SUBMISSION AND SUBJECTION IN LEVIATHAN: GOOD SUBJECTS IN THE HOBBESIAN COMMONWEALTH

BY MICHAEL BYRON

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Reviewed by Christopher Faille

Readers of *The Federal Lawyer* are likely familiar with the broad outlines of Thomas Hobbes' political philosophy. Still, I'll state them here to get our discussion underway. Hobbes imagined an anarchic "state of nature" as a terrible place, where life was "solitary, poor, nasty, brutish, and short." Further, he hypothesized a "social contract" as humanity's escape from that terrible condition, one in which people agreed to cede virtually unlimited control over their lives and deaths to a sovereign—an earthly god. In the history of the philosophy of law, Hobbes is often treated as a crucial forerunner of the version of positivism that defines law as the will of the sovereign.

That is the superficial stuff, but when one dives more deeply into Hobbes' texts, especially *Leviathan*, one finds congeries of scholarly contentions on related but much less familiar points.

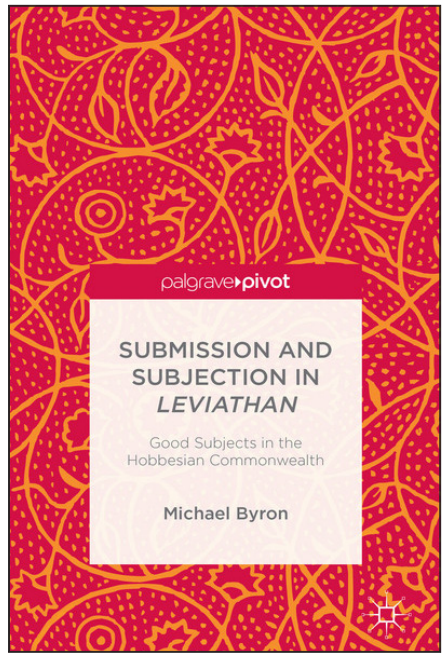
An Apparent Contradiction

Michael Byron, associate professor of philosophy at Kent State University, powers his own dive with an apparent contradiction in Hobbes' descriptions of the state of nature. At one point, Hobbes says that no right or wrong exists in this anarchic condition. His words are quite clear: "To this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place."

But, only one chapter later, Hobbes says that there are laws *of a sort* even in a state of nature and that violating these laws is an injustice. He is here discussing how (unenforceable) promises might be made, and might sometimes be kept, without legal structures. Further, he specifies that motivations exist for keeping one's word even if the anarchic state of one's surroundings would allow one to get away with breaching it. Such motivations include one's "glory, or pride in appearing not to need to break it."

Hobbes is also clear that making a promise in the state of nature is a matter of "laying aside a right." Because you have a right to do what you please in this condition (and so, of course, does everyone else), any promise you make to another must constitute an abandonment of something you otherwise had a right to do.

Given the possibility, in the state of nature, of promises and of a motive to keep promises, the further possibility of injustice follows. Here, too, Hobbes is clear: "And when a man hath in either manner abandoned, or granted away his right; then he is said to be obliged, or bound, not to hinder those, to whom such right is granted … not to make void that voluntary act of his own." If he does hinder those others, then he has done an "injustice, and injury."



In this context, Hobbes certainly seems to be saying that keeping one's word is the right thing to do and thus that there is, after all, a right and wrong even before the former can be civilly enforced or the latter punished. So, what are we to make of this direct contradiction in his exposition of the state of nature, arguably his key hypothetical construct?

Making Sense of Both Sides of the Contradiction

One of Byron's projects in *Submission and Subjection in Leviathan* is showing that Hobbes' inconsistency isn't a simple goof: that his thought can be understood in a way that makes sense of it. Another of his goals is to show that, in understanding this, we come to an enriched understanding of what Hobbes expected from the submissive subjects in a well-run commonwealth.

Byron approaches these goals in part by taking Hobbes at his word as a theist, and indeed as a Christian. Another school of thought, associated with Leo Strauss and his students, *refuses* to take Hobbes at his word on such matters; it treats him as an atheist who kept his godlessness only thinly veiled. Hobbes had principled reasons to keep it at least somewhat veiled: He surely understood that the Stuart family was officially High-Church Anglican, and he had no justification within his own philosophy for rebelling against that official creed. On the Straussian view, though, the existence of God was never a premise for Hobbes, only an acknowledgment to which he meekly submitted. As Leo Strauss himself once wrote, "Hobbes accommodated not his unbelief but his utterances of that unbelief to what was permissible in a good and, in addition, prudent subject."

Byron will have none of this. For him, the "Christian priority of God over man" is a Hobbesian commitment. Any historically sensible interpretation must honor it.

Returning to the apparent contradiction in Hobbes' accounts of his state of nature, Byron cites another author who has wrestled with this question: A.P. Martinich. In a 1992 book, *The Two Gods of Leviathan,* Martinich postulated two distinct conceptual moments within Hobbes' imagined anarchic world. The "primary" state of nature has no God watching over it, so indeed there is no common power, no law, and no right or wrong. This was the world Dostoevsky was to imagine: one where there is no God, and so everything is permitted.

In the secondary state of nature, though, God is in His heaven, but of course there is no sovereign—no artificial god on earth. In that secondary state, arising from what Martinich describes as Hobbes' "compos-

ite method," even though concepts such as "justice" or "injustice" are not enforced by any civil power, they do state realities about the relationships among people. Further, the existence of promises in this secondary state, and the existence of some sense that it is right to keep promises, are obviously conditions precedent to the creation of the social contract that is supposed to rescue humanity from anarchy.

Byron endorses Martinich's introduction of God into the interpretation of Hobbes' remarks on the state of nature; he thinks it a healthy reaction to the "tendency stretching from Strauss" to neglect the importance of religion in Hobbes' thought generally. Hobbes wrote of the leviathan of his title as "that mortal god, to whom we owe under the immortal God, our peace and defence." Martinich takes this passage so seriously that it inspired the "Two Gods" in his book's title. Byron approves.

But Byron doesn't think Martinich goes far enough in this direction. Byron's Hobbes sees God as a Necessary Being, a Being whose existence logically preexists that of humans. Thus, it isn't even coherent to create a counterfactual "primary state of nature" without a God. Whereas, for Martinich's Hobbes, no god exists in the primary state of nature, for Byron's Hobbes, God is present—even as humans are waging a war of all against all.

A God Whom No One Worships

For Byron's Hobbes, though, people in the primary state of nature do not acknowledge God. The difference that Byron's Hobbes sees between the primary and secondary states of nature is the difference between, on the one hand, an anarchic world looked down upon by a God whom no one worships, and, on the other hand, an anarchic world with at least a few theists around, where the intensity of the war of all against all is mitigated by some promise-keeping and by the sense that breaking promises is bad. In the latter condition, covenants begin to be possible, and the theistic humans in this world have taken a step toward the possibility of a law-bound commonwealth.

Byron distinguishes sharply, on Hobbes' behalf, between God's causal power (He could presumably zap an atheist with a lightning bolt at will) on the one hand and God's reign as sovereign (over His believers, who are thus His subjects) on the other. "As nobody in the primary state of nature is God's subject, God's political sovereignty does not exist in the primary state of nature. Thus, no legal obligations are possible in the primary state of nature, and so the concept of justice in inapplicable there." Although Byron disagrees with Martinich's belief that Hobbes claimed that God was not present in the primary state of nature, he agrees with Martinich that Hobbes believed that justice could not exist there.

How does Byron's rewrite of Martinich's views help us to understand "submission and subjection" in the commonwealth? Let us assume that both scholars are right and that Hobbes is proposing the existence of three possible conditions in which humans can live: the primary state of nature; the secondary state of nature; and a civilized commonwealth. The second of these serves as the haven into which warriors in the first seek to escape, but then is treated as itself a prison, warranting a further escape into the third condition. Given this framework, we can see a clear analogy between those two escapes. In Byron's view, the analogy is this: The warriors' submission to God is to the escape from the primary state of nature what their later submission to a sovereign state is to their escape from the secondary state of nature. In each case, submission makes escape possible and, because in each case escape is presumed to be desirable, submission is rational.

It is perhaps worth stressing that to a Straussian reader, much of the Byron/Martinich disagreement concerns a red herring, a God in whom Hobbes had no real belief.

One point that is clear in *Leviathan* to readers of any interpretive bent is that Hobbes treats the conquest of new territory by an existing prince as in principle a re-creation of the submission to the state created by the hypothetical social contract. Both vanquished and victor play a role in an implicit or explicit ceremony. As Byron paraphrases Hobbes, "The vanquished perform by submitting and thereby becoming subjects, *and the* victor performs by sparing the new subjects' lives and thereby becoming their sovereign."

Hobbes also distinguishes a mere subject from a good subject. The good subject obeys the law "sincerely from the heart," out of identification with his sovereign, rather than in a grudging and merely submissive spirit. Even if effectively kept secret, an "erroneous conscience" weakens the commonwealth, Hobbes thinks.

Using a more contemporary terminology, Byron paraphrases Hobbes, having him postulate a higher-order desire (a "value conforming desire") that works to keep a subject's lower-order desires in line. A good subject will only want to want what the state wants. When such a subject finds his own first-order wants at odds with those of the state, he will regret that situation and will work to bring them in line, in the same way that many nicotine addicts work to bring an end to their first-order desire for tobacco by virtue of their value-conforming desire to be free of that habit.

The distinction between submission and subjection, with regard either to the immortal God or the mortal god, is much the same. Submission (or, in some religious contexts, conversion) is at least in principle an all-or-nothing and once-for-always event. Subjection, on the other hand, is a normative lifelong struggle, because individual desire is a fierce inner demon that keeps tugging us away from our duties to either or both of these gods. We ought to keep tugging ourselves back.

That is what Byron has to say. In my own humble view, his interpretation is misguided. But it does make a valuable point, which will bring us back to legal philosophy, to the often-alleged connection between Hobbes and the positivist views of H.L.A. Hart or Morris R. Cohen.

A Misguided but Instructive Interpretation

Byron's interpretation is misguided because, as noted, he presumes that Hobbes was a believing Christian. I won't argue the point at length here, but I find persuasive the Straussian arguments to the contrary. Hobbes did discuss Christianity a great deal but usually did so in the context of the ongoing disputes between natural theology and revealed theology—between rational inferences about God on the one hand, and the close reading of sacred texts on the other. In this context, he would play each sort of theism off against the other in such a way as to indicate that he actually opposed them both. That is, he would invoke a strict belief in the Scriptures while fighting a battle against natural theology, whereas in other passages he would employ historical and philosophical criticisms of the authority of the Scriptures quite like those of the natural theologians.

Once one sees what he was up to, one sees also that of his "two gods," the heavenly

deity is at best a fairy tale created to support the earthly and real deity.

Indeed, the distinction between primary and secondary states of nature doesn't really require a heavenly god. Even in the most intense and chaotic of wars, alliances shift, and at times one ally will act in support of another. If we must hypothesize the state of nature as a war of all against all, we can also readily imagine that it would slowly modify itself. Warriors will develop (perhaps at first short-lived and shifting) alliances with one another and will make promises to their allies in pursuit of strategies against common foes.

Further, Hobbes himself offers psychological explanations of this process that don't require that the warriors working their way toward such alliances have to believe in any god. Consider the quotation I introduced above in which Hobbes suggests that an individual in the natural state may keep his promise to another simply because he feels a sense of glory or pride in appearing not to need to break it. Suppose the warriors/promisers are atheists. Since when does atheism make such pride impossible?

Insofar as Byron presumes Hobbes' sincerity as a Christian, his argument fails. That of course doesn't make this book worthless. Indeed, I can recommend it without hesitation to anyone seeking to keep track of the latest in Hobbesian scholarship, and I believe that Byron's discussion of the two different states of nature in particular is quite insightful, as, for example, where he writes that Hobbes would have classified as secondary states of nature "a range of political structures, including tribes, towns, and other polities whose leaders do not amount to a Hobbesian sovereign."

This insight holds some promise for a deconstruction of the whole Hobbesian project. Yes, "deconstruction" is an overused word and has become vague as a consequence. But I mean it here in its original literary-theory sense, as a demonstration of the way in which meanings in any closely examined text can be rendered unstable, even causing the text to subvert its own meaning. In other words, words depend on other words, and this network of dependence makes surprises inevitable. As a case in point, a theory designed to support the claims of an absolute monarch ends up containing within itself a possibly tempting description of an organized society without a sovereign.

Even if you don't care to read Hobbes' *Leviathan* as arguing against a leviathan, you can take from *Submission and Subjection in Leviathan* a healthy skepticism about the positivist reading of Hobbes. If law is present in *any* important sense within a "state of nature," then law is something other than the will of the sovereign. The history of legal philosophy needs a reworking. ⊙

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during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and (2) any period of INACDUTRA during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty.

[54]*Id.*

[55]DVA Op. Gen. Counsel Prec. 6-04 (July 12, 2004). ("According to VA regulations, the VA General Counsel is authorized to designate precedential opinions. 38 C.F.R. § 2.6(e)(8). … The General Counsel, or the Deputy General Counsel acting as or for the General Counsel, is authorized to designate, in accordance with established standards, those legal opinions of the General Counsel which will be considered precedent opinions involving veterans' benefits under laws administered by the Department of Veterans Affairs.").

[56]38 C.F.R. *supra* note 51, § 3.1(d) (emphasis original).

[57]*Id.* at § 3.4(b)(1).

[58]*Holton v. Shinseki*, 557 F.3d 1363, 1366 (Fed. Cir. 2009) (*quoting Shedden v. Principi*, 381 F.3d 1163, 1167 (Fed. Cir. 2004)); *Hickson v. West*, 12 Vet. App. 247, 253 (1999).

[59]This regulation "implements Department of Defense Instructions 1132.14. It establishes policies, standards, and procedures governing the administrative separation of certain enlisted Soldiers of the Army National Guard of the United States and the United States Army Reserve."

[60] AR 135-178, *supra* note 2.

[61]*Id.* at 1-1(a).

[62]*Id.* at 2-8(a).

[63]U.S. Dep't of Army, Reg. 635-200, Personnel Separations: Active Duty Enlisted Administrative Separations, para. 3-6(b) (Jun. 6, 2005) (RAR Sep. 6, 2011) [hereinafter AR 635-200].

[64]38 U.S.C. § 5303(a)(2014); 38 C.F.R. § 3.12(c)(6)(2014).

[65]38 C.F.R. *supra* note 51, § 3.12(d)(4).

[66]*Id.*

[67]*Id.* at § 3.1(n).

[68]VA Compensation and Pension Manual Rewrite M21-1MR, Part. 3, Subpt. V, Ch. 1, Sec. B, ¶ 5(c) (2014)

[69]*Id.* at ¶ 7(c)

[70]*Id.*

[71]AR 635-200, *supra* note 63, para. 3.6(b).

[72]For a detailed assessment of eligibility for VA benefits of active-duty members separated with an OTH, *see* Major John W. Brooker, *et al.*, *Beyond "T.B.D.": Understanding VA's Evaluation of a Former Servicemember's Benefit Eligibility Following Involuntary or Punitive Discharge from the Armed Forces*, 214 Mil. L. Rev., Winter 2012.

[73]AR 135-178, *supra* note 2, para. 2-8(a).

[74]Capt. Jeremy R. Bedford, *Eligibility for VA Disability Compensation and Health Care Benefits for Army National Guardsmen Discharged With an Other Than Honorable Discharge*, Army Law, July 2014, at 36.

[75]Department of Defense, Unique SSAN Activations as of April 22, 2014, www.defense.gov/documents/Mobilization-Weekly-Report-04-25-14.pdf (accessed May 1, 2015). (As of April 22, 2014, 895,630 members of reserve components had been active since Sept. 11, 2001.).

[76]AR 135-178, *supra* note 2, para. 2-8(a).

[77]38 C.F.R. § 3.12 (2014).