

# Is Political Obligation Necessary for Obedience? Hobbes on Hostility, War and Obligation \*

Thomas M. Hughes \*\*

## Abstract

*Contemporary debates on obedience and consent, such as those between Thomas Senor and A. John Simmons, suggest that either political obligation must exist as a concept or there must be natural duty of justice accessible to us through reason. Without one or the other, de facto political institutions would lack the requisite moral framework to engage in legitimate coercion. This essay suggests that both are unnecessary in order to provide a conceptual framework in which obedience to coercive political institutions can be understood. By providing a novel reading of Hobbes's Leviathan, this article argues that both political obligation and a natural duty to justice are unnecessary to ground the ability of political institutions to engage in legitimate coercion. This essay takes issue with common readings of Hobbes which assume consent is necessary to generate obedience on the part of citizens, and furthermore that political obligation is critical for the success of political institutions. While the failure of the traditional Hobbesian narrative of a consenting individual would seem to suggest the Leviathan is indefensible as a project, this paper argues that the right of war in the state of nature was more central for Hobbes's understanding of political institutions than obligation. Furthermore, Hobbes provides an adequate defense of political institutions even if his arguments about consent, obligation and punishment are only rhetorical. In this way Hobbesian law is best understood as a set of practical requirements to avoid war, and not as moral requirements that individuals are bound to comply with. Thus Hobbesian political institutions are not vulnerable to contemporary philosophical anarchist criticisms about political obligation and political institutions as such. To develop this reading, I focus primarily on the Leviathan, including interpretations by Skinner, Kateb, Flathman, and Oakeshott. Ultimately, this argument provides insight into contemporary political institutions of the state, citizenship, criminality, and the law in a world where political obligation has not been adequately justified.*

**Keywords:** Hobbes. Obligation. War. Obedience. Punishment.

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\* The article has gone through several revisions, the first of which was presented at the UC Santa Barbara Political Theory Workshop, and subsequent drafts at the 2009 Western Political Science Association's meeting in Vancouver for the session «Reading Hobbes», and the 2009 Southwest Political Science Association's panel on «Just War Theory». My thanks go to Alison Scheirman, Yuchun Kuo, Stuart Gray, Brian Lovato, Jason Pfeifle, Jovian Radheshwar, David Reed, Evan Oxman, Lisa Burke, John Fortuna, Ed Barvosa, Andrew Norris and above all, Paige Digeser. Any remaining errors or omissions are my own.

\*\* University of California Santa Barbara, [hughes@polsci.ucsb.edu](mailto:hughes@polsci.ucsb.edu).

## 1. Introduction

Recent work on the concept of political obligation suggests that political obligations may not exist for citizens<sup>1</sup>, suggesting that it is permissible for individuals to «misbehave», rather than to remain obedient. It may even be argued that the lack of such a moral justification for compliance for those who would prefer not to comply would make well organized political institutions effectively impossible even for individuals who would otherwise prefer to comply with them. I argue this is not necessarily the case. By revisiting the most influential work of Thomas Hobbes, the *Leviathan*, this article produces an understanding of political institutions that has access to the necessary tools of coercion when dealing with disobedient individuals in order to obtain obedience, while at the same time not resorting to a language of political obligation when discussing those disobedient individuals. This is possible due to Hobbes's status as a thinker fundamentally concerned with compliance with political institutions, despite never using the term «political obligation».

I begin with a discussion of existing literature on the importance of coercion as a necessary tool of political institutions by revisiting a contemporary debate between Thomas Senor and A. John Simmons on the issue of political obligation. From this starting point, I examine the legitimate use of violence in the *Leviathan* by considering the areas of the text that are concerned with punishment<sup>2</sup>. The essay then works back through Hobbes's argument to the understanding of reason, specifically as it relates to how an individual ought to become obligated. Ultimately, this will lead to a reconsideration of Hobbes's understanding of reason, particularly in the context of the passionate fear of death. Through this exegesis, I argue that Hobbes's own definition of reason must be broader than often anticipated, that his understanding of obligation is thinner than often assumed, and, despite these limitations, he envisions a sovereign can still engage in legitimate coercive actions even without a moral right to punish<sup>3</sup>. As such, I will utilize Hobbes to show an understanding of political institutions that can effec-

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<sup>1</sup> A. J. Simmons, *Moral Principles and Political Obligations*, Princeton, Princeton University Press, 1979; Id., *The Anarchist Position: A Reply to Klosko and Senor*, «Philosophy and Public Affairs», 16, 3, 1987, pp. 269-279; Id., *The Lockean Theory of Rights*, Princeton, Princeton University Press, 1992; Id., *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*, Princeton, Princeton University Press, 1993; R. P. Wolff, *In Defense of Anarchism*, New York, Harper, 1970.

<sup>2</sup> I am working primarily from the *Leviathan* because I take it to be Hobbes's mature political work. I recognize this may not fully encapsulate all of Hobbes's thought, as the *Elements of Law* and *De Cive* illuminate parts of Hobbes's thought better than the *Leviathan* alone. Despite this caveat, the sections of *Leviathan* that are of interest here appear to be plausible on their own. For more on the difficulties of reading Hobbes, see D. Baumgold, *The Difficulties of Hobbes Interpretation*, «Political Theory», 36, 2008, pp. 827-855.

<sup>3</sup> I read certain parts of the *Leviathan* as rhetorical in nature, rather than metaphysical. This will put me in contrast with some recent readings which operate with the assumption that Hobbes is working from a completely metaphysical understanding of materialism. See N. Dungey, *Thomas Hobbes's Materialism, Language, and the Possibility of Politics*, «The Review of Politics», 70, 2008, pp. 190-220. I am claiming that certain parts of Hobbes's argument were crafted in such a way as to be more compelling to his particular audience and that we cannot simply take everything he says as what he accepts to be metaphysically true.

tively coerce to obtain obedience without needing a proper conceptual defense of political obligation. I will conclude the essay with some considerations of the dangerous consequences of a politics based on the potential for violence, rather than a politics based on political obligations.

## 2. Obligation and the Problem of Coercion

A significant problem for political obligation, as a concept, is the problem of coercion. A concept like political obligation is only necessary when individuals will not do what the institutions want (or perhaps need) them to do. As Joseph Raz argues, if citizens were always inclined to support and comply with the political institutions that apply to them, there would be no need to argue that there is an additional moral requirement<sup>4</sup>. This kind of obedience works for that can be understood as just or laws that are of moral indifference, such as what side of the street we ought to drive on, but is a bit problematic for other kinds of laws. For laws that are not really matters of justice or laws that we are indifferent to, obligation may be doing some work, in that it allows political institutions to coerce individuals who have not committed a natural injustice. However, it remains unclear why we should be comfortable with coercive laws that cannot be understood as just on issues that we care strongly about. If a principle can be found that provides a moral requirement to comply with institutions, there is a moral right to *force* compliance amongst those who disobey, and ultimately coercive force would be morally legitimate, as opposed to simple political expedience<sup>5</sup>.

Questions about political obligation are primarily interesting when they are applied to individuals who would prefer to *not* comply with the political institutions<sup>6</sup>. When our view is focused on those who are complying with the laws, it will not be a surprise to see that they are receiving benefits from the institutions, or that the policies that are governing the institutions are largely in line with that individual's own preferences, or even that they recognize the justness of those institutions. They may also be simply indifferent. Explaining to individuals who are already following the law, *why* they ought to follow the law is not particularly interesting. They are already complying with that law, and it is unlikely that additional arguments about political obligations would change the situation. Discussions about political obligation would simply be an academic curiosity.

<sup>4</sup> J. Raz, *The Authority of Law: Essays on Law and Morality*, Oxford, Clarendon Press, 1979.

<sup>5</sup> I recognize that the history of political thought is not always concerned with a moral justification. For thinkers like Machiavelli, political order is justification enough, even in the absence of any moral justification. However, the appearance or reality of moral legitimacy can further enhance the pursuit of political order.

<sup>6</sup> When I say «prefer to not comply», I am not really referring to individuals who prefer to receive the benefits of the institutions without paying for the costs (such as free riders). Relatively compliant individuals are fairly easy to deal with; you simply deny them the benefits when they refuse to participate. Even systems that claim to be founded upon a concept like political obligation utilize an enforcement method to deal with free riders. Instead, I am referring to the individuals who would not accept the benefits if given the choice, or perhaps even more significant, when they do not see the benefits as benefits at all.

However, there are, as a matter of fact, people who do not comply with the law or support the political institutions. Furthermore, we usually assume that lawless individuals are dangerous individuals. No doubt, this association with lawlessness and dangerousness can be found most clearly in Hobbes. Who can forget his claim that the state of nature (where there is no law) is a situation that is «nasty, brutish and short»<sup>7</sup>? Thus the possibility of individuals existing outside of the reach or control of the law is something that is unacceptable to those who find security in the law. This alone would seem to be sufficient to force individuals to comply with the law through the use of coercion. Yet, there remains one lingering problem: modern liberal theories of politics assume that man is born free. Because of the natural freedom of man, naked force alone is either unacceptable or (as is in the case of Hobbes) unlikely to be successful. Thus, it is assumed that there must be a moral concept that links the individual (even the would be lawless individual) to the political institutions that seek to govern. This concept has been called «political obligation».

If an individual is morally obligated to do something, a failure to discharge that obligation has resulted in a moral «wrong». Because the individual has now done something morally wrong, the one who was owed the obligation now has a moral «right» of coercion against the individual who has done wrong. However, the wrong of failing to support and comply with political institutions is not a natural moral wrong. If men are born naturally free, they have the choice to refuse to comply. Were a completely free individual to refuse to comply with the law, he would have done no wrong<sup>8</sup>. Defenders of political obligation claim it is only if there is some additional voluntary action which generated an obligation that it is possible to suggest that it is «right» to coerce a free individual to do something that they would not otherwise do on their own.

For this reason, it is no surprise that there is strong resistance to the philosophical anarchist claim that political obligation has not (and potentially cannot) be justified. Despite the numerous forms of philosophical anarchist arguments against political obligation, the most common retort is simply that philosophical anarchism is impractical. That is to say, it is not possible for a society to be run without political obligations. The concept *must* be there, or else political organization as we know it will cease to exist. If individuals are not obligated to comply with the law, then when an individual fails to comply with the law, the political institutions would have no special right of coercion against the individual who failed to comply. If the political institutions cannot coerce (or one might say punish), then the institutions must be completely inef-

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<sup>7</sup> T. Hobbes, *Leviathan with Selected Variants from the Latin Edition of 1668*, Indianapolis, Hackett, 1994, p. 76.

<sup>8</sup> This is not always the case. Were the individual to act unjustly, there would be good reason to claim that the individual has done wrong. If there is an independent standard of justice available to us, then it is possible to judge a violation of the law as morally wrong, even if no political obligation was present. The capacity to judge the wrong here would not originate from any particular special obligation, but rather from the independent standard of justice. The fact that the law prohibited this behavior as well is irrelevant; the simple fact that it was unjust is sufficient to label the action as a moral «wrong». However this does nothing to generate political obligations. See Ch. 6 of *Moral Principles and Political Obligations* and *The Authority of Law*.

fectual, and are not relevant<sup>9</sup>. Insofar as we desire political institutions, critics of philosophical anarchism demand that some defense of political obligation is necessary.

The most explicit formulation of this debate is seen between Thomas Senor and the self-styled philosophical anarchism of A. John Simmons<sup>10</sup>. If Simmons is correct and most citizens in most situations do not have political obligations, then Senor argues virtually all of the political institutions on this planet would lack the moral right to punish. Furthermore, if the political institutions cannot punish, then they cannot serve the purpose they were intended to serve – whether it be to provide peace and security or serve a broader set of social goals<sup>11</sup>. For this reason, and this reason alone, Senor dismisses philosophical anarchism as a mistaken and misguided position. With no political obligation, there would be no legitimate basis for coercion, and with no coercion, political institutions would fail their primary mandate. For Senor, this is an absurd outcome, as it would render all political institutions illegitimate. Following this logic, if a theoretical position produces an outcome that is plainly absurd, then there *must* be a mistake in Simmons's argument.

Recognizing this common argument against his position, Simmons responded to Senor in «The Anarchist Position»<sup>12</sup>. Simmons argues that political institutions can still maintain the right of punishment, even if individuals possess no special moral obligations to those institutions. He argues that there are certain natural laws that govern over us, independent of any conventional political institutions, and that were an individual to violate those natural laws, a third party would do no wrong if he were to punish the violator for his infraction. Thus, insofar as the laws and rules of political institutions are just rules, the institutions would be well within their rights to engage in acts of punishment against those who transgress the rules. However, this only works if the conventional laws map on to the natural laws that Simmons believes govern over all of us. Simmons's position should sound reasonably familiar; it is effectively a variation of Locke's *Second Treatise*<sup>13</sup>, in which individuals in the state of nature have the right to punish each other for violations of the natural laws. Like Locke, Simmons will argue for a minimal set of political institutions whose purpose is to enforce the laws and rights associated with natural man. In both *The Lockean Theory of*

<sup>9</sup> This does not necessarily mean that there is no reason to obey such ineffectual institutions. As part of his interpretation of Hobbes, Tuck suggests even if others do not comply, I have nothing to lose in compliance. He writes, «I will effectively remain in the same state as I was before, surrounded by men with disparate judgements about when to exercise the right of self-preservation» (R. Tuck, *Hobbes*, Oxford, Oxford University Press, 1989, 69). Though giving reasons for obedience still does not establish a right to coerce.

<sup>10</sup> T. D. Senor, *What If There Are No Political Obligations? A Reply to A. J. Simmons*, «Philosophy and Public Affairs», 16, 3, 1987, pp. 260-268.

<sup>11</sup> Schmitt's reading of Hobbes echoes this when he remarks, «A state is not a state unless it can put an end to that kind of war,» referring to civil war (C. Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, Westport, Greenwood Press, 1996, p. 47). Unlike Schmitt, and I argue Hobbes, Senor believes the state's existence requires a moral justification, and not simply a pragmatic or political justification.

<sup>12</sup> Simmons, *The Anarchist Position*, cit.

<sup>13</sup> J. Locke, *Two Treatises of Government*, Cambridge, Cambridge University Press, 1999.

*Rights*<sup>14</sup> and *On the Edge of Anarchy*<sup>15</sup>, Simmons develops a position that looks much like the position of the *Second Treatise*. However, unlike Locke, Simmons never sees the need to utilize political obligation as a concept to get us out of the state of nature, as the Laws of Nature are sufficient for establishing a moral right to punish, allowing for the generation of political order<sup>16</sup>.

Simmons's response to Senor is inadequate, primarily due to a lack of firm grounding for his conception of natural law. Simmons is largely unconcerned with the metaphysical origin of the natural law. In *The Lockean Theory of Rights*, he explicitly acknowledges that, for Locke, natural law derives directly from God. He writes: «The rights defended by Locke in the *Second Treatise* are grounded in a familiar and largely traditional natural law theory. The law of nature (and the duties and rights it defines) is God's law for man, a law for beings with reason and free will, binding them to perform (often contrary to their inclinations) as God wills and as their rational status demands»<sup>17</sup>. Of course, grounding natural law directly in a theological position creates all sorts of problems, but Simmons largely ignores this issue. Simmons remarks that the position of God in Locke's philosophy is «of course, highly controversial (at the very least)», but only notes in passing «that a secular foundation for Locke's moral theory (if possible) would have the advantage of avoiding these thorny steps»<sup>18</sup>. Ultimately, Simmons believes that it is possible to detach Locke's theory of rights from his theology, noting «the logical detachability of much of Locke's theory from his theology allows it to function as a consistent development of secular moral theory»<sup>19</sup>. As such, Simmons is saying that the considered Lockean position can be derived from a variety of sources (Christian, Kantian, or rule-consequentialist), and he does not particularly care which is used to get there. There is, however, little doubt that Simmons wishes for us to adopt what he considers to be the Lockean theory of rights. When referring to our contemporary political philosophy, he ultimately suggests that «[t]he Lockean theory of rights may serve as a viable foundation for [our political philosophy]»<sup>20</sup>. Thus, Simmons's final position amounts to a system of Lockean natural laws without a single clear origin, but several potential origins, which can get us peace without the need for civil law backed up by a moral principle.

While a nice set of natural laws that are easy to discover in nature would certainly be convenient, it seems that there remains large disagreement over what those natural laws are and whether they exist at all. If there were a clear set of rules and regulations available to all men and discoverable through reason, it

<sup>14</sup> Simmons, *The Lockean Theory of Rights*, cit.

<sup>15</sup> Simmons, *On the Edge of Anarchy*, cit.

<sup>16</sup> This is in stark contrast to Hobbes. With respect to Hobbes, Bobbio remarks, «Reason alone is not enough to make human beings live in peace. If it were enough, there would be no need for the state, that is for civil laws. (The laws of nature would suffice). It is necessary that human beings agree to institute a state that will create the conditions for living a life according to reason. This agreement is an act of will» (N. Bobbio, *Thomas Hobbes and the Natural Law Tradition*, Chicago, University of Chicago Press, 1993).

<sup>17</sup> Simmons, *The Lockean Theory of Rights*, cit., pp. 15-16.

<sup>18</sup> *Ivi*, pp. 23-24.

<sup>19</sup> *Ivi*, p. 354.

<sup>20</sup> *Ibidem*.

seems that there would not be as much dispute over the existence and substance of those laws over such a long period of time. Even Locke recognized that there would be disputes over the particular substance of the laws of nature, and for that reason saw need to develop a relationship to civil law that stood independent to the relationship to natural law. Thus, it seems to me that Simmons's solution to the lack of political obligations is, at best, inadequate, and ultimately not much more convincing than attempting to rely upon political obligation.

It is at this point that I suggest we turn to the work of Thomas Hobbes. Hobbes is extremely skeptical of a set of thick substantive laws of nature such as those laid out by thinkers like Locke or Simmons. Instead, Hobbes suggests that the laws of nature are called «a precept or general rule, found out by reason»<sup>21</sup>, where reason is understood in instrumental terms, with the explicit purpose of avoiding death. For example Taylor suggests Hobbes's «meaning is simply that since every man desires to live, reflection shows us that it would be irrational to endanger our lives or to fail to protect them»<sup>22</sup>. Oakeshott echoes this when he remarks «On no plausible reading of Hobbes is the Law of Nature to be considered obligatory because it represents natural conduct»<sup>23</sup>. On this reading of the laws of nature, it is suggested that Hobbes was intentionally using conventional language of natural law in order to discuss a radically new concept. On this reading, the use of the words «law of nature» is done for rhetorical (or perhaps polemical or esoteric) reasons<sup>24</sup>.

When I say Hobbes is pursuing a rhetorical strategy, I am suggesting he is willing to use whatever means necessary to persuade his audience of his point and not simply following his own premises to their logical conclusion. Like Schmitt, I acknowledge «[I]ike all the great thinkers of his times, Hobbes had a taste for esoteric coverups»<sup>25</sup>. Furthermore, I would like to concur with readings that take note of Hobbes's own hyperbole. As Bobbio notes, Hobbes uses hyperbole to help human beings «understand [...] what is most precious to them: their lives»<sup>26</sup>. This reading suggests that there are seeming inconsistencies in Hobbes's text which appear to be internally incoherent, confused, or inadequately devel-

<sup>21</sup> Hobbes, *Leviathan*, cit., p. 79.

<sup>22</sup> A. E. Taylor, *Thomas Hobbes*, London, Archibald Constable, 1908.

<sup>23</sup> M. Oakeshott, *Introduction to Leviathan*, in *Hobbes on Civil Association*, Los Angeles, University of California Press, 1975, p. 94.

<sup>24</sup> Many of the recent readings of Hobbes's *Leviathan* have been considered rhetorical readings of the *Leviathan*. On Warrender's account, the rhetorical reading takes the *Leviathan* «as a subterfuge or a piece of refined propaganda on Hobbes's part, used in order to induce men to obey the civil law without giving real reasons why they should» (H. Warrender, *The Political Philosophy Hobbes: His Theory of Obligation*, London, Oxford University Press, 1957, p. 5). The phrase has since been expended to incorporate virtually any reading of Hobbes where it is assumed that Hobbes said things that he did not really mean in order to achieve some other end. Examples of this include L. Stephen, *Hobbes*, London, Macmillan, 1904; D. Johnston, *The Rhetoric of Leviathan: Thomas Hobbes and the Politics of Cultural Transformation*, Princeton, Princeton University Press, 1989; R. Prokhovnik, *Rhetoric and Philosophy in Hobbes' «Leviathan»*, New York, Garland Publishing, 1991; Q. Skinner, *Reason and Rhetoric in the Philosophy of Hobbes*, New York, Cambridge University Press, 1996; Skinner, *Hobbes and Republican Liberty*, New York, Cambridge University Press, 2008; J. R. Martel, *Subverting the Leviathan: Reading Thomas Hobbes as a Radical Democrat*, New York, Columbia University Press, 2007.

<sup>25</sup> Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, cit., p. 26.

<sup>26</sup> Bobbio, *Thomas Hobbes and the Natural Law Traditioni*, cit., p. 44.

oped, unless he is misunderstood or he is intentionally deceptive<sup>27</sup>. Instead, As part of this rhetorical strategy, I claim Hobbes is willing to be intentionally deceptive at these moments.

For my part, I would like to suggest that Hobbes remark «there is no such *Finis ultimus* (utmost aim) nor *Summum Bonum* (greatest good) as is spoken of in the books of the old moral philosophers» speaks directly to this<sup>28</sup>. I take this quote to be powerfully suggesting that there is no natural order or organizing God available to us in this world. Furthermore, because Hobbes never puts forth any substantive argument for a natural law based upon claims of the good or justice, he may be the better thinker to develop a philosophical anarchist set of political institutions that do not rest upon assumptions of political obligation. Utilizing Locke to explain how and why political institutions can punish is inadequate because it relies upon a contentious understanding of natural law. However, Hobbes's understanding of natural law *may* be more accessible to a society with a significant degree of moral pluralism, due to the fact that it asks us to accept a much more minimal understanding of natural law<sup>29</sup>.

### 3. Criminality and Punishment in the *Leviathan*

At this point I have considered the argument that political obligation is necessary because it makes acts of punishment possible<sup>30</sup>. The claim is that without the ability to punish<sup>31</sup>, political institutions cannot function. Furthermore, I have argued that attempting to resolve the situation by relying on restrictions placed by natural law alone will be inadequate. My goal now is to argue that it is possible for political institutions to engage in acts that appear as punishment and utilize coercion without having to rely upon any voluntarily generated political obliga-

<sup>27</sup> Lloyd suggests that this indicates an acceptance of a deeper moral position, rather than deception. S. A. Lloyd, *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature*, New York, Cambridge University Press, 2009, p. *xiv*. I argue that rhetorical deception is more likely than a interpretation that is so hard to comprehend that no one has figured it out until recently.

<sup>28</sup> Hobbes, *Leviathan*, cit., p. 57.

<sup>29</sup> Readers of Hobbes like Warrender may argue that Hobbes (like Locke) relies upon an understanding of natural law that is binding upon us, and as such, I am making the same mistake that Simons did by relying upon a contentious understanding of nature. Later on in this paper, I will argue that Hobbes does *not* believe his understanding of natural law to be one that we are bound to by a duty, unlike Locke. Because the natural law presented by Hobbes is a dictate of reason *that we need not accept*, individuals remain free to act against what Hobbes's considers to be the laws of nature. Furthermore, an individual *does no wrong* when they reject Hobbes's laws of nature, unlike the laws of nature laid out by Locke. Ultimately, this will come down to Hobbes's understanding of «reason», which I shall discuss later in the paper.

<sup>30</sup> I use the word «possible» here instead of «legitimate» intentionally. For Senor punishment has an inherently moral connotation, and punishment ceases to be punishment when it loses that moral character. For example, if a parent were to discipline their child illegitimately, we would not call that punishment. Depending on the severity of the discipline, it would likely be called abuse. However, if the discipline is legitimate, then it becomes known as punishment. As such, the very idea of illegitimate punishment seems to be an impossibility. When punishment is illegitimate, it is not punishment at all, but instead coercion. Thus, the need to make punishment legitimate should be understood as the need to make punishment possible at all.

<sup>31</sup> Once again, I use the word «ability» rather than «right» deliberately. Following footnote 30, without the right to punish, there is no ability to punish. Coercion is the only thing possible.

tions or a substantive notion of natural law. I do this with a close examination of punishment and criminality in Hobbes's *Leviathan*. Within Hobbes's thought, we will find political institutions which are within their rights to coerce criminals for violation of the law, even though no moral obligation to obey the law exists at the time of punishment.

Criminality is extraordinarily specific for Hobbes. One can only commit a crime through the violation of *civil* law, not through any other moral infraction (including violations of natural law)<sup>32</sup>. He argues «the civil law ceasing, crimes cease»<sup>33</sup>, which is not to say that once the law stops being effective that individuals will become predisposed to being well-behaved, as certain more optimistic anarchists may argue, but rather that the institution of law generates the possibility of engaging in a crime. Without the presence of the law to define the conventional right and wrong, Hobbes will claim that there is no standard of right or wrong that can effectively apply to us<sup>34</sup>. As such, any unpleasant behavior on the part of an individual in a circumstance with no civil law consequently cannot be understood as crime.

Usually the *Leviathan* is read as a series of consensual acts made by individuals, where they come to generate a new set of political institutions (ultimately including the law). The claim is that, because of the act of consenting to the covenant that generates government, these individuals are now morally obligated to support and comply with those new institutions that they have created<sup>35</sup>. I wish to dispute this version of the story. I argue that Hobbes never truly argued that those individuals were politically obligated to those institutions, but rather that, given his understanding of reason, most people will have a general inclination to support those institutions. Furthermore, through the use of calculated coercive force by the sovereign, it becomes possible to further reinforce behaviors of obedience even in the absence of a moral obligation to comply with the institutions<sup>36</sup>.

There is a definite tension with respect to a right of punishment in the *Leviathan*, which Hobbes recognizes when he remarks:

Before I infer anything from this definition [of punishment], there is a question to be answered of much importance, which is: by what door the right or authority of punishing in any case came in? For by that which has been said before, no man is supposed bound by covenant not to resist violence; and consequently, it cannot be intended that he gave any right to another to lay violent hands upon

<sup>32</sup> Hobbes, *Leviathan*, cit., p. 191.

<sup>33</sup> *Ibidem*.

<sup>34</sup> *Ibidem*.

<sup>35</sup> This has been described as the standard reading by Warrender (Warrender, *The Political Philosophy of Hobbes*, cit.) and Baumgold (D. Baumgold, *Hobbes's Political Theory*, New York, Cambridge University Press, 1988). Bobbio describes this process as follows: «The passage from the state of nature to the civil society does not occur by necessity, because of the nature of things; it rather takes place through one or more conventions. These are voluntary and deliberate acts, performed by individuals who are interested in leaving the state of nature» (Bobbio, *Thomas Hobbes and the Natural Law Tradition*, cit., p. 2).

<sup>36</sup> Schmitt refers to this as «a means of compulsorily influencing the psychological motivation of men» (Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, cit., p. 72).

his person. In the making of commonwealth, every man giveth away the right of defending another, but not of defending himself. Also, he obligeth himself to assist him that hath the sovereignty in the punishing of another, but of himself not. But to covenant to assist the sovereign in doing hurt to another, unless he that so covenanteth have a right to do it himself, is *not to give him a right to punish*. It is manifest therefore that the right which the commonwealth (that is, he or they that represent it) hath to punish is not grounded on any concession or gifts of the subjects<sup>37</sup>.

Thomas Schrock takes this tension to be irreconcilable. Insofar as the individual retains the right to resist the lawful and lawfully punishing sovereign, there is no door by which the right of punishing can enter the picture<sup>38</sup>. However, Schrock's argument rests upon a distinction between the right of war and the right of punishment that I am not sure can be maintained in Hobbes's original text. That is to say, Schrock reads the right of nature (as the right of war) potentially as the «*foundation of the right to punish, but not the right itself*»<sup>39</sup>. In saying this, Schrock, like Senor, is assuming that the right of nature is not sufficient for the development of Hobbesian sovereignty. On Schrock's account, if the sovereign lacks the right of punishment, he «shows up for work without the requisite piece of equipment»<sup>40</sup>. In contrast, I argue that the right of nature is sufficient to grant the sovereign the ability to punish, and that seeking a special right to punish may be ultimately misguided.

From the earlier quote by Hobbes, we can see quite clearly that the simple act of consenting to abide by the laws does not generate an obligation to abide by punishments associated with those laws. Furthermore, we can see here that our consenting to generate the institution of the sovereign does not generate the sovereign's *right* to punish those who refuse to comply. The best that we see here is the sovereign's natural right to engage in hostility (or acts of war) against non-compliant individuals<sup>41</sup>. This is a right that all individuals were said to possess in the state of nature, only now it has been magnified in effectiveness due to the agreement of others to aid in his acts of violence against those who are targeted by the sovereign for acts of punishment. But this picture of punishment does not appear as a moral relationship involving obligated targets of punishment; instead it simply looks like a violent war between an artificially stronger sovereign versus the weaker transgressor of the law<sup>42</sup>. This does not appear to establish a right of punishment that the theorists of political obligation were hoping to find.

<sup>37</sup> Hobbes, *Leviathan*, cit., p. 203-204.

<sup>38</sup> T. S. Schrock, *The Rights to Punish and Resist Punishment in Hobbes's Leviathan*, in «The Western Political Quarterly», 44, 4, 1991, pp. 853, 866-867.

<sup>39</sup> *Ivi*, p. 871.

<sup>40</sup> *Ivi*, p. 887.

<sup>41</sup> Hobbes writes, «But I have also showed formerly that before the institution of commonwealth, every man had a right to everything, and to do whatsoever he thought necessary to his own preservation, subduing, hurting or killing any man in order thereunto» (Hobbes, *Leviathan*, cit., p. 204).

<sup>42</sup> Bobbio describes this as a situation where «[b]oth are back in the state of nature, that is, in that condition in which everyone has as much right as he has power. The subject who has been condemned to death has the right to use force to avoid the execution of the sentence. The sovereign has the right to use force in order to see his order carried out. As in the state of nature, the stronger of the two wins» (Bobbio, *Thomas Hobbes and the Natural Law Tradition*, cit., p. 141).

Hobbes defines punishment as such: «an evil inflicted by public authority on him that hath done or omitted that which is judged by the same authority to be a transgression of the law, to the end that the will of men may thereby be better disposed to obedience»<sup>43</sup>. It is extremely important to note, at no point does Hobbes involve anything like the language of political obligation here. All that is required for the sovereign to punish is for the sovereign authority to judge an individual to have violated a law. It does *not* suggest that the violator must have consented or become obligated to that set of laws. Because of this, punishment *can* simply be an act of hostility by the sovereign against any individual for having violated rules that have been consented to by some mass of men, and this mass of men need not include the individual who has transgressed the law. An obligation to the law is not the source of a right to punish.

However, it is not *all* acts of hostility that the sovereign engages in that can be classified as punishment. It is only acts of hostility that serve the specific purpose of making men «better disposed to obedience» to the laws. Thus, the target of the punishment is *not* necessarily the target of the hostility. On this definition, the sovereign inflicts an evil upon a particular individual with the expectation that this event will catch the eye of as many as possible and provide a clear negative incentive to discourage individuals from engaging in the activity that the law prohibited. Such a benefit can be produced regardless of whether the target of the hostility accepts this act as punishment or not, nor does it depend on the presence of political obligations. There merely needs to be some body of citizens who could understand the evil being performed as a punishment rather than a simple act of war.

Because this definition of punishment becomes a matter of perspective, it is important that the intended viewers are capable of seeing the act as one of punishment and not simply as an act of hostility or war. Hobbes seems to recognize this quite clearly. Immediately after his definition of punishment, he enumerates eleven distinct conditions for acts of hostility to be understood as punishment. These include the claim that the evil inflicted must include «precedent public condemnation», and must possess the «intention or possibility of disposing the delinquent (or by his example, other men) to obey the laws»<sup>44</sup>. Furthermore, «harm inflicted upon one that is a declared enemy falls not under the name of punishment»<sup>45</sup>. It is not that the sovereign is prohibited from engaging in other hostilities; the sovereign will not properly be able to call them punishment. The sovereign has the right to engage in whatever violence he desires, but if he is going to engage in punishment, its goal must be to encourage men to obedience to the law. Punishment then, for Hobbes, is not a matter of moral *right*, but an attempt to convince and encourage individuals to comply with the law through the use of violence.

We can see this even more clearly when Hobbes discusses the possibility of inflicting evil against those who are innocent. He writes:

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<sup>43</sup> Hobbes, *Leviathan*, cit., p. 203.

<sup>44</sup> *Ivi*, p. 204.

<sup>45</sup> *Ivi*, p. 205.

But the infliction of what evil soever on an innocent man that is not a subject, if it be for the benefit of the commonwealth, and without violation of any former covenant<sup>46</sup>, is no breach of the law of nature. For all men that are not subjects are either enemies or else they have ceased from being so by some precedent covenants. But against enemies, whom the commonwealth judgeth capable to do them hurt, it is lawful by the original right of nature to make war, wherein the sword judgeth not, nor doth the victor make distinction of nocent and innocent as to the time past, nor has other respect of mercy than as it conduceth to the good of his own people<sup>47</sup>.

The right of violence, war and hostility remains ever present with the sovereign; he does no wrong when he utilizes coercion against *any* target of his choosing. Thus, no *right* of punishment is necessary at all. However, by utilizing punishment as a form of justification to individuals, he can potentially make them more inclined to support and comply with the institutions that he embodies. It is not that the sovereign is *right* to punish, but rather by tending to limit his coercive actions to ones that fit within Hobbes's definition of punishment, the sovereign will be more likely to produce a situation in which individuals tend to be obedient to the laws, and as such, tend to be inclined to peace rather than war<sup>48</sup>. However, if one is looking to ground the right of coercion utilized during punishment, one is forced to look to the right of war that was originally found in the state of nature.

#### 4. Reason and the Fear Death

The lack of clarity on issues of punishment are intentional for Hobbes. As one who writes on the law, he believes himself to be in a unusual position that places a greater burden of legal support upon his shoulders. He explicitly remarks, «a professor of the law, to maintain any point or do any act that tendeth to the weakening of the sovereign power is a greater crime than in another man»<sup>49</sup>. Clearly, Hobbes believes if he, himself, were to do something to weaken sovereign power, it would be a crime even greater than those committed by violent criminals. If Hobbes were to argue openly and forcefully that ordinary individuals do not have any political obligations, that the sovereign has no right of punishment, and that we truly are in a constant state of war, he would be doing much to encourage individuals to engage in greater acts of lawlessness that he is so afraid of. Ultimately, Hobbes falsely hints to a moral capacity of the sovereign in an attempt to provide the sovereign institutions a greater degree of legitimacy. The false hint comes in the utilization of moral language where no moral concept is actually

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<sup>46</sup> Keep in mind that the sovereign, by Hobbes own design, is not part of any covenant. Thus, the sovereign has the right to inflict whatever evil he sees fit on any man (innocent or not).

<sup>47</sup> Hobbes, *Leviathan*, cit., p. 208.

<sup>48</sup> The ability to inspire terror is central to this. As Schmitt remarks, «only to the fact that the possessor of sovereign power wields the highest temporal power indivisibly, and through the “terror of such power and force” (as it is called in Chapter 17), everyone, especially the great ones, the “children of arrogance”, is subject to him» (Schmitt, *Leviathan in the State Theory of Thomas Hobbes*, cit., p. 20).

<sup>49</sup> Hobbes, *Leviathan*, cit., p. 201.

present<sup>50</sup>. He does not do this because he is attempting to cover up weaknesses in his argument, but rather Hobbes is afraid of what happens when individuals do not believe institutions to be legitimate.

Thus, the so-called sovereign «right» of punishment is not a moral right, but an act available to the sovereign to adjust levels of fear in the population, specifically fear of sudden and violent death. He punishes not to give individuals what they are due, or what justice demands, but rather to manipulate their individual fear in such a way as to make them more likely to be compliant with the law. Hobbes remarks, «[o]f all the passions that which inclineth men least to break the law is fear. Nay (excepting some generous natures) it is the only thing (when there is appearance of profit or pleasure by breaking the laws) that makes men keep them»<sup>51</sup>. For Hobbes, the primary reason why individuals ought to comply with the law appears not to be out of a moral claim based upon an obligation derived from consent, but almost exclusively from the fact that human beings have a predictable passion that makes them afraid of death<sup>52</sup>. If you increase fear of death at the hands of the sovereign for disobedience, or decrease fear of death at the hands of disobedience, individuals are generally more likely to be obedient.

It is incredibly important to note that this passionate fear of death is not an irrational fear for Hobbes. Fear of death derives from his well known claim that human beings desire felicity, «a continual progress of the desire, from one object to another, the attaining of the former being still but the way to the latter»<sup>53</sup>. On Hobbes's account of reason, all men in this world will seek to pursue their desires, fulfilling them when they can and then moving on to the next desire<sup>54</sup>. The potential for the future fulfillment of desires is perhaps even more important than the actual fulfillment of those desires. It is here we can see why Hobbes considers death to be terrifying for all individuals. If one were literally to perish, there is no possibility of ever having a future desire fulfilled. Because all men will seek, pursue and fulfill their desires (whatever the particular content of those desires may be), Hobbes claims that *all* individuals should rationally fear death.

Reason here serves a very specific purpose for Hobbes. The goal of reason is not to pursue the metaphysical truth, utmost aims or the greatest good, as those things cannot be found by reason. Instead, reason is «to the desires as scouts and spies, to range abroad and find the way to the things desired»<sup>55</sup>. On Hobbes's

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<sup>50</sup> Here, I am relatively close to Oakeshott when he «recognizes Hobbes to have two doctrines, one for the initiated (those whose heads were strong enough to withstand the giddiness provoked by his scepticism) and the other for the ordinary man who must be spoken to in an idiom and a vocabulary he is accustomed to, and to whom novelties (both in respect of duties and in respect of their grounds) must be made to appear commonplaces» (Oakeshott, *Introduction to Leviathan*, cit., p. 118).

<sup>51</sup> Hobbes, *Leviathan*, cit., p. 196.

<sup>52</sup> Tuck suggests that it is not that human beings are naturally violent towards each other, but rather it is this fear that makes human beings potentially violent towards each other. In *Hobbes*, he writes, «There is one thing on which even in a state of nature we can all agree, and that is that other people have a right to defend themselves against attack [...] But we will also have to recognize that in a state of nature, there will be a larger number of cases where everyone must be their own judge of how and when to defend themselves» (Tuck, *Hobbes*, cit., pp. 58-59).

<sup>53</sup> Hobbes, *Leviathan*, cit., p. 57.

<sup>54</sup> *Ibidem*.

<sup>55</sup> *Ivi*, p. 41.

understanding, reason is a mental capacity for human beings to determine how to get the things that they desire. And it is this capacity to figure out how to obtain our desires that will ultimately give us a rational reason why we *should* be afraid of death. While there is no doubt that fear of death is a powerful emotional response, Hobbes will claim that it is also the *correct* response if one wishes to have any desire fulfilled in the future. Thus, our most powerful passion is one that Hobbes believes we can arrive at through the use of our reason.

The rest of Hobbes's argument now fits nicely into place. If all individuals possess reason as a tool to pursue their desires, and that reason will tell them that death is something to avoid, it now becomes possible to arrive at a «law of nature». He writes, «[a] law of nature (*lex naturalis*) is a precept or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life or taketh away the means of preserving the same, and to omit that by which he thinketh it may be best preserved»<sup>56</sup>. This law of nature only makes sense within the context of Hobbes's understanding of reason<sup>57</sup>. Hobbes is not making a moral claim that the preservation of one's self is the most important thing, he is making a purely instrumental claim here. Insofar as Hobbes is right and all human beings primarily seek to have their desires fulfilled above all else, such a tendency will cause all to fear death. As all fear death, all will prohibit themselves from engaging in activities that will likely lead to their own death. From this initial understanding of natural law, he famously states the first natural law to be «that every man ought to endeavour peace, as far as he has hope of obtaining it, and when he cannot obtain it, that he may seek and use all the helps and advantages of war»<sup>58</sup>.

From these initial assumptions, the entire remaining authoritarian artifice of the *Leviathan* is born. Because (almost) all of us can agree that death is bad, Hobbes will assume that we will be willing to sacrifice many of our desires in order to obtain security. At least if we are alive, and not in any particular fear of death, we have some capability of pursuing our desires, no matter how minuscule it is. As such, when the law demands the individual do something that they desire not to perform, his reason ought to tell him to perform anyway *if* he sees that performance as something that helps to protect and preserve the security and sanctity of his own life. This rational fear would appear sufficient to obtain obedience to the law. If the law is the provider of security, and violations of the law threaten that security, than through the use of reason, the individual will have a compelling desire to comply with the law, even to the extent with which it overpowers other desires.

If Hobbes can make it appear that reason (as a scout for the passions and desires) encourages us to consent to comply with a set of political institutions, then he can give the appearance that an individual ought have a moral obligation to rules and regulations even when that individual believes they can escape

<sup>56</sup> *Ivi*, p. 79.

<sup>57</sup> The awareness that Hobbes was not talking about a God given set of natural laws dates at least back to Robert Filmer. R. Filmer, *Patriarcha and Other Writings*, Cambridge, Cambridge University Press, 1991, p. 189.

<sup>58</sup> Hobbes, *Leviathan*, cit., p. 80.

any consequences of that particular violation of the law. This is where Hobbes appears to obtain his second law of nature when he writes «a man be willing, when others are too, as far forth as for peace and defence of himself he shall think it necessary, to lay down his right to all things, and be contented with so much liberty against other men, as he would allow other men against himself»<sup>59</sup>. What ultimately obliges the individual is not an internalized sense of right and wrong, but the knowledge that there will be painful consequences from a failure to comply. If this appearance of obligation is merely the fear of coercion, than any individual who honestly believes that they can escape detection during a transgression very well may transgress the law. However, the use of moral language such as «obligation», may rhetorically help to encourage obedience in certain individuals who may otherwise be inclined to transgress the law. His word choices are intended as rhetorical devices for the particular end of obtaining obedience from individuals<sup>60</sup>.

More should be said about the assumed language of obligation that Hobbes is believed to employ. Insofar as man seeks to have his desires fulfilled, he will fear death. Insofar as he fears death, he will seek peace. As he seeks peace, he will be willing to lay down his right to all things. This is the supposed origin of obligation for Hobbes. «When a man hath in either manner abandoned or granted away his right, then he is said to be OBLIGED or BOUND not to hinder those to whom such a right is granted or abandoned from the benefit of it; and it is said that he *ought*, and it is his DUTY, not to make void that voluntary act of his own, and that such a hindrance is INJUSTICE, and INJURY as being *sine jure* [without right], the right being before renounced or transferred»<sup>61</sup>. Because an individual's reason suggests giving up his right to all things in the pursuit of his desires, Hobbes does explicitly say that man does have a duty. However, this duty does not have the moral connotation that we would expect of it here. Hobbes quickly tempers his language. The specific «injustice and injury» that is produced is what scholars have «called absurdity»<sup>62</sup>. The violation of this obligation is an absurdity because it will «contract what one maintained in the

<sup>59</sup> *Ibidem*.

<sup>60</sup> As Bobbio remarks, «His entire political philosophy has one polemical target: to confute the doctrines, be they traditional or innovative, conservative or revolutionary, inspired by God or by the devil, that prevent the state from attaining unity» (Bobbio, *Thomas Hobbes and the Natural Law Tradition*, cit., p. 75).

<sup>61</sup> Hobbes, *Leviathan*, cit., p. 81. Note, the word here is *obliged*, and not obligation or obligated. Hart provides us with a good example of the difference when he writes «B was obliged to hand over his money may simply mean, as it does in the gunman case, that he believed that some harm or other unpleasant consequences would befall him if he did not hand it over and he handed it over to avoid those consequences» (H. L. A. Hart, *The Concept of Law*, New York, Oxford University Press, 1961, p. 80). Furthermore, «the statement that a person had an obligation, e.g. to tell the truth or to report for military service, remains true even if he believed (reasonably or unreasonably) that he would never be found out and had nothing to fear from disobedience» (*ivi*, p. 81).

<sup>62</sup> Hobbes, *Leviathan*, cit., p. 81. To some extent, I am trivializing inconsistency more than Hobbes himself does. By saying scholars have called this absurdity makes it sound as though this is only a concern of the ivory tower. Hobbes is making a stronger claim than that, and it is more clearly visible in *De Cive* when he writes, «there is an analogy between what in ordinary life is called wrong and what in the schools is usually called *absurdity*» (T. Hobbes, *On the Citizen*, New York, Cambridge University Press, 1998, p. 44). Similar language is found in Baumgold, *Hobbes's Political Theory Elements of Law*, cit., p. 88. However, my point remains. The highest possible wrong that Hobbes considers is absurdity,

beginning»<sup>63</sup>. Thus, the great injustice performed by the failure to discharge one's obligations is simply an inconsistency.

Appearing inconsistent is not an inherently bad thing for Hobbes's thought. After all, in the state of nature, we have the right to all things, which presumably would include the right to be inconsistent in what we say and do<sup>64</sup>. Indeed, when there is no overarching legal structure, there may be many times where reason tells an individual that appearing inconsistent will help to obtain particular desires<sup>65</sup>. The obligation that Hobbes was discussing before can only exist *if* that obligation continues to be supported by a reason that is seeking to fulfill desires. The obligation to continue to lay down one's rights is entirely contingent upon whether that laying down of rights continues to aid in the pursuit of desires – primarily through aiding in the avoidance of sudden and violent death. There is no inherent reason to avoid inconsistency.

Hobbes recognizes this, as he notes covenants are completely worthless when one is in the state of nature. «If a covenant be made wherein neither of the parties perform presently, but trust one another, in the condition of mere nature (which is a condition of war of every man against every man) upon any reasonable suspicion it is void»<sup>66</sup>. Once again, reason is the key word here. It is only when our reason suggests that this covenant will aid in the pursuit of our current and future desires that we ought to be concerned with what Hobbes has labeled «obliged». The violation of any such an agreement does not produce injustice in the state of nature, merely an appearance of absurdity, and reason may find great utility within such an absurdity when one cannot be made obliged out of fear. The generation of a duty as Hobbes has defined it does not generate any requirement to comply with the duty when one is not obliged out of force. This is not a moral obligation at all.

Hobbes is aware of this problem with his conception of duty as well. Thus he attempts to make it appear stronger than it was before when he remarks, «if there be a common power set over them both [who are engaged in the act of a covenant], with right and force sufficient to compel performance, it is not void»<sup>67</sup>. However, the wording here is extremely important. The duties created are not void at mere reasonable suspicion because the common power can *compel* performance, ultimately making us *obliged*, not obligated. That is to say, one must keep his duties, because a failure to do so will result in coercion being utilized to force compliance anyway. Here again, obligation does not serve as contemporary readers would expect it to. We only comply with what appears as an obligation

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not murder, rape, pillage, or sin. Even if he uses strong language to claim absurdity is wrong, it is still an extremely low bar to set for moral judgment.

<sup>63</sup> Hobbes, *Leviathan*, cit., p. 81.

<sup>64</sup> Here I am in direct contrast to Lloyd where he claims, «the Law of Nature requires us to undertake political obligation, because our insistence that others should do so for the sake of our own safety and agency requires that we submit as well» (Lloyd, *Morality in the Philosophy of Thomas Hobbes*, cit., p. 51). There is no rational reason, on Hobbes's understanding of rational, for an individual to submit to the will of another, *if* they could force another to comply. The only thing stopping this is the general sense of equality that exists in the state of nature.

<sup>65</sup> That is, it may make sense to appear to consent for some personal gain, and then appear to be inconsistent when it comes time to pay for the benefits that have already been received.

<sup>66</sup> Hobbes, *Leviathan*, cit., p. 84.

<sup>67</sup> *Ibidem*.

because failure to do so will result in an absurdity that the sovereign power will forcefully correct. Once again, it is an act of violence against the individual that compels obedience to the requirement, not what contemporary readers consider to be an actual moral obligation.

This is where the earlier discussion of punishment fits in. Here again, we see the sovereign engaged in a hostile act against an individual through the utilization of his right of nature to engage in acts of war. It is significant that Hobbes begs the sovereign to focus his hostile acts in a very specific way. He wants the sovereign to *punish* the individual who has committed an absurdity, not simply engage in a naked act of violence. Thus as part of the violent act, Hobbes wishes for the sovereign to (either directly or indirectly) *explain* why this violence is being done, with the hopes of reducing the possibility of similar transgression occurring in the future. Punishment, in effect, is a symbolic act intended to reconfigure the reasoned utility calculations of individuals, both the one being harmed as well as those who witness the harm. Punishment is not as a result of having committed a moral *wrong*, it is merely a calculated attempt to maintain security so that reasoned individuals will continue to maintain a system that provides security<sup>68</sup>.

The reading of *Leviathan* that I am presenting here is at odds with a dominant trend in Hobbes scholarship, which relies heavily on the claim that Hobbes depends on the concept of political obligation, and include the readings of Hobbes from Taylor<sup>69</sup> and Oakeshott<sup>70</sup>. Oakeshott claims «that his [Hobbes's] project was to display a theory of obligation consistent with the tenants of his general philosophy and with his reading of human nature; and also show his contemporaries where their civil duties lay and why they lay there, in order to combat the confusion and anarchical tendencies of current thought and conduct»<sup>71</sup>. In doing so, Oakeshott is suggesting that real civil obligations are generated, and they are not merely rhetorical devices in order to attain obedience from individuals. This is a «theory of moral obligation at once original and consistent with the other philosophical novelties to be found in them»<sup>72</sup>. But it remains unclear as to *why* we must find a theory of political obligation in the *Leviathan* at all. Hobbes himself certainly does not utilize the term «political obligation» in his text.

Thus, I am in agreement with readers like Johnston, Prokhovnik, Skinner and Lloyd<sup>73</sup>, who argue that Hobbes was speaking rhetorically (and at times

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<sup>68</sup> Tuck interpretation seems to support this when he write: «Since they do have a most powerful reason for wanting their judgement aligned with other people's, it is a simple conclusion to draw that they should all find some single source of opinion whose view about the danger to each of them in doubtful or contentious cases they will accept. Its power will then protect its citizens, for it will be able to co-ordinate their judgments round the same dangers, and elicit common action against both criminals and other nations who pose a possible threat to the new "commonwealth" which the citizens have thus brought into being». Tuck, *Hobbes*, cit., p. 65.

<sup>69</sup> Taylor, *Thomas Hobbes*, cit., p. 80.

<sup>70</sup> Oakeshott, *Introduction to the «Leviathan»*, cit., pp. 44, 66, 114.

<sup>71</sup> *Ivi*, p. 117.

<sup>72</sup> *Ivi*, p. 114.

<sup>73</sup> Johnston, *The Rhetoric of Leviathan*; Prokhovnik, *Rhetoric and Philosophy in Hobbes' Leviathan*; Skinner, *Reason and Rhetoric in the Philosophy of Hobbes*; Skinner, *Hobbes and Republican Liberty*; Lloyd, *Morality in the Philosophy of Thomas Hobbes*.

polemically) towards an irenic end<sup>74</sup>. This irenic end is to seek peace. Given the historical context in which Hobbes finds himself, surrounded by the kind of civil war he denounces in the *Leviathan*, where he is oft times a target of violent threats for his positions and the like; Hobbes's true goal in the *Leviathan* was to seek peace, at virtually any cost. Like Oakeshott, the rhetorical readings of Hobbes agree «the sufficient *cause* or *motive* for endeavouring peace is found in fear of shameful death»<sup>75</sup>, but disagree that the actual discovery of a concept like political obligation is necessary. Because the rhetorical readings suggest that political obligation is not *actually* up and running, they argue «If the state is to survive, the people must obey it not because they fear the consequences of disobedience, but rather because they recognize that there are good reasons for acquiescing in its rule»<sup>76</sup>. Furthermore, the strength of the law, is at best, metaphorical. To quote Skinner, «the bonds of law have no power to restrain us in such a way that we are genuinely (as opposed to metaphorically) tied or chained, and hence genuinely deprived of our liberty according to the proper signification of the word»<sup>77</sup>. The falsely implied presence of a political obligation exists to help provide «good reasons», in order to get individuals to voluntarily limit their natural liberty.

This reading suggests that Hobbes's understanding of the covenant from the state of nature, the obligations that follow, and even the right of punishment from the sovereign are all rhetorical fictions. Furthermore, Hobbes knows they are fictions, and that they will always be fictions. However, they are incredibly useful fictions for one who fears death<sup>78</sup>. If the mass of men, utilizing reason to pursue their passions *believe* themselves to have moral obligations, and furthermore they believe that the sovereign has a *right* of punishment, they are far less likely to engage in behavior that will threaten peace and security. One that is truly afraid will not only find reasons to comply with a political authority that provides protection, but also hopes to provide reasons to compel those who are not similarly afraid. Hobbes needs to provide the best argument he can to encourage individuals to comply with the law, even if it can be deceptive at times. Failure to do so will be a crime on his own terms. For to suggest that individuals continue to maintain their right of nature, their right to all things, would only encourage individuals to think that they ought to continue to act in their own self-interest, even at the cost of public security.

The truth of the matter is that the sovereign is merely an institution that retains the rights of nature, specifically the right to engage in hostility. While it may

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<sup>74</sup> As Lloyd remarks, «Hobbes aimed to offer a confluence of reasons —prudential, moral, and religious— for political obedience, in the hope that this confluence would motivate most of the people most of the time to obey». Lloyd, *Morality in the Philosophy of Thomas Hobbes*, cit., p. xii.

<sup>75</sup> Oakeshott, *Introduction to Leviathan*, cit., p. 119.

<sup>76</sup> Skinner, *Hobbes and Republican Liberty*, cit., p. 159.

<sup>77</sup> Ivi, p. 173.

<sup>78</sup> There should be little doubt that Hobbes himself was terrified. Even within his own autobiography, he remarks «And hereupon it was my mother dear Did bring forth twins at once, both me and fear». Hobbes, *Leviathan*, liv. I am in agreement with Skinner when he states, «For all the violence of his polemics, however, Hobbes clearly intended *Leviathan* as an irenic work» (Skinner, *Hobbes and Republican Liberty*, cit., p. 179).

generally be more successful in its acts of violence than disconnected individuals, it holds no special moral position with respect to those it engages in violence against. For this reason, I find myself in similar company with those who have claimed that the Leviathan «can only be a paper tiger, is and must be incapable of cogently demanding or effectively compelling more than minimal obedience from its subjects»<sup>79</sup>. Despite Hobbes's polemical language to suggest that the sovereign is an overwhelming mortal God capable of crushing all opposition, terrestrial sovereignty is still man made, and not qualitatively (though quantitatively) different from the force available in the state of nature<sup>80</sup>. Any attempt to go further than minimal obedience can only result in the project collapsing «under its own weight»<sup>81</sup>. Despite what appears to be an overwhelming support of absolute authority, I am in agreement with those who claim that Hobbes's «real passion ... is probably on the side of the fragile individual, on the side of the ordinary person, not on the side of all those (in power or aspiring to it) who gain from the mystifications that crush him»<sup>82</sup>. And this would be little surprise, given how fragile (and frightening) Hobbes found his own position during the civil wars of his time. That is to say, he is attempting to get those who would violate the law to comply with it as best he can, such that all fragile individuals are less likely to be destroyed by the violent conflict of war. At the same time he is encouraging the sovereign to *punish* (as a particular kind of war), and in doing so, he is encouraging the sovereign to temper his hostility as a matter of reason.

All of this assumes that reason will *always* tell us that we must avoid death. To reinforce this, Hobbes claims that anyone who comes to a decision that will risk a violent death must be defective in some way. He writes, «The source of every crime is some defect of the understanding, or some error in reasoning, or some sudden force of the passions»<sup>83</sup>. Tuck succinctly suggests, «What Hobbes meant was that if you wish to preserve yourself, then it is absurd — a logical error — to suppose that you could better preserve yourself in a situation of war than one of peace»<sup>84</sup>. For the *Leviathan* to have the absolute character that he needs it to have, then the large mass of men must utilize reason to reach the same result that Hobbes has reached.

However, increasingly in contemporary politics, a certain kind of religion appears to be fulfilling this prerequisite role that may be more important than just life. There are individuals who are willing to place themselves at great risk to engage in bombing attacks against abortion clinics. At the same time local state

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<sup>79</sup> R. E. Flathman, *Thomas Hobbes*, cit.; *Skepticism, Individuality, and Chastened Politics*, Newbury Park, Sage, 1993, p. 7.

<sup>80</sup> Schmitt echoes this when he remarks, «Because state power is supreme, it possesses divine character. But its omnipotence is not at all divinely derived: It is a product of human work» (Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, cit., p. 33).

<sup>81</sup> Oakeshott, *Introduction to Leviathan*, cit., p. 311. See also Lloyd when he remarks, «Hobbes held that serious oppression —that is, severe violation of the Laws of Nature by the sovereign in his treatment of his subjects— would sooner or later lead to rebellion and active warfare, even if not justified» (Lloyd, *Morality in the Philosophy of Thomas Hobbes*, cit., p. 129).

<sup>82</sup> G. Kateb, *Hobbes and the Irrationality of Politics*, in «Political Theory», 17, 3, 1989, p. 387.

<sup>83</sup> Hobbes, *Leviathan*, cit., p. 191.

<sup>84</sup> Tuck, *Hobbes*, cit., p. 346.

institutions are actively passing laws they know to be illegal in order to challenge the federal government. Hobbes's only response to these individuals is to say that they are mentally defective or that they are making an error in their reasoning. By doing so, it is easy to suggest that Hobbes is claiming that concern for one's particular way of life is unimportant for civil law. By writing off individuals who value something in addition to mere life as crazy, the *Leviathan* appears to become even more threatening to those individuals than ever before. For individuals who (like Hobbes) fear death more than anything else, the sovereign can provide a stable system of laws to try and protect them. However, in that process, the *Leviathan* may actually become more hostile and aggressive to those who do not accept that life is the only precondition to felicity<sup>85</sup>. In turn, this makes those who fear death *more* vulnerable than they need to be.

For this reason, Hobbes ought to be far more sensitive to the intense claims that individuals (and groups of individuals) make about what is necessary to sustain their way of life. If nothing else, it is far too dangerous simply to exclude them entirely. However, this is not a call to simply bring all claims of identity or forms of existence into the political discourse wholesale. To do so can be equally dangerous. Incorporating specific religious definitions over what constitutes a marriage into the law, for example, can also become a potential threat to a way of life, resulting in an increased pressure for some to engage in violent disobedience and acts of lawlessness. Opening the floodgates to claims about way of life can be can be incredibly dangerous as well; the inclusion of one way of life into the political institutions can increase the possibility of conflict with another way of life as well.

## 5. A Politics of War

I originally began this enterprise to see if Hobbes can help with contemporary debates about political obligation. Despite Hobbes's radical understanding of negative liberty which gives individuals the right to engage in nearly any action, he still manages to defend a set of political institutions that have the necessary capacities of coercion. Furthermore, I have argued that Hobbes has managed to explain and justify these institutions without any reliance upon our contemporary understanding of political obligation, and furthermore he did it

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<sup>85</sup> It is true that Hobbes considers other preconditions for felicity, such as wealth, power, and commodious living. However, these kinds of preconditions all depend on being alive first, before it becomes possible to attain these other preconditions. That is to say, wealth, power and commodious living are worthless if one is dead. But there may be other preconditions to felicity that stand independent of mere life. Take the example the lives of loved ones. My ability to pursue my desires may depend on my loved ones (particularly my children) remaining secured from sudden and violent death. Where my wealth or my power requires me to be alive to exist, my loved ones can and do live independently of the current status of my pulse. Thus, we might coherently imagine a parent saying «All of my desires become meaningless if I lose my child». If this happens, the child's death leads to the death of the parent, as the parents desires completely cease. This is not true for wealth, power, or commodious living. If I lose those things, I can continue to have desires, it is just difficult to fulfill them. But if the loss of my child leads to the loss of my desires, then it is effectively the same as the loss of life. It is these kinds of preconditions that I am concerned with here.

without needing to establish a conventional right of punishment<sup>86</sup>. In doing so, I think Hobbes has shown us a way to understand political institutions without political obligations. To do this, Hobbes has reminded us that there is an ever present possibility of intensely violent civil war. Thus, Senor's fears about political institutions in the absence of political obligation are unfounded. State violence is possible, and effective, even without the moral justification.

If I am correct, political organization is founded upon nothing more than acts of hostility and war without any backing in moral right. This would seem to suggest that life within the commonwealth really has not gotten us out of the state of nature; we still effectively remain vulnerable to acts of violence at the arbitrary whims of other individuals in the pursuit of their own desires. Furthermore, this vulnerability is now coming from two directions. We still have to fear those who do not accept Hobbes's understanding of reason: suicide bombers, serial killers, enemy combatants, rapists, violent partners, secretly predatory «friends», family and neighbors never disappear from our political reality (despite Hobbes's desire simply to label them as irrational). In addition to this, the sovereign now appears to have the same arbitrary powers of violence that he had before, only now we are even more vulnerable to his whims, as others are far less likely to come to our aid. This is a horribly dangerous picture of political life.

However, political life being dangerous does not mean that political life is inherently bad or evil. Nor does it even mean that it is something to be avoided. War, punishment and violence have long been central concepts for understanding politics in the west. It is just within the last few hundred years that liberal theory, resting on political obligation, has attempted to cover up, conceal, and remove those potential dangers. My contention is not that the dangers of political violence are good things that should be celebrated. Rather, my hope is to uncover the dangers present in politics such that we can be more responsible in our utilization of those dangerous tools.

The *Leviathan* can help us to see that any attempt to generate coercive political institutions that will ultimately result in acts of hostility not unlike those found in Hobbes's state of nature. When the sovereign institutions state, «this is now prohibited, and I will utilize violent force against you for transgressions», the sovereign is effectively laying out a standard by which it is known that conflict will begin. The sovereign should be aware of this. There is a very real possibility of acts of war breaking out in response to the creation of laws. This is true for the big laws (such as ones prohibiting murder) as well as the small laws (such as speeding limits). Every law becomes the sovereign stating «I will go to war with you over this». As history has shown, the sovereign does not always win those resultant civil wars.

This goes the other way as well. Even minor infractions of the law can be incredibly dangerous for the individual. If Hobbes is right, and the sovereign truly exists within a situation where he is not (and cannot) be morally limited from any

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<sup>86</sup> It may be argued that I have not provided a sufficient public justification for this coercing institution. My sense is that, if an institution is reaching the point of utilizing coercion against individuals, any attempt at public justification has already failed. Public justifications have their place, but they should be appearing well before it comes to the actual situation of war.

violent acts, all transgressions of the law become incredibly risky. Each transgression can easily be viewed as an assault on the sovereign's capacity to maintain any sense of order at all, and as such, a transgression of the law effectively invites a violent response from the political institutions. While there may be times when the institutions do *not* respond by going to war, and there may even be times when individuals can win the war against the institutions, there is little question that the risk is extraordinary. While it is true, like Oakeshott<sup>87</sup>, Kateb<sup>88</sup>, and Flathman<sup>89</sup>, I understand the sovereign to be a paper tiger, where the sovereign's power is not qualitatively different from any other individual's in the state of nature, and all opponents in the state of nature are extraordinarily dangerous to one's life once there is a relationship of war.

My hope is that when both sides are aware of the dangers and risks, both are far less likely to engage in acts that invite a violent response from the other. By painting an incredibly grim picture of the state of nature and of civil war, Hobbes was hoping to discourage individuals from making claims upon their political institutions that would invoke violent responses. However, what is often overlooked is the amount of pleading that Hobbes does with the sovereign. His lists of times when the sovereign can and cannot punish serves to remind the sovereign that he too is at risk of reverting to an actual (and not just potential) state of war<sup>90</sup>. Insofar as both sides wish to avoid a violent conflict, both sides should see good reasons for limiting the claims that they make upon the other. If those in command of the political institutions know that it is possible to push the citizens too far, they ought to be less likely to craft laws that compromise the foundational desires that individuals are willing to risk their lives over. Conversely, when individuals recognize that the alternative to the law is a great risk of violence, they are less likely to engage in lawless behavior.

At the same time, I am not saying Hobbes is an anarchist. Neither he, nor I, claim that there is never a good time to go to war. Because there are things that are worth going to war over, there are things that make sense as laws, and likewise there are times where it makes sense to be disobedient. That is to say, when either side looks at the issue at hand and can honestly say «I am willing to take this risk» while being honest about the risk, there will be little that can stop the enactment of that law or the engagement in disobedience. When individuals truly are willing to put themselves at great risk for some purpose, no amount of saying that they are obligated to the law, or that they have no right to produce such a law really matters anyway. The simple fact that one is being disobedient

<sup>87</sup> Oakeshott, *Introduction to Leviathan*, cit.

<sup>88</sup> Kateb, *Hobbes and the Irrationality of Politics*, cit.

<sup>89</sup> Flathman, *Thomas Hobbes*, cit.

<sup>90</sup> To some degree, the claim here is that we always exist in a state of potential war, not unlike what is seen in Hobbes's example of international relations. He writes «in all times kings and persons of sovereign authority, because of their independency, are in continual jealousies and in the state and posture of gladiators, having their weapons pointing and their eyes fixed on one another, that is their forst, garrisons, and gus upon the frontiers of their kingdoms, and continued spies upon their neighbors, which is a posture of war». Hobbes, *Leviathan*, cit., p. 78. In the international realm, even if there is not actual fighting at the moment, there is an ever present potential that guides independent actions, and as such, it is quite similar to the state of nature.

or that a law is being generated that will produce violence is not sufficient to say that the disobedience or the law is *morally wrong*. There must be some other concept that comes into play to provide the standard of judgment. Political obligation does not and cannot serve that purpose.

## 6. Conclusion

I have attempted to recognize a major critique of the philosophical anarchist position. I have considered the claim that, if political institutions are incapable of engaging in necessary coercion, political institutions cannot be defended. Within this context, I have sought to utilize Hobbes to claim that coercive political institutions are possible, even if there is no attempt to justify a strong moral relationship between the individual and those institutions. By reexamining his understanding of punishment, obligation, and reason, we see that Hobbes has defended the institutions of coercion without using the contemporary language of political obligation. The resulting conception of politics is admittedly dangerous, but danger is not necessarily bad. My hope is that by bringing the dangers of political coercion to the fore, both private individuals and political institutions are less likely to utilize coercion for unimportant ends.