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If we turn by contrast to the humanists, and more particularly to the theorists of rhetoric, we encounter an entirely different line of argument. For the rhetoricians, the significance of the fact that laughter is an expression of scorn and contempt is essentially forensic in character. If it is true, they argue, that laughter is the outward manifestation of these particular emotions, we can hope to convert it into a uniquely powerful weapon of moral and political debate.

To see how they arrive at this conclusion, we need to begin by recalling perhaps the most basic assumption inherited by the philosophers of the Renaissance from the rhetorical culture of ancient Rome. To state it in the terms that eventually became proverbial, there will always be two sides to any question in the moral or civil sciences. As Quintilian explains in his chapter on the nature of rhetoric, if you argue about such questions you will find yourself in a situation 'in which two wise men may with just cause take up one or another point of view, since it is generally agreed that reason can lead even the wise to fight among themselves'.¹⁷⁴ It will always be possible 'to employ the weapons of powerful speech in *utramque partem*, on either side of the case', with the result that you can never hope to demonstrate beyond question that one or the other side is in the right.¹⁷⁵

We have already seen in volume 2 chapter 10 what was taken to follow from this predicament. If there are two sides to the question, your aim must be to argue in such a way that – as we still say – you persuade your audience to come round to your side. The characters in Cicero's *De Oratore* repeatedly insist on the crucial importance of knowing how to speak 'winningly', how to move or sway your auditors into seeing things from your point of view.¹⁷⁶ The commitment is vividly conveyed by the figure of Antonius when he declares that, should you find yourself confronting an audience 'actively hostile to your cause and friendly to your opponent', your objective must be 'to try to swing them round as if by some kind of machinery'.¹⁷⁷ The image survives in modern times in the form of the judgement that the greatest feat of parliamentary oratory will always be to cause an adversary to 'cross the floor'.

How can this be done? Not by reason alone, because there may be equally good reasons on either side. Rather you must learn how to

¹⁷⁴ Quintilian 1920-2, II. XVII. 32, vol. 1, p. 338: 'duos sapientes aliquando iustae causae in diversum trahant (quando etiam pugnaturos eos inter se, si ratio ita duxerit, credunt)'.
¹⁷⁵ Quintilian 1920-2, II. XVII. 10, vol. 1, p. 322: 'in utramque partem valet arma facundiae'.

¹⁷⁶ Cicero 1942, I. VIII. 30, vol. 1, p. 22; II. XLII. 178, vol. 1, p. 324; III. VI. 23, vol. 2, p. 18; III. XIV. 55, vol. 2, p. 44.

¹⁷⁷ Cicero 1942, II. XVII. 72, vol. 1, p. 252: when the judge is 'amicus adversario et inimicus tibi', then 'tanquam machinatione aliqua . . . est contorquendus'.

supplement your reasoning with the passionate force of powerful speech. You must learn, in other words, how to arouse in your audience a purely emotional commitment to your side of the case. As the figure of Antonius in *De Oratore* puts it with cynical frankness, after attracting the attention of your auditors 'you must try to shift them so that they become ruled not by deliberation and judgement but rather by sheer impetus and perturbation of mind'.¹⁷⁸ As we saw in volume 2 chapter 10, a deliberate ambiguity in the use of the word *move* may thus be said to lie at the heart of the argument. One of your aims in moral or political debate must always be to shift or move your audience to adopt your own perspective. But the only means of attaining this goal will be to speak or write in such a way that they are not merely convinced but 'greatly moved'.¹⁷⁹ This is the power that prompts your adversaries to cross the floor: if and only if they feel sufficiently moved will they move.

These contentions leave the rhetoricians confronting a question of some practical importance. Are there any specific techniques we can hope to learn and deploy in such a way as to move the emotions of an audience? Cicero gives his answer in Book 3 of *De Oratore*, in which he explains that this brings us to the topic of *ornatus* – that is, the figures and tropes of speech – and their crucial place in the theory of eloquence. Here the figure of Crassus takes up the argument. 'The greatest praise for eloquence is reserved for the amplification of argument by means of *ornatus*', and it is by means of such amplification 'that we are able either to conciliate the minds of our listeners or else to excite them', arousing or calming their passions at will.¹⁸⁰ Quintilian later explores the argument at greater length in Books 8 and 9 of the *Institutio Oratoria*, where he ends by declaring that the figures of speech, correctly deployed, possess an unsurpassed power to rouse the emotions and move people to accept our point of view.¹⁸¹

We still need to know how this can be done. Here the classical rhetoricians have several suggestions to make, but one of the most important is

¹⁷⁸ Cicero 1942, II. XLII. 178, vol. 1, p. 324: 'ipse sic moveatur, ut impetu quodam animi et perturbatione, magis quam iudicio aut consilio regatur'.

¹⁷⁹ As the figure of Antonius in *De Oratore* expresses it, the highest art is to argue in such a way that, while appearing merely to teach, 'you have the power to move the minds of your audience as much as possible'. See Cicero 1942, II. LXXVII. 310, vol. 1, p. 434: 'habere hanc vim magnopere debent, ut ad eorum mentes apud quos agitur movendas pertinere possint'.

¹⁸⁰ Cicero 1942, II. XXVII. 104, vol. 2, p. 82: 'Summa autem laus eloquentiae est amplificare rem ornando . . . vel cum conciliamus animos vel cum concitamus'.

¹⁸¹ Quintilian 1920-2, IX. I. 21, vol. 3, p. 358: 'Plurimum tamen ad commendationem facit, sive in conciliandis agentibus moribus sive ad promerendum actioni favorem.' On *figure* as the chief means by which 'ornatur oratio', cf. Quintilian 1920-2, X. V. 3, vol. 4, p. 114.

that we can hope to deploy a particular range of figures and tropes in such a way as to excite laughter and thereby discredit our opponents. When Quintilian first introduces this suggestion in Book 6 he apologises for its seeming triviality.¹⁸² But he later makes it clear that he is far from supposing that any such apology is genuinely required. Returning to the topic in Book 10, he declares that 'this use of humour, together with the ability to inspire pity, are undoubtedly the two means of stirring the emotions that have the greatest impact of all'.¹⁸³

We can now see the special significance for these writers of the claim that laughter arises out of scorn and contempt. If a distinctive range of figures and tropes can be used to arouse laughter, and if laughter is invariably an expression of such hostile feelings of superiority, then we can hope to deploy these figures and tropes in such a way as to arouse these hostile feelings against our dialectical enemies. We can thereby hope to make them look ridiculous in the eyes of our audience, and in consequence make our own side of the case look correspondingly more impressive. This is the main promise held out by Cicero in Book 2 of *De Oratore*, in which the figure of Caesar declares that a talent for exciting laughter 'is not only of great value in replying to your opponent's arguments, but is of no less value in attacking them, since humour can be used to break up his case, to obstruct his arguments, to make light of his cause, to deter him from speaking and to turn aside what he has said'.¹⁸⁴

It remains to explain the role of the figures and tropes in bringing about these dramatic results. We need to recall that, as Cicero had argued, we can hope to induce the specific and devastating effect of laughter only if we *suddenly* bring home to an audience that someone or something is deserving of contempt. The role of the figures and tropes arises from the fact that several of them are especially well adapted to producing this indispensable element of shock or wonderment. One such trope, Cicero explains, is that of irony, since ironic speakers characteristically say the opposite of what we expect, thereby surprising us and potentially making us laugh.¹⁸⁵ To which he adds that various forms of deliberate understatement or overstatement (described by later writers as *meiosis* and *hyperbole*) possess a similar power to defeat our expectations, thereby

¹⁸² Quintilian 1920-2, VI. III. 8, vol. 2, p. 442.

¹⁸³ Quintilian 1920-2, X. I. 107, vol. 4, pp. 60-2: 'Salibus certe et commiseratione, qui duo plurimum in adfectibus valent.'

¹⁸⁴ Cicero 1942, II. LVIII. 236, vol. 1, p. 372: 'maxime respondentis, nonnumquam etiam lacerantis; vel quod frangit adversarium, quod impedit, quod elevat, quod deterret, quod refutat.'

¹⁸⁵ Cicero 1942, II. LXV. 261, vol. 1, p. 394, and esp. II. LXVII. 269-72, vol. 1, pp. 402-4.

inducing 'incredible levels of surprise' and corresponding opportunities for ridicule.¹⁸⁶

The ancient writers find little more to say about the connections between *ornatus* and laughter, but in the hands of the Renaissance rhetoricians this aspect of the classical theory was very much elaborated. This development may have been due to the fact that the Renaissance writers place so much more emphasis on the element of *admiratio* in the provocation of laughter, which may in turn have made them more sensitive to the power of what they liked to describe as the mocking tropes. But whatever the cause, the result was that they succeeded in identifying, defining and illustrating a far broader range of these rhetorical techniques than any of their classical predecessors had done.

Among the mocking *tropi*, they lay particular emphasis on the device they describe as *astismus*. Thomas Wilson assures us in his *Arte of Rhetorique* that this is one of the best means of producing a 'just occasion of much laughter'.¹⁸⁷ Henry Peacham offers a helpful analysis in *The Garden of Eloquence*, explaining that we have a case of *astismus* when 'a word having two significations is exprest in the one and understood in the other', or when 'a saying is captiously taken and turned to another sense'.¹⁸⁸ The required element of surprise is furnished by the fact that the words will seem entirely innocent if we only think of their ordinary meaning, but will suddenly lose their innocence as soon as the alternative meaning occurs to us.

Besides adding to the *tropi*, the Renaissance theorists considerably extend the list of mocking *figurae* of speech. Among the devices they single out is the one they usually call *synchorexis*. Dudley Fenner explains in his *Artes of Logike and Rethorike* of 1584 that this is the figure we employ 'when an argument is mockingly yielded unto'.¹⁸⁹ Here the element of surprise is furnished by the fact that, expecting to find the argument countered, we instead find this expectation suddenly undermined. A second figure especially well suited to satirical use is said to be *apocriphesis*. Fenner informs us that this is the figure in play 'when the course of the sentence begun is so stayed, as thereby some part of the sentence not being uttered, may be understood'.¹⁹⁰ Henry Peacham adds that, if the unexpected silence additionally leaves 'the venome of some false suspicion behind it', the effect may be to hint at something contemptible, and hence worthy of

¹⁸⁶ Cicero 1942, II. LXVI. 267, vol. 1, p. 400: 'Etiam illa quae minuendi aut augendi causa ad incredibilem admirationem effertur.'

¹⁸⁷ Wilson 1554, fo. 76^v. ¹⁸⁸ Peacham 1593, p. 34.

¹⁸⁹ Fenner 1584, Sig. E, l. v. ¹⁹⁰ Fenner 1584, Sig. D, 4^v.

ridicule.¹⁹¹ A further and still more blatantly ridiculing figure is said to be *tapinosis*. According to Henry Peacham, we make use of this device whenever 'the dignitie or majestie of a high matter is much defaced by the basenesse of a word'.¹⁹² Here the use of inappropriate terminology occasions the required shock of surprise, while the replacement of a dignified description by a ludicrous one virtually guarantees a laugh.

These rhetorical techniques were widely deployed by the moral and political theorists of the Renaissance, who make full use of them to unmask the vices of avarice, vanity and hypocrisy, the vices said to be especially deserving of our scorn and contempt. Erasmus relies on the device of ironic inversion throughout his *Encomium Moriae* to satirise the hypocrisies of the age,¹⁹³ while More in *Utopia* makes repeated use of rhetorical understatement to ridicule the avarice and vaingloriousness of the nobility and the rich.¹⁹⁴ Of all the Renaissance satirists, however, perhaps the most devastating in his use of these particular techniques is Hobbes, especially in Books 3 and 4 of *Leviathan*. Hobbes is no less a master of irony and mocking understatement,¹⁹⁵ but he is equally skilful at deploying the more rarefied devices recommended by the rhetoricians, especially in his attacks on the avarice, vanity and hypocrisy of the Roman Catholic church.¹⁹⁶

Hobbes satirises clerical avarice in several ways, but one of the most memorable is undoubtedly by his use of the mocking trope of *asteismus*. When, for example, he turns to examine the Catholic doctrine of Purgatory, he plays on the fact that the word *profit* can either mean (as Cotgrave's *Dictionary* of 1611 puts it) 'gaine, lucre' or else 'benefit, utilitie'.¹⁹⁷ We are told, Hobbes says, that the Doctors of the Church conducted lengthy debates about the location of 'the place which they were to abide in till they should be re-united to their Bodies in the Resurrection'. At first they supposed that 'they lay under the Altars', but 'afterward the Church of Rome found it more profitable to build for them this place of Purgatory'.¹⁹⁸

Hobbes likewise takes every opportunity to ridicule the Church's hypocrisies, but never more successfully than when he uses the mocking figure of *apostopesis* to satirise the doctrine of clerical celibacy.

¹⁹¹ Peacham 1593, p. 118. ¹⁹² Peacham 1593, p. 163.

¹⁹³ For an analysis of Erasmus's satirical techniques see Sorceuch 1997, pp. 161–75, 188–90.

¹⁹⁴ A point perceptively made in McCutcheon 1971, pp. 114–16.

¹⁹⁵ For Hobbes's use of these techniques see Skinner 1996, pp. 404–5, 421–2.

¹⁹⁶ For a full account of these techniques (on which I draw in what follows) see Skinner 1996, pp. 413–25.

¹⁹⁷ Cotgrave 1611, Sig. Sss, vi^r. ¹⁹⁸ Hobbes 1996, ch. 44, p. 426.

He begins with a series of opprobrious comparisons between the Catholic priesthood and the fairies. The fairies acknowledge only one king; the priests acknowledge only the pope. The fairies live in enchanted castles; the priests have cathedral churches. The fairies cannot be made to answer for their crimes; the priests likewise vanish from the tribunals of justice. Then he adds his apostopesis: 'The *Fairies* marry not; but there be amongst them *Inubi*, that have copulation with flesh and bloud. The *Priests* also marry not.'¹⁹⁹

A good Renaissance rhetorician, Hobbes registers still greater indignation at the pride and vaingloriousness of the schoolmen, whose teachings he summarises under the heading of 'vain philosophy'.²⁰⁰ He introduces them with a broadly satirical use of *asteismus*, which in seventeenth-century ambiguity inherent in the word *egregious*, which in seventeenth-century English (as Cockeram's *Dictionary* of 1623 informs us) could mean either 'Excellent' or else 'vile, base'.²⁰¹ Hobbes scoffingly avails himself of the double meaning when he speaks of the whole tribe of scholastic theologians as 'Egregious persons'.²⁰² Most disparaging of all is Hobbes's deployment of the mocking figure of *tapinosis* to dismiss the attempts of the schoolmen to base the Christian religion on a combination of reason and faith. He retorts that, properly defined, religion is merely '*Fear* of power invisible, feigned by the mind, or imagined from tales publicly allowed'. Nothing in his entire philosophy caused so much offence. Sir Charles Wolseley exclaimed in *The Reasonableness of Scripture-Belief* that the definition illustrates more clearly than anything the iniquity of those who, 'by an empty prophane sort of discourse, which themselves call Wit', have disgraced the age.²⁰⁴

VI

My principal aim in the foregoing analysis has been to expound a theory, but I have attempted at the same time to trace a narrative, a narrative that originates with Aristotle and reaches its climax with the new philosophy of the seventeenth century. By way of conclusion, I want finally to note that, as well as having a beginning and a middle, the story I have been recounting has a recognisable end.

The classical and Renaissance view of laughter as an expression of contempt was countered from two different directions by the end of

¹⁹⁹ Hobbes 1996, ch. 47, p. 481.

²⁰⁰ Hobbes 1996, ch. 46, p. 458.

²⁰¹ Cockeram 1608, Sig. D, 7^v.

²⁰² Hobbes 1996, ch. 8, p. 59.

²⁰³ Hobbes 1996, ch. 6, p. 42.

²⁰⁴ Wolseley 1672, Sig. A, 3–4^r.

the seventeenth century. As we have seen, one challenge was mounted by those who wished to defend the anti-Hobbesian thesis that laughter can sometimes be an expression of unalloyed delight. But another arose from within the Hobbesian theory itself. A number of moralists began to suggest that, even though it may be true that laughter is always an expression of contempt, we must be very wary of expressing our contempt in the form of outright laughter.

Hobbes himself had a particular reason for issuing this warning. The disposition to laugh, he always maintains, is nothing other than a disposition to insist on our own superiority. But such aggression, he also believes, is an obvious threat to peace, and consequently an affront to the laws of nature. As he makes clear in his definitive account of these laws in chapters 14 and 15 of *Leviathan*, he sees the threat as directed in particular against the eighth and ninth laws. The ninth enjoins 'That every man acknowledge other for his Equall by Nature', adding that 'the breach of this precept is *Pride*'.²⁰⁵ Still more relevant is the eighth law, which Hobbes presents as follows:

And because all signes of hatred, or contempt, provoke to fight; insomuch as most men choose rather to hazard their life, than not to be revenged; we may in the eighth place, for a Law of Nature, set down this Precept, *That no man by deed, word, countenance, or gesture, declare Hatred, or Contempt of another*. The breach of which Law, is commonly called *Contumely*.

Having insisted that laughter is always an expression of contempt, Hobbes now insists that, since all such expressions lead to violence, we must avoid them altogether in the name of upholding 'the first, and Fundamentall Law of Nature; which is, *to seek Peace, and follow it*'.²⁰⁶

During the latter part of the seventeenth century, we also encounter a second and very different line of argument in favour of avoiding and even proscribing outright laughter. This further doubt arose as an aspect of what has been described as the civilising process.²⁰⁷ An important part of this development was the growing demand for mutual respect and restraint, and more particularly for the control of various bodily functions that had previously been classified as involuntary.²⁰⁸ Laughter came to be seen as a form of incivility, and at the same time as an obvious instance of an uncontrolled reaction that needed, in polite society, to be governed and preferably eliminated.

We encounter little of this animus against laughter even in the most exciting courtesy-books of the Renaissance. Castiglione is certainly anxious

²⁰⁵ Hobbes 1996, ch. 15, p. 107.

²⁰⁶ Elias 1994, pp. 110–17; Thomas 1977, p. 79.

²⁰⁷ Elias 1994.

that our mirth should never be vulgar, nor of such a kind as to give rise to blasphemy or dangerous hostilities.²⁰⁹ But he is so far from viewing laughter as inherently blameworthy that, in Book 2 of the *Cortegiano*, he makes the irreproachable figure of Lady Emilia call on M. Bernarde, after a particularly high-spirited exchange, to 'leave nowe makinge us laugh wyth practisyng of Jestes, and teache us howe we should use them'.²¹⁰ We find an even broader tolerance in Stefano Guazzo's *La Civile Conversazione*, the leading courtesy-book of the next generation. Guazzo's text is suffused with laughter, but none of his high-born ladies and gentlemen appears to find anything ill-bred or reprehensible in it. When the figure of Lord Hercules, in the course of the banquet described in Book 4, is persuaded to declaim his lover's complaint, we are told that 'everie one laughed apace'.²¹¹ And when at an earlier stage of the banquet one of the lords tells a *risqué* anecdote, we are told that the entire company – including the Queen – 'burst out in such a laughing' that for some time no one was able to speak.²¹²

If, however, we glance forward a century, we come upon a demand for decorum so greatly increased that laughter begins to be virtually debarred. We already encounter this demand in the courtly comedies of the later seventeenth century, in which we are regularly admonished that, as Lord Froth declares in Congreve's *Double-Dealer*, 'there is nothing more unbecoming a man of quality than to laugh; Jesu, 'tis such a vulgar expression of the passion'.²¹³ Yet more severe are the admonitions to be found in books of conduct intended for ladies. As Lord Halifax explains in his *Advice to a Daughter* of 1688, women have a special need to observe decorum and prudence, a requirement that obliges them wholly to avoid anything resembling 'a concert of senseless merriment'.²¹⁴ Halifax goes on to draw the moral with his habitual confidence:

It is not intended by this that you should forswear laughing; but remember that, fools being always painted in that posture, it may fright those who are wise from doing it too frequently, and going too near a copy which is so little inviting; and much more from doing it loud, which is an unnatural sound and looketh so much like another sex that few things are more offensive. That boisterous kind of jollity is as contrary to wit and good manners as it is to modesty and virtue.²¹⁵

Too much laughter is now seen as an offence not merely against good breeding but against morality itself.

²⁰⁹ Castiglione 1994, pp. 155, 159–60.

²¹⁰ Castiglione 1994, p. 153.

²¹¹ Guazzo 1925, vol. 2, p. 198.

²¹² Guazzo 1925, vol. 2, p. 132.

²¹³ Congreve 1981, I, i, p. 25. For this and other comparable references see Tave 1966, p. 10 and notes.

²¹⁴ Halifax 1969, p. 298.

²¹⁵ Halifax 1969, p. 298.

Soon after this, we reach the point at which, at least among the genteel and the civilised, laughter is outlawed altogether. When Erasmus Jones's popular courtesy-book, *The Man of Manners*, reached its third edition in 1737, one of the warnings he inserted into the section entitled 'General Rules for a Genteel and Prudent Behaviour' was that 'it is not becoming to break out into violent loud Laughter upon any Occasion whatever'.²¹⁶ By the time we reach Lord Chesterfield's *Letters to his Son*, some ten years later, we find that laughter, that great vehicle of contempt, has become an object of contempt itself. Chesterfield repeatedly insists that 'there is nothing so illiberal, and so ill bred, as audible laughter', and that laughing is something that 'people of sense and breeding should show themselves above'. To laugh is 'low and unbecoming', especially in virtue of 'the disagreeable noise that it makes, and the shocking distortion of the face that it occasions' whenever we succumb to it.²¹⁷

This is not of course to deny that laughter may be a natural expression of contempt, nor to deny that we should find the means to express our contempt when appropriate. It is merely to insist that something more controlled than scornful laughter is required. Moreover, the requirement can easily be met, according to Chesterfield, for we need only train ourselves to reduce our laughter to a sub-laugh – that is, to a *sorriso*, a *sourire*, a contemptuous smile. As Chesterfield duly concludes this part of his advice to his son, 'I could heartily wish, that you may often be seen to smile, but never heard to laugh while you live'.²¹⁸

The imperative of decorum was undoubtedly the principal source of the growing movement in the early-modern period to outlaw laughter from civilised life. To anyone living in a post-Freudian culture, however, a further reason for wishing to avoid contemptuous laughter is bound to suggest itself. Such outbursts are liable to be interpreted not merely as highly aggressive, but at the same time as obvious strategies for dealing with feelings of inadequacy and self-doubt. To us these are familiar thoughts, but one might well wonder whether any of the moralists of the early-modern period had access to them. The answer, perhaps unsurprisingly, is that in general they seem not to have done. To this generalisation, however, there is at least one exception, and that is Hobbes.²¹⁹

As early as *The Elements of Law*, we already find Hobbes observing that it is generally those who 'are greedy of applause, from every thing they doe well' who enjoy laughing 'at their own Actions, performed never so

little beyond their owne expectation'.²²⁰ He also notes that such laughter consists in effect of 'the recommending of our selves to our owne good opinion, by comparison with another mans Infirmityes or absurditie', and adds in more critical tones that 'it is vaine-glory, and an argument of little worth to thinke the Infirmityes of another sufficient matter for his triumph'.²²¹

For the explicit suggestion, however, that laughter betokens a lack of self-esteem we need to turn to Hobbes's *Answer* to Sir William Davenant's Preface to *Gondibert*, which Hobbes published in 1650:

Great persons that have their mindes employed on great designes, have not leasure enough to laugh, and are pleased with the contemplation of their owne power and vertues, so as they need not the infirmities and vices of other men to recommend themselves to their owne favor by comparison, as all men do when they laugh.²²²

Here Hobbes brings together two equally stern thoughts about laughter, namely that great minds will lack not merely any motive but any time to indulge in it.

If we turn to *Leviathan*, published a year later, we find Hobbes concentrating his main attention on the suggestion that laughter reveals a weakness of character, and expressing the thought in yet more forbidding tones:

[Laughter] is incident most to them, that are conscious of the fewest abilities in themselves; who are forced to keep themselves in their own favour, by observing the imperfections of other men. And therefore much Laughter at the defects of others, is a signe of Pusillanimity. For of great minds, one of the proper workes is, to help and free others from scorn; and compare themselves onely with the most able.²²³

Since this is Hobbes's last word on the subject, it is striking to find him introducing two entirely new elements into his basic theory of laughter as an expression of contempt. One is that, because it is appropriate for great minds to compare themselves only with the most able, they will have no occasion to entertain such feelings of superiority or scorn. His other and still more demanding suggestion is that gifted people have in addition a positive moral duty to help others to cultivate similar feelings of magnanimity and respect.

Although Hobbes had never previously expressed these ideas in print, they were by no means new commitments on his part. He had held these

²¹⁶ [Jones] 1737, p. 37. For the ascription see Cockayne 2000.

²¹⁷ Chesterfield 1901, Letter 144, vol. 1, p. 212. ²¹⁸ Chesterfield 1901, Letter 144, vol. 1, p. 213.

²¹⁹ There is a hint of the same idea in Descartes 1988, Article 179, p. 196.

²²⁰ Hobbes 1969a, p. 41.

²²¹ Hobbes 1969a, p. 42. ²²² Hobbes 1971b, p. 53.

²²³ Hobbes 1996, ch. 6, p. 43.

views for a considerable time, as is evident from a remarkable letter of admonition and advice he had addressed to Charles Cavendish, the younger son of the second earl of Devonshire, at the time when he had taken up residence in Paris in 1638:

To encourage inferiours, to be cheerefull with ones equals & superiors, to pardon the follies of them one converseth withall, & to help men of, that are fallen into y^e danger of being laught at, these are signes of noblenesse & of the master spirit. Whereas to fall in love with ones selfe upon the sight of other mens infirmities, as they doe that mock & laugh at them, is the property of one that stands in competition with such a ridiculous man for honour. They are much deceived that think mocking Witte. for those be few y^t cannot do it. And what witte is it to loose a frend though the meanest in the world for the applause of a jest.²²⁴

Here the duty to exhibit and help others to cultivate a proper sense of magnanimity is so much emphasised that Hobbes comes close to the traditional humanist claim that *virtus vera nobilitas est*.

These almost unrecognisably self-righteous observations are in obvious tension with the withering tones of scorn and contempt that Hobbes liked to visit upon his intellectual adversaries, in particular the school-men whom he mocks so relentlessly in Book 4 of *Leviathan*. Nor is it easy to believe that he took himself in these passages to be following his own advice and comparing himself only with the most able. Despite his own penchant for satire, however, Hobbes is clearly in earnest in counselling us to avoid derisive laughter whenever possible. We need to fear it not merely as a breach of the peace, not merely as a failure of magnanimity, but even more deeply as a lapse of self-control, a slipping of the mask of assurance with which we must always aim to confront the hostile world.

²²⁴ Hobbes 1994, Letter 28, vol. 1, pp. 52–3.

Hobbes and the purely artificial person of the state

I

Hobbes prefaces *Leviathan* with a letter in which he dedicates the work to Francis Godolphin and at the same time offers him a summary of the theory of public authority contained in the book. 'I speak', Hobbes explains, 'not of the men, but (in the Abstract) of the Seat of Power.'¹ This seat, he adds in his Introduction, is occupied by 'that great LEVIATHAN called a COMMON-WEALTH, or STATE'.² The essence of Hobbes's theory of public power is thus that the person identifiable as the true 'subject' of sovereignty in any lawful state must be the person of the state itself.

Hobbes's opening remarks allude to what has proved to be one of the most enduring puzzles in our inherited theories of government. On the one hand, most contemporary political philosophers would agree with Hobbes that the state is the seat of sovereignty.³ As Hobbes expresses the claim later in *Leviathan*, it is 'the Reason of this our Artificiall Man the Common-wealth, and his Command, that maketh Law', so that civil law is nothing other than 'the Will and Appetite of the State'.⁴ But on the other hand, most contemporary philosophers would also agree with Hobbes when he adds that the state amounts to nothing more than an artifice. To quote Hobbes's way of expressing this further point, the state has no capacity 'to doe any thing'; it is 'but a word, without substance, and cannot stand'.⁵ There, then, is the puzzle. How can the state, an apparent abstraction, nevertheless be the name of the person who makes laws, punishes criminals, declares war and peace and performs all the

¹ This chapter is a revised version of an article that originally appeared under the same title in *The Journal of Political Philosophy* 7 (1999), pp. 1–29.

² Hobbes 1996, Epistle, p. 3. ³ Hobbes 1996, Introduction, p. 9.

⁴ For some recent examples see the contributions to Biersteker and Weber 1996.

⁵ Hobbes 1996, ch. 26, p. 187 and ch. 46, p. 469.

⁶ Hobbes 1996, ch. 26, p. 184 and ch. 31, p. 245.

other actions necessary for maintaining – in Hobbes's fine phrase – the safety of the people and their other contentments of life.⁶

One reason for wishing to focus on Hobbes's answer is a strictly exegetical one. He informs us in chapter 17 of *Leviathan* that the state can actually be defined as 'One Person'.⁷ But it is far from clear what he means by this claim, and even less clear what he means by adding that this person is also the seat of power. Nor have these problems been very satisfactorily addressed in much of the critical literature. It is remarkable how many surveys of Hobbes's thought – even the best recent surveys⁸ – tend to glide past these issues in silence. The exegetical task is accordingly that of trying to say something further about the meaning of Hobbes's claims about the person of the state.

My principal reason, however, for wishing to re-examine Hobbes's theory is a more philosophical one. As I have observed, we continue to organise our public life around the idea of the sovereign state. But it seems to me that we do not always understand the theory we have inherited, and that arguably we have never managed fully to make sense of the proposition that the person of the state is the seat of sovereignty. This encourages me to hope that an historical investigation of Hobbes's argument may turn out to be of more than purely historical interest.

II

Hobbes eventually worked out a distinctive and highly influential approach to the question of how it is possible for a state – or any other abstraction or collectivity – to perform actions and take responsibility for the consequences. The explanation, he proposed, depends on making sense of what he describes as the class of attributed actions. What we need to understand is how actions can be validly attributed to agents, and genuinely counted as theirs, even when the agents in question did not in fact perform the actions, and perhaps could not in principle have performed them.

Hobbes gives his answer without preamble in chapter 16 of *Leviathan*, the chapter entitled *Of Persons, Authors and Things Personated*. His proposed solution (already implicit in his title) is impressively if deceptively

⁶ Hobbes 1996, ch. 30, p. 291. ⁷ Hobbes 1996, ch. 17, p. 121.

⁸ For example, Tuck 1989, Fiallman 1993, Martinich 1997. But this lack of interest is especially marked among Anglophone commentators. By contrast, the French literature includes a number of important studies of the *personne* of the state. See, for example, Polin 1981, Tricaud 1982, Jaume 1986, Lessay 1992, Zarka 1985 and 1995. For a valuable recent discussion in English see Sommerville 1992, pp. 57–63.

straightforward. It is possible, he argues, for an action genuinely to be attributed to a collectivity – or to an abstraction or even a thing – provided that one particular condition is met. The agent to whom the action is attributed must be represented by another agent who can validly claim to be 'personating' the first by way of acting on their behalf.⁹

The inspiration for this approach – along with so much else in the conceptual apparatus of *Leviathan* – appears to be drawn from the *Digest* of Roman law.¹⁰ Book 14 of the *Digest* opens by considering the implications of the fact that owners of various kinds of property – specifically, owners of ships and shops – can appoint other persons to serve as their captains or managers.¹¹ The law describes a number of circumstances in which you may be liable for the consequences of whatever actions are performed on your behalf when you agree *praeposare* – that is, to appoint someone to serve as your agent.¹² Although you will not have performed the actions yourself, you will be legally obliged *praestare* – that is, to stand by the actions and accept responsibility for them as your own.¹³

There are several indications in Hobbes's early works that – in common with other constitutional theorists of the 1640¹⁴ – he was aware of this theory and interested in developing it.¹⁵ In his first treatise on civil

⁹ Pitkin 1967 rightly stresses that representation is the basic concept. Although I disagree with Pitkin at several points, I am greatly indebted to her classic analysis.

¹⁰ Brett 1997, pp. 205–35 examines the place of this legal tradition in Hobbes's thought. See also Springborg 1976 on Hobbes's 'incorporation' of the commonwealth and Lessay 1992, pp. 167–79 on Hobbes's invocations of the Roman law of corporations.

¹¹ *Digest* 1985, XIV.1.1, vol. 1, p. 415 and XIV.1.1.1, vol. 1, p. 422. Johnston 1995, esp. pp. 1517–24 discusses these passages and their implications for legal liability.

¹² *Digest* 1985, XIV.1.5, vol. 1, p. 415 and XIV.1.1.5, vol. 1, p. 422: even if I have put someone else in charge (*praeposui*) I may still be liable in full (*in solidum tenet*).

¹³ *Digest* 1985, XIV.1.5, vol. 1, p. 415: '*deben praestare qui eam praeposui*' – 'I who have appointed that person ought to stand by their actions'.

¹⁴ Among parliamentary writers, [Parker] 1933, p. 193 speaks of the need for 'Authors' to take responsibility for their 'Actors'; among royalists, [Digges *et al.*] 1642, p. 22 claims that acts performed by judges are in effect performed by the king, since 'they sustaine his person'. Thomas Thomason wrote on the title-page of his copy of [Digges] 1642: 'Talk [land] Chilyw: [orth] Digges & ye rest of ye University'.

¹⁵ The earliest of these intimations can be found in [Hobbes (?)] 1986, I.14, p. 61, where he speaks of the need to know 'what a *publique Person*, or the *Citty* is; and what a *private Person*, or *Citizen* is'. This text is an English rendering of Hobbes MSS (Chatsworth) MS D. 1, Hobbes's Latin paraphrase of Aristotle's *Rhetoric*. For this manuscript see chapter 1 note 27 and chapter 2 note 79. Hobbes's paraphrase is in turn drawn from Goulston 1619, a Latin translation of Aristotle's *Rhetoric* published by Goulston alongside his edition of the Greek text. But the passage from chapter 14 is one of several that might lead one to doubt whether the English version in [Hobbes (?)] 1986 is in fact Hobbes's work. There is nothing in Goulston's text or Hobbes's Latin paraphrase corresponding to the suggestion that a city can be described as 'a *publique Person*', and elsewhere in his early works Hobbes always prefers to speak of 'civil' persons. I owe this point to Karl Schuhmann, who has persuaded me that the English version is almost certainly not by Hobbes.

science, *The Elements of Law*, the manuscript of which he circulated in 1640, he already isolates the category of 'civil persons'¹⁶ and asks how 'a multitude of persons naturall' can become 'united by Covenants into one person Civil, or body politique'.¹⁷ And in the earliest published version of his political theory, the *Elementarum Philosophiae Sectio Tertia De Cive* of 1642, he examines the same question at greater length,¹⁸ defining a city or *civitas* as a *persona civilis* 'whose will, from the covenants of many men, is to be taken for the will of them all'.¹⁹

At the same time, Hobbes begins to raise the question of how it is possible for actions to be attributed to civil persons of this kind. In *The Elements* he asks how 'any action done in a multitude' can be 'attributed to the multitude, or truly called the action of the multitude'.²⁰ And in *De Cive* he begins to supply his answer. He introduces a distinction in chapter 7 between a *populus* considered as a collectivity and 'a dis-united multitude to whom it is not possible for any action or any right to be attributed'.²¹ The implication, duly pursued in chapter 12, is that a united body of people, by contrast with a mere multitude, may be capable of acting as a single person in the sense that 'it is possible for one single action to be attributed to it'.²²

The weakness of these discussions is that they lack any account of how such attributions are to be made, and of how to distinguish between genuine attributions and those that may be counterfeited. It is only in the *Leviathan* of 1651 that these questions are properly addressed and a theory of attributed action is systematically laid out. This initial effort, however, was marred by some obscurity and even incoherence. Hobbes later recognised these defects himself, and took the chance to introduce a number of improvements when he published *De Homine* in 1658, in which he devoted his closing chapter to the theme of *De Homine Fictio*. Still later he introduced yet further refinements when he revised *Leviathan* and reissued it in Latin in 1668. While it will be best to begin with the English *Leviathan* of 1651, which contains Hobbes's fullest statement of

¹⁶ Hobbes 1969a, pp. 108, 117. Later, Hobbes adds (p. 174) that 'though in the Chapters of subordinate Corporations, a Corporation be declared to be one Person in lawe, yet the same hath not been taken note of in the body of a Commonwealth, or City'.

¹⁷ Hobbes 1969a, p. 108.

¹⁸ Hobbes 1983a, V, IX-X, p. 134 and VI, I, p. 136 describes the *civitas* as a *persona civilis*.

¹⁹ Hobbes 1983a, V, IX, p. 134: 'cuius voluntates, ex pactis plurimum hominum, pro voluntate habenda est ipsorum omnium'.

²⁰ Hobbes 1969a, p. 108.

²¹ Hobbes 1983a, VII, V, p. 153: 'multitudo dissoluta cui nulla neque actio necque ius attribui potest'. Cf. Hobbes 1983a, VI, I, p. 136 on why it is impossible for an action to be attributed to a multitude.

²² Hobbes 1983a, XII, VIII, p. 190: 'cui actio una attribui possit'.

his distinctions and arguments, it will be necessary at various points to take account of these later corrections and embellishments.

Hobbes introduces his attempt to analyse attributed action in terms of representation at the start of chapter 16 of *Leviathan*,²³ where he begins by unveiling his definition of the underlying concept of a person:

A PERSON, is he, whose words or actions are considered, either as his own, or as representing the words or actions of another man, or of any other thing to whom they are attributed, whether Truly or by Fiction.²⁴

To construe. A general theory of action will not only have to explain how individual persons can represent themselves, so that their words and actions can truly be attributed to them. Such a theory will also have to explain how it is possible for one person to represent someone else – or some thing else – in such a way that the words or actions of the representative can validly be attributed to the person (or thing) being represented. To put the point in a different way – as Hobbes himself does later in the chapter – a general theory of action will need to include an account of how it is possible for one person to act in the name of another. This is because 'to *Personate*, is to *Act*, or *Represent* himselfe, or another; and he that acteth another, is said to beare his Person, or act in his name'.²⁵

These phrases about 'bearing' and 'personating' fall strangely on modern ears, so it is worth recalling that Hobbes's usages were not at all uncommon at the time. It has lately been suggested that the peculiarities of his terminology stem from the fact that he was drawing on the vocabulary of covenanting theology.²⁶ But as Hobbes himself emphasises, his terminology is largely taken from the theatre.²⁷ By the time he was writing, the idea of 'bearing' or 'presenting' *dramatis personae* on the stage had become sufficiently familiar to be understood even by such unsophisticated thespians as the tradesmen in *A Midsummer Night's Dream*. Rehearsing the story of Pyramus and Thisbe, they find themselves beset by various problems of mimesis. One is how to convey the fact that the lovers met by moonlight. They decide that someone will have to enter 'with a bush of thorns and a lantern and say he comes to disfigure, or to present, the person of Moonshine'.²⁸ A further problem is that the lovers spoke through a chink in a wall, and that it will not be possible to

²³ Although Hobbes 1966, ch. 15, pp. 103-4 already introduces the concept when discussing the attribution of justice and injustice to actions and to men.

²⁴ Hobbes 1996, ch. 16, p. 111. ²⁵ Hobbes 1996, ch. 16, p. 112.

²⁶ See Martinich 1992, pp. 165, 384 and references there.

²⁷ Pagnani 2001 also draws attention to Boethius's *De Persona* and Renaissance commentaries on it. On the place of theatricality in Hobbes's account see Fye 1984 and Runckman 1997, pp. 224-9.

²⁸ Shakespeare 1988, *A Midsummer Night's Dream*, III, i, 54-6, p. 320.

bring a wall on stage. Again they agree that 'some man or other must present Wall';²⁹ and when they later perform their play the wall is duly personated by the tinker Snout.³⁰

The anxiety of Shakespeare's rustics to demonstrate their mastery of theatrical terminology is of course part of the comedy. But the passage reminds us that, in drawing on the same terminology in *Leviathan*, Hobbes was merely 'translating', as he puts it, a range of concepts long familiar in the playhouse to encompass 'any Representer of speech and action, as well in Tribunalls, as Theaters'.³¹ The outcome, as he adds, is that in his theory 'a *Person*, is the same that an *Actor* is, both on the Stage and in common Conversation'.³² As Hobbes's theory continually reminds us, *persona* is, in Latin, the ordinary word for a theatrical mask.

The term *attributed* was likewise a familiar piece of legal terminology, and was evidently chosen by Hobbes with some care. The Latin verb *attribuere* had always been used to convey the sense that something should be counted as belonging to someone. Furthermore, there was always the implication – as in the case of attributing an anonymous text to its rightful author – that the responsibility for a work may sometimes be hard to assign, and that appearances may often be deceptive. These considerations had already been highlighted by the ancient theorists of forensic eloquence. They had made it a principle that, whenever the wording of a text is in question in a court of law, you must seek to cast doubt on whatever attributions of meaning and authorship have been made by your adversaries.³³ The parallel with attributed action is close: while it may be evident who performed a given action, it may not be evident who should count as its true author, and hence as responsible for its consequences. These were exactly the parallels that Hobbes was concerned to bring out.

With the introduction of the key concept of an attributed action, Hobbes comes face to face with the principal problem he needs to address. What is to count as the valid representation of one person's words or actions by someone else, such that it will be proper to say of an action performed by a representative that it ought to be attributed to the person – or thing or collectivity – being represented? What, in a word, distinguishes representation from misrepresentation?

Hobbes grappled with this problem in every recension of his civil science, but it was only in *Leviathan* that he arrived at an answer that he

²⁹ Shakespeare 1988, *A Midsummer Night's Dream*, III. i. 62, p. 320.

³⁰ Shakespeare 1988, *A Midsummer Night's Dream*, V. i. 154–5, 160–1, p. 330.

³¹ Hobbes 1996, ch. 16, p. 112. ³² Hobbes 1996, ch. 16, p. 112.

³³ See, for example, *Ad C. Herennium* 1954, II. IX. 13, p. 80 on how a *sententia* should be *attributa*.

seemed to find satisfactory.³⁴ Once again his solution wears an air of remarkable simplicity, but it constitutes one of the most important theoretical advances he made between the publication of *De Cive* in 1642 and *Leviathan* nearly a decade later, and arguably embodies his most original contribution to the theory of the state.³⁵ His suggestion is that an action can be validly attributed to one person on the basis of its performance by a representative if and only if the representative has in some way been duly authorised,³⁶ and hence instructed and commissioned, to perform the action concerned.³⁷ The crucial concept is accordingly that of authorisation,³⁸ and more specifically that of being an author and hence in a position to grant authority.³⁹ These terms make no appearance in *The Elements* or *De Cive*. Although Hobbes gives some consideration in those texts to the question of where authority may be said to reside, he never considers how it comes to be authorised. In *Leviathan*, by contrast, he deploys the concepts of authorisation and of 'being an author' to furnish the entire theoretical grounding for his theory of the legitimate state.⁴⁰

This terminology is introduced at an early stage in chapter 16 of *Leviathan*. Hobbes first employs these terms when considering the sense in which we can speak of actions, by analogy with possessions, as 'owned' by particular individuals:

Then the Person is the *Actor*; and he that owneth his words and actions, is the *AUTHOR*: In which case the Actor acteth by Authority. For that which in speaking of goods and possessions, is called an *Owner*, and in latine *Dominus*, in Greeke *κύριος*, speaking of Actions, is called an Author.⁴¹

³⁴ Although Hobbes made several changes in the Latin version of *Leviathan* to his theory about the person of the state, his theory about authorisation remained unchanged.

³⁵ Rightly stressed in Gauthier 1969, p. 120 and Zarka 1995, p. 197.

³⁶ Note that 'duly' need not mean 'explicitly': implicit authorisation is a possibility for Hobbes.

³⁷ Hobbes does not say that the representative has to be authorised by the person being represented. As we shall see in section III, he needs to leave space for the fact that this will sometimes be impossible in principle.

³⁸ Hobbes 1996, ch. 17, p. 120 and ch. 21, p. 151 explicitly invokes this terminology. On Hobbes's concept of authorisation see Copp 1980, pp. 582–95, a discussion to which I am particularly indebted.

³⁹ On 'authors' and 'authority' in this period see Elsky 1989.

⁴⁰ My discussion is mainly confined to the basic case in which one natural person or body of persons directly authorises another to act either on their behalf or on behalf of a third party. Hobbes adds many possible refinements: conditional authorisation (Hobbes 1996, ch. 16, p. 115); authorisation of Assemblies (Hobbes 1996, ch. 19, p. 129); and authorisation not by mutual covenant but by covenant with a conqueror (Hobbes 1996, ch. 20, p. 141). A full analysis of Hobbes's theory would need to take account of these refinements, but in the meantime there are several good reasons for concentrating on the basic case. One is that Hobbes does so himself. Another is that he is not always successful in explaining how the refinements fit on to the basic case. As we shall see, one consequence is that sometimes there is insufficient textual basis for discussing them.

⁴¹ Hobbes 1996, ch. 16, p. 112.

Hobbes is asking what allows an actor – that is, a representative – to claim that he is acting by authority. (I shall sometimes be obliged to follow him in writing as if all such actors are male.) The representative needs to be able to claim that he was duly authorised, in which case the person who granted him authority will count as the author of his action and will have to take responsibility for its consequences. The conclusion is guaranteed by the two stipulations underpinning Hobbes's argument. The first states that anyone who authorises an action can be identified as its author. The second adds that, when we speak about the authors of actions, we are equivalently speaking about their owners, since we are speaking about those who must 'own up' to whatever is done in their name.⁴²

A dramatic implication underlies this analysis, as Hobbes immediately points out:

From hence it followeth, that when the Actor maketh a Covenant by Authority, he bindeth thereby the Author, no lesse than if he had made it himselfe; and no less subjecteth him to all the consequences of the same.⁴³

The implication is brought out still more forthrightly in *De Homine*: 'He is called an author who has declared that he wishes an action to be held as his own which another person has performed.'⁴⁴ Hobbes is now prepared unequivocally to state that the reason why authors must 'own up' to the actions they have authorised is that the actions in question will be theirs, not those of anyone else.

The significance of the implication is that it yields the required criterion for judging when an alleged author can validly claim to have been misrepresented. If you are impersonated by a purported representative without having antecedently granted him authority, you are under no obligation to 'own' his actions, since you cannot be said to have authorised their performance. It is only 'when the Authority is evident' that the author is obliged; if, by contrast, 'the Authority is feigned, it obligeth the Actor onely; there being no Author but himselfe'.⁴⁵

To round off his exposition, Hobbes provides an account of the mechanism by which it is possible for one person to receive the kind of authority that enables them validly to represent another and act in their name. He

gives his explanation – again by analogy with the ownership of goods – in the same passage of chapter 16:

And as the Right of possession, is called Dominion; so the Right of doing any action, is called AUTHORITY.⁴⁶ So that by Authority, is alwayes understood a Right of doing any act; and *done by Authority*, done by Commission, or License from him whose right it is.⁴⁷

To construe again. To be able to act by authority is to have been granted a commission or at least a licence to perform an action by some person or persons who must possess the right to perform the given action themselves. The grant must take the form of a voluntary transfer of right, since commissioning and licensing are names of voluntary acts. So the receipt of such a commission must be equivalent to the acquisition of the transferred right of performing the action involved.⁴⁸ Hobbes later summarises more clearly in *De Homine*: 'They are said to have authority who do something by the right of someone else',⁴⁹ so that 'unless he who is the author himself possesses the right of acting, the actor has no authority to act'.⁵⁰

By signalling acceptance of such a covenant,⁵¹ the authorising agent acquires two contrasting obligations towards his representative. One is a duty to take responsibility for the actions performed by the representative in his name. But the other is a duty of non-interference. The latter obligation follows from the fact that, whenever an authorising agent voluntarily transfers the right to perform an action, he thereby gives up the right to perform it himself. As Hobbes explains, 'To *lay downe* a mans Right to any thing, is to *devest* himselfe of the *Liberty*, of hindring another of the benefit of his own Right to the same'.⁵² He goes on to trace the implications in his most minatory tones:

⁴⁶ Hobbes in BL MS Egerton 1910, p. 96 adds 'and sometimes warrant' at this point, but this is omitted from the 1651 text.

⁴⁷ Hobbes 1996, ch. 16, p. 112.

⁴⁸ This point is worth underlining, if only because it has sometimes been argued that (as Gauthier 1969, p. 124 puts it) although the act of authorisation seems to involve 'some translation of right', this is 'evidently not mere renunciation, nor is it transfer, in Hobbes's usual sense'.

⁴⁹ Hobbes 1839d, XV, 2, p. 131: 'Iaque autoritatem habere dicuntur, qui quid iure faciant alieno.'

⁵⁰ Hobbes 1839d, XV, 2, p. 131: 'Nisi enim is, qui author est, ius habet agendi ipse, actor agendi autoritatem non habet.'

⁵¹ Note that this is the form of the covenant only in what I am calling the basic case – what Hobbes 1996, ch. 16, p. 115 calls the case of being 'simply' as opposed to 'conditionally' authorised. Leyden 1982, pp. 89–95 discusses the special complexities attaching to conditional authorisation.

⁵² Hobbes 1996, ch. 14, p. 92.

⁴² I am indebted to Pitkin 1967, pp. 18–19 on owning and 'owning up'.

⁴³ Hobbes 1996, ch. 16, p. 112.

⁴⁴ Hobbes 1839d, XV, 2, p. 131: 'Author enim vocatur is, qui actionem quam facit alius pro sua habere se velle declarat.'

⁴⁵ Hobbes 1996, ch. 16, p. 113.

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 such 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 such hindrance is INJUSTICE, and INJURY, as being *Sine Jure*; the Right being before renounced, or transferred.⁵³

Once you have covenanted, you must leave it to your representative, who is now in possession of your right of action, to exercise it at his discretion when acting in your name.

Before considering how Hobbes applies this general theory, we need to examine one allegedly knock-down objection to his entire line of thought.⁵⁴ One commentator to press the objection has been Joel Feinberg, who has raised it in discussing Hobbes's example in chapter 15 of *Leviathan* of a master who 'commandeth his servant to give money to a stranger'.⁵⁵ The servant is acting as his master's representative, from which it follows, according to Hobbes, that the act of paying the stranger must be attributed to the master.⁵⁶ According to Feinberg this analysis is dangerously misleading. Although the 'pecuniary consequences' may be the same as if the master had acted himself, 'it is nevertheless true that he did not act'; what we have to say is that his servant acted for him.⁵⁷ The objection is thus that attributed actions are not actions.

One possible retort⁵⁸ would be to insist that, in spite of the obvious difference between attributed actions and actions performed at first hand, the two ought nevertheless to be classified together on the grounds of their numerous family resemblances.⁵⁹ While this raises some interesting questions about the concept of action, Hobbes himself makes no

⁵³ Hobbes 1996, ch. 14, pp. 92–3.

⁵⁴ Copp 1980, pp. 585–6 offers a more specific objection. I can validly be held accountable for an action performed by someone else if I coerce them into performing it. But coercing is not authorising; so I can validly be held accountable, *pace* Hobbes, for actions I have not authorised. Hobbes would not regard this as an objection. For him, coercion and freedom of action are compatible, so that even coercive acts of authorisation genuinely authorise. For a discussion of this aspect of Hobbes's theory of freedom see below, chapter 7 section III.

⁵⁵ Hobbes 1996, ch. 15, p. 104; cf. Feinberg 1970, p. 227.

⁵⁶ Hobbes 1996, ch. 16, pp. 112, 113; cf. also Hobbes 1996, ch. 22, p. 156.

⁵⁷ Feinberg 1970, p. 227.

⁵⁸ Copp 1979, pp. 177–8 suggests another possible retort: that the question of what it may be misleading to say in the case of the master and his servant depends on what is in question about the episode. Suppose that, although the servant duly hands over the money, a question later arises as to whether the stranger has been paid. What it will be misleading to say in these circumstances is that the master has *not* paid the stranger. He *has* paid him – by commanding and thereby causing his servant to make the payment.

⁵⁹ Copp 1980, pp. 581–2 discusses Feinberg's objection to Hobbes's analysis and proposes this response.

attempt to mount this kind of defence, and he surely stands in no need of it. It is true that he likes to speak of attributed actions as if they are genuine instances of action. But it is sufficient for his purposes to defend the much less controversial claim he puts forward about 'ownership': the claim that, when someone acts as an accredited representative, the person being represented must 'own' the consequences of the action *as if* they had performed it themselves. The action counts as theirs, and is called their action,⁶⁰ not because they actually performed it, but because they are under an obligation to take responsibility for its occurrence.⁶¹

III

I have now laid out what I take to be the basic elements in Hobbes's theory of attributed action. But the plot is a great deal thicker than I have so far intimated. When Hobbes introduces his theory, he specifies that two distinct types of person are capable of performing attributed actions: natural persons and feigned or artificial persons.

A PERSON, is he, *whose words or actions are considered, either as his own, or as representing the words or actions of another man, or of any other thing to whom they are attributed, whether Truly or by Fiction.*

When they are considered as his owne, then is he called a *Naturall Person*. And when they are considered as representing the words and actions of another, then is he a *Feigned or Artificiall person*.⁶²

To appreciate the scope of Hobbes's theory, and to locate the person of the state within his general scheme of things, we next need to consider these different types of person and the different ways in which it is possible for actions to be attributed to them.

Since the distinction between natural and artificial persons turns out to be fundamental to Hobbes's theory of the state, it is unfortunate that he introduces it in such an ambiguous way. In the second paragraph quoted above, strict grammar requires that the referent of the final 'he' should be 'an other', so that the artificial person must be the person represented. But the flow of the sentence suggests that the referent of 'he' must be the

⁶⁰ This phrase is actually invoked by Hobbes's friend Ben Jonson in *Catiline his Conspiring*. See Jonson 1937, III. i. 38–9, p. 469, where Cicero, on his election as Consul, is made to declare:

'For every lapse of mine will, now, be call'd
Your error, if I make such . . .'

⁶¹ Runciman 1997 p. 7. I am much indebted to Runciman's analysis at this point.

⁶² Hobbes 1996, ch. 16, p. 111. These paragraphs are unchanged in sense from Hobbes's manuscript version in BL MS Egerton 1910, pp. 95–6.

natural person mentioned at the start of the first paragraph, in which case the artificial person must be the representative.

Hobbes initially resolved the ambiguity by endorsing the latter alternative. Later in chapter 16 he explains that 'Of Persons Artificiall, some have their words and actions *Owned* by those whom they represent', thereby making it clear that the artificial person is the representative.⁶³ The artificiality of such representatives, he later makes clear, resides in the fact that they are acting as public persons rather than in their private capacity. This is explicitly brought out in chapter 35, where Hobbes declares that 'the King of any Countrey is the *Publique* Person, or Representative of all his own Subjects', to which he adds in chapter 42 that any such '*Publique Person*' will at the same time be 'the Representant of the Common-wealth'.⁶⁴

It is still more unfortunate, however, that so many of Hobbes's interpreters have followed him at this point.⁶⁵ The subsequent deletion from the Latin *Leviathan* of the passage from chapter 16 in which Hobbes lays it down that representatives are artificial persons strongly implies that he had come to feel that he initially misstated his own argument. There are in any case conclusive reasons for preferring the alternative reading, reasons that seem especially conclusive in the case of the person of the state. If we adopt Hobbes's initial proposal and call representatives artificial persons, then sovereigns are artificial persons while states are not. This is bad enough in itself, since states are obviously not natural persons, while sovereigns obviously are. The problem is made worse when commentators infer that, since the state is neither a natural nor an artificial person, it must be a *persona ficta*. It is true that Hobbes occasionally uses the terms 'artificial' and 'fictitious' as synonyms in this context.⁶⁶ But as we shall see in section IV, it is crucial to his theory that, although the state is an artificial person, it is very far from being fictitious in the strict sense of being imaginary.⁶⁷

⁶³ Hobbes 1996, ch. 16, p. 112.

⁶⁴ Hobbes 1996, ch. 35, p. 285; ch. 42, p. 399.
⁶⁵ The reason is that, insofar as Hobbes's commentators have examined his theory of persons, they have usually concentrated on chapter 16 of *Leviathan*. Some have gone so far as to claim that Hobbes's articulation of his theory is almost wholly confined to that chapter. See, for example, Pitkin 1967, pp. 14–15; Gauthier 1969, p. 121; Runciman 1997, pp. 7–8. As a result, it has come to be widely agreed that Hobbes's distinction between natural and artificial persons is equivalent to the distinction between represented persons and their representatives. See, for example, Hood 1964, pp. 147–8; Pitkin 1967, pp. 15–16; Gauthier 1969, pp. 121–3; Jaume 1986, pp. 95–104; Baumgold 1988, pp. 38, 45; Martineau 1992, p. 165; Tuckaen 1994, p. 46; Martineau 1995, pp. 228–30; Zarka 1995, pp. 208–18; Runciman 1997, pp. 7–8, 33. But for two correctives to which I am indebted see Tricaud in Hobbes 1971a, pp. 168–9 and Copp 1980, pp. 582–4.
⁶⁶ See Hobbes 1996, ch. 16, p. 113 and cf. Hobbes 1840d, p. 130.
⁶⁷ But Runciman 2000 counters that, although the state is not a fictional person, it is best understood as a 'person by fiction'.

The decisive point is that Hobbes himself subsequently makes it clear that his own considered preference is for using the terminology of artificial persons to describe persons who are represented. He first brings this out at a later stage in the English *Leviathan* in the course of explaining his intensely controversial theory about the three persons of the Holy Trinity. He describes Moses and Christ as natural persons who spoke in the name of God, thereby serving as His representatives on earth. But he adds that each represented God in his own way, Moses by preaching His word, Christ by 'Teaching, and Reigning' as his son.⁶⁸ The implication is that God converted Himself into an artificial person by virtue of authorising his representation in these contrasting ways. Hobbes underlines the suggestion by adding that the effect of these representations was to give God a number of different *personae*, since He became 'one Person as represented by Moses, and another Person as represented by his Sonne the Christ'.⁶⁹

Hobbes indicates his change of mind yet more clearly in the course of restating his theory of attributed action in the final chapter of *De Homine*. Here he leaves little room for doubt that, when he speaks of artificial or fictitious persons, he means persons represented:

What concerns the civil use of the term person can be defined as follows. *A person is someone to whom the words and actions of men are attributed, whether they are his own or those of someone else.* If they are his own, then the person is a *natural* one. If they are those of someone else, then the person is a *fictitious* one.⁷⁰

Returning to the same issue yet again in the Latin *Leviathan* ten years later, Hobbes appears to confirm this analysis:

A Person is *someone who acts either in his own name or in the name of someone else.* If he acts in his own name, then the Person is *his Own* or a Natural one; if he acts in the name of someone else, then the Person is *Representative* of the one in whose name he acts.⁷¹

Here the terminology of artificial or fictitious persons is dropped, while the persons whom Hobbes had initially classified as artificial are now described simply as representatives.

⁶⁸ Hobbes 1996, ch. 41, p. 338; ch. 42, pp. 339–41.

⁶⁹ Hobbes 1996, ch. 41, p. 338.
⁷⁰ Hobbes 1893d, p. 130: 'Quod autem ad usum personae civilem attinet, definitur potest hoc modo; *persona est, cui verba et actiones hominum attribuantur vel suae vel alienae: si suae, persona naturalis est; si alienae, fictitia est.*'

⁷¹ Hobbes 1841a, p. 123: 'PERSONA est is qui suo vel alieno nomine res agit; si suus, persona propria, sive naturalis est; si alieno, persona est eius, cuius nomine agit *representative*.' (Note that, although Molesworth uses the 1688 edition of the Latin *Leviathan* as his copy-text, he does not hesitate, here as elsewhere, to alter spellings and weed out Hobbes's luxuriant use of capital letters.)

It would be unwise, however, to assume that Hobbes simply nodded when he initially claimed that representatives are engaged in a form of artifice. What he seems to have had in mind is that, when you serve as a representative, you act as the player of a legally or socially recognised role. You become a public person as opposed to an ordinary individual. Hobbes offers many examples: you can serve as a lieutenant, a vicar, an attorney, a deputy, a procurator, a rector, a master, an overseer, a guardian, a curator and the like.⁷² To adopt one or other of these *personae* is to play a part in a world that Hobbes never ceased to describe as artificial: the world of civil society in which our behaviour is conditioned and regulated by the artificial chains of the civil law.⁷³ The insight he evidently wished to capture is that there is a sense in which all the world's a stage.

Perhaps one might go so far as to say that the best statement of Hobbes's theory is the one that he never explicitly gave. The suggestion is hermeneutically daring, to say the least, but perhaps both possible ways of reading Hobbes's theory are correct. Natural persons convert themselves into artificial persons – even into a variety of different *personae* – by agreeing to be represented in different ways. But natural persons who agree to serve as representatives also convert themselves into artificial persons, since the act of making such an agreement is at the same time the act of turning oneself from a private individual into a public person discharging a recognised role.

With these cautions and attempted clarifications, I am now in a position to lay out Hobbes's considered views about the defining characteristics of natural persons. A natural person is someone capable of representing him or herself. In the words of Hobbes's initial definition, it is when someone's words and actions are 'considered as his own' that he can be described as 'a Natural Person'. As we have seen, however, anyone capable of owning his actions in this way can also be described according to Hobbes as an author, and hence as capable of authorising other persons to serve as his representatives. A further defining characteristic of natural persons must therefore be that they are capable of converting themselves – for certain determinate purposes – into represented or artificial persons by way of commissioning others to act in their name.

We may say, then, that in isolating the category of natural persons Hobbes has two closely connected ideas in mind. One is that natural

⁷² Hobbes 1996, ch. 16, pp. 112–13; cf. Hobbes 1841a, pp. 123–4, where he lists *deputati*, *procuratores* and *procuratores*, and later adds *rectores*, *curatores* and *tutores*.

⁷³ Hobbes speaks of the civil society in which we live as artificial (*artificialis*) and as tied together by artificial chains (*vincula artificialia*) in the Latin as well as in the English *Leviathan*. For the English formulae see Hobbes 1996, Introduction, pp. 9–10 and Hobbes 1996, ch. 21, p. 147. For the Latin formulae see Hobbes 1841a, pp. 2, 161.

persons are those capable of autonomously choosing whatever roles or *personae* they may wish to assume in social life. Hobbes is very fond of quoting a remark of Cicero's to the effect that (as he translates it in *Leviathan*) it is possible to 'bear' a number of different persons simultaneously.⁷⁴ Hobbes's most interesting gloss on the dictum appears in his posthumously published *Answer* to John Bramhall's *The Catching of Leviathan*:

Cicero, in an epistle to Atticus, saith thus: *Unus sustinet tres personas, mei, adversarii, et iudicis*: that is, 'I that am but one man, sustain three persons; mine own person, the person of my adversary, and the person of the judge'. Cicero was here the substance intelligent, one man; and because he pleaded for himself, he calls himself his own person: and again, because he pleaded for his adversary, he says, he sustained the person of his adversary: and lastly, because he himself gave the sentence, he says, he sustained the person of the judge. In the same sense we use the word in English vulgarly, calling him that acteth by his own authority, his own person, and him that acteth by the authority of another, the person of that other. And thus we have the exact meaning of the word *person*.⁷⁵

Hobbes's allusion here to the idea of 'being one's own man' as opposed to being the person (perhaps even the creature) of someone else points to his second and closely related thought: that a natural person is someone under no one else's sway. He is someone capable of voicing his own thoughts, making his own promises, agreeing the terms of his own contracts and covenants.

It is worth underlining these implications, since they have the effect of making the category of natural persons a remarkably narrow one.⁷⁶ Hobbes seems to have come to terms with this aspect of his theory only in the course of working it out. When he first speaks of 'men as persons natural' in *The Elements of Law*, he appears to treat all human beings as natural persons.⁷⁷ But in *Leviathan* he explicitly states that many people lack the required ability to act on their own behalf, including 'Children, Fools, and Mad-men'.⁷⁸ On the one hand, such persons are undoubtedly capable of acting and of exercising rights, since they are capable of having actions attributed to them on the basis of their performance by guardians authorised to act in their name. But on the other hand, they 'can be no

⁷⁴ Hobbes 1996, ch. 16, p. 112. He also quotes the dictum in the corresponding passage of the Latin *Leviathan* (and again in the Appendix); in chapter 15 of *De Homine*; and in his *Answer* to Bramhall. See, respectively, Hobbes 1841a, pp. 123, 533; Hobbes 1839d, XV.1, p. 130; Hobbes 1840b, p. 310.

⁷⁵ Hobbes 1840b, pp. 310–11.

⁷⁶ But as Tricaud 1982 notes, Hobbes also speaks of human beings as persons in familiar, non-technical ways. In Part 1 of *Leviathan* he consistently uses 'person' to refer to any man, woman or child. See Hobbes 1996, ch. 2, pp. 16, 17–19; ch. 7, pp. 48–9; ch. 8, pp. 51–2; ch. 12, pp. 80, 82–3. In Part 2 he uses the term to refer more specifically to the living bodies of men, women and children. See Hobbes 1996, ch. 20, p. 141; ch. 21, pp. 152, 154; ch. 30, pp. 236, 238.

⁷⁷ Hobbes 1969a, p. xiv. ⁷⁸ Hobbes 1996, ch. 16, p. 113.

Authors (during that time) of any action done by them', because they have no capacity to take responsibility for any actions their guardians may undertake.⁷⁹

Nor does Hobbes even treat the class of natural persons as co-terminous with that of sane adult males. In Hobbes's England some 20 per cent of the latter class would have been servants,⁸⁰ and servants according to Hobbes are not to be counted as natural persons, or at least not for a considerable number of purposes.⁸¹ This exclusion stems from the fact that the civil law takes lawful families to be united in 'the Father, or Master' as 'one Person Representative'.⁸² But to say that a father is a representative is to say that he has the right to speak and act in the name of his entire family.⁸³ This in turn means that, insofar as the father chooses to exercise this right, his household servants (to say nothing of his wife and children) cannot be counted as natural persons, since they lack the required capacity to speak and act on their own behalf.⁸⁴

I next need to examine Hobbes's contrasting concept of an artificial person, which is of still greater importance for his theory of the state. So far we have seen that some natural persons can be artificial at the same time. But Hobbes is principally interested in those artificial persons who are not natural persons at all. These are persons capable of being represented, but incapable of acting as authors in the distinctive manner of natural persons, and hence of authorising their own representatives. It follows that, while it is possible for such artificial persons to speak and act, it is possible for them to do so *only* if their words and actions can validly be attributed to them on the basis of their performance by some other person or collectivity licensed to act in their name.

Hobbes proposes no particular term to isolate this category, but it may be helpful to designate them as *purely* artificial persons to distinguish them from those who voluntarily take on this status by authorising others to represent them. As we have seen, Hobbes further lays it down that two

⁷⁹ Hobbes 1996, ch. 16, p. 113. The time to which Hobbes refers is the time of their childhood, folly or madness.

⁸⁰ I am greatly indebted to Keith Wrigglesworth for making this computation on my behalf. His figure is derived from information in Wrigley and Schofield 1981 and Kussmaul 1981.

⁸¹ The proviso is important, because Hobbes is here treading a very fine line. A servant ordered to walk to a neighbour's house with a message who instead chooses to run will apparently be running to the house (as opposed to somewhere else) as an artificial person, but running (as opposed to walking) as a natural one.

⁸² Hobbes 1996, ch. 22, pp. 162–3.

⁸³ Hobbes 1996, ch. 20, p. 142.

⁸⁴ There is a remarkably close parallel with the Leveller refusal to include servants even in an extended franchise on the grounds that 'they are included in their masters'. See Woodhouse 1938, p. 83.

sub-classes of this category need to be anatomised: those whose words and actions can be 'truly' attributed to them, and those who can only have words and actions attributed to them 'by Fiction'.

Nothing further is said in *Leviathan* about the class of purely artificial persons who are also wholly fictitious. But in *De Homine* it emerges that what Hobbes has in mind are the characters impersonated by actors on the stage:

For it was understood in the ancient⁸⁵ theatre that not the player himself but someone else was speaking, for example Agamemnon, namely when the player, putting on the fictitious mask of Agamemnon, was for the time being Agamemnon. At a later stage, however,⁸⁶ this was understood to be so even in the absence of the fictitious mask, namely when the actor declared publicly which person he was going to play.⁸⁷

This is a dark passage, but the implications for my present argument can perhaps be spelled out as follows. If I play the part of Agamemnon on the stage, the actions I perform in the *persona* of Agamemnon will be taken by the audience to be Agamemnon's actions rather than mine. They will not 'truly' be taken to be Agamemnon's actions, however, but only 'by fiction', since the audience will remain aware of the fact that (as we put it in a knowingly ambiguous phrase) I am only playing. This will especially be the case, Hobbes implies, if I follow the convention of explicitly pointing out that I am merely engaged in a performance. For then it will be clear that I am only pretending to be an imaginary character, that there is no other person whom I am 'truly' representing, and thus that there is no one else to whom my actions can validly be attributed.⁸⁸

Some commentators have taken exception to Hobbes's inclusion of stage characters in his account. As Hanna Pitkin emphasises, Hobbes lays it down that, if there is to be a valid act of representation, there must be some natural person or collectivity in possession of the right to authorise it. Pitkin adds that this requirement makes no sense in the

⁸⁵ I have added the adjective, since Hobbes makes it clear in the preceding sentence that he is referring to ancient Greece and Rome.

⁸⁶ A later stage, that is, in the evolution of theatrical conventions, when masks were no longer worn.

⁸⁷ Hobbes 1899d, XV, 1, p. 130: 'Intelligebatur enim in theatro loqui non ipse histrio, sed aliquis alius, puta Agamemnon, nimirum faciem fictitiam Agamemnonis inducunt histriones, qui pro illo tempore erat Agamemnon; quod tamen postea intelligebatur etiam sine facie ficta, ut nimirum profectus se actorem quam personam acturum erat.'

⁸⁸ From the fact, however, that the action of a play does not 'truly' take place, it does not follow for Hobbes that a play might not create as powerful an impression as an action 'truly' performed. See Hobbes 1969a, p. 68, where he goes to the extreme of arguing that, because 'not truth, but Image, maketh passion', it follows that 'a Tragedie affecteth no lesse than a Murder, if well acted'.

case of actors in a play. 'No one has authorized their actions, neither the person(s) they represent nor any third party.'⁸⁹ But this is an unhistorical criticism. By 1640, the year in which Hobbes completed *The Elements of Law*, the compulsory licensing of theatrical productions had been a feature of English law for nearly a century. The official with the right to authorise the representation of fictional characters on the stage was the Master of the Revels, from whom a permit had to be purchased for every play intended for public performance.⁹⁰ Two years later, moreover, all the theatres in England were closed by Act of Parliament.⁹¹ While it remained possible to impersonate Agamemnon on the stage, it was no longer legally permissible to do so, since it was no longer possible to obtain the necessary licence. It is, in short, anachronistic to suggest that Hobbes introduces any inconsistency into his general theory of persons by implying that theatrical representations have to be authorised. He was writing in a society in which the need for such authorisation was taken for granted.

I turn finally to Hobbes's other class of purely artificial persons: those who, while incapable of acting except through representatives, are nevertheless more than merely fictitious because they are capable of having words and actions 'truly' attributed to them. As we have seen, Hobbes regards some human beings (notably fools and madmen) as purely artificial in this sense. But he is more interested in the fact that various inanimate objects and even figments of the imagination can be classified in a similar way. Among inanimate objects he lists 'a Church, an Hospital, a Bridge'. Since these are 'things Inanimate' they 'cannot be Authors, nor therefore give Authority to their Actors'. Nevertheless, they can perfectly well be personated or represented 'by a Rector, Master, or Overseer' who can be commissioned and thereby given authority to act on their behalf.⁹² Among imaginary objects he singles out the gods of the heathen. Such idols obviously cannot be authors, 'for an Idol is nothing'.⁹³ Nevertheless, in ancient times such deities were frequently recognised as having the ability not merely to own possessions but to exercise rights. As in the case of the hospital and the bridge, these capacities stemmed from the fact that authorised persons (in this case officiating priests) were assigned a legal right to act in their name.⁹⁴

⁸⁹ Pitkin 1967, p. 25.

⁹⁰ Bentley 1971, pp. 145–50. ⁹¹ Bentley 1971, p. vii.

⁹² Hobbes 1996, ch. 16, p. 113.

⁹³ Hobbes 1996, ch. 16, p. 114. As he later points out (Hobbes 1996, ch. 45, p. 445), he is quoting St Paul.

⁹⁴ Hobbes 1996, ch. 16, pp. 113–14.

To classify bridges, hospitals and imaginary objects as persons may seem the merest abuse of language, and Hobbes in *Leviathan* undoubtedly balks at expressing his argument in these terms. The most he is prepared to say is that 'there are few things, that are incapable of being represented by Fiction'.⁹⁵ As he subsequently recognised, however, this is an unfortunate way of expressing his point. What he appears to be saying is that, like Agamemnon, the hospital and the bridge are purely fictitious entities. But this is not in the least what he believes. On the contrary, it is crucial to his argument that, if the hospital or the bridge is validly represented by an authorised overseer, then the actions of the overseer will 'truly' and not merely 'by fiction' count as the actions of the hospital or the bridge.

Eventually Hobbes resolved the confusion by biting the bullet. When he translated *Leviathan* into Latin, he rewrote the passage to say that, since there are few things incapable of being represented, 'there are few things incapable of being persons'.⁹⁶ This certainly clarifies the phrase in the English *Leviathan* about representation 'by Fiction'. The fiction is evidently that the bridge, the hospital and so forth are persons; if and only if we allow that fiction can they be validly represented. Meanwhile Hobbes had made the point explicitly in *De Homine*: 'even an inanimate thing can be a person, that is, can own possessions and other goods and be able to act at law', so long as it is capable of being validly represented.⁹⁷ Hobbes's final position is thus that the hospital and the bridge are indeed persons, albeit purely artificial ones, since there is no doubt that they can be validly represented.

The category of purely artificial persons leaves Hobbes with one last problem to solve. Who has the right to authorise their representation? We have seen that, in the case of entirely fictitious *personae*, the answer in Hobbes's time was fully determinate: the right was possessed by the Master of the Revels acting as an officer of state. But what of purely artificial persons who are not fictitious, but who possess (like the bridge) their own independent reality, or may even be able to count (like the child or the madman) as natural persons for certain purposes? We still need a test for judging whether a third party who lays claim to authorise

⁹⁵ Hobbes 1996, ch. 16, p. 113.

⁹⁶ Hobbes 1841a, p. 124. 'Paucae res sunt, quantum non possunt esse personae.'

⁹⁷ Hobbes 1899d, XV, 4, p. 192. 'Etiam rei inanimatae persona esse potest, id est, possessiones et alia bona habere, et iure agere potest.' It is thus a mistake to infer, as does Runciman 1997, p. 21, that 'unrepresented "fooles" are not persons'. A person is anyone (or any thing) *capable* of being represented.

someone to represent such persons has a valid title to invite such a representative to act in their name.

The solution Hobbes puts forward is that the person performing such acts of authorisation must stand in some appropriate relationship of dominion or ownership with respect to the purely artificial person concerned.⁹⁸ One possibility, Hobbes suggests, would be for the relationship to be that of ownership in the strict sense. This applies to the case of the bridge: Hobbes specifically states that the person who authorises the overseer to procure its maintenance must be its proprietor.⁹⁹ A second possibility would be for the relationship to be that of a governor to his charge. This applies to the case of the church and the hospital, and equally to the fool, the madman and the child: all stand in need of governors with sufficient legal standing to authorise rectors or guardians to act on their behalf.¹⁰⁰ A third possibility would be for the dominion to be that of the state itself. When, for example, the gods of the heathen were represented by priests, their authority according to Hobbes 'proceeded from the State'.¹⁰¹ Finally, Hobbes considers a fourth possibility to which he attaches particular importance, although he only mentions it explicitly when discussing family power later in *Leviathan*. This last form of dominion arises when the first party brings the third into existence.¹⁰² Again Hobbes has in mind the case of children, and offers as an example the right of dominion over infants in the state of nature. Since it will always be the mother who brings the child into the world, 'the right of Dominion over the Child dependeth on her will, and is consequently hers'.¹⁰³ She can decide either to nourish it, or to abandon it, or to dispose of her rights in it to someone else.¹⁰⁴

IV

I am now in a position to apply Hobbes's general theory to solve the puzzle I began by isolating about the person of the state. How can such a

⁹⁸ Weirmann 1996, pp. 12–13 comments on this linkage of authority with ownership.

⁹⁹ Hobbes 1996, ch. 16, p. 113.

¹⁰⁰ It is not clear, however, why Hobbes appears to exclude the possibility that the owner of the bridge or the governor of the child might decide to commission himself. If I stand in a relation of dominion with respect to the bridge or the child, then according to Hobbes I can authorise anyone I wish to represent them. But if I can authorise anyone, then I can certainly authorise myself.

¹⁰¹ Hobbes 1996, ch. 16, p. 114.

¹⁰² But Hobbes 1996, ch. 17, p. 120 implicitly mentions this form of dominion, since it underlies his pattern of sexual imagery, especially his claim that *Leviathan* is engendered out of the union of the multitude.

¹⁰³ Hobbes 1996, ch. 20, p. 140. ¹⁰⁴ Hobbes 1996, ch. 20, p. 140.

seemingly insubstantial person be the holder of sovereignty and the seat of power?

First we need to see exactly where Hobbes places the person of the state on his general map. He begins in chapter 16 of *Leviathan* by considering the process by which the members of a multitude living in a condition of mere nature can manage, as he puts it, to 'institute' a legitimate commonwealth or state.¹⁰⁵ Before turning to his analysis, however, I need to note by way of preliminary that I shall be concerned only with Hobbes's account of sovereignty 'by Institution', not with sovereignty 'by Acquisition'. Hobbes introduces this distinction at the end of chapter 17 of *Leviathan*, thereafter devoting chapters 18 and 19 to 'institution' and chapter 20 to 'acquisition'.¹⁰⁶ Sovereignty is said to be 'acquired' when the members of a multitude covenant not with each other but with a conqueror to whom they individually submit themselves. Presumably Hobbes believed that the latter type of covenant also has the effect of converting the multitude into an artificial person with the conqueror as its sovereign representative. But he never says so, and his analysis of sovereignty by acquisition makes no mention of the person of the state. Although sovereignty by acquisition is in some ways the fundamental case,¹⁰⁷ it is not clear that Hobbes ever thought through his views about artificial persons in relation to it. For this reason it seems not merely preferable but essential to concentrate on the case of sovereignty 'by Institution', the subject of chapters 18 and 19.

The only means, according to Hobbes, by which a multitude can manage to 'institute' a commonwealth is by transforming themselves into an artificial person by way of authorising some natural person or persons to represent them. This is not in the least to say that the multitude acts in the manner of a single *persona* in agreeing to set up a government. This had been the view of the so-called 'monarchomach' or 'king-killing' writers of the French religious wars.¹⁰⁸ The author of the *Vindiciae, Contra Tyrannos*, for example, had argued in discussing the exemplary case of Israel that the king acted as one party to the covenant and the people as the other. Both were able to contract as single persons, the king because

¹⁰⁵ Hobbes 1996, ch. 17, p. 121.

¹⁰⁶ While this order seems logical, Hobbes must originally have placed what is now chapter 20 before chapter 19. The present chapter 20 makes two references (Hobbes 1996, pp. 139, 142) to the 'precedent chapter' which are in fact references to chapter 18, while chapter 21 makes a further reference (Hobbes 1996, p. 154) to 'the precedent chapter' which is in fact a reference to chapter 19.

¹⁰⁷ An argument persuasively developed in Hockstura 1998.

¹⁰⁸ On these writers see Skinner 1978b, pp. 302–48.

he was a natural person, the people because they constituted a *universitas* and 'were therefore able to play the part of a single person'.¹⁰⁹ But it is precisely this monarchomach view of the people as a natural unity capable of acting as one person that Hobbes aims to discredit. 'The Multitude naturally is not *One*, but *Many*', he retorts, so that it is only 'the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*'. The only way in which 'a Multitude of men, are made *One Person*' is 'when they are by one man, or one Person, Represented'. There is, in short, no natural unity outside the state; unity and community are attained only with the appointment of a representative, and 'cannot otherwise be understood in multitude'.¹¹⁰

In chapter 17 Hobbes goes on to describe the mechanism by which this transformation takes place. It is as if each and every individual should agree with everyone else 'to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will'. When they perform this act of mutual covenanting, this is as much as to say that they 'appoint one Man, or Assembly of men, to beare their Person'. So the outcome 'is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same Person', in consequence of which they are now able, through the agency of the person representing them, to act in the manner of a single person with one will and voice.¹¹¹

What is the name of the artificial person brought into existence when a multitude forms itself into such a unity by instituting a representative? The name of the person thus engendered is the commonwealth or state. As soon as the members of the multitude agree, each with each, 'to appoint one Man, or Assembly of men, to beare their Person', the multitude 'so united in one Person, is called a COMMON-WEALTH, in latine CIVITAS'.¹¹² – the term Hobbes also translates in *Leviathan* as 'state'.¹¹³ This union or coupling together has the effect of engendering immediate issue in just the manner of a marital union blessed by God. (The one crucial difference, later emphasised by Hobbes, is that the offspring of the multitude has no determinate gender, for 'though *man* be *male* and *female*, *authority* is not'.)¹¹⁴ Following out his metaphor of marriage and

¹⁰⁹ *Vindiciae* 1994, p. 38: '*universitas enim hominum unitis personae nunc sustinet*'.

¹¹⁰ Hobbes 1996, ch. 16, p. 114. ¹¹¹ Hobbes 1996, ch. 17, p. 120.

¹¹² Hobbes 1996, ch. 17, p. 120; cf. Polin 1981, p. 95; Tuckaiten 1994, p. 48.

¹¹³ Hobbes's preferred translation of *civitas* is 'commonwealth'. See, for example, Hobbes 1996, ch. 17, p. 120; ch. 26, p. 183. But when he uses 'state' as a translation, the word he is translating is almost always *civitas*. For the most striking instance see Hobbes 1996, Introduction, p. 9.

¹¹⁴ Hobbes 1840d, p. 434.

procreation, Hobbes then proceeds to baptise the person of the commonwealth or state with its own specific name, informing us of it in his gravest tones. 'This is the Generation of that great LEVIATHAN, or rather (to speake more reverently) of that *Mortal God*, to which wee owe under the *Immortal God*, our peace and defence.'¹¹⁵

We still need to know the name of the person appointed by the members of the multitude to act in their name when they take the decision to be represented. Hobbes replies that the name of this person is the sovereign, who is thereby given authority to 'bear' or 'carry' or act the part of the purely artificial person of the state. The commonwealth or state 'is *One Person*', and 'he that carryeth this Person, is called SOVERAIGNE, and said to have *Sovereigne Power*'.¹¹⁶ The same distinction is subsequently drawn even more clearly in the Latin version of *Leviathan*. There the holder of *summa potestas* or sovereign power is described, in a phrase closely echoing Cicero's *De Officiis*, as 'he who beares the Person of the State'.¹¹⁷ The sovereign may in turn be a natural person, as in the case of a monarchy, or else an assembly of natural persons, as in the case of an aristocracy or democracy.¹¹⁸ But in every case the legal standing of the sovereign will be that of 'the absolute Representative of all the subjects'.¹¹⁹

It is worth underlining the complexity of Hobbes's argument, if only because so many commentators have oversimplified it. We are told that the 'civil person' brought into existence by the union of the multitude is the sovereign.¹²⁰ As we have seen, however, the name of the person engendered by the transformation of the multitude into one person through their agreement to appoint a representative is not the sovereign but the state. The sovereign is the name of the representative of the multitude united in one person, and is thus the name of the representative of the state.

Armed with this analysis, we can now see how the apparently insubstantial person of the state can nevertheless be the holder of sovereignty and the seat of power. Hobbes concedes of course that all the actions

¹¹⁵ Hobbes 1996, ch. 17, p. 120. ¹¹⁶ Hobbes 1996, ch. 17, p. 121.

¹¹⁷ Hobbes 1841a, p. 131: 'Is autem, qui civitatis personam gerit, *summam habere dicitur potestatem*'. Cf. Cicero 1913, I, XXXIV, 124, p. 126 on the office of magistrates: 'scilicet gerere personam civitatis'.

¹¹⁸ Hobbes 1996, ch. 19, p. 129. The question of how assemblies can act as representatives obviously raises further questions, but I am concerned here only with the basic case. Copp 1980, p. 599 suggests that Hobbes must regard assemblies as their own representatives, but Hobbes himself never pronounces on the point.

¹¹⁹ Hobbes 1996, ch. 22, p. 156.

¹²⁰ See, for example, Baumgold 1988, pp. 38–9; Burgess 1990, p. 687; Fukuda 1997, p. 43; Martinich 1997, pp. 44–9. But see, by contrast, Jaume 1986, pp. 99–100 and Zarka 1995, pp. 212, 225.

performed by states will in fact have to be performed by sovereigns acting in their 'politique' capacity.¹²¹ He is always careful to insist, however, that sovereigns are not the proprietors of their sovereignty. They are holders of offices with duties attached, their fundamental duty being to procure the safety and contentment of the people. Although they are granted the right to exercise complete sovereign power, this power is merely 'placed' and 'resideth' in them by virtue of the office they are asked to discharge.¹²² The true status of all lawful sovereigns is thus that they are merely 'the Person representative of all and every one of the Multitude'.¹²³

As I have shown, however, the central contention of Hobbes's theory of attributed action is that, whenever a person or collectivity agrees to appoint such a representative, whatever actions are thereafter performed by the representative in their name will be attributable not to the representative but rather to the person or collectivity being represented. Not only will those who appoint the representative be held accountable for the consequences of any actions undertaken on their behalf, but the actions in question will actually count as theirs, not as those of the representative who carries them out. It follows that, whenever our sovereigns exercise their powers in order to procure our safety and contentment, the acts they perform should not be regarded as their own but rather as those of the person whom they are representing, that is, the person of the state. This, then, is how it comes about that we can properly speak – and not by metaphor – of the commonwealth or state as the person who imposes the laws and thereby ensures that our safety and contentment are secured. Although the sovereign is always the legislator, the legislator 'is always the Representative of the Common-wealth'.¹²⁴ So 'the name of the person Commanding' is not the sovereign but the person whom the sovereign represents. And the name of that person, as Hobbes eventually declares in a further echo of Cicero, is '*Persona Civitatis*, the Person of the Common-wealth'.¹²⁵

¹²¹ Hobbes 1996, ch. 19, p. 131. For general claims to the effect that the only way in which the state can act is for the sovereign representative to act in its name, see also Hobbes 1996, ch. 19, p. 136; ch. 21, p. 149; ch. 24, p. 174; ch. 26, pp. 184, 186; ch. 31, p. 253.

¹²² Hobbes 1996, ch. 18, p. 127; ch. 20, p. 144. On the sovereign as holder of an office of trust see Hobbes 1996, ch. 18, p. 126; ch. 20, p. 143.

¹²³ Hobbes 1996, p. 129. For other references to the fact that the sovereign is merely the representative of the state, see Hobbes 1996, ch. 17, p. 121; ch. 22, pp. 155–6; ch. 23, p. 167; ch. 26, p. 185; ch. 27, p. 212; ch. 29, p. 223. When we are instead told in Hobbes 1996, ch. 26, p. 187 that the sovereign is 'the Person of the Common-wealth' (rather than the representative of that Person), this appears to be either an ellipsis or perhaps a slip of the pen.

¹²⁴ Hobbes 1996, ch. 29, p. 223.

¹²⁵ Hobbes 1996, ch. 26, p. 183; cf. Cicero 1913, I. XXXIV. 124, p. 126. Lessay 1992, pp. 159–60 discusses the allusion.

It is important to emphasise Hobbes's route to this conclusion, if only because a number of commentators have claimed to find in his theory of the state an incipient or latent belief in the real personality of groups.¹²⁶ The will of the sovereign, we are told, comes to be identical with that of the commonwealth because Hobbes presents us with a vision 'of an organic community, whose will is the sovereign's will'.¹²⁷ It is certainly true according to Hobbes that there cannot fail to be an identity between the will of a lawful sovereign and the will of the commonwealth or state. As I have laboured to demonstrate, however, this is not in the least because Hobbes believes in any kind of organic unity between the two. It is simply because he insists that all lawful sovereigns are representatives, and thus that all their public actions must be attributed to the person whom they represent, namely the person of the state.

It remains for Hobbes to distinguish between the representation and misrepresentation of the state's authority. How are we to discriminate between lawful sovereigns and those who merely usurp the powers of the state without enjoying the standing of accredited representatives? To put the same question the other way round, who has the right to authorise the actions of the state?

It is not open to Hobbes to reply that sovereigns themselves possess this right. Sovereigns are merely representatives, and all representatives must themselves be authorised. Nor can the actions of the state be authorised by the state itself. If an agent is to authorise its own actions it must be a natural person, capable of exercising its own rights and acting in its own name. But the state is not a natural person; on the contrary, there is a sense in which it more closely resembles a fictitious person such as Agamemnon in Aeschylus's play of that name. Agamemnon has no existence, except as words on a page, until he is brought to life by the skills of an actor who impersonates him and speaks his lines. The state likewise amounts to little more than a verbal entity in the absence of a sovereign to represent it and play its part in the world.

This is not to say that Hobbes regards the state as a *persona ficta*, as some commentators have maintained.¹²⁸ As we have seen, the defining characteristic of such *personae* is that, when someone represents them, the acts performed by their representatives will be attributable to such

¹²⁶ Forsyth 1981, pp. 197–8. But for an excellent critique of the view that the unity of Hobbes's commonwealth is 'organic' see Krouman 1980, pp. 167–8.

¹²⁷ Baumgold 1988, p. 39.

¹²⁸ See, for example, Gierke 1957, pp. 44–7; Oakeshott 1975b, p. 204; Runciman 1957, pp. 14, 18, 29.

persons merely 'by fiction'. But it is of the utmost importance to Hobbes's theory that the acts performed by sovereigns are 'truly' attributable to the state, and are in fact the actions of the state in the real world.

While the state is not fictional, however, it is undoubtedly a member of the class of persons I have characterised as purely artificial, and bears a close resemblance to such exemplary members of the class as hospitals, bridges and so forth. Like such inanimate objects, the state is unquestionably capable of acting, since it is capable of being represented and of having actions 'truly' attributed to it. Like such objects, however, the state cannot give authority to anyone to represent it, and cannot therefore authorise its own representation. As Hobbes puts it, it has no capacity 'to doe any thing, but by the Representative'.¹²⁹ So shadowy, indeed, is its existence that it might be thought to bear a yet closer resemblance to such purely artificial persons as the gods of the heathen. Whereas hospitals and bridges remain things even when they are not being personated, the state in the absence of a sovereign 'is but a word', just as the gods of the heathen are 'nothing' in the absence of a priest to represent them.¹³⁰

Who then is capable of authorising the actions of the state? We already know the answer in general terms from our examination of how it is possible for one person validly to authorise a second to represent a third – as in the case of the owner of a bridge who authorises an overseer to act on its behalf. As we have seen, two requirements must be met. One is that the natural person or persons authorising the representation must themselves possess the right to undertake whatever actions they intend to authorise. The other is that this right must in turn be owed to the fact that they stand in some appropriate relationship of dominion over the purely artificial person concerned.

According to Hobbes there is only one possible way in which these conditions can be satisfied in the case of the state. The public acts of a sovereign will count as valid acts of the state if and only if the sovereign has been authorised to perform them by each and every member of the multitude. With this contention, Hobbes is finally able to offer his formal definition of a commonwealth or state: it is '*One Person, of whose Acts a great Multitude, by mutuall Covenants one with another, have made themselves every one the Author, to the end he may use the strength and means of them all, as he shall think expedient, for their Peace and Common Defence*'.¹³¹

¹²⁹ Hobbes 1996, ch. 24, p. 171; ch. 26, p. 184.

¹³¹ Hobbes 1996, ch. 17, p. 121.

¹³⁰ Hobbes 1996, ch. 16, p. 114; ch. 31, p. 245.

Hobbes makes good this central contention by pointing out in the first place that the individual members of the multitude undoubtedly possess the right to perform the actions undertaken by sovereigns as representatives of the state. When Hobbes describes the lines of conduct that sovereigns are authorised to pursue, he always makes it clear that their rights of action are merely those possessed by each one of us in the state of nature. These rights can be summarised as the blameless liberty of using our powers in any way that we judge necessary to defend our lives against others and to secure ourselves against threats by anticipating them.¹³² Because the exercise of these equal rights brings war, we are led by reason to recognise that the best means of attaining peace and the other contentments of life will be to transfer our rights to a sovereign who will exercise them on our behalf. When we covenant to appoint such a sovereign, it is accordingly with the specific purpose of providing more effectively for our own peace and contentment. The sovereign is commissioned, in other words, merely to exercise those of our rights which, so long as we exercise them ourselves, will lead to war.¹³³

Finally, Hobbes argues in addition that the individual members of the multitude stand – and alone stand – in an appropriate relationship of dominion with respect to the person of the state. The source of their dominion lies in the fact that the union of the multitude brings the state into existence. As a result, the relationship of the multitude to the state is analogous to that of the mother to her infant in the state of nature. Just as the mother brings her child into the world, thereby acquiring dominion over it, so the union of the multitude serves to procreate the state. Hobbes goes to the almost blasphemous extreme of drawing a parallel between this act of engendering and the work of God. 'The *Pacts and Covenants*, by which the parts of this Body Politique were at first made, set together, and united, resemble that *Fiat*, or the *Let us make man*, pronounced by God in the Creation'.¹³⁴

As Malcolm has recently emphasised, however, the person whom we engender when we covenant to institute a sovereign representative needs to be simultaneously seen in two perspectives.¹³⁵ On the one hand, the person in question – the person of the commonwealth or state – is 'but

¹³² Hobbes 1996, ch. 13, pp. 87–8, ch. 14, p. 91.

¹³³ Hobbes 1996, ch. 13, pp. 87–9; ch. 18, p. 124; ch. 19, p. 131.

¹³⁴ Hobbes 1996, Introduction, pp. 9–10. But does the artifice created by the multitude more closely resemble a man or a machine? See Tuckman 1994 and Runciman 1997, pp. 16–24 for Hobbes's contrasting structures of imagery.

¹³⁵ Malcolm 1998, pp. 145–6.

a word' in the absence of a sovereign to act in its name. But on the other hand, it is important to Hobbes that the state is at the same time the name of a common power whose stature and strength are greater than those of any of its subjects and of all of them put together. While Hobbes aims to demystify sovereign power by showing it to be the outcome of a rational choice made by individual agents, he wishes at the same time to leave his great Leviathan invested with a certain mysterious force, if only as a guarantee that we shall in turn think of it, as we should, with a certain awe.

V

What prompted Hobbes to develop this novel and intricate theory of the state? The clue lies, I believe, in attending to what he says at the outset of *Leviathan* about his hopes for the work. He aspires, he says, to pass unbounded between the opposing swords of 'those that contend, on one side for too great liberty, and on the other side for too much Authority'.¹³⁶

Those contending for too much authority are identifiable as the theorists of divine right, who rose to renewed prominence in the face of the parliamentary attack on the English crown in the early 1640s. All political power, these writers declare, is 'natural'.¹³⁷ God is its 'immediate Author',¹³⁸ and all rulers acquire it from divine ordination rather than from the consent of the people, who have 'no more possibility in right to choose their Kings, then to choose their Fathers'.¹³⁹ Hobbes's vision of the state as an artificial person authorised by its own citizens has the effect of challenging every element in this argument. All political power, he replies, is 'Artificial'.¹⁴⁰ The only source from which the authority of the state can validly flow is 'the consent of every one of the Subjects'.¹⁴¹ The capacity of sovereigns to act as legitimate representatives of the state must therefore be 'derived originally from the consent of every one of those that are to be governed'.¹⁴² The state is a wholly human contrivance, not in the least an outcome of God's providence.

During the civil wars of the 1640s, this view of consent became one of the leading arguments used by the supporters of Parliament to question the powers of the crown. Drawing on the work of the monarchomachs,

¹³⁶ Hobbes 1996, Epistle, p. 3.

¹³⁷ Morton 1643, p. 3.

¹³⁸ Williams 1643, pp. 48, 49; Maxwell 1644, p. 19. See Sanderson 1989, p. 48 on Maxwell's authorship of this tract.

¹³⁹ Williams 1643, pp. 43, 48.

¹⁴⁰ Hobbes 1996, ch. 17, p. 120.

¹⁴¹ Hobbes 1996, ch. 28, p. 219.

¹⁴² Hobbes 1996, ch. 42, p. 395.

Henry Parker developed perhaps the most influential version of the argument in his *Observations* of 1642.¹⁴³ He begins by restating the monarchomach claim¹⁴⁴ that the only way in which lawful authority can arise is when 'a societie of men', acting in the manner of a *universitas*, agrees by 'common consent' to set it up.¹⁴⁵ One implication is that, since 'the fountaine and efficient cause' of all authority 'is the people', it follows that 'the King, though he be *singulis Major*, yet he is *universis minor*' – of lesser standing than 'the whole universality' from which his power is derived.¹⁴⁶ A further implication is that, if the king violates the terms of the covenant imposed by the *universitas* of the people in granting him power, they must retain the right to withdraw their consent and set down the authority they originally set up. As Parker summarises, 'the whole universality' of the people is not only the 'free and voluntary Author' of all sovereignty; it also retains its original sovereignty at all times, and accordingly remains 'the proper Subject of all power'.¹⁴⁷

While Hobbes agrees that all lawful government arises from consent, he violently disagrees with the radical implications drawn from this argument by the supporters of Parliament. He seeks instead to demonstrate that these alleged implications embody a peculiarly dangerous plea for too great liberty. As before, moreover, the way in which he mounts his case is by invoking and applying exactly the theory of attributed action on which I have concentrated.

One way in which Hobbes applies his theory is by returning to his rival account of how it is possible for a multitude to act as 'one person'. A proper understanding of this process, he insists, will wholly defuse the Parliamentarian argument:

There is little ground for the opinion of them, that say of Sovereign Kings, though they be *singulis majores*, of greater Power than every one of their Subjects, yet they be *Universis minores*, of lesse power than them all together. For if by *all together*, they mean not the collective body as one person, then *all together*, and *every one*, signifie the same; and the speech is absurd. But if by *all together*, they understand them as one Person (which person the Sovereign bears,) then the power of all together, is the same with the Sovereigns power; and so againe the speech is absurd.¹⁴⁸

¹⁴³ See Sommerville 1992, pp. 60–3; Mendle 1995, pp. 70–89.

¹⁴⁴ The influence of monarchomach thought, in particular the *Vindiciae*, was noted by Parker's critics at the time. See Mendle 1995, pp. 123–5.

¹⁴⁵ [Parker] 1933, p. 167.

¹⁴⁶ See [Parker] 1933, pp. 168, 210, and cf. *Vindiciae* 1994, pp. 47–8, 78, 107, 157–8, 172 for the use of the *maior singulis, minor universis* formula.

¹⁴⁷ [Parker] 1933, pp. 167, 210.

¹⁴⁸ Hobbes 1996, ch. 18, p. 128; cf. Sommerville 1996, p. 262.

Hobbes's fiercely polemical message is thus that, since the people only transform themselves into a collective body by way of instituting a sovereign, it makes no sense to think of them as a collective body setting limits in advance to the exercise of sovereign power.

The main way, however, in which Hobbes applies his theory of attributed action to attack the Parliamentary cause is by invoking his analysis of what it means to authorise a representative. If we understand this process aright, he insists, we shall see that it is the merest *non sequitur* to suppose that the theory of covenanting commits us to defending the sovereignty of the people. On the contrary, we shall see that the idea of consent as the only source of lawful government is fully compatible with a strong defence of absolute sovereignty and the duty of non-resistance.

As we have seen, Hobbes stipulates that, if an act of authorisation is to be validly performed, a transfer of right must take place. Once this covenant has passed, the authorising agent is left with two specific obligations towards his or her representatives. One is the duty to 'own' their actions and those of any third party for whom they may have been authorised to act. But the other is the duty not to interfere with the execution of their commission, since the right to act as they think best in discharging their task is precisely what has been voluntarily handed over to them.

In chapter 17 of *Leviathan* Hobbes argues that the covenant by which lawful states are instituted takes exactly this form. When the members of the multitude agree, each with each, to appoint a sovereign representative, theirs is a covenant of authorisation embodying a declaration that a set of rights has been transferred. They covenant 'in such manner, as if every man should say to every man, *I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men*'.¹⁴⁹ At the same time Hobbes examines the precise character of the covenant involved. What the members of the multitude agree is 'to conferre all their power and strength upon one Man, or upon one Assembly of men'.¹⁵⁰ But as we have seen, this has the effect of producing two immediate consequences. It gives them a single will and voice, thereby converting them into one person, the person of the state. But it also creates a representative of that person in the figure of the sovereign, who is thereby given the job of 'bearing' or 'carrying' the person of the state. To say all this, however, is to say that the members of the multitude remain the authors of all the

¹⁴⁹ Hobbes 1996, ch. 17, p. 120.

¹⁵⁰ Hobbes 1996, ch. 17, p. 120.

actions of their sovereign, and at the same time remain the authors of all the actions of the person whom they have authorised their sovereign to represent, namely the person of the state. Each member of the multitude must now 'acknowledge himselfe to be Author of whatsoever he that so beareth their Person, shall Act, or cause to be Acted, in those things which concerne the Common Peace and Safetie'.¹⁵¹

Hobbes lastly turns, in chapter 18, to consider the implications of this political covenant. The members of the multitude have given up their right of using their own discretion to secure their safety and contentment. They have voluntarily ceded their right of self-government to be exercised by their sovereign on their behalf. It follows according to Hobbes's theory of authorisation that the members of the multitude must now be under an absolute obligation not to interfere with their sovereign in the exercise of the rights they have transferred to him. The sovereign acquires complete discretion and absolute power to decide what shall be done to preserve the safety and contentment of every subject under his charge.

Hobbes goes still further. Not only do the members of the multitude have no remaining right to question the actions of their sovereign; they have a positive duty to 'own' whatever actions their sovereign may undertake in seeking their safety and contentment. But this is to say, according to Hobbes's theory of attributed action, that the public acts of the sovereign, and hence of the state, are nothing other than the acts of the individual members of the multitude. So it will not merely be unjust for them to oppose their sovereign; it will actually be self-contradictory, for they will be opposing themselves.

This moral is finally drawn in a powerful summarising passage in chapter 18:

Because every Subject is by this Institution Author of all the Actions, and Judgements of the Sovereigne Instituted; it followes, that whatsoever he doth, it can be no injury to any of his Subjects; nor ought he to be by any of them accused of Injustice. For he that doth any thing by authority from another, doth therein no injury to him by whose authority he acteth: But by this Institution of a Common-wealth, every particular man is Author of all the Sovereigne doth; and consequently he that complaineth of injury from his Sovereigne, complaineth of that whereof he himselfe is Author; and therefore ought not to accuse any man but himselfe.¹⁵²

Although Hobbes returns to this claim with evident satisfaction in a number of later passages, he stands in no need of such uncharacteristic

¹⁵¹ Hobbes 1996, ch. 17, p. 120.

¹⁵² Hobbes 1996, ch. 18, p. 124.

repetitiousness.¹⁵³ His account of attributed action already enables him to rest his case against the constitutional writers of his age. The concept of the political covenant is not a means of limiting the powers of the crown; properly understood, it shows that the powers of the crown have no limits at all. The theory of attributed action lies at the heart of the politics of *Leviathan*.

¹⁵³ Hobbes 1996, ch. 19, p. 136; ch. 24, p. 172.

Hobbes on the proper signification of liberty

'Civil philosophy', Hobbes declares in an oft-quoted boast at the start of *De Corpore*, is a science 'no older... than my own book *De Cive*'.¹ As he later explains in *Leviathan*, the failure of all previous efforts has been due to their 'want of Method'.² The method followed hitherto, especially in the universities, has been to rely on the authority of selected writers and books.³ The universities, indeed, have come to rely so heavily on one particular writer that their teachings no longer deserve to be called philosophy, but merely Aristotelism.⁴ This approach, however, is nothing but 'a signe of folly', one that is 'generally scorned with the name of Pedantry'.⁵ The only scientific way of proceeding is to follow the methods of geometry, which requires its practitioners to 'begin at settling the significations of their words'.⁶ Only by this means can we hope to avoid the insignificant speech of the schoolmen and lay the foundations for a genuine science of political life. For 'the foundation of all true Ratiocination, is the constant Signification of words'.⁷

As Hobbes turns to employ this approach in *Leviathan*, there is no case in which he is so anxious to insist on his own definitions, and to argue that all others are dangerously misleading, as he is in explicating the concept of liberty. It is striking, moreover, that his anxieties on this score increased as he progressively refined his theory of the state. In *The Elements of Law*, originally circulated in 1640, he voices no such concern and fails even to supply a formal definition of liberty.⁸ Only in *De Cive*, first published in 1642, does he formulate the basic definition on which he

This chapter is a revised version of an article that originally appeared under the same title in *Transactions of the Royal Historical Society*, 5th series, 40 (1990), pp. 121–51.

¹ Hobbes 1839c, p. ix. ² Hobbes 1996, ch. 5, p. 34. ³ Hobbes 1996, ch. 4, pp. 28–9.

⁴ Hobbes 1996, ch. 46, p. 462. ⁵ Hobbes 1996, ch. 6, p. 37. ⁶ Hobbes 1996, ch. 4, p. 28.

⁷ Hobbes 1996, ch. 34, p. 269. ⁸ Hobbes 1969a, p. 134.

later relies.⁹ Even at this stage, moreover, he still alludes only glancingly to the dangers of misunderstanding the term, while his application of his own formula is not free from ambiguity. By the time he came to publish *Leviathan* in 1651, however, all such equivocations had been removed, and the meaning of liberty had come to be one of his central themes. Not only does he devote a special chapter to discussing the liberty of subjects, but he constantly emphasises the importance of establishing 'the proper signification of the word', what it 'signifieth (properly)', its 'proper and generally received meaning', how to understand it 'in the proper sense'.¹⁰

These developments prompt two questions, both of which I shall seek to answer in sections IV and V of this chapter. Why does Hobbes become increasingly preoccupied with the idea of liberty? And why does he become increasingly anxious to insist that, as *Leviathan* puts it, 'it is an easy thing for men to be deceived' by its 'specious name'?¹¹ Before we can address these issues, however, we obviously need to be sure that we have understood what Hobbes means by the concept of liberty itself. This is a topic on which his commentators seem to me to have cast a considerable amount of darkness. So I shall first consider this purely textual problem in sections II and III, before turning to the more contextual and historical questions in which I am principally interested.

II

When Hobbes first introduces the topic of human freedom in *Leviathan*, it is in connection with his discussion of 'the right of nature' in chapter 14. This right is defined as 'the Liberty each man hath to use his own power as he will himself for the preservation of his own Nature'.¹² (Here as elsewhere Hobbes equates human freedom with the freedom of a man, a usage I shall sometimes be constrained to follow.) This freedom or liberty,¹³ Hobbes at once stresses, must be defined in negative terms.¹⁴ The presence of liberty is always marked, that is, by the absence of something. Specifically, it is marked by 'the absence of external Impediments'.¹⁵ And

⁹ Hobbes 1993a, IX, p. 167.

¹⁰ Hobbes 1996, ch. 14, p. 91; ch. 21, pp. 145, 146, 147.

¹¹ Hobbes 1996, ch. 21, p. 149.

¹² Hobbes 1996, ch. 14, p. 91.

¹³ As Hobbes 1996, ch. 21, p. 145 makes clear when he speaks of what 'LIBERTY, or FREEDOME, signifieth' he makes no distinction between the two terms. I have followed him in using them interchangeably.

¹⁴ On Hobbes's general disposition to offer negative definitions see Pasquino 1994.

¹⁵ Hobbes 1996, ch. 14, p. 91.

by 'impediments', Hobbes adds, he means anything that can hinder a man from using his powers 'according as his judgement, and reason shall dictate to him'.¹⁶

This analysis is subsequently taken up and elaborated at the start of chapter 21, at which point Hobbes presents his formal definition of what it means to be a free man:

— And according to this proper, and generally received meaning of the word, A FREE-MAN, is he, that in those things, which by his strength and will he is able to do, is not hindered to doe what he has a will to.¹⁷

As this definition makes clear, Hobbes sees two essential elements in the concept of human freedom. One is the idea of possessing an underlying power or ability to act. As Hobbes had already observed in chapter 14, it is in relation to 'a man's power to do what hee would' that we speak of his being or not being at liberty.¹⁸ The other is the idea of being unimpeded in the exercise of such powers. As Hobbes explains later in chapter 21, the freedom of a man 'consisteth in this, that he finds no stop in doing what he has the will, desire or inclination to doe'.¹⁹

Hobbes's basic doctrine can thus be very simply summarised. He already hints as much at the start of chapter 14 of *Leviathan*,²⁰ but he says so most clearly at the end of *The Questions Concerning Liberty, Necessity and Chance*, his final reply to Bishop Bramhall on the problem of free will. A free agent is someone who, in respect of his powers or abilities, 'can do if he will and forbear if he will'.²¹

As Hobbes acknowledges, however, this analysis is not yet a very illuminating one. We still lack an account of the kinds of limitations on human action that can count as impediments. To put the point another way, we still lack a criterion for distinguishing between inherent limitations of our powers themselves, and positive constraints upon our freedom to exercise or forbear from exercising those powers in accordance with our will and desires.

¹⁶ Hobbes 1996, ch. 14, p. 91.

¹⁷ Hobbes 1996, ch. 21, p. 146.

¹⁸ Hobbes 1996, ch. 14, p. 91. Cf. Hobbes 1996, ch. 10, p. 62, where he defines 'The POWER of a man' as 'his present means, to obtain some future apparent Good'.

¹⁹ Hobbes 1996, ch. 21, p. 146. The point is foreshadowed in Hobbes 1996, ch. 6, p. 44, where he argues that deliberation is so called 'because it is a putting an end to the Liberty we had of doing, or omitting, according to our own Appetite, or Aversion'.

²⁰ Hobbes 1996, ch. 14, p. 91 defines 'right' as 'liberty to do or to forbear'.

²¹ See Hobbes 1956, p. 301 and cf. Hobbes's opening formula, pp. 28–9. For a bibliography of Hobbes's debate with Bramhall see Macdonald and Hargreaves 1952, pp. 37–41. I quote from the original version of Hobbes's *Questions* (Hobbes 1956) but the text is also available in Molesworth's edition (Hobbes 1841b).

Turning to this further problem at the start of chapter 21, Hobbes distinguishes two ways in which a person's freedom may be hindered or impeded. The first is common to human and inanimate bodies.²² It occurs when an agent encounters 'the opposition of some external body' which operates in such a way that the agent is tied – or, as Hobbes also says, is bound²³ – so that 'it cannot move but within a certain space'.²⁴ Hobbes has just laid it down that to be free is to be unimpeded from doing or forbearing from doing something. But these are cases in which the agent is impeded from doing something. An action within the agent's powers is rendered physically impossible of performance. It follows that such agents 'are not at Liberty, to move in such manner, as without those external impediments they would'.²⁵

The other way in which a person can be hindered from using their powers at will is considered in the same passage. This happens when they are physically bound or obliged to act in some particular way by the operation of an irresistible external force.²⁶ Hobbes assumes that, if we are to describe a man as free, we must not only be able to say that he is free to act; we must also be able to say that, if he acts in a certain way, then he performs his action freely, in that he 'may refuse to do it if he will'.²⁷ If, by contrast, he cannot forbear from acting, then his action will not be that 'of one that was free'.²⁸ As Hobbes had already noted in his preliminary discussion in chapter 14, obligation and liberty 'in one and the same matter are inconsistent'.²⁹

This second type of impediment might seem to be of merely residual significance, especially as Hobbes largely confines himself to illustrating it with such simple instances as that of a criminal who is 'led to prison

²² Hobbes 1996, ch. 21, pp. 145–6. Hobbes even claims (p. 145) that the concept of liberty can be applied to inanimate bodies (his example being a body of water) 'no less' than to rational creatures. If he means that the concept can be applied in exactly the same way this seems a slip; for his definition of human freedom makes essential reference to the will. Hobbes 1966, p. 209 explicitly distinguishes human freedom from wider notions of free action when he observes that 'I understand compulsion to be used rightly of living creatures only'.

²³ Hobbes 1996, ch. 14, pp. 91, 92–3.

²⁴ Hobbes 1996, ch. 21, p. 145. Hobbes also speaks in the same passage of the agent being 'restrained'.

²⁵ Hobbes 1996, ch. 21, p. 146.

²⁶ Note that Hobbes distinguishes with a fair degree of consistency between being 'forced' and being 'compelled'. I am compelled if my will is coerced. I am forced if it is rendered physically impossible for me to forbear from acting in a certain way. For Hobbes, compulsion is compatible with liberty but force is not. See Hobbes 1966, pp. 199–200, 208–9, 216–17. The point is well brought out in Wernham 1965, p. 123.

²⁷ Hobbes 1996, ch. 21, p. 146.

²⁸ Hobbes 1996, ch. 14, p. 91.

by force'.³⁰ But in fact the category of actions we cannot forbear from performing is of considerable theoretical importance for Hobbes, because he takes it to be the means of defining two forms of human bondage.

One is that of slavery. According to Hobbes's analysis, both in *De Cive* and *Leviathan*, the lack of liberty suffered by slaves is not simply due to the fact that they are 'kept in prison, or bonds'.³¹ It is also due to the fact that 'their labour is appointed to them by another' in such a way that their bodies 'are not in their own power'.³² A slave is thus defined as someone whose lack of freedom is due in part to the fact that he is, literally, a bondsman: someone who is bound or forced to act, and is not at liberty to forbear from acting.³³ The other way in which human freedom is similarly forfeited is among those who admit God's providence. This too is stressed in both *De Cive* and *Leviathan*, although in this case the earlier analysis is the fuller one. God's power, to those who recognise it, must appear irresistible.³⁴ When he issues a command to those who believe in him – for example through the Scriptures, which many believe to be the word of God – then 'they cannot forbear from obeying him'.³⁵ They are tied or bound to obey in such a way 'that their bodily liberty is forfeited'.³⁶ As Hobbes starkly summarises in chapter 45 of *Leviathan*, all religious believers 'are Gods Slaves'.³⁷

³⁰ Hobbes 1966, pp. 216–17. Hobbes 1969a, p. 63 uses the same example. The reason why the category may appear residual, even empty, is that Hobbes sometimes speaks as though an action we cannot forbear from performing is a case in which we are acted upon, not a case in which we act. See, for example, Hobbes 1966, pp. 209, 216–17. But the implication that all actions are free by definition is one that Hobbes elsewhere rejects. See Hobbes 1996, ch. 21, p. 146, where he lays it down that it is only 'actions which proceed from the will' which 'proceed from liberty'.

³¹ Hobbes 1996, ch. 20, p. 141.

³² See Hobbes 1996, ch. 45, p. 447 for the explicit distinction between 'the service of Bondmen' and 'a voluntary Servant'. Except for discussing enslavement as a result of conquest in war; however, Hobbes does not explain how such bondage can arise. His discussion of slavery seems in tension with his stress on the implications of human equality.

³³ Hobbes 1983a, XV, V, p. 221.

³⁴ Hobbes 1983a, XV, VII, p. 223: 'non potest non obtemperare'. Orr 1987, pp. 58–9 interprets Hobbes as claiming that, although fear of our fellow-men does not take away liberty, fear of God does. What Hobbes seems to be saying, however, is that it is our fatalistic disbelief in our capacity to resist God's power that forces us to obey and so takes away our liberty. If we turn to Hobbes 1996, ch. 21, pp. 246–7 (the corresponding passage in *Leviathan*) we find all reference to fear deleted. Hobbes is now clear that the believer is forced to obey simply by the fact that God appears an irresistible force. Orr is right to point out, however, that there is something unsatisfactory about Hobbes's argument. As we have seen, Hobbes holds that liberty can only be taken away by external impediments to motion. It is clear that God's omnipotence will constitute such an impediment if it is a fact. But it is not clear how it can be said to do so if it is merely believed to be a fact. For further discussion see Goldsmith 1966, pp. 111–13 and appendix 4.

³⁵ Hobbes 1983a, XV, VII, p. 223: 'libertas . . . corporeis tollitur'.

³⁷ Hobbes 1996, ch. 45, p. 447.

The whole of Hobbes's analysis thus depends on his initial distinction between power and liberty.³⁸ An agent forfeits his liberty if an external force renders him either powerless to act or powerless not to act in some particular way. The distinction is I think clear, but is nevertheless worth underlining because, as Hobbes himself stresses, it is all too easy for the two concepts to become confused.³⁹ The danger arises from the fact that, if we follow a Hobbesian analysis, we are bound to say of someone capable of exercising the power to act in some particular way that they are also at liberty to act in that way. In this case, the agent's power and liberty amount to the same thing. This being so, there is a temptation – as Hobbes duly notes in his reply to Bramhall⁴⁰ – to add that, if someone analogously lacks the power to act, they must also lack the liberty.

This is certainly a temptation to which 'negative' theories of liberty have fallen prey in contemporary no less than in early-modern philosophy.⁴¹ But as Hobbes rightly observes, it may or may not make sense to claim that an agent who lacks power also lacks liberty. It will not make sense 'when the impediment of motion is in the constitution of the thing itself'.⁴² To take Hobbes's own example, a man 'fastened to his bed by sickness' lacks the power to move, but it makes no sense to say that he lacks liberty.⁴³ The reason why he cannot be said to be unfree is that nothing is impeding him from moving: he is simply incapable of movement. This contrasts with the predicament of someone 'imprisoned, or restrained, with walls, or chayns'.⁴⁴ His plight is similar to that of the sick man in that he is unable to leave. But the sick man would still be unable to leave even if the prison doors were to be opened, whereas the prisoner is only unable because the doors remain locked. He possesses an underlying power or ability to leave which has been taken away from him.⁴⁵ So while the sick man merely lacks ability, the prisoner lacks freedom.

If this interpretation is sound, it is worth adding that Hobbes's theory of human freedom seems to have been rather widely misunderstood. Hobbes is often singled out as the classic exponent of what is sometimes

³⁸ But for a different analysis of this distinction see Kramer 2001.

³⁹ Hobbes 1996, ch. 21, p. 146; cf. Hobbes 1656, p. 211.

⁴⁰ Hobbes 1656, pp. 209–11.

⁴¹ See, for instance, Cassinelli 1966, p. 28, for a contrasting discussion of an example similar to the one considered in Hobbes 1996, ch. 21, p. 146. Oppenheim 1981, p. 87 offers a good criticism of Cassinelli's analysis.

⁴² See Hobbes 1996, ch. 21, p. 146. I have supplied the word 'in', missing in Tuck's edition.

⁴³ Hobbes 1996, ch. 21, p. 146; cf. Hobbes 1656, p. 211.

⁴⁴ Hobbes 1996, ch. 21, p. 146.

⁴⁵ See Hobbes 1996, ch. 14, p. 91 and cf. Hobbes 1656, p. 285.

called the pure negative theory of liberty.⁴⁶ He is claimed, that is, to hold the view that a man is unfree if and only if his doing of some particular action has been rendered impossible.⁴⁷ But this appears to be untrue to his analysis in two distinct ways. Although Hobbes agrees that an agent lacks freedom if an action within his powers has been rendered impossible, he does not think that this is the only way in which unfreedom can be produced.⁴⁸ The agent will also lack freedom if he is tied or bound to act in such a way that he cannot forbear from acting. The other misunderstanding is that, even if no one is rendering it impossible for an agent to act in a given way, it still does not necessarily follow for Hobbes that the agent is free to perform the action concerned.⁴⁹ This is because, as we have seen, the action in question may be beyond the agent's powers. It is true that, given the lines along which Hobbes analyses the concept, he might be willing to admit that the agent is free to *try* to perform the action – although he does not pronounce on that question at any stage. But what is certain is that, for Hobbes, the question of whether the action is one that the agent is or is not free to perform simply does not arise.

Rather than being an instance of the pure negative theory of liberty, Hobbes's analysis serves to suggest that there may be something amiss with that theory itself. To state it in its positive and most widely accepted form, the theory holds that agents are free unless actions within their powers are subjected to 'preventing conditions'.⁵⁰ This formulation certainly avoids the awkwardness of claiming that agents remain free to perform actions that are beyond their powers. But it still appears to confuse the general concept of social freedom with the more specific notion of being free to act.⁵¹ It overlooks the possibility that an agent's lack of freedom may derive not from being unfree to act, but rather from being unable to act freely.⁵²

⁴⁶ See Taylor 1982, p. 142. As a paradigm of the pure negative theory Taylor cites Steiner 1974–5.

⁴⁷ This is to allude to the definition given in Steiner 1974–5, p. 33.

⁴⁸ As appears to be assumed, for example, in Day 1983, where Hobbes's analysis is treated as though he is concerned only with being free and unfree to act.

⁴⁹ As is assumed, for example, in Goldsmith 1989, p. 24, where it is claimed that according to Hobbes to be unfree means 'to be restrained from acting as one wishes to act'. This implies that we remain free so long as no one restrains us from performing an action we may wish to perform.

As we have seen, however, Hobbes's view is that, if the action is beyond our powers, the question of freedom does not arise. But Goldsmith's is a valuable analysis, especially for its emphasis on the coherence of Hobbes's views.

⁵⁰ See, for example, MacCallum 1972, p. 176.

⁵¹ See the excellent discussion in Oppenheim 1981, pp. 83–4.

⁵² This distinction is well drawn, however, in McNelly 1968, p. 171. See also Watkins 1965, pp. 120–2 and Raphael 1984, p. 30.

III

So far I have presented Hobbes's theory of human freedom as a simple and unambiguous one. But it must be admitted that this interpretation faces a difficulty. It is a difficulty, moreover, that has caused many of Hobbes's commentators to conclude that his theory is not only more complicated than I have been implying but is seriously confused.⁵³

The main grounds for this accusation are furnished by the range of examples Hobbes uses to illustrate his theory at the start of chapter 21. One of the cases he considers is that of a free gift. 'When we say a Gift is Free', he maintains, 'there is not meant any Liberty of the Gifter, but of the Giver, that was not bound by any law, or Covenant to give it.'⁵⁴ Hobbes's point is that the agent is free in the sense of being able to act freely as opposed to being bound or forced to act. But his chosen instance seems to presuppose a view much broader than I have so far been suggesting of the range of ties that can properly be said to take away our liberty to forbear from acting. As well as the purely physical constraints of slavery, he now appears to include not merely the bonds of law but also of our own promises.

The other example Hobbes discusses in the same passage is that of freedom of speech. 'When we *speak Freely*', the freedom we exercise 'is not the Liberty of voice, or pronunciation, but of the man, whom no law hath obliged to speak otherwise than he did'.⁵⁵ Here Hobbes is making the converse point that the agent is at liberty in the sense of being free to act as opposed to being stopped or prevented from acting. But again he appears greatly to expand his sense of the range of ties that are capable of stopping us, and hence of taking away our liberty. As well as the purely physical bonds on which he initially concentrated, he now appears willing to include the bonds of law as another such potential impediment.

In the light of such examples it is easy to see how the accusation of inconsistency arises. Hobbes first defines freedom as the absence of purely physical hindrances. But he then seems to allow that our liberty can also be limited by legal and moral ties. By passing, as one critic has put it, 'from physical impediments to obligations' as his criterion of unfreedom, he leaves his analysis muddled and confused.⁵⁶

⁵³ For the accusation that Hobbes's discussion of liberty is confused see, for example, Pennock 1965, pp. 102, 116; Wernham 1965, pp. 120-1; Gauthier 1969, pp. 62, 65-6; Ross 1974, pp. 55-6; Raphael 1984, pp. 30-4. But for defences of Hobbes's consistency see Leyden 1982, pp. 45-50 and Goldsmith 1989.

⁵⁴ Hobbes 1996, ch. 21, p. 146.

⁵⁵ McNeilly 1968, p. 171. Note that, although *Leviathan* contains an extensive discussion of the concept of unfreedom, Hobbes never uses that word.

I cannot see that this criticism is justified. Consider first Hobbes's contention that we are tied or bound by our covenants and promises even 'in the condition of meer Nature'.⁵⁷ It is certainly true that he speaks as if the act of promising, and hence of laying aside a right, prevents me from acting contrary to my word. I am said 'to be OBLIGED, or BOUND, not to hinder those, to whom such Right is granted'.⁵⁸ He also speaks as though a promise or covenant can similarly tie or bind me to act. 'If I Covenant to pay a ransom' in the state of nature, I am said to be 'bound by it'.⁵⁹ Hobbes also supplies an unambiguous account of the means by which these ties operate. It is a law of nature, as the start of chapter 15 declares, 'That men performe their Covenants made', and we are bound to obey the laws of nature.⁶⁰ Not only are we 'forbidden' and 'commanded' by their dictates, but they also 'bind to a desire they should take place'.⁶¹

Hobbes is no less clear, however, that these ties cannot be said to limit our liberty in the proper signification of the word. The laws of nature, as he repeatedly affirms, are 'improperly' called laws; they are nothing more than 'Conclusions, or Theoremes concerning what conduceth to the conservation and defence' of ourselves.⁶² When we say, therefore, that we are tied or bound by these laws, we are merely saying that, if we desire peace and defence, we are bound or obliged to follow the dictates of reason. No such bonds, however, can ever restrict our liberty in the proper signification of the word. As Hobbes has explained, such limitations can only arise from the natural strength of external impediments. But as he almost wistfully puts it, the bonds of which he is now speaking have no strength at all 'from their own Nature', for 'nothing is more easily broken than a mans word'.⁶³ They have no power to 'bridle' us from acting as ambition, avarice and anger dictate, nor do they have any power to force us to act and thereby 'hold men to the performance of their Covenants'.⁶⁴ They leave us, in short, in full possession of our natural liberty.

⁵⁷ Hobbes 1996, ch. 14, p. 97.

⁵⁸ Hobbes 1996, ch. 14, p. 97.

⁵⁹ For these formulae see Hobbes 1996, ch. 14, pp. 91-2 and ch. 15, p. 110 respectively.

⁶⁰ Hobbes 1996, ch. 15, p. 111.

⁶¹ Yet Hobbes 1996, ch. 21, p. 146 does say, in discussing the example of a free gift, that it will be free if the giver 'was not bound by any law or Covenant to give it'. 'The addition of "or Covenant" may be a slip. The liberty of the giver can certainly be bound by law, in that the law constrains our liberty as subjects. But it cannot similarly be constrained by the donor's own covenants. As Hobbes 1996, ch. 17, p. 117 stresses, these "are but Words", and in the absence of laws are "of no strength to secure a man at all". There are two possible ways of rescuing Hobbes's consistency. We can take him either to be referring to just those cases in which covenants are legally enforceable, or else to be speaking of what we are rationally bound or obliged to do even in the condition of mere nature.

⁶² Hobbes 1996, ch. 14, pp. 96, 99.

Hobbes admittedly adds that, although the force of words is too weak to hold men, there are two possible ways of strengthening it. One is 'a Feare of the consequence of breaking their word', while the other is 'a Glory, or Pride in appearing not to need to breake it'.⁶⁵ However, it is Hobbes's contention that neither of these auxiliary strengths can ever be expected to suffice in the condition of mere nature. No reliance can be placed on pride, for this presupposes 'a Generosity too rarely found to be presumed on, especially in the pursuers of Wealth, Command, or sensuall Pleasure; which are the greatest part of Mankind'.⁶⁶ Nor can we rely on fear, because there is no reason to feel any alarm at the consequences of failing to keep our promises unless we have good grounds for fearing either the wrath of God or of our fellow-men. But there is no reason to entertain a sufficient fear of our fellow-men. For 'Nature hath made men so equal' in the condition of mere nature that they will have just as strong a reason for feeling intimidated by us.⁶⁷ Nor does the fear of being punished by God supply a rational person with a sufficient motive for keeping their promises. Any rational person is bound to confess that God is completely incomprehensible.⁶⁸ This being so, there can be 'no naturall knowledge of mans estate after death; much lesse of the reward that is then to be given to breach of Faith'.⁶⁹ Nor does it alter the case that the Scriptures appear to promise us punishments after death for failing to abide by our word. For while we may believe, we cannot possibly know that the Scriptures are the word of God.⁷⁰ It follows that, for all we know, there may be no such punishments. And it follows from this – at least if we reject

⁶⁵ Hobbes 1996, ch. 14, p. 99.

⁶⁶ Hobbes 1996, ch. 14, p. 99. As Oakshott 1975a, pp. 119–25 emphasises, however, Hobbes leaves open the possibility that pride can be 'moralised', and thus that justice and the pursuit of glory need not be incompatible. See also Thomas 1965, pp. 202–7 on the place of 'generous natures' in Hobbes's theory.

⁶⁷ On natural equality see Hobbes 1996, ch. 13, pp. 86–7. For the fact that this will tend (in the absence of compulsive laws) to militate against our keeping of our promises, simply because no sufficient 'inequality of Power' will appear, see Hobbes 1996, ch. 14, p. 99. But if 'Nature hath made men so equal', how can one man get another so completely into his power as to enslave him? Hobbes does not directly address this point.

⁶⁸ This point is constantly reiterated in *Leviathan*, especially in the discussions of religion and of vain philosophy. See Hobbes 1996, ch. 12, pp. 77–8; ch. 46, pp. 466–8. This does not mean that Hobbes disbelieves in God, although it does mean that he sharply distinguishes knowledge from belief. On this point see Glover 1995.

⁶⁹ Hobbes 1996, ch. 15, p. 103. See Woodcut 1983 on the fact that such a dismissal of the fear of God as a rational ground for obedience – by no means unknown to humanists of the Renaissance – had by this time become exceptional.

⁷⁰ For this claim see Hobbes 1996, ch. 33, p. 267 and ch. 43, p. 406. For the fact that we cannot hope to receive any supernatural revelation of God's will see Hobbes 1996, ch. 26, pp. 197–200. Hobbes thus distances himself from the claim that we can acquire knowledge of an omnipotent God. Cf. the valuable discussion in Halliday, Kenyon and Reeve 1983.

Pascal's wager, as Hobbes implicitly does – that 'Covenants, without the Sword, are but Words, and of no strength to secure a man at all'.⁷¹

So far we have been considering the status of our promises and covenants in the condition of mere nature. But a similar set of considerations applies if we turn to Hobbes's account of the manner in which human laws may be said to tie or bind us when we quit the state of nature and submit ourselves to the laws of a commonwealth. Again, there can be no doubt that Hobbes repeatedly speaks of our being bound, and thus apparently rendered unfree, by the force of the laws to which we submit. They are said to be capable of binding men from acting, as when they serve 'to tie their hands from rapine, and revenge'.⁷² They are likewise said to be capable of binding men to act, as in the case where 'Subjects are bound to uphold whatsoever power is given to the Sovereign'.⁷³ But again, the question is whether these ties or bonds can be counted as impediments to freedom in the proper signification of the word.

To grasp Hobbes's answer, we need to begin by making a cardinal distinction that he himself draws in the passage of chapter 21 of *Leviathan* immediately following the one on which we have so far concentrated. On the one hand, there is the idea of liberty as he has so far been considering it, the idea of 'naturall liberty', which only is properly called *liberty*.⁷⁴ But on the other hand, we need to take note of a distinct concept he now introduces for the first time, a concept he labels 'the *Liberty* of Subjects'.⁷⁴

Hobbes's distinction reminds us of the fact that, throughout *Leviathan*, he is interested in two separate 'conditions of mankind'.⁷⁵ There is the condition of mere nature, the condition in which we are free from legal constraints and at the same time possess our natural liberty to the extent that we are capable of exercising our powers without being physically prevented or compelled.⁷⁶ But there is also what Hobbes describes as our artificial condition, the condition we voluntarily take upon ourselves when we covenant to become the subjects of an 'Artificiall Man' and thereby load ourselves down with the 'Artificiall Chains' of the law.⁷⁷ It is in relation to this underlying duality between nature and artifice, and hence between natural liberty and our liberty as subjects, that we need to assess the coherence of Hobbes's views about the capacity of laws to

⁷¹ Hobbes 1996, ch. 17, p. 117. But for a sharply contrasting account of the relationship between God's law and political obligation see Hood 1964, pp. 85–96, 135–7.

⁷² Hobbes 1996, ch. 19, p. 128. ⁷³ Hobbes 1996, ch. 26, p. 200.

⁷⁴ Hobbes 1996, ch. 21, p. 147.

⁷⁵ For a full analysis of Hobbes's distinction between the worlds of nature and artifice see Rossini 1988.

⁷⁶ Hobbes 1996, ch. 13, pp. 86–90. ⁷⁷ Hobbes 1996, ch. 21, p. 147.

limit our freedom, and hence about the relationship between coercion and liberty.

Hobbes is emphatic that the force of law definitely limits our freedom as subjects. To say that someone is a subject is to say that they have covenanted to give up the condition in which everyone is naturally placed, the condition of mere nature in which 'every man holdeth this Right, of doing any thing he liketh'.⁷⁸ But to say that the state of nature can be defined as a condition in which everyone can do as they like is to say that it is a state in which, apart from our rational obligation to obey the laws of nature, we have no legal obligations at all. There is therefore a sense in which, in agreeing to give up our natural condition, we are agreeing to give up a form of liberty. Hobbes summarises the crucial contrast at the end of his chapter on civil laws:

For *Right* is *Liberty*, namely that Liberty which the Civil Law leaves us: But *Civill Law* is an *Obligation*; and takes from us the Liberty which the Law of Nature gave us. Nature gave a Right to every man to secure himselfe by his own strength, and to invade a suspected neighbour; by way of prevention: but the Civill Law takes away that Liberty, in all cases where the protection of the Law may be safely staid for.⁷⁹

To insist on the rationality of giving up this freedom from human law is the fulcrum of Hobbes's theory of the commonwealth. Because everyone in the state of nature enjoys this freedom, and because 'Nature hath made men so equal' in power and strength, the state of nature can only be described as a condition of liberty in the most paradoxical sense.⁸⁰ It can equally well be described as a condition in which we all enjoy an equal liberty to master and enslave our neighbours, while they enjoy the same liberty 'to make themselves Masters' of our own 'persons, wives, children and cattell' if they can.⁸¹ Hence the emphasis that Hobbes always places on 'that misery, which accompanies the Liberty of particular men'.⁸²

Nevertheless, there remains a sense in which liberty is forfeited when we covenant to become subjects of a commonwealth. To live as a subject is, by definition, to live in subjection to law. To speak of the liberty of a subject is thus to speak essentially of 'the Silence of the Law'.⁸³ If there are 'cases where the Sovereign has prescribed no rule, there the Subject hath the Liberty to do, or forbear, according to his own discretion'.⁸⁴

⁷⁸ Hobbes 1996, ch. 14, p. 92.

⁷⁹ Hobbes 1996, ch. 26, p. 200.

⁸⁰ Hobbes 1996, ch. 13, p. 86.

⁸¹ Hobbes 1996, ch. 13, p. 90.

⁸² Hobbes 1996, ch. 21, p. 152. Hence Hobbes defines a crime (ch. 27, p. 201) as 'the Committing (by Deed, or Word) of that which the Law forbiddeth, or the Omission of what it hath commanded'.

But where the law enjoins or forbids a certain course of action, there the subject is tied or bound to act or forbear from acting as the law and the sovereign command.

As Hobbes makes clear at the outset, however, these considerations apply only to the liberty of subjects. It remains to ask whether these considerations apply to liberty in the proper signification of the word. For only in that case will it be justifiable to claim that Hobbes's exposition is confused.

Before turning to that question, it is important to note that Hobbes allows one exception even to the doctrine that the form of liberty characteristic of the state of nature is cancelled by our obligation to obey the civil law. The exception is grounded on the nature of the reasons we possess for covenanting to take upon ourselves the bonds of a subject. 'The motive, and end for which this renouncing and transferring of Right is introduced, is nothing else but the security of a mans person, in his life, and in the means of so preserving life, as not to be weary of it'.⁸⁵ From this it follows that, since 'the end of Obedience is Protection', there must be certain natural rights – and hence liberties of action – that 'can by no Covenant be relinquished'.⁸⁶ Specifically, I cannot consistently agree to relinquish my freedom to act in protection of my life and bodily liberty. For my sole aim in agreeing to the covenant was to assure a better protection for precisely those rights than I could have hoped to achieve by my own efforts in the free but warlike condition of mere nature.⁸⁷

However, the main point on which Hobbes wishes to insist is that, even in those cases where the freedom of the state of nature is undoubtedly abridged by our obligation to obey the civil laws, this does nothing to limit our liberty in the proper signification of the word.

Hobbes of course intends this conclusion to seem a paradoxical one. But the paradox can readily be dissolved if we turn to the account he gives of the distinctive way in which any system of law operates to ensure the obedience of those subject to it. There are two separate routes, according to Hobbes, by which a citizen can come to feel the force of a law and decide to obey it. One is that all rational persons will, *ex hypothesi*, recognise that obedience is in their interests. For the basic aim of law is to seek peace by protecting life and liberty, and these are the goals that all rational persons seek above all. So the liberty of such agents to act as their judgement and reason dictate will not in the least be infringed

⁸⁵ Hobbes 1996, ch. 14, p. 93.

⁸⁶ Hobbes 1996, ch. 21, p. 153.

⁸⁷ For this claim see Hobbes 1996, ch. 14, pp. 98–9. For the remarkably extensive range of things that a subject, 'though commanded by the Sovereign', may 'without Injustice refuse to do', see Hobbes 1996, ch. 21, pp. 150–3.

by their obligation to obey the law. The dictates of their reason and the requirements of the law will prove to be one and the same.

This expresses a traditional view about the compatibility of law and liberty, one that John Locke was classically to restate a generation later in his *Two Treatises of Government*.⁸⁸ 'Law, in its true Notion, is not so much the Limitation as the direction of a free and intelligent Agent to his proper Interest.' Locke draws the inference that, when we submit to the direction of such laws, this will constitute an expression rather than a restriction of our liberty. 'That ill deserves the Name of Confinement which hedges us in only from Bogs and Precipices.'⁸⁹ This is not merely a doctrine that Hobbes appears to endorse, but one that he enunciates in the form of a simile later echoed by Locke with remarkable closeness. 'The use of Lawes', as Hobbes puts it in discussing the office of the sovereign in chapter 30, 'is not to bind the People from all Voluntary actions; but to direct and keep them in such a motion, as not to hurt themselves by their own impetuous desires, rashnesse, or indiscretion; as Hedges are set, not to stop Travellers, but to keep them in the way.'⁹⁰

As Hobbes stresses, however, this is not the reason why the generality of men obey the law, moved as they are by mere considerations of wealth, command and sensual pleasure. The only mechanism by which they can be brought to obey is by making them more frightened of the consequences of disobedience.⁹¹ As we have seen, there is admittedly no hope of employing this device outside the confines of the commonwealth. Covenantants without the sword are but words, and of no strength to secure a man at all. But if a 'visible Power' is erected 'to keep them in awe, and tye them by feare of punishment to the performance of their Covenantants', then there is every prospect of compelling them both to act in line with their obligations and at the same time to forbear from acting as partiality, pride and revenge would otherwise dictate.⁹²

It is of course true that, where the mechanism of using fear to produce obedience works successfully, a subject will elect not to exercise his powers or abilities in various ways. The whole purpose of assigning the right of

⁸⁸ For Locke's views on political liberty see Tully 1993, pp. 315–23.

⁸⁹ Locke 1988, II, para. 57, p. 305.

⁹⁰ Hobbes 1996, ch. 30, pp. 239–40 puts the point in this way when discussing the extent to which laws are necessary. But the argument is a corollary of his earlier contention that we are bound by reason to obey the laws of nature.

⁹¹ Hobbes occasionally seems to allow a more direct mechanism: subjects may be physically forced to act by authorised agents of the commonwealth. For passages in which this seems to be envisaged see Hobbes 1996, ch. 14, p. 96, where the state is said to be capable of compelling by force, and ch. 21, p. 151, where the sovereign is described as capable of authorising assault.

⁹² Hobbes 1996, ch. 17, p. 117.

punishment to sovereigns is to form and direct the wills of their subjects in just this way. Hobbes's point, however, is that this does nothing to take away the continuing power or ability of a subject to act as his will and desires dictate. 'The Consent of a Subject to Sovereign Power' is such that 'there is no restriction at all, of his own former naturall Liberty'.⁹³

To see how Hobbes can consistently defend this crucial conclusion, we need only recall his account of the means by which we are alone capable of forfeiting our liberty in the proper signification of the word. An external impediment must intervene in such a way that we are either physically stopped from acting or physically forced to act. But neither fear nor any other passion of the soul can possibly count as such an impediment. Rather, a man who acts out of fear performs his action because he wills or desires to avoid various consequences which, he fears, will otherwise befall him. Of such a man we can certainly say that he acts as he does because his will has been 'formed' or 'compelled'.⁹⁴ But to compel someone's will is only to cause them to have a will or desire to act other than the will or desire for the sake of which they would otherwise have acted. When such a person acts, it will still be because they possess the will or desire to act in precisely the way in which they duly act. Even if the cause of their having this will is fear, the action they perform out of fear will remain a free action.

To illustrate his argument, Hobbes takes an example originally put forward by Aristotle at the start of Book 3 of the *Nicomachean Ethics*, the example of a man who 'throweth his goods into the Sea for feare the ship should sink'.⁹⁵ The man certainly acts out of fear; so we may say if we like that he felt compelled to act. But as Hobbes grimly adds – challenging Aristotle's analysis⁹⁶ – 'he doth it nevertheless very willingly, and may refuse to doe it if he will: It is therefore the action, of one that was free'.⁹⁷

Hobbes's basic argument is thus that 'Feare, and Liberty are consistent'.⁹⁸ If we speak of being tied or bound by the laws, we can only

⁹³ Hobbes 1996, ch. 21, p. 151.

⁹⁴ Because Hobbes distinguishes between bodily coercion, which takes away liberty, and coercion of the will, which does not, he has no objection to describing threats of punishment as coercing and compelling us to act, while insisting that the resulting actions will nevertheless be freely performed. See, for example, Hobbes 1996, ch. 14, pp. 96; ch. 15, pp. 100–1; ch. 28, pp. 220–1; ch. 42, pp. 391–2; ch. 45, pp. 449–50.

⁹⁵ See Hobbes 1996, ch. 21, p. 146 and cf. Aristotle 1934, III, 1, p. 118.

⁹⁶ According to Aristotle 1934, III, 1, p. 118, the action is 'mixed': voluntary and yet in a sense involuntary.

⁹⁷ See Hobbes 1996, ch. 21, p. 146 and cf. Hobbes 1656, pp. 199, 208.

⁹⁸ See Hobbes 1996, ch. 21, p. 146 and cf. Hobbes 1656, p. 209.

be speaking metaphorically. Hobbes is anxious to underline this implication, for he proceeds to describe the artificial character of these bonds in a grotesque piece of imagery at odds with his usual expository style:

But as men, for the attaining of peace, and conservation of themselves there by, have made an Artificiall Man, which we call a Common-wealth; so also have they made Artificiall Chains, called *Civill Lawes*, which they themselves, by mutuall covenants, have fastned at one end, to the lips of that Man, or Assembly, to whom they have given the Sovereigne Power; and at the other end to their own Ears.⁹⁹

Hobbes is alluding to Lucian's version of the fable of Hercules.¹⁰⁰ According to Lucian, the ancient Gauls thought of Hercules as a venerable and exceptionally prudent orator, symbolising his gifts of persuasion by picturing him as drawing men along by fetters attached at one end to his tongue and at the other end to his followers' ears.¹⁰¹ Hobbes's original readers might perhaps have been surprised to come upon this classical flourish, especially as Hobbes boasts in the Review and Conclusion that he has deliberately left *Leviathan* unencumbered with such conventional references to ancient authorities.¹⁰² But Hobbes would undoubtedly have expected his original readers to recognise the allusion and to grasp its relevance, especially as Lucian's claim that men can be 'led by the ears' had already become a favourite *topos* among humanist writers on rhetoric by the end of the sixteenth century.¹⁰³

For Hobbes, the moral of the story is not in doubt. On the one hand, the artificial chains by means of which we are persuaded to obey the laws are of course sufficient to bind us as subjects. For the category of 'subject' is itself an artificial one, the product of that indispensable piece of political artifice, the Covenant, from which political obligation can alone be derived. But on the other hand, these chains are 'in their own nature but weak'. They can be made to hold only 'by the danger, though not by the difficulty of breaking them'.¹⁰⁴ We retain our natural liberty at all times to break what Hobbes in a further classical allusion (this time to Plutarch's life of Solon) calls the cobweb laws of our country.¹⁰⁵

⁹⁹ Hobbes 1996, ch. 21, p. 147.

¹⁰⁰ For a discussion, with illustrations, see Breckkamp 1999, pp. 126–31.

¹⁰¹ Lucian 1913, vol. 1, p. 65.

¹⁰² See, for example, Montaigne 1946–7, I, 27, vol. 2, p. 55 on those who are 'subjects à estre menéz par les oreilles' and the further reference in Montaigne 1946–7, I, 51, vol. 2, pp. 229–30. See also Sonnet 58 in Sidney 1962, p. 193, claiming that 'with his golden chaine/The Oratour so farre men's hearts doth bind'. Lucian's image of Hercules appears as Emblem 181 in Alciato 1621, p. 751, although with the interesting variation that Hercules's strength is shown as overcome by the force of eloquence.

¹⁰⁴ Hobbes 1996, ch. 21, p. 147.

¹⁰⁵ See Hobbes 1996, ch. 27, p. 204 and cf. Plutarch 1579, p. 89. For further discussion see chapter 2 section II above.

I cannot see, therefore, that there is any serious inconsistency in Hobbes's theory of human freedom. He does not contradict himself by saying first that liberty can only be constrained by external impediments and later that it can also be constrained by laws. Rather we can summarise his argument by observing that natural liberty and civil law belong, for Hobbes, to two different spheres. Liberty 'according to the proper signification of the word' belongs to the sphere of nature, the sphere in which everyone possesses an equal right, and thus a liberty, 'to use his own power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life'.¹⁰⁶ This liberty can only be constrained by ties or bonds which are themselves natural – that is, physical – in character. But civil law belongs to the sphere of artifice, the sphere in which, as Hobbes's Introduction explains, 'by Art is created that great LEVIATHAN called a COMMON-WEALTH, or STATE, (in latine CIVITAS) which is but an Artificiall Man'.¹⁰⁷ The laws of such common-wealths undoubtedly limit our liberty as subjects, since the aim of the sovereign is to make us feel sufficiently frightened of the consequences of disobeying to feel tied or bound by his commands. But in this case the ties are purely artificial, and leave unimpaired our natural liberty to make use of our powers as we please. Summing up in chapter 21, Hobbes spells out this crucial implication as unambiguously as possible: 'generally all actions which men doe in Common-wealths, for *fearre* of the law, are actions, which the doers had *liberty* to omit'.¹⁰⁸

IV

I have now laid out what I take to be Hobbes's views about the proper signification of liberty. But I am far from supposing that I have said enough to enable his theory to be fully understood. As I indicated at the outset, it remains to explain why he should have been so anxious to insist that this explication of the concept is the only coherent one. Having followed the account he gives, it now becomes possible to rephrase my initial question more pointedly. Why should Hobbes have been so anxious to insist on such a restricted analysis of the circumstances in which we can legitimately claim that our liberty has been infringed?

We first need to recognise that Hobbes had a profound philosophical motive for drawing the boundaries of unfreedom in such a narrow way. On the one hand, a major concern of *Leviathan* is to explore the relationship between liberty and political obligation. Hobbes accordingly stands

¹⁰⁶ Hobbes 1996, ch. 14, p. 91.

¹⁰⁸ Hobbes 1996, ch. 21, p. 146.

¹⁰⁷ Hobbes 1996, Introduction, p. 9.

in need of a firm criterion for distinguishing between free and unfree actions. But on the other hand, Hobbes is a determinist. He cannot allow that anyone is ever free to will or not to will. To be free is to be unimpeded from moving according to one's will and desires. But since the will itself 'is not subject to Motion', it cannot be 'subject to Impediment'.¹⁰⁹ It follows that 'from the use of the word *freewill*, no Liberty can be inferred to the will, desire or inclination' in any instance at all.¹¹⁰

It might seem that this leaves Hobbes with an insuperable difficulty. But by adopting the precise view of human freedom I have outlined, he is able to frame an elegant solution to it. On the one hand, he is able to maintain that the will is never free, always determined. 'Every act of mans will, and every desire, and inclination proceedeth from some cause', so that 'to him that could see the connexion of those causes, the necessity of all mens voluntary actions, would appeare manifest'.¹¹¹ But on the other hand, he is able to mark a clear distinction between free and unfree actions. A man remains free provided that no external impediment obstructs him from acting according to his will or desires. He only ceases to be free if he is impeded in such a way that his will (which is itself caused) no longer functions as the cause of his actions.

As Bishop Bramhall acutely remarked, Hobbes is here reviving an essentially Stoic vision of the compatibility between liberty and necessity.¹¹² The effect is to enable him to speak of human freedom in a manner wholly consistent with his determinism. An agent's will is never free; but where the agent is unimpeded from acting at will, we may nevertheless speak of free action. As Samuel Pepys noted in his *Diary* for 20 November 1661, the solution is 'very shrewd'.¹¹³

As well as having these metaphysical commitments, Hobbes had at least two powerful reasons of a political nature for wishing to draw the boundaries of unfreedom in a restricted way. As we have already seen in volume 2 chapter 12, it is clear in the first place that he had come to feel an urgent need to respond to the dangers he associated with the classical republican theory of liberty espoused by so many of his fellow-countrymen. This attitude reflects one of the sharpest changes of direction to be found in the evolution of Hobbes's political

¹⁰⁹ Hobbes 1996, ch. 21, p. 146; cf. Hobbes 1656, p. 29.

¹¹⁰ Hobbes 1996, ch. 21, p. 146; cf. Hobbes 1656, p. 289.

¹¹¹ Hobbes 1996, ch. 21, pp. 146-7.

¹¹² Modern commentators have been inclined to credit Hobbes with the invention of this 'compatibilist' doctrine. See, for example, Raplael 1984, p. 30. But cf. Bramhall's comments on Hobbes's evident debt to the Stoics as quoted in Hobbes 1656, pp. 192-4, 195-7.

¹¹³ Pepys 1970-83, vol. 2, p. 217.

thought.¹¹⁴ In *The Elements of Law* he had basically accepted the classical republican case, arguing that 'Liberty in a Common wealth' can only be said to be truly secured 'in the Popular State, or Democracy'.¹¹⁵ Aristotle is warmly praised for having stressed this insight: he 'saith well' that 'the ground or intention of a Democracy, is Liberty'.¹¹⁶ In *De Cive*, however, Hobbes begins to change his mind. Aristotle's contention that 'in the case of a commonwealth governed by its own citizens, liberty can be assumed' is now dismissed as a mere speech of the vulgar, and Aristotle is criticised 'for following the custom of his time in confusing dominion with liberty'.¹¹⁷ By the time Hobbes came to publish *Leviathan*, he had acquired a further and more urgent reason for wishing to repudiate the classical republican theory of liberty. He now believed that 'by reading of these Greek, and Latine Authors, men from their childhood have gotten a habit (under a false shew of Liberty) of favouring tumults, and of licentious controlling the actions of their Sovereigns'.¹¹⁸ One consequence, he now maintains, was the civil war itself. The outcome of being 'made to receive our opinions concerning the Institution, and Rights of Common-wealths, from *Aristotle, Cicero*' and other defenders of popular states has been 'the effusion of so much blood; as I think I may truly say, there was never any thing so dearly bought, as these Western parts have bought the learning of the Greek and Latine tongues'.¹¹⁹

Hobbes is particularly exercised by two distinctive elements in the classical republican theory of liberty. One is the contention – which he again quotes from Aristotle's *Politics* – that 'in democracy, Liberty is to be supposed: for *this commonly held, that no man is Free in any other government*'.¹²⁰ The other is the connected doctrine that Greece, Rome and modern republics are worthy in some special sense to be described as 'free Commonwealths', whereas 'all manner of Common-wealths but the Popular' can be dismissed as tyrannies.¹²¹

Faced with these arguments, which he had come to regard as seditious, what Hobbes does is to deploy his distinctive analysis of liberty in such a way as to try to show that both of them are arbitrary and absurd. This is obvious, he thinks, in the case of the inflammatory contention 'that the Subjects in a Popular Common-wealth enjoy Liberty; but that

¹¹⁴ A point excellently brought out in Gauthier 1969, pp. 145-6.

¹¹⁵ Hobbes 1969a, pp. 169-70. ¹¹⁶ Hobbes 1969a, p. 170.

¹¹⁷ Hobbes 1969a, X.VIII, p. 176. 'Aristoteles . . . consuetudine temporis libertatem pro imperio nominans. Lib. 6. *Politiarum*, cap. 2. In statu populari libertas est ex suppositione. Quod vulgo dicunt.'

¹¹⁸ Hobbes 1996, ch. 21, p. 150. ¹¹⁹ Hobbes 1996, ch. 21, pp. 149-50.

¹²⁰ Hobbes 1996, ch. 21, p. 150. ¹²¹ Hobbes 1996, ch. 46, p. 470 and ch. 21, p. 149.

in a Monarchy they are all Slaves'.¹²² As Hobbes takes himself to have shown, to speak of the liberty of subjects is only to speak of the silence of the law. But all commonwealths have laws, and no subject can be free of them. 'They that live under a Monarch' may deceive themselves into thinking otherwise, but we never encounter this illusion among those who actually live under popular governments. For as Hobbes adds in his most forbidding tones, 'they find no such matter'.¹²³

No less absurd, on the analysis Hobbes now gives, is the republican idea of the *vivere libero* or 'free commonwealth', the idea 'whereof there is so frequent, and honourable mention' in Greek and Roman writings on statecraft.¹²⁴ Given that freedom merely consists in the absence of impediments, the only sense we can assign to this concept is that such commonwealths must be free to act as they will or desire. But this form of natural liberty is obviously common to all states that are 'not dependent on one another', each of which 'has an absolute Libertie, to doe what it shall judge' to be 'most conducing to their benefit'. It makes no sense, therefore, to speak as if some particular types of commonwealth can uniquely be described as 'free states'. 'Whether a Common-wealth be Monarchical, or Popular, the Freedome is still the same.'¹²⁵

As I showed in volume 2 chapter 11, the ideals of classical republicanism suddenly acquired a new salience in the immediate aftermath of the regicide of 1649. So it is hardly surprising to find that Hobbes felt the need to denounce them with so much vehemence.¹²⁶ As I indicated in chapter 1 of the present volume, however, Hobbes also had a more immediate reason for wishing to insist on his distinctive analysis of liberty at the time when he began writing *Leviathan* in the autumn of 1649. By highlighting his views about the compatibility between freedom and coercion, he hoped to supply an answer to the most vexed question of conscience that had arisen at that precise juncture: the question of whether the new government of the Commonwealth 'without a King or House of Lords' could be lawfully obeyed.¹²⁷

No sooner had the Rump Parliament and its Council of State installed themselves in power in February 1649 than they found their legitimacy questioned on all sides.¹²⁸ The most violent denunciations came from

surviving royalists, but the most dangerous opposition came from a number of groups that had hitherto supported the parliamentary cause. Among these, the most intransigent were the Levellers. But by far the most numerous were those who remained loyal to the authority of Parliament as it had been constituted before its purge by Colonel Pride in the name of the army leadership in December 1648.¹²⁹

Both these latter groups denounced the government from the same basic standpoint. They agreed that, because liberty is a birthright, any regime must derive its legitimacy from a voluntary act of submission on the part of its own subjects. With the Levellers this took the form of a demand that the new regime should receive its powers from a formal Agreement of the People. With this goal in mind, John Lilburne, William Walwyn, Thomas Prince and Richard Overton issued the third and final *Agreement of the Free People of England* in May 1649.¹³⁰ But the leading writers in support of Parliament – Edward Gee, Edmund Hall, William Prynn, Nathaniel Ward and many others – were scarcely less emphatic about the indispensability of popular consent. As the author of *The Grand Case of Conscience* put it in June 1649, any regime that can lawfully call on the allegiance of its citizens must originate in 'the generall consent of the major part of the people'.¹³¹

As both groups went on to argue, however, the government of the Rump lacked any such basis in consent. The Levellers concentrated on the fact that, as John Lilburne fulminated in *Englands New Chains Discovered*, with its 'long plotted Council of State erected', the army leadership now 'threateneth tyranny'.¹³² More sweepingly, the protagonists of Parliament maintained that the entire sequence of events from Pride's Purge to the execution of the king and the abolition of the House of Lords lacked any vestige of consent and hence of lawfulness. As William Prynn concluded in *Summary Reasons Against the New Oath and Engagement*, the new Commonwealth was 'forcibly and treasonably erected' by sheer military strength, 'without consent of Kingdome, People or Parliament'.¹³³

Having fought for their liberty against the tyranny of Charles I, the people of England had thus been rewarded with a new form of slavery. By entitling his major pamphlet of February 1649 *Englands New Chains*

¹²⁹ See Underdown 1971, pp. 143–72 on the purge and pp. 173–207 on subsequent moves to execute the king and found the Commonwealth.

¹³⁰ See Lilburne *et al.* 1998.

¹³¹ *Grand Case* 1649, p. 14. For the date of publication (22 June 1649) see Wallace 1964, p. 391.

¹³² Lilburne 1649, pp. 165, 167. On the authorship and circumstances of composition see Aymer 1975, p. 142.

¹³³ [Prynn] 1649, pp. 3, 13. For the attribution see Lamont 1963, pp. 187–8.

¹²² Hobbes 1996, ch. 29, p. 226.

¹²³ Hobbes 1996, ch. 29, p. 226.

¹²⁴ Hobbes 1996, ch. 21, p. 149.

¹²⁵ For the presence of classical republican arguments in the pamphlet literature following the regicide see Wallace 1964, pp. 384–5.

¹²⁶ The formula used in the Oath of Engagement, January 1650. See *Constitutional Documents*, p. 391.

¹²⁷ For the associated pamphlet literature see Wallace 1964.

¹²⁸ For the settlement and creation of the Council see Worden 1974, pp. 177–85.

Discovered, John Lilburne registered his disgust as plainly as possible. Scarcely less violent was the language of the tracts written in support of summoning a new Parliament. Nathaniel Ward affirms in his *Discollimium* that 'I believe, while the Parliament of England are the armies Servants, the People of England shall be very Slaves'.¹³⁴ William Pryune in his *Summary Reasons* even feels able to congratulate the late King Charles for his prophetic insight in seeing that the army would 'subject both King and People, Lawes and Liberties' and 'bring them into perpetuall slavery and bondage'.¹³⁵

There can therefore be no duty to obey the new government. Edmund Hall puts the point as unambiguously as possible in his *Lazarus's Sores Licked*. The new regime owes its ascendancy to 'bare possession, without any right', which 'gives no true title to any power', and hence no basis for demanding allegiance.¹³⁶ Edward Gee goes even further in his *Exercitation Concerning Usurped Powers*, stressing that the people of England now have a positive duty of disobedience. The new government has come to power by sheer force in the manner of a conquering party usurping a lawfully established form of sovereignty.¹³⁷ But 'the right and title of Sovereignty is not built upon possession'; it can only be built 'upon the people's consent'.¹³⁸ Such 'violent intrusion into, and possession of the Seat of Authority gives no right to it, and consequently neither draws allegiance after it, nor evacuates it in relation to another'.¹³⁹ To yield obedience to such a conquering and usurping power is in consequence unlawful, and cannot be justified.¹⁴⁰

Among supporters of the Rump, the initial response to these outbursts was in part a concessive one. They admitted that the new government was perhaps illegal in its origins, but argued that it ought nevertheless to be obeyed as a power ordained of God.¹⁴¹ In the course of 1650, however, a much more positive line of defence emerged. A number of writers began to claim that, even though the government may have acquired its powers

¹³⁴ [Ward] 1650, p. 53. For the attribution see Wallace 1964, p. 398.

¹³⁵ [Pryune] 1649, p. 6.

¹³⁶ [Hall] 1650, p. 3. For the attribution see Wallace 1964, p. 401.

¹³⁷ [Gee] 1650, pp. 5-7, using the pretence that he is describing 'a nation in America'. For the attribution see Wallace 1964, pp. 394-5. For a yet more explicit reference to the new government as 'a conquering party' see *Grand Case* 1649, p. 7.

¹³⁸ [Gee] 1650, pp. 11-12.

¹³⁹ [Gee] 1650, p. 13. For the same claim see [Pryune] 1649, p. 12 and [Ward] 1650, p. 8.

¹⁴⁰ [Gee] 1650, p. 9. For the same conclusion see *Grand Case* 1649, pp. 7, 9 and [Pryune] 1649, p. 3.

¹⁴¹ For the development of this argument see below, chapter 10 section II. See also Wallace 1968, pp. 43-7, 51-6.

only as a consequence of the army's victory, this ought not to be regarded as impugning either its legitimacy or its title to allegiance.

This suggestion appears to have originated with Anthony Ascham,¹⁴² but was soon taken up in yet more forthright style by such publicists as George Wither and especially Marchamont Nedham in *The Case of the Commonwealth of England, Stated*.¹⁴³ The point on which these writers all agree is that conquest is simply one of the means (and historically the most usual means) by which political authority comes to be lawfully acquired.¹⁴⁴ Bodin and Grotius had already put forward this argument, as had a number of likeminded writers in England, including John Hayward, Alberico Gentili and Calybute Downing.¹⁴⁵ Nedham not only quotes both Bodin and Grotius,¹⁴⁶ but applies their doctrine (in defiance of common law sentiment)¹⁴⁷ directly to the history of England, claiming that William I and Henry VII both founded their dynasties on the right of conquest.¹⁴⁸

It is thus a misconception, Nedham argues in his response to Gee's *Exercitation*, to suppose that 'only a call from the people' can 'constitute a lawful magistracy'.¹⁴⁹ This forgets that a king may 'by right of war lose his share and interest in authority and power, being conquered'. When this happens, 'the whole right of kingly authority' is 'by military decision resolved into the prevailing party'. This in turn means that 'what government soever it pleases them next to erect is as valid *de iure* as if it had the consent of the whole body of the people'.¹⁵⁰ 'For the sword creates a title for him or those that bear it, and installs them with a new majesty of empire, abolishing the old'.¹⁵¹ As Richard Saunders summarised in the title of a sermon published shortly afterwards, 'plenary possession makes a lawful power'.¹⁵²

¹⁴² For Ascham's argument see below, chapter 9 section IV.

¹⁴³ For a biography of Nedham see Frank 1980. On the writing of *The Case* see Knachel 1969. On Nedham's changing political outlook see Worden 1994; on the question of his consistency see Worden 1995.

¹⁴⁴ For this claim see [Wither] 1650, p. 42; for the attribution see Wallace 1964, p. 401. See also Nedham 1969, pp. 15-29. A similarly forthright argument had earlier appeared in *The Constant Man's Character* 1650, pp. 64-70.

¹⁴⁵ See Sommerville 1986a, Sommerville 1986b, pp. 66-9, and Burgess 1992, pp. 82-6.

¹⁴⁶ Nedham 1969 cites Bodin (p. 32) and Grotius (p. 39).

¹⁴⁷ For common law hostility to conquest theory see Pocock 1957, pp. 42-55 and cf. Pocock 1987, pp. 293-305.

¹⁴⁸ Nedham 1969, pp. 25-9, 48-50. For further discussion of the use of historical arguments in the engagement controversy see below, chapter 8 section III.

¹⁴⁹ Nedham 1969, p. 37. ¹⁵⁰ Nedham 1969, p. 36; cf. also p. 40. ¹⁵¹ Nedham 1969, p. 38.

¹⁵² Saunders 1651. For the date of publication (28 July 1651) see Wallace 1964, p. 404.

V

It is against this background that Hobbes's analysis of political obligation in *Leviathan* needs to be understood.¹⁵³ I seek to develop this argument at greater length in chapters 9 and 10 below, although I now feel that my discussion assimilates Hobbes's analysis too closely to the defenders of *de facto* sovereignty.¹⁵⁴ There are important similarities, but this reading makes too little of the fact that, in the basic premises of his political theory, Hobbes stands closer to William Prynne, Edward Gee and other such enemies of the Rump than he does to such enthusiastic defenders of *de facto* powers as Anthony Ascham, Marchamont Nedham and their ilk. Hobbes agrees in the first place with the Parliamentary writers that our natural condition is one of 'full and absolute Libertie in every Particular man'.¹⁵⁵ He likewise agrees that, because 'all men equally, are by Nature Free', there can be 'no Obligation on any man, which ariseth not from some Act of his own'.¹⁵⁶ He consequently agrees that conquest and victory can never in themselves yield any 'right of Dominion over the Vanquished' nor any obligation on the part of the conquered. When someone submits merely as a result of being made captive, their obedience will be due to the fact that they are 'kept in prison, or bonds' and cannot help themselves.¹⁵⁷ As we have seen, however, to be physically forced into submission in this way is, for Hobbes, to be in the condition not of a subject but a slave.¹⁵⁸ If, by contrast, a man's obligation is to be that of a true and conscientious subject, it is indispensable that his submission should take the form of an act of free consent. Right and obligation can never be derived simply from conquest or victory.¹⁵⁹

The significance of Hobbes's intervention in the debates about the Commonwealth government is not best captured, therefore, by seeing him essentially as a defender of *de facto* powers. The importance of his argument stems rather from what the theorists of rhetoric would have called its dispositionally ironic character: familiar premises are adopted,

¹⁵³ This is not to deny that there are other contexts too. For valuable expansions of the argument see Burgess 1986 and Burgess 1996.

¹⁵⁴ This is also true, I now feel, of the discussions in Johnston 1986, p. 208 and Baumgold 1988, pp. 124–33.

¹⁵⁵ Hobbes 1996, ch. 21, p. 149.

¹⁵⁶ Hobbes 1996, ch. 20, p. 141.

¹⁵⁷ Hobbes 1996, ch. 27, p. 204 corroborates the point by saying that, although 'in all ages, unjust Actions have been authorised, by the force, and victories of those that have committed them', such actions have in all cases been unjust.

¹⁵⁸ See Hobbes 1996, Conclusion, p. 486 on the mistake of those who seek to 'justify the War, by which their Power was at first gotten, and whereon (as they think) their Right dependeth'.

but they are then shown to yield surprising inferences.¹⁶⁰ Hobbes accepts the basic assumptions of the Rump's leading adversaries, but he seeks to show that the wrong conclusions have been drawn from them. Above all, he seeks to show that those who believe the government to be imposing a new form of bondage have simply failed to understand the proper signification of liberty.

In mounting this case, Hobbes develops two distinct lines of attack. The more general is aimed at the Levellers and other radical enemies of the new regime who, as he puts it, are clamouring for liberty and calling it their birthright.¹⁶¹ Given his analysis of human freedom, Hobbes now feels able to dismiss their claims as totally confused. Suppose, he says, we take it that what these agitators are demanding is 'Liberty in the proper sense', that is, 'corporall Liberty' or 'freedom from chains, and prison'. Then it is 'very absurd for men to clamor as they doe' for this form of freedom, since they manifestly enjoy it already.¹⁶² But suppose we instead take them to be calling for liberty in the sense of 'exemption from laws' – what Hobbes has been describing as the liberty of subjects. To ask for complete freedom in this sense is no less absurd. For this is to demand a return to the state of nature. But as Hobbes has already shown, to call for a return to this condition is to call in effect for our own servitude, since it is to ask for that form of unrestricted liberty 'by which all other men may be masters' of our goods and lives.¹⁶³

Hobbes reserves his most detailed criticisms, however, for those who had been arguing about the rights of conquest. He mainly focuses on this issue in the Review and Conclusion of *Leviathan*, where he complains that 'divers English books lately printed' have made it evident that no one really understands 'what is Conquest' nor how it relates to the obligation of subjects.¹⁶⁴ But it is in chapter 20 that he first takes up the issue of 'Dominion acquired by Conquest, or Victory in war', and is thus led to examine the predicament of a man who, finding his sovereign vanquished, submits to his conqueror 'to avoyd the present stroke of death'.¹⁶⁵

The first point that Hobbes makes about the liberty of a man in such a situation is that he is free to submit. If 'his life and corporall Libertie' are given to him 'on condition to be Subject to the Victor, he hath Libertie to

¹⁶⁰ Quintilian 1920–2, IX, II, 44–7, vol. 3, pp. 398–400.

¹⁶¹ Hobbes 1996, ch. 21, pp. 147, 149. For evidence about the clamour for liberty see Lindley 1986.

¹⁶² Hobbes 1996, ch. 21, p. 147.

¹⁶³ Hobbes 1996, ch. 21, p. 147.

¹⁶⁴ Hobbes 1996, Conclusion, pp. 484–5.

¹⁶⁵ Hobbes 1996, ch. 20, pp. 141.

accept the condition'.¹⁶⁶ Here in turn Hobbes has two claims to advance. The first, which he takes for granted, is that such a man is free in the fundamental sense that nothing is stopping him. Although Hobbes observes in his Conclusion that such impediments can certainly arise, the only instance he mentions is that of someone prevented from submitting through being abroad at the time when his country is conquered.¹⁶⁷ Hobbes's other and principal claim is that such a man is also free as a subject. He is under no legal or moral obligation not to submit. This follows from the fact that our obligations as subjects depend, as we have seen, upon our sovereign's capacity to protect us. If our sovereign is conquered, we lose any such protection and the commonwealth is thereby dissolved. We thereupon cease to be subjects, and each of us is left 'at liberty to protect himself by such courses as his own discretion shall suggest unto him'.¹⁶⁸

In his Review and Conclusion Hobbes clarifies and elaborates this account of 'when it is that a man hath the liberty to submit'. He reiterates that 'for him that hath no obligation to his former Sovereign but that of an ordinary Subject', the moment arrives 'when the means of his life is within the Guards and Garrisons of the Enemy'.¹⁶⁹ But he now adds the topical observation that, if the man is not merely a subject but a soldier in a civil war, the case becomes more complicated. 'He hath not the liberty to submit to a new Power, as long as the old one keeps the field, and giveth him means of subsistence.' Once that protection is lost, however, he too is at liberty to 'seek his Protection wheresoever he has most hope to have it; and may lawfully submit himself to his new Master'.¹⁷⁰

The other point Hobbes makes specifically about the liberty of a man in this predicament is also brought out in chapter 20, but is particularly underlined in the Review and Conclusion. It is that such a man is not merely free to submit; if he submits, he will also be acting freely. Here again Hobbes has two claims to advance. The first and obvious one is that such a man will be acting freely in the legal sense. He is clearly under no legal obligation to submit, since his predicament is such that he has no legal obligations at all. But Hobbes's chief claim – and the heart of his eirenic reply to the enemies of the Commonwealth – is that such a man will also be free according to the proper signification of the word. If he submits, his act will be that of a free man voluntarily consenting to a new sovereign power.

¹⁶⁶ Hobbes 1996, ch. 21, p. 154.

¹⁶⁸ Hobbes 1996, ch. 29, p. 230.

¹⁷⁰ Hobbes 1996, Conclusion, p. 485.

¹⁶⁷ Hobbes 1996, Conclusion, p. 486.

¹⁶⁹ Hobbes 1996, Conclusion, p. 484.

To see how Hobbes arrives at this central conclusion, we need only recall the conditions that would have to be met before it could properly be argued that such a man's freedom of action had been infringed. He would have to be physically tied or bound to submit in such a way that he could not forbear from submitting. As we have seen, this is of course a possible way of inducing obedience. It describes the manner in which a slave, someone 'not trusted with the libertie of his bodie', is forced into submission.¹⁷¹ It is Hobbes's principal aim, however, to establish that this is not the position of the man who subjects himself to a conqueror in order to avoid imprisonment or death. The reason is that this describes the predicament of a man who, unlike the slave, is offered a condition of submission, and is thus at liberty to accept or refuse that condition 'if hee will'.¹⁷² He is not forced to submit by being 'beaten, and taken'. On the contrary, he is presented with a clear choice, and accordingly acts freely in making it. He can either refuse to submit, or else he can agree to submit on condition that 'his life, and the liberty of his body is allowed him'.¹⁷³

Hobbes's fundamental contention is thus that the man he is describing is someone who, far from being forced into subjection, freely consents to the terms of his submission and thereby enters into a covenant with a new sovereign.¹⁷⁴ 'Having liberty to submit to him, he consenteth, either by expresse words, or by other sufficient sign, to be his Subject.'¹⁷⁵ He may thus be said to 'contract with the Victor, promising Obedience, for Life and Liberty'.¹⁷⁶ Hobbes's reason for treating it as an error to suppose that plenary possession makes a lawful power is thus that 'it is not therefore the Victory, that giveth the right of Dominion over the Vanquished, but his own Covenant'.¹⁷⁷

¹⁷¹ Hobbes 1996, ch. 21, p. 154.

¹⁷³ Hobbes 1996, ch. 20, p. 141.

¹⁷⁴ Hobbes 1996, Conclusion, pp. 484–5.

But if the man submits only on condition that his life and liberty are spared, this would appear to make the victorious sovereign a party to the covenant. This would be contrary to Hobbes's earlier contention (ch. 18, p. 122) that 'he which is made Sovereigne maketh no Covenant with his Subjects before-hand'. This raises no problems in the case of what Hobbes calls (ch. 17, p. 121) a 'Common-wealth by Institution', because the form taken by the Covenant in such cases is that each prospective subject agrees with everyone else who shall be sovereign. Ever since Pufendorf raised the doubt, however, critics have complained that Hobbes contradicts himself when he comes to what he calls (ch. 17, p. 121) 'a Common-wealth by Acquisition', and thus to the relationship of victor and vanquished. For there he explicitly states (ch. 20, p. 138) that those who covenant 'subject themselves, to him they are afraid of'. As Gauthier 1969, pp. 114–15 observes, however, Hobbes's consistency can be rescued if we interpret him as saying not that the conqueror covenants to allow life and liberty to those he has vanquished, but merely accepts their covenant by allowing them life and liberty while remaining free from any obligation to respect those terms.

¹⁷⁵ Hobbes 1996, Conclusion, p. 484.

¹⁷⁷ Hobbes 1996, ch. 20, p. 141.

¹⁷⁶ Hobbes 1996, Conclusion, p. 486.

In relating his theory of liberty to the debates about the legitimacy of the Commonwealth government, Hobbes appears to have acted with full self-consciousness. The best evidence lies in the fact that his conclusions are based not just on a clarification but on a revision of his earlier arguments. In *The Elements of Law* he still espouses the orthodox position he repudiates in *Leviathan*, contrasting the predicament of a man who 'submitth to an Assaylant for feare of death' with that of someone who makes a 'Voluntary offer of Subjection'.¹⁷⁸ In *De Cive* his analysis is more ambiguous, and undoubtedly begins to shift in the direction later taken up in *Leviathan*.¹⁷⁹ But he still marks a distinction between states 'founded on contracts and on mutually given faith' and states 'acquired by power and natural force', and he still maintains that only in the former case can we say that the *civitas* has been 'founded on the consent of many men' who have 'willingly submitted themselves'.¹⁸⁰

In *Leviathan*, by contrast, he unequivocally asserts that, when a man submits to a conqueror to avoid the present stroke of death, his act of submission is the willing act of a free man. As a result, he is able to make a novel and dramatic intervention in the arguments about conquest and allegiance. As we have seen, many enemies of the Rump had maintained that, because the new Commonwealth government was founded on conquest and usurpation, it lacked any basis in consent and condemned the people of England to a state of enslavement. Many of its defenders had retorted that, although the government was doubtless imposed without consent, the fact of its being founded on an act of conquest gave it a just title to be obeyed. By contrast with both these positions, Hobbes maintains that there is no need to invoke the supposed rights of conquerors to vindicate the present duty of allegiance. By deploying his distinctive analysis of liberty, he is able to insist that the concepts of conquest and consent are not in the least incompatible in the way that all parties to the debate had hitherto supposed.

This in turn enables Hobbes to draw the polemical conclusion in which he is clearly most interested. Since the act of submitting to a conqueror is based on consent and expressed in a covenant, a man who submits in this way cannot possibly be described as a slave, as the Levellers and the supporters of Parliament were both trying to insist. Rather he must be

¹⁷⁸ Hobbes 1969a, p. 127.

¹⁷⁹ See in particular Hobbes 1983a, VIII. 1, p. 160, where he clearly states that conquest and consent are at least potentially compatible.

¹⁸⁰ Hobbes 1983a, VIII. 1, p. 160 contrasts a *civitas* 'pactis & fide mutuo data ... inita est' with a *civitas* 'quae acquiritur potentia & viribus naturalibus', adding that only the *civitas* founded 'pactis & fide mutuo data' can be said to be based on the 'consensio' of men acting 'volentes'.

acknowledged to be a true subject with an absolute duty of obedience. This final conclusion is initially drawn at the end of the chapter on the liberty of subjects:

If a Subject be taken prisoner in war; or his person, or his means of life be within the Guards of the enemy, and hath his life and corporall Libertie given him, on condition to be subject to the Victor, he hath Libertie to accept the condition; and having accepted it, is the subject of him that took him; because he had no other way to preserve himself.¹⁸¹

The suggestion that such a man has no obligation to obey, on the grounds that he has merely been compelled to submit out of fear, is scornfully dismissed at the end of the chapter on the dissolution of commonwealths as nothing more than a fraudulent pretence.¹⁸² Finally, the same argument is triumphantly reiterated in the closing pages of the Review and Conclusion. A man who finds himself conquered is at liberty to 'submit himself to his new Master' and 'may do it lawfully, if hee will. If therefore he doe it, he is undoubtedly bound to be a true Subject: For a Contract lawfully made, cannot lawfully be broken.'¹⁸³

¹⁸¹ Hobbes 1996, ch. 21, p. 154.

¹⁸² Hobbes 1996, ch. 29, p. 230.

¹⁸³ Hobbes 1996, Conclusion, p. 485.

circumstances in and for which it was produced. My general conclusion is that one of the conditions for accepting any suggested interpretation of a political theory should be that these links must themselves be of an historically credible kind. My particular conclusion is that this condition is so much lacking, in the case of the deontological reading of Hobbes's theory of political obligation, that the validity of this interpretation must for this reason alone be regarded as questionable.

Conquest and consent: Hobbes and the engagement controversy

The opening months of 1649 saw the climax of the English revolution: the king was executed, the monarchy and House of Lords abolished, the Commonwealth of England proclaimed. But this outcome was far more radical than most moderates in the presbyterian party had wanted, and far more revolutionary than the instinctive royalism of most English people could readily countenance. One of the immediate tasks of the new government was accordingly to persuade such moderate and hostile groups that the revolution was really over. They had to be given reasons for 'engaging' with the newly established Commonwealth, accepting and swearing allegiance to it rather than trying to continue the fight.¹ There was a need, in other words, for a theory of political obligation in terms of which the new government could be legitimated. And it was clear that any such theory would in turn have to satisfy two contrasting conditions. It would need to be couched in a sufficiently familiar form to be acceptable to presbyterian and even royalist opinion. But it would need at the same time to be capable of performing the revolutionary task of justifying the duty to obey a merely *de facto* and usurping political power.

The Council of State was plainly aware of the need, which it sought to meet in March 1649 with its own Declaration, 'expressing the grounds of their late proceedings, and of setting the present government in the way of a free state'.² The arguments of the Declaration echoed those of a number of government propagandists, notably John Milton in his *Tenure of Kings and Magistrates*, first published in February 1649.³ The basic

This chapter is a revised and updated version of an essay that originally appeared under the same title in *The Interregnum: The Quest for Settlement*, ed. G. E. Aylmer (London, 1972), pp. 79-98.

¹ To 'engage' with the new government was to accept the oath of 'engagement' to its authority.

² See *Declaration* 1649, and for its significance in the ensuing controversy see Wallace 1968, pp. 44-5.

³ For the date of publication (13 February 1649) see Dzelzainis 1991, p. xxvii.

claim on which they agree is that any lawful regime must originate in a decision by the people to consent to its establishment.⁴ The execution of Charles I is thus represented as the removal of a tyrant and a reassertion of the people's right to set limits to the powers of government.⁵

This type of justification, however, was of strictly limited value outside the ranks of the Independent party. Such arguments could scarcely be expected to persuade any former royalists, since most of them derived their views on political obligation from the simple assertion that kings enjoy a God-given right to rule.⁶ But nor could such arguments be expected to persuade many members of the presbyterian party. They had admittedly supported the revolution up to the time of Colonel Pride's purge of Parliament in December 1648, and many of them would doubtless have been prepared to endorse the premises of the government's case.⁷ But the presbyterians had also sworn the Solemn League and Covenant, which included an oath binding them 'to preserve and defend the King's Majesty's person'.⁸ It was difficult to see how any but the most cynical could now justify taking oaths and paying allegiance to the very power that had deprived the king of his life.⁹

It was at this juncture that a different defence of the new government began to be urged by a studiously moderate (though mainly presbyterian) group of political writers.¹⁰ The basic contention put forward by these theorists was that St Paul's injunction to obey the powers that be as ordained of God can validly be argued even in the case of usurping powers. The claim is historically important, and worth examining in some detail, for at least two reasons. It was this defence of *de facto* sovereignty that in the event supplied exactly the type of argument needed to persuade the presbyterians and even the royalists of their duty to 'engage' with the

⁴ Milton 1991, pp. 8–11.

⁵ Milton 1991, pp. 8, 32–3.

⁶ On the prevalence of this assumption see Scholchet 1975, Dally 1979 and Sommerville 1986b, pp. 9–56.

⁷ This is clear, from the reactions of William Prynn and Edward Gee, both presbyterians who denounced the Commonwealth on the grounds that it was established without the consent of the people. See above, chapter 7 section IV and cf. Prynn 1649, pp. 3, 13 and [Gee] 1650, pp. 11–12.

⁸ *Constitutional Documents* Article 3, p. 269. For the anxiety of the presbyterians to achieve compatibility between their previous engagements and any new demands for allegiance see Dury 1650c and *Memorandums* 1650, Sig. A, 3.

⁹ For the civil war as a case of conscience see Wallace 1968, pp. 9–12 and Thomas 1993, pp. 43–6. On the place of apparently contradictory promises in the ensuing controversy see Vallance 2001.

¹⁰ For the pioneering treatment of these writers see Zagorin 1954, pp. 62–77. The two fundamental studies remain Wallace 1964 and Wallace 1968. More recent contributions include Gunn 1969, pp. 82–7; Baumgold 1988, pp. 125–32; Sommerville 1992, pp. 63–70.

new regime.¹¹ A further reason for studying these writers is that their arguments, and the conditions out of which they arose, provide a context within which the main aims and several of the most characteristic doctrines of Hobbes's political theory can best be understood.¹² In Hobbes's intellectual house there are of course many mansions. But the principal thesis of the present chapter is that one of Hobbes's aims in *Leviathan* was to contribute to precisely this debate about the rights of *de facto* powers at this critical juncture in the English revolution.

II

One justification for remaining passively obedient to the new Commonwealth, even if one disapproved of it, was provided by invoking the authority of Calvin. His *Institutes of the Christian Religion* had repeatedly emphasised the duty of private citizens not to meddle in affairs of state.¹³ This sentiment was in turn echoed by many of the more religious-minded among the *de facto* theorists. The most indefatigable of these was John Dury, a presbyterian divine who spent much of his life travelling abroad in the interests of Protestant reunion. He returned to England in 1645, took the Covenant and turned himself into a vocal supporter of Parliament.¹⁴ Dury limited himself exclusively to Calvin's argument in publishing what was in fact the first of the *de facto* defences of the Commonwealth, *A Case of Conscience Resolved*, which initially appeared in March 1649.¹⁵ Dury simply declares that, even if questions arise about the legitimacy of our rulers, we 'ought not to apply' ourselves 'to intermeddle in their affairs'.¹⁶ His later contributions to the debate all return to the same theme. 'All private men', as he puts it in his *Considerations of 1650*, 'ought to walk unblameably under the superior powers of the World', since 'it doth not belong to us to judge definitively of the Rights which the Supream Powers over us in the World, pretend to have unto their places'. The lesson, as he expresses it with his usual repetitiousness,

¹¹ Although they seldom go so far as to describe themselves as *de facto* theorists, they frequently make use of the distinction between *de iure* and *de facto* powers when discussing the crisis of 1649.

See, for example, *Discourse* 1650, pp. 16, 22.

¹² When I originally put forward this claim, I ought perhaps to have made it clearer that I did not of course mean that these writers provide the *only* immediate context for understanding the character of Hobbes's theory of obligation. For corrections and developments of my argument see Burgess 1986, Baumgold 1988, Burgess 1990.

¹³ For Calvin's insistence that only magistrates, never individuals, can question established powers see Skinner 1978b, pp. 219–21, 230–3.

¹⁴ For these details see DNB *sub* Dury and cf. Turnbull 1947, pp. 249–51.

¹⁵ [Dury] 1649; cf. Wallace 1968, p. 44.

is that it is 'no part of our Christian Profession to become Judges of the great ones of this World'.¹⁷

A more secularised version of this argument consisted, equally simply, of pointing out that there had already been too many disputes over matters of government, that these had led only to conflict and bloodshed, and that the time had come to settle for peace at any price. This line of thought proved especially attractive to surviving royalists, who later liked to insist that their own non-intervention in the affairs of the Commonwealth constituted the badge and guarantee of their political innocence. Something of the same attitude can be seen in the preoccupation of the royalist poets in the 1650s with the pleasures of pastoral retreat (as in Edmund Waller, Abraham Cowley and Henry Vaughan) and in the popularity of such encouragements to rustic retirement as Izaak Walton's *Compleat Angler*, first published in 1653.¹⁸

A similar outlook is reflected in several of the *de facto* defences of the Commonwealth. Anthony Ascham brings to a close his *Bounds & Bonds of Publique Obedience* in 1649 by expressing the earnest hope that his fellow-countrymen will now prevent anyone from 'coming on the Stage to Act our late Tragedy over againe'.¹⁹ Marchamont Nedham in his *Case of the Commonwealth* of 1650 likewise seeks to vindicate not merely the 'necessity and equity' of submission to the new regime but its 'utility and benefit' as well. The greatest benefit to be gained, he adds, is that the Commonwealth will 'have leave to take breath a little in the possession of a firm peace' if everyone now agrees to 'close cordially in affection' and 'submit and settle'.²⁰ The same overwhelming desire for 'the preservation of a firm and lasting peace', the same hope for a 'unity of minds' and 'a restraining of the hands' provides a recurrent motif of *de facto* theory throughout the months following the regicide.²¹

There are many elements of the same temperament to be found in Hobbes's political works.²² He frequently condemns ambitious subjects who meddle in affairs of state as one of the causes of the dissolution of commonwealths. 'The Popularity of a potent Subject', as he puts it in *Leviathan*, 'is a dangerous Disease', since the people are always liable to be

¹⁷ [Dury] 1650a, p. 10. For the attribution see Wallace 1968, p. 394. As Wallace notes, Dury's tract went through four editions in 25 many months.

¹⁸ For this theme see Rostvig 1954, pp. 19–22 and Thomas 1965, pp. 201–2.

¹⁹ [Ascham] 1649b, pp. 36–7. For the attribution see Wallace 1964, p. 391.

²⁰ Nedham 1650, p. 127.

²¹ See, for example, *Logical Demonstration* 1650, pp. 2–3; *Constant Man's Character* 1650, pp. 71–2; *Memorandum* 1650, p. 7.

²² For this theme see Thomas 1965, an article of exceptional importance.

'seduced from their loyalty' by 'the flattery of Popular men' and thereby 'drawn away from their obedience to the Lawes'.²³ He also lays much emphasis on the value of being able to leave political matters for others to decide while one gets on with one's own life. He accordingly treats it as one of the disadvantages of democracy that everyone has a hand in public business. He assures us in a withering passage in *De Cive* that democratic assemblies merely encourage childish vanity, leading their members to neglect their families for more glamorous but less genuine duties.²⁴ Conversely, he regards it as a special virtue of monarchies that subjects are able to lead a retired life and keep out of trouble whoever may be in charge.²⁵ As he explains in the same chapter of *De Cive*, anyone under a monarchy 'who is prepared to live quietly' will be 'free of danger', for 'only the ambitious suffer', while 'the rest are protected from being wronged'.²⁶ Most insistently of all, he argues that the course of prudence in any civil society will always be to hold fast to whatever security has been achieved, and to prevent anyone from acting – even from the highest motives – in such a way as to endanger the peace. He admits in *Leviathan* that the need for such unconditional obedience may appear to bring with it many inconveniences. But he retorts that the greatest inconvenience that any government can bring will always be painless by comparison with the sole alternative, namely 'the miseries, and horrible calamities, that accompany a Civill Warre'.²⁷

Such demands for submission in the name of peace doubtless had some effect. But they could scarcely be said to offer any new arguments to anyone still in doubt about the godliness or even the legality of paying allegiance to the new regime. The problem of persuading such persons of tender conscience remained the same. They needed to be convinced that it would not merely be beneficial to submit and obey, but in some way compatible with their existing oaths and covenants.

The credit for originating the main argument in terms of which this scruple was overcome seems to be due to Francis Rous. As I have already noted in chapter 9, Rous first outlined his argument in a brief but important tract of April 1649 entitled *The Lawfulness of Obeying the Present Government*.²⁸ A leading presbyterian, Rous had sat in the Parliaments of

²³ Hobbes 1996, ch. 29, p. 229; ch. 30, p. 234. See also Hobbes 1969a, pp. 141–2, 175–8 and Hobbes 1983a, XII, X–XIII, pp. 191–4.

²⁴ Hobbes 1983a, X, XV, p. 179; cf. Hobbes 1998, pp. 124–5.

²⁵ Hobbes 1983a, X, VII, pp. 174–5.

²⁶ Hobbes 1998, p. 120; cf. Hobbes 1983a, X, VII, pp. 174–5.

²⁷ Hobbes 1996, ch. 18, p. 128.

²⁸ [Rous] 1649. For the attribution see Wallace 1964, p. 390.

the 1620s as well as in the Long Parliament since its opening in 1640.²⁹ He had taken the Covenant in 1644, going over to the Independent party (like many other 'engagers') shortly before the execution of Charles I.³⁰ His pamphlet seeks to establish 'that though the change of a Government were believed not to be lawfull, yet it may lawfully be obeyed'.³¹ He thus begins by offering a prudent and important concession: he makes no attempt to deny that the new regime is unlawful; he only attempts to show that it may not be unlawful to obey such a regime.

Rous's ensuing argument may be said to proceed in three simple steps. He begins by taking his stand squarely on 'the duty of submission and obedience to Authority' laid down by St Paul in the opening verses of chapter 13 of the Epistle to the Romans.³² This was the most widely quoted text on the question of political obligation throughout the seventeenth century. It represented an inescapable authority, one that no presbyterian or even royalist opponent of the new regime could possibly fail to accept. Rous's next step is to ask precisely what powers were in fact accepted by St Paul, and were subsequently accepted throughout English history, as having a title to be obeyed. He answers that, even though 'in this Nation many persons have beene settled in supreme power and authority by meere force without title of inheritance', this consideration has never been regarded hitherto as a sufficient reason for refusing them the obedience that the apostle commands.³³ Rous's third step then follows readily. St Paul's injunction must be taken literally as a command to obey *whatever* powers are in a position to demand our obedience:

When a question is made whom we should obey; it must not be lookt at what he is that exerciseth the power, or by what right or wrong he hath invaded the power; or in what manner he doth dispencc it, but onely if he have power. For if any man doth excell in power, it is now out of doubt, that he received that power of God; Wherefore without all exception thou must yield thyself up to him and heartily obey him.³⁴

Rous's conclusion is thus that the possession of power is in every instance an indication of God's will and providence, and consequently a sufficient title to be obeyed.

Rous's argument was of the utmost importance throughout the ensuing debate, and many people clearly welcomed it immediately and with relief. To the most tender consciences, however, his ingenious trans-formation of passive obedience into a defence of the revolution must have seemed more shocking than persuasive, and no sooner had Rous

²⁹ Shaw 1900, vol. 1, p. 205.

³⁰ Wallace 1964, p. 385.

³¹ [Rous] 1649, p. 1.
³² [Rous] 1649, p. 1. ³³ [Rous] 1649, p. 4. ³⁴ [Rous] 1649, p. 7.

published his pamphlet than a series of counter-attacks began to appear. Rous's critics all focus on the same two vulnerable points in his argument. First they question his interpretation of St Paul's injunction to obey the powers that be. Rous, they object, introduces a dangerous confusion between the genuine authority that God ordains and the mere possession of power. The anonymous author of *The Grand Case of Conscience Stated*, whose tract appeared within two months of Rous's pamphlet, puts the objection with particular force.³⁵ While authority is undoubtedly 'ordained by God', our actual rulers are merely 'constituted by men' and have at most 'Gods permission', not his ordinance.³⁶ The moral is that 'Men in Authority' are 'to be obeyed no further than as acting according to that Authority'.³⁷ A large number of Rous's other opponents took up a similar stance. They agree that the crucial text from Romans 13 will yield the right answer 'if clearly opened and rightly understood'. But they insist that the correct interpretation must be that the Apostle is referring not to any 'powers that be' but only to lawfully constituted authority. This alone is ordained of God, although he may well permit (but never ordain) many forms of tyranny. And while the apostle commands us 'not to resist their power', he never commands us 'not to resist their Tyranny'.³⁸

The other argument mounted by Rous's critics was a closely related one. The reason, they maintain, why St Paul must have intended a distinction between power and authority is that otherwise there could never be any justifiable resistance to tyrannous government. Once more the author of the *Grand Case* strongly emphasises the point. If we grant 'that men assuming to themselves the place and power of Magistrates, by what right or means soever they came by it, must be obeyed, surely it would be the greatest inlet to tyranny in the world, and the speediest means of destroying states that could be invented'.³⁹ Rous's later critics all concur. Rous's doctrine would 'open too wide a gap to rebels' powers and loyal subjects' misery' and would encourage 'intrusion into the seat of authority' by those without any lawful claim to it.⁴⁰

To any but the most cynical, these responses must have seemed a serious challenge to Rous's case. Once the distinction between powers ordained and powers merely permitted by God was firmly drawn, the way was open first to insist that God never ordains but often permits the wicked to rule, and thence to infer that the rule of the Rump must be just

³⁵ For the date of publication (22 June 1649) see Wallace 1964, p. 391.

³⁶ *Grand Case* 1649, p. 3. ³⁷ *Grand Case* 1649, p. 3.

³⁸ See [Ward] 1649, p. 8 and *Enquiry* 1649, pp. 9-10.

³⁹ *Grand Case* 1649, p. 3. ⁴⁰ [Ward] 1649, p. 8; *Enquiry* 1649, p. 10.

such a wicked power, sent to vex but also to test sinful men. Meanwhile the royalists had arrived at the same conclusion. One poignant example is provided by John Wenlock, who records his reply to a soldier who assured him that the victories of Parliament over the king were a direct sign of God's providence:

Alas, friend, that is no good argument on your side, for we know that God doth many times permit wicked men to prosper in their ways, to their own destruction; and if you were an historian, you would know that God hath suffered the Turks so to prevail against the Christians for many hundred years because of their sins.⁴¹

The fact that God so often allows the wicked to prosper is, as these writers concede, one of the great mysteries. But this makes them all the more anxious to insist that, although such evils may be permitted, they are never positively ordained.

While Rous's position was being undermined by such doubts, the need for an effective defence of the new regime was becoming all the more urgent. The Rump found its authority increasingly called into question throughout 1649 by a strange but predictable coalition of royalist and Leveller arguments. The Levellers turned against the Commonwealth the weapons they had previously used against the king, declaring that the new government no less than the old was a tyranny based on ignoring the will of the people.⁴² Meanwhile the royalists fanned the widespread hatred of the Rump with the publication of *Eikon Basilike*, their celebration of the tragic and appealing figure of 'Charles, King and Royal Martyr'.⁴³ At the same time they began to mount a series of highly emotive denunciations of the impiety as well as the illegality of the new regime. Bishop Juxon's *The Subjects Sorrows*, offering 'lamentations' for a king 'unjustly put to death by his owne people' appeared as early as March 1649.⁴⁴ Fabian Philipps's *King Charles the First no Man of Blood but a Martyr for his People* was in print by June.⁴⁵ By the end of the summer, the need for a convincing defence of the Commonwealth had become yet more urgent

⁴¹ On Wenlock and his *Declaration* see Hardacre 1956, p. 83.

⁴² This, for example, was one of John Lilburne's arguments as early as February 1649 in his *Englands New Chains Discovered*. See Lilburne 1964, pp. 165, 167.

⁴³ *Eikon Basilike* 1649. The title-page of Thomason's copy notes that the first impression appeared on 9 February 1649.

⁴⁴ [Juxon] 1649. The attribution and date of publication are given on the title-page of Thomason's copy. William Juxon (1582–1663) was Bishop of London, and after the restoration Archbishop of Canterbury.

⁴⁵ [Philipps] 1649. For the date of publication see the title-page of Thomason's copy and for the attribution see DNB.

as a result of the actions of the government itself. During October it took the aggressive step of requiring an oath of 'Engagement' to be sworn to its authority, and in the following January it demanded that the oath be taken by all men over the age of eighteen.⁴⁶ The question of political obligation was thus turned into a formal test of citizenship.

It was of course possible in this predicament simply to hold fast to the providentialist case in favour of engagement originally presented by Rous. This approach was duly followed by many defenders of the Commonwealth, and probably remained the most widely used argument in favour of subscribing to the new oaths of allegiance.⁴⁷ As the anonymous author of *The Engagement Vindicated* put it, writing in the opening week of 1650, 'every change' in 'great Bodies Politick' must be seen as 'a signal act of Providence' and must for that reason be seen as a direct reflection of God's will.⁴⁸ William Jenkin, writing as late as November 1651, likewise claims that all alterations of civil government reflect 'the wise and righteous providences of God', so that 'a refusal to be subject to this present Authority' is equivalent to 'a refusal to acquiesce in the wise and righteous pleasure of God'.⁴⁹

The difficulty, however, was that Rous's opponents had made it hard to accept that this line of reasoning offered adequate grounds for actively paying allegiance to the new regime. Just as the invocations of providence continued, so the attacks continued on the interpretation of the Pauline injunctions upon which they depended.⁵⁰ The polemical situation was one of stalemate. New arguments in favour of submitting in conscience to the Commonwealth government were urgently required.

One argument floated at this juncture sought to vindicate the lawfulness of engagement by the principles of radical Independency. As we have seen, this had initially been the government's own line of defence, and it continued throughout the ensuing controversy to offer a means of claiming that *de facto* powers can be accepted *de iure* by their own subjects. Henry Parker and Henry Robinson both lent their support to the engagement with the claim that the new government reflects the will of the

⁴⁶ *Constitutional Documents*, p. 391. ⁴⁷ Wallace 1963, pp. 46, 48.

⁴⁸ *Engagement Vindicated* 1650, p. 3. For the date of publication (7 January 1650) see Wallace 1964, p. 395.

⁴⁹ Jenkin 1651, p. 3. For other providentialist defences of engagement see *Logical Demonstration* 1650, p. 5, in which the civil war is treated as an appeal to heaven, and *Engagement Vindicated* 1650, pp. 2–3, in which the outcome is ascribed to providence.

⁵⁰ For example, Rous's original pamphlet was attacked in this fashion in *Traptors Deceitful* 1650, while *Engagement Vindicated* was similarly attacked in *Arguments and Reasons* 1650. See too the criticism of Dury's numerous contributions to the debate in *Answer to Mr J. Dury*. Wallace 1964, pp. 397, 399, 402 has established that all these anti-engagement tracts can be dated to 1650.

people,⁵¹ while the republication of Milton's *Tenure of Kings and Magistrates* at the end of 1649 suggests that this line of thought was felt to have continuing relevance.⁵² Even Gerrard Winstanley, the leading spokesman for the Diggers, eventually wrote in defence of the engagement in similar terms.⁵³

The most pressing ideological need, however, was for a more conservative defence of engagement, and it was clear what form this defence would have to take. The vulnerable feature of Rous's case had been his questionable interpretation of St Paul's injunction to obey the powers that be. What was needed was an argument in which less emphasis was placed on the need to understand God's purposes, and more on the practical reasons for obeying *de facto* powers. There was an existing tradition – deriving mainly from Grotius – in which the rights of *de facto* rulers (especially conquerors) had already been discussed, and in which the obligation to obey such powers had been vindicated less by invoking God's providence than by stressing the needs of civil society, and especially the paramount need for security and peace. I next wish to show how this line of thought was taken up and developed at this precise juncture in the English revolution. I want in particular to focus on a group of lay apologists for engagement whose specific aim was to rescue the providentialist defence of *de facto* powers from the vulnerable position in which Rous had left it, and to defend his position by means of these very different arguments.

III

The first writer to supply a more secularised defence of *de facto* powers was Anthony Ascham,⁵⁴ a protagonist of Parliament throughout the 1640s who was shortly to pay with his life for supporting the new regime when he was murdered on his arrival as ambassador to Spain in 1650.⁵⁵ As I have already noted in chapter 9, Ascham had published a *Discourse* at the end of 1648 treating the rights of conquerors in the manner of Grotius.⁵⁶ He now turned, in two pamphlets specifically directed against

Rous's critics, to show that this type of argument could be deployed to rescue Rous's defence of the Commonwealth. The first of these counter-blasts appeared in July 1649 as *A Combate Between Two Seconds*,⁵⁷ and was shortly followed by a longer tract entitled *The Bounds & Bonds of Public Obedience*.⁵⁸ By November 1649 Ascham had added ten new chapters to his original *Discourse* and reissued it, in a more polemical and topical form, under the title *Of the Confusions and Revolutions of Governments*.⁵⁹

These tracts reiterate Rous's suggestion that the new government can lawfully be obeyed even if it is not a lawful power.⁶⁰ They also contain something – although not very much – of Rous's invocations of God's providence as the touchstone for obedience.⁶¹ But at the same time they introduce two new and contrasting lines of argument. One is the suggestion that an understanding of political obligation depends less on an awareness of God's providence than on a recognition of the needs of political life. The highest goal in any state is said to be the maintenance of what the *Combate* calls 'public peace and quietness' and 'the preservation of the commonwealth from destruction'.⁶² 'The soul of a state', as *The Bounds & Bonds* explains, consists in 'the administration of public justice and protection', while 'the end of all law and Government' is 'to preserve our persons and estates'.⁶³ The same assumptions recur in perhaps the most important of the chapters added to *Of the Confusions and Revolutions of Governments*. The 'chief end' of government is now described as 'Security and Protection', and we are warned that we must be prepared to yield up 'much of our generall rights' in the name of attaining that end.⁶⁴

Ascham corroborates these conclusions by considering the alternative to yielding up our rights. The sole alternative, the *Combate* maintains, is to lose 'all justice and order, give up all to power, and so bring confusion upon the whole'.⁶⁵ *The Bounds & Bonds* draws the same lesson still more emphatically. Unless we submit, we shall be resolving in effect that 'the Common-wealth were dead, and each man were left in his naturals,

⁵⁷ [Ascham] 1649a. For the attribution see Wallace 1964, p. 391. Ascham's argument is mainly directed against [Ward] 1649.

⁵⁸ [Ascham] 1649b. For the attribution see Wallace 1964, pp. 391–2. Ascham is here replying to *Grand Case* 1649 as well as to [Ward] 1649.

⁵⁹ Ascham 1649c. Like the *Discourse*, this appeared under Ascham's own name.

⁶⁰ [Ascham] 1649a, p. 6; [Ascham] 1649b, pp. 2–3; Ascham 1649c, pp. 31, 47.

⁶¹ See [Ascham] 1649a, p. 7; [Ascham] 1649b, pp. 22–3; Ascham 1649c, pp. 109–10, 115, and pp. 157–9, the conclusion of the *Confusions*, where Ascham reverts to a purely providentialist argument.

⁶² [Ascham] 1649a, p. 13. ⁶³ [Ascham] 1649b, pp. 27, 31.

⁶⁴ Ascham 1649c, p. 109. ⁶⁵ [Ascham] 1649a, p. 14.

⁵¹ See Jordan 1942, pp. 140–202; Mendle 1995, pp. 164–5, 177–9.

⁵² Dzelzainis 1991, p. xxvii notes that the second edition may have been in print as early as October.

⁵³ Winstanley 1968, p. 15.

⁵⁴ On Ascham see Zagorin 1954, pp. 64–7, Colman 1962, pp. 197–239, Wallace 1968, pp. 30–63,

Gunn 1969, pp. 82–7; Tuck 1979, pp. 123–4, 152–4.

⁵⁵ Bell 1990, p. 261. Ascham arrived on 26 May and was assassinated on the following day.

⁵⁶ Ascham 1648. Grotius provides the inspiration for Ascham's discussion in chapters 3 and 4, as Ascham himself (p. 10) points out.

to subsist of himselfe, and to cast how hee could in such a state of warre, defend himselfe from all the rest of the world, every man in this State having an equall right to every thing'.⁶⁶ Both aspects of the argument are summarised in one of the new chapters added to the *Confusions*. 'He who would keep his Naturall Liberty without Relation to a State, shall loose that and everything else; and he who will resolve to loose that Liberty may conserve to himselfe the enjoyment of all necessary things'.⁶⁷

The upshot is that Ascham insists on a duty to obey any power capable of providing us with protection and security. As the *Combate* puts it, there is already an obligation to obey if peace is being preserved, simply 'in regard of common good'.⁶⁸ In *The Bounds & Bonds* the argument is applied to the case in hand. With 'the whole Kingdome now receiving all law, protection and subordinate Magistracy' from the Commonwealth regime, we have a duty to obey it simply because 'we receive necessary protection' from it.⁶⁹ The *Confusions*, in its final additional chapter, reiterates the claim in consciously secular tones. 'It is but reasonable, just and Necessary, that we obey those, who in good and convenient things command and Plenarily possesse us'.⁷⁰

The first change of emphasis introduced by Ascham is thus that he places his main stress on the needs of civil society. The vulnerable interpretation of the Pauline injunctions, on which Rous's case had rested, is effectively bypassed. The other change is that he begins in consequence to wobble over the question of whether it is necessary to concede (as Rous had done) that such powers are unjust. He begins, that is, to question the relevance of the distinction on which the counter-attack on Rous had relied, and thereby raises the possibility of bypassing the argument used by the presbyterians to dismantle Rous's case.

There is no suggestion of such a *démarche* in the *Combate*, but there is a distinct hint of it in *The Bounds & Bonds*. To say, Ascham complains, that those 'who have us in their full possessing may be obey'd in no lawful things' is tantamount to saying that no one has ever lived under a lawful power, since 'we and our forefathers for the most part, have liv'd under no better Titles then Plenary possession'.⁷¹ By the time we come to the additional chapters in the *Confusions*, Ascham is on the brink of concluding that the present regime is not unlawful after all. Why may we not regard a government as lawful, he rhetorically asks, even if it is not founded upon a 'formall succession of Persons', so long as it maintains

⁶⁶ [Ascham] 1649b, p. 27.

⁶⁷ Ascham 1649c, p. 138.

⁶⁸ [Ascham] 1649a, p. 15.

⁶⁹ [Ascham] 1649b, p. 24.

⁷⁰ Ascham 1649c, p. 157.

⁷¹ [Ascham] 1649b, pp. 14-16.

'the same Law and Equity, which the Excluded Magistrates ought to have done, if they had succeeded'.⁷²

Ascham's attempt to rescue and reformulate Rous's case was not at first taken up in the controversy about engagement. It is true that John Dury in his next pamphlet, his *Considerations* of December 1649, repeated Ascham's claim that 'we are bound to shew fidelity unto those of whom we desire protection'.⁷³ But Dury was always opportunistic in exploiting all available arguments, and although he mentions this doctrine he mainly continues to rely on the providentialist contention that 'it is not possible that any can attain to the height of power, without Gods disposall of it into his hands'.⁷⁴ It is also true that we encounter a tone more pragmatic even than Ascham's in Albertus Warren's *The Royalist Reform'd*, which was published within a month of Ascham's *Confusions and Revolutions of Governments*. But Warren's tract is a genially cynical affair, with none of Ascham's careful attempts to meet the remaining scruples of moderates. He merely insists that, if we 'persevere in screwing rigor of general lawes up to the height of injury', we shall make ourselves 'a burden unto our fellow Subjects' and 'weaken the esteem of the commonlawes wholesome constitution'.⁷⁵

Although it seemed at first that Ascham's argument might not be taken up, the situation began to alter as soon as he published his one further contribution to the debate. When he was denounced by the great Anglican casuist Robert Sanderson,⁷⁶ he responded in January 1650 with *A Reply to a Paper of Dr. Sanderson*, restating with greater confidence the new emphases he had introduced into the controversy.⁷⁷ He now sidesteps the question of providence at the outset by claiming that, although governments may have been 'ordained sometimes and in some Places extraordinarily by God', yet they are 'ordinarily now' set up 'by man in his publique Necessities' with the aim of ensuring 'that nations may be conserved from Confusions and Private injuries'.⁷⁸ At the same time he comes even closer to withdrawing Rous's original concession that the new government is an unlawful power. A situation may properly

⁷² Ascham 1649c, p. 137.

⁷³ [Dury] 1650a, p. 16. For the date and attribution see Wallace 1964, p. 394.

⁷⁴ [Dury] 1650a, p. 13.

⁷⁵ Warren 1649, p. 44. For the date of publication (26 November 1649) see Wallace 1964, p. 394.

⁷⁶ Sanderson replied to Ascham in [Sanderson] 1649. For the date of publication (1 December 1649) and the attribution see Wallace 1964, p. 394.

⁷⁷ [Ascham] 1650. For the date of publication (9 January 1650) and the attribution see Wallace 1964, p. 395.

⁷⁸ [Ascham] 1650, p. 2.

be described as lawful, he now suggests, even if it is not strictly legal, for we ought to accept that something can 'be Lawfull which is not so much Legall as Equitable'. Besides which, he adds, 'in this state of confus'd families, and uncertainty' the idea of providing a legal proof of anyone's right to rule is probably a moral impossibility.⁷⁹

Ascham's mode of argument, concerned less to answer the immediate 'case of conscience' than to give a general account of political obligation, never commended itself to the casuists or presbyterian divines who mainly kept up the debate about engagement over the next two years. Among a group of lay theorists, however, this way of defending *de facto* powers had an immediate impact. The first signs of this influence can be traced in an anonymous tract entitled *A Discourse Concerning the Engagement*, which was published within a month of Ascham's *Reply* to Sanderson.⁸⁰ Thereafter the same line of thought reappears in a number of important tracts over the next two years: in the *Memorandums* of a conference held in London in early 1650 to discuss the engagement;⁸¹ in Marchamont Nedham's *Case of the Commonwealth* and George Wither's *Respublica Anglicana* of the same year;⁸² in John Drew's influential tract of 1651, *The Northern Subscribers Plea, Vindicated*;⁸³ and finally in Francis Osborne's *Perswasive to a Mutuall Compliance* of early 1652.⁸⁴

All these lay defenders of engagement take up Ascham's two distinctive arguments. They manage, at least to some extent, to avoid questions about providence by concentrating instead on what political society is for, and answering that it is essentially a product of necessity and a means to secure protection and peace. This is first intimated in the *Discourse*, which speaks of the 'dismal confusion' that must 'unavoidably follow' any refusal of allegiance.⁸⁵ The same judgement is strongly underlined by Nedham, who opens his discussion by claiming that there is 'a necessity of some government at all times' to ensure 'the maintenance of civil conversation and to avoid confusion'.⁸⁶ The author of the *Memorandums* agrees that the purpose of government is to provide 'a mutual relation for safetie', a means to ensure 'that the Publick may be preserved in peace', so that the 'ruine of all' can be avoided.⁸⁷ Thereafter the same

⁷⁹ [Ascham] 1650, p. 4.

⁸⁰ *Discourse* 1650. For the date of publication (29 January 1650) see Wallace 1964, p. 396.

⁸¹ *Memorandums* 1650. For the date of publication (21 August 1650) see Wallace 1964, p. 400.

⁸² See Nedham 1969 and [Wither] 1650. For the first edition of Nedham's tract (May 1650) see Knachel 1969, p. ix. For the attribution of *Respublica Anglicana* to Wither see Wallace 1964, p. 401.

⁸³ Drew 1651. For the date of publication (August 1651) see Wallace 1964, p. 404.

⁸⁴ [Osborne] 1811. For the date of publication (18 February 1651) see Wallace 1964, p. 405.

⁸⁵ *Discourse* 1650, p. 5. ⁸⁶ Nedham 1969, p. 30. ⁸⁷ *Memorandums* 1650, pp. 12–13.

note is struck in several other tracts, perhaps most forcefully in Osborne's *Perswasive to a Mutuall Compliance*. Osborne ends with a warning that it would be 'an act of the highest indiscretion for people so long beaten by the cruell stormes of a civil warre to refuse for the present any harbour, though never so incommodious, and to venture againe the wrack of so sacred a vessel as the commonwealth'.⁸⁸

We can appreciate, according to these writers, the compelling reason for these commitments if we reflect on the essentially anti-social nature of man. Here again they take up an argument that Ascham had particularly emphasised. Nedham traces the origins of government to the fact that the world 'grew more populous and more exceeding vicious', thereby generating a need for 'someone more potent than the rest that might restrain them by force' and prevent the 'grand enormities' that would otherwise have ensued.⁸⁹ The same pessimistic assumptions can be found in the *Memorandums*, in which we are told that men in civil society must be ruled with 'no intermission', since the need for absolute power to restrain them is 'absolutely necessarie for the preservation of humane societies'.⁹⁰ Once again Osborne offers an unusually forthright version of the same argument. Until our forefathers learned to submit to government, and not to oppose 'successful and irresistible powers', they condemned themselves to living in a state of war, with their births 'dated from some foraine conquest or their deaths from a civil dissention at home'.⁹¹ The implication – as Sanderson had already pointed out in shocked tones in his critique of Ascham – is that self-preservation must be regarded not merely as the basic motive for political obedience but as 'the first and chiefest Obligation in the World'.⁹²

The most notable feature of these discussions is that several of these writers corroborate these claims by making fully explicit the two further arguments that Ascham had only adumbrated. The view of political obligation at which Ascham had in effect arrived was that protection constitutes a sufficient title to allegiance. While he never explicitly states this doctrine, however, it was now enunciated by several of the writers I am considering in unequivocal terms. As the author of the *Discourse* proclaims, there is simply a 'mutual relation of Protection and Allegiance'.⁹³ Marchamont Nedham repeats that 'protection implies a return of obedience', and adds in more minatory tones that 'it cannot in reason be expected that those who refuse obedience to their authority should receive

⁸⁸ [Osborne] 1811, p. 157.

⁸⁹ Nedham 1969, p. 15.

⁹⁰ *Memorandums* 1650, p. 7.

⁹¹ [Osborne] 1811, p. 157.

⁹² [Sanderson] 1649, p. 6.

⁹³ *Discourse* 1650, p. 11.

the benefit of protection' from it.⁹⁴ Thereafter we find the same commitment endorsed by all the writers I have singled out. The author of the *Memorandum* declares that 'Protection and Allegiance are relatives'.⁹⁵ George Wither agrees that 'I am bound to give subjection in all lawful things, where I receive protection'.⁹⁶ John Drew applies the maxim to the case in hand by arguing that 'the mutuall relation of protection and Allegiance presseth us to an owning and realiance with them (our present Powers) as our actual Protectours'.⁹⁷

The other conclusion at which Ascham had only hinted was that, since protection constitutes a sufficient title to allegiance, the original concession made by Rous can perhaps be withdrawn. Again this suggestion is enthusiastically taken up by the writers I am considering, all of whom explicitly deny that the distinction between powers ordained and powers merely permitted by God has any force. All of them in consequence repudiate the counter-attack mounted by Rous's opponents by declaring that the new government not only has a just title to rule, but a title no less just than that of any other government. The author of the *Discourse* already permits himself this conclusion, albeit hesitantly. Some people object, he admits, that only 'lawful powers, a power of right' are ordained of God and ought to be obeyed. But perhaps, he goes on, 'our present Powers may fall within that compass'.⁹⁸ Marchamont Nedham exhibits no such hesitation at all. 'It is undeniably evident', he declares, 'that the present prevailing party in England have a right and just title to be our governors'.⁹⁹ Nedham's note of confidence was soon to be echoed more widely. According to the *Memorandum*, there can be no doubt that 'a full possession of the place of Government doth give a title to govern'.¹⁰⁰ And according to George Wither, there is no reason to deny that the existing government of England is no less 'just and pious' than many other governments whose legality has never been called in doubt.¹⁰¹ Francis Osborne brings his *Persuasive* to a close by reiterating once more that 'the duty of obedience' to the newly established government 'cannot in justice be denied'.¹⁰²

IV

During 1650 and 1651, when the debate about political obligation reached its height, the insights initially explored by Anthony Ascham

⁹⁴ Nedham 1969, p. 30.

⁹⁵ *Memorandum* 1650, p. 8.

⁹⁶ [Wither] 1650, Sig. A, 3^r.

⁹⁷ Drew 1651, p. 23.

⁹⁸ *Discourse* 1650, p. 8.

⁹⁹ Nedham 1969, p. 40.

¹⁰⁰ *Memorandum* 1650, p. 12.

¹⁰¹ [Wither] 1650, pp. 42–3.

¹⁰² [Osborne] 1811, p. 161.

were eventually converted into a full-scale secular defence of the Commonwealth government. The way in which Ascham's argument was taken up, however, was not perhaps as clear-cut a process as the above account may tend to suggest. Although the lay defenders of engagement presented a similar theory of obligation, none of them argued for it in a very systematic way, and few of them stated, except in fragmentary form, the pessimistic view of human nature on which it was based. And although they made use of purely secular arguments, most of them continued to invoke God's providence as a supplementary argument – and sometimes a prominent argument – in favour of the same conclusion. This is true even of Nedham and Osborne,¹⁰³ and true to an even greater degree of the other theorists who followed Ascham's perhaps somewhat equivocal lead.¹⁰⁴ Of all the writers who contributed to the debate about *de facto* powers, only one eliminated all invocations of God's providence and grounded a theory of obligation entirely on an account of the political nature of mankind. This was Thomas Hobbes, to whose place in the controversy I now wish to turn.¹⁰⁵

It was exactly at this juncture that Hobbes published – for the first time in England, and for the first time in English – his major works on civil science. His *Elements of Law*, the manuscript of which he had circulated in 1640, was now put into print, the epistemological sections in February 1650 under the title *Humane Nature*,¹⁰⁶ the political sections three months later as *De Corpore Politico*.¹⁰⁷ Next there appeared an English translation of the one work on politics that Hobbes had already published, his *De Cive* of 1642, which was issued in March 1651 as *Philosophicall Rudiments Concerning Government and Society*.¹⁰⁸ Finally, only a few weeks later, Hobbes published the masterpiece on which he had been working intensively throughout the previous year, *Leviathan*.¹⁰⁹

As soon as this remarkable sequence of texts appeared, they were immediately recognised by the lay defenders of engagement as offering an authoritative presentation of a theory of political obligation at which

¹⁰³ See Nedham 1969, pp. 47–50 and [Osborne] 1811, p. 159, both discussing St. Paul's injunction to obey the powers that be.

¹⁰⁴ *Discourse* 1650, pp. 3–9; *Memorandum* 1650, Sig. A, 2^v.

¹⁰⁵ For other aspects of Hobbes's connection with the controversy see Sampson 1990 and Burgess 1990.

¹⁰⁶ For the date of publication (2 February 1650) see 'Illustrations' 1848, pp. 170–1 and cf. Tannies 1969a, p. v and note.

¹⁰⁷ For the date of publication (4 May 1650) see Wallace 1964, p. 398.

¹⁰⁸ For the date of publication (2 March 1651) see the title-page of Thomson's copy, British Library.

¹⁰⁹ For the date of publication of *Leviathan* (late April or early May 1651) see above, chapter 1 section III.

they had already arrived. As I noted in chapter 9, this was explicitly acknowledged by Ascham, and soon afterwards by Nedham, Osborne and Warren. This is not to say that they were pointing to Hobbes's direct influence on their own political works. Ascham, Warren and Nedham had all produced their defences of *de facto* power before they could have read *De Corpore Politico*, and there is good reason to doubt whether any of them knew at that stage of *De Cive*, which had only been published in Latin in Paris and Amsterdam.¹¹⁰ The striking fact is that they appear to have come upon Hobbes's treatises after publishing their own works, at which juncture they recognised, and took the opportunity to say, that Hobbes had articulated their own view of political obligation in a more systematic and comprehensive style.

Anthony Ascham seems to have read *De Cive* between the appearance of the first and second version of his *Discourse*. He thereupon included a new chapter on the state of nature and political obligation, referring to Hobbes's views in corroboration of his own conclusions and quoting Hobbes (together with Grotius) as one of his authorities.¹¹¹ Marchamont Nedham never seems to have read *De Cive*, but he evidently came upon *De Corpore Politico* immediately after publishing his own *Case of the Commonwealth*. (The two works appeared in the same week.) This prompted him to add an appendix to the second edition of *The Case* in which he quotes Hobbes's views and uses them, like Ascham, to underpin the position he had already taken up.¹¹² Both Albertus Warren and Francis Osborne appear to have read *Leviathan* soon after it came out in the following year. Although neither of them refers to Hobbes in writing about the engagement, both of them quote him in later works by way of underpinning their own distinctly Hobbesian views about political authority.¹¹³

The point that needs to be stressed is that these defenders of *de facto* powers were undoubtedly right to see in *De Corpore Politico* and *Leviathan* a theory of political obligation similar to their own. Hobbes's account of man's anti-social nature, especially in *Leviathan*, offers a highly coloured version of an argument that several of them had already expressed. As Hobbes puts it in a celebrated summary, the nature of mankind is such that, 'during the time men live without a common Power to keep them all in awe', they will be 'in that condition which is called Warre; and such a warre, as is of every man, against every man'.¹¹⁴ Hobbes also gives

¹¹⁰ Warrender 1983a, pp. 5, 8–13.

¹¹¹ Ascham 1649c, pp. 108, 119.

¹¹² Nedham 1669, pp. 135–9.

¹¹³ Warren 1653, p. 5; Osborne 1673, Sig. Pp. 6'.

¹¹⁴ Hobbes 1996, ch. 13, p. 88.

a more extended account of the implications already drawn from this argument by a number of *de facto* theorists, in particular the implication that we need to transfer our natural rights to a common power if there is to be any prospect of civil peace. As Hobbes explains, I must 'give up my Right of Governing my selfe' to a sovereign authority endowed with 'the use of so much Power and Strength' as to make it capable of enforcing peace equally on everyone.¹¹⁵ Civil society is thus viewed in Hobbes's analysis, as in that of the other *de facto* theorists, as the sole alternative to anarchy and the indispensable means by which we can hope to protect ourselves from the anti-social behaviour of our fellow-citizens.

Hobbes is thus led to restate a number of the most distinctive arguments of the *de facto* theorists I have discussed. He agrees in the first place that conquest can give a valid title to allegiance.¹¹⁶ He even systematises this claim by deriving all political authority from the 'Naturall force' of conquest when it is not derived from an act of 'institution' on the part of those covenanting to set up a government.¹¹⁷ One of his main polemical aims in *Leviathan*, as he explains in the Conclusion, is to show 'what is Conquest' and 'how it comes about, that it obliges men to obey'.¹¹⁸ The obligation arises, he maintains, when a man has 'liberty to submit' to a conqueror and 'consenteth, either by expresse words, or by other sufficient sign, to be his Subject'.¹¹⁹ A subject is in turn said to possess this liberty when 'the means of his life is within the Guards and Garrisons of the Enemy', for it is then that his lawful ruler no longer has the capacity to protect him.¹²⁰

Hobbes agrees in consequence with the *de facto* theorists that subjects are released from their oaths of allegiance as soon as their lawful rulers are conquered. 'If a Monarch subdued by war, render himself Subject to the Victor; his Subjects are delivered from their former obligations, and become obliged to the Victor'.¹²¹ This leads him to endorse the further *de facto* claim that no valid distinction can be drawn between powers 'ordained' and powers merely 'permitted'. Any power with the capacity to protect us must be regarded as legitimate and entitled to obedience. It is an axiom in *Leviathan* that, in all discussions about government, 'the present ought alwaies to be preferred, maintained, and accounted best'.¹²² To which Hobbes adds in his Conclusion – very much in the

¹¹⁵ Hobbes 1996, ch. 17, p. 120.

¹¹⁶ I have allowed this claim to stand, but I would not now wish to put the point in quite this way, for reasons I have given above in chapter 7 section V.

¹¹⁷ Hobbes 1996, ch. 17, p. 121.

¹¹⁸ Hobbes 1996, Conclusion, p. 484.

¹¹⁹ Hobbes 1996, Conclusion, p. 484.

¹²⁰ Hobbes 1996, Conclusion, p. 484.

¹²¹ Hobbes 1996, ch. 21, p. 154.

¹²² Hobbes 1996, ch. 42, p. 379.

spirit of the engagers – that any attempt to ground political obligation on right rather than possession will leave ‘no tie of the Subjects obedience to their Sovereign at this day in all the world’.¹²³

Like other *de facto* theorists, Hobbes grounds these conclusions on the assumption of a mutual relationship between the duty of our sovereigns to protect us and our duty as subjects to obey. As he argues in chapter 21 of *Leviathan*, ‘the Obligation of Subjects to the Sovereign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them’.¹²⁴ Anyone who enjoys protection ‘is obliged (without fraudulent pretence of having submitted himselfe out of fear,) to protect his Protection as long as he is able’.¹²⁵ But if there is ‘no farther protection of Subjects in their loyalty; then is the Common-wealth DISSOLVED, and every man at liberty to protect himselfe by such courses as his own discretion shall suggest unto him’.¹²⁶ The basic idea, as Hobbes summarises in his Conclusion, is that anyone who agrees to submit to the powers that be and ‘live under their Protection openly’ is thereby ‘understood to submit himselfe to the Government’.¹²⁷

Hobbes’s *Leviathan* can thus be represented as a slightly belated but uniquely important contribution to the lay defence of engagement. It might still be doubted, however, whether this accurately reflects Hobbes’s intentions in writing the work. But there can be little doubt that it does. When Hobbes replied in the 1660s to the criticisms made by John Wallis of his loyalty during the revolution, it was his proudest boast about *Leviathan* that it had ‘framed the minds of a thousand gentlemen to a conscientious obedience to present government, which otherwise would have wavered in that point’.¹²⁸ And when he published *Leviathan* he made it clear that he intended his treatise as a contribution to the debate about the rights of *de facto* powers. It goes without saying that *Leviathan* is much else besides. But when Hobbes speaks in his Conclusion about what he has tried to accomplish, it is this aspiration that he emphasises himself. His book, he says, was ‘occasioned by the disorders of the present time’.¹²⁹ It was motivated by the discovery ‘that the Civill warres have not yet sufficiently taught men, in what point of time it is, that a Subject becomes obliged to the Conquerour’.¹³⁰ And it was written ‘without other designe, than to set before mens eyes the mutuall Relation between Protection and Obedience’.¹³¹

¹²³ Hobbes 1996, Conclusion, p. 486.

¹²⁵ Hobbes 1996, ch. 29, p. 230.

¹²⁷ Hobbes 1996, Conclusion, p. 485.

¹²⁹ Hobbes 1996, Conclusion, p. 491.

¹³¹ Hobbes 1996, Conclusion, p. 491.

¹²⁴ Hobbes 1996, ch. 21, p. 153.

¹²⁶ Hobbes 1996, ch. 29, p. 230.

¹²⁸ Hobbes (1845), p. 336.

¹³⁰ Hobbes 1996, Conclusion, p. 484.

As we have seen, the idea of such a mutual relation had already been enunciated by several of the *de facto* theorists. Hobbes was clearly aware of this fact, and even appears to have recast his own argument to echo the formula they had popularised. The contention that protection and obedience are mutually related is arguably implicit in the *De Corpore* never explicitly stated, and although it is again implicit in the *De Corpore Politico* of 1650 it is not announced openly until the final paragraph of *Leviathan*. It is only at that moment – at the height of the controversy about engagement – that Hobbes employs the formula of ‘mutuall Relation’ for the first time.

These family resemblances between Hobbes’s account of political obligation and that of the *de facto* theorists suggest two reflections about the place of Hobbes’s political theory in the ideological contests of the English revolution. First of all, it is a mistake to suppose (as many commentators have done) that Hobbes’s theory was an isolated phenomenon in the intellectual world of its time. We shall misunderstand his achievement if we try to give an account of his special status as a political philosopher mainly in terms of the alleged novelty of his doctrines. Hobbes’s claim to originality lies to a greater degree at the epistemological level, in the reasons he gave for holding his political beliefs, than in his beliefs themselves. It was in his attempt to deduce his political system from an account of human nature, and in his emancipation from the confines of the providentialist vocabulary, that Hobbes made his most original contributions to the political theory of his age. It was this achievement that was barely hinted at by the other *de facto* theorists, even though several of them, independently of Hobbes, articulated a number of political doctrines that have since been associated exclusively with Hobbes’s name.