

From Bernard Gert,  
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### Power of the Sovereign

One of the most common criticisms of Hobbes's political theory is his claim that sovereignty is absolute, that is, that the sovereign has the authority to do whatever he decides is best for maintaining peace and defending his citizens, and his decisions cannot be legitimately challenged (L. XVIII, 8). When Hobbes discusses sovereignty by institution in *Leviathan*, he seems to base the authority of the sovereign on the fact that each of the citizens has authorized the sovereign to act on his behalf. However, in *De Cive* he holds that the sovereign has absolute authority, although he had not yet developed the concept of authorization. So although Hobbes uses the concept of authorization to reinforce his views about the sovereign not being subject to punishment, authorization is not necessary to support his views about the absolute authority of the sovereign (L. XVIII, 7). Moreover, he is completely clear and consistent in holding that the power and authority of the sovereign is exactly the same whether a commonwealth comes into existence naturally by conquest or artificially by institution. Because sovereignty based on conquest does not involve authorization, authorization cannot be essential to his argument that the sovereign's decisions can never be unjust or legitimately challenged. Hobbes's argument that all forms of sovereignty are based on the free-gift of the future citizens to the future sovereign, rather than on any covenant between subject and sovereign, is sufficient to support his conclusion that the sovereign can never act unjustly and so can never be legitimately punished.

That the term "sovereign" is often mistakenly equated with the term "monarch" may be partially responsible for the strong criticism of Hobbes's claim that the sovereign has absolute power and authority. Hobbes does hold that monarchy is the best form of sovereignty, but he is clear that this is not part of his political theory,

but simply a conclusion that he comes to on the basis of his observation of the different forms of government. None of his arguments concerning the power of the sovereign is related more closely to monarchy than to aristocracy or democracy. Hobbes explicitly says: "The difference between these three kinds of commonwealths consisteth not in a difference of power, but in the difference in convenience, or aptitude to produce the peace and security of the people, for which end they were instituted" (L. XIX, 4). He not only consistently denies the doctrine of the divine right of kings but also claims that sovereign power derives from the free-gift of their rights by the citizens. Indeed, when talking about sovereignty by institution, he seems to claim that the original commonwealth was a democracy (see L. XVIII, 1, 5). So his defense of absolute sovereignty has no connection at all with his preference for a monarchy over an aristocracy or a democracy.

Hobbes denies Aristotle's view of human beings as natural political creatures, that is, as living in large commonwealths in the same way that large numbers of ants and bees "live sociably one with one another" (L. XVII, 6). He points out that human beings differ from other animals in ways that show Aristotle to be wrong. He talks of the competition for honor and the resulting clashing emotions, but he thinks that the most important difference is that human beings have language, and this results in problems that animals do not have. Among these is that people make moral judgments even when they are not personally affected. Their different moral and religious beliefs lead them to come into conflict with each other. Hobbes agrees that the clash of people's natural emotions are a problem, but a more important reason why people need an absolute sovereign is due to language giving some people the ability to persuade others of their moral and religious views. This linguistically generated disagreement is the primary reason that Hobbes denies that people naturally can live together peacefully in a commonwealth large enough to protect them without a sovereign with sufficient power to keep them all in awe (see D.C. V, 5; L. XVII, 7-12). It is the clash of moral and religious views that requires an absolute sovereign.

The view that an absolute sovereign is necessary because all people are self-interested makes no sense; everyone acting on their rational own self-interest would never lead to a civil war. Since the primary practical task of Hobbes's political theory is to design a commonwealth that will not succumb to civil war, it would be pointless for him to hold the view that all people are completely selfish. It would

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be almost as pointless for him to hold the view that all people act only in order to benefit themselves and their family and friends. An absolute sovereign is needed in order to provide a peaceful way of settling disputes – not only practical disputes about what is the best way to achieve peace and defense, but also the moral and religious disputes that pose such a threat to civil amity. Hobbes holds that the sovereign needs the power to settle any disputes that might lead to civil war. The only kinds of disputes that lead to civil war are those based on moral, political, and religious beliefs, where large numbers of people hold differing views so strongly that they are prepared to fight for them.

When one realizes that the point of an absolute sovereign is to settle disputes that might lead to civil war, it should become clear that, except for anarchists, everyone believes that the sovereign is absolute, that is, that the decision of the sovereign is final and cannot be challenged. In the United States, the decisions of the Supreme Court are final and cannot be challenged. Every stable country is similar in that there is a final decision-maker whose decision is final and cannot be challenged. Every stable country has a limited number of procedures that are regarded as legitimate ways to make fundamental changes in the way the country is governed. Attempts to make fundamental changes in ways that are not legitimate are regarded as treason and can be severely punished. The absolute power of all sovereigns may not be widely recognized because in most modern countries sovereignty is so dispersed that it is difficult to identify. Indeed, it seems that the concept of sovereignty with which Hobbes was concerned has little relevance to modern commonwealths. Nonetheless, in every stable state the overwhelming majority accepts the authorized procedures for resolving disagreements, including who is authorized to make the final decision. This is true even though these procedures may not designate the same authority as the final decision-maker for all of the different kinds of disagreements.

In the United States the sovereign power can be thought of as divided among the three branches of government, with the power to make laws vested in a complicated arrangement between the executive and legislative branches, and the power to interpret the law and to determine whether it is consistent with the constitution vested in the judicial branch. Hobbes might claim that the sovereign is actually the people, because at stated times they have elections that enable them to change the members of the executive and legislative branches. However, the system is arranged so that they

cannot change them all at the same time. Further, the people cannot change the members of the judicial branch, so that there is some limit to their sovereign power. It might even be claimed that in the United States the real sovereign in Hobbes's sense is an aristocracy consisting of state legislators, for, if three-quarters of the state legislatures agree, they can modify the constitution in any way they want and there is no check or limitation on what they can do. However, as a practical matter, this aristocracy with unlimited sovereign power rarely acts, and when it does, as when amendments to the constitution are approved, it makes only relatively minor changes. And unless these state legislatures act with a speed that they have never yet shown, elections will be held in which the people can change the members of the state legislature and the new legislature can rescind the vote for constitutional changes for which the previous state legislature voted.

Nonetheless, all stable modern states have a government that does what Hobbes claims that the sovereign should do: namely, provide an agreed-upon way to settle all disagreements. Stable modern states do not need a sovereign in Hobbes's sense because there is such widespread agreement about how any particular disagreement should be resolved. In the United States, even those who vehemently disagree with a particular decision of the Supreme Court do not deny that the Court has the final authority to make that decision. There are some accepted ways that those who disagree with the decision of the Supreme Court can act to achieve the result denied them by that decision. If the decision involves the interpretation of a law, the legislature and the President may pass a different law that will not be subject to an interpretation to which they object. If the decision involves interpreting the constitution, it is more difficult to reverse the result, but a constitutional amendment is always a possibility. Also, if one is prepared to take the necessary amount of time, then one can wait until some justices retire and try to have them replaced by judges who will reverse the decision. All of these are acceptable ways to try to reverse a Supreme Court decision, but none of them involves challenging the authority of the Court. Everyone now takes Hobbes's view that settling a disagreement in a way that preserves the stability of the commonwealth is far more important than acting in a way that threatens the stability of the commonwealth, no matter how important the issue on which people disagree.

If there is widespread disagreement about who has the final authority to settle a particular dispute, and if both sides view the

dispute as important, this creates a significant risk of civil war. The religious disputes in the time of Hobbes coincided with disagreements between those who claimed sovereignty for the king and those who claimed sovereignty for Parliament. Hobbes championed the claim of sovereignty for the king, but on the basis of his own theory about how sovereignty is achieved, not on grounds of the divine right of kings that others who championed the claim of sovereignty for the king accepted. About 150 years ago in the United States of America, there was disagreement about whether final authority lay with the federal government or with the individual state governments. Although this disagreement existed for some time before a fighting war developed, Hobbes would have said that a civil war was almost inevitable once an important issue on which these opposing claimants to sovereignty disagreed had arisen. Slavery was an issue about which there was significant dispute between those who claimed sovereignty for the federal government and those in some southern states who claimed sovereignty for the individual states.

The disagreement about where sovereign power lay is evident in the different names that were given to the war by those supporting the sovereignty of federal government and by those supporting the sovereignty of the individual states. The former referred to it as "the civil war" and the latter referred to it as "the war between the states." But once the war was over and those on the side of the federal government had won, there was no longer any question about sovereignty. On Hobbes's theory, regardless of who held sovereign power before the war, the federal government clearly held it after the war. In the same way, when Cromwell's forces won the English civil war, there was no longer any doubt about who had the sovereign power. It may be that it is this aspect of Hobbes's political theory that gives rise to the mistaken view that he held that might makes right. Hobbes does hold that might makes authority, or rather that submission to might results in authority for that person or group to whom one has submitted. But he consistently holds that this political authority should be exercised for the benefit of those who have submitted, and that the laws of nature, or the moral law, is eternal and not subject to the command of the sovereign.

In both *De Cive* and *Leviathan*, Hobbes argues: "Now the duties of rulers are contained in this one sentence, *the safety of the people is the supreme law*" (D.C. XIII, 2; see also L. XXX, 1). In both works he is clear: "But by safety here is not meant a bare preservation, but

also all other contentments of life, which every man by lawful industry, without danger or hurt to the commonwealth, shall acquire to himself" (L. XXX, 1; see also D.C. XIII, 4). Hobbes lists the four kinds of benefits that the sovereign should provide to the subjects. "1. That they be defended against foreign enemies. 2. That peace be preserved at home. 3. That they be enriched, as much as may be consistent with public security. 4. That they enjoy a harmless liberty" (D.C. XIII, 6). He even talks about people who, due to some accident, "become unable to maintain themselves by their labour," and says, "they ought not to be left to the charity of private persons, but to be provided for (as far forth as the necessities of nature require) by the laws of the commonwealth." (L. XXX, 18). Hobbes's support for at least a minimal welfare state comes as a surprise to those that take the traditional view of his political theory.

Although Hobbes says that no law can be unjust, his view of a good law supports the view that I have been putting forward: "A good law is that which is *needful* for the *good of the people*, and withal *perspicuous*" (L. XXX, 20). He denies that a law that "is for the benefit of the sovereign, though it be not necessary for the people," is good, because he holds that "the good of the sovereign and the good of the people cannot be separated" (ibid.). When he goes on to say that "[u]nnecessary laws are not good laws" (ibid.), it is clear that he means unnecessary for the good of the people. Hobbes holds that the sovereign, by enacting good laws, can initiate a virtuous cycle. Good laws make the citizens of the commonwealth more likely to obey the law and less likely to engage in the kind of behavior that might lead to civil war. The more satisfied the citizens are with the sovereign, the more freedom the sovereign can allow the citizens, including the freedom to criticize the sovereign. The more freedom the citizens have to criticize the sovereign, the less likely they are to engage in the kind of behavior that might lead to civil war. By enacting bad laws the sovereign may initiate a vicious cycle, one that makes it more likely that there will be a civil war. Were Hobbes alive today, he would change many of the details of his views about sovereignty, and his preference for a monarchy would be replaced by a preference for the stable western democracies.

In *De Cive* Hobbes talks about the duties of the sovereign, but he is clear that these duties are not duties in the sense that citizens have duties, the neglecting of which counts as injustice and which can be enforced by punishment. Rather, with regard to the sovereign, Hobbes holds, "it is their duty in all things, as much as they possibly

can, to yield obedience unto right reason, which is the natural, moral, and divine law" (D.C. XIII, 2). In *Leviathan*, he avoids a possible ambiguity by substituting the word "office" for the word "duty," but this does not indicate any change in his view about what the sovereign should do (L. XXX, 1). All of his statements about how the sovereign ought to behave, or what the laws ought to be, constitute advice or counsel to the sovereign, who is, as Hobbes knows, free to accept or reject them. However, if the sovereign is rational, that is, concerned with his own safety and the safety of the people, he will accept them. Although Hobbes claims that citizens have no right to revolt, he is aware they will do so if they become sufficiently dissatisfied with the behavior of the sovereign. He does stress that the duty or office of the sovereign requires teaching the citizens why they should obey the law. Part of what Hobbes does to commend his advice to the sovereign is to provide arguments that the sovereign can use to try to persuade the citizen to obey the law. However, Hobbes knows that, just as with children, citizens are influenced more by bad examples than by good precepts, so his advice to the sovereign is to set a good example by following the laws of nature, e.g., the laws concerning gratitude and equity.

### Arguments for Obeying the Law

Hobbes's initial moral argument for obeying the law might be called a deontological argument. It claims that all citizens gave to the sovereign the right to decide how they should act, and that citizens therefore have no right to act contrary to the decisions of the sovereign, that is, to the law. We have quoted the relevant passage before (see above):

And when a man hath in either manner abandoned or granted away his right, then is he said to be OBLIGED or BOUND not to hinder those to whom such right is granted or abandoned from the benefit of it; and that he *ought*, and it is his DUTY not to make void that voluntary act of his own, and that hindrance is INJUSTICE, and INJURY, as being *sine jure*, the right being before renounced or transferred. (L. XIV, 7)

Because being unjust is violating a law of nature, it is immoral not to obey the civil law. This argument depends upon Hobbes's claim

that every citizen, explicitly or implicitly, transfers his natural right to act as he thinks best to the sovereign. Citizens do this because they know that not making this free-gift will result in their living in a state of nature, or state of war, with everyone else. The rational fear of living in the state of nature, and the hope to avoid or escape that state, is what leads every rational person to give up his right of nature.

Hobbes's social contract theory of political obligation requires that the contract, covenant, free-gift, or renunciation not be a hypothetical contract, covenant, free-gift, or renunciation, because it is only by virtue of an actual granting away of one's right that one becomes obliged. Hobbes's state of nature is either a state that people want to avoid going into, or a state that they want to get out of. It is not the kind of hypothetical state that no one could possibly ever be in, such as Rawls's original position. It is a state in which there are no commonwealths with governments large enough to provide security for a reasonably satisfactory life. Hobbes holds that all citizens, or their ancestors, did actually renounce or grant away their natural right to the sovereign. Hobbes does not claim that everyone explicitly says the words that constitute the performative act of granting away one's right. He is prepared to accept that one's actions, e.g., in openly accepting the protection of the sovereign, can constitute granting of one's right to the sovereign (see L. XIV, 7, 14).

Because Hobbes argues that it is fear that leads people to enter into those covenants that are necessary for creating a commonwealth, he must hold that "[c]ovenants entered into by fear, in the condition of mere nature, are obligatory" (L. XIV, 27). He holds that the covenants necessary to form a commonwealth, or, more precisely, the making of a free-gift of one's right of nature, is always done from fear, either fear of the person to whom one made a free-gift of one's right or fear of others. Hobbes takes covenants so seriously that he holds that in the state of nature, "if I covenant to pay a ransom, or service, for my life, to an enemy, I am bound by it" (*ibid.*). Hobbes must therefore explain why covenants made from fear in a civil society do not oblige. Most covenants made from fear do oblige in a civil society, e.g., if my fear of an extreme rise in the price of oil leads me to sign a contract to buy 1,000 gallons of oil at the present price, that contract is valid. However, Hobbes claims that even coerced covenants oblige in the state of nature, so he has to explain why coerced covenants do not oblige in a civil society. His explanation is that the civil law can make coerced covenants