Macquarie University

Department of Philosophy

The Role of Counsel in Hobbes' Political Thought

Thomas Alexander Corbin

Date submitted: 10th of October 2016

Good counsellors are to princes the best instruments of a good age.

-Ben Johnson, Discoveries, 1641

Contents

Abstract

In all of Thomas Hobbes' political writings, counsel plays some role. It is either directly explored as a concept, as it is for example in *The Elements of Law* and *Leviathan*, or it is used as an instrument of analysis, as it is in *Behemoth*. Yet, despite this, there is currently no large scale survey of the role counsel plays in Hobbes' political thought. This thesis aims to address this gap.

Counsel is one of several forms of political language Hobbes discusses. Another, more famous form is that of command. Command acts as the forerunner of law and travels downhill from Sovereign to Subjects. One reason for this unidirectional path is that a command imparts obligations upon those commanded and Hobbes' sovereign cannot be obligated by its subjects. Counsel, unlike command, does not create any form of obligation, and as such, it is not required to travel the same one-way path. Counsel, in other words, is a form of political language which gives subjects a voice to use in communicating with their sovereign.

Exploring the role of counsel in Hobbes' political thought provides us with a more nuanced picture of how Hobbes himself saw the practical operations of the civil society he proposed. Specifically, as this thesis shows, by exploring the role of counsel we are provided with a platform to review both the relationship between sovereign and subject as well as the relationship between morality and politics in Hobbes' thought.

Statement of Originality

I declare that the research presented here is my own original work and has not been previously submitted for the award of any other degree at this or any other institution. I also declare that throughout this thesis any work conducted by persons other than myself has been appropriately acknowledged.

Thomas Alexander Corbin

30/09/2016

Acknowledgements

There are many people I would like to acknowledge and to thank for the support, assistance, and knowledge they have offered me throughout this past year. First and foremost, I would like to thank my supervisor, Dr Michael Olson. Throughout this year, Dr Olson has been a constant presence, offering his wealth of knowledge, his encouragement and his time. I truly cannot begin to thank him for this.

The only person whose presence and support has been more constant is my fiancé, Samantha Emery. Samantha encouraged me to return to university to pursue my love of philosophy through the master's degree which this thesis culminates, and for that I am extremely grateful. Not only has she supported me in returning to university, she has supported me when I have had to work late nights, in letting me off the hook for leaving books and used cups of tea around the house, and also by listening to me bang on for twelve months about some guy named Hobbes. Samantha has not only given me direct support, she also encourages me indirectly through her own academic achievements and hard work. She constantly astounds me with her work ethic and her enthusiasm, and every day the admiration I hold for her has helped propel me forwards in producing this thesis.

I would also like to thank Macquarie University, and the Macquarie University philosophy department in particular. Since becoming a student at Macquarie, every member of that department with whom I have had interactions has been welcoming and open. I have found it to be a wonderful department for encouraging the love and pursuit of philosophy and I would like to thank all the members of it for their part in

building that environment. I would also like to thank the other members of my master's cohort at Macquarie. Although we all engaged in very different projects, working through our ideas and arguments together was an extremely valuable experience for me. I would like to thank Steve Gadsby especially, as his presence and shared difficulties starting off our post-graduate lives together made the harder times of this year so much the easier.

My good friend Adam Dickes also deserves my gratitude. Adam has always had a special talent for uncovering the ideas which I can stumble into but never quite identify. In as much as the ideas portrayed in this thesis are my own, I owe a debt to Adam for helping me to excavate them.

My parents have also given their support to me in producing this thesis. My father Raymond Corbin and his wife Adrienne Irving, and my mother Linda Corbin, each of these people has given so much to me and I could not have produced this thesis without their love and support. The other side of my family, Samantha's side, has equally supported me. Samantha's parents David and Catherine Emery, her brothers Nathan and Tim, and Tim's wife Darci Wallis, all of them have given me so much love and support which I feel every single day. I am so grateful for each of these people in my life and I would not have been capable of producing this thesis without them.

Finally, I would like to thank my cat Tyrion. He doesn't care much for philosophy but he nonetheless sat by my side for the entire time I wrote this thesis. Except when he wanted food, which was surprisingly often.

The Role of Counsel in Hobbes' Political Thought

Introduction

It is a matter of agreement that Thomas Hobbes was an advocate of absolute rule and that he proposed a political system with an all-powerful sovereign at its centre supported by obedient subjects. What exactly the nature of the relationship between sovereign and subject amounted to, and consequently what the exact nature of absolute rule in Hobbes' mind was, is something which is highly contested.

A debate regarding Hobbes' perspective on absolutism currently exists between opposing interpretations of his account of law. On one side of this debate, theorists argue that Hobbes' account of natural law protects subjects living in civil society.[1] On the other, theorists argue that Hobbes' account of civil law removes the support that the natural law otherwise offers, and as a result, leaves subjects at the mercy of the sovereign's whim.[2]

That the natural law is important to Hobbes' political thought is clear, at least as far as it allows for the existence of civil society and the formation of positive laws by the sovereign. The debate between these opposing interpretations centres instead on the role that the natural law plays once civil society emerges. It is then that questions are asked such as - can the natural law limit the power of the sovereign, or otherwise act

[1] Examples of this interpretation can be found in David Van Mill, *Liberty, Rationality, and Agency in Hobbes's Leviathan* (Albany: State University of New York Press, 2001)., Eleanor Curran, *Reclaiming the Rights of the Hobbesian Subject* (New York;: Palgrave Macmillan, 2007). and also Larry May, *Limiting Leviathan : Hobbes on Law and International Affairs* ed. Philosophy Oxford Scholarship Online, First edition. ed. (Oxford, United Kingdom : Oxford University Press, 2013).
[2] Examples of this interpretation are far more numerous, leading cases can be seen in Tom Sorell, "Law and Equity in Hobbes," *Critical Review of International Social and Political Philosophy* 19, no. 1 (2016)., and also Charles D. Tarlton, "'To Avoyd the Present Stroke of Death:' Despotical Dominion, Force, and Legitimacy in Hobbe's Leviathan," *Philosophy* 74, no. 2 (1999).

to defend subjects against bad or immoral governance? How we answer this questions will determine how we understand the nature of absolutism in Hobbes' political thought. That answer will depend on how robust we see the connection between the natural law and civil law as being, and what mechanism that connection operates through.

The typical position of those who argue that subjects exist only at the sovereign's whim, the more orthodox interpretation of Hobbes, is that the only mechanism which plays a meaningful role connecting the natural law to the civil law, is the sovereign herself. On this view, since the civil law is simply the sovereign's interpretation of the natural law, the natural law cannot simultaneously protect subjects from that sovereign. On the other side of the debate, the more liberal interpretations of Hobbes respond that even though it is true that the sovereign is the official interpreter of the natural law, within Hobbes' writings there are clear areas which suggest against the notion that the sovereign can interpret, and consequently legislate, at whim. For example, Hobbes details obligations relating to equity which the sovereign ought to operate according to in her treatment of subjects and in her creation of laws. As such, according to this latter view, these areas of Hobbes' thought demonstrate that the natural law can and does operate to protect subjects when the sovereign governs badly.

The liberal interpretation claims that the natural law can protect individuals from both bad governance and immoral rule, however, it is unclear how exactly this protection operates. The difficulty facing this more liberal interpretation, and the reason that it is difficult to accept in its current form, rests on Hobbes' concept of justice.

Hobbes defines justice not as the existence or as the results of good laws, but instead as obedience to law. Through the social contract, subjects take on a duty to obey the commands of the sovereign as these commands exist in the form of civil laws. Failing to obey these laws is unjust, according to Hobbes, since it breaks the covenant formed in the social contract. Any refusal to obey the law, regardless of the content of that law - be it good, bad, immoral or otherwise - is thus prevented by Hobbes' definition of justice. Whilst there are exceptions to this duty of obedience, these exceptions relate to the preservation of the life of the subject at the point of physical danger. As a result, whilst this offers some assurances for subjects against their sovereign, these assurances only exist on the periphery of life in civil society and for the most part cannot offer any protection against the core problem of absolute rule, that problem being bad or immoral governance.

The problem then, is that whilst the natural law has an ongoing influence on civil society and on civil laws, the only mechanism which makes this influence meaningful is the sovereign herself. It is therefore difficult to take the liberal aspects of Hobbes' writing as meaningfully operating beyond the sovereign's whim. It is, as a result, similarly difficult to see Hobbes' understanding of absolutism in any but the harshest of lights. What is needed to prevent this conclusion is a mechanism which can connect the natural law to civil society and that exists outside of the sovereign yet at the same time does not run counter to Hobbes' concept of justice. In this thesis, I argue that this mechanism exists in the role of counsel.

In the recent literature surrounding Hobbes' political thought, an appreciation has developed for aspects of his system which have previously been overlooked, one such aspect is the role of counsel. Counsel is advice which, unlike command, the counselled is not obliged to follow. In this sense, sovereign counsel does not risk

detracting from the absolute power of the sovereign and, consequently, does not run afoul of Hobbes' concept of justice. Counsel is also advice which is given in order to benefit the individual who is counselled. In terms of subjects, this benefit is found in advice given to live well. In terms of sovereign counsel, this benefit exists in terms of advice given to govern well, which in Hobbes' system means governing according to the natural law.

In this thesis I argue for the claim that sovereign counsel operates as a mechanism outside of the figure of the sovereign which can meaningfully connect the natural law with civil law and which does not subvert the obligations on subjects imposed by justice. I not only argue for this claim, but I also argue that Hobbes intended this to be the case. Hobbes intended counsel to act as the aid of good and moral governance whilst still allowing for an absolute sovereign to rule without restraint.

In order argue for this claim, this thesis is divided into two parts. The first part begins by setting the groundwork for explorations into the debate between the orthodox and the liberal interpretations of Hobbes, as well as for later discussions on counsel, by presenting an overview of Hobbes' thought from the state of nature to civil society. Following the presentation of this foundation and an exploration of its relationship to the orthodox interpretation, in the following section an exploration of several liberal interpretations will be presented. This will cover two main areas, the first a potential theory of rights protecting subjects in society, and the second the natural law as a restraining mechanism on the legislative power of the sovereign. The final section of this part focuses on Hobbes' account of justice. The liberal interpretations will here be returned to in the light of justice and it will be shown that they are incapable of succeeding in their aims of expanding the role of the natural law in civil society.

The second part presents a survey of both the theoretical and the historical employments of counsel. The aim of this is to show how the concept of counsel could plausibly be used to reinforce the bridge between natural and civil law in Hobbes' political thought. By looking to the use of counsel in the writings of Hobbes and his contemporaries, and comparing this use to the practice of counsel in sixteenth- and seventeenth- century England, I argue that it is counsel which Hobbes intended to reinforce the connection between the natural law and the civil law beyond merely the sovereign's whim. It is, in short, counsel which allows us to take the more liberal aspects of Hobbes' writing seriously whilst maintaining the more familiar absolutist core that is essential to his political thought.

Through these two parts, in this thesis I argue for a particular kind of liberal interpretation of Hobbes. On this interpretation, the natural law can and was intended by Hobbes to direct the creation of civil laws with the aid of sovereign counsel. I do not, however, go so far to claim that the natural law can restrain either the creation or the content of civil laws. To argue this would, I believe, be to suggest that Hobbes was not in fact a proponent of absolute rule at all, an argument which is untenable. Instead, I argue that Hobbes had a specific understanding of absolutism in mind throughout his writings, an understanding which only becomes clear through an appreciation of the role that counsel plays in his political thought.

Part One

In this thesis I argue that counsel plays a central role in Hobbes' political thought, a role which acts to expand the connection from the laws of nature to the laws of civil society beyond the figure of the sovereign. In order to argue this, I will show that current attempts to achieve this expansion are insufficient. The reason for this is that current attempts all involve limiting the power of Hobbes' concept of justice, something which I argue is impossible without collapsing the social contract which the civil state rests upon. The first half of this thesis is intended to argue for this claim. In the following part, I will build upon this claim to argue that counsel does not suffer from these same insufficiencies.

Considering the intended aim of this part of this thesis, it is important that we understand exactly how the two aspects of law, that is the natural and the civil, are currently portrayed as operating in Hobbes' system. As such, I begin with an exploration of these aspects as they are presented within the debate between those theorists who lean on the natural law aspects of Hobbes in order to portray a liberal interpretation of his political thought, and those theorists who rely on the primacy of the civil law in order to portray a more orthodox and potentially authoritarian position.

Hobbes, since his own day, has been interpreted as holding a position which allows the threat of authoritarian rule into society.[3] In a famous expression of this perspective, David Hume stated that "Hobbes' politics are fit only to promote tyranny".[4] This reading of Hobbes, which emphasises the more authoritarian aspects of his writings, is best characterised by what Eleanor Curran refers to as the orthodox reading.[5] The orthodox reading of Hobbes, according to Curran, assumes that "in his political theory he champions an uncompromising and extreme form of absolutism and that his … view of morality cannot support any genuine moral concepts, including those required for a theory of moral rights."[6] Curran and others have gone on to claim that this orthodox view is so entrenched that it disfigures the historical reality of Hobbes' writing.[7]

In place of the orthodox interpretation, a number of theorists, Curran included, have offered alternate interpretations which present a highly contrasting vision of Hobbes.[8] These readings attempt to use his account of the natural law to minimise the threat of authoritarianism.[9] This attempt to show that the orthodox reading is inaccurate offers, in its place, a picture of civil society which connects the civil laws to the natural laws in a thicker sense than is provided simply in the figure of the

[3] Samuel I. Mintz, *The Hunting of Leviathan: Seventeenth-Century Reactions to the Materialism and Moral Philosophy of Thomas Hobbes* (Cambridge University Press, 1962), 48.
[4] David Hume, *The History of England*, vol. 6 (Indianapolis Liberty Fund, 1983), 153.
[5] Although there is a large amount of overlap between what both terms 'orthodox' and the term 'positivist' capture, I use the term orthodox in an attempt to capture a wider net around scholars working on Hobbes' moral and political philosophy rather than focusing exclusively on interpretations of his account of law.
[6] Curran, *Reclaiming the Rights of the Hobbesian Subject*, 1. An exploration of this claim is conducted in the body of this thesis, see pages 44 - 6.
[7] As examples of the orthodox reading, Curran provides A. P. Martinich, Johann Sommerville, and Richard Tuck. Ibid., 12. To that list I would add Tom Sorell as a leading adherent.
[8] For an extreme example of this contrast see James R. Martel, *Subverting the Leviathan: Reading Thomas Hobbes as a Radical Democrat* (New York: Columbia University Press, 2007). For a more commonly discussed example see May, *Limiting Leviathan : Hobbes on Law and International Affairs*
[9] As leading examples see: *Limiting Leviathan : Hobbes on Law and International Affairs* And also Perez Zagorin, *Hobbes and the Law of Nature* (Princeton: Princeton University Press, 2009).

sovereign. Liberal readers, typically, attempt to provide interpretations of Hobbes' system in which the subject is protected, in some measure, from the abuse of power by the sovereign.

The reason that these new readings have proliferated is due to an apparent inability of the orthodox interpretation to explain certain aspects of Hobbes' writing. Equity, according to some liberal interpreters, limits the kinds of laws which the sovereign might otherwise legislate.[10] Hobbes discusses equity throughout his works and includes multiple laws of nature which target it.[11] On the orthodox interpretation, the laws of civil society are made entirely at the whim of the sovereign and the laws of nature are only guidelines to ensure social stability.[12] Yet Hobbes seems to take these natural laws further than simply being guidelines, discussing them, for example, in relationship to the duties of the sovereign.[13] As such, it has been claimed that equity challenges the orthodox reading since it is not obvious how it could accept equity in any meaningful sense, when it seems clear that Hobbes in fact does.

However, it is not simply chance or bad philosophy which has led to the dominance of this orthodox reading. In fact, there are two good reasons to think that the orthodox interpretation is the only plausible interpretation possible. Firstly, there are

[10] In the *Elements of Law,* for example, Hobbes claims that without subjects acknowledging their equality with each other (though not of course with their sovereign), "it cannot be imagined how they can live in peace." Thomas Hobbes, *The Elements of Law Natural and Politic* (Oxford: Oxford World Classics, 2008), 93. From this, May argues that "Hobbes places greater weight on equity than on justice, and that understanding the role of equity is the key to his legal philosophy." May, *Limiting Leviathan : Hobbes on Law and International Affairs* 1-2.
[11] In *Leviathan* for example, both the ninth and eleventh laws focus on equity, where the ninth states "that everyman acknowledge other [sic] for his equal by nature" and the eleventh that "if a man be trusted to judge between man and man, it is a precept of the law of nature that he deal equally between them." Thomas Hobbes, *Leviathan* (London: Collins, 1962), 211 and 12.See also *Man and Citizen*, ed. Bernard Gert (Cambridge: Hackett Publishing Company, 1993), 144 and 46.
[12] Alan Ryan, "Hobbes's Political Philosophy," in *The Cambridge Companion to Hobbes:*, ed. Tom Sorell (Cambridge University Press, 1996), 235.
[13] See for examples Hobbes, *Leviathan*, 377., *The Elements of Law Natural and Politic* 172. And also, *Man and Citizen*, 257.

areas of Hobbes' writing where it seems that he directly states that this more authoritarian reading was his intention.[14] Secondly, it seems that the foundation which he builds for his political theory leads, necessarily, to the acceptance of absolutism of the kind suggested by the orthodox interpretation.

The main reason for thinking that absolutism is a requirement of Hobbes' system is the concept of justice. Justice, one of the laws of nature, cements the subject's obligation to his sovereign in civil society. Justice is done when a subject acts according to the commands of the sovereign, and injustice is done when a subject fails to do so.[15] Justice is only then found in civil society, and, since the sovereign is not subject to her own laws, injustice is not something which the sovereign can be guilty of.[16] Obedience does not emerge from the commands themselves, rather, obedience emerges out of the social contract which founds civil society. The natural outcome of this, which it is clear that Hobbes was aware of and intended, is that any command the sovereign issues must be followed because of the authority of the sovereign, regardless of the content of that command.[17] In fact, this is the essence of justice and it in this sense Hobbes' sovereign is absolute.

[14] For example, Hobbes states in *Leviathan* "The liberty of a subject, exists therefore only in those things, which in regulating their actions, the sovereign hath permitted." *Leviathan*, 265. Taking this even further, he also states in *The Elements of Law* that once a subject enters civil society, they "may no more govern themselves according to their own judgment and discretion, or (which is all one), conscience …. but must be tied to do according to that will only [of the sovereign]." *The Elements of Law Natural and Politic* 136-7.
[15] *Leviathan*, 202., See also, *Man and Citizen*, 138. and *The Elements of Law Natural and Politic* 88.
[16] As Hobbes states in *Leviathan* "To this war of every man against every man, this is also a consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have no place. Where there is no common power, there is no law: where there is no law, no injustice." *Leviathan*, 188.
[17] As Hobbes defines it in *Leviathan*, "Command is where a man saith, Doe, or Doe not this, without expecting other reason than the will of him that says it." Ibid., 303.

The Foundations of Society

The orthodox interpretation of Hobbes emerges primarily out of an understanding of the core foundation of his political system. In this opening section of this first part, I put forward an exploration of this foundation of Hobbes' system from the state of nature to the formation of civil society. The primary purpose of this section is to develop an understanding of exactly why the orthodox reading of Hobbes is dominant, and thus set the stage for later examinations of more liberal interpretations and also for the exploration of counsel in Part Two. In order to achieve the aim of this section, it is important to understand how the rights of individuals shift from the state of nature to civil society, and how these rights are related to Hobbes' account of law and obedience.

Subjects take on a duty of obedience to their sovereign, and thereby grant the sovereign her power, through the social contract.[18] Before becoming part of this contract, individuals exist in a pre-political mode Hobbes refers to as the state of nature. The state of nature acts in Hobbes' political works as the assembly ground of civil society, and ultimately as a touchstone for his portrayal of the life of the subject relative to the role of the sovereign.

[18] Ibid., 223., See also *The Elements of Law Natural and Politic* 111 - 2., and *Man and Citizen*, 167. It is as a result of this that the political life of the subject in civil society is often understood through the frame of obedience or political duty. This perspective has emerged largely from the work of Warrender and remained a core tenant of individualist and other following perspectives. See, Howard Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation* (Oxford Clarendon Press, 1957). and also Mark C. Murphy, "Deviant Uses of "Obligation" in Hobbes' "Leviathan"," *History of Philosophy Quarterly* 11, no. 3 (1994): 280 - 81.

In the state of nature, all individuals have a right to all things, which in Hobbes' understanding means that no one has an obligation to abstain from some act or from some object.[19] Individuals in this account are driven by self-preservation, which, when combined with this right to all things, results in a war of all against all.[20] The reason self-preservation is the primary motivator of individuals in this state is itself an outcome of the laws of nature.[21] Hobbes refers to this outcome as the "right of nature" which dictates that individuals will, or at least it is rational for them to, act in any way which they judge as best suited to the preservation of their own lives.[22] Because, in other words, I am at risk of having my life or my life-enhancing possessions taken away from me by others in their pursuit of their own self-preservation, it is always potentially in my interest to pre-emptively act aggressively in self-defence. This may take the less serious route of reneging on promises, or the more serious route of killing those I suspect might be a threat. The absence of assurances that others will not either kill me or take from me that which is essential to my life is, in this way, the basis of the state of nature.[23]

One outcome of the right of nature is that self-preservation pulls in two opposite directions at once. This opposition exists as, firstly, I am in need of external support

[19] Hobbes, *Leviathan*, 189. See also, *Man and Citizen*, 116 - 7. And, *The Elements of Law Natural and Politic* 79 - 80.
[20] *Leviathan*, 185 - 6. See also, *Man and Citizen*, 117 - 18. And, *The Elements of Law Natural and Politic* 80.
[21] In *Leviathan*, Hobbes defines the natural law as "a precept, or general rule, found out by reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which he thinketh it may be best preserved." *Leviathan*, 189. See also, *The Elements of Law Natural and Politic* 82. And, *Man and Citizen*, 123.
[22] More specifically, Hobbes defines the right of nature in *Leviathan* as, "the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say of his own life; and consequently, of doing anything, which in his own judgement, and reason, he shall conceive to be the aptest means thereunto." *Leviathan*, 189. See also, *The Elements of Law Natural and Politic* 79. and *Man and Citizen*, 115.
[23] As Hobbes says in *Leviathan,* "And from this diffidence of one another, there is no way for any man to secure himself, so reasonable, as anticipation; that is, by force, or wiles, to master the persons of all men he can, so long, till he see no other power great enough to endanger him." *Leviathan*, 184.

to truly defend myself, yet, secondly, I am prevented from cooperating with others on social, moral or any other grounds apart from self-interest, as the threats posed to me by others can never be overcome by myself alone.[24] In other words, in the state of nature, whilst peace and security are my goals, they simultaneously act to prevent my attaining them.

The reason for this absence of assurances, and the reason that I require external support, is that the only resources available in the state of nature are an individual's own physical strength and cunning.[25] However, both of these resources are insufficient to overcome the threat which others pose. Although individuals vary in physical strength, intelligence, cunning, fears and material wealth, individuals are nonetheless equal in the state of nature, since no variation in their power can prevent them from being killed by another. Equality in this sense is thus a core foundation which Hobbes relies upon to build his system.[26] As Hobbes argues, even if one individual is stronger than all others, he can still be overpowered when he sleeps or by others acting in concert against him.[27]

The seemingly obvious way to get around this problem of self-preservation is to simply work with others in order to form a more powerful group. In the state of nature, however, this approach suffers from the same problem it is intended to resolve, a lack of security. Whilst our natural equality is the original cause for this

[24] Hobbes points to this tension in *Leviathan*, where he states that "It may seem strange to some man, who has not well weighed these things, that nature should thus dissociate, and render men apt to invade, and destroy one another." Ibid., 186.
[25] Ibid., 184., See also, *Man and Citizen*, 113 - 4. and *The Elements of Law Natural and Politic* 79.
[26] As Hoekstra states in this regard, "human beings are naturally equal in their physical and mental powers, and are especially equal because of their natural ability to kill one another." Kinch Hoekstra, "Hobbesian Equality," in *Hobbes Today: Insights for the 21st Century*, ed. S. A. Lloyd (Cambridge University Press, 2012), 76.
[27] In *Leviathan,* Hobbes states that "For as to the strength of the body, the weakest has the enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himself." Hobbes, *Leviathan*, 183. See also, *The Elements of Law Natural and Politic* 104-5.

problematic tension, the reason for its continuation in the state of nature has to do with the fact that without security it is always potentially in the interest of an individual's self-preservation to break agreements with others. Due to the primacy of self-interest, cooperation between individuals, or even contracts made simply between individuals designed to avoid the state of war, can always legitimately be abandoned within the state of nature. As Hobbes states in *De Cive*:

> In the state of nature agreements made by contract of mutual trust (by which both parties trust the other and neither makes any performance immediately) are invalid if a just cause for fear arises on either side.[28]

In order to understand Hobbes' claim here that such contracts are invalid, and consequently to discover what would make a contract valid, it is important to note that due to Hobbes' formulation of the laws of nature, even in the state of war one has a duty to keep one's promises. In this state, however, that duty is superseded by the fundamental law of nature, the corollary of the right of self-preservation.

The fundamental law of nature, the first and most important of all the laws of nature Hobbes discusses, dictates the primacy of self-preservation. This law Hobbes' states as:

> That everyman, ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of war.[29]

It is this fundamental law which ensures that in the state of nature (as well as in civil society) a risk to one's life can legitimately overrule the duty which one has to keep

[28] *Man and Citizen*, 127.
[29] *Leviathan*, 190.

one's promises or be bound by cooperative agreements.[30] The duty to act according to promises, however, remains in the state of nature even though it can be invalidated or overruled by the circumstances an individual acts within. Promises thus must be kept in as much as they can be kept safely, but, in the state of nature such safety is never assured and as a result cooperation brings with it mortal risks. As Hobbes states in *Leviathan*:

> For he that should be modest, and tractable, and perform all he promises, in such a time, and place, where no man else should do so, should but make himselfe a prey to others, and procure his own certain ruin...[31]

Here, although Hobbes states that acts such as modesty and promise keeping are obligatory due to the laws of nature, he at the same time makes it clear that if an individual were to follow them regardless of his external situation, then he would violate the right of self-preservation by placing himself in danger. Since in Hobbes' view no act which violates the right of self-preservation can be rational, and since we can never be obliged to act irrationally, we cannot be obligated to act according to these laws of nature in all circumstances.[32]

It is not, then, the case that the chaos which exists in the state of nature is one which exists because of a lack of laws. All the laws of nature are active in the state of nature; they are simply at constant risk of being overruled by the right of nature. Consequently, the chaos which exists is, in fact, due to individuals acting according to

[30] Ibid., 204., See also *The Elements of Law Natural and Politic* 79 - 80. and *Man and Citizen*, 166 - 69.
[31] *Leviathan*, 196.
[32] For a greater discussion on this aspect of how Hobbes portrayed the relationship between reason and the natural law, see Gregory S. Kavka, "Right Reason and Natural Law in Hobbes's Ethics," *The Monist* 66, no. 1 (1983).

these laws.[33] It is the goal of civil society, and it is the reason for its creation, to produce an environment where this no longer occurs, where following laws leads to peace rather than a war of all against all. The creation of civil society solves the tension found in self-preservation by ensuring sufficient security to allow individuals to act freely, and cooperate with each other, without the ever-present threats found in the state of nature.

It may seem that there is a problem underlying this notion of obligations which can be overruled. Hobbes argues in *Leviathan* that all laws of nature necessarily oblige the mind of individuals yet at the same time are only contingently obligatory in terms of individuals acts.[34] It is for this reason that theorists such as Arvan refer to Hobbes' laws of nature as "prudential", in that they are only in place when it is of practical value to do so.[35] This understanding of law, however, risks misunderstanding the significance of Hobbes' account of obligation.

Obligation is at the heart of Hobbes' system in that it secures the ongoing stability of civil society as it emerges out of the state of nature. Subjects in civil society are duty bound to obey the sovereign regardless of the prudential outcomes of doing so or not.[36] If the sovereign commanded all subjects to recite the national anthem for two hours in solitude every morning, it might be prudential for subjects to ignore this command and get a further two hours sleep. This is not, however, a conclusion that

[33] This point is also made in Perez Zagorin, "Hobbes as a Theorist of Natural Law," *Intellectual History Review* 17, no. 3 (2007): 244 - 45.
[34] This distinction is explored in Hobbes as that between *in foro interno* and *in foro externo*. *In foro* translates to 'before the court of' or 'under the jurisdiction of' and, more obviously, *interno* and *externo* translate as internal and external respectively. As Hobbes states in *Leviathan,* "The Laws of Nature oblige *in foro interno;* that is to say, they bind to a desire they should take place: but *in foro externo*; that is, to putting them in act, not always." Hobbes, *Leviathan*, 215.
[35] Marcus Arvan, "Why Hobbes Cannot Limit the Leviathan," *Hobbes Studies* 27, no. 2 (2014): 174.
[36] This is in fact one of the reasons Hobbes' supplies for the failure of societies or groups of men to escape the state of nature without a valid covenant and the institution of sovereign power. See Hobbes, *The Elements of Law Natural and Politic* 105 - 05.

Hobbes would allow. It is not that obligations in Hobbes' system are optional, it is rather that they can incorrectly appear this way due to this distinction between the rational adherence to the law and the physical adherence to the law, the latter of which is contingent upon security.[37] This obligation results, in the same way as self-preservation, from the laws of nature. Although the first law of nature is the most significant in Hobbes' political system, it is only one of many laws of nature which Hobbes outlines.

The first three of these are generally seen as central to his political theory.[38] These first three laws of nature are as follows, 1) to seek peace and follow it, 2) to agree with others to lay down rights and 3) that failure to act according to agreements is unjust.[39] These three laws are seen as central because individually they operate to allow for and legitimate the social contract, the existence of the sovereign, and the conditions of obedience. On the orthodox interpretation, it is only these three laws that are necessary to understand Hobbes' political theory. It is a law of nature to seek peace, therefore we will make sacrifices if we can obtain it (including the sacrifice of our liberty in civil society). It is also a law of nature that when others will lay down their rights to all things, we should also be willing to lay down ours. We, in other words, are willing to make agreements when it is possible, yet in the state of nature, there can be no such agreements and as such, the second law of nature dictates the need of the sovereign. The second law of nature states that when individuals come together in the social contract, they will agree to transfer their rights to all things to

[37] For a discussion on the contrary view, that Hobbes' understanding of obligation is in fact simply inconsistent, see Patricia Springborg and Deborah Baumgold, "The Paradoxical Hobbes: A Critical Response to the Hobbes Symposium, Political Theory, Vol. 36, 2008/Unparadoxical Hobbes: In Reply to Springborg," 37, no. 5 (2009): 682.
[38] Sorell, "Law and Equity in Hobbes," 32.
[39] Hobbes, *The Elements of Law Natural and Politic* 88. See also,, *Man and Citizen*, 137. And, *Leviathan*, 191.

one individual, or group of individuals, termed the sovereign. The sovereign then gains, and maintains the rights to all things and therefore also gains the power to act as an enforcer of the original contract and to all subsequent contracts. Finally, the third law of nature requires that once we make agreements, the most notable being the social contract, we stand by them. This third law of nature dictates that once we have created the sovereign and once we have entered civil society at the sacrifice of our right to all things, we will stand by our agreement and act according to the commands of the sovereign.

Subjects, although they lose rights upon entering civil society, gain the assurances against the threats to their lives that were lacking in the state of nature. The power the sovereign gains, is that which is necessary to provide this assurance. The form that power takes is in that which is sufficient to punish any individual in society who would otherwise break contracts. In effect then, the creation of the sovereign takes away the legitimate grounds for deal breaking.[40]

Through the reception of the right to all things, which individuals voluntarily grant, the sovereign also becomes authorised to all things.[41] As a result of this simultaneous removal of rights from subjects and the granting of rights to the sovereign, the sovereign becomes the sole figure of authority in civil society. The subjects in effect grant their individual authority to the sovereign in exchange for the security

[40]As Hobbes states in *De Cive:* "for it is not reasonable for anyone to make a performance first if it is not likely that the other will perform his part later. … But in the civil state where there is someone to coerce both parties, whichever party is called upon to perform first should do so; since the reason that he was afraid that the other party might not perform no longer exists, as the other can be compelled." *Man and Citizen*, 126 - 27. See also *Leviathan*, 162., and *The Elements of Law Natural and Politic* 78.
[41] Hobbes describes this in *The Elements of Law* as, "In all cities or bodies politic not subordinate, but independent, that one man or one council, to whom the particular members have given that common power, is called sovereign, and his power the sovereign power; which consisteth in the power and the strength that every of the members have transferred to him from themselves by covenant. And because it is impossible for any man really to transfer his strength to another … it is to be understood: that to transfer a man's power and strength, is no more than but to lay by or relinquish his own right of resisting him to whom he so transfereth it." *The Elements of Law Natural and Politic* 107.

thereafter provided by the sovereign power. The point then of having a sovereign, is to have someone with power above all others, whose will must be obeyed *because* of that power.[42] Individuals are granted the security to live without threats from the rational fear the sovereign provides through his power to punish. Such power becomes meaningless if it is not sufficient to create and enforce laws beneficial to the preservation of the lives of the members of civil society. In fact, the minimum amount of power needed for the sovereign to act effectively *as* a sovereign, is absolute.[43]

The power of the sovereign is synonymous with the authority of the sovereign to use that power legitimately within the confines of civil society.[44] The result of this creation of authority is thus that individuals in civil society are granted the safety not only to act according to the natural law, but more fundamentally they are also granted the safety to live at all. The cost of this safety, the cost paid to grant the sovereign the power necessary to possess absolute authority, is obedience. The political subject in Hobbes' civil society pays the cost of obeying the commands of the sovereign, in almost every circumstance regardless of content. In fact, Hobbes defines a law in *De Cive* as 'a command of that person (whether man or council), whose instruction is the reason for obedience".[45] As we shall see in discussing the liberal interpretations, there are exceptions or limits to this obedience which Hobbes outlines. However, these are only in cases where obedience would threaten the life of

[42] As Hobbes states in *The Elements,* "Covenants agreed upon by every man assembled for the making of a commonwealth, and put in writing without erecting of a power of coercion, are no reasonable security for any of them that so covenant, nor are they to be called laws; and leave men still in the estate of nature and hostility." Ibid., 112.
[43] Ibid., 121 - 24. See also, *Leviathan*, 236 - 38.
[44] Outside of these confines exists the state of nature, in which all individuals maintain their legitimate use of power.
[45] Hobbes, *Man and Citizen*, 154., See also *Leviathan*, 312., and *The Elements of Law Natural and Politic* 113.

the subject. In all other scenarios, the subject is duty bound to obey the sovereigns every command, regardless of its content.

In Hobbes' system, commands of the sovereign are civil laws. Thus, when subjects agree to obey the commands of the sovereign, they simultaneously agree to obey the laws of civil society.[46] This is, I would argue, the foundation of the orthodox interpretation of Hobbes.[47] The commands of the sovereign, according to Hobbes, should be created with the intention of protecting civil society. This is reflected in the fact that the point of civil society, and the point of the social contract, is peace.[48] An illuminating example exists in what we would consider contentious laws, such as laws relating to censorship. The role of censorship in Hobbes' thought is contested, however it is at least fairly uncontroversial to say that it exists to promote civil stability. [49] Ideas, books or artworks which require censorship require it due to the fact that their propagation in society is seen as being a potential source of unrest. It is, then, the worry regarding unrest which justifies censorship. It is not simply that something is seen as causing unrest, but specifically that something is seen by the sovereign as doing so. It is the sovereign's role to be the judge of these concerns, and when a judgement is made a command is issued which obligates subjects, not

[46] Hobbes equates the sovereign's commands with the civil law in *De Cive,* where he states that "And the civil laws (that we may define them) are nothing else than the commands of him who hath the chief authority of the city, for the direction of the future actions of his citizens." *Man and Citizen*, 178. In other areas, however, he does specify the need for commands to be communicated appropriately in order for them to count as laws properly speaking. See for instance, *Leviathan*, 317 and 37 - 38.
[47] This foundation, not surprisingly, is also shared by the positivist interpretation of Hobbes' legal system. This interpretation is exemplified by Hampton when he states that in Hobbes' writing "Law is understood to depend on the sovereign's will. No matter what the content, no matter how unjust it seems, if it has been commanded by the sovereign, then and only then is it law." Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), 107.
[48] Hobbes, *Man and Citizen*, 110. See also, , *Leviathan*, 81.
[49] For perspectives on the role censorship plays, see, Van Mill, *Liberty, Rationality, and Agency in Hobbes's Leviathan* and Richard E. Flathman, *Thomas Hobbes : Skepticism, Individuality, and Chastened Politics* (Lanham, MD: Rowman & Littlefield, 2002).

because there is general agreement about the destabilising effects of this ideas themselves, but rather due to the sovereign's power.

It is the commands of the sovereign, then, and ultimately the enforcement of those commands which allow for a civil society. These commands set out the laws of society and are, in Hobbes' view, intended to promote the stability of the state and consequently the safety of its subjects. As a result, the nature of the sovereign's commands are tied to the stability of the state and are designed to direct the acts of subjects in a manner which promotes this stability. From this perspective it seems that the political life of the subject is restricted to obedience. Political behaviour outside of obedience is, in the sense of engaging in the creation of laws or political policy, seen as dangerous to the stability of the state and therefore to be prevented. The reason for this is that Hobbes believes that one of the main causes for social instability is the formation and dissemination of doctrines not sanctioned by the sovereign.[50] As a result of this, it has been common to view Hobbes' political theory as accepting, if not actively endorsing, tyranny.[51]

Due to the nature of obligation, the absolute power of the sovereign is such that political subjects are by definition unable to oppose it. This is due to the fact that it is the *authority* of the sovereign, which itself commands obedience, rather than the content of the sovereign's commands. The overwhelming power of the sovereign is not simply imposed on the subjects of a commonwealth since they themselves

[50] Hobbes refers to these doctrines in *Leviathan* as "the poison of seditious doctrines", and as a "disease of the commonwealth". Hobbes, *Leviathan*, 365.
[51] Hobbes defines tyranny in *Leviathan* essentially as a term used to convey dislike for a government rather than any characteristic form of a government: "for those that are discontented under monarchy call it tyranny" ibid., 240.. In *Behemoth,* however, Hobbes uses the term Tyranny in a far more common manner referring to an excess of power over a populace. For examples of this use in his writing see Bart Sir William Molesworth, ed. *The English Works of Thomas Hobbes* vol. VI (London: John Bohn, 1860), 168, 89, 92, 265, 66 and 305.

authorise the sovereigns power.[52] As Duke states, "The role of sovereign authority in Hobbes' political philosophy is to establish peace and stability by serving as a definitive and unambiguous source of law."[53] The laws of nature cement that authority and make it legitimate. It is not, then, as some theorists assume, simply a matter of asymmetrical power relations which grants the sovereign the authority to create laws.[54] As such, subjects cannot resist the will of the sovereign without denying his authority and thus denying the social contract and consequently the very foundation of civil society. As Hobbes states in *Leviathan*, any resistance to the essential rights of the sovereign is rebellion against the state.[55] The liberty of the subject cannot be such that it resists or even reacts against the authority of the sovereign's commands. As such, it is hard to see how the subject could maintain liberty at all. The life of the subject, however, is not entirely lived according to the sovereign's commands.

According to Hobbes, civil laws are intended to orient subjects towards acts which maintain the stability of the state. In an often quoted expression, Hobbes talks of civil laws in terms of hedge rows which are designed to protect walkers, rather than designed to control their walk.[56] In fact, Hobbes goes so far as to say that "a law that

[52] In discussing authorisation in this sense in *Leviathan,* Hobbes states that through the social contract, "I authorise and give up my right of governing myself, to this man, or to this assembly of men, on this condition, that thou give up their right to him, and authorise all his actions in like manner." Hobbes, *Leviathan*, 227.
[53] Duke, "Hobbes on Political Authority, Practical Reason and Truth," 605.
[54] As an example of this view, see A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), 199.
[55] Hobbes, *Leviathan*, 377., *The Elements of Law Natural and Politic* 171.
[56] This discussion is found in *Leviathan,* where Hobbes states that, "the use of laws … is not to bind the people from all voluntary actions; but to direct and keep them in such a motion, as to not hurt themselves by their own impetuous desires, rashness, or indiscretion, as hedges are set, not to stop travelers, but to keep them in the way." *Leviathan*, 388. A valuable exploration oh Hobbes' understanding of the relationship between liberty in this legal sense and Hobbes' understanding of absolutism can be found in, David Van Mill, "Civil Liberty in Hobbes's Commonwealth," *Australian Journal of Political Science* 37, no. 1 (2002).

is not needful, having not the true end of a law, is not good."[57] And, in *The Elements,* Hobbes states that it is a duty of the sovereign not to make excessive laws.[58] Clearly it would not be conducive to the stability of the state to have the entire life of subjects dictated by laws; perhaps it would not even be possible.[59] In aspects of life where the law is silent, subjects are free to act upon their own interpretation of the natural law.[60] However, when the sovereign commands a subject, the subject's liberty to do otherwise is removed, regardless of the perceived wisdom of that command. Not only do subjects sacrifice their rights to act contrary to the sovereign's commands, they also take on a duty to act in accordance with the sovereign's interpretation of the moral law rather than their own. As such, the sovereign has complete authority in the daily life of its subjects. It is perhaps this more than any other aspect of Hobbes' writing which makes his acceptance of authority truly terrifying for readers today.

In civil society, subjects are required to relinquish their right to follow their private judgements of right or wrong in cases where the sovereign issues a command. They cannot, in other words, place the power of their own individual conscience over the power of the sovereign.[61] If this were not the case, then, according to Hobbes, civil war would be the logical outcome of the inevitable instability produced by the chaos of individuals acting according to a multitude of individual authorities.[62] A crucially important role for the sovereign from Hobbes' point of view is to act as a mechanism

[57] Hobbes, *Leviathan*, 388.
[58] *The Elements of Law Natural and Politic* 173.
[59] Whilst there are many reasons this would not be desirable, one of the most illuminating which Hobbes provides is that if there are too many laws for subjects to be familiar with for fear that "well-meaning men" might break laws accidently. Ibid., 173 - 74.
[60] In *Leviathan*, Hobbes states this as "In cases where the sovereign has prescribed no rule, there the subject has the liberty to do, or forebear, at his own discretion." *Leviathan*, 271.
[61] *The Elements of Law Natural and Politic* 162 - 63., See also *Man and Citizen*, 243 - 44.
[62] In *The Elements* Hobbes states this as "In the state of nature, where every man is his own judge, and differeth from others concerning the names and appellations of things, and from those differences arise quarrels, and breach of peace: it was necessary that there was a measure of all things that might fall into controversy." *The Elements of Law Natural and Politic* 180.

to unite the wills of the people under a single authority. Clearly for this to act as a plausible solution, the authority of the sovereign must be uncontested. There is thus no room for conscientious objection, or what Hobbes would have been more familiar with, passive disobedience.[63]

Crucially, however, the sovereign's role as interpreter of the natural law is restricted to cases in which a judgement is required. That is, those cases where the stability of civil society is at risk and a judgement among alternatives becomes required to unite the people's acts under a single authority to ensure state stability through unity.[64] These judgements determine civil laws. Since it is impossible that the entire life of a subject will be dictated by the civil law, it seems that there is always room for liberty, or what Hobbes terms "liberty harmless to the state".[65] Equally clearly however, this liberty exists at the mercy of the sovereign, which, if it should choose, could issue a command curtailing that liberty at an instant. If there are no laws regarding the consumption of alcohol in society, for example, subjects would be free to act as they saw fit regarding their own alcohol use. However, as soon as the sovereign commanded against the use of alcohol, individuals would no longer be free to act as they choose.

Hobbes' argument for why individuals would voluntarily give up so much is premised on the notion of authorisation. By transferring their rights to the sovereign, they authorise the sovereigns use of those rights, and since they transferred their rights to the sovereign in order that the sovereign would act on their behalf, they are

[63] Hobbes, in fact, specifically addresses passive disobedience in *De Cive* where he unsurprisingly dismisses it as a sin against the law of nature. As he states, "Vain therefore is the distinction of obedience into active and passive; as if that could be expiated by penalties constituted by human decrees, which is a sin against the laws of nature, which is the law of God." *Man and Citizen*, 288.
[64] In *The Elements,* Hobbes posits individual interpretation of the natural law as one of the reasons for rebellion against the sovereign in civil society. *The Elements of Law Natural and Politic* 164 - 65.
[65] *Man and Citizen*, 269.

responsible for the sovereign's acts. As Hobbes' states in *Leviathan,* every subject is "author of all the actions, and judgements of the sovereign instituted; it follows, that whatsoever he doth, it can be no injury to any of his subjects."[66] So in accepting the authority of the sovereign to interpret the laws of nature I thereby accept those interpretations as the grounds for my own acts, rather than using my own interpretation. In this regard, Hobbes argues that:

> For the conscience being nothing more than a mans settled judgements and opinion, where he hath once transferred his right of judging to another, that which shall be commanded, is no less his judgement, than the judgement of that other. So that in obedience to laws, a man doth still according to his own conscience, but not his private conscience[67]

Note the distinction Hobbes makes in the final sentence between a man's conscience and a man's private conscience. Hobbes does not believe that through the social contract we sacrifice our own connection to the natural law. Doing so would require that we quite literally give up our ability to think for ourselves, an act which is clearly impossible. Rather, the distinction between conscience and private conscience is one which hinges on authority. By granting the sovereign the authority to interpret the moral law, we grant it the right to be the judge of morality in society. As subjects, by doing so, we take on a responsibility to act according to the authority of those judgements rather than our own authority. In other words, we do not have a responsibility to agree with a judgement, but we do have a responsibility to act according to it.

[66] *Leviathan*, 232.
[67] *The Elements of Law Natural and Politic* 153. See also *Leviathan*, 365., and *Man and Citizen*, 244.

With limited but notable exceptions, political subjects owe obedience to any and all commands issued by the sovereign. The civil law overrules the laws of nature in an important sense. Although the law of nature is still theoretically primary as a foundation for the civil law, the later is the official interpretations of the natural law. The judgements of the sovereign form these civil laws and it is they that must be used as the basis for action and not the laws of nature according to the interpretation of individual subjects. The judgement of the sovereign is final. As such, since the sovereign is not bound by civil law in Hobbes' system, political subjects are only indirectly bound to the natural law via his interpretation. Of course, as we have seen, the civil law does not cover the entirety of life lived within civil society, and here, where the civil law is silent, the authority of the natural law once again has a direct role in the life of the subject.[68]

In Hobbes' own time this mechanism of social stability was seen by some as not only granting free reign of moral tyranny to the sovereign but also of unreasonably sacrificing the individual's moral autonomy.[69] This perspective is certainly understandable, as the role of the sovereign as ultimate authority and moral adjudicator is undeniably a central aspect of Hobbes' political system. In agreeing to that however, we need not agree that Hobbes was in fact ready to grant free reign to tyranny or to cast aside any thick notion of autonomy in the subject. In fact, there are many areas in Hobbes' writing where it seems clear that he intends to protect the subject from tyranny. This suggests that he intended civil society to allow not just for the life of the subject, but for a 'good' life. It these aspects of Hobbes' writing which

[68] Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*, 164.
[69] Goldie claims that at the time of publication, it was a common claim that "Hobbes … emptied the world of its natural moral economy, and left humanity at the mercy of preponderant or anarchic wills" Mark Goldie, "The Reception of Hobbes," in *The Cambridge History of Political Thought 1450 - 1700*, ed. J. H. Burns & M. Goldie (Cambridge: Cambridge University Press, 1994).

the orthodox interpretation has difficulty explaining and which has motivated the emergence of an alternative interpretation which emphasises the role of the natural law in protecting the subject from the whims of the sovereign. It is to this alternate interpretation I turn to in the next section.

The 'Other' Hobbes

Hobbes, as we have seen, is both unwilling and unable to deny the sovereign absolute power. He is unwilling since he sees any attempt to achieve this denial as a source of social bloodshed, and he is unable since his system is predicated on a system of law which requires obedience to an unbound sovereign. However, simply concluding that Hobbes requires the sovereign to be absolute is unsatisfying for one important reason. This reason is one which many other theorists have noted, namely, that if the sovereign's power is absolute, and the life of the subject is lived at the whim of this power, then it is not clear in what sense Hobbes claims the sovereign has duties.[70]

The aim of this section is to introduce the liberal interpretations of Hobbes, specifically with a view to the understanding of law which they rely upon. These readings pick up on aspects of Hobbes' writing which it seems that the orthodox reading cannot accept as playing a meaningful part.

At the start of Part One, I argued that apart from the theoretical reasons to assume the orthodox interpretation's legitimacy, the other main reason for its enduring legacy is the fact that throughout his political works Hobbes directly states that this is the view he endorses. As an example, in *Leviathan,* Hobbes states that, "the Power and the Honour of Subjects vanisheth in the presence of the Sovereign."[71] And later in the same chapter (Ch. 18 *Of the Rights of Sovereigns by Institution)*, he expands

[70] Arguably the main attempt to solve this problem has been within debates surrounding the status of the natural law with regards to the place of God in Hobbes' system, most notably put forward by A.E. Taylor and Howard Warrender. See, A. E. Taylor, "The Ethical Doctrine of Hobbes," *Philosophy* 13, no. 52 (2009). And also, Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*.
[71] Hobbes, *Leviathan*, 237.

on this to state that subjects, "though they shine, some more, some lesse, when they are out of his sight; yet in his presence, they shine no more than the stare in the presence of the sun."[72] However, whilst this shows a clear emphasis on the relative importance of the sovereign in relation to her subjects, on the orthodox reading alone it is nonetheless difficult to square these statements with other statements he makes in the same works. Principally, these statements relate to areas of liberty which the subject maintains, or areas which ought to be immune from sovereign command.

In each of *The Elements of Law, De Cive,* and *Leviathan*, Hobbes devotes two separate chapters to discussing the laws of nature. The first chapter deals with those laws that are necessary for the formation of civil society whilst the second chapter, titled in all three works, "Of Other Laws of Nature", explores those laws which deal with the ongoing stability of a civil society once it has been established. On the orthodox interpretation, these laws in the second chapter are seen as largely if not entirely irrelevant. This is due to the fact that the sovereign is, as we have seen, given absolute power through the social contract. Recently, however, scholars have pointed to these 'other laws of nature' as being equally important in understanding Hobbes' political thought.[73] Some scholars have even gone so far as to argue that it is these laws which Hobbes intended to act as a restraint on the sovereign.[74] Here we will explore these claims and see how far these laws of nature can take the subject towards a liberal understanding of Hobbes' political thought.

Hobbes describes multiple areas where the sovereign is bound by duties in her treatment of subjects. These areas range from less serious cases, such as prohibiting

[72] Ibid., 238.
[73] See for example S. A. Lloyd, *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature* (Cambridge: Cambridge University Press, 2009).
[74] May, *Limiting Leviathan : Hobbes on Law and International Affairs*

the sovereign from interfering in the marriages or the family life of subjects,[75] to more serious cases, such as allowing subjects to resist a sovereign who threatens them with physical harm.[76] These are specific acts which Hobbes discusses, but there are also more general conceptual areas which arguably result in similar areas of exception. Specifically, the concept of equity, which Hobbes discusses as a duty of sovereign's to maintain, demands a method of governance seemingly at odds with a ruler whose only necessary attribute is power. One example of this is where Hobbes states that "it is a law of nature that every man in distributing right to others, do carry equal weight himself. Wherefore rulers are, by the nature law, obliged to lay the burdens of the commonwealth equally on their subjects."[77]

Many theorists who defend the orthodox interpretation have simply dismissed these aspects of Hobbes, with some suggesting that they are mere embarrassing non sequiturs.[78] However, a distinct area of the literature has embraced these aspects of Hobbes' writing. This literature attempts to minimise the form of authoritarianism and offer a more liberal interpretation of Hobbes' political thought. Baumgold, for example, appeals to these aspects when she claims that in *Leviathan* Hobbes argues for "the people's safety and prosperity, political education, promulgation of good laws, equal justice."[79]

[75] Hobbes, *The Elements of Law Natural and Politic* 174.
[76] *Leviathan*, 268 - 69.
[77] The full quotation is found in *De Cive* and is in regards to taxation, where Hobbes states, "since what is brought by the subjects to public use is nothing else but the price of their bought peace, it is good reason that they who equally share in the peace, should also pay an equal part, either by contributing their monies or their labor to the commonwealth. Now it is a law of nature that every man in distributing right to others, do carry equal weight himself. Wherefore rulers are, by the nature law, obliged to lay the burdens of the commonwealth equally on their subjects." *Man and Citizen*, 264.
[78] Glenn Burgess, "On Hobbesian Resistance Theory," *Political Studies* 42, no. 1 (1994): 69.
[79] Deborah Baumgold, *Hobbes's Political Theory* (Cambridge;New York;: Cambridge University Press, 1988), 101.

One passage which is often invoked in support of the more liberal interpretations of Hobbes is found in *De Cive*, where he states that:

> The duties of the ruler are contained in this one sentence; the safety of the people is the supreme law… Safety must be understood, not as the sole preservation of life in what condition so ever, but in order to its happiness … to furnish the subject abundantly not only with the good things belonging to life, but also with those which advance delectation.[80]

To say that the duty of the sovereign is based not just upon the ongoing life of the subject, but rather upon the happy and the good life of the subject demands explanation, and it is unclear how the orthodox interpretation can achieve this. That is, it is unclear how a reading which posits life in civil society as the better of two evils, a reading which posits the threat of tyranny as a necessary price paid to escape the state of nature, can explain Hobbes' definition of the supreme law as the advancement of happiness. At the same time however, it is unclear in what sense this duty exists, in that it is unclear how subjects could act to ensure the sovereign does in fact act according to this duty. One method is to grant subjects in Hobbes' system rights.

In as much as Hobbes' political system is characterised by obligation, it about what subjects are obliged to do and also, to a lesser extent, what they cannot be obliged to do.[81] When discussing the commands of the sovereign and the obligation subjects

[80] Quoted from David Van Mill, *Deliberation, Social Choice and Absolutist Democracy* (Hoboken: Taylor & Francis, 2007), 133. This claim is mirrored in *The Elements*, however it is delivered more directly as the duty: "*Salus populi suprema lex;* by which must be understood, not the mere preservation of their lives, but generally their benefit and good." Hobbes, *The Elements of Law Natural and Politic* 172.

[81] This is by no means a new discovery. Warrender in 1957, for example, begins his discussion on the framework of his analysis by stating that, "Hobbes' doctrine contains a theory of what the individual is obliged to do; it also contains, however, a theory of what the individual cannot be obliged to do, which

have to obey these commands above, I mentioned briefly that Hobbes maintains that the subject does not give up all her rights in civil society. In most areas of civil society, subjects do give up rights. We do give up our rights to act according to our own interpretations of natural law and we give up our rights to be the judge of our own security. The right to life, however, is always maintained. This is due to the primacy of the fundamental law of nature, which states that without the assurance that my life will be secure it is always permissible for me to break contracts.[82] In this case, that contract is the social contract. As a direct result of this, another maintained right is that subjects have a right to refuse a military draft. In this example Hobbes suggests that it is legitimate for subjects to refuse to serve in the military even at the sovereign's command. [83] More generally, Hobbes states, clearly and repeatedly, that it is legitimate for subjects to disobey the sovereign when obedience would risk the life of the subject, or indeed the honour of the subject.

In his writings, Hobbes argues that subjects maintain the right to self-preservation in civil society. For example, in *Leviathan* Hobbes writes:

> The obligation of subjects to sovereign, is understood to last as long, and no longer, that that power lasteth by which he is able to protect them. For the right men have by nature to protect themselves, when no one else can protect them, can by no covenant be relinquished.[84]

is worthy of examination upon its own merits and which has largely been ignored." Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*, 13.

[82] There is some controversy over this, as this would seem to extend to soldiers serving in a standing army, something which Hobbes explicitly denies. For a greater discussion on this see: Susanne Sreedhar, *Hobbes on Resistance: Defying the Leviathan* (Cambridge;New York;: Cambridge University Press, 2010).

[83] For a more extensive discussion on the exclusivity of self-defense to the social contract see, "Defending the Hobbesian Right of Self-Defense," *Political Theory* 36, no. 6 (2008).

[84] Hobbes, *Leviathan*, 272.

According to Burgess, this right of self-preservation carries over from the state of nature to civil society, where it can manifest itself as a right to resist the sovereign.[85] This resistance covers both straightforward disobedience to the sovereign's commands, and active violence towards the body of the sovereign. This right, according to Burgess, provides evidence that the natural law remains relevant for subjects living in civil society.[86] This is of course due to the fact that the right to self-defence is a right given by the laws of nature. It is important to note, however, that the right of self-preservation is not a right against the sovereign as such, it is a right which exists prior to the sovereign's existence.[87] Its importance lays in the fact that it is, possibly, the only right which is maintained by subjects in civil society. In this sense however, the right exists as one which necessitates only that subjects can rationally act in self-preservation. It does not by itself obligate others to act in any specific way. It is therefore difficult to see how this right could be used to expand the role of the natural law in civil society in any expansive sense. That is because it is difficult to see how it could be used to alter the behaviour of others.

There is another problem facing any attempt subjects make to enforce either their rights or their sovereign's duties. That is, it seems that Hobbes is unwilling to allow subjects the option of punishing or otherwise restricting their sovereign. As he states in *Leviathan*, "no man that hath the sovereign power can justly be put to death, or otherwise in any manner by his subjects punished."[88] There seems, then, to be a disconnect between the duties of the sovereign and the powers that subjects hold in relation to these duties. This disconnect, rather than being bridged by the natural

[85] Burgess, "On Hobbesian Resistance Theory," 66.
[86] Ibid.
[87] Hobbes, *Leviathan*, 268 - 71.
[88] Ibid.

law, is, upon closer inspection, caused by the natural law, since it is the natural law itself which allowed for the existence of the sovereign and the conditions of obedience.

There is also another barrier preventing taking the right of self-preservation to the point of enforcing the duties of sovereigns, a barrier which exists in the fact that the sovereign, properly speaking, does not have obligations to her subjects at all. Whilst through the social contract subjects make agreements which obligate them to their sovereign, the sovereign herself does not. The sovereign is not party to the social contract which establishes civil society; that contract is made between subjects while the sovereign is simply the beneficiary.[89] As such, the sovereign cannot be said to have obligations *to* her subjects, though she does have obligations *with regard* to her subjects.[90] The distinction matters since if the sovereign had obligations *to* her subjects, then the subjects would be an active party who would have the grounds to objects if the sovereign failed to act appropriately.[91] Whilst subjects incur duties from the social contract towards the sovereign, such as obedience, the sovereign does not. The danger of confusing this aspect of Hobbes' thought is that it on the former view subjects themselves play a role in the behaviour of their sovereign, whereas on the latter they do not. This is not to say that the sovereign does not have duties *with regard* to her subjects, she does, but it does make it difficult to see how such obligations could be enforced if the sovereign decided against acting upon them.

[89] Hobbes argues for this in *Leviathan*, stating that "A commonwealth is said to be instituted, when a multitude of men do agree, and convent … that to whatsoever man, or assembly of men, shall be given by the major part, the right to present the person of them all." Ibid., 228.
[90] Sreedhar, *Hobbes on Resistance: Defying the Leviathan*, 96.
[91] This is also the basis for Green's claim that, "Hobbes's individualism and emphasis on consent to political hierarchy are congenial to our understandings of human rights while his views on natural rights and political absolutism are not." Michael Green, "Hobbes and Human Rights," in *Hobbes Today*, ed. S. A. Lloyd (London: Cambridge University Press, 2012), 320.

Considering that Hobbes states that the sovereign does not take on obligations to her subjects through the social contract, in order for the natural law to operate effectively in the protection of subjects it seems the mechanism would need to exist outside of this contract. Sreedhar, as one example of this attempt, claims that subjects maintain a right of resistance against the sovereign which is not impacted by the sovereign's duties at all.[92] Sreedhar goes further than Burgess, in claiming that Hobbes intended this right to exist.[93] As she argues, since Hobbes was aware that due to the demands of governance, the sovereign would, at some point in the existence of civil society, put subjects in mortal danger, Sreedhar claims that Hobbes aimed to prevent this inevitability and for this reason includes this right to resist.[94] This right to resist the sovereign does not place any demands on the behaviour of the sovereign, rather it grants a liberty to subjects in that it removes the validity of the social contract and therefore also removes the obligation to obey the sovereign. One outcome of this is that, at least portrayed in this way, the right to resist cannot be developed into a broad system of social rights, but is only relevant to subject when they are under the threat of mortal danger.

The other, potentially more important issue with this interpretation of the right of resistance is that, due to the invalidation of the social contract, subjects cannot claim this right from within the protection of civil society. From the orthodox perspective, this may not be a problem. After all, if the reason that it was invoked was that the subject was already in mortal danger, returning to the state of nature would seem to be a straightforward mirroring of circumstances. The problem instead exists when the right to resist is built up to reinforce a liberal interpretation of Hobbes'

[92] Sreedhar, "Defending the Hobbesian Right of Self-Defense," 798.
[93] Burgess, "On Hobbesian Resistance Theory."
[94] Sreedhar, *Hobbes on Resistance: Defying the Leviathan*, 150.

absolutism. It seems that rather than expanding the role of the natural law in civil society, even if there is recourse to subjects based on the natural law, they are not actually reflective of a liberal perspective of governance since this recourse in fact removes individuals from the political system entirely.

When a subject justly refuses the command of the sovereign, that subject is placed outside of civil society. Hobbes points to this Chapter XIII of *De Cive, On the duties of them who bear rule,* where he states that if the law is not executed properly, that is according to justice, then "the city itself is dissolved, and every man's right of protecting himself at his own will returns to him."[95] If the sovereign should choose to kill that individual, then the only framework to understand the act would be the laws of nature, which as we know suggest that this is the expected outcome. As such, this aspect of Hobbes civil society seems to strongly advocate for the orthodox interpretation of Hobbes political system.

In order to overcome this challenge, Curran argues for an interpretation of Hobbes' system which allows the subject more rights than simply the right of self-defence.[96]. As we saw with the right to resist, it does not actually prevent the sovereign from acting against the subjects wellbeing; it simply allows subject to justly resist. Curran agrees that some of Hobbes' rights exist this way, but she also believes that the subject has other kinds of rights which do impart meaningful obligations. Curran argues for rights of the kind that do in fact place obligations upon others without relying on a direct agreement.

[95] Hobbes, *Man and Citizen*, 270.
[96] Curran, *Reclaiming the Rights of the Hobbesian Subject*.

Curran uses a distinction between claim rights and liberty rights developed by Wesley Hohfield in order to argue that subjects do in fact have a recourse, within civil society, to protect them from abuses of the sovereign power.[97] On this view, a liberty right is one which grants individuals themselves the liberty to act, such as the right to resist which grants subjects a liberty to resist rather than obey their sovereign. It is a right which grants a liberty to an individual subject and no more. Claim rights, on the other hand, are rights which exist as duties to others.[98] Claim rights in the sense that Curran argues exist in Hobbes, are rights which enforce genuine duties upon others.

Curran claims that these claim rights emerge out of the second law of nature, the law which dictates that individuals will agree to give up their rights if others do the same. More specifically, Curran picks up on Hobbes' claim that:

> When a man hath in either manner abandoned, or granted away his right; then is he said to be obliged, or bound, not to hinder those, to whom the right is granted, or abandoned, from the benefit of it: and that he ought, and it is his duty, not to make voyd that voluntary act of his own; and that hinderence is injustice and injury.[99]

Hobbes here states that through the social contract, since all individuals renounce their rights to all things in, to fail to live up to this agreement is injustice. That agreement, according to Curran, is that "anyone who transfers or renounces a right is therefore under an obligation and has a duty to refrain from any action that would

[97] Ibid., 4. In Curran's primary argument she relies on a system of rights developed by Neil MacCormick in his interest theory of rights, however the terminology discussed here emerges out of the work of Hohfield.
[98] Curran defines a claim right more specially as "a right that is correlated with the duties of another or others. These duties either consist in refraining from actions that would impede the rightholder in her exercise of that right or, sometimes, of performing actions that will give the rightholder the thing she has a right to or help her have or do the thing she has a right to." "Hobbes's Theory of Rights: A Modern Interest Theory," *The Journal of Ethics* 6, no. 1 (2002): 64.
[99] Quoted from Curran, ibid., 68.

hinder the recipient in his exercise of his right."[100] Assuming that subjects retain claim rights, of the kind Sreedhar puts forward in the right to resist, other members of the social contract are obligated not to act, at least, in ways which prevent the expression of that right.

Whilst I believe there are good reasons to think Curran is successful in her argument that claim rights have a place in Hobbes' system, they are not a place which relates to the duty of the sovereign herself. As we have seen, the sovereign is not party to the social contract and thus cannot be held accountable for the agreements made within it. These approaches which are reliant on a notion of rights seem to grant credence to some aspects of Hobbes' liberal writing. But they do not range widely enough to cover all of it. It is not clear to me, for example, that they can be used to explain Hobbes' claim that sovereigns have a duty to ensure subjects live a happy life. They also seem to leave, or at least threaten to leave, the subject outside civil society in the state of nature, once again placing the individual at the mercy of the sovereign's whim. In order to supply a wider ranging answer to this problem, some theorists have looked to the conceptual foundations of Hobbes' system, not so that the laws of nature might provide a system of rights as such, but instead that they might provide a moral framework which governs the legislative power of the sovereign.

According to May, within Hobbes' laws of nature, equity is the fundamental principle which grounds civil society. As May states,

> Viewing the sovereign as merely a beneficiary to a contract she has not made, of course, presents difficulties, most especially concerning the duties of that sovereign to her citizens. But there is no reason to think this difficulty cannot

[100] Ibid.

> be overcome … Hobbes sought to overcome it with an ingenious understanding of the idea of equity.[101]

According to May, Hobbes account of equity is fundamental to his system in that it is logically prior to the social contract.[102] Thus, although the sovereign does not directly agree to act in specific ways with her subjects, she nonetheless must do so in order to keep the terms of the social contract valid. In other words, according to May, equity is a method which allows the natural law to act to expand the terms of relations between subject and sovereign beyond the mere security issues of the social contract. As he states, this account of equity "seems to provide us with the moral wedge we can drive between Hobbes' seemingly severe terms of the constitutional contract."[103]

There are multiple formulations of equity in Hobbes' work, all of which have in common the theme of legal judgement.[104] The eleventh law of nature regarding equity, for example, states that

> if a man be trusted to judge between man and man, it is a precept of the law of nature, that he deal equally between them. For without that, the controversies of men cannot be determined but by war.[105]

Clearly the individual who is the most significant in deciding judgements in civil society is the sovereign. The law of equity, then, seems to offer a direct rebuttal of the

[101] May, *Limiting Leviathan : Hobbes on Law and International Affairs* 66.
[102] Van Mill makes a similar argument for the primacy of the laws of nature in, Mill, "Civil Liberty in Hobbes's Commonwealth," 34 - 36.
[103] May, *Limiting Leviathan : Hobbes on Law and International Affairs* 68.
[104] Klimchuck, for example, identifies four main roles equity plays in Hobbes' legal theory. See, Dennis Klimchuk, "Hobbes on Equity," in *Hobbes and the Law:*, ed. David Dyzenhaus and Thomas Poole (Cambridge University Press, 2012).
[105] Hobbes, *Leviathan*, 212. In *The Elements* Hobbes also discusses equity as it relates to pride, he does so however, in a slightly differently manner to *Leviathan* in that the focus is not upon judging between two others, but instead judging between oneself and another as equals. "For peace sake, nature hath ordained that every man acknowledge another for his equal." *The Elements of Law Natural and Politic* 93.

claim that the sovereign in Hobbes' system can govern according to its whim. The challenge standing in the way of accepting equity directly as a method to connect the natural law with civil law in a robust and meaningful sense, is that it is not clear how in practice it would work.[106]

One method which might seem natural to minimise the degree of authoritarian power and make equity enforceable, is by focusing on the law of nature which outlines the nature of justice. However, justice has a specific meaning in Hobbes' thought. Justice, according to Hobbes, refers to the keeping of contracts, and especially to the keeping of the social contract. In *Leviathan,* Hobbes states, "When a covenant is made, then to break it is unjust: and the definition of injustice, is no other than the not performance of covenant. And whatsoever is not unjust, is just."[107] Justice is done, in other words, when subjects obey their sovereign.

However, if it turns out that equity is fundamental to the social contract in the way May suggests, then it seems that the sovereign could be limited by justice through her obedience to equity. In other words, it seems possible that the sovereign could be guilty of injustice through being guilty of inequity. In order to explore this claim, in the next section of this part we will look more closely at the specifics of Hobbes' account of law in order to see how justice works within his system.

[106] Arvan, "Why Hobbes Cannot Limit the Leviathan."
[107] Hobbes, *Leviathan*, 202. See also, *Man and Citizen*, 138 - 9., and *The Elements of Law Natural and Politic* 88 - 9.

The Challenge of Justice

The liberal interpretations of Hobbes' political thought rest on aspects of his writing which the orthodox interpretation cannot make meaningful sense of. The concept of justice however, seemingly prevents these liberal aspects from playing an active role in the practical life of the subject. In this final section of Part One, I attempt to narrow down these conflicting interpretations to their underlying understandings of Hobbes' account of law. By doing so, I argue that whilst it is true that justice prevents these aspects of his writing being used to limit the power of the sovereign, it is nonetheless the case that Hobbes takes these aspects seriously. In Part Two of the thesis I will put forward the concept of counsel as the mechanism which allows Hobbes to do just this.

Since justice relates to obedience to the civil law and the source of the civil law is the sovereign, it seems fairly straightforward that the sovereign can never be guilty of injustice. The other outcome of this, and one which was seen as unpalatable in Hobbes' time as it may well be seen today, is that it eliminates the possibility for unjust laws.[108] At one point in *Leviathan*, however, Hobbes defines a just individual as one who obeys, not the civil laws, but the laws of nature.[109] This may seem to add credence to the claims of the liberal interpretations in their attempts to enhance the

[108] May, *Limiting Leviathan : Hobbes on Law and International Affairs* 67.
[109] Hobbes states this definition in full as, "The laws of nature are immutable and eternal; For injustice, ingratitude, arrogance, pride, inequity, acception of persons, and the rest, can never be made lawful. For it can never be that warre shall preserve life, and peace destroy it. The same Laws, because they oblige only to a desire, and endeavor, I mean an unfeigned and constant endeavor, are easie to be observed. For in that they require nothing but endeavor; he that endeavored their performance, fullfilleth them; and he that fullfilleth them, is just." Hobbes, *Leviathan*, 215.

role of the natural law in society. I will argue that the principle of justice, as it emerges out of the social contract, prevents this attempt from succeeding.

An unclear case regarding the sovereign acting unjustly might, as an example, exist if the sovereign makes it a law that subjects are free to earn a living being street performers and then later prevents mimes from doing so. It seems in this case that the sovereign may be acting unjustly through legislating inequitably. In fact, it seems in some sense that Hobbes himself agreed. For example, in *Leviathan,* he states:

> If a subject has a controversy with his sovereign, of debt, or of right of possession of lands or of goods, or concerning any service required at his hands, or concerning any penalty corporal or pecuniary, grounded on a precedent law; He hath the same liberty to sue for his right, as if it were against a subject… [110]

Granting subjects the liberty to sue their sovereign in these cases suggests that in these types of cases, the sovereign can be guilty of injustice. There is, however, good reason to think this is not the case. Recall that justice relates to the keeping of covenants, not of laws as such. In Hobbes' words, commands affect those "formerly obliged to obey."[111] Subjects agree to obey the laws of the sovereign, and therefore the breaking of laws is unjust in that it breaks the original covenant, the social contract. The sovereign, however, is not a party to that contract. As Hobbes states:

[110] Ibid., 271.
[111] Ibid., 312. This claim is echoed in *The Elements,* where Hobbes states that "a law obliges not otherwise than by virtue of some covenant made by him who is subject thereunto." *The Elements of Law Natural and Politic* 178.

> because the right of bearing the person of them all, is given to him they make sovereign, by covenant only of one to another, and not of him to any of them; there can happen no breach of the covenant on the part of the sovereign.[112]

The sovereign may well break laws which she herself created, but she is not obligated to do otherwise, and thus is not guilty of injustice.[113] The question then becomes: if the sovereign cannot act unjustly, and if subjects are duty bound to obey the sovereign, why does Hobbes create the option of subjects suing the sovereign?

By exploring the laws of nature beyond what is necessary for the formation of civil society, a less authoritarian reading of Hobbes emerges in which the sovereign is in some sense limited. Supporting such a reading is the fact that the laws of nature apply to all, both subject and sovereign.[114] As such, the acts of the sovereign towards her subjects are morally constrained by the laws of nature and are motivated by both these laws and the duties which emerge in the formation of civil society. In other words, in much the same way as individuals in the state of nature have obligations which they cannot be rationally obliged to act upon, on this view the social contract and the existence of civil society does not create the obligations of the sovereign, they simply create the conditions upon which the sovereign can be obligated to act.

The laws of nature which deal with societal interactions all have a common theme. As Kavka notes, this theme lies in their targets. He argues that although Hobbes redefines justice so that the sovereign cannot be guilty of being unjust, in fact, the laws of nature, which also obligate the sovereign, all relate to injustices in the more

[112] *Leviathan*, 230., see also *Man and Citizen*, 137.
[113] In *The Elements* Hobbes in fact spells out the difference between a covenant and a law and being the difference between the declaration of one's own will and the declaration of another's. *The Elements of Law Natural and Politic* 179.
[114] See for example, May, *Limiting Leviathan : Hobbes on Law and International Affairs*

common usage of the term.[115] The question then becomes, in what sense is the more common usage of injustice in the background of Hobbes' use and, in short, is Hobbes attempting to have his cake and eat it too?

All of the liberal interpreters of Hobbes looked at in the last section use aspects of the natural law to allow for some liberty on behalf of political subjects. All of them, however, ran into difficulties when attempting to show how these liberties could be employed against an absolute sovereign. The reason for this is, as Duke argues, that there are two fundamental yet apparently contradictory aspects of Hobbes' system. Firstly, that "the promulgated commands of the sovereign authority are sufficient to establish the existence and validity of civil law."[116] And secondly, that "the laws of nature place moral constraints on the existence and validity of civil law."[117] The problem is, therefore, if the commands of the sovereign are sufficient for the creation of valid civil laws, then it is hard to see how these laws could be dependent upon moral considerations.

Kavka proposes a solution to this problem in what he terms the "mutual containment thesis".[118] There are two halves to this thesis as he lays it out, the first is simply that subjects must obey the commands of the sovereign, not because of any attribute in the civil law, but because of the commitment to obedience which exists in the natural law and is realised through the social contract. The other half claims civil laws contain natural laws through the sovereign's function as interpreter. Some theorists see this mutual containment thesis as sufficient reason to qualify Hobbes as a natural

[115] Gregory S. Kavka, *Hobbesian Moral and Political Theory* (Princeton, N.J: Princeton University Press, 1986), 343 - 44.
[116] Duke, "Hobbes on Political Authority, Practical Reason and Truth," 606.
[117] Ibid.
[118] Kavka, *Hobbesian Moral and Political Theory*, 248.

law theorist rather than a positivist.[119] There is a reason, however, which in fact the first half of the thesis points to, that is the commitment to obedience, which suggests this conclusion may be premature. That reason is justice.

As Lloyd points out, the laws of nature "do not contain qualifying clauses."[120] All laws, according to Hobbes, require interpretation. However due to their generality, this is especially true of the laws of nature.[121] As we have seen, the necessity of interpretation is a key reason for having a sovereign at the centre of civil society in the first place. Subjects are bound to act according to the natural law as it is interpreted through the civil law in order to prevent the instability caused by opposing interpretations. However, according to Hobbes, the reason that subjects grant this power to the sovereign is itself due to the natural law. In this way, the natural law clearly points to inequity and at the same time removes the possibility of acting against it.

In order to capture this tension, Lloyd proposes her "self-effacing natural law" thesis in which she argues that the natural law is self-effacing, in the sense that the natural law itself enforces the authority of the sovereign's interpretations of the natural law (rather than enforcing adherence to the natural law itself), as they exist as civil law.[122]

According to Lloyd:

> Hobbes propounded a theory according to which the core commitment of natural law imposes upon subjects a genuine and virtually infeasible duty to

[119] For a recent example of this claim see, Kody W Cooper, "Commanding Consistently with Sovereignty: Thomas Hobbes's Natural Law Theory of Morality and Civil Law," *Brit. J. Am. Legal Stud.* 3 (2014).
[120] Lloyd, *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature*, 180.
[121] This challenge of interpretation is explored in depth in, D. Undersrud, "On Natural Law and Civil Law in the Political Philosophy of Hobbes," *History of Political Thought* 35, no. 4 (2014).
[122] Lloyd, *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature*, 280.

> comply with the sovereign's civil laws, even when behaviours commanded violate the requirements of discrete particular laws of nature.[123]

This is the reason that after the creation of civil society, as far as subjects are concerned, the primary law of nature which concerns their daily life is justice.[124] For the sovereign, on the other hand, all laws of nature hold importance. The point here is that because of justice, there is no recourse available to subjects to enforce the sovereign's commitment to the natural law. Justice simultaneously cements the natural laws containment in civil society, at least assuming that subjects actually do obey their sovereign, and at the same time prevents subjects from using the natural law to protect their attempts at living a good life. If there is one area where Hobbes breaks more clearly with the natural law tradition than any other, then, it is here in his treatment of justice.[125]

Within the natural law tradition, it was a core doctrine that it was possible to separate civil laws along just lines, identifying just laws against unjust laws by their relationship with the natural law underpinning them.[126] Hobbes, however, redefined justice in a way which ensured the civil law's relationship to the natural law, and simultaneously removed the possibility of using justice as a legal yardstick. Hobbes thus redefined justice in a way which simultaneously strengthened and weakened the civil laws connection to the natural law. Although at first glance it might seem that the remaining laws of nature hold promise for freeing the subject from the whims of the sovereign and the subjugation of tyranny, it is, on closer inspection, hard to see

[123] "Hobbes's Self-Effacing Natural Law Theory," *Pacific Philosophical Quarterly* 82, no. 3&4 (2001): 286.
[124] Lloyd refers to this as justice's "privileged position among the laws of nature." Ibid., 288.
[125] Quentin Skinner, *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge;New York;: Cambridge University Press, 1996), 314.
[126] Lloyd, "Hobbes's Self-Effacing Natural Law Theory," 286.

how this could in practice be realised. This is because at the point of the third law of nature, the point of justice, the subject, as a condition of the social contract, becomes duty bound to substitute his own understanding of the remaining laws for the sovereign's. Although the laws of nature are obligatory, as we have seen, once the sovereign makes a judgement about how to interpret them, subjects are no longer able to act contrary to the sovereign's commands. The natural law is a crucial aspect of Hobbes' system, yet for the subject, it is hard to see how they could be accessed past the bulwark of the sovereign's authority as it is solidified in the concept of justice.

Although the remaining laws may look to be a plausible tool to use against the sovereign, this is not the case due to the fact that the sovereign is the official interpreter of the moral law.[127] This, combined with the fact that it is the authority of the sovereign's commands which demands obedience rather than the content of those commands, means that the subject can never bypass the authority of the sovereign to access the moral law in isolation from the sovereign's power.

Liberal interpretations of Hobbes, such as that presented by May, do a good job identifying the aspects of his writing which run counter to the picture presented by the orthodox interpretation. They are completely correct that Hobbes does in fact frequently use this liberal language in ways which seem to contradict the orthodox view of a deaf and distant sovereign. However, whilst Hobbes' liberal language is clear, what is not clear is the role it plays in his system. Attempts to use these aspects to provide either a theory of rights which can resist Hobbes' sovereign or a moral framework which can limit the legislative power of the sovereign both challenge the

[127] Glenn Burgess for example looks to Hobbes' natural laws as the basis of what he terms a theory of Hobbesian Resistance. See, Burgess, "On Hobbesian Resistance Theory."

core aspect of Hobbes' system, that is, of obedience. The orthodox interpretations alternative, however, is simply to dismiss these aspects of his writing.

The orthodox reading can only take these apparently liberal statements to be meaningful in as much as the sovereign actually uses them, a factor it argues which is entirely separate to lives of her subjects. From this perspective, it is easy to see that the liberal aspects of Hobbes' writings cannot be indicative of a role for the natural law beyond the actual sovereign herself. [128] This orthodox reading argues that it is simply the case that Hobbes takes the threat of instability seriously and believed the best way to protect against this is to allow subjects to live freely enough to satisfy them and prevent them from destabilising the commonwealth. Understandably, as a result, this means that the liberal aspects of his writing are not seen as integral aspects of Hobbes' political thought. Yet, whilst this seems a reliable conclusion, especially in the light of justice, these liberal aspects of his writings seem to be more than just off hand advice. They, for example, use what seems to be much more forceful language, language of 'obligation' and 'duty'.[129] The laws of nature are also returned to in nearly all areas when Hobbes' discusses the governance of the commonwealth.[130] However, in order to explain this, much of the liberal response has taken the form of, in some sense, forcefully protecting individuals from the sovereign's incorrect use of power. This approach has the unfortunate consequence of damaging the absolute nature of Hobbes' absolute sovereign, something which it is simply impossible to accept that Hobbes intended.

[128] For an example of this view, see Sorell, "Law and Equity in Hobbes."
[129] Hobbes, *Leviathan*, 376, 82.
[130] For select examples in *Leviathan*, see ibid., 223, 24, 52, 67 and 354.

It is my position that the gulf separating the orthodox from the liberal reading is based on a misunderstanding of absolute rule and the corresponding relationship between sovereign and subject. By looking closely at the way political decision making took place in Hobbes' time, and comparing this with the language Hobbes actually uses, specifically in regards to counsel, in the next part of this thesis I will show how Hobbes intended the liberal aspects of his language to be meaningful beyond simply being useful, without subtracting from his core idea of an absolute sovereign.

Part Two

In the sixteenth and seventeenth centuries, counsel was seen as central to political life in England.[131] Counsel, in short, was political advice given to rulers and was commonly seen as a requirement, and in many cases as the legitimation, of good governance. Hobbes' own position on counsel fits directly into the discussions of counsel during this period. However, it is not an aspect of his political thought which has been previously explored in depth. Part Two of this thesis aims to address this gap in the literature.

In early modern England, the political role of counsel was seen to have both negative and positive effects. It was considered a negative since counsel was at risk of being the cause of bad governance from vested interests. There was, in other words, a danger that individuals seeking to manipulate the power of the monarch to their own ends could use counsel as a tool. It was also, and more significantly, considered a positive because it helped legitimate the concentration of power in one individual. Monarchs, like the rest of us, are human and suffer the same shortcomings we all do. They have gaps in their knowledge, they react badly to emotional issues and they make mistakes in their reasoning. Granting absolute power to one individual brings with it a risk that, because of these reasons and more, power will be used badly or harmfully to the state and its people. Counsel was the primary tool which helped to

[131] Jacqueline Rose, "Kingship and Counsel in Early Modern England," *The History Journal* 54, no. 1 (2011): 49 - 50.

prevent that from happening. Understanding how to achieve this whilst preventing its corruption was a constant theme of political discussions in this period.

As one would expect of a political theorist writing in this time, Hobbes includes counsel in his political discussions. The role that this concept plays in his writings has, however, been largely overlooked.[132] Despite this relative scholarly neglect, the importance of counsel to Hobbes is evident from the use he puts it to throughout his works, from his *A Briefe of the Art of Rhetoric* written in 1637, to *Behemoth* written in 1668.[133]. Indeed, Hobbes was read by his contemporaries in the lights of his portrayal of counsel.[134] By exploring the role of counsel as it was used in early modern understandings of governance, and comparing this use to Hobbes' own, we can see a picture of absolute rule which can meaningfully be referred to as both absolute and limited.

The central claim of the second part of this thesis is that counsel is an integral aspect of Hobbes' political thought and that its role was intended by Hobbes to widen the connection between the natural law and the law of civil society. That is to say, counsel is the mechanism designed to bring civil law into closer alignment with natural law. The role of counsel in Hobbes is significant in terms of governance because of the role it plays in supporting the expression of the natural law in civil society. This role is especially significant in terms of the current literature on the

[132] For exceptions to this see the recent work of Gabriella Slomp, "The Inconvenience of the Legislator's Two Persons and the Role of Good Counsellors," *Critical Review of International Social and Political Philosophy* 19, no. 1 (2016).;and Joanne Paul, "Counsel, Command and Crisis," *Hobbes Studies* 28, no. 2 (2015).;
[133] See for examples within these works, Sir William Molesworth, *The English Works of Thomas Hobbes* 196, 207, 48, 427, 68, and 82. His use of political counsel in his works published between these works is referenced throughout the following three sections of the second part of this thesis.
[134] See for examples, G. A. J. Rogers and Andrew Pyle, *Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*, vol. no. 5 (Bristol, England: Thoemmes Press, 1995), 72 and 250.

natural law, specifically because counsel offers a mechanism to address the more liberal aspects of Hobbes' writing in a way which is not antagonistic to justice.

In order to argue for this claim, we will look to three main aspects of counsel. Firstly, we will look to the history of the concept and practice of political counsel from the sixteenth century up to Hobbes' writings in the mid-seventeenth century. Secondly, we will look to the way Hobbes himself discussed counsel in his writings and consequently at the role he gives it in his system. Thirdly, and finally, we will look to the way an understanding of this incorporation can impact our understanding of Hobbes' vision of absolutism as it intersects with the central theme of Hobbes' commonwealth, the theme of justice. By looking to these three main areas in this second part of this thesis, I will show that counsel is directly connected to the core of Hobbes' political thought.

The History of Counsel

Recently, historical explorations of the politics of early modern England have seen an expansion of scope beyond the traditional top down analysis of juridical law which travels from the monarch to the people. Instead, contextual evidence has begun to take centre stage which shows a more nuanced exchange of ideas and of influences between the various strata of society. This widening of scope has not only allowed a better picture of the daily practice of politics and legal decision making in this period, it has also granted a better, more accurate, picture of the traditional focus of historical political analysis, the absolute monarch. By widening this scope, we get a better understanding of what absolutism under such a ruler really meant.

One way in which this expansion has aided our understanding has been by shining light on political practices that were previously obscured by the significance of absolute power. Absolute rule has traditionally been framed in a legal sense as the source of law and power, and consequently the more mundane aspects of every day politics struggled to be recognised in the background of this framework. Jaqueline Rose argues that one such aspect is the role of counsel. By looking directly towards the role of counsel as it existed in both the pursuit of good governance and in the related task of legitimating the use of power, Rose argues that we can more accurately see how politics in practice operated at this point in history. [135]

[135] Rose, "Kingship and Counsel in Early Modern England," 52.

What modern historians are starting to realise – that counsel was an essential ingredient in sovereign power – was widely recognised in early modern England. Francis Bacon wrote in his essay on counsel that, "the ancient times do set forth in figure both the incorporation and inseparable conjunction of counsel with kings".[136] Counsel was seen as ever-present in political discussions and, as Bacon here points out, this is because counsel was seen as a necessary component of absolute rule. It was impossible to see absolute power existing without it, and the reason for this was the division between knowledge and power.

While the monarchs of early modern England may have been seen as omnipotent, they were not seen as omniscient. There was a clear division between power and politics in this period and this presented a difficulty, as granting absolute power to one individual brought with it obvious dangers of immoral rule or, the more likely scenario, straightforward bad governance. Monarchs cannot possess perfect knowledge and in order to govern well they required counsel on all topics concerning their kingdom, from economic and military matters to matters of the spiritual health of their people. It is for this reason that during this time, advocates of absolute power paid special attention to counsel as a method of ensuring that that power was used properly.[137]

In an effort to overcome the danger posed by this division, Erasmus (1466 – 1536) wrote in his *Education of a Christian Prince* (1516; 135 years before Hobbes published *Leviathan*), that counsel was what was required to bridge the

[136] Francis Bacon, *Essays*, vol. 2 (London: George Routledge & Sons), 79.
[137] John Guy, "The Rhetoric of Counsel in Early Modern England," in *Tudor Political Culture*, ed. Dale Hoak (Cambridge University Press, 1995), 292.

shortcomings of rule by one fallible individual.[138] Erasmus states that "a country owes everything to a good prince; but the prince himself owes to the one whose right counsel has made him what he is."[139] It was this division between power and knowledge which necessitated counsel and made it so important in early modern conceptions of politics. It is also what made the balance between the king and counsellor more complicated than the term 'absolute monarchy' suggests.[140]

From Erasmus's work, it became a common understanding that the councillors to the king were in some sense responsible for the actions of the king, and thus it was a common view that a bad king was preferable to a good king with bad friends. As a result of this, it was a common understanding at the beginning of the sixteenth century that "a country should thank counsellors more that kings for good rule."[141] One reason for this is, Guy suggests, because counsel, "underpinned not only the assumptions, but also some of the most important practices and political structures of the Tudor and early-Stuart polity."[142] In fact, according to Peltonen, in the minds of those living in this period, the power of the counsellor in pre-revolutionary humanist thought was almost universally seen as being superior to the physical powers that the state might wield.[143]

[138] For an analysis of the forerunner to the centrality of counsel in this period, in the guise of petitioners during the 14th century, see Gwilym Dodd, "Kingship, Parliament and the Court: The Emergence of 'High Style' in Petitions to the English Crown, C.1350-1405," *The English Historical Review* 129, no. 538 (2014).
[139] Desiderius Erasmus and Lisa ed. Jardine, *The Education of a Christian Prince* (Cambridge, U.K;: Cambridge University Press, 1997), 85.
[140] With the consideration of counsel, Rose suggests that a better way to understand absolute rule is to understand it as being both absolute and limited. As she states, "widening our understanding of the debate on royal power beyond the narrowly juridical helps us to understand how advocates of the divine right of kingship could hold monarchy to be both absolute and limited" Rose, "Kingship and Counsel in Early Modern England," 49.
[141] Ibid.
[142] Guy, "The Rhetoric of Counsel in Early Modern England," 292.
[143] Markku Peltonen, *Rhetoric, Politics, and Popularity in Pre-Revolutionary England* (Cambridge;New York;: Cambridge University Press, 2012), 13-14.

The primary reason for the significance of counsel at this time was in relation to good governance. This can be seen through the reinforcement of Erasmus' understanding of counsel by the English born Sir Thomas Elyot (1490 – 1546) in his *The Book of the Governor*. This work argues, more directly and forcefully than Erasmus' writing for the centrality of counsel.[144] He makes, for example, the strong claim that "where counsel hath no authority, there may nothing be perfect."[145] The reasons he gives for this are that counsel allows a clear view of the purpose of law, where that purpose is found in avoiding and repairing the decay of the public good.[146] It was this focus of the public good which made counsel so important to the humanist writers of this time and Elyot was not alone in seeing counsel as the best defence against bad governance. Ash, for example, details the methods of counsel Sir David Lyndsay (1490 – 1555) employed in 1528 in order to realign the rule of the Scottish king James V to the "arts of good governance."[147] These methods, however, were for the most part not formalised. It was not until the reign of Edward IV that counsel became formally entrenched in the daily politics of monarchical rule.

During the reign of Edward VI (1547 – 1553), counsel became the central focus of practical political life. Although counsel had been an important aspect of politics prior to this, the fact that Edward was only nine years old at the time of his coronation brought counsel to the forefront of governance. Indeed, in his survey of the political machinations of this period, Alford claims that counsel was "arguably

[144] Greg Walker, *Writing under Tyranny: English Literature and the Henrician Reformation* (Oxford: Oxford University Press, 2005), 143.
[145] Thomas Sir Elyot, *The Book Named the Governour* (London: Ridgeway and Sons, 1834), 222.
[146] Ibid., 274 - 75.
[147] Kate Ash, "'I Beseik Thy Maiestie Serene': Difficulties in Diplomacy in Sir David Lyndsay's *Dreme*," in *Authority and Diplomacy from Dante to Shakespear* ed. Jason Powell & William T. Rossiter (London: Routledge 2013), 69.

Tudor politics at its source."[148] Even prior to Edward, at the most individualistic points of sovereign rule - the decisions to make pardons for example or condemnations or the decisions to license or prohibit acts and items - counsel was ever present for the simple reason that the monarch could not be in perfect possession of the knowledge required to manage the state.[149] The rule of a Edward brought the distinction between knowledge and power to the fore.

With a monarch so young, the question was asked – who was responsible for the civil law, the monarch or his counsellors?[150] On one side of this, William Cecil (1520 – 1598) said, "the nation was happy where the king would take counsel and follow it."[151] From Cecil's perspective, the king had an obligation to follow the advice of his counsellors as without doing so Edward could not legitimately claim that his rule was in his people's interest. Good governance legitimated power and good governance depended on the knowledge and experience which one individual cannot alone possess. On the other side of the debate, Jean Bodin (1530 – 1596) firmly rejected the idea that there could be anyone with more power than the king. Bodin divided command and counsel along the lines of sovereignty itself, arguing that counsel was not a characteristic of sovereignty, and ought to be kept distinct from it.[152] Bodin argued, in much the same manner as Hobbes did, that if the sovereign's power was

[148] Stephen Alford, *Kingship and Politics in the Reign of Edward Vi* (Cambridge: Cambridge University Press, 2002), 27.
[149] Robert Zaller, *The Discourse of Legitimacy in Early Modern England* (New York: Stanford University Press, 2007), 22.
[150] Alford, *Kingship and Politics in the Reign of Edward Vi.*
[151] "The Political Creed of William Cecil," in *The Monarchical Republic of Early Modern England: Essays in Response to Patrick Collinson*, ed. John F. McDiarmid & Patrick Collinson (London: Ashgate, 2007), 85.
[152] In Chapter 10 of Book 1 of *On Sovereignty*, Bodin specifically states that "Taking counsel on affairs of state is also not a mark of sovereignty. It is properly the task of the privy council, or senate, of the commonwealth, which is always kept distinct from the sovereign, especially in a democracy where sovereignty resides in an assembly of the people. Far from being appropriate for the people, deliberation on affairs of state ought not be allowed at all." Jean Bodin and Julian H. Franklin, *On Sovereignty: Four Chapters from the Six Books of the Commonwealth* (New York;Cambridge [England];: Cambridge University Press, 1992), 50.

limited by another power which could force it to accommodate the advice of its counsellors, then it would no longer be sovereign.[153] This is not the same as rejecting the role of counsel; however, granting counsel too much of a central role clearly concerned Bodin.

One way to prevent counsel from possessing too much power is to control who is allowed to give counsel. This was a significant issue during this period since counsel was a form of advice given to the monarch by a wide range of individuals, either officially by those whose designated role was to give counsel in court, or less officially such as that given outside of the court in private conversations.[154] Counsel was, as a result of this, also an area where women could hope to have a meaningful political say in this period.[155] In the majority of cases, however, counsel was offered within the court by individuals who either themselves held power in the kingdom through official title, or it was offered by those who had the monarch's favour. Both kinds of individuals had potential vested interests either in syphoning off the sovereign power to their own ends or in maintaining royal favour.[156] It was in response to this problem that much of the discussion around counsel at the time was conducted. In 1552, William Cecil wrote that "where no good counsel is, there the people decay."[157] The challenge, however, was ensuring that counsel was good. As Cecil argued, the

[153] Ibid., 65.
[154] This included commoners of the general public, however royal access was difficult to obtain. In order to overcome this, in the attempt to give counsel to King Charles I, some members of the public wrote letters, tied them to rocks and hurled them onto the grounds of royal residences. Cressy discusses one such incident in detail, see David Cressy, *Charles I and the People of England* (Oxford: Oxford University Press, 2015), 1 - 6.
[155] For a discussion on this topic see Shawn D. Ramsey, "The Voices of Counsel: Women and Civic Rhetoric in the Middle Ages," *Rhetoric Society Quarterly* 42, no. 5 (2012). And also, Mary Thomas Crane, "'Video Et Taceo': Elizabeth I and the Rhetoric of Counsel," *SEL: Studies in English Literature, 1500-1900* 28, no. 1 (1988): 3.
[156] Michael J. Braddick and Societies American Council of Learned, *State Formation in Early Modern England, C. 1550-1700* (New York: Cambridge University Press, 2000), 39 - 40.
[157] Alford, *Kingship and Politics in the Reign of Edward Vi*, 136.

real danger of counsel, and why it was so important to ensure a system where good counsel was best guaranteed, was that counsel legitimated absolute rule. As John Guy states, "whether expressed in Court, Council, or Parliament, it was counsel that made the royal exercise of power legitimate."[158] Bad counsel risked detracting from that legitimation and thereby risked destabilising the state.

Thomas More (1478 – 1535) also raised similar concerns in his *Utopia*, where he claimed that even though virtuous citizens would otherwise offer good counsel to their sovereigns, the corrupt conditions of the court prevented this from occurring, and thus prevented counsel from operating as the effective bridge it was intended to be.[159] Note however, that this too is not as such a concern about the use of counsel, rather, it was about the barriers which prevented it from operating effectively.

One result of this challenge is that discussions of counsel during this time, typically had little to say regarding the actual content of counsel.[160] Instead, writings on counsel focus primarily on its more practical aspects, such as how to evaluate good from bad counsel. The content of counsel, as much as it was discussed, often assumed a base line of good or Christian governance and sought to unite this with the actual governance by the sovereign. For this reason, counsel was seen by some as simply the moral education of sovereigns.[161] It was the combination of knowledge with power that made governance legitimate, and which at the same time made the analysis of the best method of counsel so important. However, legitimising the political power of counsel itself was also a challenge with no obvious solution. Whilst

[158] John Guy, "Tudor Monarchy and Its Critiques," in *The Tudor Monarchy*, ed. John Guy (London: Arnold, 1997), 78.
[159] Sir Thomas More, *Utopia* (Newburyport: Dover Publications, 2012), 16 - 17.
[160] Nicholas Perkins, *Hoccleve's Regiment of Princes: Counsel and Constraint* (Cambridge, [England]: D.S. Brewer, 2001), 57.
[161] Ibid., 59 - 60.

Bodin's solution was to remove counsel from the sovereign entirely, more generally counsel was seen as indispensable to sovereign power. Naturally, this made the challenge of uncovering the best methods of counsel all the more important.

As we saw above, Bodin argued that counsel must be kept separate from sovereignty in order to preserve the unity of will required to preserve sovereign power.[162] The reason this unity is threatened by counsel, is, as we saw, that counsel was also a potential source of power. The issue that Bodin raised with this claim related to an ongoing challenge in understanding the correct place of counsel in this period as it relates to the problem of efficacy.

This problem of counsel's efficacy is simple. If counsel has no force, then what good is it? If it does have force, then in what sense is it still just counsel? This is in fact a central question in Thomas Starkey's *Dialogue Between Pole and Lupset*. In this work, Pole argues that to claim that the lack of force counsel had was a reason to discount its role, would be tantamount to claiming that "all counseyl is voyd and never can take place"[163] Counsel must be limited in order to allow for a true sovereign, but it must be meaningful in order to allow for the legitimate rule of an absolute sovereign. Others, however, went further than this. Milton, for example, writing at the same time as Hobbes, argued that counsel and sovereignty overlapped, and that the monarch was obliged to act according to the counsel she received.[164] Typically, however, counsel stood in a balance with sovereign power, where the only

[162] Preston T. King, *The Ideology of Order: A Comparative Analysis of Jean Bodin and Thomas Hobbes* (London: Allen & Unwin, 1974), 308 - 09.
[163] Quoted from, F. W. Conrad, "The Problem of Counsel Reconsidered: The Case of Sir Thomas Elyot," in *Political Thought and the Tudor Commonwealth*, ed. T. F. Mayer and P. Fideler (New York: Routledge, 1992), 89.
[164] As Milton himself states, however, this makes the problems of ensuring good counsel all the more real. See, John Milton, Stephen Orgel, and Jonathan Goldberg, *The Major Works* (Oxford: Oxford University Press, 2003), 232.

obligation the monarch had was to simply listen to counsel and not necessarily to take any action. This balance was recognised in practice in the rule of Elizabeth I (1558 – 1603). As an example, in discussing how Elizabeth I managed to balance her own power with the necessity of counsel, Alford states that "Elizabeth's duty merely lay in listening to the advice of her counsellors: she had no obligation to follow it."[165] This balance was thus able to be achieved because Elizabeth was free to act on counsel or to reject it, therefore, "counsel left royal power intact."[166] This however did not prevent debates regarding the appropriateness of this practice.

The role of counsel in the court effected all aspects of life, and also had a direct relationship with the educational practices of the time. In all the debates regarding the legitimation of the use of power during the 16th century, according to Zaller "all English commentators agreed on the vital importance of conscientious counsel."[167] What they disagreed upon, however, was how that importance should be recognised in practice. The result of this was that counsel became seen from the perspective of expertise rather than royal standing.[168] As a result, humanist educational practices evolved towards counsel. Skinner, for instance, addresses this humanist perspective on counsel and presents evidence to show that in the latter half of the 16th century, a humanist education was valued precisely for its employment in political counsel. Quoting Richard Mulcaster writing in 1581, Skinner writes that "'the highest degree to which learning will prefer' will be that of becoming 'a wise counsellor whose learning is learned policy.'"[169] This perspective is shared by Crane, who states that

[165] Alford, "The Political Creed of William Cecil," 86.
[166] Ibid. For further discussion on the impact which this balance had on the practical aspects of absolute rule, see, Nicholas Henshall, *The Myth of Absolutism: Change and Continuity in Early Modern European Monarchy* (New York;London;: Longman, 1992), 16.
[167] Zaller, *The Discourse of Legitimacy in Early Modern England*, 23 - 24.
[168] Nicole Reinhardt, *Voices of Conscience: Royal Confessors and Political Counsel in Sevententh Century Spain and France* (Oxford: Oxford University Press, 2016), 307.
[169] Skinner, *Reason and Rhetoric in the Philosophy of Hobbes*, 70.

"the purpose of humanist educational reform in England … was to train young men in the serious moral purpose and copious Latin style that they needed to become authoritative advisors and public servants."[170] It was this training that legitimated counsel and thereby allowed counsel to legitimate absolutism.

Works on the appropriateness of counsel in this period were not written to convince readers of the significance of counsel, but rather were written primarily to argue for, or against, a specific method or form that counsel should take. Bacon, for example, attacked private counsel for its lack of what we would term transparency, whilst Elyot attacked open counsel for its encroachment on sovereign power.[171] The reason which Bacon argues for the public use of counsel is that counsellors behave more respectfully when they are in public, and, as such, it could be used to preserve the place and dignity of the king's position. Bacon refers to the relationship between sovereignty and counsel as one of marriage, highlighting the masculine qualities of sovereignty and the feminine qualities of counsel each only becoming useful when brought together.

Developing out of these debates at the end of the 16th century were new debates relating to the nature of the absolute monarch's relationship to parliament. Should the monarch be required to obey parliament in some matters? Should she be required to simply listen to parliamentary advice? Or was parliament there for when the monarch saw fit to use it? Absolutists in the seventeenth century, Hobbes included, refuted the idea that the parliament should resist the power of the king. As a consequence of this, considered with the fact that even absolutists wanted good

[170] Crane, "'Video Et Taceo': Elizabeth I and the Rhetoric of Counsel," 3.
[171] , Walker, *Writing under Tyranny: English Literature and the Henrician Reformation*, 412 - 17. and, Bacon, *Essays*, 2, 67 - 68.

governance, absolutists were uniquely diligent in producing political theories which themselves resisted tyranny, thereby removing the problematic potential of requiring subjects to do so.[172] Clearly, however, these attempts were not always successful, as the challenges leading to the English Civil War attests.

Understanding counsel as it was used by writers around the time of the Civil War is complicated by the seemingly ambiguous role that counsel played in the events of Charles I's rule in the years preceding the war. As Paul has argued, whilst the English Civil Wars were focused on the role of sovereignty, propelling this focus was a question regarding counsel.[173] It has been a common charge that Charles I was withdrawn from counsel, with many historians arguing that it was this fact about his rule which led more than any other, such as the famous ship tax, to the English Civil War.[174] As Pocock argues, "The monarchy that had fallen was a monarchy of counsel; many thought of Charles I as a king who had not listened to counsel, had taken false counsel from his bishops, or had been misled and seduced by evil counsellors."[175] In recent years however, this view has been challenged. Mark Kishlansky for example argues that "Charles I was arguably the most widely travelled and accessible monarch of the early modern era."[176] Even more recently, David Cressy has argued that Charles I was both open with his person and open with his legal power through petitions from his subjects.[177] The Civil War developed out of conflicting views

[172] Rose, "Kingship and Counsel in Early Modern England," 53.
[173] Paul, "Counsel, Command and Crisis," 103.
[174] See for examples; John Morrill, "What Was the English Revolution?," *History Today* 34 (1984): 12. Corinne Comstock Weston, *Subjects and Sovereigns : The Grand Controversy over Legal Sovereignty in Stuart England / Corinne Comstock Weston, Janelle Renfrow Greenberg*, ed. Janelle Renfrow Greenberg (New York: Cambridge University Press, 1981), 35.
[175] J. G. A. Pocock, "A Discourse of Sovereity: Observations on the Work of Progress," in *Political Discourse in Early Modern Britain*, ed. Nicholas Phillipson and Quentin Skinner (Cambridge University Press, 1993), 395.
[176] Mark Kishlansky, "Charles I: A Case of Mistaken Identity," *Past & Present*, no. 189 (2005).
[177] Cressy, *Charles I and the People of England*, 152 - 56.

relating to the application of power by Charles I, specifically the power of the king to resist that of parliament.. It makes sense then to agree with Paul that the civil war was a conflict concerned with the "nature, and proper source, of counsel."[178] This was the issue at the forefront of political debates during Hobbes' life. It is an awareness of these arguments which allows us to recognise that Hobbes' attacks on parliamentary counsel, especially in *Leviathan*, are not in fact evidence of an attack on counsel itself.[179]

Aside from debates regarding the demands, if any, which counsel placed on sovereign actions, the uniform position from all sides in Hobbes' time is that it is counsel which allows the governance of a single monarch to be, in Rose's words, "absolute but not arbitrary."[180] In its correct application, counsel allowed for, rather than dissolved, the absolute power of the monarch. It is for this reason that Bacon could claim "the majesty of kings is rather exalted than diminished when they are in the chair of counsel."[181] It is my contention that Hobbes too shared this position, and specifically, that the way counsel achieved this in his system was by granting a role to the natural law in civil society that did not run counter to justice.

[178] Paul, "Counsel, Command and Crisis."
[179] In one of the rare discussions of Hobbes' position on counsel, Schochet makes the contrary claim, see Gordon J. Schochet, "Why Should History Matter? Political Theory and the History of Discourse," in *The Verieties of British Political Thought, 1500 - 1800*, ed. J. G. A. Pocock (Cambridge: Cambridge University Press, 1996), 239 - 340.
[180] Rose, "Kingship and Counsel in Early Modern England," 53.
[181] Bacon, *Essays*, 2, 69.

Hobbes' use of Counsel

The orthodox interpretation of Hobbes' political thought portrays the sovereign as a figure distant from her subjects.[182] This view is understandable from the perspective of civil law as it emerges directly out of the first three laws of nature. From other aspects of Hobbes' writing, however, this view seems less credible. In fact, when we look at Hobbes' writings more broadly, there are many areas where he specifically portrays the sovereign as giving audience to her subjects.[183] Unfortunately, these aspects have been overshadowed by the importance of Hobbes' account of civil law as it emerges out of his account of command.

I will argue in this section that Hobbes saw counsel in direct relation to the natural law and in particular to the duties of the sovereign. More specifically, I argue here that the role of counsel in Hobbes' political thought acts to widen the connection between the laws of nature and the civil laws. The reason that counsel can achieve this, is that it exists as a mechanism outside of the sovereign which allows subjects a meaningful role in the formation of civil laws.[184] Importantly, counsel also allows a

[182] This view is evident, for example, when Wolin states that "Hobbes' sovereign is never portrayed as listening." Sheldon S. Wolin, "Hobbes and the Culture of Despotism," in *Thomas Hobbes and Political Theory*, ed. Mary G. Dietz (New York: University Press of Kansas, 1990), 20.
[183] As one initial example of this, in *Leviathan* Hobbes states that "Another business of the sovereign, is to choose good counsellors; I mean such, whose advice he is to take in the government of the commonwealth."
[184] Some discussion has been previously conducted on the natural laws existing themselves as counsel, as opposed to the civil law which exists as commands, however no literature I am aware of has taken this to the natural laws relationship with the actual conduct of counsel in the court of the sovereign. See for example, Ross Harrison, "The Equal Extent of Natural and Civil Law," in *Hobbes and the Law:*, ed. David Dyzenhaus and Thomas Poole (Cambridge: Cambridge University Press, 2012), Especially pages 23 - 26. The recent work of Slomp takes counsel further, however the focus of this work is with Hobbes' anthropology rather than his account of law itself. See, Slomp, "The Inconvenience of the Legislator's Two Persons and the Role of Good Counsellors."

way to view the liberal aspects of Hobbes' writing more meaningful by allowing the laws of nature an expanded role which can be expressed without running afoul of justice. Though political counsel does not supplant the elements of sovereign power emphasized by the orthodox interpretation, it does soften its conclusions regarding the actual practice of absolute rule.

It is common, especially from the perspective of the orthodox interpretation, to see Hobbes' understanding of civil society as being strictly divided between the sovereign on one side and subjects on the other. From the perspective of poetry at least, Hobbes himself divides up society between the court, the city and the country.[185] This does not, of course, mean that this is necessarily the way Hobbes, as a political theorist, would have divided humanity.[186] Nonetheless, I think there is good reason to think that this division is representative of how he understood civil life - with the political centre existing as the wider court rather than the individual throne. The main reason I have for thinking this is the manner in which Hobbes discusses the office of the sovereign. In *Leviathan,* for example*,* Hobbes states that the best organisation of a commonwealth is one which has at its head a single "man who doth his business by the help of many and prudent counsellors, with everyone consulting apart in his proper element, does it best."[187] Further, also in *Leviathan*, Hobbes states it is the sovereign's duty to hear counsel from subjects, specifically, from those who possess the local knowledge on areas of concern which the sovereign needs to avail himself of to govern well.[188]

[185] Alexander Witherspoon & Frank Warnke, ed. *Seventeenth Century Prose and Poetry* (New York: Harcourt Brace Jovanovich Inc. , 1963), 211.
[186] Indeed, he prefaces this claim by stating he himself is not a poet and, I at least, cannot find evidence of this three region divide in any of his more notable works
[187] Hobbes, *Leviathan*, 310.
[188] Ibid., 393.

It is clear that Hobbes saw counsel as significant in the politics of his own time. After all, the full title of *Behemoth* is *Behemoth: The history of the causes of the Civil Wars of England, and of the counsels and artifices by which they were carried on from the year 1640 to the year 1660*. It seems natural, then, to assume that Hobbes saw counsel playing a vital role in the day to day practice of politics. It also seems natural to assume that he was aware of the negative aspects of counsel.[189] This could seem an immediate barrier to giving too much weight to counsel in his work since he, with Parliamentarians and Royalists alike, blamed the practice of counsel for creating the conditions which led to the civil war. [190] Hobbes, however, refers to counsel, in this negative sense, throughout his works sense not simply as "counsel" but as "evil counsel".[191] The fact that he distinguishes these two forms of counsel in this way shows some evidence that Hobbes wasn't entirely dismissive of the role counsel could play.[192]

Hobbes addresses this problem of evil counsel by providing a picture of what he believes makes a good counsellor. On his view, "The most able of counsellors, are they that have the least hope to benefit by giving evil counsel, and most knowledge of

[189] At the very least we can be sure that Hobbes was aware of the concerns relating to counsel that were given by Bodin, whose work *De Republica* (which contains his views on counsel), Hobbes cites in *The Elements*. See, *The Elements of Law Natural and Politic 166 - 67*. As well as this, Hobbes had access to a large range of humanist texts through the Hardwick library, including the works of Bacon More and Erasmus, all of whom directly discuss counsel as we saw in the last section of this thesis. See, Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008), 3 - 4.

[190] In fact, during this time, to some degree Hobbes was himself engaged in political counsel in the sense addressed in the title of *Behemoth*, openly advising against Charles I and his proposed plans regarding the Isle of Weight Treaty of 1648. 10 years later, Lawson suggested that chapter 20 of Leviathan, which discusses the ways in which sovereign power can exist in a commonwealth, was included in the text on the basis that it was intended to be a repudiation of the treaty. Zaller, *The Discourse of Legitimacy in Early Modern England*, 675 - 82.

[191] The term "evil counsel" was common in Hobbes' time dating from at least the 1590's. For a discussion on the emergence of this term in this period see: Laura Lunger Knoppers, *The Oxford Handbook of Literature and the English Revolution*, vol. 1st (Oxford: Oxford University Press, 2012), 83 - 91. For an example of this use in Hobbes' writing see, Hobbes, *Leviathan*, 391.

[192] Rogers and Pyle, *Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*, no. 5, 62 - 63.

those things that conduce to the peace, and defence of the common-wealth."[193] Hobbes, like many of his contemporaries, was wary of vested interests, which is, for example, the reason he states that "good counsel comes not by lot nor inheritance".[194] For Hobbes, politics is a science, and as a result, counsel is done best when it emerges from a study of that science. This is the reason he states that counsel is best given by those who have the requisite knowledge, rather than hereditary title.[195]

Related to Hobbes' approach to politics as science, is an issue which emerges out of his account of anthropology. In a recent paper, Sandra Leonie Field asks:

> What relationship is there between the image … of a sovereign who wisely and reliably behaves in the way required to sustain the civil order, and the image derived from Hobbes' science of human beings as matter, applicable to the sovereign as to any other human, which shows humans to be prone to irrationality and short-sightedness?[196]

Field here picks up on the way Hobbes presents his account of man, a presentation which includes a view of individuals as "weak and irrationality prone."[197] If, in Hobbes' understanding, human beings are flawed in this way then what makes him think that the sovereign, who is human like the rest of us, will be able to provide good governance? This is a clear challenge to Hobbes' account, however it is also a challenge which was commonly addressed in Hobbes' time and, I argue, a challenge Hobbes addresses in his own works.

[193] Hobbes, *Leviathan*, 391.
[194] Ibid., 392.
[195] Hobbes then goes on to say that this must be the only way to think of counsel, "unless we think there needs no method in the study of the politiques, (as there does in the study of geometry) but only to be lookers on; which is not so. For the politiques is the harder of the two" ibid.
[196] Sandra Leonie Field, "Hobbes and Human Irrationality," *Global Discourse* 5, no. 2 (2015): 7.
[197] Ibid.

The natural reason to think that Hobbes would give counsel a meaningful role is the same reason his contemporaries did, that being the separability of knowledge and power. In a recent paper on this topic, Slomp supports this view when she claims that Hobbes' concept of counsel exists due to a similar division. Specifically, Slomp claims that because the sovereign of Hobbes' commonwealth is both a natural person and a political person, counsel is required in order to bridge the deficiencies of the natural man.[198] Slomp, in essence, presents counsel as the answer to Field's question.[199]

In *Leviathan*, Hobbes describes the sovereign's division into natural and political persons as follows:

> Every man, or assembly that hath sovereignty, representeth two persons or (as the more common phrase has it) two capacities, one natural and one politique as a monarch hath the person not only of the commonwealth, but also of a man; and a sovereign assembly hath the person not only of the commonwealth, but also of the assembly.[200]

In order to overcome the challenges presented by this division, specifically as it relates to the civil law, Slomp claims that "the process of consultation of good counsellors is an essential component of Hobbes' understanding of law making."[201] Slomp's argument is that the concept of counsel is integral to Hobbes' theory of law as it acts as a safety net against bad commands. These commands are not bad in the sense they are intentionally immoral, but rather they are those laws which are the result of deficiencies we all possess imperfect beings. The main deficiency being the

[198] Slomp, "The Inconvenience of the Legislator's Two Persons and the Role of Good Counsellors."
[199] Whilst it seems clear that this would also be Hobbes' answer, this answer would be unlikely to satisfy Field herself who in this paper has a focus upon a sovereign who *knowingly* governs poorly. See, Field, "Hobbes and Human Irrationality," especially 7 - 9.
[200] Hobbes, *Leviathan*, 283.
[201] Slomp, "The Inconvenience of the Legislator's Two Persons and the Role of Good Counsellors," 69.

unreliability of our reasoning, but also our lack of perfect knowledge and lived experience. This view is supported by the descriptions Hobbes provides of a good counsellor, such as when he recommends counsel from those who can, "deduce the consequences of what he adviseth to be done, and tye himself therein to the rigour of true reasoning."[202]

On the view that Slomp presents, the division between natural and political ties into the main distinction of Hobbes' account of law, the distinction between command and counsel. This is due to a difference found in both distinctions which relates to power. Command in Hobbes' work has long been the centre of scholarly attention, and for good reason. Command is where the bulk of the philosophical load bearing aspects of Hobbes' work exists. It is, in fact, with command that Hobbes attempts to relate the authority of the moral law to the authority of the sovereign.[203] In *Leviathan*, Hobbes defines a command in the following way:

> Command is where a man saith, Doe this, or Doe not this, without expecting other reason than the Will of him that saith it. From this it followeth manifestly, that he that Commandeth, pretends thereby his own Benefit: For the reason of his Command is his own Will only, and the proper object of every mans will, is some goode to himself.[204]

[202] Hobbes, *Leviathan*, 304. The attributes of a good counsellor are similar in his *Art of Rhetoric*, where he prioritizes the benefits of experience. As he states, "the counsellor ought to know the strength of the commonwealth, how much it both now is, and hereafter may be, and wherein that power consisteth. Which knowledge is gotten, partly by experience and relations at home, and partly by the sight of wars and of their events abroad." Sir William Molesworth, *The English Works of Thomas Hobbes* 425.
[203] It is for this reason that some theorists claim that the natural laws themselves exist as counsel, as opposed to the civil law which exists as commands, however no literature I am aware of has taken this to the natural laws relationship with the actual conduct of counsel in the court of the sovereign. See for example, Harrison, "The Equal Extent of Natural and Civil Law," Especially pages 23 - 26.
[204] Hobbes, *Leviathan*, 303.

This is contrasted with counsel, which he defines as:

> Counsel is where a man saith, Doe, or Doe not this, and deduceth his reasons from the benefit that arriveth by it to him whom he saith it. And from this it is evident, that he that giveth counsel, pretendeth only (whatsoever he intendeth) the good of him, to whom he giveth it.[205]

Hobbes' definition of counsel differs therefore from that of command in two ways. Firstly, in that it is not necessary for the counselled individual to obey or to act upon the counsel. And secondly, in that the benefit of counsel is to the counselled, whereas command benefits the commander.[206] Regarding the first difference, Hobbes mirrors Bodin's position that sovereignty can only refer to the highest power. In fact, he claims that if it were necessary that counsel be obeyed, then counsellors would cease being counsellors and become masters.[207]

What these two definitions have in common is that they are both reasons for action.[208] With counsel that reason is the benefit which is revealed by the counsellor and with command it is the prior obligation held to the commander. According to Hobbes, obedience as it relates to command has to do with the authority of the commander, an aspect which is removed in counsel. Counsel, instead, has to do with the content of the counsel as opposed to the authority of the counsellor. [209] Since it

[205] Ibid.
[206] According to Hobbes, any benefit accrued to the sovereign also benefits its subjects, thus preventing commands, and consequently the civil law, from being in tension with the self-preservation of subjects. See, ibid., 230.
[207] As Hobbes states in *The Elements* "But if to counsellors there should be given a right to have their counsel followed, then are they no more counsellors, but masters of them whom they counsel; and their counsels no more counsels, but laws. For the difference between a law and a counsel being no more but this, that in counsel the expression is, Do, because it is best; in a law, Do, because I have right to compel you; or Do, because I say, do: when counsel which should give the reason of the action it adviseth to, becometh the reason thereof itself, it is no more counsel, but a law." *The Elements of Law Natural and Politic* 178.
[208] Harrison, "The Equal Extent of Natural and Civil Law," 24.
[209] Hobbes, *The Elements of Law Natural and Politic* 174.

does not depend on authority, counsel operates as a truly two-way form of political discourse, something which Hobbes clearly cannot allow regarding command.

As we saw above, a main concern relating to counsel is its ability to detract from the sovereign power. Hobbes, like Bodin, has clear concerns about counsel's impact on the sovereign power of command. Unlike Bodin, however, for Hobbes this seems to originate less from a suspicion of counsel itself and more from a practical concern regarding the confusion of counsel for command in the minds of subjects. Hobbes thinks it is crucial that subjects are able to distinguish clearly between counsel and command because of the contrasting natures of voluntary counsel and compulsory command. If subjects mistake the will of the sovereign, then they may well resent or rebel against their sovereign. This is due to the resulting circumstances of this confusion where subjects mistake the command of the sovereign for counsel and then are punished for acting contrary to the law. In this regard, Hobbes thought it necessary to educate the public as to the relationship between command and counsel in order that these errors would not occur.[210]

Hobbes' concerns regarding the use of counsel were not only related to its confusion with command; he also harboured the same concerns as his contemporaries did regarding counsel as the source of bad governance. And, as we have already seen, the problem of choosing good counsellors relates to the problem Hobbes sees in vested interests. It is for this reason that Hobbes not only repudiates the idea of hereditary authority to counsel, but also the idea of limiting of counsel to the court.[211] By doing so, Hobbes focuses on the best ways to ensure that counsel was directly concerned with the accurate portrayal of information to the sovereign. This goes some way

[210] *Leviathan*, 302.
[211] Ibid., 393.

towards supporting the claim that Hobbes thought of counsel as bridging the gaps between knowledge and power.

Hobbes also had specific views on how counsel was to be given. Bodin had concerns that counsel would erode the unity and supremacy of sovereign power. In one way, Hobbes shared this view in that he was concerned that counsel could descend to a method of criticism. He specifically discusses the danger of open counsel as it relates to the rapprochement of the sovereign in *The Elements*, where he claims divine law forbids the misuse of counsel in this way. Quoting the book of Mathew, Hobbes says that "after our charity to rectify one another is rejected, to press it further, is to reprehend him, to condemn him, which is forbidden [by God]."[212] Once again, note that Hobbes does not talk in terms of the rejection of counsel but in terms of ensuring it is not overextended into the territory of command.[213]

The problem of how to give counsel without portraying it as an attack on the sovereign relates also to the problem of rhetoric. Hobbes discusses at length the dangers rhetoric can pose in poisoning the minds of a population against the sovereign.[214] Pocock strongly suggests that this aspect of Hobbes' thought is indicative of Hobbes' rejection of counsel.[215] Rhetoric is a clear enemy of stability in Hobbes' mind and, according to Pocock, this means that allowing for counsel would simply be to grant rhetoric an unnecessary platform. But of course, rhetoric is not simply any form of speech. In Hobbes' portrayal, political subjects had the ability to

[212] *The Elements of Law Natural and Politic* 101.
[213] This point is also made in King, *The Ideology of Order: A Comparative Analysis of Jean Bodin and Thomas Hobbes*, 242.
[214] See for example, Hobbes, *The Elements of Law Natural and Politic* 169. See also, *Man and Citizen*, 253 - 54.
[215] Pocock, "A Discourse of Sovereity: Observations on the Work of Progress," 396.

counsel the sovereign, yet he drew the line at anything which could be considered rebuking. One way he did this was by placing counsel behind closed doors.

Rhetoric is fearsome for Hobbes because of its ability to enflame the public, a fear which is clearly in the background of his claim that the most appropriate platform for counsel to be delivered is one of privacy. That Hobbes was aware of the destabilising potential of speech should not lead us to dismiss the role of counsel in his political thought entirely. Pocock goes too far when he claims that, "It is hard to imagine Leviathan either making speeches to his subjects in the manner of Olpaus Megaletor the legislator, or receiving counsel from them which he weighs in his own deliberations."[216] Instead, we should look to the ways Hobbes believes counsel can best be used effectively. One way he believes this can best be ensured relates to the institutional makeup of the commonwealth.

Hobbes famously argues that an absolute monarchy is preferable to a democracy. What is less familiar, is that one of the reasons he supplies for this is based on the role of counsel.[217] Hobbes sees counsel, and more specifically its optimal method of private delivery, as one of the reasons for preferring the rule of an individual sovereign to that of an assembly such as in a democracy.[218] The reasons for this are clear in Hobbes' portrayal of the best form of counsel, where he states:

[216] Ibid., 398.
[217] A recent engagement with this idea can be found in Daniel J. Kapust, "The Problem of Flattery and Hobbes's Institutional Defense of Monarchy," *The Journal of Politics* 73, no. 3 (2011).
[218] This is the second of six reasons Hobbes supplies for preferring a single monarch in Leviathan, which he states as follows, "Secondly, that a monarch recieveth counsel of whom, when and where he pleaseth; and consequently may hear the opinion of men versed in the matter about which he deliberates, of what rank or quality soever, and as long before the time of action, and with as much secrecy as he will. But when a sovereign assembly has need of counsel, none are admitted but such as have a right thereto from the beginning; which for the most part are of those who have been versed more in the acquisition of wealth than knowledge; and are to give their advice in long disources, which may, and do commonly excite men to action, but do not govern them in it. For the *understanding* is by the flame of the passions, never enlightened, but dazzled: nor is there any place, or time, wherein

> And how able soever be the Counsellours in any affaire, the benefit of their Counsell is greater, when they give every one his Advice, and reasons of it apart, than when they do it in an Assembly, by way of Orations; and when they have premeditated, than when they speak on the sudden; both because they have more time, to survey the consequences of action; and are lesse subject to be carried away to contradiction, through Envy, Emulation, or other Passions arising from the difference of opinion.[219]

The influence that this understanding had on Hobbes' perspective regarding the systems of government is clear. In a democracy counsel must take place in the open, in front of groups of people: In other words, it must take place in the conditions which are ripest for what he terms 'evil counsel'.[220]

Hobbes clearly had reservations about counsel and had specific views about the most appropriate methods of counsel in order to minimising its negative aspects. However, it is not yet clear what he thought counsel accomplished in specific positive terms. In early modern England, it was common to view counsel as legitimating the power of the absolute monarch. In one way, this is clearly not the case with Hobbes who sees the use of power as legitimated by the social contract. Hobbes, however, clearly harboured no illusions about the power of the social contract *itself* to secure the stability of the state, as he makes clear when he writes that, "It is not the right of the sovereign, though granted to him by everyman's express consent, that can enable him to do his office; it is the obedience of the subject that must do that."[221] The

an assembly can receive counsel with secrecie, because of their own multitude." Hobbes, *Leviathan*, 242.

[219] Leviathan, chapter 30.

[220] Hobbes, *Leviathan*, 39.

[221] Sir William Molesworth, *The English Works of Thomas Hobbes* 343.

relationship that Hobbes' saw between absolute power granted through the social contract and the office of the sovereign as it relates to governance is clearly more complex than a straightforward analysis of the first three laws of nature can explain.

Hobbes was aware of the fact that counsel was seen in his time as legitimating absolute power by connecting the natural law to the laws of society in the promotion of good governance. In Chapter six of *De Cive,* for example, Hobbes states that the power granted to the sovereign through the social contract is absolute and he then defines that power in a long footnote in which he states that:

> A popular state openly challenges absolute dominion, and the citizens oppose it not. For, in the gathering together of many men, they acknowledge the face of a city; and even the unskilled understand that matters there are ruled by council. Yet monarchy is no less a City, than Democraty, and absolute Kings have their Counsellors, from whom they will take advice, and suffer their Power, in matters of greater consequence, to be guided, but not recall'd.[222]

Hobbes here directly catches the concerns of absolutism as it exists in most people's minds. In this footnote, Hobbes suggests that for most people, the fact that a democracy, or sovereignty by assembly, is conducted through groups who debate and discuss issues to govern in the most suitable way grants democracies a legitimacy which a single ruler does not possess. However, with the inclusion of counsel, Hobbes points out that this view is false. In fact, Hobbes claims that absolute monarchs govern in much the same manner as that which people think is crucially important in a democracy. The difference, according to Hobbes, is not in the process of governance except in the final instant, the instant where a final decision is made.

[222] Hobbes, *Man and Citizen*, 181.

The reason for this prior similarity, according to Hobbes' own words, is because of counsel.

Although it is clear from this that Hobbes thinks counsel plays some role in supporting absolute power, it is still not clear exactly what work counsel is doing. It could easily be argued in fact that this is simply a practical inclusion which has no real bearing on his central system. I believe there are good reasons to reject this argument. In the *Dialogue*, for one, Hobbes puts forward the following interaction between the philosopher (P) and the student (L):

> *L.* I grant you that the King is the sole legislator; but with this restriction, that if he will not consult with the Lords of Parliament, and hear the complaints and information of the Commons, that are best acquainted with their own wants, he sinneth against God, though he cannot be compelled to any thing by his subjects by arms and force.
>
> *P.* We are in agreement upon that already. Since therefore the King is the sole legislator, I think it also reason he should be sole supreme judge.
>
> *L.* There is no doubt of that; for otherwise there would be no congruity of judgements with the laws.[223]

Here, Hobbes adds a burden onto counsel beyond that of practical requirements. He directly connects counsel, and the obligations of the sovereign to hear counsel, to the natural law as it is given by God. Though, in doing so he remains true to the core tenant of his absolutist system when he states that the sovereign "cannot be

[223] Sir William Molesworth, *The English Works of Thomas Hobbes* 23.

compelled." Other areas of his writing echo this view, most notably in Hobbes' discussion of the office of the sovereign.

In discussing the office of the sovereign, Hobbes specifically states that the she is to take counsel.[224] The full significance of this requirement comes into focus when we look to what Hobbes means when he refers to the office of the sovereign. He defines this in the following manner:

> 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 … 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 unto the commonwealth, shall aquire unto himself. And this is intended should be done … in the making of good laws.[225]

Here, Hobbes clearly states that the laws of nature make it a duty that the sovereign create "good laws". Then, later in that chapter he goes on to explain exactly what he means by this:

> To the care of the sovereign, belongeth the making of good laws. But what is a good law? By a good law, I mean not a just law; for no law can be unjust … A good law is that which is needful, for the good of the people and withal perspicuous.[226]

[224] "Hobbes, *Leviathan*, 388.
[225] Ibid., 376.
[226] Ibid., 387 -88.

Good laws are, thus, those that the sovereign is obliged by the law of nature to create which are needed for the good for the people. How though, is the sovereign to possess the knowledge to do this? Once again in this same chapter, Hobbes clearly tells us how this need is to be discovered, when he states that the:

> business of the sovereign, is to choose good Counsellors; I mean such, whose advice he is to take in the Government of the Commonwealth … The best counsel in those things that concern … the ease, and the benefit the subjects may enjoy by laws, is to be taken from the general informations, and complaints of the people of each province, who are best acquainted with their own wants, and ought therefore, when they demand nothing in derogation of the essential rights of sovereignty, to be diligently taken notice of.[227]

Here, Hobbes states directly, that in order for the sovereign to be successful in acting upon her obligation to create good laws she is to use counsel. In other words, Hobbes states that counsel expands the connection between the sovereign and her obligation to govern according to the laws of nature. It is not, then, simple pragmatics which necessitates Hobbes' use of counsel, it is at the centre of his overall system.

The laws of nature provide the basis for the civil laws, yet when the only mechanism connecting these two forms of law is the sovereign herself, it is hard to see this connection as being meaningful beyond the whim of the sovereign. However, Hobbes does not think that the only mechanism is the sovereign. He does think that the sovereign is the most significant connection between these forms of law, but he also thinks that in order for the sovereign to be able to act appropriately in her role, she requires the support of an alternate mechanism. This mechanism which he puts

[227] Ibid., 393.

forward is counsel. It is in this way that the role of counsel in Hobbes' political thought is to expand the connection between the laws of nature and the laws of civil society.

Whilst Hobbes himself connects the civil law and the law of nature with counsel, there is one reason to think that we should be cautious in expecting it to actually be successful in the role he sets it. That reason is the centrality of obedience in Hobbes' system. In a recent paper, Sorell addresses Hobbes' chapter on the office of the sovereign as being the most likely to identify a duty for the sovereign to govern according to the laws of nature.[228] Unfortunately, Sorell dismisses this chapter as ineffective in bypassing the absolute demands of justice, without discussion on Hobbes' account of counsel. However, even if he had addressed it, it is not clear that he would change his position.[229] It seems that we have good reason to think that Hobbes saw counsel playing a meaningful role in connecting the natural law to the governance of the sovereign, a role which exists outside the body of the sovereign and grants subjects a place in the formation of good civil laws. Arguing that counsel acts as a connection between the natural law and civil law, however, this seems to run counter to an unquestionably central pillar of Hobbes' political thought. That pillar is the sovereign's role as the official interpreter of the natural law.

Regardless of Hobbes' claims that the sovereign is obliged to seek good counsel, it may quite simply be a more fundamental fact of Hobbes' system that subjects are prevented by the social contract from acting as counsellors in any meaningful way.

[228] Sorell, in fact, is attempting to identify a duty which would qualify as "genuinely anti-authoritarian", an attempt he argues fails due to the centrality of justice. In this regard counsel would not be successful either, as counsel can only expand the role of the natural law in civil society, it cannot force the sovereign to act against its will. See, Sorell, "Law and Equity in Hobbes."
[229] Ibid., 36.

The liberal interpretations of Hobbes explored in part one of this thesis failed to make sense of the more liberal aspects of his writings due to the fact that they attempted to use them to minimise the power of the sovereign. The concept of justice prevents this. Counsel, however, is not prevented by justice in the same manner. This is because counsel is not antagonistic to command.

Whilst actions, civil disobedience or any other attempt to 'correct' the civil law by not following the law, breaks the duty of obedience set up by the social contract and threatens the stability of civil society, something Hobbes could never abide, counsel does not do this for the reason that counsel on, Hobbes account, is not an action in the same sense. Both justice and commands track actions whilst counsel tracks conscience. Counsel is not, therefore, antagonistic to justice in the same way as other attempts to make sense of Hobbes' liberal aspects are.

Conclusion

The reason that the sovereign's whim holds such fear in Hobbes' system is that it is seen as the only mechanism uniting the natural law with the civil law. Yet I believe there is good reason to think Hobbes had no intention of leaving the creation of civil laws to the interpretation of the sovereign in isolation. It is true that the sovereign has the final say in deciding the fate of its subjects, but it is not true that the sovereign has the only meaningful say.

Hobbes frequently claims that the natural law imposes duties upon the sovereign in regards to her treatment of her subjects. However, through the social contract, whilst subjects take on a duty to their sovereign, the sovereign takes on no such duties. The problem facing those interpretations which attempt to portray a liberal interpretation of Hobbes' political thought is to explain in what sense the sovereign in fact has duties at all, and then to connect this answer with a meaningful mechanism which subjects could use to act to attempt to ensure the sovereign in fact does govern from the perspective of these duties. From a straightforward top down perspective, the role of justice and the sovereign's role as official interpreter of the natural law would seem to finish the matter. However, when we focus on the practicalities of the office of the sovereign, as Hobbes himself does, the authority of this top down view point begins to wane.

Counsel does not act as a foolproof bulwark against bad interpretations of the moral law. As much is evident by our discussions of the debates around counsel of the

sixteenth century. If the sovereign, upon hearing counsel refuses to act upon it then there is little recourse available to her subjects. In fact, if the sovereign refuses to take counsel on a matter, there is also no route the subject could take to force counsel upon her. Nonetheless, because counsel is not foolproof is no reason to think it fails in what it is intended to achieve, that is, expand the connection between the natural law and civil law.

By exploring the role of counsel as Hobbes himself presents it, it becomes clear that intends to reserve a meaningful place for real dialog regarding the best way to organise political life. The orthodox view of Hobbes absolutism portrays a view of the sovereign as an isolated holder of physical power. However, the possession of power and authority is an aspect of Hobbes view of absolute rule, the most important aspect, it does not follow that the political realm of Hobbes' commonwealth is limited to the individual sovereign. Hobbes states that for a sovereign to govern well, that is to govern according to the laws of nature, she must do so with the aid of good counsellors. These counsellors do not obligate the sovereign into acting upon their counsel, but nonetheless by granting it they act to increase the connection between the natural law and the civil law.

Counsel cannot prevent unjust rule, but the role Hobbes grants it is evidence that he was aware of the problem, at least as it relates to the imperfections of the sovereign as a natural person. Hobbes puts employs counsel in a role that encourages wise and effective interpretations of the natural law in the formation of civil law.

Counsel in Hobbes cannot categorically avoid the threat of authoritarian rule, nor can it offer subjects guarantees against bad governance, but it does help to ensure

that neither of these outcomes occurs by acting to grant a meaningful role to the natural law beyond simply the figure of the sovereign in her role as interpreter.

References

Alford, Stephen. *Kingship and Politics in the Reign of Edward Vi*. Cambridge: Cambridge University Press, 2002.

———. "The Political Creed of William Cecil." In *The Monarchical Republic of Early Modern England: Essays in Response to Patrick Collinson*, edited by John F. McDiarmid & Patrick Collinson. London: Ashgate, 2007.

Arvan, Marcus. "Why Hobbes Cannot Limit the Leviathan." *Hobbes Studies* 27, no. 2 (2014): 171-77.

Ash, Kate. "'I Beseik Thy Maiestie Serene': Difficulties in Diplomacy in Sir David Lyndsay's *Dreme*." In *Authority and Diplomacy from Dante to Shakespear* edited by Jason Powell & William T. Rossiter. London: Routledge 2013.

Bacon, Francis. *Essays*. Vol. 2, London: George Routledge & Sons.

Baumgold, Deborah. *Hobbes's Political Theory*. Cambridge; Cambridge University Press, 1988.

Bodin, Jean, and Julian H. Franklin. *On Sovereignty: Four Chapters from the Six Books of the Commonwealth*. Cambridge: Cambridge University Press, 1992.

Braddick, Michael J. *State Formation in Early Modern England, C. 1550-1700*. New York: Cambridge University Press, 2000.

Burgess, Glenn. "On Hobbesian Resistance Theory." *Political Studies* 42, no. 1 (1994): 62-83.

Conrad, F. W. "The Problem of Counsel Reconsidered: The Case of Sir Thomas Elyot." In *Political Thought and the Tudor Commonwealth*, edited by T. F. Mayer and P. Fideler. New York: Routledge, 1992.

Cooper, Kody W. "Commanding Consistently with Sovereignty: Thomas Hobbes's Natural Law Theory of Morality and Civil Law." *Brit. J. Am. Legal Stud.* 3 (2014): 165.

Crane, Mary Thomas. "'Video Et Taceo': Elizabeth I and the Rhetoric of Counsel." *SEL: Studies in English Literature, 1500-1900* 28, no. 1 (1988): 1.

Cressy, David. *Charles I and the People of England*. Oxford: Oxford University Press, 2015.

Curran, Eleanor. "Hobbes's Theory of Rights: A Modern Interest Theory." *The Journal of Ethics* 6, no. 1 (2002): 63-86.

———. *Reclaiming the Rights of the Hobbesian Subject*. New York;: Palgrave Macmillan, 2007.

Dodd, Gwilym. "Kingship, Parliament and the Court: The Emergence of 'High Style' in Petitions to the English Crown, C.1350-1405." *The English Historical Review* 129, no. 538 (2014): 515.

Duke, George. "Hobbes on Political Authority, Practical Reason and Truth." *An International Journal for Jurisprudence and Legal Philosophy* 33, no. 5 (2014): 605-27.

Elyot, Thomas Sir. *The Book Named the Governour*. London: Ridgeway and Sons, 1834.

Erasmus, Desiderius, and Lisa Jardine. *The Education of a Christian Prince*. Cambridge, U.K;: Cambridge University Press, 1997.

Field, Sandra Leonie. "Hobbes and Human Irrationality." *Global Discourse* 5, no. 2: 207-20.

Flathman, Richard E. *Thomas Hobbes : Skepticism, Individuality, and Chastened Politics* Lanham, MD: Rowman & Littlefield, 2002.

Goldie, Mark. "The Reception of Hobbes." In *The Cambridge History of Political Thought 1450 - 1700*, edited by J. H. Burns & M. Goldie. Cambridge: Cambridge University Press, 1994.

Green, Michael. "Hobbes and Human Rights." In *Hobbes Today*, edited by S. A. Lloyd. London: Cambridge University Press, 2012.

Guy, John. "The Rhetoric of Counsel in Early Modern England." In *Tudor Political Culture*, edited by Dale Hoak: Cambridge University Press, 1995.

———. "Tudor Monarchy and Its Critiques." In *The Tudor Monarchy*, edited by John Guy. London: Arnold, 1997.

Hampton, Jean. *Hobbes and the Social Contract Tradition* Cambridge: Cambridge University Press, 1986.

Harrison, Ross. "The Equal Extent of Natural and Civil Law." In *Hobbes and the Law:*, edited by David Dyzenhaus and Thomas Poole. Cambridge: Cambridge University Press, 2012.

Henshall, Nicholas. *The Myth of Absolutism: Change and Continuity in Early Modern European Monarchy*. New York: Longman, 1992.

Hobbes, Thomas. *The Elements of Law Natural and Politic* Oxford: Oxford World Classics, 2008.

———. *Leviathan*. London: Collins, 1962.

———. *Man and Citizen*. Edited by Bernard Gert Cambridge: Hackett Publishing Company, 1993.

Hoekstra, Kinch. "Hobbesian Equality." In *Hobbes Today: Insights for the 21st Century*, edited by S. A. Lloyd: Cambridge University Press, 2012.

Hume, David. *The History of England*. Vol. 6, Indianapolis Liberty Fund, 1983.

Kapust, Daniel J. "The Problem of Flattery and Hobbes's Institutional Defense of Monarchy." *The Journal of Politics* 73, no. 3 (2011): 680.

Kavka, Gregory S. *Hobbesian Moral and Political Theory*. Princeton, N.J: Princeton University Press, 1986.

———. "Right Reason and Natural Law in Hobbes's Ethics." *The Monist* 66, no. 1 (1983): 120-33.

King, Preston T. *The Ideology of Order: A Comparative Analysis of Jean Bodin and Thomas Hobbes*. London: Allen & Unwin, 1974.

Kishlansky, Mark. "Charles I: A Case of Mistaken Identity." *Past & Present*, no. 189 (2005): 41.

Klimchuk, Dennis. "Hobbes on Equity." In *Hobbes and the Law:*, edited by David Dyzenhaus and Thomas Poole: Cambridge University Press, 2012.

Knoppers, Laura Lunger. *The Oxford Handbook of Literature and the English Revolution*. Vol. 1st, Oxford: Oxford University Press, 2012.

Lloyd, S. A. "Hobbes's Self-Effacing Natural Law Theory." *Pacific Philosophical Quarterly* 82, no. 3&4 (2001): 285-308.

———. *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature*. Cambridge: Cambridge University Press, 2009.

Martel, James R. *Subverting the Leviathan: Reading Thomas Hobbes as a Radical Democrat*. New York: Columbia University Press, 2007.

May, Larry. *Limiting Leviathan : Hobbes on Law and International Affairs*: Oxford, United Kingdom : Oxford University Press, 2013.

Mill, David Van. "Civil Liberty in Hobbes's Commonwealth." *Australian Journal of Political Science* 37, no. 1 (2002): 21-38.

———. *Deliberation, Social Choice and Absolutist Democracy*. Hoboken: Taylor & Francis, 2007.

Milton, John, Stephen Orgel, and Jonathan Goldberg. *The Major Works*. Oxford: Oxford University Press, 2003.

Mintz, Samuel I. *The Hunting of Leviathan: Seventeenth-Century Reactions to the Materialism and Moral Philosophy of Thomas Hobbes*. Cambridge University Press, 1962.

More, Sir Thomas. *Utopia*. Newburyport: Dover Publications, 2012.

Morrill, John. "What Was the English Revolution?". *History Today* 34 (1984): 11.

Murphy, Mark C. "Deviant Uses of "Obligation" in Hobbes' "Leviathan"." *History of Philosophy Quarterly* 11, no. 3 (1994): 281-94.

Paul, Joanne. "Counsel, Command and Crisis." *Hobbes Studies* 28, no. 2 (2015): 103-31.

Peltonen, Markku. *Rhetoric, Politics, and Popularity in Pre-Revolutionary England*. Cambridge;New York;: Cambridge University Press, 2012.

Perkins, Nicholas. *Hoccleve's Regiment of Princes: Counsel and Constraint*. Cambridge, [England]: D.S. Brewer, 2001.

Pocock, J. G. A. "A Discourse of Sovereity: Observations on the Work of Progress." In *Political Discourse in Early Modern Britain*, edited by Nicholas Phillipson and Quentin Skinner: Cambridge University Press, 1993.

Ramsey, Shawn D. "The Voices of Counsel: Women and Civic Rhetoric in the Middle Ages." *Rhetoric Society Quarterly* 42, no. 5 (2012): 472-89.

Reinhardt, Nicole. *Voices of Conscience: Royal Confessors and Political Counsel in Sevententh Century Spain and France*. Oxford: Oxford University Press, 2016.

Rogers, G. A. J., and Andrew Pyle. *Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*. Vol. no. 5, Bristol, England: Thoemmes Press, 1995.

Rose, Jacqueline. "Kingship and Counsel in Early Modern England." *The History Journal* 54, no. 1 (2011): 47-71.

Ryan, Alan. "Hobbes's Political Philosophy." In *The Cambridge Companion to Hobbes:*, edited by Tom Sorell, 208-45: Cambridge University Press, 1996.

Schochet, Gordon J. "Why Should History Matter? Political Theory and the History of Discourse." In *The Verieties of British Political Thought, 1500 - 1800*, edited by J. G. A. Pocock. Cambridge: Cambridge University Press, 1996.

Simmons, A. John. *Justification and Legitimacy: Essays on Rights and Obligations*. Cambridge: Cambridge University Press, 2001.

Sir William Molesworth, Bart, ed. *The English Works of Thomas Hobbes* Vol. VI. London: John Bohn, 1860.

Skinner, Quentin. *Hobbes and Republican Liberty*. Cambridge: Cambridge University Press, 2008.

———. *Reason and Rhetoric in the Philosophy of Hobbes*. Cambridge;New York;: Cambridge University Press, 1996.

Slomp, Gabriella. "The Inconvenience of the Legislator's Two Persons and the Role of Good Counsellors." *Critical Review of International Social and Political Philosophy* 19, no. 1 (2016/01/02 2016): 68-85.

Sorell, Tom. "Law and Equity in Hobbes." *Critical Review of International Social and Political Philosophy* 19, no. 1 (2016): 29-46.

Springborg, Patricia, and Deborah Baumgold. "The Paradoxical Hobbes: A Critical Response to the Hobbes Symposium, Political Theory, Vol. 36, 2008/Unparadoxical Hobbes: In Reply to Springborg." 37, no. 5 (2009): 676.

Sreedhar, Susanne. "Defending the Hobbesian Right of Self-Defense." *Political Theory* 36, no. 6 (2008): 781-802.

———. *Hobbes on Resistance: Defying the Leviathan*. Cambridge;New York;: Cambridge University Press, 2010.

Tarlton, Charles D. "'To Avoyd the Present Stroke of Death:' Despotical Dominion, Force, and Legitimacy in Hobbe's Leviathan." *Philosophy* 74, no. 2 (1999): 221-45.

Taylor, A. E. "The Ethical Doctrine of Hobbes." *Philosophy* 13, no. 52 (2009/02/01 2009): 406-24.

Undersrud, D. "On Natural Law and Civil Law in the Political Philosophy of Hobbes." *History of Political Thought* 35, no. 4 (2014): 683-716.

Van Mill, David. *Liberty, Rationality, and Agency in Hobbes's Leviathan*. Albany: State University of New York Press, 2001.

Walker, Greg. *Writing under Tyranny: English Literature and the Henrician Reformation*. Oxford: Oxford University Press, 2005.

Warnke, Alexander Witherspoon & Frank, ed. *Seventeenth Century Prose and Poetry*. New York: Harcourt Brace Jovanovich Inc. , 1963.

Warrender, Howard. *The Political Philosophy of Hobbes: His Theory of Obligation*. Oxford Clarendon Press, 1957.

Weston, Corinne Comstock. *Subjects and Sovereigns : The Grand Controversy over Legal Sovereignty in Stuart England / Corinne Comstock Weston, Janelle Renfrow Greenberg*. Edited by Janelle Renfrow Greenberg New York: Cambridge University Press, 1981.

Wolin, Sheldon S. "Hobbes and the Culture of Despotism." In *Thomas Hobbes and Political Theory*, edited by Mary G. Dietz. New York: University Press of Kansas, 1990.

Zagorin, Perez. *Hobbes and the Law of Nature*. Princeton: Princeton University Press, 2009.

———. "Hobbes as a Theorist of Natural Law." *Intellectual History Review* 17, no. 3 (2007/01/01 2007): 239-55.

Zaller, Robert. *The Discourse of Legitimacy in Early Modern England*. New York: Stanford University Press, 2007.