

authorization applies. Accordingly, my account of obligation incorporates authorship by recognizing that Skinner's reading of authorship is true by definition when the sovereign is judged to be providing the protection necessary for it to be considered a sovereign.

Protection of the Opportunity for Commodious Living

The scope of protection determines the significance of conditional obedience because the circumstances in which the subjects are freed from their obligation to obey the sovereign is determined by when the power to protect has failed. These circumstances are quite limited under the traditional understanding of Hobbes's account of preservation. Hobbes's example of the failure of the power to protect is a military defeat that destroys the sovereign's entire ability to use force and even field an army (L 518). Even a weak ruler can typically muster some semblance of military capacity. Accordingly, a defeat so complete as to eliminate the sovereign's ability to project force is likely to be rare and obligation will not often end under the traditional account of protection as keeping one's subjects alive.⁵⁰ Similarly, this thin definition of protection implies that extreme incompetence would be necessary on the part of the sovereign in order for its actions to constitute an absence of protection. Hobbes's standard is "ignorance" on the part of the sovereign, indicating the sovereign does not know how to properly fulfill its purpose (L 344). The criterion of ignorance implies that a few mistakes on the part of the sovereign do not constitute a lack of protection because knowledge does not logically imply always acting perfectly. This is especially true on a narrow formulation of protection, as knowing how to protect one's subjects from violence does not require a high degree of skill.

Recent scholarship has begun to recognize that Hobbes's conception of protection is more robust than previously thought. Building on Kavka's observation that "mere survival is not the guiding value of Hobbes's philosophy," and life is instead "a prerequisite for the attainment of other human goods,"⁵¹ Curran describes Hobbes's account of preservation as securing "an inalienable right, not only to preserve our lives, that is, to avoid death, but also to what is needed for us to live a life that will be worth living."⁵² She demonstrates that Hobbes includes the means of commodious living as part of protection. By limiting herself to such requirements as keeping the peace and the "minimum freedoms that are required for a full and active life," Curran leaves exploration of the particulars of expanded preservation for future analysis. As a result, her definition of commodious living, focused primarily on the

⁵⁰E.g., Richard Tuck, *Philosophy and Government, 1572–1651* (Cambridge: Cambridge University Press, 1993).

⁵¹Kavka, *Hobbesian Political and Moral Philosophy*, 82.

⁵²Curran, "Can Rights Curb," 250.

“minimum freedoms that are required for an active and full life,”⁵³ is a criterion that provides minimal analytic leverage for determining when exactly the power to protect fails and obligation ends. Kavka fills much of this gap, especially with his discussion of the economic provisions that would be inherent in any rational social contract. But this analysis is primarily extrapolative, examining what provisions would be “within the spirit of Hobbes’s rationale.”⁵⁴ Providing a more developed understanding of the opportunity for commodious living, one that allows for a more detailed recognition of the circumstances in which subjects are freed from obligation, and that demonstrates Hobbes’s overt embrace of these positions, is the task that I take up in this section.

By emphasizing commodious living as a component of protection, Curran reveals the need for more power and efficacy from the sovereign in order to avert a failure of the power to protect.⁵⁵ This formulation of preservation is present in *Leviathan*, where “the office of the sovereign (be it monarch or assembly) consisteth in the end for which he was trusted with the sovereign power, namely, the procuration of *the safety of the people*” and “by safety here is not meant a bare preservation, but also all other contentments of life, which every man by lawful industry, without danger or hurt to the commonwealth shall acquire to himself” (L 520). The sovereign is created to further self-preservation in terms of not simply life, but also the enjoyment of the fruits of one’s labor; in sum, the “means to live well.”⁵⁶ As a result, the end of obedience is protection not only of person but also of property and its use, that is to say, the opportunity for commodious living.

Turning to *De Cive* reinforces the important insight that commodious living is an aspirational requirement. The sovereign is not required to guarantee happiness to every subject, rather “he has done his duty if he has made every effort, to provide by sound measures for the welfare of as many of them as possible for as long as possible; and to see that no one fares badly except by his own fault or unavoidable circumstances” (DC 143). The sovereign must therefore safeguard the background conditions necessary for the attainment of happiness and provide equality of opportunity to all subjects by not excluding them from the four types of goods it provides: defense from foreign enemies, internal peace, “innocent liberty,” and the “acquisition of wealth” (DC 144). This formulation has critical consequences for determining when individuals are obligated to obey. If the requirement was a certain level of goods be provided to all individuals, Hobbes would be providing a clearly demarcated threshold of commodious living, allowing subjects to

⁵³Ibid.

⁵⁴Kavka, *Hobbesian Political and Moral Philosophy*, 212.

⁵⁵See also Eleanor Curran, “Hobbes’s Theory of Rights—A Modern Interest Theory,” *Journal of Ethics* 6, no. 1 (2002): 63–86.

⁵⁶Warrender, *Political Philosophy of Thomas Hobbes*, 181.

leave the commonwealth if a known standard of material well-being was not reached. Hobbes's actual standard is more ambiguous and more open to variations in judgment, with individuals only being released from obligation if they lacked commodious living because they were denied the opportunity to succeed, not because they came up short of their goals.

The support my interpretation receives from *De Cive* is crucial to understanding the role of commodious living in Hobbes's thought as a whole. Steinberger focuses only on *Leviathan*, which leaves open the possibility that, as Curran claims,⁵⁷ this conception is present only in *Leviathan* and not Hobbes's earlier political writings. This could make such a conception either a late evolution in Hobbes's thought or an artifact of the presentation in *Leviathan*. However, analysis of *De Cive* demonstrates that the framework for the dissolution of the commonwealth is inherent in Hobbes's philosophy more generally. Furthermore, examining *De Cive*, where Hobbes is more expansive regarding what actions the sovereign must take in order to properly protect the subjects, reveals more particulars of what natural right requires of the sovereign than Steinberger is able to provide on the basis of *Leviathan*.⁵⁸ For instance, although Steinberger thoroughly treats the need to preserve life and preserve the laws, his treatment of commodious living only establishes the basic framework of sufficient commodity that life is "not excessively tiresome," which requires that the sovereign "generally provides security, comfort, liberty, and satisfaction."⁵⁹ In *De Cive* as in *Leviathan*, Hobbes argues the purpose of the commonwealth is to provide for protection, and characterizes protection as being the condition for which obedience is granted; specifically:

Security is the End for which men subject themselves to others, and if it is not forthcoming, the implication is that no one has subjected himself to others, or lost the right to defend himself as he thinks best. People are assumed not to have bound themselves to anything or to have given up their right to all things until arrangements have been made for their security. (DC 77–78)

Protection is even more clearly a condition of obedience in *De Cive* based on the same logic as in *Leviathan*. In both texts, Hobbes presents protection as

⁵⁷Curran, *Reclaiming the Rights*.

⁵⁸Although Hobbes wrote *De Cive* a decade before *Leviathan*, his thought, especially regarding obedience and protection, is so consistent across texts that "if we are interested in Hobbes's *political* thought, we will still find it at least as clearly set out in *De Cive* as in *Leviathan*" (Richard Tuck, introduction to *On the Citizen*, ed. Richard Tuck and Michael Silverthorne [New York: Cambridge University Press, 1998], xxxiii). This position draws additional credence from Hobbes's later decision to have these two texts published together in a single volume, indicating he conceived of these works as being complementary in some manner (*ibid.*).

⁵⁹Steinberger, "Hobbesian Resistance," 863, 864.

inclusive of far more than just physical security of persons' bodies. In discussing what the sovereign exists to protect, he is clear that "by *safety* one should understand not mere survival in any condition, but a happy life as far as that is possible," and individuals establish commonwealths "in order to live as pleasantly as the human condition allows" (DC 143–44).

Admittedly, these quotations contain major caveats about feasibility, so possibly Hobbes considers only low levels of happiness and pleasant or commodious living, as he frequently terms it, to be possible. However, his detailed discussion of what a happy life consists of and what actions are therefore required of all sovereigns in order to be in accordance with the requirements of their office makes clear that for Hobbes "as much as possible" does not translate to "and this is not actually possible." In detailing what constitutes doing as much as possible, he discusses the need for the sovereign to "do whatever can be done by laws to ensure that the citizens are *abundantly* provided with all the good things necessary not just for life but for the enjoyment of life" (DC 144, emphasis added).

The robust nature of preservation is made most clear by the steps Hobbes argues must be undertaken by the sovereign in order to facilitate the acquisition of wealth and the fact that these steps are required as part of preservation. In addition to providing the physical security and legal predictability necessary for the acquisition of wealth, the sovereign must take more active steps. Hobbes argues the sovereign should promote commerce and industriousness, in part by passing sumptuary laws and measures against idleness, as well as legislation to promote the art of navigation, the mechanical arts, and mathematical sciences, which he states are essential to navigation, artisan crafts, and other trades (DC 149–50). Because these measures are necessary for the provision of "the good things necessary ... for the enjoyment of life" (DC 144) which is itself a component part of safety as defined in *De Cive*, the promotion and protection of the basic components of commercial society is part of the protection individuals create the office of sovereign in order to receive. Therefore when the sovereign is unwilling or unable to protect property in both its possession and acquisition as required by this more robust conception of protection, the power to protect can be seen to have failed. Such a failure could take a number of forms, including the formal exclusion of certain individuals or groups from economic life, as well as being barred from property holding, financial markets, or commercial activity. As with more traditionally recognized failures to protect, failure to provide the opportunity for commodious living terminates the obligation of those subjects so effected and returns them to the state of nature. Since in *De Cive* it is also improper to speak of the subjects having any corporate capacity independent of the sovereign, and some may be safe while others are insecure, the cessation of obligation occurs through the same individual-level mechanism as in *Leviathan*, legitimizing resistance as elaborated above.

The argument that the sovereign's failure to provide comprehensive protection terminates obligation is contested on the grounds that while these are

steps a prudent sovereign would take, any obligation the sovereign would have is not enforceable by the subjects. Some point to Hobbes's explicit statements that the sovereign is not a party to the social contract and therefore cannot commit a breach of contract vis-à-vis the subjects.⁶⁰ While the sovereign is not party to the social contract, focusing on the definition of the office of sovereign reveals the above policy prescriptions are not simply suggestions or maxims of prudence for the sovereign. Instead, these policies must be enacted by the sovereign because they, and the ends they provide for, are requirements of the office of sovereign. If one or more individuals who are given this office fail to fulfill these requirements, they may be many things, but to Hobbes "sovereign" is not one of them. That these steps for the encouragement of commodious living must be undertaken by the sovereign as part of ensuring citizens are provided with those goods necessary for life speaks to the robust nature of the protection the sovereign must provide because they are constituent parts of the happy life required by Hobbes's definition of "safety."

Other scholars note the sovereign "is obliged by the law of nature" to provide for the safety of the people, but when it fails to do so the sovereign must "render an account thereof to God" and God only, making enforcement beyond the realm of the subjects.⁶¹ But the sovereign's failure being punishable only by God does not preclude legitimate resistance. Hobbes argues God uses the natural laws governing the universe to establish a "declaration of his natural punishments" for violating the law of nature, among which is the punishment of "negligent government of princes, with rebellion" (L 572). If rebellion is God's punishment of the sovereign, it would be strange for Hobbes to claim those resisting were taking an illegitimate action in furthering God's will. Although the natural punishment for rebellion is "slaughter" (L 572), the resistance that occurs when the power to protect has failed technically occurs in the state of nature because the commonwealth no longer exists; therefore it is not de jure rebellion because the former subjects are simply at war with an individual, not a sovereign. Since the resistance is not a rebellion on Hobbes's definition, the natural punishment does not apply.

As a result of this expanded definition of protection, more power is now needed in order to provide protection. The sovereign now must be able to protect the enjoyment of property, a wide array of economic activity and commerce. Just as significantly, this higher threshold, especially in light of the requirements for facilitating the preservation of property outlined in *De Cive*, requires not only more action but also more knowledge and skill on the part of the sovereign in order to fulfill the definitional requirements of

⁶⁰E.g., Glenn Burgess, "On Hobbesian Resistance Theory," *Political Studies* 42 (1994): 62–83.

⁶¹David Gauthier, "Hobbes: The Laws of Nature," *Pacific Philosophical Quarterly* 82, no. 3–4 (2001): 258–84.

the office. As a result, there is a far greater realm for inaction or ignorance causing the power to protect to fail, causing the person or persons invested with the office of sovereign to cease to be a sovereign properly speaking and thereby freeing the subjects from their obligation of obedience to the sovereign.

Natural Right Limits Law

Hobbes's definition of law restricts the actions of sovereigns by disqualifying as laws several types of actions prejudicial to the subjects' preservation. By further requiring the subjects' obedience only to laws and not to arbitrary commands that violate his definition of law, Hobbes illustrates the full extent of the conditionality of obligation by including ruling through laws as an element of how the sovereign is required to provide for the preservation of the people.⁶² If Hobbes had defined law as the will of the sovereign, then the requirement of ruling through laws would not provide the subjects with any substantive protections because civil laws are those the subjects are "bound to observe" as a result of being in a commonwealth (L 414). However, when outlining the definitional criteria of laws and permissible punishments, rather than simply claiming whatever the sovereign may say or do at any time constitutes law, Hobbes presents a number of criteria sovereign commands must meet in order to count as law. Close analysis of Hobbes's conception of law reinforces the interpretation that the protection of natural right demarcates both the jurisdiction in which the sovereign can legitimately act and is absolute and a realm in which it cannot legitimately act, thereby defining the proper scope of political power and the areas into which such power cannot permissibly reach. Analyzing Hobbes's conception of law thereby provides an avenue for demonstrating how the subjects' natural right substantively limits the actions the sovereign can permissibly take.

Two of the defining features of laws are that they must be made known to the public by publishing them publicly and in writing (L 422–24). Otherwise

⁶²The phrase "rule of law" as it is currently understood is contrary to Hobbes's statements regarding the relationship between the sovereign and the law. The idea of rule of law implies a system in which not only is governance conducted via law, but those who rule are bound by the laws. The latter criterion is especially important because in its absence it is possible to argue, as Oakeshott does, for Hobbes being a rule-of-law thinker (Michael Oakeshott, "The Rule of Law," in *On History and Other Essays* [Oxford: Basil Blackwell, 1983]). Yet when this requirement is part of the definition of rule of law, Hobbes is easily recognized as one who "does rail against the rule of law" (Michael P. Zuckert, "Hobbes, Locke and the Problem of the Rule of Law," in *Launching Liberalism: On Lockean Political Philosophy* [Lawrence: University Press of Kansas, 2002], 299; see also Hampton, *Hobbes and the Social Contract Tradition*, esp. in light of his statement that the sovereign "is not subject to the civil laws" [L 416]).

commands do not qualify as laws because making them binding on subjects who have no way of knowing them punishes subjects for apparently permissible actions, which deprives them of the protection they entered into the commonwealth for. Moreover, even when these criteria are fulfilled it is still possible for individual subjects to not be obliged to obey a specific law because “the want of means to know the law totally excuseth” from obedience the subject who cannot know the law (L 468). The defining features of law do not empower the sovereign, but rather protect its subjects’ rights.

Hobbes argues that failing to do due diligence regarding the contents of the law “shall not be considered a want of means” (L 468). While requiring the subject to seek out the content of the law significantly circumscribes the ignorance of the law caveat and suggests it will rarely be applicable, one can still think of situations in which an isolated individual (or individuals) is (are) unable to hear of changes to the law. This individual would be freed from obligation until returning to a settlement in which it would be possible to learn of the new law and become obliged to obey. Such a scenario reinforces the argument that there is space in Hobbes’s theory for an individual to be freed from obligation as a result of the demands of their individual right of preservation while other subjects are still obliged to obey.

The requirements of knowableness and predictability apply to punishments as well. The sovereign is required to apply no greater punishment for the crime than such as is established by law or has previously served as a punishment for the same offense. Hobbes’s rationale here is that to do otherwise is to create a situation in which the law “tempted and deceiveth” the subjects (L 470). Such punishments, as well as ex post facto laws, are forbidden by Hobbes because they cause individual subjects to make rational decisions in the furtherance of their preservation that unforeseeably lead to contrary results. The rational pursuit of one’s preservation is thus the touchstone of law since “no law can oblige a man to abandon his own preservation,” and as such the law exists to prevent the sovereign from violating the rights of the subjects (L 458, 468).

These requirements of law, and their role in circumscribing the subjects’ obligations, demonstrate that the sovereign’s role in protecting the subjects’ natural right to survival is more robust than merely keeping them alive. In addition to being unable to order its subjects to harm themselves (L 338), the sovereign is required to recognize and respect that their natural right to self-preservation dictates certain terms for their survival. This qualification of preservation disproves the claim that Hobbes “intended to give the sovereign carte blanche to do with his subjects as he will,”⁶³ demonstrates the insufficiency of defining preservation as simple physical survival, and points to the need for a more robust conception of protection. Hobbes’s treatment of the nature of law also shows that the protection of natural right defines the

⁶³Martinich, *Two Gods of “Leviathan,”* 173.

areas in which the sovereign may permissibly act and those where it cannot legitimately interfere, and thereby defines the “proper sphere on which political power cannot encroach.”⁶⁴ The subjects’ natural right thus substantively shapes the role of the sovereign and the range of actions it can take.

Conclusion

Recognizing that natural right provides a basis for legitimate resistance to the person or persons entrusted with the office of sovereignty adds nuance to the current understanding of the nature of political obligation in Hobbes’s thought. Natural right, and the expanded conception of protection that stems from it, circumscribes the applicability of the conventional interpretation of Hobbes as inimical to any form of resistance and demonstrates there are a broader range of circumstances in which the prevailing interpretation does not apply. Specifically, I have shown Hobbes possesses a more robust conception of preservation than is typically acknowledged, which increases the level of protection a sovereign must provide its subjects in order to be fulfilling the purpose and definition of a sovereign. When the sovereign fulfills this requirement, then all of Hobbes’s most memorable remarks about absolutism apply, the sovereign cannot legitimately be resisted (except when a subject kicks and screams all the way to the gallows) and all rebels may be legitimately punished without mercy or restraint. However, when the person(s) entrusted with the office of sovereignty is unable or unwilling to provide for this more robust formulation of preservation, then by definition the sovereign is no longer a sovereign. The failure of the power to protect returns all subjects to the state of nature, allowing them to pursue their self-preservation by whatever means each of them judges to be best and to resist whoever interferes with this pursuit, including the former sovereign.

The practical consequences of this resistance are profound. After all, how many sovereigns will readily acknowledge that their power to protect is no longer in force and they are no longer properly speaking sovereigns as such? More likely, as Hobbes acknowledges, the former sovereign will claim to still be sovereign and owed obedience (L 1133–34). Usually this claim will be backed by more than words, and the former sovereign will utilize force and loyalists to attempt to compel obedience (L 266). Having complete discretion over how to pursue preservation allows the former subjects to respond to such a threat by banding together in order to increase their chances of successfully defeating the loyalist forces. Such group activity is not properly speaking a rebellion because Hobbes grants no group of individuals the right to act collectively within the commonwealth and “the people” is not a concept he recognizes, it is simply war because in theory it occurs in the

⁶⁴Yves Charles Zarka, “The Political Subject,” in *“Leviathan” after 350 Years*, ed. Tom Sorell and Luc Foisneau (Oxford: Clarendon, 2004), 181.

state of nature, where individuals have the ability to coordinate with each other on a temporary basis if they so choose; however, in practice it has all the appearances of rebellion. When applied, the de jure right of individual resistance becomes a de facto right of rebellion.

Such implications allow for a reengagement with the objections of Hobbes's contemporaries, particularly fellow royalists. Is *Leviathan* a "rebel's catechism," as Bramhall feared?⁶⁵ Not to the extent that it can be used to justify organized rebellion against a sovereign properly speaking. But insofar as *Leviathan* demonstrates the kind of protection that a sovereign should provide, and, by emphasizing the conditional nature of obedience, suggests to disgruntled individuals that one is not obligated to obey someone who is not allowing for commodious living to be pursued and obtained and so leads individuals to pursue the full freedom of action of the state of nature, *Leviathan* can be seen as providing guidance for when political obedience ceases. In light of the potential for leading to strife and de facto rebellion as discussed above, Bramhall's fears appear more astute than outlandish.

The potential for creating conflict does not contradict Hobbes's purpose because he wrote *Leviathan* "without other design than to set before men's eyes the mutual relationship between protection and obedience" (L 1141). The very act of defining when individuals must obey implicitly delineates when they are not required to do so. Hobbes could have chosen many avenues, including divine right of kings or an alienable form of natural right. Yet by choosing an inalienable right to pursue self-preservation he created a system in which retained right precludes uniformity of judgment regarding preservation. Hobbes's recognition that the inalienability of natural right will always entail some level of individual judgment is a credit to his intellectual consistency. By recognizing these nuances, we do not obscure Hobbes's purpose, but rather honor his commitment to the consequences of his premises.

⁶⁵Curley, introduction to *Leviathan*, xxxviii.