

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.

The argument is this. Ask Hobbes: What is the Right of Nature actually *for*? In particular, ask what the Right of Nature does for men that the Laws of Nature do not do? The chief characteristic of the Law of Nature is that men are 'forbidden' (Hobbes's word) to do anything which might put their lives at risk, or to neglect any precautions which make their survival more likely. This is a Natural Law, whether Natural Law is God's command or a simple dictate of prudence. If men are thus commanded, then they have no option but to obey, so why do they need the Right of Nature to give them permission to obey what is already a command? Law for Hobbes is the command of a Sovereign, and men do not ask their commanders 'Is it all right if I do what you tell me?' That is an absurdity. In real life the opposite would be much more likely to happen: petitioners would ask on occasions, and for good reason, if it would be all right to disobey, or modify, commands given to them by superiors. So why, of all things, do we need permission to obey what Hobbes does after all say is God's Law? Why the Right of Nature? The answer is obvious. Hobbes gives men the Right of Nature, which is not only useless but unnecessary as well, so that, at the moment of social contract, men have actually got something they can give up as a consideration in order to make the social contract conform to the formal-legal criteria of ordinary contract-making. If this argument about considerations is right, then Hobbesian men have done what they did by command, and not by contract, because how could they have made a valid contract without a consideration at all? The Right of Nature is something in the nature of a red herring. It is unnecessary; Hobbes knows this, and he only gives men the Right of Nature to save the appearance of the social contract as a valid contract.

Hobbes puts up a smokescreen to disguise this. He knows perfectly well that most readers of *Leviathan* (then as now) wishing to take issue with him on his account of social contract will immediately fasten on to the element of compulsion, especially as it occurs in the account of Acquisition of Sovereignty by conquest. Hobbes uses some long (by his standards) and meticulous arguments to show that compulsion by fear is never an argument against contracts in general. All formal contracts are insisted upon for fear of non-performance. In Civil Society, the only difference will be that the positive law will deny the validity of certain specific kinds of contract. Judges and juries in courts of law in Civil Society will be unlikely to hear sympathetically the plea of a bank-robber that he made a perfectly fair contract with the bank manager by giving him the option: Your money or your life! A contract like that would be valid in the State of Nature (though it couldn't be made for money because there would be no Sovereign to coin sovereigns in the State of Nature), but not in Civil Society, because a prudent Sovereign would always make sure it was against the law. (Compare the American phrase 'taking out a contract on someone', which means hiring an assassin.) The argument about the compulsory nature of all valid contracts is one of the most ingenious in *Leviathan*, and we can now see that it is ingenious in two separate senses: first, it is ingenious in its own terms as an argument, but second, and perhaps more importantly, by arguing elaborately against the invalidity of social contract through fear and compulsion, Hobbes very cleverly tries to lull his readers into thinking that the only possible argument against his account of the social contract is the fear-and-compulsion argument. But we have seen that the real argument against him might be that the social contract as Hobbes sees it is not a valid

contract because no consideration is really given up to another. The contract argument in Hobbes fails by the test of the formal requirements of ordinary contracts.

HOBBS AND THE LIMITATIONS ON SOVEREIGNTY: THE EFFICIENCY CONSTRAINT

Men being the egotists they are, and the Sovereign being the supreme egotist that everyone wants to be, what is to stop the Sovereign running amok in Civil Society? Hobbes may think he has set an eagle above the vultures, but what he may have done is to set a cat among the doves (I say 'doves' because doves are in fact quite aggressive creatures). If Hobbes ever uses inflated language, it is in speaking about Sovereigns and Commonwealths. Kings are themselves called gods by God himself (in the Old Testament), and Hobbes calls the state, that artificial creation of man, *Leviathan*, a 'mortal God'. Hobbes's reason for this hyperbole is partly witty; he is taunting his opponents who believed that formal constraints would be put on the Sovereignty by contract, but many a reader has come away from Hobbes with the impression that Hobbes's Sovereign could and would do anything he pleases. *Leviathan*, on this view of it, is a formula for the rehabilitation of Caligula, and some commentators have even seen in *Leviathan* a blueprint for the modern world's only contribution to possible forms of government, the totalitarian state.

The truth of the matter is more sober. It must be remembered that in *Leviathan* Hobbes is always attacking the possibility of formal-legal, contract-type constraints on sovereignty, and it is easy to forget that in the real world of politics non-legal constraints on sovereignty arise which do in fact limit sovereign power. What is at issue here is the tricky distinction (of which a great deal will be made when we come to discuss eighteenth-century political thought, especially in America) between 'powers' and 'power'. The 'powers' of a Sovereign refer to those things the Sovereign may do *by right*; what in the case of kingship is called the royal prerogative. Hobbes's argument is that the powers of the Sovereign are virtually unlimited and unlimitable. But it is often the case that sovereigns have rights to do things which it would in fact be impolitic to do, and this is especially true of a Hobbesian Sovereign who, remaining as he does in the State of Nature, has the right to do virtually anything he likes to or for his subjects. But unlimited right does not imply unlimited 'power', where power means the capacity to enforce one's will on others, or, more simply, doing and getting done anything one pleases.

So what constraints are there on this Hobbesian Sovereign with virtually unlimited powers but limited power (on the commonplace assumption that all power is to a degree limited)? The answer probably is: efficiency of law-enforcement. We have to ask the question: What would induce a Sovereign's subjects actually to obey the law? Some subjects might think they ought to obey, and that would be a great bonus for the Sovereign because subjects like these would not have to be coerced into obedience. Other subjects might obey because they feared a return to the State of Nature, and they would be another bonus for the Sovereign because they too would obey voluntarily.

But there is still a catch. Hobbesian men do not come into Civil Society in order to change their natures but *because* of their natures. Each subject of a Sovereign might still be dreaming of being in the optimum position for a rational egotist, which is to be in circumstances in which everybody *except himself* was obliged and willing to obey laws. This might give the Sovereign in that commonwealth more than one sleepless night. The head that wears the crown might lie uneasily because the Sovereign would know that ‘out there’ there would be subjects dreaming of themselves becoming Sovereign. Not all of them, perhaps, but enough. These potential rivals for the Sovereignty would be thinking this: of course we don’t want a return to the State of Nature, and of course that means that the Sovereign must be obeyed, but it would still suit me very well if everybody else *except me* obeyed the Sovereign and kept within the law. A rational egotist would want his neighbours to be law-abiding while he got away with murder.

How could a Hobbesian Sovereign cope with that? The only way he could keep these rationally egotistically would-be sovereigns within the law would be the fear of punishment. Men feared violent death at the hands of another in the State of Nature, and they must still be made to feel that fear in Civil Society. (And by ‘violent’ death Hobbes really means what he says: cruel and unusual punishments might be the required norm.) What this amounts to is that in Civil Society subjects must fear the Sovereign more than they fear anyone else.

It is out of this necessity to fear the Sovereign more than one’s neighbour that the efficiency constraint arises. Men must somehow be made to feel that they are more frightened of the Sovereign than they are of their neighbours stealing a march on them by going outside the law while they remain within it. That must mean efficiency of law enforcement, which in its turn implies regular (and fair) administration of justice. I have to feel that my neighbour feels that law-breaking just isn’t worth it because the risk of getting caught is too high for them to risk disobedience to the Sovereign’s lawful commands.

Another way of looking at this question would be to ask: What does fear really mean for Hobbes? We can readily see why men would be fearful of each other in the State of Nature, but what changes when these fearful creatures come into Civil Society? The answer is obvious: in Civil Society men exchange a very generalised fear of violent death at everybody else’s hands for a very particular fear of violent death from the Sovereign’s sword of justice. It is not that men stop fearing those who have now become their neighbours. Quite the reverse. Men will always be afraid of their neighbours stealing a march on them, by going outside of the law, but Hobbes’s point is that in Civil Society this fear of neighbours will be overshadowed by fear of the Sovereign. A very generalised fear is exchanged for an overriding fear of the Sovereign, and that is what makes social life possible. There is a useful analogy here with psychiatric medicine. Sometimes psychiatrists are confronted with patients in such a generalised phobic condition that they are frightened of everyone and everything, and this can lead to such generalised paralysis of the will that the patient is too afraid to do anything and is even afraid to leave the at least familiar surroundings of his own room. This is a sad parody of the solitariness of the Hobbesian State of Nature. The beginnings of a cure start to happen when the psychiatrist can get the phobic patient to say what *exactly* he is afraid of. If he

can get the patient to convert his very generalised fear into, say, fear of large red buses, then it begins to become possible that the patient can begin to live a 'normal' life by avoiding large red buses (by moving to another town, say, where the buses are blue). When fear acquires a definite shape and direction, then you know where you stand, and a regular, socialised life becomes possible. Hobbesian men in Civil Society are in the position of the patient who swaps his fear of everything for the fear of large red buses; he can now get on with something like a normal life.

Hobbes's position therefore seems to be that Civil Society will remain intact provided only that subjects fear the Sovereign more than they fear anyone else. This means that the machinery of justice really has to work and to keep working. The Sovereign, being a rational egotist, wants to hold on to his sovereignty, and it would be a very stupid, and therefore irrational, Sovereign who did not realise that he could only keep the sovereignty by keeping the machinery of law-enforcement in good running order.

Under what conditions might the efficiency constraint upon Sovereignty fail? Plainly, you would begin to realise that it was beginning to fail when your fear of your neighbours began to increase and your fear of the Sovereign began to diminish. There need be no high-sounding proclamation in Hobbes, as there is in Locke, about the natural *right* of rebellion, because Hobbes implies the natural *fact* of rebellion. We will see that in Locke it requires some fairly sophisticated reasoning about the right to rebel before you can tell whether in your present circumstance you may exercise that right. Not so in Hobbes: any sane fool knows what he fears most. When a man begins to feel in his guts the fear of his neighbours more than the fear of his Sovereign, then the rebellion has already happened internally, and he is back in the State of Nature. This could happen by degrees, or it could happen very quickly, as circumstances demanded (war would be a slightly different case: the internal rebellion would be over as soon as a soldier began to fear the opposing Sovereign and his army more than his own commanding Sovereign; then it would be rational behaviour to desert, change sides, or surrender). Allegiance only lasts for as long as it makes sense. Clarendon (who wrote a famous history of the English Civil War and became a Minister under Charles II after the Restoration) got the matter exactly right when he said that Hobbes was such a fellow that he will have his Sovereign for better, but not for worse. In any social, political or military emergency, fear is a man's best guide. An analogy in the spirit of Hobbes might be what happens when people begin to man the lifeboats on a sinking ship. It appears that the ship is about to go down, say, in twenty minutes. Orderly queues form at lifeboat stations, women and children first, marshalled by ship's officers armed at the captain's command to make sure there is no queue-jumping or panic. In these circumstances, it makes sense for an individual passenger to obey commands on the assumption that *he* will get off in the remaining twenty minutes of the ship's life. Suddenly, word goes round that the ship will go down in five minutes. True or not, this change of circumstances alters what is happening in every passenger's own mind. His adrenalin tells him he must do something more to save himself than just queuing up for the lifeboat. He eyes up the officer with the gun, and he begins to sense that others are going to rush the lifeboats. That is his moment of truth. He realises that he has more fear of his neighbours jumping the queue than of the ship's officer acting as the captain's agent. Everybody else now becomes his enemy, he is back in the State of

Nature, and knowing no duty of obedience to anyone, he fights his way towards the lifeboats like everybody else, and the final recognition that sovereignty has collapsed occurs when the Sovereign-captain himself recognises it and shouts 'Every man for himself'.³

THE SOURCES OF HOBBSIAN INDIVIDUALISM

We saw in the introductory section on the rise of social contract that social contract theory depends on a view of individuals as being in some important sense autonomous. We also saw that it is a vexed question where the idea of individual autonomy 'comes from'. In Hobbes's case, this difficulty does not arise. It has often been remarked how susceptible Hobbes was to the influence of the scientific and philosophical currents of his day, both English and continental. He had been Bacon's amanuensis, and he met Descartes and Galileo. Hobbes was also impressed by Harvey's discovery that the blood circulated, and by current ideas of motion and gravity. When Hobbes looked out of his window and saw the world, he didn't see it, as Aristotle and the scholastic philosophy did, as full of objects and creatures naturally at rest and having to be set in motion. What Hobbes saw was a world full of objects and creatures naturally in motion until they were arrested by some equal and opposite force. Motion, internal and external, is what constitutes human happiness. Unrestricted pursuit of human goods is what all men want, and moral rules and the positive law are ways found out by reason (and perhaps commanded by God) to ensure the maximum liberty to do that, combined with the minimum harm caused to others. Hobbes is an eminently physical, if not physiological, thinker. If the blood flows quickly and easily, unrestricted by hard arteries, and if men can go about their business in the world without bumping too hard against their fellow men, then a measure of human happiness and fulfilment is possible.

Long ago, Professor C.B. MacPherson (*The Political Theory of Passive Individualism: Hobbes to Locke*, 1962) taught us to look for aggressive, self-seeking, marketmen in Hobbes's political theory. Hobbes's men were possessive individualists, always in danger of coming into sharp and potentially damaging contact with others of their kind, unless regulated to an extent by law. The rush to acquire in a society rapidly becoming a market society in which the typical economic activity was buying and selling, including the buying and selling of labour, was always going to cause problems of disruption in the social and political orders as traditionally conceived. Hobbes offers one kind of answer to the self-seeking of market-men continually on the move, and that answer is the absolute Sovereign.

Self-moving, self-seeking marketmen are the rising bourgeoisie by another name, and historians have come to associate the bourgeoisie with a certain set of political institutions and practices: Parliaments; government limited by a constitution; political representation and the bourgeois freedoms of thought and expression. In short the rise of liberalism is often thought of as the necessary accompaniment of bourgeois domination of economy and society. Not by Hobbes: a rising bourgeoisie requires an absolutist state.

We once thought of this as an objection to Hobbes's argument in *Leviathan*. Hobbes