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The Leviathan Becoming a Cephalophore: Primogeniture and the Transition from Sovereignty to Governmentality

Abstract

For Foucault, Hobbes is important for the transition from sovereignty to governmentality, but he does not always go into great detail how. In *"Society Must Be Defended"*, Hobbes's reactions against the political historicism of his time lead him to an ahistorical foundation to the state. In *Security, Territory, Population*, his contract is emblematic of the art of government still caught in the logic of sovereignty. Management techniques, one of which being inheritance laws like primogeniture, inducing changes in a population's milieu so that its interest is properly directed allow the art of government to escape this logic. Hobbes supports primogeniture, but its historical position in the common law makes this support unexpected. This article examines the historical context of primogeniture and the reasoning for Hobbes's support of it in light of Foucault's claims about him in order to give more precision to those claims. The result is that primogeniture as a law of nature produces the family as an interested unit of the population. Yet this interest is itself historicized, so Hobbes's attempt to de-historicize politics did not fully succeed.

Keywords: Hobbes, Foucault, Sovereignty, Governmentality, Primogeniture, Natural Law.

Leviathan Bir Cephalophore Dönüşürken: İlk Çocuk ve Egemenlikten Yönetimselliğe Geçiş

Öz

Foucault, egemenlikten yönetimselliğe geçiş konusunda Hobbes'u önemli bulsa da Hobbes'un önemi konusunda detaylı bir açıklamayı çoğunlukla sunmamaktadır. Hobbes'un kendi dönemindeki tarihçilik karşıtı tepkileri Toplum Savunulmalıdır (Society Must Be Defended) eserinde Foucault'yu devletin ahistorik temellerine yöneltmiştir. Güvenlik, Bölge, Nüfus (Security, Territory, Population) eserinde sözleşme kavramı yönetim sanatının sembollerinden olup hala egemenlik mantığı çerçevesinde konumlanmaktadır. İlk çocuğa (primogeniture) dair miras hukukunu da kapsayan idare yöntemleri milieunun çıkarını doğru bir şekilde yönlendirecek şekilde nüfusun milieusunda değişimlere neden olmakta ve böylece yönetim sanatının bu mantıktan kurtulmasını mümkün kılmaktadır. Hobbes ilk çocuk fikrini desteklemektedir fakat fikrin kamu hukukundaki tarihsel konumu bağlamında bu beklenmedik bir destektir. Bu makale ilk çocuğun tarihsel bağlamını ve Hobbes'un verdiği desteğin dayandığı akıl yürütmeyi Foucault'nun iddiaları ışığında irdelemekte ve bu iddiaları daha belirgin bir şekilde sunmayı amaçlamaktadır. Sonuç olarak, bir doğa yasası olarak ilk çocuğun aileyi nüfusun hissedar bir birimi olarak üretmesidir. Fakat bu hissedarlığın kendisi de tarihselleşmiştir, dolayısıyla Hobbes'un siyaseti tarihsellikten çıkarma girişimi tam olarak gerçekleşmemiştir.

Anahtar Kelimeler: Hobbes, Foucault, Egemenlik, Yönetimsellik, İlk Çocuk (Primogeniture), Doğal Yasa.

The cephalophore is a theme in Christian art and literature of a saint carrying his own head.[1] Its origins are Saint John Chrysostom's fourth-century homily on Saints Juventinus and Maximinus and the legends surrounding the life of Saint Denis of Paris (Walter 2003: 143). The former were Christian soldiers in Julian the Apostate's army who lamented the emperor's persecutions at a military drinking party. Put in jail and their property confiscated, their prison became a gathering place for Christians, so Julian sent people to tempt them with pardon and promotion. They refused, indeed resigned their ranks, and Julian had them beheaded. They, says Chrysostom, presented their heads at the gates of heaven as a sign of their martyrdom (Chrysostom 2006: 91-99). The latter, often erroneously conflated with Dionysius the Areopagite, was one of seven bishops sent to Gaul by Pope Fabian in the third century to counter Emperor Decius' persecutions (Tours 1974: I.30). For his effectiveness in converting a nobleman, Denis, along with Saints Rusticus and Eleutherius, was scourged, enchained, and imprisoned. The next day, having already been cooked on an iron grill and placed before unfed animals, he was roasted in an oven, but none of these things killed or even harmed him. Again imprisoned after being nailed to a cross, he served communion to his fellow inmates. Finally, Denis, Rusticus, and Eleutherius were beheaded. Denis then stood, picked up his head, and walked to the top of Montmartre, where he is buried (Voraigne 2012: 626). His beheading is depicted on the north portal of the Basilica of Saint-Denis, the burial place for French kings for eight hundred years.

In a 1977 interview, to the suggestion that the great political theories have always presented an enormous gap between those who have and do not have power, Michael Foucault replies that political theory remains obsessed with the question of sovereignty. Despite the experiences of Charles, I and Louis XVI, despite the spread of non-monarchical systems of government and the theories espousing them, for Foucault the king's head remains on his shoulders (Foucault 1980: 121).

Nevertheless, and precisely because of Foucault's historical analyses of power, perhaps we ought not be so quick to see a king or sovereign before us. Perhaps a more appropriate image is the cephalophore, the remarkable image of a man carrying his

head, an act whereby he gains or is rewarded for his saintly power. To make this case, I turn to one of those great theories of sovereignty, that of Thomas Hobbes.

Foucault clearly sees Hobbes as important to the history of Western political philosophy but rarely goes into detail. As Hanssen (2000: 114-115) and Spieker (2011: 190-191) point out, Hobbes is Foucault's unnamed adversary in *Discipline and Punish* insofar as the former thinks of power as a possession or commodity and the latter examines its deployment (Foucault 1995: 26-27).[2] Yet the only mention of Hobbes in *The History of Sexuality I* is as a transitional figure who placed a condition on sovereignty's subtractive power over life and death: Sovereignty can claim my natural rights only to protect its artificial life, which in turn protects my natural and artificial life (Foucault 1990: 135-136). Meanwhile, in *"Society Must Be Defended"*, Foucault is interested more in how modern politics incorporated war into the domestic sphere and less in Hobbes as such (Foucault 2003: 89-99). For this reason, it seems, much of the literature on Foucault's understanding of Hobbes focuses on war (Hanssen 2000: 124-130; Kelly 2009: 51-54; Polat 2010; Spieker 2011; Crano 2011). *Security, Territory, Population*, however, cites Hobbes as an example of the early stage of the art of government that still thought of the law as its primary instrument rather than as a tactic (Foucault 2007: 103).

The understandable focus on war might lose sight of how exactly Hobbes figures in this early stage of the art of government, of the transition from sovereignty to governmentality. In sovereignty, i.e., the right to take life, power asserts both law and the punishment for disobeying it. Governmentality is a particular if now dominant form of biopower, a manner of power taking up the biological features of the human qua species through a set of mechanisms. These mechanisms are apparatuses of security and involve, among other things, understanding individuals' desires as unchangeable. Within a political system as a whole and according to subgroups within the system, however, one can gain knowledge of the population. The population does not desire, but its general interest is discerned through knowledge of the different subgroups' interests and individuals' desires. Policies can then induce changes in the population's actions

not through law and punishment, as in sovereignty, but through campaigns and other techniques that access both individuals' desires and the population's general interest. Law becomes one of these techniques. The population's surface, upon which these techniques act, is the public. Of Foucault's three definitions of governmentality, the most important here is the first, insofar as it highlights the centrality of the economy (Foucault 1990: 136, 137; 2007: 5, 44, 1, 23, 70-75, 62-63, 105-106, 99, 108).[3] Governmentality, then, as a type of biopower, is a particular way to apply security apparatuses in order to induce changes in the population, applying them to the economy.

Tracing out how Hobbes is transitional between sovereignty and governmentality could bolster Foucault's claims despite critiques that he ignores Hobbes scholarship (Hanssen 2000: 125). Foucault's understanding of power as deployed rather than as a commodity means it operates through technologies of violence in sovereignty and of population-level surveillance and biological controls in governmentality, all developing in tandem with knowledge (Foucault 2003: 240, 245-246; Kelly 2009: 43-44). Here I ask what knowledge allows Hobbes to become 'Hobbes', an author with the function of effecting the transition from sovereignty to governmentality (Foucault 1977: 130-131; Crano 2011: 159, 166-167). Hanssen (2000: 124) identifies the three fictions that, for Foucault, allow Hobbes to generate these effects: subjects' subjection, power's unification, and natural law's originariness. Examining Hobbes's defense of primogeniture, where the eldest child inherits the whole of an estate, will show how these fictions operate within his system as a technique that opens onto governmentality. First, though, I lay out more explicitly what Foucault says about Hobbes in *"Society…"* and *Security*. Then I contextualize primogeniture in English history before discussing Hobbes's position on it. Because Foucault is mostly thinking of *Leviathan* in his comments, that is my focus here.[4]

What Is Hobbes to Foucault?

In *"Society…"*, Hobbes emerges as both reactionary and revolutionary by resisting alike the political historicism of the royalists, parliamentarians, and the Levellers and Diggers.[5] For Foucault, Hobbes seeks to end the conflict between Normans and Saxons at work since 1066, to give England an ahistorical foundation. Royalists claimed that James I's divine right to rule was secured through the Norman Conquest, meaning England was a possession of the crown and Saxons had no proprietary right beyond royal grant. Colonization further legitimated this claim to right by conquest. On the parliamentarian side, William was the legitimate successor to Edward the Confessor, so his sovereignty was Saxon-approved and subject to those laws, customs, and right. The laws and proprietary claims later instituted by the Normans to secure their sovereignty were the illegitimate conquest. For the Levellers and Diggers, 1066 was indeed a conquest and therefore illegitimate, as are all law, property, and rule since they exploit the people in a conspiracy to extend and make permanent conquest. Saxon rule was as guilty of this as Norman (Foucault 2003: 102-109).

On Foucault's reading, Hobbes wants to end this political deployment of historical interpretation. Our natural equality in strength and intelligence means we must display what strength we have and a willingness to engage in war, so the state of nature's war of all against all is as much theater as battle. Sovereignty is established by the calculation to institute it, the violence that acquires it, or the natural power of mother over child (i.e., original or natural dominion). It does not matter which (Foucault 2003: 110-111, 91-97). Hobbes is, then, reactionary in arguing against the infiltration of history into the discussion of right but revolutionary in repositioning the right to rule away from inheritance, tradition, or divine justification.[6]

Foucault does not say much in *"Society…"* as to how Hobbes effects this transition beyond noting that war and nature are de-historicized. In *Security*, though, Hobbes is the exemplary contributor to modern contract theory understood as part of the

literature on the art of government, the seventeenth century's nascent governmentality that remained caught within the logic of sovereignty. Historically, the Thirty Years War, uprisings, and financial crises prevented the spread of governmentality and its economic administration over life. Let us add the English Civil Wars to this list. Structurally, the art of government was tied to sovereignty in two ways important. First, it focused its thinking on upward and downward analogies of management of state, household, and self such that the head of the household served as a model for the other managers. Second, these early attempts at the art of government, mercantilism being the clearest example, took the law as their main instrument, leading to a plethora of self-defeating regulations. As result, contract theory developed within the framework of law until governmentality could emerge from out of the art of government (Foucault 2007: 101-103, 93-95, 33).

Physiocracy, being more circumspect than mercantilism about imposing laws and regulations since it understands the population as a set of procedures to be managed according to their natures, allows for this metamorphosis.[7] Of the three ways Foucault mentions to manage a population, I focus mainly on the first: understanding the variables that induce differences in population (climate; the degree of commerce; tax, marriage, and inheritance laws; religion and local mores; and the level of subsistence). Almost none of these are in sovereignty's control. At the end, I look to the second way: knowing that individuals' desires cannot be changed or suppressed by force, but can be given a milieu within which to move so as to produce a general interest. Specifically, I examine one set of the laws that can induce differences in population, those concerning inheritance. As laws, they can be controlled by sovereignty. They are thus techniques in the transition to governmentality. Foucault cites primogeniture as one of these laws (Foucault 2007: 60-74, 20-21). Hobbes supports primogeniture in a way that can shed light on how he contributes to the transition. However, his support is not a given because of primogeniture's position in post-Conquest English history, the political deployment of which Foucault argues Hobbes is desperate to end. Thus, a brief look at its historical position is needed.

What Is Primogeniture?

Primogeniture is at least as old as ancient Mesopotamia. In Europe, it was common among feudal nobles. By the sixteenth century, it was especially common in England and Scandinavia (Bertocchi 2017). Once feudal duties no longer involved military obligations in seventeenth-century England, noble wealth became more aligned with income from land, giving rise to the gentry (Hill 1982: 41, 12-13).

This practice was mostly, though not completely, introduced into England by the Normans. While they also brought their practices to Italy and Syria, these were most systematically applied in England. Following their introduction, fiefdoms—land held on the fee of military service to the king—became hereditary estates. From the twelfth century, a new fief could be transmitted to anyone except the father of the original grantee, but not after the first generation. For a time after 1066, the moral though not legal or juridical obligation of a fief's heir to make provision for his siblings resulted in the system called parage, where the eldest son alone bore responsibility for services and honors to the lord while his younger brothers held portions of the original estate through him, sometimes paying him homage. However, by the twelfth century the fief was no longer primarily a source of services for the lord, but of revenue. The division and partition of honors, duties, and tax revenue was recognized as detrimental to the original lord's rule and wealth, so primogeniture was enforced (Bloch 1978: 200-207).

Before 1540, if an estate holder died without living relatives, the land would pass to the crown according to the common law doctrine of escheat. Otherwise, primogeniture was in force. That year, Parliament passed the Statute of Wills, allowing a testator to allocate the inheritance in his will (Rathby 1963: 744-746). In the early seventeenth century, a landowner dying with a minor heir meant, if the family did not or could not buy from the king a wardship for the heir, the crown would choose a courtier, whose loyalty would only rarely be with the family. The failed Great Contract of 1610 proposed to end this practice (Hill 1982: 41-42). By the middle of the seventeenth century, strict settlement, where the eldest son became tenant to the land upon marriage,

was the most common practice in wills and recognized by the common law (Bonfield 1983: 9, 53-54). Though in practice identical to primogeniture, strict settlement is a volitional act, while primogeniture had become the default custom for intestate lands (Bonfield 2018: 482).

For my purposes, two aspects to this history are most worth considering. First, the introduction of primogeniture is part of the introduction of Norman domination over England's Saxon population. Whether that domination is understood as beginning in 1066 or as a later betrayal of William's legitimate succession to the throne—i.e., whether seen through a royalist or parliamentarist lens—its existence is part of the legacy of sovereignty. Second, it seems never to have been a law, strictly speaking, but to have gained force as a custom through the common law system. The common law existed explicitly for property-holding freemen and was often in opposition to the crown's statutory system (Hill 1982: 22, 37-40, 55-56, 87-88). Given Hobbes's consistent disdain for custom gaining the force of law of its own accord (Hobbes 1983: 14.15; 1996: 184-185; 1997a: 96; 2008: 17.11), his support for primogeniture appears odd. However, what leads him to this support gives us a more specific understanding of how he is transitional between sovereignty and governmentality.

What Is Primogeniture to Hobbes?

In *Leviathan*, primogeniture is, with first seizure, part of the fourteenth law of nature, itself part of a group, with the twelfth and thirteenth, of natural laws on the use and distribution of things. The eleventh law, on equity, and the sixteenth through eighteenth laws, on arbitration and partiality, are also important here. Primogeniture and first seizure are the two kinds of the natural form of lot, distinct from the arbitrary form, where competitors for a thing agree on its possession. The twelfth law says that what cannot be divided should, if possible, be enjoyed in proportion according to right or in common. Since some things cannot be commonly enjoyed even in proportion, the thirteenth law declares that lot should determine their possession. These laws flow from the eleventh, that someone entrusted with arbitrating a controversy should deal equally

with the competitors. The sixteenth law demands that competitors submit their rights to this arbitrator. Meanwhile, the seventeenth law prohibits someone from arbitrating their own case and the eighteenth forbids anyone arbitrating a case wherein they have an interest (Hobbes 1996: 108-109). Thus, nature is the arbiter of controversy over indivisible things that cannot be proportionately or commonly shared and whose competitors cannot agree to a judge. It is the distributor of equity.

What, though, is a law of nature? A law binds us to an action, impeding our motion, while a right is a liberty, the absence of impediment. Nature is God's art as the creation and governance of the world. A law of nature, then, is an impediment governing natural motion forbidding self-destruction. We discover these laws by reason and reasoning is the calculation of consequences that build on each other (Hobbes 1996: 91, 9, 31, 33). Thus, the laws of nature are the discovery of calculating the consequences to our actions in a world governed by the divine art.

However, Hobbes also calls these laws theorems since they are not commands from one with that right via acquisition, institution, or natural dominion.[8] If we take them as divine commands, though, we can understand them as laws. To command is to express one's will that another do something for one's own benefit and solely because it is one's will, while to counsel is to suggest an action to another on at least the pretense of being for that other's benefit and to give reasons for the action. We cannot covenant with God save through supernatural revelation or lieutenants, and so cannot transfer our natural rights thereto since we cannot know if our promises are accepted. Thus, we cannot be commanded by God as we can by a sovereign. Still, children also cannot be covenanted with except through personation, yet a mother has dominion over a child in nature by its consent to being nourished and by a dependence on her will so extreme that this will is its own (Hobbes 1996: 111, 176-177, 97, 113, 139-140). The laws of nature, as theorems derived by a calculation of the consequences of our actions in the world governed by God, can then be understood as divine commands that we not harm ourselves. Our will to live is also God's, our consent to life the sign that we will it, too.

The punishment for disobedience is the destruction or making miserable of our lives, so these laws are divine commands as much as rational counsels.[9]

Still, why convert primogeniture from a custom into a law of nature? For Hobbes, civil law is the commonwealth's rules commanded by the sovereign. Custom, if not contrary to the law of nature, gains the force of law not through time but from the sovereign's judgment according to the eleventh law of nature, on equity. It does not gain the force of law via time because knowledge of it is only historical knowledge of fact, not the conditional knowledge of consequences required for science or philosophy. It is, at most, a compound experience connected to remembrance, one form of regulated trains of thought whereby we seek effects. Judgments about it would be an understanding or a prudence that animals also have and so would not involve reason's calculation of consequences. Common law judges, then, are not judges proper, but counsellors who must give reasons to sovereignty why a custom ought to be judged a law. Judges, including judges of natural laws, are authorized by sovereignty to interpret, which all laws require (Hobbes 1996: 183-184, 60, 16, 20-22, 19, 186-197, 190-192). To convert primogeniture into a law of nature, then, is to shift it away from the accumulation of historical fact and into the rational knowledge of consequences, to subject it to the interpretation of an authorized judge as the expression of a divine will that equals our own.

Its historical origin in the Norman Conquest is irrelevant, even if we claim that a commonwealth by acquisition is illegitimate, because the divine art of the world's equitable governance legitimates primogeniture. Reason can know this legitimacy because primogeniture is a natural form in a natural law. It is a natural form because age and time, the foundations of memory and experience, are also the foundations of the prudential trains of thought that allow us to seek future effects. Prudence is most assured with the most experience because more experience means having accumulated more signs, i.e., more knowledge and memory of one event following another, allowing the one with the most experience to guess the future the best. Experience is distributed equally to all by time if they put in equal effort (Hobbes 1996: 22-23, 87). The eldest

child, being eldest, will have accumulated the most signs, so reason dictates that, absent a will stating otherwise or evidence of unequal effort, this is the child to be preferred for prudence's sake. Doubly natural and doubly equitable, primogeniture is no mere custom, even if custom and common law happened upon it and counsel its adoption to sovereignty. Nature dictates it and reason discerns it from our natural equality and will to equal distribution. Nature, governed by God, is the authorized arbitrator here, a fair and impartial distributor interpreting a will to equity that is also our own.

Primogeniture, Governmentality, and Family History

In converting primogeniture from a custom into a law of nature, Hobbes did not just eradicate historically grounded arguments over property and inheritance rights. He also shifted the justification for primogeniture's enforcement away from sovereignty and toward nature and reason. Both our own will to equity and our rational calculation of the consequences of allowing intestate property to be distributed according to something other than age, experience, and prudence tell us that primogeniture is the only natural and peaceful form of its distribution. In other words, converting this custom into a natural law gives sovereignty a technique for producing a general interest, uses governmentality's first way to manage a population such that it becomes the second. Landholders, if they are rational, should now generally understand that it is in their interest, their will to natural equity, to follow primogeniture.

Yet if Foucault is not wrong that Hobbes sought to de-historicize politics, the latter failed to do so completely. The upward and downward movements of management are broken in that primogeniture as a natural law is not justified on the model of the family, which is parallel to the corporation in structure and dependence on the sovereign (Hobbes 1996: 162-163). However, the family becomes a public upon which state management takes hold of the population for the state's economic stability (Foucault 2007: 104-105). As such a surface, the family's rational interest, qua familial, includes parents' and ancestors' desires. These historical and historicized desires

become the grounds for the human forms of understanding expressed in language through strict settlement or other forms of entail.

As governmentality evolves from the art of government, this interest is recognized in John Locke's naturalization of property and the legitimate power parents can hold over adult children via inheritance through to the American neoliberal economist Gary Becker's argument that parents who desire their children care for them in old age produce guilt in those children and that social welfare systems for the elderly break up families. Over the course of this evolution, different strands of governmentality develop. Again, governmentality, as the application to the economy of security apparatuses that induce changes in a population, is a specific type of biopower, or power's way of taking up the biological features of the human species, distinct from the individual humans who compose it. From the eighteenth century on, governmentality emerges as the main form of political organization, taking on more specific expressions in liberalism, classical economics, Marxism, Keynesianism, and neoliberalism. This last strand is further divided between its German and American styles, with the American distinguished by the concept of human capital: individual economic and non-economic behavior understood as investments to be returned to that individual, whether as a monetary wage or in some other form (Foucault 2007: 109, 48, 76-77; 2008: 101-184, 215-289).

For Locke, children are obligated by nature to honor their parents, but not beyond minority. However, ownership beyond one's own use is justified since both property is founded on bodily labor, which adds value to what would be wasted without it, and money constituted by useless but durable materials. Having so grounded the right to estates and the right to bestow them as they see fit and/or within custom, fathers can exert power and control over sons into adulthood, as their fathers exerted over them, to which the sons voluntarily submit (Locke 1690: §§72, 27, 46, 50, 73).

Three hundred years into governmentality's development, the hold of ancestral interests having slackened, Becker emphasizes the need for economic theory to take account of guilt in parent-child relationships. Making their children feel obligated to

care for them in old age through guilt is, he claims, a technique for parents to secure themselves against risks like failing health and unemployment. Doing so allows them to consume more in their own old age than they lose in the reduction of their children's consumption. The guilt instilled in these children does more to explain their later behavior toward their parents than either altruism or self-interest. Anticipation of this care expected thanks to guilt means parents may be more loving toward their children than they might otherwise be, although instilling guilt also means the parents do not invest as much in their children's human capital as they perhaps could. Thus, social programs that help the elderly weaken families' emotional ties (Becker 1992: 50-51).

Between Locke and Becker, then, we see an increasing entwinement of familial and governmental interest. Locke's naturalization of property may separate the sovereign's power over property and the right to bestow estates as fathers see fit, but the power to preserve the power to bestow estates falls to the government, which oversees political unity (Locke 1690: §87). Becker may merely analyze the effects of social and legal old-age programs on generational family ties, but the large-scale consequences of these effects are in policymakers' interests in terms of what changes in those ties can be induced (Becker 1992: 52).

Arguments against primogeniture and entails hinge on the relationship between family and political interest. Adam Smith's arguments center on its inefficiency. He considers the equal distribution of an estate to be a natural law and argues that primogeniture developed as a temporary security for monarchical holdings. By the eighteenth century, however, property rights are well secured, so large estates, especially those with unproductive land, are unnecessary. Entails for Smith developed as a way to secure familial lineage and the stability of small political holdings, but are grounded on the claim that future generations are tied to their pasts. Social and political interest, however, is in the improvement of production, and those with large estates rarely improve their lands in this way. Thus, small estates are preferred to large for the wealth of a nation (Smith 1976: I.407-411, I.1). Historical and historicized family interest is here in conflict with political and Smith recommends changes in law such

that the milieu for landholders allows them to voluntarily make changes in line with political interest.

Primogeniture is also recognized as a technique or tactic of domination by noble and gentry over commoner (Hill 1982: 38), eldest siblings over younger (Jamoussi 2011: 32-41), and husbands and their families over wives (Mill 2002: 155-157). No longer, as in sovereignty, is political power invoked to justify the maintenance of an estate. Instead, in the name of historically grounded familial stability expressed in the estate, political and economic power is exerted against those with fewer rights thanks to that same political and economic power.

By transferring it away from custom, the Hobbesian de-historicization of primogeniture historicizes the family, which is no longer precisely blood, no longer a consanguineous structure in a relationship to the sovereign enforced by techniques of violence (Foucault 1990: 147). Family history as the historicization of economic interest becomes entwined with the sovereign's obligation to guarantee *meum* and *tuum*. Neither locus of military or financial obligation nor model for self- and state management, through primogeniture-become-natural-law the family is produced and reproduced as the historicized public unit of self-interested wealth maintenance. The landholder's particular desires are modified into family interest, which is debated as with or against the state's desire for the population's general interest. Hobbes's de-historicization of primogeniture by converting it into a natural law discerned by reason is one way he becomes 'Hobbes', a figure who circumscribes, determines, and articulates a realm of discourse (Foucault 1977: 130).

Through the de-historicizing naturalization of primogeniture, the king, beheading himself, becomes a cephalophore. As Foucault points out, sovereignty never disappeared but in the very developments leading to governmentality and its more specific strands became all the more important (Foucault 2007: 106-107). Shifting primogeniture away from custom appears to lessen royal power insofar as the obligation to maintain an estate as a whole is no longer grounded in protection and violence. Yet this same shift that makes ancestral and generational family property interests both

more the focus of governance and more tied to government. The very appearance of sovereignty's disappearance is how it keeps its power, here by tying itself to questions of generational family estate maintenance. Locke, Smith, and others thus did not, contra Hobbes, domesticate the political (Paris 2004: 50). Rather, following Hobbes, they historicized, politically, the *domus*.

NOTES

1. I wish to thank the anonymous reviewers for their helpful suggestions on an earlier draft.

2. When not discussing established political forms, either civil or ecclesiastical, Hobbes consistently translates 'power' from or into Latin as *potentia*. In *De Corpore*, it is the result of accidents, his name for what belongs to neither a thing as such nor its parts but without which it is destroyed, by which a thing causes acts or effects (Hobbes 1839, 1997b: 3.3, 9.4, 10.1). *Leviathan* defines power, divided into natural or instrumental, as the medium through which we obtain what seems good (Hobbes 1841: 68-69; 1996: 62-63). In addition, in *The Elements of Law* power is either the bodily and mental faculties summarized by defining humans as rational animals or the use of the mental power of conception to further one's faculties (Hobbes 2008: 1.4-8, 8.3-4). I do not have the space to develop this argument in full, though it would be worthwhile in light of Foucault's later discussion of the milieu (Foucault 2007: 20-23), but if power/*potentia* in Hobbes is that through which one acts, it may not be a commodity if that means something held or not. Fully developing this argument would build on the insight that *potentia* indicates power as constitutive of or as a process through which something enacts itself (Polat 2010: 333-334).

3. The second definition focuses on the pre-eminence of government over other forms of power and the third on the governmentalization of the state as a result of the processes in question (Foucault 2007: 108-109).

4. A comparison with what Hobbes says about primogeniture in Hobbes (1983) and Hobbes (2008) (see also Hobbes (2017)) would be worthwhile, but I will follow Foucault and stay with *Leviathan*. In addition, the aspect of primogeniture that most concerns me is not royal succession, but estate inheritance more broadly. Thus, I also do not refer to works like Hobbes (2005).

5. For royalist historicism, see James I (1918); for parliamentarist, Coke (2003); and for that of the Levellers and Diggers, Hart (2015) and Winstanley (2011), respectively.

6. Many of Foucault's claims are backed up by Hill (1982: 51-57). One difference, though, is in the analysis of the motivations for the era's turn to history. In Foucault, it sometimes seems like a deliberate act to think through the contestations over sovereignty and law. Hill argues that the turn to history occurred because the participants did not have the conceptual apparatuses to engage the problems they were facing.

7. Without entering into the debate over what kind of economic thinker Hobbes is, he can be considered a mercantilist in Foucault's terms. Corporations in *Leviathan* are lawful, private, regular systems dependent on laws that emanate from the absolute regular system of sovereignty and whose gain is distinct from national wealth (Hobbes 1996: 155, 160-162). Gain in this sense means he is neither a physiocrat on Foucault's

understanding (Foucault 2007: 33-34) nor a political economist or capitalist (Smith 1976: I.1-2). For a review of the debate, see Taylor (2010). Also see Colella (1982).

8. There is a debate in Hobbes scholarship whether natural laws are laws proper. Gauthier (2001: 263-264, 280, 282-283) understands them as primarily theorems, and so not laws, for two main reasons: first, reason's discerning them does not give them the status of commands, and second, if natural laws are obligatory only under civil law, subjects are left in a circle of obligation between natural laws obeyed because civil, civil laws obeyed because from the sovereign, and sovereign obeyed because authorized by subjects from out of the natural laws themselves. Undersud (2014: 704, 708, 715) argues that natural laws have no force without connection to civil law, and thus are not of truly laws, but the grounds for civil law and its force. Cooper (2018: 144, 168, 179), however, claims their legal status because even civil law is grounded on God's power, making it a crime not to pursue the human good of peace.

9. The infant's consent to original dominion never seems to come up in debates over the status of natural laws, but it would argue against Gauthier and Undersud in that discerning them only articulates them what is already in force and against Gauthier in that obligation has already been signified before becoming subjects. However, I see nothing in this consent to life that, à la Cooper (2018: 7, 70, 80-81, 88-92), argues against severing God as their wilful commander.

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