

## **Hobbes and the Indirect Workings of Political Consent**

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### **Abstract**

This paper brings to light an unexplored aspect of Hobbes's argument that political authority rests upon subjects' consent. Consent enacts a transfer of subjects' right of nature to the sovereign, yet she already possesses a natural right to everything. What moral difference, then, does this make to her possession of power, and how? In my reading, the difference lies in the rise of new obligations befalling the sovereign by means of an indirect mechanism: That many individuals, hoping for safety, transfer their right of nature to the sovereign, triggers an obligation for her to accept the role of a ruler and perform the duties attached to it, for the sake of the peace enjoined by the laws of nature. This reading should also confirm the possibility of a consensual foundation for the Hobbesian right to punish and shed new light on Hobbes's notion of tacit consent.

### **Keywords**

Consent, political authority, right transfer, natural law, punishment

### **1 Introduction**

This paper brings to light an underestimated dimension of Hobbes's argument that political authority rests upon subjects' consent.<sup>1</sup> According to Hobbes, subjects'

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<sup>1</sup> On Hobbesian consent, see especially Deborah Baumgold, *Hobbes's Political Theory* (Cambridge: Cambridge University Press, 1998), 93–100; Robin Douglass, "Hobbes and Political Realism," *European*

consent enacts a transfer of their right of nature to the sovereign. Yet the sovereign already possesses a natural right to everything, as does anyone in the state of nature. This raises a puzzling question: What moral difference, then, does this right transfer make to the sovereign's possession of power, and how? In my reading, the main moral consequence of the right transfer consists in the rise of new obligations befalling the person(s) designated as sovereign, by means of an indirect mechanism. That is, the fact that many individuals transfer their right of nature to the sovereign, hoping for her to provide safety, triggers the corresponding natural obligations for the sovereign to accept the role of a ruler and perform all of the duties attached to said role, for the sake of the peace enjoined by the laws of nature. I argue that this mechanism is crucial to understanding how consent can generate the status of the sovereign as well as the specific duties tied to the office, even though the sovereign does not enter into any covenant with the subjects and has already owned an unlimited right of nature prior to the right transfer.

If this mechanism has not received much attention from Hobbesian scholars so far, it is probably for two main reasons. First, Hobbesian consent performs a twofold function. As a promise of obedience to the sovereign, it accounts for the subject's

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*Journal of Political Theory* 19 (2020), 259–64; Evan Fox-Decent, "Hobbes' Relational Theory: Beneath Power and Consent," in *Hobbes and the Law*, ed. David Dyzenhaus and Thomas Poole (Cambridge: Cambridge University Press, 2012); Kinch Hoekstra, "The De Facto Turn in Hobbes's Political Philosophy," in *Leviathan after 350 Years*, ed. Tom Sorell and Luc Foisneau (Oxford: Clarendon, 2004); Rex Martin, "Hobbes and the Doctrine of Natural Rights: The Place of Consent in His Political Philosophy," *The Western Political Quarterly* 33 (1980); Mark Murphy, "Hobbes on Tacit Covenants", *Hobbes Studies* 7 (1994); Gordon Schochet, "Intending (Political) Obligation: Hobbes and the Voluntary Basis of Society," in *Thomas Hobbes and Political Theory*, ed. Mary G. Dietz (Lawrence, KS: University Press of Kansas, 1990); Alan Zaitchik, "Hobbes and Hypothetical Consent," *Political Studies* 23 (1975).

obligation to abide by the sovereign's orders, in virtue of the natural law of justice that commands promissory fidelity. This obligating function has been widely discussed in the literature, notably with regards to the Fool's challenge.<sup>2</sup> This tends to overshadow the complementary function performed by the right transfer, which the present paper aims to redress by highlighting its moral effects on the sovereign's moral status and obligations.<sup>3</sup>

Second, the workings of the right transfer may also have been eclipsed by the abundance of contributions on Hobbes's innovative conception of authorisation in *Leviathan*.<sup>4</sup> As emphasised by various commentators, authorisation does not have major consequences on which actions the sovereign has the right to perform or not, but it does change the moral status of these actions as it enables her to act on her subjects' behalf, with 'authority'. Nevertheless, we are still missing an explanation of how the right

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<sup>2</sup> See e.g. Luc Foisneau, "Leviathan's Theory of Justice," in *Leviathan after 350 Years*, ed. Luc Foisneau and Tom Sorell (Oxford: Oxford University Press, 2004); Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), 134–50; Gregory Kavka, *Hobbesian Moral and Political Theory* (Princeton: Princeton University Press, 1986), 137–47; Gabriella Slomp, *Thomas Hobbes and the Political Philosophy of Glory* (London: MacMillan, 2000), 121–39.

<sup>3</sup> On the distinction between the right transfer and the promissory obligation generated by consent, see Arash Abizadeh, *Hobbes and the Two Faces of Ethics* (Cambridge: Cambridge University Press, 2018, 193–4; 218).

<sup>4</sup> See e.g. Abizadeh, *Two Faces of Ethics*, 245–63; Robin Douglass, "Authorisation and Representation before Leviathan," *Hobbes Studies* 31 (2018); David Gauthier, *The Logic of Leviathan. The Moral and Political Theory of Thomas Hobbes* (Oxford: Oxford University Press, 1969), 120–45; Johan Olsthoorn, "Leviathan Inc.: Hobbes on the nature and person of the state," *History of European Ideas* 47 (2021); Hanna Pitkin, *The Concept of Representation* (Berkeley, Los Angeles: University of California Press, 1967), 14–37; Quentin Skinner, *From Humanism to Hobbes* (Cambridge: Cambridge University Press, 2018), 190–221.

transfer, conceived by Hobbes as subjects' renouncement of their right of nature in the sovereign's favour, can effect this authorisation process in the first place.

To begin, I briefly introduce Hobbes's passages on consent and political authority before presenting his account of consent as a right transfer and the questions it raises in the political realm. Next, I examine his passages on the sovereign's duties to emphasize the moral effects of the right transfer and the indirect mechanism by which the right transfer operates. On this basis, I compare my reading to the debates related to the Hobbesian right to punish to bring out its consensual foundation.<sup>5</sup> Finally, I provide a response to some of the objections against Hobbes's much-disputed account of tacit consent<sup>6</sup> by demonstrating how the right transfer can trigger effects without consent being expressly communicated.

## 2 Hobbes on political consent: the argument

This section and the following one have the purpose of introducing Hobbes's main assertions on consent and his conception of the right transfer. Later, my analysis will draw heavily upon these elements, but readers familiar with these passages may

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<sup>5</sup> On this controversy, see e.g. Michael J. Green, "Authorization and the Right to Punish in Hobbes," *Pacific Philosophical Quarterly* 97 (2016); Dietrich Hüning, "Hobbes on the Right to Punish," in *The Cambridge Companion to Hobbes's Leviathan*, ed. Patricia Springborg (Cambridge: Cambridge University Press, 2007); Alice Ristroph, "Respect and Resistance in Punishment Theory," *California Law Review* 97 (2009); Susanne Sreedhar, *Hobbes on Resistance: Defying the Leviathan* (Cambridge: Cambridge University Press, 2010), 98–9; Arthur Yates, "The Right to Punish in Thomas Hobbes's *Leviathan*," *Journal of the History of Philosophy* 52 (2014).

<sup>6</sup> See Fox-Decent, "Hobbes' Relational Theory"; Sharon Lloyd, "Hobbes's Self-effacing Natural Law Theory," *Pacific Philosophical Quarterly* 82 (2001): 288–9; Martin, "Hobbes and the Doctrine of Natural Rights"; Murphy, "Hobbes on Tacit Covenants"; Zaitchik, "Hobbes and Hypothetical Consent".

directly turn to the core arguments of the paper in the subsequent sections should they wish to do so.

Hobbes often declares consent to be the source of a sovereign's authority, as in this quote from *Leviathan*:

For it is evident, and has already been sufficiently in this Treatise demonstrated, that the Right of all Sovereigns, is derived originally from the consent of every one of those that are to be governed; whether they that choose him, doe it for their common defence against an Enemy, as when they agree amongst themselves to appoint a Man or an Assembly of men to protect them; or whether they doe it, to save their lives, by submission to a conquering Enemy.<sup>7</sup>

This points to two modalities of consent, taken by Hobbes to be normatively equivalent.<sup>8</sup> The sovereign's authority may result either from institution, via a covenant among a multitude of individuals, or by acquisition, when a conqueror obtains each individual's voluntary subjection separately, by "force."<sup>9</sup> Note that the sovereign can be either an individual, as in a monarchy, or a selective assembly in an aristocracy, or an assembly of all subjects in a democracy.<sup>10</sup> In the case of conquest, the covenant is only

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<sup>7</sup> Thomas Hobbes, *Leviathan*, ed. Noel Malcolm (Oxford: Clarendon Press, 2012), chapter 42, p. 910 [p. 314 of the 1651 edition] (thereafter: Hobbes, *Leviathan* 42, p. 910 [314]). See also Hobbes, *Leviathan* 18, p. 264 [88].

<sup>8</sup> Hobbes, *Leviathan* 20, p. 306 [101].

<sup>9</sup> Hobbes, *Leviathan* 20, p. 306 [101].

<sup>10</sup> Thomas Hobbes, *The Elements of Law: Natural and Politic*, ed. Ferdinand Tönnies (London: F. Cass, 1984), Book 2, Ch. 1, p. 107–19 (thereafter: Hobbes, *Elements of Law* 2,1 (followed by section number if applicable), p. 107–19); Thomas Hobbes, *De Cive [On the Citizen]*, ed. Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), Ch. 8, p. 102–6; (thereafter: Hobbes, *De Cive*, 8 (followed by section number if applicable), p. 102–6); *Leviathan* 19, p. 284–305 [94–101].

between the sovereign and each of his subjects, separately. Each subject makes his promise of obedience directly to the sovereign “for fear or death, or bonds,” without covenanting with other subjects, and in return for his life.<sup>11</sup> In the case of sovereignty by institution, there first takes place a covenant among the future subjects, who promise one another to abstain from resisting the sovereign’s commands. Second, as stipulated in said agreement, future subjects lay down their “right of nature“ (“the liberty each man hath, to use his own power, as he will himself, for the preservation of his own Nature [i.e., his own life]”<sup>12</sup>) and transfer it to the sovereign. In *Leviathan*, subjects are also said to ‘authorise’ the sovereign’s actions, that is, to give her ‘authority,’ the right to act on their behalf (more on this below).<sup>13</sup> Crucially, in all versions, no right is given in return by the sovereign to her subjects. This is no coincidence, as Hobbes deems the idea of a covenant between a sovereign and a people to be dangerous. In the absence of a “Judge” to settle disagreements between both parties, things would return “to the Sword,” against the very purpose of the institution of a state.<sup>14</sup>

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<sup>11</sup> Hobbes, *Leviathan* 20, p. 306 [101]. It is one of Hobbes’s classic controversial claims that fear for one’s life is perfectly compatible with free consent. All governments would actually be rooted in fear; thus, whether we fear our fellows or the conqueror would make no moral difference (*Leviathan, Review*, p. 1133–4 [390] and 20, p. 306 [101]).

<sup>12</sup> Hobbes, *Leviathan* 14, p. 198 [64]; see also Hobbes, *Elements of Law*, 1,14,6, p. 71 and Hobbes, *De Cive* 1,10, p. 28.

<sup>13</sup> Hobbes, *Leviathan* 16, p. 244 [81]. By contrast, in Hobbes’s previous works, a sovereign is said to possess “sovereign power” in the *Elements* (1,19,10, p. 104) and *summa potestas* in *De Cive* (5,11, p. 73–4).

<sup>14</sup> Hobbes, *Leviathan* 18, p. 266 [89].

### 3 Political consent as a right transfer

With this overview of Hobbes's argument in mind, we can proceed to a more precise presentation of his conception of what a 'right transfer' consists of (in *De Cive* and the Latin *Leviathan*, usually '*translatio iuris*'). Across his works, his technical accounts of the workings of a right transfer remain fairly similar. However, as we will shortly see, there are important variations in his use of the notion in his arguments on political authority.

Consent is conceived as a promise creating an obligation and enabling a right transfer. A promise is defined as the expression of an intent to take a future action and can be made in the form of a free gift, a contract or a covenant (pact).<sup>15</sup> A free gift, or grace (*donatio* or *gratia* in the Latin *Leviathan*), is a unilateral right transfer with no due counterpart. A contract is a "mutual transferring of Right"<sup>16</sup> and notably occurs in commercial transactions, where the right to a thing is transferred at the same time as the thing is delivered. A covenant (pact) results from a mutual transfer of rights as well, but the parties do their share after the agreement is made, and the second party performs after the first party. For this reason, covenants require trust between the parties (which, according to Hobbes, is impossible without a common authority above them to enforce the covenant).

All of these forms of commitment result from an individual's will to "lay down" a right (*deponere* in the Latin *Leviathan*).<sup>17</sup> Laying down a right means giving up the "Liberty" to prevent someone else from using his right to the same thing.<sup>18</sup> There are, in

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<sup>15</sup> Hobbes, *Elements of Law* 1,13,6, p. 67; Hobbes, *Leviathan* 14, p. 204 [66].

<sup>16</sup> Hobbes, *Leviathan* 14, p. 204 [66].

<sup>17</sup> Hobbes, *Leviathan* 14, p. 200 [65].

<sup>18</sup> Hobbes, *Leviathan* 14, p. 200 [65].

fact, two ways to do so. “Renouncing” a right means laying it down without intending someone in particular to benefit from it, or in other words, simply ‘abandoning’ the right.<sup>19</sup> By contrast, “transferring” a right means laying it down in favour of someone in particular, or ‘granting’ it to this person – let us call her A in what follows.<sup>20</sup> In both cases, the result is an obligation not to “hinder” others in their use of their own right to right to this thing, or to do this action; whether it be anyone else in case of a mere renunciation, or only A in the case of a right transfer to her.<sup>21</sup> Any opposition would be unjust, in the sense of “Sine Jure,”<sup>22</sup> not grounded in any available right. Importantly for our discussion of political consent, in the state of nature, everyone owns an unlimited right of nature. Therefore, laying down a right (be it via renunciation or transfer to someone in particular) does not create a new right for others, but rather a “diminution of impediments” to the “use” of their own right of nature:

To lay downe a mans *Right* to any thing, is to *devest* himselfe of the *Liberty*, of hindring another of the benefit of his own *Right* to the same. For he that renounceth, or passeth away his *Right*, giveth not to any other man a *Right* which he had not before; because there is nothing to which every man had not *Right* by Nature [...].<sup>23</sup>

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<sup>19</sup> Hobbes, *Leviathan* 14, p. 200 [65].

<sup>20</sup> Hobbes, *Leviathan* 14, p. 200 [65].

<sup>21</sup> Hobbes, *Leviathan* 14, p. 200 [65].

<sup>22</sup> Hobbes, *Leviathan* 14, p. 202 [65].

<sup>23</sup> Hobbes, *Leviathan* 14, p. 200 [65]. See also *De Cive* 2,4, p. 34: what it means for an individual in the state of nature to transfer a right is that “he no longer wants it to be licit for him to offer resistance to his doing some specific thing in which he could rightly resist before”. This boils down to “non-resistance,” for the reason that “the recipient already had a right to all things before the transfer of the right; hence the transferor could not give him a new right.” See also *Elements*, 1,15,3.



Let us now turn to the way right transfers operate in Hobbes's political arguments. In the *Elements* and *De Cive*, the idea of a right transfer from the subjects to the sovereign is central to the institution of the sovereign.<sup>24</sup> In this account, "the power of government is secured by a double obligation on the part of the subjects": first, "to their fellow subjects," in virtue of their covenant, and second, "to the ruler," as a consequence of their right transfer (*De Cive*).<sup>25</sup> As a free "gift of right (*juris donatione*)," the right transfer creates an "obligation towards the holder of power" to let her make use of this right.<sup>26</sup> According to *De Cive's Preface*, this transfer (*translata*) "is so indispensable, that if it does not occur, no commonwealth comes into being."<sup>27</sup> *Leviathan* enriches this account of the right transfer with an original account of authorisation. The subjects are now said to *authorise* their sovereign. The sovereign becomes an "Actor" whose words and actions represent all of the subjects', while each

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<sup>24</sup> See especially Hobbes, *Elements* 1,19,7–11, p. 103–5 and 2,1,5–7, p. 110–2, as well as *De Cive* 5,7–8, p. 72–3 and 6,19–20, p. 88–90. The notion of a transfer of right would be more useful than that of a transfer of power, because bodily strength cannot be given to, nor received from, someone else: "And because it is impossible for any man really to transfer his own strength to another, or for that other to receive it; it is to be understood: that to transfer a man's power and strength, is no more but to lay by or relinquish his own right of resisting him to whom he so transferreth it (Hobbes, *Elements of Law* 1,19,10, p. 104)." See also Hobbes, *De Cive* 5,11, p. 73–4.

<sup>25</sup> Hobbes, *De Cive* 6,20, p. 89–90.

<sup>26</sup> Hobbes, *De Cive* 6,20, p. 90. See Hobbes, *De Cive* 2,8, p. 35: "The transfer of a right to another person not for a good received in return nor on the basis of an agreement, is called a gift (*donum*) or free donation (*donatio libera*)."

<sup>27</sup> Hobbes, *De Cive, Preface*, p. 12.

subject is considered to own the sovereign's actions and thus to be their "Author."<sup>28</sup> As such, she rules "by Authority," as the "Representer" of a multitude turned into "One Person" (the commonwealth) by this very authorisation process.<sup>29</sup> Compared to the earlier versions of Hobbes's political theory, authorisation does not restrict the extent of the sovereign's power, nor does it give her additional obligations to the ones she had in former accounts (see below on her obligations).<sup>30</sup> One remarkable difference is that authorisation provides a more precise account of the sovereign's relationships with her subjects.<sup>31</sup> It brings in a personal dimension: authorisation "enables *you* to act in my place, and so with *my* right" (Gauthier).<sup>32</sup> Indeed, the authorisation process does not dismiss the notion of a right transfer to the sovereign, but rather seems to go hand in hand with it. Hobbes is clear that the sovereign remains the intended and exclusive beneficiary of subjects' will to "lay down"<sup>33</sup> their right of nature (as opposed to a mere renunciation of this right).<sup>34</sup>

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<sup>28</sup> Hobbes, *Leviathan* 16, p. 244 [81].

<sup>29</sup> Hobbes, *Leviathan* 16, p. 248 [82]. See also *Leviathan* 18, p. 264 [88].

<sup>30</sup> See Pitkin, *Representation*, 33.

<sup>31</sup> Douglass, "Authorisation," 41.

<sup>32</sup> Gauthier, *The Logic of Leviathan*, 124.

<sup>33</sup> Hobbes, *Leviathan* 14, p. 200 [65].

<sup>34</sup> On this continuity, see e.g. Hobbes, *Leviathan* 21, p. 336 [111]: "To come now to the particulars of the true Liberty of a Subject [...] we are to consider, what Rights we passe away, when we make a Commonwealth; or (which is all one,) what Liberty we deny our selves, by owning all the Actions (without exception) of the Man, or Assembly we make our Sovereign," or Hobbes, *Leviathan* 17, p. 260 [87]: "I authorise and give up my Right of Governing my selfe, to this man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorize all his Actions in like manner."

This brings us to the core questions of this paper. How does transferring one's right of nature to the sovereign generate this transformative authorisation process? Most importantly, in the three iterations of Hobbes's consent theory, the sovereign does not receive a new right from the subjects and retains an unlimited right of nature. What, then, are the moral consequences of this process, compared to her situation as a mere individual among others in the state of nature? How does it turn her into the representative of subjects, and why should she now act as a sovereign?

#### 4 Consent and the constitution of the sovereign

I believe the way to the answer to lie in the passages on the sovereign's duties.<sup>35</sup> Such duties include all of the tasks necessary to foster peace within the state. This means protecting subjects from one another's violence and theft, making laws for the common good and enforcing them, making sure that justice "be equally administered" to "the rich, and mighty" subjects and to the "poor and obscure" subjects alike,<sup>36</sup> ensuring the equity of taxes, or providing public charity to those who are in need. She should also contain any seed of sedition, and thus break factions, prevent the spread of subversive doctrines, and teach their duties of obedience to the subjects. As for defence against external enemies, she should warrant the availability at all times of intelligence (to enquire potential threats to the state), as well as of soldiers, arms and fortifications. All of these are obviously not duties the sovereign had as a random individual in the state of nature (or as a random aggregation of individuals). Neither are these duties conceived as mutual obligations arising from a contract concluded *between* the

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<sup>35</sup> These are most widely discussed in the *Elements*, Book 2, Chapter 9, *De Cive*, Chapter 13, and *Leviathan*, Chapter 30.

<sup>36</sup> Hobbes, *Leviathan* 30, p. 534 [181].

sovereign and the subjects, which Hobbes was adamant to avoid. Instead, according to the following quotes, these duties stem from the laws of nature, and arise as a consequence of the intention underlying subjects' consent:

And since governments were formed for the sake of peace, and peace is sought for safety, if the incumbent in power used it otherwise than for the people's safety, he would be acting against the principles of peace, that is, against natural law (*De Cive*).<sup>37</sup>

The Office of the Sovereign, (be it a Monarch, or an Assembly,) consisteth in the end, for which he was trusted with the Sovereign Power, namely the procuration of *the safety of the people*; to which he is obliged by the Law of Nature, and to render an account thereof to God, the Author of that Law, and to none but him (*Leviathan*).<sup>38</sup>

In other words, it is because subjects submit to the sovereign for the sake of their safety that he is obligated in virtue of the laws of nature to provide it. This suggests that the natural obligations pertaining to the office of the sovereign are triggered by subjects' right transfer and the expectations motivating this transfer. Before I spell out the steps this entails, we should pause to note that the corresponding passages of the *Elements* regarding the sovereign's duty to strive for "the good government of the people" in virtue of the laws of nature does not make an explicit reference to subjects' right

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<sup>37</sup> Hobbes, *De Cive* 13,2, p. 143.

<sup>38</sup> Hobbes, *Leviathan* 30, p. 520 [175]. Hobbes adds here: "But by safety here, is not meant a bare Preservation, but also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt to the Commonwealth, shall acquire to himselfe."

transfer.<sup>39</sup> Along with the fact that the sovereign's duties are not discussed as extensively in the *Elements* as in the subsequent works, this suggests that the normative consequences of the right transfer were not yet conceptualised as precisely there, at least not when it comes to the aspects studied in the present paper.

Let us now see how this argument unfolds.<sup>40</sup> I believe the right transfer to have a twofold normative effect on the sovereign's moral status: The first part relates to a general change of context as a consequence of the large number of right transfers effected in the sovereign's favour (that is, by all consenting subjects). The second part captures the moral difference made by each subject's right transfer, taken separately. I start with the first one.

By virtue of the first law of nature, everyone, including the sovereign, is bound by the laws of nature to seek peace.<sup>41</sup> Hobbes is clear that the laws of nature apply as much to the sovereign as to any human being, be it in the state of nature or in the civil state (as

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<sup>39</sup> See Hobbes, *Elements of Law* 2,9,1, p. 179: "For the duty of a sovereign consisteth in the good government of the people; and although the acts of sovereign power be no injuries to the subjects who have consented to the same by their implicit wills, yet when they tend to the hurt of the people in general, they be breaches of the law of nature, and of the divine law; and consequently, the contrary acts are the duties of sovereigns, and required at their hands to the utmost of their endeavour, by God Almighty, under the pain of eternal death."

<sup>40</sup> I leave aside the immense question of the moral status of Hobbes's laws of nature: Are they merely prudential dictates rooted in self-interest, or do they also have an intrinsic moral character? For a summary of the debate, see Baumgold, *Hobbes's Political Theory*, 5–6. In my view, humans have an obligation towards God to desire peace and act as self-preservation requires, an obligation which is binding at all times (at least *in foro interno*) and ultimately grounded in God's irresistible power. However, I believe the process described in my argument in what follows to be compatible with other, more prudential interpretations of the meaning of Hobbesian natural laws as well.

<sup>41</sup> Hobbes, *Elements of Law* 1,15,1, p. 75; Hobbes, *De Cive* 2,2, p. 34; Hobbes, *Leviathan* 14, p. 198 [64].

evidenced in his passages on the sovereign's duties). Now, if many individuals intend not to interfere with her actions and expect her to protect them and enforce justice, what this general obligation comes to mean in her case is that she must accept the role of a ruler and act in accordance with the obligations attached to this role for the sake of everyone living in peace. Indeed, the sum of the subjects' right transfers in her favour creates a specific context in which she is the only person free to use her right of nature without being hindered by anyone else's. As a consequence, she disposes of a vast amount of "power and strength" that "enable[s]" her "to conforme the wills of them all, to Peace at home, and mutuall ayd against their enemies abroad," thanks to the "terror" inspired by this enormous power.<sup>42</sup> This, then, puts her, and only her in the most appropriate position to govern. Therefore, in her case, seeking peace may require accepting the role of ruler and properly performing it.

Although I have found no concrete textual evidence that this is what Hobbes had in mind, this general deduction from the overall goal of the laws of nature—peace—could also be supported by one natural law in particular: accommodation. Accommodation requires "that every man strives to accommodate himself to the rest" for the sake of everyone's survival.<sup>43</sup> In fact, whoever refuses to do so without sufficient motive is "guilty of the warre that thereupon is to follow."<sup>44</sup> If the sovereign were to be designated as ruler by means of all other individuals' right transfers in her favour, she would be obligated to take the role, instead of ruining the occasion for everyone to leave the state of nature (or keep it away).

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<sup>42</sup> Hobbes, *Leviathan* 17, p. 260 [88].

<sup>43</sup> Hobbes, *Leviathan* 15, p. 232 [76]; Hobbes, *De Cive* 3,9, p. 48; Hobbes, *Elements of Law* 1,16,8, p. 85.

<sup>44</sup> Hobbes, *Leviathan* 15, p. 232 [76].

The second moral effect of the right transfer relates to the effect of each individual's right transfer inasmuch as it creates an obligation for the sovereign to be grateful for it. While the law of justice pertains to the observance of an "Antecedent Covenant," the law of gratitude applies in the case of an "Antecedent Free-gift" (which, as we have seen above, is what subjects' right transfers to the sovereign consist of).<sup>45</sup> Gratitude enjoins "that a man which receiveth benefit from another of mere grace, endeavour that he which giveth it, have no reasonable cause to repent him of his good will,"<sup>46</sup> or that "no one should accept the benefit without the intention to try to ensure that the giver not have reason to be sorry he gave it."<sup>47</sup> Hobbes suggests an analogy with the natural law of justice (promise keeping): Ingratitude "hath the same relation to Grace, that Injustice hath to Obligation by Covenant."<sup>48</sup>

According to Hobbes, even though a free gift does not entail the demand for any right in return, it is nonetheless made with a view to some "Good" for oneself.<sup>49</sup> This makes ingratitude a hostile response that undermines the prospect of "benevolence," "trust," or "mutual assistance" among individuals inclined to these important dispositions to peace.<sup>50</sup> In the case of political consent, the good in question would be the safety expected from the sovereign's authority and "a more contented life thereby,"<sup>51</sup> or even "a happy life so far as that is possible."<sup>52</sup> In *De Cive*, Hobbes alludes

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<sup>45</sup> Hobbes, *Leviathan* 15, p. 230 [75].

<sup>46</sup> Hobbes, *Leviathan* 15, p. 230 [75].

<sup>47</sup> Hobbes, *De Cive* 3,9, p. 48.

<sup>48</sup> Hobbes, *Leviathan* 15, p. 230 [76].

<sup>49</sup> Hobbes, *Leviathan* 15, p. 230 [75]. See also *De Cive* 2,8, p. 35–6.

<sup>50</sup> Hobbes, *De Cive* 3,9, p. 48–9; Hobbes, *Leviathan* 15, p. 230 [75]; see also *Elements of Law* 1,16,6, p. 84–5.

<sup>51</sup> Hobbes, *Leviathan* 17, p. 254 [85]; see also 14, p. 202 [66]).

to gratitude in this vein as he affirms that sovereigns “would be acting contrary to the law of nature (because in contravention of the trust (*fiduciam*) of those who put the sovereign power in their hands) if they did not do whatever can be done by laws to ensure that the subjects are abundantly provided with all good things necessary not just for life but for the enjoyment of life.”<sup>53</sup> There, gratitude also comes in to justify an obligation for monarchs appointed “for a limited time” to foresee an occasion for subjects to designate their next ruler to prevent the commonwealth’s disintegration after the ruler’s death.<sup>54</sup> We will see another instance of such references to gratitude below with the right to punish in *Leviathan*.

One implicit assumption of the gratitude interpretation is that subjects’ free gift of their right of nature to the sovereign entails a benefit for the latter, something to be grateful for in the sense of the laws of nature. But what if “the greatest gift that men may rightfully give” happened to be a considerable “burden,” as Smith asks?<sup>55</sup> In general, Hobbes tells us little about the sovereign’s acceptance of political authority<sup>56</sup>, even though he is clear that a free gift must be accepted by its recipient in order to deploy its effects.<sup>57</sup> He notably rejects the idea of a covenant between the people and God by contending that one cannot know whether He has accepted the promise or not,

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<sup>52</sup> Hobbes, *De Cive* 13,4, p. 143.

<sup>53</sup> Hobbes, *De Cive* 13,4, p. 143–4.

<sup>54</sup> Hobbes, *De Cive* 7,16, p. 98.

<sup>55</sup> Travis D. Smith, “On the Fourth Law of Nature,” *Hobbes Studies* 16 (2003), 89–92.

<sup>56</sup> See, e.g., Hobbes, *De Cive* 7,12, p. 96 for a rare example.

<sup>57</sup> Hobbes, *Elements of Law* 1,15,4, p. 76; Hobbes, *De Cive* 2,12, p. 37; Hobbes, *Leviathan* 14, p. 202 and 210 [65 and 68–9].



at least not without the “mediation of a prophet.”<sup>58</sup> What may call for seeing the office of a ruler as a benefit would be Hobbes’s claims that authority belongs to the greatest powers and honours one may enjoy<sup>59</sup>, coupled with the ideas that humans are inhabited by a “restless desire”<sup>60</sup> to continually increase their power and that many of them have a deep longing for glory.<sup>61</sup>

To summarize the way the right transfer functions in my reading, the fact that many individuals renounce a large part of their right of nature in the sovereign’s favour, hoping for safety, triggers the corresponding natural obligation for the sovereign to accept the role of a ruler, as well as to perform the duties attached to it—in sum, governing with a goal of peace. The continuum between the obligation to accept this role and the obligation to fulfil the duties that flow from it can again be derived from the purpose of subjects’ right transfer. Subjects wish to institute a ruler to escape the misery of their natural condition, and only a ruler who succeeds in keeping away the threats of the state of nature can accomplish this wish. What this requires from the ruler is precisely what is enunciated in Hobbes’s list of sovereign duties (cf. above).<sup>62</sup>

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<sup>58</sup> Hobbes, *Leviathan* 14, 210 [69]; Hobbes, *De Cive* 2,12, p. 37; Hobbes, *Elements of Law* 1,15,11, p. 78–9.

<sup>59</sup> Hobbes, *Elements of Law* 1,8,5–6, p. 34–6; Hobbes, *Leviathan* 10, p. 132 and 136 [41–2].

<sup>60</sup> Hobbes, *Leviathan* 11, p. 150 [47].

<sup>61</sup> See e.g. Hobbes, *Elements of Law* 1,7,7, p. 30; Hobbes, *De Cive* 1,2, p. 22; Hobbes, *Leviathan* 13, p. 190–1 [61–2].

<sup>62</sup> On this continuum, see also Eleanor Curran, *Reclaiming the Rights of the Hobbesian Subject* (London: Palgrave Macmillan, 2007), 113: “Whoever is sovereign, she (or they) must protect the people and provide or maintain the conditions necessary for subjects to be able to preserve themselves and to have the basic freedoms necessary in order to live a commodious life. And the position of sovereign is tied to these responsibilities in such a way that one cannot be sovereign without fulfilling them,” and Tom

Hence, subjects' right transfers activate specific injunctions of natural laws applying to the sovereign, which prescribe the way she must rule to fulfil the purpose of these right transfers. Before moving to the next step, allow me to briefly situate this reading in the literature regarding the Hobbesian sovereign's duties.<sup>63</sup> Various commentators have stressed the importance of the laws of nature in tempering her absolute power while wondering about the exact rationale for these injunctions.<sup>64</sup> Hopefully, my reading provides an answer by highlighting the significance of consent in this context, as subjects' right transfers account for the rise of natural obligations determining how the sovereign must rule and giving shape to the content of these obligations (even in the absence of a contract between sovereign and subjects).

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Sorell, "Hobbes on Sovereignty and Its Strains," in *A Companion to Hobbes*, ed. Marcus P. Adams (Hoboken, NJ: Wiley-Blackwell, 2021), 249: "At the best of times, sovereignty is a matter of maintaining an equilibrium between the exercise of the rights of sovereigns and the durability of the subjects' transfer of the right of nature. [...] If sovereigns fail in providing public safety – if subjects are *unsafe*, despite the sovereign's laws and law-enforcement, then subjects revert to the state of nature, and sovereigns are reduced to mortal beings whose lives are at risk."

<sup>63</sup> See especially Curran, *Rights of the Hobbesian Subject*, 111–6, David Dyzenhaus and Thomas Poole, "Introduction," in *Hobbes and the Law*, ed. David Dyzenhaus and Thomas Poole (Cambridge: Cambridge University Press, 2012), Sharon Lloyd, *Morality in the Philosophy of Thomas Hobbes* (Cambridge: Cambridge University Press, 2009), 33–49, Sorell, "Hobbes on Sovereignty," 244–7 and Perez Zagorin, *Hobbes and the Law of Nature* (Princeton: Princeton University Press, 2009), 84–98.

<sup>64</sup> For instance, Baumgold (*Hobbes's Political Theory*, 82) and Zagorin (*Hobbes and the Law of Nature*, 86) locate it in the convergence of the subjects' and the sovereign's interest. Alternatively, Lloyd (*Morality in the Philosophy of Thomas Hobbes*, 34–5) appeals to a principle of reciprocity underlying the whole architecture of Hobbesian natural laws, which would require the sovereign to rule in accordance with what she would deem reasonable if she were in subject position.

## 5 What the right transfer means for the right to punish

Moving further, I turn to the new light these findings can shed upon Hobbes's discussion in *Leviathan* of the foundation of the sovereign's right to punish, a tricky question deemed by Hobbes himself to deserve particular attention. In Chapter 18, Hobbes briefly states that the right to punish is "committed" to the sovereign.<sup>65</sup> However, in his chapter on punishment (Chapter 28), Hobbes affirms that this right does not derive from any "gift of the Subjects."<sup>66</sup> This is because subjects do not give up the right to defend themselves when their preservation is under threat, a right which Hobbes considers to be inalienable. Subjects can commit to "assist" the sovereign when she inflicts sanctions upon others, but they do not give her a right to punish them.<sup>67</sup> Instead, Hobbes claims the right to punish to be a "strengthened" version of the sovereign's right of nature inasmuch as it was "not given, but left to him, and to him only."<sup>68</sup> Importantly, this was done with the intent that the sovereign would use his immense, exclusive power "as he should think fit, for the preservation of them all".<sup>69</sup>

This account has fuelled intense debates in the literature: Can the right to punish be derived from subjects' consent, similarly to the other rights of sovereignty,<sup>70</sup> or is it merely an "unrelinquished natural right of war" (Yates)?<sup>71</sup> As Yates and Green have emphasized, the connection to consent appears if we consider Hobbes's clear distinction

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<sup>65</sup> Hobbes, *Leviathan* 18, p. 276 [92].

<sup>66</sup> Hobbes, *Leviathan* 28, p. 482 [161].

<sup>67</sup> Hobbes, *Leviathan* 28, p. 482 [161].

<sup>68</sup> Hobbes, *Leviathan* 28, p. 482 [162].

<sup>69</sup> Hobbes, *Leviathan* 28, p. 482 [162].

<sup>70</sup> Hobbes, *Leviathan* 18, p. 264 (87).

<sup>71</sup> Yates, "The Right to Punish," 234–8; for further references on this debate, see note 5.

between punishment, as an authorised act of the sovereign, and a mere natural attack.<sup>72</sup> Indeed, Hobbes details conditions for an “evil” to qualify as punishment.<sup>73</sup> A punishment is “inflicted by public authority” and not a mere “act of hostility.”<sup>74</sup> It exclusively targets a “transgression of the law” and can only be executed after a proper trial of the transgressor, in accordance with the sanctions prescribed by the relevant laws.<sup>75</sup> Crucially, a genuine punishment only serves the purpose of increasing subjects’ willingness to obey the law; otherwise, it threatens to bring people back into the state of nature.<sup>76</sup>

There is, hence, a marked contrast between the sovereign’s administration of punishments and the actions she might have taken as a random individual in the state of nature, although she possesses an unlimited right of nature in both cases. I believe that the mechanism of the right transfer depicted above can also account for the process giving rise to this difference. As Yates points out, in the state of nature, which is conceived as “a state of *blameless* liberty,” individuals do not own a “pre-political right to punish.”<sup>77</sup> However, when subjects transfer their right of nature to the sovereign, their purpose is the creation of a power large enough to maintain safety for all, which includes a coercive power able to sanction and deter breaches of law as an authorised punisher.<sup>78</sup> The sum of these free gifts, along with the fact that all are directed at the same person(s)—the sovereign—create a context in which it becomes possible (and

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<sup>72</sup> Yates, “The Right to Punish” and Green, “Authorization.”

<sup>73</sup> Hobbes, *Leviathan* 28, p. 482 [161].

<sup>74</sup> Hobbes, *Leviathan* 28, p. 482 [161].

<sup>75</sup> Hobbes, *Leviathan* 28, p. 481–2 [161–2].

<sup>76</sup> See also Hobbes, *Leviathan* 30, p. 542–4 [182–3].

<sup>77</sup> Yates, “The Right to Punish,” 237, his emphasis.

<sup>78</sup> On this point, see especially Hobbes, *Leviathan* 17, p. 254 [85].

even obligatory) for her to endorse this new role. For this, no gift of a specific right to punish is necessary, but rather only a large number of subjects intending to let the sovereign use her right of nature without interference for the sake of peace. Thus, this is how subjects' consent can generate this right.

In fact, consent also produces obligations pertaining to the use of this right, in accordance with the interactions between the right transfer and the laws of nature I have fleshed out above. In *Leviathan's* chapter on the sovereign's duties, Hobbes includes the "right application of Punishments, and Rewards" in these.<sup>79</sup> In Chapter 28, he refers to three particular laws of nature that take a specific meaning once the sovereign comes to possess what the subjects' right transfer has transformed into a right to punish, and that obligate the sovereign to make wise use of it:

All Punishments of Innocent Subjects, be they great or little, are against the Law of Nature; For Punishment is only for Transgression of the Law, and therefore there can be no Punishment of the Innocent. It is therefore a violation, First, of that Law of Nature, which forbiddeth all men, in their Revenges, to look at anything but some future good: for there can arrive no good to the Commonwealth, by Punishing the Innocent. Secondly, of that, which forbiddeth Ingratitude: For seeing All sovereign Power, is originally given by the consent of every one of the Subjects, to the end they should as long as they are obedient, be protected thereby; the Punishment of the Innocent, is a rendring of Evill for Good. And thirdly, of the Law that commandeth Equity; that is to say, an equall distribution of Justice; which in Punishing the Innocent is not observed.<sup>80</sup>

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<sup>79</sup> Hobbes, *Leviathan* 30, p. 542 [182].

<sup>80</sup> Hobbes, *Leviathan* 28, p. 492 [165].

The first and third laws of nature at work in this passage apply as consequences of the large number of subjects' individual right transfers to the sovereign, which entail a general change of context affecting her natural obligations, as we have seen above. While punishments have the purpose of inclining subjects "to obey the Law," punishing the innocent would have "a contrary effect" and erode the state's very foundation, namely subjects' willing obedience.<sup>81</sup> The first natural law mentioned in this passage is the one that prohibits anyone from engaging in acts of private revenge that proceed from sheer passions without any concern for future peace.<sup>82</sup> Analogously, the sovereign, who acts no longer as a private individual but from public authority, must inflict proportionate punishments with the sole aim of achieving peace within the state, which precludes abusive sanctions. A similar reasoning applies to the third law of nature invoked here: equity, which refers to an arbitrator's obligation to be impartial. Now that the sovereign is expected to act as the subjects' common arbitrator, he is obligated to treat all of them equitably; otherwise, he would "deterre men from the use of Judges, and Arbitrators," which would bring everyone back to their natural condition of war.<sup>83</sup> By contrast, the obligation of gratitude—the second law of nature mentioned in our quote—befalls the sovereign as a more direct consequence of each subject's individual right transfer, similarly to what we have already observed above. Gratitude requires the recipient of a free gift (here, the sovereign) to refrain from behaviour that would cause the giver (here, the subject) to regret the gift. In this context, punishing an innocent subject entails "a rendring of Evill for Good," as the subject's submission rests upon the hope for protection, not gratuitous hostility.

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<sup>81</sup> Hobbes, *Leviathan* 28, p. 484 [162].

<sup>82</sup> On this unnamed law, see Hobbes, *Leviathan* 15, p. 232 [76].

<sup>83</sup> Hobbes, *Leviathan* 15, p. 236 [77].

## 6 On tacit and presumed consent

I now turn to what my interpretation can reveal about another challenge related to the interpretation of Hobbes's consent theory, one that has long worried his readers: his willingness to admit tacit consent as a substitute for express consent and to presume consent in many cases. Until now, the literature has mainly emphasised the problems this raises for consent's obligating function as a promise of obedience. On the basis of my analysis, I hope to bring out an unnoticed asset of Hobbes's consent argument that is not necessarily affected by these difficulties, which is that the right transfer may indeed be able to operate without being expressly communicated, including when it comes to its effects on the sovereign's status and duties.

Once again, it is in *Leviathan* that this part of Hobbes's argument is most elaborate. In the *Elements*, Hobbes only affirms the need for subjects' express consent to establish the sovereign's authority (although he adds that the only "imaginable" scenario would be their allowance of the will of the persons in power to "be taken for the wills of every man").<sup>84</sup> In *De Cive*, Hobbes moves closer to tacit consent by adding that the "transfer of right consists solely in non-resistance."<sup>85</sup> Eventually, in *Leviathan*, he specifies that the institution of the state may proceed "as if every man should say to everyman, I authorise and give up my Right of Governing my selfe, to this man, or to

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<sup>84</sup> *Elements of Law* 2,1,3, p. 109: "The first thing therefore they [would-be subjects in the state of nature] are to do, is expressly every man to consent to something by which they may come nearer to their ends; which can be nothing else imaginable but this: that they allow the wills of the major part of their whole number [in a democracy], or the wills of the major part of some certain number of men by them determined and named [aristocracy]; or lastly the will of some one man [monarchy], to involve and be taken for the wills of every man."

<sup>85</sup> Hobbes, *De Cive* 2,4, p. 34; see Douglass, "Hobbes and Political Realism," 260.

this Assembly of men, on this condition, that thou give up thy Right to him, and Authorize all his Actions in like manner.”<sup>86</sup> The “as if” (*tamquam si* in the Latin *Leviathan*) suggests that the covenant needs not be expressly made, which is because consent can also be given tacitly, “by other signes” than an express promise.<sup>87</sup> Hobbes thus speaks of “Signes by Inference” that refer to the “consequences” of words or actions (or, alternatively, of silence or the omission of actions) or more broadly to “whatsoever sufficiently argues the will of the Contractor.”<sup>88</sup> For instance, after a military conquest, anyone “openly” living under the conqueror’s “protection” is thereby “understood to submit himself” to him.<sup>89</sup>

Why Hobbes deems it so easy to presume subjects’ consent despite their silence can be gathered from two principles of which he often makes use. First, all of an agent’s voluntary acts (including consent) aim at “some Good to himself.”<sup>90</sup> Second, no one can be presumed, or “understood” to will something self-detrimental and thus to have incurred an obligation to it.<sup>91</sup> These principles can offer reasonable protection to subjects, such as when Hobbes claims that one can never relinquish the right to defend oneself.<sup>92</sup> The problem, however, is that Hobbes seems to apply them the other way around when he makes the inference from one’s residence in a state to one’s consent.

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<sup>86</sup> Hobbes, *Leviathan*, 17, p. 260 [87].

<sup>87</sup> Hobbes, *Leviathan, Review*, 1135 [391].

<sup>88</sup> Hobbes, *Leviathan*, 14, p. 204 [67].

<sup>89</sup> Hobbes, *Leviathan, Review*, p. 1135 [391].

<sup>90</sup> Hobbes, *Leviathan*, 14, p. 202 [66].

<sup>91</sup> Murphy, “Hobbes on Tacit Covenants,” 85.

<sup>92</sup> Thus, as Sreedhar phrases it, Hobbes advocates for “limited obedience to an unlimited sovereign” (*Hobbes on Resistance*, 129).



As Hoekstra and Zaitchik point out,<sup>93</sup> this is probably due to Hobbes's conviction that no good can be obtained from what he views as the only alternative to consent, namely the horrendous state of nature. As he considers it absurd not to consent to the sovereign's authority, Hobbes almost implies that we may be presumed to tacitly consent by default.<sup>94</sup>

In *De Cive*, Hobbes resorts to another line of argumentation to justify the move from express to tacit consent (with which Locke's tacit consent argument<sup>95</sup> will resonate). There, Hobbes asserts that a person's use of the benefits of a state entails her consent to it. Consent (*consensu*) can be "implied"

when they [the subjects] accept the benefit [*beneficio*] of a person's power and laws for protection and preservation of themselves against others. For when we demand that our fellow subjects obey someone's power for our good, we admit by that very demand that his power [*imperium*] is legitimate [*legitimum*].<sup>96</sup>

Enjoying the benefits provided by the sovereign means enjoying the result of the other subjects' efforts of compliance, apparently, even "demanding" them. The quote is somewhat ambiguous. On a first reading, enjoying these benefits would only be sensible if we consider the sovereign to have authority; and if we do, then we can plausibly be understood to consent to subject ourselves to it. This could be an example of the "consequences of actions" (using said benefits) that provide "Signes by Inference" of

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<sup>93</sup> Hoekstra, "The De Facto Turn," 67–8; Zaitchik, "Hobbes and Hypothetical Consent," 479.

<sup>94</sup> See also Abizadeh, *Two Faces of Ethics*, 22.

<sup>95</sup> John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 2013), §113.

<sup>96</sup> Hobbes, *De Cive* 14,12, p. 159–60; see also Hobbes, *Leviathan* 26, p. 426 [142].

our consent.<sup>97</sup> On a second reading, the passage may be a plea against what we now call free riding (in the same spirit as in the Fool's passage), doing one's share in a collective endeavour being more rational than selfishly taking advantage of a situation and thereby undermining what one acknowledges to be useful. The fact that we ought to consent would be sufficient to treat us as if we had consented, because we must assume the moral consequences of our voluntary actions (here, enjoying the sovereign's protection).

From Hume's essay "Of the Original Contract" on to its large reception in Locke scholarship, the literature on early modern consent theories of political obligation has identified various difficulties with the notions of tacit and presumed consent in the political context, which often apply to Hobbes as well.<sup>98</sup> These challenges are all too well known, which is why I only present them briefly in what follows. Hume and many after him deny the voluntary and free character of a consent presumed simply on the basis of a person's residence in a country because of the absence of a feasible alternative for many subjects. Furthermore, Hume is sceptical towards the idea that subjects themselves would understand their presence in the country as a promise of obedience, thus revealing the propensity of consent arguments to neglect subjects' actual will and intentions.<sup>99</sup> All in all, the worry is that what is considered consent is so

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<sup>97</sup> Hobbes, *Leviathan* 14, p. 204 [66–7].

<sup>98</sup> See, for example, Hanna Pitkin, "Obligation and Consent I," *The American Political Science Review* 59 (1965); Alan John Simmons, "'Denisons' and 'Aliens': Locke's Problem of Political Consent," *Social Theory and Practice* 24 (1998); Jules Steinberg, *Locke, Rousseau, and the Idea of Consent: An Inquiry into the Liberal–Democratic Theory of Political Obligation* (Westport, Conn.: Greenwood Press, 1978).

<sup>99</sup> David Hume, "Of the Original Contract," in *David Hume. Essays moral, political and literary*, vol. 1, ed. T. H. Green and T. H. Grose (Aalen: Scientia, 1964), 451.

vast that it retains little moral value and proves to be of limited help to distinguish legitimate from illegitimate rulers.

My interpretation is no attempt to remedy the shortcomings related to the obligating function of consent in Hobbes's theory. Neither can it dispel the malaise observed by Hoekstra, according to whom Hobbes tends to conflate one's consent with the reasons one ought to consent, thus possibly shifting toward a hypothetical consent argument.<sup>100</sup> I agree with the contention that Hobbes should not heed the temptation to presume consent on an almost-automatic basis simply because it may be convenient to secure political obligation. It is certainly one of Hobbes's main objectives to instruct his readers as to their political obligations, rather than to empower them to dispute the legitimacy of their rulers. *Leviathan* aims to demonstrate "the mutuall Relation between Protection and Obedience,"<sup>101</sup> while *De Cive* is said to be a "doctrine of duties."<sup>102</sup> As Douglass puts it, one of Hobbes's aims was "to show individuals the sense in which they actually do consent."<sup>103</sup> At times, these purposes seem to have tainted the

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<sup>100</sup> Hoekstra, "The De Facto Turn," 69. This tendency is most visible in *Leviathan*'s claim that parental authority is to be derived "from the Childs Consent, either expresse, or by other sufficient arguments declared" (Hobbes, *Leviathan* 20, p. 308 [102]). These sufficient arguments could well be referring to the child's hypothetical consent: A child would consent to one of its parent's authority for the sake of its own preservation, if it were already in age of reason and able to understand that he ought to: "For it [the child] ought to obey him by whom it is preserved; because preservation of life being the end, for which one man becomes subject to another, every man is supposed to promise obedience, to him, in whose power it is to save, or destroy him (Hobbes, *Leviathan* 20, p. 310 [103])." On this argument, see Baumgold, *Hobbes's Political Theory*, 97–9.

<sup>101</sup> Hobbes, *Leviathan, Review*, p. 1141 [395–6].

<sup>102</sup> Hobbes, *De Cive, Preface*, p. 8.

<sup>103</sup> Douglass, "Hobbes and Political Realism," 261.

consensual premise of his argument, which has led some of his commentators to wonder how committed he really was to the ideal of consent given his eagerness to allow for presumptions of it.<sup>104</sup> When it comes to the actual importance of consent in Hobbes's theory, I hope to have shown that the right transfer effected by consent does make a genuine normative difference if we consider the natural obligations it triggers for the person(s) designated as rulers.

I believe it would also be hasty to dismiss the whole of Hobbes's consent argument because of the problems related to its obligating function. Indeed, his conception of the right transfer yields a significant argumentative benefit when it comes to the workings of tacit consent (provided it is available). On my reading, the effects of the right transfer can operate without being explicitly communicated, which confirms tacit consent to be a possible source of justification for the sovereign's power (which, again, is no excuse to presume it by default). It requires only the addition of many subjects' shared intention to let the sovereign employ her unlimited right of nature with a view to everyone's safety to generate a context in which she becomes obligated by the laws of nature to endorse the office of ruler, along with the duties this implies, because this is what it means in her case to strive for peace. Hence, no actual communication is needed between sovereign and subjects for consent to be effective in this respect, when it is actually the case that many subjects tacitly consent.

To conclude, a last question regarding the functioning of the right transfer remains to be addressed. One may object that this Hobbesian consent, as a right transfer, is maintained on the condition that others consent as well. This again raises the question of its communication, but among subjects this time (who, according to Hobbes, do not

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<sup>104</sup> See also Fox-Decent, "Hobbes' Relational Theory"; Martin, "Hobbes and the Doctrine of Natural Rights"; Zaitchik, "Hobbes and Hypothetical Consent."

exactly have a natural taste for sociable life). To my mind, a shared sense of the situation among them could suffice, at least in established, stable political communities. There, subjects already know who the other subjects are, and who the sovereign is. They may not need to consult one another if they see others comply with the sovereign's commands and decide to do likewise, and hence transfer their right of nature to her. The communication problem may thus not be a major one in practice. In a similar vein, the communication of the sovereign's acceptance of her office remains a theoretical problem to be raised (cf. above), but in practice, established rulers may easily be considered to want the office, as it would be pointless for them to perform such work and to present themselves as rulers to the public if they did not. However, the epistemic problem related to the communication of subjects' consent among one another has an important bearing on unstable contexts (such as the English Civil War that impregnated Hobbes's political writings). When a country is torn apart by various actors' and their adherents' fight for power, ascertaining who is the one enjoying most subjects' consent may be difficult (even though one probably does). And if it is only a small proportion of subjects' consent that breaks the tie, then all the relevant power-holders clearly face a deficit of authority, which indeed accords with the fundamental tenet of Hobbes's consent theory.<sup>105</sup>

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