

**Why Hobbes Cannot Limit the Leviathan:
A Critical Commentary on Larry May's *Limiting Leviathan***
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Abstract: This commentary contends that Larry May's Hobbesian argument for limitations on sovereignty and lawmaking in *Limiting Leviathan* does not succeed. First, I show that Hobbes begins with a plausible instrumental theory of normativity. Second, I show that Hobbes then attempts, *unsuccessfully*—by his own lights—to defend a kind of non-instrumental, moral normativity. Thus, I contend, in order to successfully “limit the Leviathan” of the state, the Hobbesian must provide a sound instrumental argument in favor of the sovereign limiting their actions and lawmaking. But, I argue, neither Hobbes nor May provides such an argument.

Key words: Hobbes, Leviathan, sovereignty, law.

Larry May's stated aims in *Limiting Leviathan* are two-fold. First, May argues that Hobbes is much more amenable to moral and legal limits on sovereignty and lawmaking than traditionally portrayed. (p. 1) Second, May endeavors to show that Hobbes' theory provides a “solid grounding” for these limits, such that *Limiting Leviathan* should make Hobbes' theory “more plausible to contemporary readers.” (pp. 1-2)

This commentary does not take issue with May's interpretation of Hobbes. I believe Hobbes clearly does want to place the normative limits on sovereignty and lawmaking that May attributes to him, and that May has done Hobbes scholarship a real service by drawing Hobbes' arguments for these limits out into the open. However, despite this, I will contend that the actual arguments Hobbes and May give for “limiting the Leviathan” do not succeed. First, I will show that Hobbes begins moral and political theorizing with a plausible *instrumental* model of normativity – a model according to which agents ought to pursue actions that they can expect to best satisfy their desires. Second, I will show that Hobbes then tries, unsuccessfully, to translate this model into a non-instrumental theory of *moral* normativity – a theory according to which agents should act in ways that may *not* best satisfy their desires. Third, I will show that Hobbes appreciated this failure himself, holding that moral obligations are “defective” unless they can be given solid instrumental grounding. Fourth, I will show that neither Hobbes nor May successfully

provide a compelling instrumental case for limiting sovereignty or lawmaking. Thus, I submit, however much Hobbes and May may wish to impose sound normative constraints on sovereignty and lawmaking, Hobbes and May have not successfully argued for constraints.

§1. Hobbes' Theories of Normativity

Let us begin – as May does – with how Hobbes understands normativity. As May points out on p. 28, in Chapter 6 of *Leviathan* Hobbes tells us that the names ‘good’ and ‘evil’ refer to objects of appetite and aversion, “there being nothing simply and absolutely” good and evil.¹ Further, Hobbes is clear that people use normative terms in a manner “relative to person, place, and time.”² Hobbes appears, in other words – at least in the first instance – to understand normativity in a thoroughly *instrumental* manner, where a person’s good-relative-to-them is simply *whatever best satisfies their appetites*.

May then points out that Hobbes aims to derive certain normative “laws of nature” from this instrumental picture. (p. 30) Because each of us endeavors to conserve ourselves, Hobbes thinks it follows, instrumentally, that we ought to seek peace with others to whatever extent it is obtainable, but alternatively, if peace is unavailable, defend ourselves by any means necessary.³ However, as May points out on p. 32, for Hobbes these laws of nature are *still nothing more than prudential rules*; they are “conclusions or theorems concerning what conduceth to [a person’s] conservation and defense of themselves.”⁴

Next, May notes (on pp. 32-38) that Hobbes attempts to translate these instrumental laws of prudence into genuinely *moral* laws – laws which are *non-instrumentally* binding. Hobbes

¹ Thomas Hobbes, “Leviathan”, in Sir William Molesworth (ed.), *The English Works of Thomas Hobbes, Vol III*, London: John Bohn, 1839: p. 41. (Henceforth “LEV”)

² Thomas Hobbes, “De Homine”, in B. Gert (ed.), *Man and Citizen*, Garden City, New York: Anchor Books, 1972: p. 47. (Henceforth “DH”)

³ LEV, p. 117.

⁴ LEV, p. 147.

attempts to do this by arguing, notoriously, that there is some kind of *self-contradiction* involved in endeavoring to do one thing at one time (e.g. endeavoring to make, and keep, a promise) and yet endeavoring to do the opposite later on (e.g. violate that promise). Hobbes illustrates this claim, notoriously, though the example of a kidnapped person who promises to pay a ransom if let go.⁵ Hobbes contends that the promise to the ransomer is binding *even if* the person could instrumentally benefit by violating the promise.

Hobbes faces a very difficult problem here to which I have never seen a good answer. Hobbes' claim that there is a *contradiction* between endeavoring to do something at one time and then resolving to do the opposite at a later time violates both commonsense and careful philosophical investigation. People coherently resolve to make contracts only to change their mind later all the time, and in ways that are perfectly coherent and instrumentally rational. Furthermore, such actions are plainly coherent and rational given Hobbes' *own* account of how people use normative terms such as 'good' and 'evil' – ascribing them “relative to person, place, and time.” On this account of normative terms, if, for instance, I have an appetite to make a contract at t , then it is *good-for-me-at-t* to make the contract. But now suppose my appetite changes at $t+n$, and I now have an appetite to *break* the contract. On Hobbes' account of how we use normative terms, it follows that it is *good-for-me-at-t+n* to break the contract I made at t . There is no contradiction here – and again, people coherently and rationally behave in these ways all the time. It can be good for someone to make a contract one time, but later be good for them to break it. Thus, Hobbes' attempt to derive a kind of non-instrumental, moral normativity from the notion of self-contradiction appears to fail.

Finally, Hobbes even seemed to recognize this himself. As May points out on pp. 32-38, Hobbes famously distinguishes between laws of nature binding *in foro interno* (binding to a

⁵ LEV, ch. 16.

desire that they always take place) and their binding *in foro externo*, or “putting them in act not always.”⁶ Specifically, Hobbes contends that, *absent punitive enforcement*, his laws of nature – including the law to keep contracts – are only binding *in foro externo*, or not always: they are, as May puts it on p. 35, “a defective type of obligation.” Hence, even *Hobbes* does not seem to stick to his “self-contradiction” account of moral obligation. When pressed, Hobbes seems to recognize that the only type of *non-defective* normativity he can defend is purely instrumental. Thus, for Hobbes, moral laws are only *truly binding* prudentially – and prudential/instrumental normativity is the only form of normativity for which Hobbes has made a good case.

2. Why Hobbes cannot Limit the Leviathan

With this in mind, let us examine the normative limits Hobbes (and May) wish to impose upon sovereignty. May argues, first (on pp. 39-40), that for Hobbes, citizens contract with one another to be governed by the sovereign for the sake not only of safety, but “in order of happiness...to live delightfully.”⁷ Next, May argues that, for Hobbes, peace and delightful living are possible only insofar as the sovereign treats citizens *equitably* – so, the sovereign is normatively bound to treat citizens equitably (p. 40) Finally, May argues, peace and delightful living requires the sovereign to obey international law, rules of war, and to seek international peace – so the sovereign is normatively bound to do these things as well. (chs. 8-10) Thus, May argues, for Hobbes, the sovereign has compelling normative grounds for restricting their behavior and lawmaking according to principles of equity, rules of war, peace, and international law.

However, can this line of argument – or anything like it – be sustained? Let us begin with its first premise: that citizens contract with one another to live *peacefully and delightfully*. I submit that this premise lacks adequate support in Hobbes’ framework, and is arguably false.

⁶ LEV, ch. 15.

⁷ Thomas Hobbes, “De Cive”, in Sir William Molesworth (ed.), *The English Works of Thomas Hobbes, Vol II.*, London: John Bohn, 1839: p. 166, ch. XIII, para. 2. (Henceforth “DC”)

There are clear and compelling reasons – both from history and ordinary life – to doubt that citizens always, or even usually rationally contract with one another “to live delightfully.” For, we need to remember that, for Hobbes, the social contract is a *prudential* contract, to be defined *relative* to people’s appetites in whatever situation in which they find themselves. (p. 44) But now, in the real world, what it is prudentially rational for citizens to contract to *will depend a great deal on what their sovereign government is willing to give them*. Consider, for instance, citizens living under the kinds of dictatorial regimes that have been so common throughout history – cases where the sovereign punishes citizens swiftly and severely for violating the law (e.g. North Korea today). In these cases, *unless they have the power to overthrow the sovereign*, it seems perfectly instrumentally prudent for citizens to accept – and contract with one another – for *mere peace*, not commodious or happy living. The reason why this is prudential is simple: *attempting* to contract to more than peace, in oppressive conditions, will risk the wrath of the sovereign (imprisonment, torture, or even death). Thus, Hobbes’ (and May’s) first premise – that citizens always (or even generally) prudentially contract with one another for *delightful* living (rather than mere peace) – seems doubtful.

Now turn to the rest of the argument: the premise that *the sovereign* has compelling normative grounds for limiting their behavior according to principles of equity, peace, international law, and rules of war. As I argued earlier, Hobbes’ only workable theory of normativity appears to be his *instrumental* account – so, in order to evaluate Hobbes’ (and May’s) arguments for “limiting the Leviathan”, we must ask whether sovereigns always, or usually, have sufficient *prudential* grounds for limiting their behavior in the aforementioned ways. Here again, there are plenty of reasons to think that this is false. Many sovereigns have ruled repressively over their own citizens, treating them inequitably; violated international law; sought war over peace; and violated the rules of war, *all to their (the sovereign’s) own advantage* – and indeed,

many regimes continue to do these things to their own advantage today. North Korea's leaders have ruled repressively to their own advantage for generations; China's ruling class has ruled repressively, and inequitably, to their own advantage for generations; and even Western, democratic governments such as the United States have consistently engaged in war, surveillance, torture, and other repressive measures to their own advantage. And they all do so for the simple reason that, oftentimes, *these things are prudentially advantageous for the sovereign.*

May could, of course, attempt to defend Hobbes here by arguing that, *in the long run*, it is prudentially in the sovereign's interest to treat their own citizens equitably – as citizens will eventually revolt if they are not treated that way; and similarly, *in the long run*, that it is in the sovereign's interest to seek peace, set up and obey international criminal law and the rules of war, etc. However, I think there are four problems here.

First, neither Hobbes nor May has *shown* that these things are necessarily (or even usually) in a sovereign's long-term interest. Whether ruling equitably, following international law and rules of war, etc., are prudentially wise for sovereigns to pursue are complex empirical questions not answered in *Limiting Leviathan*.

Second, there are arguably many reasons to doubt whether, *as a rule*, the kinds of normative limits Hobbes and May wish to impose on the sovereign are in fact in the sovereign's long-term interests. The world is an incredibly varied places, with many different types of sovereigns in vastly different types of situations. Consider a situation – such as Iraq today, after the 2003 US Invasion and occupation – where there are many different factions that refuse to cooperate equitably. Attempting to treat citizens equitably *who are not willing to treat one another equitably* seems like a recipe for disaster – and has been so far in Iraq.

Third, depending on their own personal-political situation, it may be a clear prudential *mistake* for a sovereign to attempt to focus on their long-term interests. Dictators often treat citizens brutally *to make an important message* to their opponents. Any form of weakness in the sovereign is perceived by the sovereign's opponents as an opportunity to seize power or incite a revolution – both of which can lead to the sovereign's losing power, or worse still for the sovereign, death. Hobbes simply never comes to terms with the fact that social-political conditions are quite different in different places. In the United States – where people are accustomed to equity – failure to treat citizens equitably could foreseeably result in revolt. However, in closed, hierarchical, dictatorial regimes treating citizens equitably can foreseeably lead to a *loss* of power (and even the life) of the sovereign. Neither Hobbes nor May address these sorts of complexities or concerns.

Finally, Hobbes' arguments for the sovereign constraining themselves according to equity, international law, and rules of war seem to conflict deeply with his own moral psychology. Hobbes, of course, argues that a state of nature would be a state of war of all against all because, in essence, without being kept in fear of punishment, *human beings are not to be trusted*. Hobbes explicitly "accuses" human beings of being inherently untrustworthy when he notes that, even in society, we lock our doors at night, travel armed and with companions, and so on.⁸ If human beings are so untrustworthy – if they are motivated, as he argues, by competition, diffidence, and glory, as well as (often enough) overestimation of their own abilities in comparison to others⁹ – how *can* it be in the sovereign's interest to treat them equitably? If Hobbes' picture of human nature is correct, the sovereign *can* expect the very kinds of secret machinations to depose leaders from power that we in fact see in dictatorial regimes. Not only

⁸ LEV, ch. 13.

⁹ *Ibid.*

that, we can expect the kinds of surveillance, violations of rules of war, and violations of international law, that we see the United States guilty of today (since its leaders too – just like all human beings – are likely to be, if Hobbes is right, motivated by the same appetites for competition, diffidence, and glory as the parties in his state of nature). Indeed, far from *justifying* equity, rules of war, and international law, I would suggest that Hobbes' dim picture of human nature anticipates the *contrary* things we see today and throughout history: dictators using everything in their might to remain in power, and democracies such as the US giving *lip-service* to equal treatment while in reality democratic representatives work primarily in their own interest, violating equity, international law, and rules of war whenever they can.

Conclusion

May prefaces *Limiting Leviathan* with the following quote from Hobbes: "Most men grant, that a government ought not to be divided; but they would have it moderated and bounded by some limits. Truly it is very reasonable it should be so...for my part, I wish not only kings, but all other persons, endued with supreme authority, would so temper themselves...within the limits of natural and divine law."¹⁰ I think most, if not all, of us *wish* that these things were true, and consider them reasonable. Yet wishing something, and considering something reasonable, are both quite different than providing a sound philosophical argument for it – and, after reading *Limiting Leviathan*, I remain unconvinced that Hobbes or May have a sound argument.

¹⁰ DC, p. 96, note.