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Author

Hoekstra, Kinch

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Leviathan and its Intellectual Context

Kinch Hoekstra

Scholars generations hence will still talk about Noel Malcolm's edition of *Leviathan* as one of this century's outstanding editorial accomplishments.¹ A great work is here available in a great edition.

Malcolm's previous work has prepared him to accomplish this project at such a high level, and I wish to refer briefly to some of this work by way of introduction. Whereas his *Leviathan* shows that he is able to do justice to one of the most ambitious and influential works in the history of thought, consider the very different challenge that Malcolm met with his 2007 *Reason of State, Propaganda, and the Thirty Years' War*.² The basis for this work is Malcolm's discovery of an unfinished translation of a Habsburg propaganda pamphlet. We are fortunate that Malcolm was the one to find it, for the result is a rich and rewarding treatment of the early career of Thomas Hobbes and the intricacies of the war of pens that accompanied the Thirty Years' War. In the course of this study, Malcolm draws on sources in at least fifteen languages. He cites books on watermarks, on paper, on the geometry of curves, and on the monetary history of the Ottoman empire. What gets thrown in may be an odd assortment of pots and pans, but what emerges is significant and compelling. If in his *Leviathan* Malcolm has produced

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¹ Thomas Hobbes, *Leviathan*, ed. Noel Malcolm, 3 vols. (Oxford: Clarendon Press, 2012).

² Noel Malcolm, *Reason of State, Propaganda, and the Thirty Years' War: An Unknown Translation by Thomas Hobbes* (Oxford: Clarendon Press, 2007).

some of the the best barrels of wine in all of Burgundy from fine old vines, with his *Reason of State* book he somehow made a very good bottle from a raisin and an eclectic chemistry set.

A number of Malcolm's most important essays are collected in his 2002 *Aspects of Hobbes*.³ The range and resourcefulness of the scholarship are astonishing, and the Hobbes at the end of the book is a substantially different and more complex Hobbes than any of us knew at the beginning. Malcolm discovers Hobbes's role in the Virginia Company, clarifies his relation to the Royal Society, situates his theory of the authorship of the first five books of the Bible, offers the best essay written on Hobbes's theory of international relations, identifies the translator of the 1651 English translation of *De cive*, and much more. In most of the essays, Malcolm dives deeply into the area he is discussing such that it ends up being *about* the history of biblical hermeneutics, or *about* an important period in the Virginia Company, rather than just offering enough context about these things to shed light on Hobbes. Or consider Malcolm's book on Marc'Antonio de Dominis, or his immense co-authored work on the mathematician John Pell: these show the importance of getting interested in matters for their own sake.⁴ Malcolm doesn't just explore some context around Hobbes, he goes so far as to become a world expert on the related subject – which of course is the best way to illuminate Hobbes, too.

³ Noel Malcolm, *Aspects of Hobbes* (Oxford: Clarendon Press, 2002).

⁴ Noel Malcolm, *De Dominis (1560-1624): Venetian, Anglican, Ecumenist and Relapsed Heretic* (London: Strickland and Scott, 1984); Noel Malcolm and Jacqueline Stedall, *John Pell (1611-1685) and His Correspondence with Sir Charles Cavendish: The Mental World of an Early Modern Mathematician* (Oxford: Oxford University Press, 2005).

Malcolm will make further contributions to the Clarendon Edition of the Works of Hobbes, not least via his indispensable service as general editor of the series. His main contribution to that series before now, however, was the immensely informative edition of Hobbes's correspondence.⁵ Quentin Skinner aptly wrote of this edition: "The concept of definitive scholarship has been made to seem almost paradoxical in these postmodern days. But research of the quality displayed in these volumes reminds us that the ideal is by no means wholly out of reach."⁶ We might think that the lesson that Skinner gently refrains from drawing here is that definitive scholarship turns out to be possible if you are Noel Malcolm. But I think that Skinner's way of putting this was exactly right: for surely one of Malcolm's most valuable contributions to all of us who come to know his work is to encourage us to want something more from our own and others' scholarship than that it should raise some interesting points and provoke a bit of discussion. Malcolm's work serves as an admonition to all of us to do things properly. This inevitably means doing things the hard way (though this is not to say that every hard way is proper).

Malcolm has called all of his scholarly virtues and skills into action in his monumental new edition of the *Leviathan*. He has done it the hard way. His attention to bibliographical and book historical niceties, his indefatigable pursuit of sources, his tremendous breadth and depth of contextual knowledge, his sensitivity to philosophical arguments, his linguistic skills, clarity of writing, and not least organizational abilities – all of these undergird the work.

⁵ Thomas Hobbes, *The Correspondence*, ed. Noel Malcolm, 2 vols. (Oxford: Clarendon Press, 1994).

⁶ Quentin Skinner, "Bringing Back a New Hobbes," *The New York Review of Books*, April 4, 1996.

The main accomplishment here is the outstanding *edition*, together with a masterful textual introduction. The general introduction (which with the textual introduction constitutes the first volume) is also enormously impressive, and this is a great bonus. But due to the very authoritativeness of the edition, and of Malcolm's scholarship on Hobbes, the interpretive general introduction may end up as something of a sacred cow. Not that Malcolm himself would demand such deference for the interpretations put forward there; but I have already heard normally irreverent Hobbesians invoke claims from the first volume as gospel truth. I wish to suggest that there may be room for questions.

In some cases, Malcolm himself makes clear that a puzzle remains, but he helpfully sharpens its terms or its stakes: an example of this is his discussion of Hobbes's use of different versions of the Bible, or of the striking difference between the table of sciences in *Leviathan* and Hobbes's divisions of knowledge elsewhere.⁷ And in other cases Malcolm does convincingly solve the puzzle: for example, Hobbes's likely source – Jacques Boulduc – for the title of *Leviathan*, or the fascinating anamorphic antecedents of the image on the title-page.⁸ In these and other cases where I had read the earlier version, the detective work was transfixing even when watched as a re-run.

My assignment is to raise for discussion a few aspects of the intellectual context and content of the English *Leviathan*, while leaving room for my fellow commentators to address the context of the civil wars and the *Leviathan* after 1651. The relevant parts of Malcolm's introductory volume are divided into discussion of changes to Hobbes's

⁷ *Leviathan*, 1:109-14; 1:141-45.

⁸ *Leviathan*, 1:114-41.

arguments, royalist political debate, religious issues, the intended audience of the work, and two issues of late adjustments (the treatment of Independency, and the proper way to read the emphasis on the argument about the mutual relation between protection and obedience). Also relevant is the section of this volume entitled “Some Features of the English *Leviathan*.” These features (in addition to a discussion of the materials Hobbes drew on in composing the work) are the bold title of the work, the famous engraved title-page illustration, and the fancy fold-out table of the sciences, so this section amounts to “Some Particularly Cool Features of the English *Leviathan*.”

There is much to discuss here, but I will offer some thoughts on just three issues that Malcolm highlights in this introductory volume.

- 1) A brief observation or two about the illustrated title page and its connection to the question of the intended audience of the *Leviathan*.
- 2) A question about how far the arguments for the inalienability of sovereignty in *Leviathan* were influenced by royalist debates in the late 1640s about what concessions the King should be prepared to make.
- 3) A doubt about whether Malcolm has made the case that the “Review, and Conclusion” is specifically geared to assist the establishment of the new Parliamentary government.

The illustrated title page.

Reading the panels in the lower half of the title page, Malcolm points out that “the theme of duality or division is subtly insinuated, by visual means, into most of the elements on the ecclesiastical side, while the temporal iconography plays its own subtle

games with the figure of a circle, arguably the most unitary geometrical figure of all.” This, he says, is part of the “powerful representation” of the argument of the book.⁹ Here I would offer what I regard as a friendly supplement, which is that we may miss a basic way in which the panels operate if we only see the temporal panels in positive terms of unity and the ecclesiastical panels in negative terms of division and discord. The temporal or civil panels on the left side of the title page do not only represent the proper aspects and tools of sovereign power. As with the paired ecclesiastical series, it is also a series of symbols of potential sources or instances of division and discord. The fortress at the top is depicted with a cannon being shot over its walls, the coronet is an attribute of the always potentially divisive nobility, the weapons are the instruments not only of defense but also of civil war, which the bottom left panel may as well represent – and when seen thus, they are not only opposed to but parallel to the ecclesiastical sources of conflict.

That is, both the temporal and the ecclesiastical panels represent threats to sovereign power and unity, and both suggest resources for a well-ordered commonwealth that provides for peace and security. The potentially threatening powers represented in the divided panels must be joined – as they symbolically are on the title page by the fabric on which is written the title (*Leviathan...A Commonwealth Ecclesiastical and Civil*) and the author (“By Thomas Hobbes of Malmesbvry”).

Let us now focus on the main difference between the engraved title page and the drawn title page.¹⁰ Malcolm argues that the drawn title page presents the faces of both the Leviathan and the subjects who constitute his body looking out at the viewer because

⁹ *Leviathan*, 1:130.

¹⁰ The illustrations are reproduced at *Leviathan*, 1:129 and 1:131.

the artist was following Hobbes's idea for a representation of dioptric anamorphosis, in which both the individual component figures and the composite figure they constituted faced the viewer. "Presumably Abraham Bosse's aesthetic sense was responsible for the revision of this in the engraved version" – for in the drawn version "the heads give a peculiarly ugly quality to the body of the colossus..., turning it into a lumpy mass of protuberances."¹¹ Malcolm adduces this improvement on "aesthetic grounds" as the most important evidence that the drawn image preceded the engraved.¹²

Here, however, I think it is worth trying to connect the difference between these two images to the intended audience for the work, and with the work's purpose. Like Gerald Mara and a number of other writers, Malcolm suggests that *Leviathan's* "primary purpose, as a book, is to be used by the sovereign," and points out that Hobbes adopts the role of counsellor to the Prince, giving advice on a range of issues vital to sovereignty.¹³ Malcolm suggests that Hobbes undertook the book for this purpose, presenting Charles II with the fine presentation manuscript.

So it is no wonder that the drawn title page in the manuscript was designed so that immediately upon opening it, Charles came face to face with a mirroring royal figure, and that all of the subjects were looking up at him, the royal reader. Hobbes having set down his own reading, the royal reader must only consider "if he also find not the same in himself": "He that is to govern a whole Nation, must read in himself...Man-kind."¹⁴ By

¹¹ *Leviathan*, 1:140, 1:132.

¹² *Leviathan*, 1:132.

¹³ *Leviathan*, 1:51-60, at 57. See Gerald M. Mara, "Hobbes's Counsel to Sovereigns," *The Journal of Politics* 50:2 (1988), and Louis Roux, "Léviathan, livre du souverain," *Études Anglaises* 41:1 (1988).

¹⁴ *Leviathan*, 2:20.

contrast, the remaining intended readers – the readers of the printed version, with the engraved title page – were subjects. For *Leviathan* is also a book to be used by subjects, and aims to teach obedience as well as ruling. When the subjects open the printed volume, they find themselves aligned with the other subjects, facing in the same direction as their fellows, looking up to the face of the crowned sovereign. I agree that the drawn version of the title-page is very probably prior, but the elimination of lumpiness is less substantive than an explanation that correlates the different presentations to the different purposes and different intended audiences of the two versions.

Inalienability of sovereignty.

Malcolm identifies the inalienability of sovereignty, and in particular the inalienability of the power of the militia, as the leading issue on which Hobbes was influenced by or engaged in the royalist debates of 1649-50.¹⁵ It is not clear, however, that those debates influenced the *Leviathan* on this issue. The inalienability of the powers or rights essential to sovereignty simply follows from Hobbes's view that sovereignty must be unified and his corresponding opposition to the mixed constitution, legal limitation, or division of sovereign power.

The emphasis on inalienability (and on that of the militia in particular) in *Leviathan* is comparative, but Malcolm only compares it to *De cive*, on the basis of his unargued assertion that Hobbes is here taking over the discussion from that work. Let us consider instead some of the relevant passages from the earlier *The Elements of Law* (1640), where the starting point of the relevant argument is that “every man hath already

¹⁵ *Leviathan*, 1:24-35, “Royalist Political Debate.”

transferred the use of his strength to him or them, that have the sword of justice”; i.e., “the right to use the forces of every particular member, is transferred from themselves, to their sovereign.”¹⁶ The sovereign has the right to use the forces of every particular member, and so has the right of the militia inalienably: “it followeth that the power of defence, that is to say the sword of war, be in the same hands wherein is the sword of justice: and consequently those two swords are but one, and that inseparably and essentially annexed to the sovereign power.”¹⁷ Hobbes here relentlessly insists on the idea that he will insist on in *Leviathan*, that the essential rights and powers of the sovereign are inseparable, essential, and cannot be transferred or forfeited without transferring or forfeiting sovereignty itself.

Hobbes argues in *The Elements of Law* that to have the right and power of the sword of justice and defence necessarily requires the sovereign to have the power of judicature and of all decisions about war.¹⁸ He maintains that the sovereign must retain the legislative power and the power to ensure the laws are observed, for the making of laws “must of right belong to him that hath the power of the sword, by which men are compelled to observe them; for otherwise they should be made in vain.”¹⁹ Further, appointing and limiting magistrates and ministers is “an inseparable part of the same sovereignty, to which the sum of all judicature and execution hath been already annexed.”²⁰ The sovereign power must have impunity, which it cannot have if it has laid

¹⁶ Thomas Hobbes, *The Elements of Law Natural and Politic*, ed. Ferdinand Tönnies, 2nd edn. (London: Frank Cass, 1969), pp. 111, 113 (2.1.8, 2.1.12).

¹⁷ Hobbes, *The Elements of Law*, pp. 111-12 (2.1.8).

¹⁸ *Ibid.*, p. 112 (2.1.9).

¹⁹ *Ibid.*, p. 112 (2.1.10).

²⁰ *Ibid.*, p. 112 (2.1.11).

down any of its essential powers.²¹ These rights of sovereignty are necessarily absolute, and cannot be limited or separated.²²

Hobbes is emphatic that sovereignty must fall without any one of the essential rights, or if the rights or powers are divided.²³ And he is aware that he has repeated himself on the subject: “the truth is, as hath been already shewed in 7, 8, 9, 10, 11, 12 precedent sections: the sovereignty is indivisible....”²⁴ Integral to this analysis is his view that the sovereign necessarily retains the right to control the militia. For “seeing revenue, without the right of commanding men, is of no use, neither in peace, nor war; it is necessary to be supposed, that he...must have also right to make use of the strengths of particular men; and what reason soever giveth him that right over any one, giveth him the same over them all. And then is his right absolute; for he that hath right to all their forces, hath right to dispose of the same.”²⁵ If someone has “the right to compel them all; then is his sovereignty absolute: if not, then is every particular man at liberty...and so the right of the private sword returneth.”²⁶ It is necessary for any body politic “in all actions to be assisted by the members...or at the least not resisted by them. For otherwise, the power of a body politic (the essence whereof is the not-resistance of the members) is none, nor a body politic of any benefit.”²⁷

²¹ Ibid., p. 113 (2.1.12).

²² Ibid., p. 113 (2.1.13).

²³ Ibid., pp. 113-18 (2.1.14-19).

²⁴ Ibid., p. 115 (2.1.16).

²⁵ Ibid., p. 114 (2.1.14).

²⁶ Ibid.

²⁷ Ibid., p. 116 (2.1.17).

Although it is abundantly clear in the preceding passages from *The Elements of Law* that a grant of a sovereign right or power like that over the militia is null and void, Hobbes also expresses the principle unambiguously later in the text: “when he or they that have the sovereign power, give such exemption or privilege to a subject, as is not separable from the sovereignty, and nevertheless directly retain the sovereign power,” then “the person or persons exempted or privileged are not thereby released.”²⁸ Because the one who has coercive power “thereby can frame and govern their actions at his pleasure; which is absolute sovereignty,”²⁹ it is obvious that he cannot retain that sovereignty while laying down the power of coercion. Hobbes believes that this follows from the principle in Jean Bodin’s great work that sovereign power is indivisible: “For if one part should have power to make the laws for all, they would by their laws, at their pleasure, forbid others to make peace or war, to levy taxes, or to yield fealty and homage without their leave; and they that had the right to make peace and war, and command the militia, would forbid the making of other laws, than what themselves liked.”³⁰ Monarchs who allow for any such division, Hobbes warns, “have been thereby divers times thrust out of their possession.”³¹ “But the truth is,” Hobbes says again, “that the right of sovereignty is such, as he or they that have it, cannot, though they would, give away any part thereof, and retain the rest.”³² Such a grant “is of no effect.”³³

²⁸ Ibid., pp. 125-26 (2.2.13).

²⁹ Ibid., p. 117 (2.1.19).

³⁰ Ibid., p. 173, 2.8.7 (citing “Bodin, Lib. II. chap. 1. *De Republica*”).

³¹ Ibid.

³² Ibid.

³³ Ibid.

Malcolm asks why Hobbes should have come to emphasize the point about essential sovereign powers “so strongly and so repeatedly” in *Leviathan*, and finds his likely answer in the royal concessions that were contemplated from 1646, and especially in 1649-50. We have seen that Hobbes emphasized the point strongly and repeatedly in 1640, and so his belief in its importance predates the war. And we do know which events of the 1640s he refers to when emphasizing the point later. Malcolm sets aside the context of the controversy over the Militia Ordinance of 1642, despite noting that “more than any other dispute” it “precipitated the outbreak of the war.”³⁴ He believes that Hobbes’s insistence on the doctrine more appropriately addresses the context of concessions contemplated by Charles I in 1646-48, and especially the context of concessions facing Charles II in 1649-50 as he negotiated with the Scots (where he believes that Hobbes was aligned with those ministers who opposed granting away the exercise of the militia). In looking back on all of these events, Hobbes himself provides a markedly different answer.

In his history of the civil war, Hobbes does refer to the concessions in mid-1650 in which Charles II “yeelded to all” that the Scots required, and says that the immediate consequence was that they joined the war and very nearly (“if Fortune and the faults of his Enemies had not relieued him”) dealt Cromwell a decisive defeat.³⁵ Although the ultimate result was dramatically different, Hobbes’s verdict about these concessions seems none the less clear, as “A.” says that “necessity made the King passe ouer” many such indignities from the Scots, “rather than suffer the pursuite of his Right in England to

³⁴ *Leviathan*, 1:26.

³⁵ Thomas Hobbes, *Behemoth, or, The Long Parliament*, ed. Paul Seaward (Oxford: Clarendon Press, 2010), p. 335.

coole, and be little better then extinguished”; to which “*B.*” replies: “Indeed I beleeeue, a Kingdome if suffered to become an old debt, will hardly euer be recouered.”³⁶

By contrast, Hobbes does briefly deploy the argument for the inalienable right of the militia when discussing the first of the four bills presented to Charles I at Carisbrooke, 24 December 1647. “*A.*” reports: “The Propositions were these. ffirst That the Parliament should haue the Militia, and the power of leuying money to maintaine it, for twenty years, and after that terme the exercise thereof to returne to the King, in case the Parliament thinke the safety of the Kingdome concerned in it.” And “*B.*” replies: “This first Article takes from the King the Militia, and consequently the whole Soueraignty for euer.”³⁷ But Hobbes here simply echoes his much more extended analysis of the crisis of 1641-42 about the authority over the militia, culminating in the Militia Ordinance of March of 1642. Hobbes details his outrage, repeatedly using a formula similar to that found in *Leviathan* (“the command of the *Militia*, without other Institution, maketh him that hath it Sovereign”).³⁸ Parliament “demand[ed] of the King the power of pressing and ordering of Soldiers. Which Power whosoever has, has also, without doubt, the whole Soueraignty”; “they assert[ed] the power of Leuying and Pressing soldiers to the two Houses of the Lords and Commons. Which was as much as to take from the King the power of the Militia, which is in effect the whole Soueraigne power. For he that hath the Power of leuying and commanding of the Soldiers, has all other Rights of Soueraignty which he shall please to claime”; “he that is Master of the *Militia*, is Master of the Kingdome, and consequently is in possession of a most absolute

³⁶ *Ibid.*, p. 332.

³⁷ *Ibid.*, p. 303.

³⁸ *Leviathan*, 2:274, quoted at 1:25.

Soueraignty”; “the Legislatiue Power (and indeed all power possible) is contained in the power of the *Militia*.”³⁹

And it is about the outbreak of hostilities that Hobbes says that by “the vnalterable Law of Nature, a man that has the Soueraigne Power cannot, if he would, giue away the right of any thing which is necessary for him to retaine for the good Gouernment of his Subiects, vnlesse he do it in expresse words, saying, that he will haue the Soueraigne Power no longer. For the giuing away that which by consequence onely draws the Soueraignty along with it, is not (I thinke) a giuing away of the Soueraignty, but an error, such as works nothing but an inualidity in the Grant it selfe.”⁴⁰ Hobbes had said much the same thing decades earlier, in *The Elements of Law* (2.8.7). And looking back, his primary example is not about the capitulations of the late 1640s, but the outbreak of hostilities in 1642 – when the King is denying the legality of “the new Militia set vp by Ordinance of Parliament” and Parliament is denying the legality of the King’s levy of forces.⁴¹

Malcolm holds that Hobbes’s emphasis on the inalienability of the essential powers of sovereignty does not stem from his concern with the events of 1641-42, on the basis that Charles I did *not* then concede an essential power (he withheld his assent, which is why it was an Ordinance rather than an Act).⁴² But the Ordinance was notorious precisely because when Charles refused his assent, Parliament declared that it was

³⁹ Hobbes, *Behemoth*, pp. 210, 211, 236, 241; for similar formulations, see also pp. 209, 215, 235.

⁴⁰ *Ibid.*, pp. 264-65.

⁴¹ *Ibid.*

⁴² *Leviathan*, 1:26.

nonetheless binding on the basis of Parliament's determination alone.⁴³ The intrinsic connection between control over the militia and the holding of the sovereign power was here made manifest in what is arguably Parliament's first effective assertion of ultimate sovereignty. In what was the clearest confrontation yet about the nature of sovereignty in England, the King accordingly demanded that his subjects not follow the Ordinance, while Parliament demanded that they do so.⁴⁴ Hobbes's own most extensive discussion of the inalienability of the power of the militia is persistently linked with these events of 1641-42.

Malcolm may bypass this context because he has pushed the idea that *Leviathan* aims to counsel the sovereign too far. For it is *also* meant to convince subjects to obedience, and by insisting on inalienability here Hobbes is upbraiding Parliament for its illegitimate claim and the people for supporting this usurpation. He argues that the war would not have begun without their disregard for the inseparability of sovereign powers. That the King seemed to grasp the inseparability of essential sovereign powers perfectly well in 1642 does not therefore mean that Hobbes does not have 1642 in mind when insisting on this inseparability, for it is vital that subjects also grasp it. There is counsel for the future here, to be sure, but it seems to be based on asking people to recognize their dramatic recent error.⁴⁵

Thus, Hobbes's greatest emphasis on the inalienability of the right of the militia in particular is in his later account of the events leading up to 1642. And Hobbes had laid

⁴³ For the views of King vs. Parliament on this matter, see John Rushworth, *Historical Collections*, part 3, vol. 1 (London, 1692), pp. 516-52.

⁴⁴ See Hobbes's treatment at *Behemoth*, pp. 241, 265.

⁴⁵ See *Leviathan*, 2:278.

down an emphatic account of the inalienability of sovereign rights and powers, including that of the militia, by 1640. It is worth remembering that while the royalist debates leading up to 1640 may have motivated this account, it was also motivated, and given its theoretical form, by Hobbes's careful reading of Jean Bodin. Similarly, if there is a renewed emphasis on the doctrine of the inalienability of sovereign rights and powers after the 1647 edition of *De cive*, this may be due less to the backroom wranglings of top ministers and more to his engagement with intellectual sources or wranglings of his own. Hobbes generally conceals his sources in *Leviathan*, but explicitly engages works by Edward Coke and John Selden. Samuel Tuke, a self-styled disciple of Hobbes, writes in late 1650 that Hobbes's principles are being constantly criticized by lawyers.⁴⁶ There are many possibilities here, but let us briefly consider the possibility that if Hobbes underscores the inalienability of sovereign rights at this time, he may have been provoked by a lawyerly treatment of the topic.

John Selden is one possible impetus. Since at least 1636, Hobbes was eager to read Selden's work in particular, but Selden was especially in his thoughts during the composition of *Leviathan*: he was one of only a few modern authors explicitly referred to in that book, and Hobbes arranged to send him a handsome copy of it as soon as it was published.⁴⁷ According to John Aubrey, Hobbes had a "strict friendship" with Selden during Selden's last years (until his death at the end of November, 1654).⁴⁸ In *Leviathan*, Hobbes refers to "Mr. *Seldens* most excellent Treatise" about "Titles of Honour"; and when he comes to list "the Rights, which make the Essence of Sovereignty" which are

⁴⁶ *Leviathan*, 1:108.

⁴⁷ Hobbes, *Correspondence*, 1:30 and 1:32; *Leviathan*, 1:224.

⁴⁸ *Leviathan*, 1:224.

“incommunicable, and inseparable,” the final essential mark or right is “to give titles of Honour” – a mark of sovereignty that is emphasized in the discussion in *Leviathan* more than in Hobbes’s previous works.⁴⁹ So Selden may be on Hobbes’s mind particularly when he is writing about the inalienability of sovereign powers. This may have been especially the case because his friend had taken a series of prominent positions (including on ship money, the Petition of Right, and the levy of tonnage and poundage) asserting legal limits on the King’s powers. Not least, Selden had played a key role in constructing Parliament’s position against the King’s levy of soldiers in the wake of the Militia Ordinance, arguing that the King was legally prohibited from such a levy.⁵⁰

Selden’s political interventions were grounded in his legal scholarship and antiquarian research. Among other historic legal texts, Selden held the sole manuscript of *Fleta*, an important thirteenth-century treatise, and he wrote a commentary that was published with the first printed edition in 1647. *Fleta* itself propounded the theory that the inalienable rights and privileges of the kingdom could not be divided or diminished, and that the King was thus unable to diminish his own authority.⁵¹ This was not only a central issue in the work, it was the culminating critical concern of Selden’s 1647

⁴⁹ *Leviathan*, 2:148, 2:278, 2:276. In his edition, Malcolm refers to other works of Selden’s that Hobbes may have drawn on in composing *Leviathan* (see 1:65 n. 247, 1:286, 2:431, 2:501, 3:1137).

⁵⁰ See e.g. Paul Seaward’s introduction in Hobbes, *Behemoth*, pp. 39-42.

⁵¹ See the summary in Peter N. Reisenberg, *Inalienability of Sovereignty in Medieval Political Thought* (New York: Columbia University Press, 1956), pp. 3-5, which makes clear that inalienability was invoked in order to control or limit kings and not just to empower them.

analysis of the work.⁵² Hobbes would surely have been struck by Selden's bold and learned take on arguably the most important political theoretical debate about Roman law in the preceding generations, the interpretation of the *lex regia*, according to which the people turned over power to the emperor. Selden expresses his surprise at the distortion of the *lex regia* by Bracton, Thornton, and *Fleta*, all of whom, he says, depart from reliable and authoritative sources available to them according to which "every kind of authority and power was transferred to the Prince from the Roman people," who were wholly stripped of rule.⁵³ Selden argues that these English authors framed their interpretation to fit the English situation and the power of Parliament, not wanting to incur the people's displeasure or diminish the power of their lawyerly caste.⁵⁴ He argues clearly that the proper interpretation of the *lex regia* is that the Roman people forfeited sovereignty to their rulers, rather than merely delegating it.⁵⁵ And he then argues at length that the common view that the influence and authority of Roman law was historically excluded from England is crudely simplistic.⁵⁶

So far, so good. But then Selden slowly dismantles the idea that Roman law has current relevance or authority in England, and at the end of his dissertation he concludes

⁵² See *Fleta*, e.g. at p. [3] (sig. B2r) (1.8: "Antiqua maneria vel jura Coronae annexa Regi non licebit alienare, sed omnis Rex Coronae suae alienata revocare tenetur..."); p. 183 (3.6: "Quae dari poterint, & quae non"); and esp. Selden's final discussion in the appended *Dissertatio*, pp. 549-53 (10.4) (*Fleta seu commentarius juris Anglicani...subjungitur etiam Joannis Seldeni ad Fletam Dissertatio Historica* (London: William Lee, Matthew Walbancke, and Daniel Pakeman, 1647)).

⁵³ John Selden, *Ad Fletam dissertatio*, p. 469 (3.3): "omnimodum imperium & potestatem à populo Romano in Principem translata esse."

⁵⁴ *Ibid.*, pp. 466-70 (3.2-3).

⁵⁵ *Ibid.*, p. 470 (3.4).

⁵⁶ Against the claim by René Choppin and others that the English make no use of Roman law, see esp. *ibid.*, p. 532 (8.4).

that the general invalidation of all alienations of royal rights at Montpellier in 1275 never happened. Hobbes can be seen as rejecting the danger, the clutter, and the indeterminacy of the legal historical argument by postulating a kind of theoretical principle without the ambiguity of the *lex regia*, with an even greater nullifying power than *Fleta* attributed to the invalidation of any sovereign alienation at Montpellier, and without the inevitably questionable historical foundation of either. Hobbes did, however, extract a clear principle from *Fleta*. It is striking that the one time Hobbes will quote from that work, he does so precisely to assert sovereign inalienability: “Again you’l find in *Fleta*...That Liberties though granted by the King, if they tend to the hinderance of Justice, or subversion of the Regal Power, were not to be used, nor allowed.”⁵⁷

Other scholars of the common law adapted the inalienability argument in ways that Hobbes would have found perverse. In *Leviathan*, Hobbes explicitly attacks Edward Coke, who had infamously hijacked the inalienability argument in a claim for the authority of courts over both King and Parliament. In one of the most controversial judicial moves of the century, Coke misapplied a dictum (from Chief Justice Herle in Tregor’s Case) that the very person who made some statutes cannot will that they be put into effect. In Bonham’s Case, Coke bends this to argue that judges can set aside statutes made by the legislative authority if they are against common law and reason.⁵⁸ In Coke’s hands, the doctrine of inalienability was turned into the idea that statutes were void if

⁵⁷ Thomas Hobbes, *A Dialogue Between a Philosopher and a Student, of the Common Laws of England*, ed. Alan Cromartie (Oxford: Clarendon Press, 2005), p. 37.

Cromartie’s assertion that Hobbes’s “knowledge of the work was second-hand or very superficial” (p. 37 n. 109) is unwarranted.

⁵⁸ *The Selected Writings and Speeches of Sir Edward Coke*, ed. Steve Sheppard, 3 vols. (Indianapolis: Liberty Fund, 2003), 1:275-76 (Coke’s *Reports* 8:118a).

they were impossible to perform, repugnant, or against right and reason; and this determination was to be made not by the King, nor by Parliament, but by the judges: “the Common Law will controll it, and adjudge such Act to be void.”⁵⁹ Coke’s “Fallacy,” according to Hobbes, was ultimately to mistake a commission to *exercise* sovereign power for a *transfer* of sovereign power to the judges.⁶⁰

It is true that some others argued for inalienability on behalf of the King. In 1637, Francis Crawley, Justice of the Court of Common Pleas, drew heavily on Bodin in finding against John Hampden and for the King’s right to collect ship money:

Admit, I say, there were an expresse Act that the King (were the Realm in never so much danger) should not have aid from his Subjects but in Parliament, it were a void Law; will any man say such an Act shall bind: This power is as unseparable from the Crown, as the pronouncing of War and Peace is; such an Act is manifestly unreasonable, and not to be suffered.⁶¹

The arguments about ship money were important for Hobbes’s thinking as he put together his civil philosophy, but Crawley’s position was not to become legal orthodoxy, and he was impeached for it by Parliament in 1641.

The lawyerly interpretation of inalienability that was prominent in Parliament was influenced by French interpretations of the inalienability of the King’s domain, understood to include a wide range of royal prerogatives.⁶² Although it could be used to

⁵⁹ Ibid., 1:275 (8:118a).

⁶⁰ Hobbes, *A Dialogue*, pp. 54-55.

⁶¹ [Thomas Frankland], *The Annals of King James and King Charles the First* (London, 1681), fol. 576r, col. b.

⁶² Jean Bacquet’s *Des droicts du domaine de la Couronne de France* and René Choppin’s *De domanio Franciae* were prominent, and frequently reissued (the former in eighteen editions from 1577 to 1644, and the latter in seven editions from 1588 to 1643).

insist that the crown ultimately retained all delegated powers, the doctrine of inalienability was also appealed to as a fundamental law that *limited* the scope of royal action, and this common legal use of the inalienability argument would have been anathema to Hobbes. Bodin's forceful articulation of inalienability – though he too made similar arguments about the limiting power of fundamental law, such as the laws of succession – was open to Hobbes's more absolutist interpretation for deployment against a parliamentary construal.⁶³ Hobbes's avowedly Bodinian argument allows him to dispense with the royalist appeal to fundamental law as the foundation for the essential rights of sovereignty, an appeal that was made as persistently by the King's opponents.⁶⁴

Consider a move made again and again in the 1640s by Parliament, for example in their declaration in response to the King's proclamation of May 27, 1642. It is Parliament, they declare, that must “preserve the publick Peace and Safety of the Kingdom, and to declare the King's pleasure in those things that are requisite thereunto, and what they do herein hath the stamp of Royal Authority, although His Majesty seduced by evil Council, do in his own Person oppose”: “the King's Supream and Royal pleasure is exercised and declared” not by the King but *by Parliament* despite “any personal Act or Resolution of his own.”⁶⁵ This sort of maneuver must have driven Hobbes to distraction, and in reasserting sovereign inalienability he flips it around.

⁶³ Hobbes was not alone in adopting Bodin for this purpose. One early example is Balthazar Ayala's discussion of the invalidity of a king's concession to rebels because of the inalienability and inseparability of sovereign rights (*De ivre et officiis bellicis et disciplina militari, libri III* (Douai, 1582), 1.6.8-10 (fols. 60v-63v)).

⁶⁴ The King himself had grounded inseparability on fundamental law, for example in his answer of January 28, 1642 to the initial petition of Parliament for control of the militia (Rushworth, *Historical Collections*, part 3, vol. 1, p. 517).

⁶⁵ Rushworth, *Historical Collections*, part 3, vol. 1, p. 552.

Parliament wants to say that even if they declare something that undermines the King's rights and powers, it is done by royal authority and is a declaration of the King's will, no matter what the King himself says; Hobbes counters that even should the King himself say or do something to lay down his rights and powers, then it is not done by royal authority and is not a declaration of the King's will.

Finally on this subject, an observation about how Malcolm characterizes the argument from inalienability. For example, he writes: "One of the fundamental features of Hobbes's argument is that...there are certain essential powers which the sovereign *must exercise*."⁶⁶ Recent studies have focused on the great importance for Hobbes of the distinction between having or holding a power or right and exercising or using it.⁶⁷ The sovereign must retain certain essential powers, but he need not always be the one to exercise those powers; such exercise may (and sometimes must) be delegated. I think that Malcolm might agree with the conceptual and interpretive point here, but it is lost in infelicitous expression. Moreover, careful attention to Hobbes's distinction on this matter might lead to questions about Malcolm's analysis elsewhere (for example, about the claimed difference between *De cive* and *Leviathan* on democracy).⁶⁸

⁶⁶ *Leviathan*, 1:25 (emphasis added).

⁶⁷ See Richard Tuck, "Hobbes and Democracy," and Kinch Hoekstra, "A Lion in the House: Hobbes and Democracy," both in *Rethinking the Foundations of Modern Political Thought*, ed. Annabel Brett and James Tully (Cambridge University Press, 2006), pp. 171-218; Hoekstra, "Early Modern Absolutism and Constitutionalism," *Cardozo Law Review* 34:3 (2013), pp. 1079-98; David Runciman, "The Sovereign," in *The Oxford Handbook of Hobbes*, ed. A. P. Martinich and Kinch Hoekstra (New York: Oxford University Press, forthcoming); and work in progress by Daniel Lee and Richard Tuck.

⁶⁸ *Leviathan*, 1:21, where Malcolm seems either to ignore *Leviathan*, 2:294 and 2.376-78, or overestimate their difference from the deflationary "concession" of *De cive* 10.15.

Late adjustments: the new regime.

There are two substantial matters at the tail-end of *Leviathan* that have long been understood to aim at making the work more acceptable to the new rulers in England: gestures of conciliation to Independency, and an apparent case for obedience to the new regime.⁶⁹ Both of these topics have been extensively discussed in the last decade, and Malcolm offers some nice encapsulations of and additions to the arguments. Malcolm discusses the first matter briefly, and I will only touch on it here. To his convincing reasons for suspicion about Hobbes's enthusiasms for Independency, I would here only add consideration of the placement of a crucial dual conditional, as well as an important qualification, in the central relevant passage from Chapter 47. Hobbes there says this of "the Independency of the Primitive Christians to follow...every man as he liketh best": "Which, *if* it be without contention, *and* without measuring the Doctrine of Christ, by our affection to the Person of his Minister...is *perhaps* the best."⁷⁰

I would suggest that Hobbes is hedging here, perhaps trying to come across as saying something favorable about Independency while not saying anything with which he disagrees. He has only said that Independency is perhaps best, and that we don't even get to that "perhaps" unless both of two conditions are met; and it is doubtful that Hobbes would think that either condition (much less both of them) would be met in the world he lived in. First, he is very unlikely to have believed that each person could follow his own judgment about spiritual leadership without this giving rise to contention. Second, he is very unlikely to have believed that, in the absence of any authoritative discipline,

⁶⁹ Discussed in *Leviathan*, 1:61-5 and 1:65-82.

⁷⁰ *Leviathan*, 3:1116, emphases added.

followers would properly interpret the doctrine of Christ rather than being swayed by their positive or negative feelings about particular ministers (especially given his oft-repeated claim that people are more influenced by example than by precept). Nor were recent events of a kind to encourage Hobbes in a belief in either the eirenic possibilities of individual judgment about religious matters, or the ability of the people to focus on what he maintained was the true doctrine of Christ. The passage may amount, that is, to saying that readers can go ahead and inscribe the rightful advent of Independency in their Hobbesian calendar under “never.”

The other late adjustment for which Malcolm argues is that in the final pages of the work, in “A Review, and Conclusion,” Hobbes presents his theory to be congenial to the new Parliamentary regime. Malcolm provides a series of refinements about important matters of detail here. Nonetheless, I want to suggest that the “Review, and Conclusion” may remain more puzzling than Malcolm admits.

On the one hand, it is hard to understand why Hobbes would have presented Charles II with the fine presentation manuscript of a work that concluded with an attempt to impress the new rulers in England with principles favorable to them. Why present it to Charles at all, if this is its final message? And if presenting it to him, why not excise or rhetorically recast the “Review” for the royal manuscript? Hobbes might have expected that the “Review” would be one of the parts of the work that Charles and those closest to him would be most likely to read. As attested by important changes to the text of *Leviathan* over time, Hobbes was perfectly content to alter or eliminate passages that would provoke the wrong kind of attention or that were less apt for one intended readership than another. What would Hobbes have been hoping for when presenting

Charles with the costly presentation manuscript of a work that he summed up as an argument in favor of the mortal enemy of the gift's recipient?

On the other hand, if Hobbes wished to support and to be seen to support the new regime, why did he not revise the aspects of the London Leviathan most offensive to it? In *Leviathan* he declares that monarchy is the best form of government; says that Charles I had undisputed sovereign right from a descent of 600 years, of which no subject could lawfully despoil him; dismisses as absurd the nature of the parliamentary claim to sovereignty; and denounces the incompetence of any "great Assembly."⁷¹ Hobbes condemns the leaders and followers of Parliament as unlawful, for "they that are subjects to a Monarch, cannot without his leave cast off Monarchy, and return to the confusion of a disunited Multitude; nor transferre their Person from him that beareth it, to another Man, or other Assembly of men."⁷² Hobbes endorses the behavior of royalists who from necessity made their peace with the new regime and engaged or compounded, but he is merciless toward the anti-royalists who pulled down the royal power; that is, his critical fire is aimed precisely at those whom Malcolm reads as receiving Hobbes's support in the "Review."

Yet it is the whole work that Hobbes is having published in England, so – if Malcolm is right about Hobbes's aims as he finished the work – why does he let stand the acclamations of monarchy and the denunciations of parliamentarians and their causes?

⁷¹ See *Leviathan*, 1:20-24; Kinch Hoekstra, "The *De Facto* Turn in Hobbes's Political Philosophy," in *Leviathan After 350 Years*, ed. Tom Sorell and Luc Foisneau (Oxford: Clarendon Press, 2004), pp. 43-44.

⁷² *Leviathan*, 2:264.

Malcolm says that Hobbes “did not go back...and weed out all the passages that so clearly proclaimed his previous allegiance to the royalist cause” because “his own theory had justified – indeed, required – such allegiance in the earlier stages of the conflict.”⁷³ But the question is why he should *publish* it, unedited, at the later date. Hobbes is, after all, especially sensitive to publication as a political action; and as Malcolm’s edition demonstrates, he was perfectly capable of altering passages that would better fit the demands of a later context. Malcolm argues that Hobbes’s “support for submission to the successful rebels was entirely compatible with his denunciation of their original rebellion.”⁷⁴ But if “Hobbes’s aim was now to support the new régime in England” and even to give “advice to the new ‘conquerors’ of England,”⁷⁵ it is hard to see how he could have hoped his condemnations of those same people would not inhibit these aims. In the *Leviathan*, Hobbes offers the English reading public an argument according to which the new leaders of that state were guilty of manifold crimes, injustices, and heinous violations of the law of nature and the law of God while striving for sovereignty. Yet Hobbes is not permitted by his view of the law of nature to undermine a peaceful civil order by word or deed. He cannot simultaneously support a new sovereign and denounce his or their actions should he have reason to think that doing so would, whether justifiably or unjustifiably, stir up disaffection toward or disobedience of that sovereign.

The other suggestion that Malcolm makes here is that Hobbes would have understood “that his own propaganda value to the régime would derive partly from the fact that he was regarded as a royalist with a particularly strong enthusiasm for purely

⁷³ *Leviathan*, 1:81.

⁷⁴ *Ibid.*

⁷⁵ *Leviathan*, 1:73.

monarchical rule,” and this would “make him more of a prize catch.”⁷⁶ I find it hard to believe that Hobbes wanted to be paraded as a prize royalist who had abandoned his king. Hobbes may well have found this intrinsically distasteful, and anyway it was not likely to lead to easy relations with either royalists or parliamentarians back in London. If Hobbes hoped to smooth his way back to England, I suppose that his priority would be for a low profile and quiet return, not one that would appear in the papers in the context of taunting or notoriety or at the expense of Charles II and Hobbes’s royalist friends.

That said, as Nedham’s recent public use of *The Elements of Law* had shown, and as Hobbes’s known position as Charles’s tutor would guarantee, he was probably already enough of a royalist prize without further protestations of royalism being published in London shortly before he was putatively planning to go back and declare his loyalty to Parliament. Not least, if he did think that it was a good strategy to smooth his return to be cast as a royalist renegado, and if he did think further published evidence would be useful, he could have retained passages elevating monarchy while removing or modulating his denunciation of the wickedness and stupidity of those who now held power in England and those who had supported them. He did no such thing.

Malcolm follows Ferdinand Tönnies and others in arguing that it is specifically in the “Review” that Hobbes strives to make peace with and support the new regime. And he follows Quentin Skinner and others in emphasizing the connection of the “Review” to *de facto* theory.⁷⁷ In particular, Malcolm follows the argument that Hobbes is not so much assimilating himself to the *de facto* theorists (as Skinner and others had argued) as

⁷⁶ *Leviathan*, 1:81-82.

⁷⁷ *Leviathan*, 1:65-82.

criticizing them, and that the particular objects of critical attention in the “Review” are texts by Marchamont Nedham and above all Anthony Ascham.⁷⁸ It is difficult to see, however, how Malcolm can adopt such a line. For he is maintaining that Hobbes is seeking to support the new regime, and to be seen as supporting it, with an argument that attacks two well-known defenders of that regime, one of whom is in its employ and the other of whom was recently and notoriously murdered by royalists while in its employ.

Hobbes does emphasize the relation between protection and obedience in the “Review,” but in a way that serves to excoriate anew the parliamentary and army leaders. He specifies that one has the liberty to submit to a new sovereign only when “the means of his life is within the Guards and Garrisons of the Enemy,” thus censuring everyone who fought against the King before being effectively captured by his enemies, and so condemns the actions by which the new leaders of the state came to power.⁷⁹ That this principle is consistent with supporting a new sovereign once established is not sufficient justification for public condemnation of the past actions of the present sovereign, nor does it make the “Review” look like a ticket home. And, as mentioned, the two theorists Hobbes appears to be attacking when providing his own theory of conquest had worked for the new regime and had written the attacked works to support it.⁸⁰ Finally, the law of nature that Hobbes adds in the “Review” requires everyone “*to protect in Warre, the Authority, by which he is himself protected in time of Peace*”: those who warred against Charles I, therefore, or for that matter those who did not come to his assistance when they

⁷⁸ Hoekstra, “The *De Facto* Turn,” pp. 33-73, at 48-64 (and pp. 55-59 for the specification of Ascham and Nedham as the principal targets of Hobbes’s argument).

⁷⁹ *Leviathan*, 3:1134.

⁸⁰ *Leviathan*, 3:1133-35.

could, violated the natural, moral, and divine law.⁸¹ (Thomas Tenison, writing shortly after the Restoration and quick to note occasions when Hobbes's principles undermine the royal interest, in this case sees Hobbes's addition of this law of nature as an attempt to show himself a supporter of the royal cause.⁸²) The reproaches found in the rest of the *Leviathan* still bristle in the "Review." Hobbes was a man of peace who stuck to his guns.

Envoi.

It is difficult to convey the quality and heft of Malcolm's accomplishment with these intensely learned volumes. While I have here focused on some interpretive matters from the general introduction, the exhaustive care put into constructing the edition itself, together with the textual introduction and the extensive apparatus, makes this a work of permanent value. That precision puts all subsequent interpretive work that takes it into account on a firmer foundation.

Malcolm's work in this edition is simultaneously substantive, sweeping, and astoundingly detailed. He handles the biggest issues of the *Leviathan* with confidence; and yet he notes when there is a missing iota subscript in the Greek. We have here an edition that allows us to view the awesome monster whole, and at the same time to consider each capillary. The new *Leviathan* is a work breathtaking in range, insight, and judiciousness. Who knew that judiciousness could be breathtaking?

⁸¹ *Leviathan*, 3:1133.

⁸² Thomas Tenison, *The Creed of Mr. Hobbes Examined* (London, 1670), pp. 157-58.