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### **'Not Sure of Safety': Hobbes and Exile**

No paradox of contemporary politics is filled with a more poignant irony than the discrepancy between the efforts of those well-meaning idealists who stubbornly insist on regarding as 'inalienable' those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves.<sup>1</sup>

'The Decline of the Nation-State and the End of the Rights of Man', a central chapter in Hannah Arendt's *Origins of Totalitarianism*, sets out one of the book's continuing provocations. Meditating on the fate the shifting and various mass of exiles generated in mid-twentieth century Europe, Arendt discerns perplexities. The exile, stripped of his or her civil rights, should have stood revealed as an individual endowed with inalienable human rights, and therefore capable of making a legitimate claim for recognition on the modern European polity which proclaims its fidelity to such notions. But this had not happened. Instead, 'those whom the persecutor had singled out as scum of the earth – Jews, Trotskyites, etc. – actually were received as scum of the earth everywhere; those whom persecution had called undesirable became the *indésirables* of Europe.'<sup>2</sup> Far from being embraced as fellows by the peoples to whom they looked for refuge, exiles carried their stigma with them.

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<sup>1</sup> Hannah Arendt, *The Origins of Totalitarianism*, 2<sup>nd</sup> edition (London: Allen and Unwin, 1958), 279.

<sup>2</sup> Arendt, *Origins*, 269.

They found themselves as estranged from the rights of man as they were from those of the citizen when they were stopped at borders or interned in camps. So for Arendt, the stateless refugee 'has been forced outside the pale of the law', and in that movement shows up an anomaly or awkwardness in our sense that human and civil rights are necessarily complementary or mutually reinforcing.<sup>3</sup> Inalienable, natural rights have turned out to be unenforceable 'whenever people appeared who were no longer the citizens of any sovereign state'.<sup>4</sup> To be expelled from a polity, to be forced to fall back on one's humanity, is in fact to be expelled from a humanity that turns out to be co-extensive with citizenship, and at the same time to be reduced to a humanity which is both the ground of right and a mark of its withdrawal. As Arendt puts it, 'a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man'.<sup>5</sup> The exile's condition is thus one of 'abstract nakedness', or 'mere existence,' a life lived as a body or a natural datum; but it is also a condition in which this givenness is juridically visible, since rights are supposed to inhere in us on account of our irreducible, universal, natural humanity. This is the source of the perplexity.

Arendt's formulation of this perplexity has been taken up by a number of thinkers intent on the somewhat suspicious examination of the rhetoric of human rights.<sup>6</sup> But perhaps the most influential recent work to follow explicitly from Arendt's discussion has been that of the Italian philosopher Giorgio Agamben. For Agamben, the perplexing condition of the stateless exile is just

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<sup>3</sup> *Origins*, 286.

<sup>4</sup> *Origins*, 293.

<sup>5</sup> *Origins*, 300.

<sup>6</sup> For a representative selection of recent views, see the essays gathered in Ian Balfour and Eduardo Cadava, eds, 'And Justice For All? The Claims of Human Rights', *South Atlantic Quarterly* 103: 2/3 (2004).

one example of a more generally queasy modern politics of the natural, a politics that produces the figure of 'bare life' as the disruption and displacement – but also disavowed condition – of modern citizenship.<sup>7</sup> Agamben therefore extends Arendt's analysis, locating the problem not just in the challenge posed to the Western conjunction of man and citizen by the streams of refugees created in twentieth century Europe, but more fundamentally in Western discourses of sovereignty and the state. In this, for Agamben, Thomas Hobbes is implicated, despite the radical differences between Hobbesian and Arendtian conceptions of law and right. This is partly because Agamben's analysis of sovereignty engages with the theoretical account offered by the reactionary German jurist Carl Schmitt, who saw himself as developing Hobbesian ideas.<sup>8</sup> But it is also because Agamben follows theorists such as Leo Strauss and Norberto Bobbio in seeing Hobbes's political philosophy as centrally concerned to articulate the relation between the *status civilis* and the *status naturalis*, as therefore thinking civility through its limits, and seeking to test the relationship between different kinds or moments of nature and right.<sup>9</sup> Clearly, it makes sense to suggest that in Hobbes the political significance of the relationship between nature and civility is very much to the point, and therefore the whole political constitution of the human is at issue; yet identifying this significance is not always the easiest or

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<sup>7</sup> Agamben, *Means Without Ends: Notes on Politics* (Minneapolis: University of Minnesota Press, 2000); *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998).

<sup>8</sup> Agamben, *Homo Sacer*, 8-19, 26-42; Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2005), esp. 16-52, and *The Concept of the Political* (Chicago: University of Chicago Press, 1996).

<sup>9</sup> See Leo Strauss, 'Notes on Carl Schmitt, The Concept of the Political', in Schmitt, *The Concept of the Political*, 81-108, *The Political Philosophy of Hobbes* (Chicago: University of Chicago Press, 1952) and *Natural Right and History* (Chicago: University of Chicago Press, 1953), esp. 166-202; Norberto Bobbio, *Thomas Hobbes and the Natural Law Tradition* (Chicago: University of Chicago Press, 1993), esp. 114-71.

most uncontroversial move. Hobbes stresses both the continuities and the disjunctions between natural and civil right and law: the weighty transition – and also caesura – between chapters 13 and 14 of *Leviathan* can serve as an exemplary instance of this. Agamben suggests that Hobbes’s thinking of right, and of the political human, is not so much an articulation of the civil and the natural as the awkward and mutual implication of the one within the other. For Hobbes, he suggests, sovereign power ‘presents itself as an incorporation of the state of nature in society, or, if one prefers, as a state of indistinction between nature and culture, between violence and law... Exteriority – the law of nature and the principle of the preservation of one’s own life – is truly the innermost centre of the political system, and the political system lives off it’.<sup>10</sup> While there may be a bit too much of Schmittian decisionism in his account of sovereignty, even without this influence Hobbes’s thought is marked for Agamben by the kind of conceptual awkwardness – paradox, almost - that Arendt locates in the modern thinking and practice of rights.

Despite the fact that his own work on bare life is indebted to the Foucauldian conception of biopolitics, Agamben here displays the distance between his own account and that of his predecessor. Foucault, following Hobbes’s own comment on his project, sees him as one of the Capitoline geese ‘that with their noise defended those within it, not because they were they, but because they were there’.<sup>11</sup> For Foucault, Hobbes is accounted ‘the father of political philosophy’ because he is the staunch defender of ‘philosophico-juridical discourse’, a paradigmatic instance of the desire to

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<sup>10</sup> Agamben, *Homo Sacer*, 36.

<sup>11</sup> Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1991), ‘Dedictory Epistle’, 3. Mauro Bertani and Alessandro Fontana, eds, Michel Foucault, *Society Must be Defended* (London: Penguin, 2004), 99.

maintain the language of right as the explanatory matrix for all human, social relations. For Agamben, though, as for Arendt, it is precisely the desire to articulate right beyond the bounds of the polis that produces, despite itself, only paradoxically juridical figures, and indeed also summons up that political other of a philosophy of right which Foucault sees Hobbes as aiming to suppress. Both Arendt and Agamben see the exile as one of the figures for this predicament, and the latter also relates this figure, briefly, to the Hobbesian account of sovereignty.<sup>12</sup> Following such hints in the context of more mainstream readings of Hobbes, this essay explores the nature and extent of any perplexity manifested in the solitary, poor, insecure exile.

## 1. Hobbes in Exile; Exile in Hobbes

The significance of exile for Hobbes is peculiarly bound up with his biography. Hobbes's sojourn in France between 1640 and 1651 certainly looks like an exile, and is described as such by a recent biographer.<sup>13</sup> The account Hobbes gave others supports the suggestion that this was not an unforced relocation. Aubrey notes that 'he told me that Bishop Manwaring (of St David's) preach't *his doctrine*; for which, among others, he was sent prisoner to the Tower. Then thought Mr Hobbes, 'tis time now for me to shift for my selfe, and so withdrew into France'.<sup>14</sup> The same suggestion is made in

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<sup>12</sup> Agamben, *Homo Sacer*, 105-11.

<sup>13</sup> Martinich, *Hobbes: a Biography* (Cambridge: Cambridge University Press, 1999). See chapters 6 and 7, 'A Decade of Exile'.

<sup>14</sup> John Aubrey, *Brief Lives*, ed. Oliver Lawson Dick (London: Secker and Warburg, 1949), 51. On Maynwaring's fate, see Harry F. Snapp, 'The Impeachment of Roger Maynwaring', *The Huntington Library Quarterly* 30 (1967), 217-232, and Vivienne Larminie, 'Maynwaring, Roger (1589/90?-1653)', *Oxford Dictionary of National Biography*, Oxford University Press, Sept 2004; online edn, Jan 2008 [<http://www.oxforddnb.com/view/article/18011>, accessed 1 Feb 2008].

Hobbes's own prose autobiography: having realised that civil war was approaching in late 1640, concerned for his safety, he returned to his friends in France.<sup>15</sup> His fears were not groundless: Hobbes's name, says Noel Malcolm, 'was ... in circulation as a hardline theorist of royal absolutism'.<sup>16</sup> Roger Maynwaring was among the most notorious of such theorists, and during the Short Parliament moves were made to reopen a Parliamentary case against him that the King had managed to head off twelve years earlier: the fear that the treatment Maynwaring had endured in 1628 for promulgating his views was about to be dished out not only to him but also to those with similarly elevated views of royal power, and that the King would not be able to protect his apologists as he had in prior troubles, is what brought him to Hobbes's mind now.<sup>17</sup> The prospect of aggressive moves against those who preached 'for absolute monarchy that the king may do as he list', raised again when the Long Parliament convened in November 1640, appears to have finally decided Hobbes.<sup>18</sup> Yet a stay in France was probably already planned, and was in large part a welcome resumption of a treasured friendship with Marin Mersenne at a point when Hobbes's main English patron, the Earl of Newcastle, was preoccupied with affairs of state.<sup>19</sup> As Malcolm suggests, 'with Newcastle distracted by politics, the prospects of a period of quiet study in Newcastle's household had receded; Mersenne's Paris thus became the most

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<sup>15</sup> Hobbes, 'The Prose Life', in J. C. A. Gaskin, ed., Thomas Hobbes, *Human Nature and De Corpore Politico* (Oxford: Oxford University Press, 1994), 247; 'T. Hobbes malmesburiensis vita', in William Molesworth, ed., *Thomae Hobbes malmesburiensis opera philosophica quae latine scripsit omnia*, vol. 1 (London: John Bohn, 1839), xv.

<sup>16</sup> Noel Malcolm, 'Hobbes, Thomas (1588–1679)', *Oxford Dictionary of National Biography*, Oxford University Press, Sept 2004; online edn, Jan 2008 [<http://www.oxforddnb.com/view/article/13400>, accessed 15 Feb 2008].

<sup>17</sup> See Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008), 86–8. I am particularly grateful to Professor Skinner for allowing me to read this book prior to its publication.

<sup>18</sup> Noel Malcolm, *Aspects of Hobbes* (Oxford: Oxford University Press, 2002), 16.

<sup>19</sup> Malcolm, *Aspects*, 16.

natural and alluring alternative'.<sup>20</sup> Hobbes in 1640 was perhaps not best classed as a refugee.

Yet the situation, according to Hobbes at least, was worse eleven years later. In his Latin autobiographies he suggests that his departure from France in 1652 did not constitute the end of exile but was actually the response to a banishment that made him a stateless refugee. Criticised at the exiled Stuart court for positions maintained in *Leviathan* that were allegedly contrary to royal interests, he found himself 'banished [prohibitus] from the King's household':

Stripped of the King's protection [protectione regia destitutus], and fearing malicious attacks by Roman clerics whose teachings he had successfully attacked, he had little option other than to take refuge [coactus sit refugere] in England.<sup>21</sup>

Or, as he put it in his verse autobiography (in the English of the anonymous 1680 translation):

When that Book [i.e., *Leviathan*] was perus'd by knowing Men,  
The Gates of *Janus* Temple opened then;  
And they accus'd me to the King, that I  
Seem'd to approve *Cromwel's* Impiety,  
And countenance the worst of Wickedness:  
This was believ'd, and I appear'd no less

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<sup>20</sup> Malcolm, 'Hobbes, Thomas (1588-1679)'.

<sup>21</sup> 'The Prose Life', 249, 'T. Hobbes malmesburiensis vita', xvii.



Than a Grand Enemy [adversis in partibus], so that I was for't

Banish'd both the King's Presence and his Court

[Perpetuo jubeor Regis abesse domo].

Then I began on this to Ruminare

On *Dorislous*, and on *Ascham's* Fate,

And stood amazed, like a poor Exile

[Tanquam proscripto terror ubique aderat],

Encompassed with Terrour all the while...

Then home I came, not sure of safety there,

Though I cou'd not be safer any where.<sup>22</sup>

Where Maynwaring's example had been the worrying precedent in 1640, now the fate of two representatives of the new commonwealth murdered abroad by royalist assassins looms threateningly large. Here, Hobbes describes himself as akin to an exile not because he shifts abroad, but because he has been deprived of protection and rendered newly and starkly vulnerable. The Stuart court in exile is itself a little commonwealth, and once ordered to leave Hobbes has no choice but to seek safety wherever he could reasonably hope to find it.

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<sup>22</sup> Hobbes, 'The Verse Life', in Gaskin, ed., *Human Nature and De Corpore Politico*, 260, and 'Thomae Hobbes malmesburiensis vita carmina expressa', in *Opera Philosophica*, ed. Molesworth, vol. 1, xciii. See Gaskin, xlix-l, for details of the translation. Faithful enough to Hobbes's Latin, there are nonetheless some important qualifications to be noted. The Latin translated as 'Grand Enemy' is 'adversis in partibus', and is rendered by Quentin Skinner as 'a member of the adverse party' (see his *Visions of Politics*, vol. 3 (Cambridge: Cambridge University Press, 2002), 22), which lacks the explicitly juridical connotations of the English. The English 'Banish'd' condenses a Latin phrase which translates more literally as 'ordered to depart forever from the King's household', which again perhaps lacks the judicial connotations of the 1680 version. And 'proscripto', here given as 'Exile', is more commonly translated as 'outlaw'. The English of the 1680 translation is not simply erroneous or misleading, however: there are perfectly good Hobbesian reasons for using such pregnant terms as 'enemy' and 'exile', as this essay seeks to demonstrate.

Of course, this version of his return to England was written some years after the fact, and there is evidence to suggest that it is intended to excuse its author from the persistent accusation that he willingly abandoned the Stuart cause in the early 1650s. Edward Hyde, Earl of Clarendon, claimed not only that Hobbes wrote *Leviathan* to appease the English Republican authorities and thus facilitate his return, but that he confessed as much at the time.<sup>23</sup> Malcolm points to indications that, like the flight to France in 1640, this journey too was substantially premeditated and not a response to a sudden crisis.<sup>24</sup> Nevertheless, this identification of his own plight with that of the exile, and the indication that this might have an exculpatory function, points to the connection that could be drawn between Hobbes's personal circumstances or interests and his political theory. When Hobbes is seeking to justify his own conduct, we might reasonably expect him to do so in a manner that is consistent with the normative framework of his own thought. In which case, Hobbes's claim to have suffered the condition of the exile can only be made fully comprehensible in relation to the place of that condition in his civil science.

Exile is mentioned in each of the major works of political theory that Hobbes produced, and its handling is consistent across them. In *The Elements of Law*, the topic first arises at the end of chapter XXI, at the point when Hobbes is completing his discussion of the kinds of commonwealth by institution, polities produced by a group of people through the consensual creation of a new civil state. Having considered 'how particular men enter into subjection', Hobbes says, 'it followeth to consider how such subjection may be

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<sup>23</sup> Edward Hyde, Earl of Clarendon, *A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State, In Mr. Hobbes's Book, Entitled Leviathan* (Oxford, 1676), 8.

<sup>24</sup> Malcolm, *Aspects*, 19-20.

discharged'.<sup>25</sup> One of the ways in which subjection as such may be dissolved is 'exile perpetual, ... forasmuch as being out of the protection of the sovereignty that expelled him, [the exile] hath no means of subsisting but from himself' (EL XXI, 14, 125). Interestingly, this brief definition of exile is paired with another instance of dissolved subjection: 'Likewise, a man is released of his subjection by conquest' (EL XXI, 14, 125). The situation of the exile and that of the conquered man are similar for Hobbes, but he says little here about the reasons for aligning them in this fashion. The issue arises again a few paragraphs later, though, in the following chapter's handling of 'dominion, or a body politic by acquisition' (EL XXII, 1, 126). Once again, exile is treated in conjunction with a handling of conquest. Hobbes here seeks to define the condition of the discharged servant, claiming specifically that 'servants ... are discharged of their servitude or subjection in the same manner that subjects are released of their allegiance in a commonwealth institutive' (EL XXII, 7, 128). Unsurprisingly, exile is the same kind of forced release from subjection in this context as in its earlier appearance: 'no more but manumission given to a servant, not in the way of benefit, but punishment' (EL XXII, 7, 128). But again, some of the conditions that Hobbes then chooses to align with exile are noteworthy. He claims that 'new captivity' is equally a necessary end of prior bonds, before going on to argue that a servant who 'is no longer trusted, but committed to his chains and custody, is thereby discharged of the obligation *in foro interno*, and therefore if he can get loose, may lawfully go his way' (EL XXII, 7, 128-9).

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<sup>25</sup> Hobbes, *Human Nature and De Corpore Politico*, ed. Gaskin, XXI, 14, 125. Hereafter EL; parenthetical references to chapter, paragraph and page number are included in the text.

In *The Elements of Law*, then, exile features as one of a number of related conditions in which the fundamental civil bond of subjection is cancelled: exiles are likened to those conquered by enemies and prisoners, all equally exposed and vulnerable to physical force, stripped of civil personality and the security it brings. In *De Cive*, a translation and development of part of *The Elements*, the mention of exile occurs again at the end of Hobbes's definition of the three kinds of commonwealth by institution and immediately prior to his account of 'dominion'. But now the implications of this account of discharged subjection are spelled out in greater detail, in tune with *De Cive*'s development of the important topic of liberty, and one significant modification is made.<sup>26</sup> Hobbes defines what happens when a commonwealth by institution is dissolved or conquered, and its civil bonds cancelled, before speaking of a different but relevant instance of such cancellation:

All the citizens together retreat from civil subjection into the liberty of all men to all things, i.e. into natural liberty, which is the liberty of the beasts. (For the state of nature has the same relation to the civil state, i.e. liberty has the same relation to subjection, as desire has to reason or a beast to a Man.) But in addition, individual citizens may rightly be released from subjection by the will of him who holds sovereign power; namely if they go to live abroad. This can happen in two ways: either by permission, as when one gets leave and voluntarily departs to live elsewhere, or by command, as an *Exile*.<sup>27</sup>

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<sup>26</sup> Skinner, *Hobbes and Republican Liberty*, 89-123.

<sup>27</sup> Hobbes, *On the Citizen*, ed. and trans. Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), VII, 18, 101. Hereafter DC; parenthetical references to chapter, paragraph and page number are included in the text.

So exile is associated here with those occasions on which natural liberty, the desiring, animal condition opposed to 'the civil state', reasserts itself. And while the name of exile applies only to those who have been banished, it is also related to the condition of someone who voluntarily seeks to live beyond the boundaries of the state in which s/he is a subject. In both cases this subjection comes undone, even if the mantle is immediately reassumed in the polity to which the exile goes.

In *Leviathan*, the picture is complicated a little further. Exile appears twice, first – tellingly – in chapter XXI, 'Of the Liberty of Subjects', and then in more detail during the discussion of punishment in chapter XXVIII. In the first case it once again features on a list of the ways in which subjection can be dissolved. Captivity in war, or conquest by an enemy, strip a person of their subjection, as does a sovereign's abdication. Hobbes then states that 'If the Sovereign Banish his Subject; during the Banishment, he is not Subject', here differentiating the exile from someone who 'is sent on a message, or hath leave to travel'.<sup>28</sup> These latter voyagers retain their subjection through a kind of exchange agreement between sovereigns; the former, entering 'another's dominion', is immediately liable to subjection to the place's master. Then, in his discussion of punishment, Hobbes spells out the thinking condensed in his basic definitions of exile in *The Elements, De Cive*, and earlier in *Leviathan*:

*Exile*, (Banishment) is when a man is for a crime, condemned to depart out of the dominion of the Common-wealth, or out of a certaine part thereof; and during a prefixed time, or for ever, not to return into it: and seemeth not in its

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<sup>28</sup> Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1991), 154. Hereafter L; chapter and page references are given parenthetically in the text.

own nature, without other circumstances, to be a Punishment; but rather an escape, or a publique commandement to avoid Punishment by flight. And *Cicero* sayes, there was never any such Punishment ordained in the City of *Rome*; but calls it a refuge of men in danger. For if a man banished, be neverthelesse permitted to enjoy his Goods, and the Revenue of his Lands, the meer change of ayre is no Punishment; nor does it tend to that benefit of the Common-wealth, for which all Punishments are ordained, (that is to say, to the forming of mens wils to the observation of the Law;) but many times to the dammage of the Common-wealth. For a Banished man, is a lawfull enemy of the Common-wealth that banished him; as being no more a member of the same. But if he be withal deprived of his Lands, or Goods, then the Punishment lyeth not in the Exile, but is to be reckoned amongst Punishments pecuniary. (L, XXVIII, 218)

Here, then, the implications of living beyond the dissolution of one's subjection are clarified. Hobbes aligns himself with one side of a long debate in asserting that exile itself is not a punishment, because punishment happens to those subject to the civil law, whereas exiles exist beyond that law. With *Cicero*, Hobbes avers that exile may also be an escape from punishment, or a refuge from danger.<sup>29</sup> Crucially, too, exile makes an enemy of someone who had been a subject, and is therefore contrary to the aim of punishment.

Given this, it is perhaps unsurprising that Hobbes then goes on to describe in detail the condition of enmity itself, in which violence may legitimately be done to someone without recourse to the processes of positive

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<sup>29</sup> See Agamben, *Homo Sacer*, 110.

law. Against its enemies, the state may act with apparently vindictive savagery, and in doing so acts entirely in accord with natural law. Such enemies include 'Subjects, who deliberately deny the Authority of the Commonwealth established', or rebels:

the nature of this offence, consisteth in the renouncing of subjection; which is a relapse into the condition of warre, commonly called Rebellion; and they that so offend, suffer not as Subjects, but as Enemies. For *Rebellion*, is but warre renewed. (L, XXVIII, 219)

As a result of the subject's or the sovereign's actions, then, an instance of the war of all against all appears as a localised enmity. The state may kill rebels or traitors without reference to law, as the enemy is legally visible only as someone beyond its pale; consequently, the apparently juridical status of the exile and the traitor, and the apparently juridical violence to which they are exposed, are in fact not properly juridical at all. As Hobbes says, 'Harme inflicted upon one that is a declared enemy, falls not under the name of Punishment':

If a subject shall by fact, or word, wittingly, and deliberately deny the authority of the Representative of the Commonwealth, (whatsoever penalty hath been formerly ordained for Treason,) he may lawfully be made to suffer whatsoever the Representative will: For in denying subjection, he denies such Punishment as by the Law hath been ordained; and therefore suffers as an enemy of the Commonwealth; that is, according to the will of the Representative. For the

Punishments set down in the Law, are to Subjects, not to Enemies; such as are they, that having been by their own act Subjects, deliberately revolting, deny the Sovereign Power. (L, XXVIII, 216)

This is a modification of the position that Hobbes sets out in different terms in chapter XIV of *De Cive*, where the crime of Lèse-Majesté is defined as a transgression of natural rather than civil law, but '*rebels, traitors* and others convicted of *treason*' are nonetheless said to be 'punished not by *civil right*, but by *natural right*, i.e. not as *bad citizens* but as *enemies of the commonwealth*, and not by the *right of government* or dominion, but by the *right of war*' (DC, XIV, 165-6). Here, punishment is still the appropriate name for this violence. And in chapter XXVII of *Leviathan*, the same crime is said in to be against fundamental law, itself earlier defined as a subdivision of civil rather than natural law; presumably then, on this basis, the violence inflicted would be a kind of punishment. (L, XXVI, 199-200, XXVII, 212). Later, in *A Dialogue between a Philosopher and a Student, of the Common Laws of England*, Hobbes argues forcefully against the opinion expressed by Edward Coke in his *Institutes* that the traitor and the enemy are fundamentally distinct. Coke deduced a fundamental difference in legal status for foreign and domestic enemies from the difference in treatment that would be meted out to them if they were captured together. Foreign enemies cannot be proceeded against as traitors; conversely, a domestic enemy in league with a foreign army would not be ransomed.<sup>30</sup> Hobbes, though, complaining that 'Sir *Edw. Coke* does seldom well distinguish when there are two divers Names for one

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<sup>30</sup> Edward Coke, *The Third Part of the Institutes of the Laws of England* (London, 1644), 11.



and the same thing', reiterates his account of treason as a form of enmity.<sup>31</sup>

He insists that a king may 'Lawfully ... kill a Man, by what Death soever without an Indictment, when it is manifestly proved he was his open Enemy'.<sup>32</sup>

The 'law' with which this course of action is compatible is therefore specifically not a civil law. As Hobbes argues:

For the Nature of Treason by Rebellion; is it not a return to Hostility? What else does Rebellion signifie? *William* the Conqueror Subdued this Kingdom; some he Killed; some upon promise of future obedience he took to Mercy, and they became his Subjects, and swore Allegiance to him; if therefore they renew the War against him, are they not again open Enemies; or if any of them lurking under his Laws, seek occasion thereby to kill him, secretly, and come to be known, may he not be proceeded against as an enemy, who though he had not Committed what he Design'd, yet had certainly a Hostile Design.<sup>33</sup>

The differences between these accounts of the precise juridical status of the traitor perhaps derive from the fact that treason is a specific kind of enmity, based on the renunciation of the basic political relation, the contract on which the state and its juridical capacity was founded. A subject cannot renounce subjection and remain liable to treatment according to judicial proceedings, but this path to enmity does make treason a distinctive hostility. The traitor is marked by the after-image of subjection, and thus hovers on the

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<sup>31</sup> Hobbes, *A Dialogue Between a Philosopher and a Student, of the Common Laws of England*, in Alan Cromartie and Quentin Skinner, eds, *Writings on Common Law and Hereditary Right* (Oxford: Clarendon Press, 2005), 73.

<sup>32</sup> Hobbes, *A Dialogue*, 72.

<sup>33</sup> Hobbes, *A Dialogue*, 73.

borders of the law as an ex-subject, his deprivation a chief element in his visibility. And the exile, as someone literally removed from the compass of the law, shares in this peculiar post-civil status. When Hobbes describes himself in his verse autobiography as appearing to be an adversary, 'adversis in partibus', to Charles II in 1651, he might be suggesting that he was merely perceived as an opponent in an informal sense. The more resonant words of his translator, which describe how he was perceived as 'no less / Than a Grand Enemy', are more accurately reflective of the categories of political status set out in his philosophy. The banishment he then suffers confirms, as much as it responds to, this apparent enmity: the exile and the traitor are both names for those who have outlived their subjection.

At the same time, it is worth pausing to note the nature of the example for which Hobbes reaches when looking to illustrate the basis for his understanding of treason in *A Dialogue*. The primal scene to which treason reverts here is not the state of nature as such, or a war of all against all; it is instead a scene of conquest. In fact, the Hobbesian account of exile and enmity often presupposes the balance – or rather, imbalance – of forces that such a scene implies. Within such circumstances, the enemy in question is defeated and captive; the outsider or exile is confronted not with a wilderness but a powerful potential sovereign. Persistently seeing these figures in this context not only shapes Hobbes's sense of their status; it also witnesses to the kinds of exigency that made their status more than a theoretical matter for him.

## 2. Obliging the Outsider

At the time of *Leviathan's* completion and publication, the kind of dubious or shadowy quasi-subject represented by the vulnerable exile or defeated enemy was a particularly urgent locus of political concern. As a number of historians of political thought and writing have argued in the last four decades, Hobbes's third version of his civil science can be read illuminatingly in the context of the commonwealth's demand that its citizens take an oath promising to obey England's republican regime.<sup>34</sup> That demand made a pressing issue of both the nature of political obligation and the ways in which a change of obligation might be justified, and it has been convincingly suggested that Hobbesian texts and arguments were influential in, and influenced by, the political controversy that followed. Hobbes's potentially dry discussion of the basis and limits of subjection becomes, in this context, of immediate relevance to those disputing whether or not the subjects of the executed king can rightly transfer their allegiance to the regime that has succeeded him. Not, of course, that all those ex-subjects are exiles, exactly, but insofar as their subjection is now in question they are in an analogous position: their sovereign has lost his power to protect them, and some have been vanquished in war. In which case, Hobbes famously says, they may be absolved of their allegiance, and therefore of the obligation to obey that

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<sup>34</sup> While much has been written in support of this claim, it has not gone unchallenged. For the flavour of all sides to the issue see John Wallace, *Destiny His Choice: The Loyalty of Andrew Marvell* (Cambridge: Cambridge University Press, 1968) Quentin Skinner, 'The Context of Hobbes's Theory of Political Obligation', and 'Conquest and Consent: Hobbes and the Engagement Controversy', in *Visions of Politics*, 3, 264-86 and 287-307; Glenn Burgess, 'Usurpation, Obligation and Obedience in the Thought of the Engagement Controversy', *Historical Journal*, 29 (1986), 515-36; Burgess, 'Contexts for the Writing and Publication of Hobbes's *Leviathan*', *History of Political Thought*, 11 (1990), 675-702; A. P. Martinich, *Hobbes: A Biography*, 216-53; Conal Condren, *Argument and Authority in Early Modern England: The Presupposition of Oaths and Offices* (Cambridge: Cambridge University Press, 2006), 290-314; and Jeffrey Collins, *The Allegiance of Thomas Hobbes* (Oxford: Oxford University Press, 2005), 1-10, 115-59.

constitutes it, because ‘the Obligation of Subjects to the Sovereign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them’ (L, XXI, 153). Sovereignty is intended to be immortal, but for Hobbes it is always a matter of capacity or power as well as title, in which case, ‘in its own nature [it is] not only subject to violent death, by foreign war; but also through the ignorance, and passions of men, it hath in it, from the very institution, many seeds of a naturall mortality, by Intestine Discord’ (L, XXI, 153). So if sovereignty is mortal, and dies with its power to protect those who established it, then subjection too dissolves at the point when subjects find themselves without recourse to the protective power of their state.

The question animating the Engagement debate then arises: what ought those who have lost their sovereign to do? In his accounts of dominion and a commonwealth by acquisition Hobbes offers a picture that is particularly pertinent to the early 1650s; indeed, its pertinence is highlighted in the ‘Review and Conclusion’ appended to *Leviathan*, and this applicability seems particularly to have riled his royalist enemies: Clarendon described it as ‘a sly address to *Cromwell*’, and suggested that Hobbes was thereby seeking to ‘secure the People of the Kingdom ... to acquiesce and submit to his Brutal Power’.<sup>35</sup> The essentials of Hobbes’s view, though, are there in the *Elements of Law* – indeed, it was this text that Marchamont Nedham directly cited in *Mercurius Politicus* and in the second edition of his *Case of the Commonwealth of England, Stated*, to reinforce his arguments in favour of

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<sup>35</sup> Clarendon, *Brief View*, 317.

obedience to the republic.<sup>36</sup> In chapter XXII, Hobbes argues that ‘a servant taken in the wars’ and kept in chains owes nothing to his new master: he is a slave, owned by ‘right of conquest’, but in no way obliged to obey his conqueror (EL, XXII, 3, 127; 9, 129). However, servants who are permitted to move around are tied to their new masters by ‘no other bond but a supposed covenant’ (EL, XXII, 3, 127). They are therefore parties to an engagement of sorts, and while they continue to be their master’s property, they are nevertheless more than slaves.

This distinction between those servants who are merely physically bound and those who are subjects through a covenant of sorts carries through to *De Cive*. Hobbes expands on its implications in a parallel chapter of his Latin treatise where the process of constituting a commonwealth by acquisition is properly delineated. A person enters into this version of the political relation ‘if, on being captured or defeated in war or losing hope in one’s own strength, one makes (to avoid death) a promise to the victor or the stronger party, to *serve* him, i.e. to do all that he shall command’ (DC, VIII, 1, 102-3). But some of the defeated fare differently. Not all captives are trusted to be set free from their bonds and make a promise, and if not they do not become obliged to obey their master: ‘for an obligation arises from an agreement, and there is no agreement without trust’ (DC, VIII, 3, 103). In *Leviathan*, this point is even more sharply stressed. Now, the emphasis is less on trust and much more firmly on the covenant. Hobbes distinguishes between the vanquished and the conquered: the former are merely defeated in war, and therefore in another’s power, whereas the latter are those among

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<sup>36</sup> Marchamont Nedham, *The Case of the Commonwealth of England, Stated*, ed. Philip Knachel (Charlottesville: University Press of Virginia, 1969); Quentin Skinner, *Visions of Politics*, 3, 279-81.

the defeated who have consented to obey their vanquisher in return for life and protection:

It is not therefore the Victory, that giveth the right of Dominion over the Vanquished, but his own Covenant. Nor is he obliged because he is conquered; that is to say, beaten, and taken, or put to flight; but because he commeth in, and Submitteth to the Victor. (L, XX, 141)

Here, emphatically, Hobbes argues that the consent of an agreement or covenant underpins subjection.

In all these accounts of the commonwealth by acquisition, then, Hobbes places an emphasis on a fundamental political relation – juridical, in Foucault's extended sense – that is an alternative to the sheer power that a victor possesses over those he has beaten. This is not, of course, the social contract of the commonwealth by institution, because it is a covenant between the sovereign and his subjects; nonetheless, it is enough to establish the conquered as subjects, with a subject's liability to all the obligations and sanctions that come with participation in the polity. In setting consent at the heart of the process he is also bringing his account of dominion into line with contract theory. This emphasis on the covenant within dominion is also relevant to the Engagement debate, where what was being demanded was precisely an explicit promise of obedience to a new sovereign power. Interestingly, though, Hobbes's account of how consent is given is developed in the 'Review and Conclusion' in a direction that clearly undermines the significance of a specific verbal promise or act of agreement. There he argues

that consent can be tacit, and might therefore be signalled merely by living openly under the protection of a power (L, 'Review and Conclusion', 485).

In fact, the centrality of consent to the process of becoming a subject is compromised more profoundly. From the evidence adduced above, those who live on beyond the dissolution of their polity, or beyond the meaningful continuance of their own bonds to a sovereign, are thereby absolved of their status as subjects. Seemingly, therefore, they are completely without any of the marks of civil subjection until such time as they contract, tacitly or expressly, with the dominating power. They are returned to the state of nature, and are presumably open to the obligations of the laws of nature that Hobbes sets out in describing the transition to the commonwealth by institution, obligations that are themselves other than the duties or responsibilities of a subject and are binding only *in foro interno*, 'to a desire they should take place' (L, XV, 110). But this sense of the circumstances faced by the vanquished, or those deprived of their sovereign in war, neglects their specificity. This is not a general return to the state of nature: it is, of course, the experience of a vulnerability to an existing power, and any account of the duties incumbent on the vulnerable here should take its bearings from Hobbes's views on the nature of dominion.<sup>37</sup> The consent of agreement or covenant, as we have seen, would seem to be vital, and Hobbes's distinction in *Leviathan* between the vanquished and the conquered would make no sense if it were not; but as Kinch Hoekstra has demonstrated, Hobbes also appears to override this requirement elsewhere in his account of dominion, leading his contemporaries to argue that he derived an obligation for people to

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<sup>37</sup> See Kinch Hoekstra, 'The *de facto* Turn in Hobbes's Political Philosophy', in Tom Sorell and Luc Foisneau, eds, *Leviathan After 350 Years* (Oxford: Oxford University Press, 2004), 33-73, esp. 46.

obey a power, to become its subjects, merely because they cringed before its might. Hoekstra suggests that, 'in passage after passage' from *The Elements of Law, De Cive* and *Leviathan*, 'Hobbes subscribes to some version of the thesis that sufficient power by itself confers the right to rule'.<sup>38</sup> The implication of this, given Hobbes's consistent claim that the rights of the sovereign and the duties of subjects are reciprocal, is that a power can make its objects subjects against their will, or rather, without their consent. This would suggest that the distinction between the vanquished and the conquered, slaves and servants, those held in chains and those trusted, is in danger of collapsing. Certainly, when Hobbes says in *The Elements* and *De Cive* that a master has 'right' and 'dominion' over both his prisoners and his servants we might wonder what these terms mean, since they apply to possession regardless of the existence of any covenant (EL, XXII, 4, 127; DC, VIII, 5, 104). This might be thought to make Hobbes at this point a remorselessly *de facto* thinker, grounding right in power, and completely contradicting his emphasis on the fundamental constitutive role of agreement or covenant.

According to Hoekstra, resolving this problem requires attention to two features of Hobbes's thinking. Firstly, there is a crucial distinction between the way in which 'right' applies in the absence of a commonwealth and its functioning within one. Only in the latter case does right entail obligation; in the former, everyone has a right over everyone else, and if one person is able to get another into his power he has merely managed to actualise a right that already existed.<sup>39</sup> The victor's right over the vanquished, therefore, is only the making concrete of an entitlement that everyone in a condition of hostility has

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<sup>38</sup> Hoekstra, 'The *de facto* Turn', 62.

<sup>39</sup> Hoekstra, 'The *de facto* Turn', 64-5.



over potential opponents. The slave thus kept in chains is an unwilling party to this actualisation, and in no sense the subject of a corresponding obligation to obey his 'rightful' master. Yet Hobbes does also seem to suggest that rights entailing obligations can arise from power, and not only where the power in question is divine. This is more than a right of nature, since it involves an obligation to obey on the part of the powerless. How, then, is this reconciled with the requirement for consent?

Hoekstra's answer sees Hobbes building on the notion of a consent given tacitly, a conception that already ensures that 'consent is sometimes stretched vanishingly thin'. Beyond this, Hoekstra argues, we find an argument that 'the covenant of obedience ... can instead be *attributed* when a given will or intention can be understood or assumed'.<sup>40</sup> Assuming that humans will do what is in their own best interests, they can be further assumed to consent to obey an overwhelming power rather than risk their lives in contesting it. The laws of nature would suggest that they ought to consent to do so; according to Hoekstra, Hobbes ends up arguing that 'one *has* consented when one *ought* to have consented', and thus a normative requirement becomes an assumed social fact.<sup>41</sup> Such an intervention into the debate around the Engagement oath would not necessarily persuade anyone of an obligation to take it; rather, it would circumvent debate in pointing out the superfluity of any such explicit consent-giving. And such a doctrine would also emphasise the nature and extent of the exile's quasi-subjecthood: to be free of one power, and to encounter another, would not leave exiles suspended in a state of natural right before their consent is signalled in words or deeds.

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<sup>40</sup> Hoekstra, 'The *de facto* Turn', 67.

<sup>41</sup> Hoekstra, 'The *de facto* Turn', 69.

Instead, their subjection – their constitution as participants in a juridical network of reciprocal obligations and entitlements - would always be immanent in any situation in which they confronted a power capable of killing them that nonetheless offers them an alternative. The limit cases of the exile and the conquered make it abundantly clear that the subjection that appeared to depend on the exercised will of a rational agent, consciously choosing to step into the civility announced by agreement or contract, arises more basically from the physical vulnerability of the living – mortal – human. If the ex-subject appears primarily as the absence of civil status, then the subject is itself stalked by the bare humanity that generates civil status.

So it is perhaps not surprising to find Hoekstra setting out the ultimate implication of Hobbes's line of argument in the claim that 'all of the living have consented to the power over them, if there is one'.<sup>42</sup> The individual without proximity to a superior power is not, though, the exception to this rule that Hoekstra has in mind: 'the only people free of obligation to the present power are the dead (and slaves in shackles)'.<sup>43</sup> These parenthetical latter have not consented, and cannot be assumed to have consented, because they have not been offered life and protection by the victorious foe. No possible agreement has been put to them. They are instead frozen or suspended in the exilic vulnerability on which the possibility of politics depends, but out of which it spins the fabric of civility. Confined captives are to be grouped with the dead, free of obligation only and exactly to the extent that their natural powers are blocked, condemned to live a life-beyond-life as those who are always about to die. Exiles are haunted both by their lost subjection and, as Arendt

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<sup>42</sup> Hoekstra, 'The *de facto* Turn', 68.

<sup>43</sup> Hoekstra, 'The *de facto* Turn', 68.

remarked, by the possibility – however momentary – that they will not find a new commonwealth in which they can become subjects once again.

### 3. The Liberty of the Exile

The language of obligation, though, is not the only lens through which Hobbes perceives the predicament of the exile, and it is not the only way in which this figure presents a potentially difficult image of political and natural life. Elsewhere in his work, instead of speaking of an obligation to obey – assumed or otherwise, normative or contractual – Hobbes describes the situation of the vulnerable in the following terms:

If a Subject be taken prisoner in war; or his person, or his means of life be within the Guards of the enemy, and hath his life and corporall Libertie given him, on condition to be Subject to the Victor, he hath Libertie to accept the condition; and having accepted it, is the subject of him that took him. (L, XXI, 154)

In the 'Review and Conclusion', as part of his effort to clarify 'in what point of time it is, that a Subject becomes obliged to the Conqueror', he refers back to this element in his argument and resorts to the same terms:

Therefore for farther satisfaction of men therein, I say, the point of time, wherein a man becomes subject to the Conqueror, is that point, wherein having liberty to submit to him, he consenteth, either by expresse words, or by

other sufficient sign, to be his Subject. When it is that a man hath the liberty to submit, I have shewed before in the end of the 21. Chapter. (L, 'Review and Conclusion', 484)

For the Hobbes of *Leviathan*, then, the ex-subject is at *liberty* to consent to the rule of the power confronting him, and this emphasis makes a vigorously renewed appearance in later, more autobiographical writings. Responding to John Wallis in a 'letter' published in 1662, Hobbes sought to refute accusations that he betrayed his king in returning from France to England and submitting to the post-regicide regime.<sup>44</sup> His defence invoked the account of political obligation and its limits that he had crafted in his treatises, with a particular focus on *Leviathan* since that was the text his critics suggested had been written primarily to justify his coat-turning. Hobbes counter-attacks by arguing that his political theory actually condemns those such as Wallis who had abandoned their obligation to obey Charles I, even when the king still had the capacity to protect them. Speaking of his own situation, he repeatedly insists that he was free of any obligation to the Stuarts when he returned to England. He suggests, tellingly, that having 'gone over' into French exile, he had then 'been driven back again'.<sup>45</sup> He also implicitly aligns his own case with that of the king's loyal servants who, 'having done their utmost endeavour to defend His Majesties Right and Person against the Rebels', were subsequently 'forced to compound with your Masters, and to promise Obedience for the saving of their Lives and Fortunes'.<sup>46</sup> The nature of

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<sup>44</sup> Thomas Hobbes, *Mr Hobbes Considered in his Loyalty, Religion, Reputation, and Manners, by Way of Letter to Dr Wallis* (London, 1662).

<sup>45</sup> *Mr Hobbes Considered*, 12.

<sup>46</sup> *Mr Hobbes Considered*, 19-20.

the force here is unclear; Hobbes, though, follows this with a categorical statement in their (and his) defence:

They that had done their utmost endeavour to perform their obligation to the King, had done all that they could be obliged unto; and were consequently at liberty to seek the safety of their Lives and Livelihood wheresoever, and without Treachery.<sup>47</sup>

Citing his own words from the 'Review and Conclusion' to *Leviathan*, Hobbes repeatedly insists on this 'liberty' – seven times in five pages.<sup>48</sup>

What, then, is this liberty of the ex-subject or exile? Liberty, as a significant body of recent research has shown, is an important and heavily freighted term for Hobbes, yet views on its meaning and place in his thinking remain various.<sup>49</sup> For Philip Pettit, the Hobbesian vision of liberty is bipartite, divided between 'non-obligation' on the one hand, and 'non-obstruction' on the other. Liberty in the former sense characterises the condition of those who are not bound by agreements to perform or refrain from certain actions, and Pettit suggests, following Annabel Brett, that here Hobbes's usage converges on the late-Scholastic and post-Scholastic definition of 'natural liberty'.<sup>50</sup>

Natural liberty, in this account, is the freedom we possess when we are not yet bound by the kind of covenant that establishes society: in the state of

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<sup>47</sup> *Mr Hobbes Considered*, 20.

<sup>48</sup> *Mr Hobbes Considered*, 20-24.

<sup>49</sup> Quentin Skinner, 'Hobbes on the Proper Signification of Liberty', in *Visions of Politics*, 3, 209-37; Skinner, *Hobbes and Republican Liberty*; M. M. Goldsmith, 'Hobbes on Liberty', *Hobbes Studies*, 2 (1989), 23-39; Annabel Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought* (Cambridge: Cambridge University Press, 1997); David van Mill, *Liberty, Rationality and Agency in Hobbes's Leviathan* (Albany: State University of New York Press, 2001); Philip Pettit, 'Liberty and Leviathan', *Politics, Philosophy and Economics*, 4 (2005), 131-51.

<sup>50</sup> Pettit, 'Liberty and Leviathan', 137.

nature, therefore, we are not yet obliged to anyone, and fully in possession of our liberty. Pettit claims that this kind of liberty is described by Hobbes in *Leviathan* as natural right. It therefore denotes both a fundamental entitlement and, negatively, an absence of obligations as social facts, rather than as normative, *in foro interno* requirements.<sup>51</sup> Liberty as non-obstruction, by contrast, is a freedom from external impediments to the full exercise of our corporeal will and capacities. Whether or not we possess this kind of liberty is apparently a matter of natural or physical fact: a river constrained by banks or channels is denied the liberty to go where its powers would take it, and the liberty possessed by humans is fundamentally of the same kind (L, XXI, 145-6). For the Hobbes of *Leviathan* this kind of liberty is identified as ‘Liberty in the proper sense’, or ‘the proper signification of the word’ (L, XXI, 147; XIV, 91).

In his account of the development of Hobbes’s thinking on freedom, Quentin Skinner has disputed the claim that natural liberty for Hobbes is fundamentally a concept of non-obligation.<sup>52</sup> He suggests instead that Hobbes’s view of natural right, and indeed of liberty more generally, is multi-faceted, encompassing the juridical language of entitlements, the negative theory of freedom from obligations, and a sensitivity to the extent of and impediments to an agent’s powers to act. The primary significance of Hobbes’s accounts of liberty lies in their attempts to resignify the term in the face of his opponents’ political rhetoric. Such attempts reach a climax in chapter XXI of *Leviathan*, where Hobbes takes it upon himself to recast the potent republican or neo-Roman notion of the ‘free-man’ in his own terms. In

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<sup>51</sup> Pettit, ‘Liberty and Leviathan’, 137, 141.

<sup>52</sup> Skinner, *Hobbes and Republican Liberty*, 35.

asserting that the subjects of the Leviathan are as free as the citizens of a republic, Hobbes draws on all aspects of his definition of liberty to make his case. He insists that 'A FREE-MAN, is he, that in those things, which by his strength and wit he is able to do, is not hindred to doe what he has a will to' (L, XXI, 146). In demonstrating that this is true of the Hobbesian subject and the republican citizen alike, he invokes his account of liberty in its 'proper sense', as 'corporall Liberty; that is to say, freedome from chains, and prison' as well as the suggestion that the subject has authorised the laws to which he is subject, and is therefore to an important degree his own governor (L, XXI, 147-8). He also defines the liberties of the subject in what Skinner calls the 'purely juridical terms' of inalienable rights and limits to obligation: since people contracted with each other or the commonwealth in order to protect themselves, and they are obliged to it only for as long as it can fulfil this end, they remain in full possession of their natural rights or 'true Liberty' to refuse a command wherever obedience would contradict it (L, XXI, 150).<sup>53</sup>

The disagreement between Skinner's and Pettit's views on liberty in Hobbes is perhaps best explained as that between a primarily expository and a primarily analytical account. Seeking to separate out the main strands making up Hobbes's usage of the term, however, Pettit draws on an analytical distinction of Skinner's own making: 'obstruction represents loss of liberty in "the sphere of nature"; obligation the loss of liberty in "the sphere of artifice"'.<sup>54</sup> The sphere of nature would appear from this to be the physical realm of bodies in motion, while that of artifice would seem to be the world of rights, agreements and obligations. If this is the case, though, the liberty of the

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<sup>53</sup> Skinner, *Hobbes and Republican Liberty*, 166.

<sup>54</sup> Pettit, 'Liberty and Leviathan', 140-1, drawing on Skinner, *Visions of Politics*, 3, 225. Skinner returns to the distinction in *Hobbes and Republican Liberty*, 162-3, 170-1.

subject in the sphere of artifice is primarily a matter of natural fact, what Hobbes actually calls in *Leviathan* 'natural liberty' (L, XXI, 147), while freedom in the sphere of nature is principally a juridical status, precisely the plenitudinous possession of a 'natural right' that survives residually for every subject after covenants have been made. It is worth noting, in this connection, that the chapter that aims to set out the Hobbesian account of the liberty of the subject is also that in which the fullest account of 'corporall' or physical liberty is to be found. The theory of human liberty in Hobbes would on this evidence appear to be somewhat convoluted: not confused, in the sense of logically discontinuous or incoherent, but precisely – as Arendt claimed of the modern conception of human and civil rights – perplexed.

The liberty of the exile or ex-subject of which Hobbes so insistently speaks is itself an instance of this, and it restates the interpenetrations of physical and juridical, natural and civil (these only insecure oppositions, as should be evident by now, are not synonymous) that have been noted in earlier sections of this essay. The passage from chapter XXI of *Leviathan* cited above mobilises the distinction between liberty as non-obligation and as non-obstruction to make its point: if life and 'corporall Libertie' are given to an ex-subject by a power with which he is confronted in return for his subjection to this power, then 'he hath Libertie to accept the condition' (L, XXI, 154). This can best make sense if the latter kind of liberty is not here synonymous with the former, if indeed it is precisely the freedom of those who have been released from their prior obligations to take up new ones and become, in so doing, someone else's subject. By the same token, only if this kind of liberty is at least partly a freedom from obligation can its invocation by Hobbes in his



own defence actually serve to refute his accusers. All people free to move around and act according to their wills retain the physical liberty to break the law, as Hobbes suggests (L, XXI, 146), and both Skinner and Pettit have pointed out;<sup>55</sup> yet when he insists against Wallis that he and other Royalists were at liberty to submit to their conquerors, he must be making a juridical claim. Anything else would not cut the exculpatory mustard. Stripped of the status of subject, the natural human revealed is only more insistently the focus for a language of liberty-as-right. Yet this liberty is also a mark of their vulnerability, the risk that their freedom to exercise their powers will be abruptly curtailed by confinement or death.

Equally significant, however, is the way in which this liberty is generated through the projection of subjects into a post-civil state. These humans are therefore testament to a temporality of subjection, a difference between before and after, that is itself a transition across the conceptual boundaries between natural and civil, physical and juridical; their identities bear the marks of these differences and of this temporality, allowing Hobbes's readers to see this as a narrative of political metamorphosis in which conceptual oppositions and relations can be explored. And insofar as these oppositions are convoluted, then those identified by them appear to perplex the philosophical project of which they are a part. In this way exiles, like other ex-subjects, are a defining case for the intelligibility and applicability of political and juridical categories, and their value as such a case depends on their being deprived of the less obviously fraught or ambiguous political identity conferred by membership of the commonwealth. Exposed in this way,

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<sup>55</sup> Skinner, *Hobbes and Republican Liberty*, 158-60, 170-73; Pettit, 'Liberty and Leviathan', 144-5.

humanly at risk, the stakes of the commonwealth appear in the starkest possible form. From this perspective the Hobbesian exile animates, however fleetingly, a problem of political definition that can certainly claim affinity with modern and contemporary worries about the relationship between the citizen and the outsider.