

annihilation of one of them. Some aristocrats were Parliament men, and all could sneer at the jumped-up aristocrats who kept appearing in their midst by royal command. Small wonder, then, that some aristocrats were to side with Parliament in the Civil War, and small wonder that Hobbes, concerned as he is for the unity of the state, should argue that aristocracy should be the Sovereign's creature, if not his creation, in so far as that is possible.²

The English Civil War was fought for many things, but there can be no doubt that contemporaries thought that one of the things they were fighting for was religion. (Not everybody was as honest as the parliamentarian who said that we fight for religion because everyone has religion; if all men possessed land, we would say we fought for land.) We have already remarked that Englishmen had been quarrelling, sometimes bloodily, over religious questions since the Reformation of the 1530s. To remember how important religion was, all we have to do is to remind ourselves that the Civil War and its aftermath, the Interregnum, is sometimes called the Puritan Revolution. Hobbes, with his implicitly European perspective, could not help but have in mind the example of what the Thirty Years War, as a religious war, was doing to Germany. His argument that the Sovereign has the right to settle religious questions, including questions about official doctrine as well as ceremony, is the least surprising of all.

THE LAWS OF NATURE: SOME OF THE CONTROVERSIES WHICH SURROUND HOBBS'S DOCTRINE

Hobbes writes a classic English prose. All the commentators on Hobbes recognise that he writes with more than ordinary clarity and pungency, so how can it be that so much learned controversy surrounds Hobbes's *Leviathan*? In particular, how can it be that controversy surrounds the central theme of *Leviathan*, the theory of political obligation as it is derived from the Laws of Nature and social contract? Some commentators even go as far as to claim that Hobbes hasn't got a genuine theory of political obligation at all.

So what is the controversy *about*? The basis of it can be stated very simply: it is sometimes argued that Hobbes fails to provide any moral basis for political obligation, no reason for supposing that men would ever feel internally obliged to obey the Sovereign. Men would obey the Sovereign out of fear of violent death at his hands, but they would never feel that they *ought* to obey him. The old Natural Law doctrine always held that in most circumstances men ought to obey the supreme authority in the state. A moral basis for political obligation was essential in polities where law-enforcing agencies were not all that efficient. The internalised feeling that one ought to obey the law was a kind of inner policeman before policemen had been invented. Where, it is said, does one find in Hobbes an argument which would lead one to suppose that a Sovereign's subjects would ever feel that they *ought* to obey him? Hobbes appears to be misusing and debasing the language of Natural Law for purely prudential ends which, as it was traditionally conceived, Natural Law had never been used to serve.

Why does this matter? It matters on two levels, one philosophical and one practical, though the two are obviously connected. On the philosophical level, to say that Hobbes

does not make out a convincing case for political obligation is to say that *Leviathan* fails in its main intention. Whatever else *Leviathan* may be about, it is certainly about why men ought to obey the Sovereign. On the practical level, if there is no moral argument for political obligation which would convince rational egotists, then these rational egotists would only obey the Sovereign when they were really compelled to by fear. That has huge implications for the practice of government as Hobbes conceives it. Fear would have to be real, adrenalin-pumping fear. Pretend fear would not be enough, and real fear would recede almost with the physical distance which men could put between themselves and the Sovereign in societies where law-enforcement was inefficient anyway. For the Hobbesian prudential scheme of political obligation to work, there would have to be literally armies of policemen and hundreds of law-enforcing agencies, because men would never obey unless they were actually confronted with the physical embodiment of the law's threat of punishment. This would be enormously expensive. A society like this would have to spend an unduly high proportion of its gross national product just to police itself. We have remarked before that the feeling of political obligation provides power on the cheap. If I feel I ought to obey, then no politically scarce resources have to be used up to secure my obedience. And if it were really true that rational egotists would only obey in the presence or the threatened presence of authority, then it is difficult to see, on this account of Hobbes's account of the matter, how the state could ever be really efficient. Having the Sovereign present through his agents everywhere would not only be ruinously expensive, but it probably wouldn't work because of the sheer impossibility of policing everybody the whole time. If *Leviathan* is about nothing else, it is about efficient government, so the argument in *Leviathan* would fail in this important practical sense.

Hobbes's argument about the Law of Nature is apparently simple. We have emphasised how lawless Hobbes's State of Nature is because there is no Sovereign, and therefore no positive law. Without a law-making and law-enforcing agency, men in the State of Nature would not be foolish enough to make contracts with each other for fear of non-performance in the absence of a law-enforcing mechanism. Hobbes does of course think that, but he also says that there is a law, but a very different kind of law, in the State of Nature, and this he calls the Laws of Nature. His definition of a Law of Nature is, again, apparently simple:

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.

Nature's Law commands a man to preserve his own life, and Hobbes goes as far as saying that if a man were to make a contract in the State of Nature by which he promised something for fear of his life, the contract would be binding, because, by preserving his life, he would be getting something in return. All of the Laws of Nature are of this life-preserving kind. In the State of Nature the Right of Nature means that everyone has a right to everything because, as we saw above, the Right of Nature must be limitless in the State of Nature because there is no way of predicting what a man might think he has to do to keep himself alive. The Right of Nature is a permission while the Law of Nature is a

command. Taken together they add up to a very pretty formula for lawlessness in the State of Nature. Therefore, the fundamental Law of Nature must be ‘to seek *Peace* and follow it’, which means that everyone has to give up their right to everything else and begin to respect the rights of others. This amounts to no more than the Gospels’ injunction to do unto others what you would have them do unto you. This second Law of Nature follows naturally from the command to seek peace. In Hobbes’s words:

That a man be willing, when others are so too, as farre-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. (Hobbes’s italics.)

The question then arises in what sense the Laws of Nature are to be thought of as laws, because Hobbes usually insists that a law is the command of a lawful Sovereign, whereas he originally speaks of Laws of Nature as general rules found out by reason, not as laws commanded by a law-giver. After Hobbes has enumerated all of the peace-providing Laws of Nature, he adds what appears almost to be an afterthought:

These dictates of Reason, men use to call by the name of Lawes; but improperly: for they are but Conclusions, or Theoremes concerning the defence of themselves; whereas Law, properly is the word of him, that by right hath command over others. But yet if we consider the same Theoremes, as delivered in the word of God, that by right commandeth all things; then are they properly called Lawes.

The problem is that ‘if we consider’, because it seems to imply that we are under no obligation to insist that the Laws of Nature are God’s Laws, and Hobbes does in fact say that a man of even the meanest intelligence could at least work out the gist of the Laws of Nature for himself. Are these Laws of Nature, then, simply dictates of prudence, or does Hobbes *really* believe they are God’s Law? He says that they are the equivalent of God’s Laws, but that is not quite the same thing.

A good deal hangs on this question. Suppose the Laws of Nature really are God’s Laws. Hobbes says that in the State of Nature the Laws of Nature bind internally (*in foro interno*) but not externally (*in foro externo*). By this he means that in the State of Nature men know in their heart of hearts that they ought to treat other men as they would have them treat them, but nobody would be the first to follow this way to peace because that would put him at a disadvantage in relation to other men who might still be in a state of war. We know that Hobbes thinks that the way to get from the State of Nature to Civil Society, from a state of war to a state of peace, is by making the social contract as he describes it, which means creating a Sovereign. If the Laws of Nature really are God’s commands, and therefore binding on all Christian people (and even on those who are not Christians), then it could be argued that there is in the State of Nature a prior moral obligation to make the social contract, and to obey the Sovereign afterwards, on the grounds that only in this way can social peace and stability ever be achieved. On this account of it, there is genuine moral obligation in the State of Nature and in Civil Society,

so that there could be a genuinely moral basis for political obligation in Civil Society.

But begin to think of Hobbes's Laws of Nature simply as dictates of prudence, and very different consequences follow. If honesty, for instance, is the best *policy*, then at least in principle there might be occasions when honesty would *not* be the best policy because the idea of 'the best policy' depends upon circumstances. You would be in the position of saying: Honesty is usually the best policy, but I will wait and see. Hobbes's Law of Nature as dictates of prudence only would work something like that. In Civil Society, it might be wisest to tell the truth, keep bargains with others, and obey the law only when the Sovereign or his agents are watching. Out of their gaze, it might make perfect sense to break the law as often as you liked, if the possibility of being found out was remote. The Sovereign's commands would have no internal force as commands, because everyone would be able to think of circumstances in which it would be wise to disobey them. Rational egotists would only feel obliged to obey when they were actually forced to through fear, and we have already seen what an expensive and cumbersome business that would be.

Is there a way out of this difficulty when Hobbes scholars are still arguing about it (and about much else in Hobbes)? One way out of the difficulty might be to say that in fact there is nothing inconsistent between Hobbes's view of the Laws of Nature and the view of Natural Law as God's Law as traditionally conceived. We have seen that in the old conception of it, Natural Law had three separate sources for God's Law: revelation in Scripture, human reason, and ordinary social experience. The hand of God writes Natural Law in these three different ways: directly by Scripture, indirectly through philosophy and again indirectly on men's hearts through social experience (Paul to the Romans, II, 14). Hobbes's doctrine of the Laws of Nature certainly fits the two indirect criteria for Natural Law, and he is also careful to say that his own doctrine is nothing but the message of the Gospels writ large. 'Careful' is the key word. The seekers after religious heterodoxy had always sniffed around Hobbes, and the heresy-hunters were after him till the end of his life. It always comes back to trying to read Hobbes's own mind across the centuries. Perhaps Hobbes expected us to read a genuinely atheistic and materialistic theory of moral and political obligation between the lines of *Leviathan*, and it has to be said that such a reading is not difficult to make. (My own view is that all the elements of such a theory are there ready and waiting to be picked up out of *Leviathan*, and that Hobbes intended that this should be so.)

Another way out of the moral/prudential conundrum about obligation in Hobbes is to say that in *Leviathan* Hobbes is giving an account of how the substantive content of morality *arises*, not an account of how morality *originates*. The fact that Hobbes has a view of how men come to fill moral categories with a particular content does not thereby make morality less 'moral'. Filling moral categories with a moral content, it might be said, is a characteristically moral enterprise. And besides, the end of Hobbes's theory is social and perhaps international peace, and who is there who would deny that this is a godly end?

The controversy continues, and perhaps a way out of it might be found if we were to ask ourselves why the controversy, which has lasted since the middle of the seventeenth century, arose in the first place. The answer to that question is obvious: Hobbes, like

Machiavelli, can give his readers sleepless nights. As Shakespeare says, 'Unaccommodated man is but a poor, bare, forked creature'; take a man out of his position in an ordinary society with law-enforcement, and he is a very unlovely sight. In *Leviathan* Hobbes certainly does not flatter humankind. Man in his natural state is an egotistical brute; much better, then, to bind him to a Sovereign. Hobbes's critics have been saying implicitly that there *must* be something wrong with the argument in *Leviathan* ever since his seventeenth-century enemies tried to discredit him with the taint of atheism. No doubt there is something wrong with the argument in *Leviathan*, but it might not occur where Hobbes's critics have always looked for it in the groundings of obligation in Natural Law.

HOBBS'S ACCOUNT OF SOCIAL CONTRACT PERHAPS NOT AN ACCOUNT OF CONTRACT AT ALL

In the normal legal idea of a contract there has to be what lawyers call a 'consideration'. By that lawyers mean that each of the two parties (or more than two parties) to a contract has to give something in return for something else. In a contract of sale, for instance, one of the parties pays the other, and that transfers the right of ownership from the seller to the buyer. No consideration, no contract, and therefore no transfer of right from one to another. On first sight, Hobbes's account of social contract appears to conform to the formal-legal criteria of contract: men by agreement with each other give up their Right of Nature to the Sovereign in return for social peace. Everybody gives up something and receives something in return. We could quibble, and say that there might be something wrong with Hobbes's idea of contract because what men receive they do not receive directly from the other contracting parties, but only indirectly through the Sovereign. It is the Sovereign law-giver and law-enforcer who is the provider of social peace, and he is not party to the social contract in Hobbes's theory. This is a technical niggles. Much more serious would be the objection that, in Hobbes's account of social contract, no consideration at all changes hands, and, as we have seen, it follows that if there is no consideration, no valid contract can be made.

In Hobbes, the consideration at social contract time is the Right of Nature. Hobbes is quite explicit about the transfer of the Right of Nature. Men transfer the Right of Nature, in so far as they are able, to the Sovereign, and a good part of *Leviathan's* argument is designed to show that men in the State of Nature would have very strong motives for giving up their Right of Nature. It is a liability to them, whereas giving it up to the Sovereign would make it an asset, because the Sovereign could use the transferred Right of Nature to provide for social peace. Men would then really receive the defence against others which in the State of Nature the Right of Nature so notoriously failed to give except in a very restricted sense. But it can be argued that the whole business of the transfer of the Right of Nature, the consideration without which the contract is no contract, might be redundant in Hobbes, that Hobbes is playing an elaborate trick with alleged transfer of the Right of Nature and that *Leviathan* contains an equally elaborately constructed screen to prevent the audience from seeing how the trick works.