Politics is concerned with coercive forms of human association. Constitutions concern how such associations are organized. Three forms of association are relevant to an inquiry into the theological roots of modern constitutional theory. First and most obvious is civil association: that is, membership of a political community or body politic, a form of association whose characteristic feature is subjection to the same body of (civil) law. Second, religious association: that is, membership of a religious community or Church. A central feature of this type of association is a shared set of beliefs about man’s relationship to the world and to the Divine, and associated obligations, practices and rituals. Third, an association of political associations – increasingly as we move into the modern period an association of states – or what we have come to call the international order, centrally comprised of the rights and duties of sovereign states, a system which remained largely inchoate during the period in question.1

The first two forms of association – civil and religious – naturally form the central focus of an inquiry into early modern political theology. Indeed, the manner in which the early moderns began to articulate a vision of man and his place in the world in which the political and the theological were separated is a defining moment in the arrival of modernity.2 This is not to deny the continued resonance of conceptions, arrangements

---

1 One of the leading historians of international law, Martti Koskenniemi, argues that there is no international law properly so called until the later nineteenth century: see his The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960 (Cambridge, 2001). Bentham seems to have been the first to coin the phrase ‘international law’ in the 1780s.

and habits of mind derived from medieval politics and theology. But, over time, the new conception came to dismantle the ‘enchanted world’ and led to the redrawing of the presuppositions and practices of social and political life. And, indeed, most of the thinkers discussed in our workshop – with the exception of Grotius but including Thomas Hobbes and James Harrington, the subjects of this paper – had as their primary concern the domestic or interior construction of the commonwealth.

It is a mistake to overlook the third type of association, however, and with it the outward facing dimensions of the state and its interactions with other political forms. Not only is it an important, if under-elaborated, aspect of this body of thought, one which affords us glimpses into the developing world of modern, post-Westphalian international law and international relations. It also reveals the extent and consequences of the deconstruction of pre-existing juridical and associational linkages across the \textit{ius publicum europaeum}, a process that involved the fracturing of the medieval image of the \textit{res publica Christiana}. This process of destruction and reconstruction opened up new vistas for the newly sovereign state.

A benefit of pairing Hobbes and Harrington is that despite a considerable overlap in their political outlook, they reach rather different conclusions about the future shape of the international order. Their analysis raises the question of empire and of imperial-commercial confrontation, soon to become endemic to the European state system. It also invites us to reflect about how legal relations between the newly minted sovereign states or commonwealths, all the more so given that these writers saw the modern state as an architectonic structure of legal rule – an ‘Artificiall Man’ (Hobbes) – whose function was to make peaceful coexistence possible by way of a sovereign power of legislation and a unitary power of judicature – an ‘empire of laws and not of men’ (Harrington). To our disenchanted eyes, these now appear straight questions of law and politics into which theology need not intrude, questions of ‘public reason’ in the

---


4 For a majestic philosophical and historical analysis of these changes see Charles Taylor, \textit{A Secular Age} (Harvard, 2007). For a reconsideration of the pre-modern condition see, e.g., Euan Cameron, \textit{Enchanted Europe: Superstition and Religion 1250-1750} (Oxford, 2010).


Rawlsian idiom. But as we shall see, to contemporaries – even those, like Hobbes and Harrington, who were not obviously religious – they were anything but.

* * * * *

Let us consider first how the ‘master leveller’ himself handled the three modes of association and the relationship between them. One is tempted to call Hobbes’s strategy on this point one of divide and conquer. Let me explain why. The goal of his political theory was the erection and maintenance of an institutionally untrammelled and normatively untroubled sovereign state apparatus, the existence of which was essential, Hobbes argued, for peaceful coexistence. This theory required a primary conceptual move that rendered our forms of association are distinct and separate (or at least separable) modes. This is not to deny that, in some sense or other, these forms of association had a distinct conceptual existence within the medieval political imaginary. This is evident if we consider the intellectual traditions on which Hobbes drew: Erastianism, for instance, which sought to claim civil jurisdiction over ecclesiastical matters, and the tradition of idealizing civil religion that went back to Machiavelli.

Hobbes navigates these modes of association in an original way, the effect of which is systematically to redraw the boundaries between them. (The modes of association interact as a complex whole in Hobbes’s theory, but for the sake of the analysis I treat them separately.) With civil association we see a thorough and complete move to deny any independent authority to intermediate forms of association – Norberto Bobbio calls them partial societies – those institutions that represent or reflect sites of power other than those of the sovereign. As sovereignty is centrally a matter of jurisdiction, the power

---

14 Norberto Bobbio, *Thomas Hobbes and the Natural Law Tradition* (Chicago, 1993), ch. 6. Hobbes himself tends to use the term ‘systems’ to indicate collective bodies – see e.g. the title of *Leviathan*, ch. 22 ‘Of Systems Subject, Political and Private’. 
to legislate and to adjudicate, the legal dimensions of this move are especially clear. Hobbes systematically downgrades forms of law other than civil law, which is now defined austerely as the public commands of the sovereign.\textsuperscript{15} Common law, canon law, customary law, natural law – each a familiar semi-autonomous source of normativity – all are brought under the sovereign’s jurisdiction.

The proximate rationale for this root and branch programme of juridical harmonizing was the need for a single public voice. The sovereign’s commands provide the standards of right in relation to which the subjects are to organize their lives and resolve their conflicts. These laws are in the final analysis self-imposed and self-authored,\textsuperscript{16} and constitute ‘Artificial Chains’\textsuperscript{17} that link sovereign and subject. The ultimate rationale is peace: any other arrangement runs the risk of disagreement and so tends towards the dissolution of the commonwealth.

Although caught in Hobbes’s dragnet, the common lawyers were not his main target. That Hobbes didn’t like them much is true; but other things being equal, they were unlikely to cause that much trouble. By far the biggest threat to peace was religion – or, rather, the imbrication of politics and religion. We see this in his diagnosis of the causes of the English civil war. Since the sedition of Presbyterian ministers was a primary cause of war and the deaths of perhaps 100,000 people, would it not have been better, he writes in \textit{Behemoth}, had ‘those seditious ministers, which were not perhaps 1000, had been killed before they had preached? It had been (I confess) a great massacre; but the killing of 100,000 is greater.’\textsuperscript{18} We see it too in relation to his criticism of the common lawyers in the \textit{Dialogue on Common Law}, where the central charge is the tendency to populist updrift in sentencing policy when lawyers gave themselves freedom to manoeuvre beyond statute. What Hobbes is most concerned about in this respect is the crime of heresy, and not I suggest for purely self-interested reasons.\textsuperscript{19} Religious crimes of this sort are destabilizing if not firmly under the (presumptively rational) control of the sovereign authority.\textsuperscript{20} Hobbes’s relentless attack on the universities was likewise centred on the

\textsuperscript{15} \textit{Leviathan}, 183; \textit{De Cive}, 79; \textit{Dialogue}, 31.
\textsuperscript{16} \textit{Leviathan}, ch. 17.
\textsuperscript{17} \textit{Leviathan}, 147.
\textsuperscript{18} Thomas Hobbes, \textit{Behemoth or the Long Parliament} (Chicago, 1990), 95.
\textsuperscript{20} See also \textit{Leviathan}, 399.
influence they wielded on theological matters and, by extension, on questions of authority and legitimate rule.\textsuperscript{21}

Civil war, the spectre that haunts Hobbes’s theory and provides the main driver behind the specific political arrangements detailed within them, is in a sense not civil war as we tend to understand it. What Hobbes identifies is what he took to be the natural and all but inevitable outcome of the cycle of theological-political violence into which post-Reformation Europe was locked.\textsuperscript{22} It is this that makes us, in other ways so like the higher animals,\textsuperscript{23} worse than the beasts. Belief in God allows men to do things that no other animal would. Animals fight only to eat or reproduce but men fight to get into heaven.\textsuperscript{24}

The most frequent pretext of Sedition, and Civil Warre, in Christian Common-wealths hath a long time proceded from a difficulty, not yet sufficiently resolved, of obeying at once, both God, and Man, then when their Commmadements are one contrary to the other … The difficulty therefore consisteth in this, that men when they are commanded in the name of God, know not in divers Cases, whether the command be from God, or whether he that commandeth, doe but abuse Gods name for some private ends of his own … But if the command be such, as cannot be obeyed, without being damned to Eternall Death, then it were madnesse to obey it, and the Counsell of our Saviour takes place, (Mat. 10.28) Fear not those that kill the body, but cannot kill the soule.\textsuperscript{25}

The relationship between the first (civil) and second (religious) mode of association is subject to the same logic that we identified in relation to law reform, save that now there is an extra dimension. If the cycle of theological-political violence is to be interrupted, the new relationship between the civil (state) and the religious (church) cannot only be about form and structure but must also contemplate substance. There is no point

\textsuperscript{21} See especially Leviathan, ch. 46, ‘Of Darknesse from Vain Philosophy, and Fabulous Traditions’.

\textsuperscript{22} Which is not to say that Hobbes was not also a keen student of conflicts (including civil wars) that had no significant religious dimension: see, for instance, his translation of Thucydides published in 1629.

\textsuperscript{23} Thomas Hobbes, The questions concerning liberty, necessity and chance in Vere Chappell (ed.), Hobbes and Bramhall on Liberty and Necessity (Cambridge, 1999), p.141: ‘He [Bishop John Bramhall] takes it ill that I compare the murthering of men with the slaughtering of brute beasts … The Elements (saith he) are for the Plants, the Plants for the brute Beasts, and the brute Beasts for Man. I pray, when a Lyon eats a Man, and a Man eats an Oxe, why is the Oxe more made for the Man, than the Man for the Lyon?’ See Brett, Changes of State, 57-61. Cf Thomas Hobbes, The Elements of Law (Oxford, ed. J.C.A. Gaskin, 1999), p.129: ‘it were a hard condition of mankind, that a fierce and savage beast should with more right kill a man, than the man a beast.‘

\textsuperscript{24} Lilla, Stillborn God, 80, 84-5.

\textsuperscript{25} Leviathan, 403.
prescribing sovereign jurisdiction over the church, Hobbes came to realize, if the content of what is actually preached by churchmen eludes sovereign control. Claiming to understand God’s will is a source of power and, as such, a potential crack in the inviolate edifice of Hobbes imagining. The threat from this quarter, in fact, could hardly be greater. In contestations with a religious dimension the stakes are ludicrously high, since one’s eternal soul is in issue. ‘And so in Christian commonwealths judgement of spiritual and temporal matters belongs to the civil authority. And the man or assembly which holds sovereign power is the head of both the commonwealth and the Church; for a Christian Church and a Christian commonwealth are one and the same thing.’

In Leviathan, Hobbes’s stance is almost brutal in its elegant simplicity. All questions that pertain to religion fall under the sovereign’s jurisdiction. Chapter 42, ‘Of Power Ecclesiasticall’ is central. Some of its persuasive power derives from the capacity of the argument to deploy standard assumptions in the service of unexpected, often radical, ends. ‘All lawful power is of God’, Hobbes proclaims at one point, before immediately channelling the divine mandate in the direction of the ‘Supreme Governour’. Elsewhere, though, Hobbes dispenses with the orthodox gloss. Sovereign rights predate Christianity, he maintains. Christian sovereigns are supreme pastors of their people, and as such ‘have power to ordain what Pastors they please, to teach the Church, that is, to teach the People committed to their charge.’ Even the distinction between temporal and spiritual power, accepted in De Cive, is collapsed: ‘Men cannot serve two Masters: They ought therefore to ease them, either by holding the Reins of Government wholly in their own hands; or by delivering them into the hands of the Pope … For this distinction of Temporall, and Spirituall Power is but words. Power is really divided, and as dangerously to all purposes, by sharing with another an Indirect Power, as a Direct one.’

---

26 Hobbes’s position on these political theological questions, as opposed to his ecclesiology, seems to have hardened from De Cive to Leviathan. Parkin, Taming the Leviathan, 91.
27 De Cive, XVII.28, p.233.
28 In De Cive, Hobbes allows for two exceptions or limitations on the sovereign’s religious capacity: first, the denial by the sovereign of divine providence (treason against God); second, idolatry. In all other matters, he writes, obedience is due: XVI.10, p.202
29 Leviathan, 391.
30 Leviathan, 377.
31 Leviathan, 372.
32 Leviathan, 396.
conclusion reached through either route was the same. ‘CHRIST’s law therefore ... commands one to obey the commonwealth alone.’

Stepping back a little, we can see that Hobbes’s argument in this chapter and elsewhere amounts to a conceptual separation of theological and civil realms, but for the express purpose of subjecting the former to the latter. The argument was not designed as one of toleration. But this does not necessarily mean that it is an argument for intolerance. For one thing, Hobbes did clear a space for free conscience by arguing that the state had no legitimate regulatory concern with what people actually believed, but only with outward conformity with state-mandated religious practices. ‘Uniformity of public worship’ is what counts. It is also clear, for instance from his writings on heresy, that Hobbes expected religion under the control of the Sovereign to be rational and predictable. Any alternative would undercut the goal of taking the sting out of politico-religious conflict. Is it too much to see in all this glimpses of a more liberal position on religion and toleration? Probably. But it is still true that at least some versions of liberalism rely on the types of arguments pressed so forcefully in the back end of Leviathan, in which theological claims are hollowed out and the pretentions of the religious to power are systematically denied.

* * * * *

So much is reasonably familiar. Less often remarked upon perhaps are what we might call the externalities inherent to such a theory. At least some of those externalities are clear enough in the text. Many of the relevant sections of Leviathan take aim at those who would seek to limit the legitimate authority of the sovereign in either temporal or spiritual matters. Cardinal Bellarmine, author of an encyclopaedic defence of the Catholic Church against the Protestants and a leading propagandist against James I of England when the king introduced a loyalty oath discriminating against his Catholic subjects, is often the specific target (or bogeyman).

---

33 De Cive, XVII.10, p.213. See Collins, Allegiance of Thomas Hobbes, 35: ‘His aim was to preserve the utility of religion, not its truth, to harness the reverence generated by religious passion and redirect it towards sovereignty.’
34 Leviathan, 343.
35 De Cive, XV.15, p.181.
36 See also Leviathan, 399.
Two political-theological arguments are raised against the Catholic position, in addition to those outlined a paragraph or two ago. The first takes aim at the very foundations of Papal claims to exert authority – let alone to have jurisdiction over – Christian sovereigns. Hobbes argues that Christ’s office being one of ‘Fishing’ for souls (or persuasion) rather than coercion (or command), those who claim power by virtue of his title, unless they have sovereign civil power, do so erroneously. There is no spiritual commonwealth in this world, nor the possibility of one until Christ’s Second Coming. The ‘Kingdome of God is a Civill Kingdome’. From which it follows that ‘the Pope, to make himself this Representant, wanteth three things that our Saviour hath not given him, to Command, and to Judge, and to Punish, otherwise than (by Excommunication) to run from those that will not Learn from him: For though the Pope were Christs onely Vicar, yet he cannot exercise his government, till our Saviours second coming: And then also it is not the Pope, but St. Peter himselfe, with the other Apostles, that are to be Judges of the world.’

But the Pope is not Christ’s only Vicar. Hobbes’s second argument deploys the fragmented state of contemporary Christendom against any such imperialist claims. The idea that one Christian commonwealth exists is a gross error, Hobbes insists. ‘For it is evident that France is one Common-wealth, Spain another, and Venice a third, &c. And these consist of Christians; and therefore also are severall Bodies of Christians; that is to say, several Churches: And their several Soveraigns Represent them, whereby they are capable of commanding and obeying, of doing and suffering, as a naturall man; which no Generall or Universall Church is, till it have a Representant; which it hath not on Earth’. Note here Hobbes’s choice of examples. All were Catholic polities and, as such, far more amenable to the claim that they still belonged to an overarching and ancient suzerainty of the Pope. Hobbes is deliberately giving himself hard cases with which to sustain his position. He might have been tempted to substitute the Dutch Republic or Geneva or indeed England, all of which rejected papal claims of authority. In refusing this temptation his point is potentially strengthened. He is saying to us: look at even those jurisdictions which still nominally accept the spiritual jurisdiction of the Pope. They operate now as functionally autonomous political units – as free as a natural man in

---

37 *Leviathan*, 342.
38 *Leviathan*, 341 & ch. 41.
39 *Leviathan*, 284.
40 *Leviathan*, 397.
41 id.
his engagement with the world around him. So let the Pope continue to make the
traditional noises about the pan-European Christian commonwealth, and of his superior
status within it. But really he is addressing a phantom empire.

The reach of this position goes far beyond the position of the Pope in respect of modern
European states. It also entails that there are no valid extra-territorial claims, on whatever
basis, other than those that a sovereign accepts as valid (and then they are only valid for
the commonwealth which that sovereign represents and only so long as the sovereign
wishes). This is another dimension of Hobbes’s levelling project, the outcome of which
is to radically simplify the interactions between European states.

I investigate what this new international (really inter-state) order might look like shortly.
But first we need to make a brief excursus into natural law. Because perhaps we have
been a little hasty. We have looked so far at just two sources of authority, religious and
civil, the latter understood as the public commands of the sovereign. This is excusable, in
that this is the way Hobbes wants us to look at things. But this binary doesn’t exhaust the
options, even in Hobbes’s theory. There are at least two other sites of normativity that
appear in his writings: the law of nature and the law of nations. Both have the potential
to represent a free-floating or jurisdictionally non-specific source of legal authority. The
former, recast from of old Stoic and Roman law models, became the predominant
conceptual apparatus for the normative patterning of the pre-social or moral landscape.42
Its relationship with Christianity (or the Divine) was ambiguous. But its originators were
for the most part theologians, and it could certainly act as a means of translating the
Christian concern with ‘innerness’ into juridical language.43 Natural law is a means
whereby God moves us to the good.44 Although this varied somewhat from writer to
writer, it was either an expression of divine law or closely connected to it in some way or
another.45 The latter, the law of nations or *ius gentium*, also had a Roman law derivation
but had evolved into something like the common law of mankind not just on issues
between sovereigns but on legal issues generally.46 By its very nature, such a framework
of law eludes any simple control by sovereign agency or agencies.

44 Brett, *Changes of State*, 72.
45 Brett, *Changes of State*, 72. See also Harold J. Berman, *Law and Revolution II: The Impact of the Protestant
Reformations on the Western Legal Tradition* (Harvard, 2003), 89.
Natural law is prominent in Hobbes’s theory. Whole chapters of *Leviathan* are devoted to it, in one or other of its guises. It is important in the state of nature – unsurprisingly given that the concept is almost designed to give shape to pre-political contexts. Indeed, the state of nature can be read as a *juridical* puzzle, or legal collective action problem. The problem is not so much the absence of rights and norms as much as a surfeit of them. The existence of a catalogue of natural law precepts, principles of right conduct deducible by reason alone, makes our predicament worse in a particular sense, not better. It is not that we are unresponsive to considerations of right. If that were the case, we would be at the mercy of our needs and passions. Humankind would be just another species of animal, no more and no less. The point is, though, that we do a capacity to consider such matters, but that left to our devices we do so very imperfectly. Moreover, even where an individual or group does hit on a correct conclusion as to what natural law principles entail in a given situation, there is nothing in the natural condition that would consistently compel behaviour accordingly.

Natural law plays another crucial role in this part of the theory. It is precisely our capacity to reason towards a longer-term goal that is helps us to plot our escape from the natural condition. The state comes to be seen as the most effective – indeed, the *only* effective – means for attaining peace, in fulfilment of the first and fundamental natural law. In a formal sense, then, natural law grounds the commonwealth, conceived as a vehicle for the regulation of life by means of positive (civil) law. As Bobbio explains, the state ‘is thus founded on the law of nature itself. The issuing of positive laws is the reason why the state arises; but positive laws draw their justification from the law of nature. In other words: the law of nature states that human beings must let positive laws govern them, if humankind are to attain the end prescribed by the law of nature.’

---

47 *Cf De Cive*, chs 2-4.
48 *Cf* Noel Malcolm, ‘Hobbes and Spinoza’ in Burns and Goldie, *Cambridge History of Political Thought*, 535: conflict in the state of nature is a result of ‘a necessary jural conflict between people whose rights overlap or conflict in some sense with another until they have been renounced.’
49 For Hobbes, the precepts of natural law are ‘theorems of reason’.
50 *De Cive*, II.1, p.33: ‘The Natural law therefore (to define it) is the Dictate of right reason about what should be done or not done for the longest possible preservation of life and limb.’
51 The seeds are sown in the second fundamental law of nature, *Leviathan*, 92: ‘That a man be willing, when others are so too, as farre-forth, as to Peace, and defence of himselfe he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe.’
52 *Leviathan*, 91; *De Cive*, II.2, p.34.
53 Bobbio, ‘Natural Law and Civil Law’, 122.
a work of collective self-authorship. Hobbes is clear that natural laws do not work as commands, in the manner of civil laws, but in the minds and conscience of men who reason.

But this is not all. Natural law also performs a structuring role in the civil condition. It does so in two ways. First, Hobbes argues, the sovereign, while not bound by his own laws, is bound by natural law. Now, depending on our religious beliefs, this might not amount to very much, since Hobbes is equally clear that there is no earthly forum capable of holding the sovereign to those constraints. (In any case, any such forum inside the state would have to conclude, on Hobbesian principles, that the sovereign’s determination of the content or application of natural law would be definitive.) Secondly, Hobbes also deploys natural law, more often described in this context as ‘Equity’, as the framework in which the sovereign’s judges are to adjudicate disputes arising from the application of civil laws. This is not a negligible role. Hobbes insists that a judge in interpreting the law should look more to its meaning or purpose than the specific words of the text. The judge must also presume that the Legislator intends to act in accordance with Equity. If the law does not cover a particular case, then the judge is to supply it with the Law of Nature. Similarly, Hobbes expects a judge to work not from legal precedent, but from a sense of justice and equity. ‘For in the act of Judicature, the Judge doth no more but consider, whither the demand of the party, be consonant to naturall reason, and Equity’. Since the quality depends ‘on the goodnesse of a mans own naturall Reason, and Meditation’, Hobbes even goes so far as to suggest that churchmen and theologians would do this job better than judges schooled in the law.

But when about that other source of jurisdictionally non-specific authority, the law of nations? Hobbes makes our task somewhat easier by insisting on the fundamental symmetry between natural law and the *ius gentium*. It seems that he regards the law of nations as an extra-political or international version of the pre-political law of nature. ‘The precepts of both are the same’, he writes in *De Cive*, ‘but because commonwealths

---

55 *Leviathan*, 190.
56 *Leviathan*, 194.
57 *Leviathan*, 192.
58 *Leviathan*, 195.
once instituted take on the personal qualities of men, what we call a *natural law* in speaking of the duties of individual men is called the *right of Nations*, when applied to whole commonwealths, peoples or nations.⁶⁰ The symmetry becomes in *Leviathan* an identity. ‘the Law of Nations, and the Law of Nature, is the same thing. And every Soveraign hath the same Right, in procuring the safety of his People, that any particular man can have, in procuring his own safety. And the same law that dictateth to men that have no Civil Government, what they ought to do, and what to avoyd in regard to one another, dictateth the same to Common-wealths, that is, to the Consciences of Soveraign Princes, and Soveraign Assemblies’.⁶¹ The effect of this analysis, in the first instance, is to denude the extra-territorial space of any normative content, independent of what the sovereign entities jointly provide.

In fact, the process of elision goes further, folding divine law in too. The equation comes to look something like this:

\[
\text{DIVINE LAW} = \text{LAW OF NATURE} = \text{LAW OF NATIONS} = \text{EQUITY}
\]

Each of these phenomena exists in a relationship that is simultaneously in opposition to, but also support, the civil law (the public commands of the sovereign). All of them combined – or, rather, they are the same thing just manifested differently in different contexts – are in a similar relationship of opposition and support with civil law. So:

\[
[\text{DIVINE LAW} = \text{LAW OF NATURE} = \text{LAW OF NATIONS} = \text{EQUITY}] \text{ versus CIVIL LAW}
\]

\[
[\text{DIVINE LAW} = \text{LAW OF NATURE} = \text{LAW OF NATIONS} = \text{EQUITY}] \text{ entails CIVIL LAW}
\]

I am not absolutely certain what to make of this. It depends largely on whether you think that natural law in Hobbes has any real normative content, and whether that content has any substantial independent obligatory force. Many would argue that it doesn’t;⁶² some suggest otherwise, using *Leviathan* Chapter 26 as their main support.⁶³ One thing that is pretty clear is the way in which the alternative source of law is used to give a reason for obeying civil law – or least so as not to provide an obstacle to obeying the civil law.

---

⁶⁰ *De Cive*, XIV.? p.156. See also Tuck, *The Rights of War and Peace*, 129.
⁶¹ *Leviathan*, 244.
⁶² E.g. Bobbio, Loughlin, Harrison.
⁶³ E.g. Dyzenhaus, Fox-Decent, Klimchuk.
Divine law, as we have seen, is particularly dangerous in this respect. But Hobbes manages by the end to boil it down very nearly to one essential proposition. ‘All that is NECESSARY to Salvation’, he says in Chapter 43 of *Leviathan*, ‘is contained in two Vertues, Faith in Christ and Obedience to Laws. The latter of these, it were perfect, were enough to us.’ He continues: ‘The Laws of God therefore are none but the Laws of Nature, whereof the principall is, that we should not violate our Faith, that is, a commandment to obey our Civill Sovereigns, which wee constituted over us, by mutuall pact one with another.’\(^{64}\) One plausible reading of this is to think of the state now constitutes the entirety of the (self-made) soul of a people. Other sources are invalidated, their content stripped to a formal essence – typically, what man left to his own devices might work out by way of right conduct. Hobbes has seemed to have abandoned entirely the scholastic idea of the *civitas*, the moral body, that allowed the state to remain even under change of regime.\(^{65}\) The language of soul is apposite here. Hobbes makes these sorts of comparisons between man and commonwealth, of course.\(^{66}\) It reveals how the Hobbesian commonwealth is happy to steal the clothes of other potential sites of norms, in this case natural law, which had long been a discourse about the ethical content (or soul) of political life. I do not mean to turn Hobbes into Rousseau, though. The Hobbesian commonwealth is normatively much thinner, not least because its author is less concerned with the dynamics of social integration. For the most part, Hobbes seems to assume that the presence of a functioning sovereign, an effective body of *Lex*, is enough to ensure the ongoing existence of the political community *qua* community. If Law exists, then community should follow.

* * * * *

Does this make the international realm (to use an anachronistic term) anarchic and a-legal? To paraphrase Tacitus: is Hobbes in the business of creating a wilderness and calling it peace? Possibly. This seems to be the standard reading of Hobbes among international relations scholars. And we can see why. Sovereign states exist in something very much like a state of nature in respect of one another. There may be rules – really

---

\(^{64}\) *Leviathan*, 403-4.

\(^{65}\) Brett, *Changes of State*, 140.

\(^{66}\) *Leviathan*, ch.29: ‘the Sovereign is the publique Soule, giving Life and Motion to the Common-wealth; which expiring, the Members are governed by it no more, than the Carcasse of a man, by his own departed (though Immortall) Soule.’
‘theorems of reason’ – that are available to them when thinking about their interaction with one another. But these cannot command them to act in any particular way. Once constituted, it would appear that the artificial person of the state took on the characteristics of the fearful and defensive individuals who instituted it.67

There is much textual support for this analysis. As Hobbes writes in the dedicatory letter in *De Cive*: ‘*Man is a God to man,* and *Man is a wolf to Man.* The former is true of the relations of citizens with each other, the latter of relations between commonwealths.’68 The position is elaborated in a well-known passage in *Leviathan*, where Hobbes writes that ‘in all times, Kings and Persons of Soveraigne authority, because of their independency, are in continuall jealousies, and in the state and posture of Gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their Forts, Garrisons, and Guns upon the Frontiers of their Kingdomes; and continuall Spymes upon their neighbours, which is the posture of War.’69 The Latin *Leviathan* (1668) goes still further, adding to the passage just quoted by asserting that ‘whatever a particular man could do before commonwealths were constituted, a commonwealth can do according to the *ius gentium*.’70

But, if true, it would be represent an odd and, in certain ways, uncomfortable conclusion for a theory that sets such store on stability, order and normative clarity. Although Hobbes consistently draws an analogy between man in the natural condition and the relations between sovereign states, it is clear that he doesn’t intend the analogy to be exact. True, the world is populated by fearful and competitive actors. But states are not nearly as vulnerable as men in the state of nature. It is a simpler proposition for them to make treaties and establish leagues – and in so doing make justice, however provisionally, govern international relations. In addition, the state is not like an individual in that it is expected to act rationally and in the public interest.71 In general terms, while the sovereign in principle is free to act as it wills, the sovereign is a rational entity that works in furtherance of the long-term public interest (peace).72 In its inter-state relations, then, we would expect the sovereign to act in the same manner (rationally) and with the same

68 DC, 3-4.
69 L, 90.
goal in mind (peace). Under normal conditions this means making covenants and treaties with other states, converting if only in a piecemeal fashion the conditions of anarchy that otherwise prevail into passable conditions of peace.

In Hobbes’s theory, *salus populi*, the safety and benefit of the people, is the aim of the sovereign’s foreign (as well as domestic) policy. ‘Unlike the caricature version of the Hobbesian position’, Noel Malcolm has argued, ‘such a theory can give a prominent place to the pursuit of prosperity through international trade, and of other advantages that flow from international cooperation.’ 73 The Hobbesian state is not crudely Machiavellian – it does not act in a moral vacuum 74 – and Hobbes was not much of a warmonger. As with men, states are fundamentally self-protective, and only secondarily aggressive. 75 There would be no point in trying to escape from the destructive cynicism of *raison d’état* politics at the domestic level only for it to re-enter via the back door through the sovereign’s foreign engagements. 76 As the Philosopher observes in the *Dialogue on Common Law*, it is important to create a juridical scenario that is good for both King and People, ‘as creating some kind of Difficulty for such Kings as for the Glory of Conquest might spend one part of their Subjects Lives and Estates, in Molesting other Nations, and leave the rest to Destroy themselves at Home by Factions’. 77 It may well be that the stable and peaceful vision of the state in its domestic context is only sustainable if it adopts a cautious international pose. 78 It is precisely the sovereign’s job to avoid what Locke called ‘the goblins of warre and bloud’. The more active the sovereign is in the international realm, the more concerned it is with enlarging its territories through war and conquest, the more likely that the apparatus of government will become co-opted by the private interests of the rulers rather than function in the interest of the public as a whole.

* * * * *

74 Malcolm, ‘Hobbes’s Theory of International Relations’, 437: ‘Hobbes clearly does not mean that the law of nature is whatever the sovereign wills it to be.’
75 Tuck, *The Rights of War and Peace*, 130.
77 D, 21.
What finally, about questions of empire? Hobbes may not have been a natural expansionist. But he does envisage the transportation of the able-bodied unemployed to less densely inhabited countries. They ‘are not to exterminate those they find there’ but to encourage the natives to live in smaller areas and to cultivate the land more effectively. So far, so (relatively) friendly. (Although one might pause to wonder about a scenario in which a sovereign decided that the most effective strategy was one of colonization and empire. There is no check on this in Hobbes’s theory, which would seem to justify such a move, save for the realist one presented by other jealous sovereigns.) But his proto-Malthusian conclusion is icy: ‘And when all the world is overcharged with Inhabitants, then the last remedy of all is Warre; which provideth for every man, by Victory, or Death.’

At this point, I want to turn to Harrington, the most original political writer of English republicanism. There is much that he shares with Hobbes. His major work The Commonwealth of Oceana (1656) is ‘one of those works that transcend their immediate context’ and marks ‘a paradigmatic breakthrough’ in English political thought. But Harrington is far from being a typical republican. He wrote not to justify the fall of the English monarch but to explain it, and was more interested in reconciliation, settlement and stability than most republicans. Like other republicans, he inherited from Aristotle and Livy via Machiavelli the belief that ‘a commonwealth is an empire of laws and not of men’. But he was not much interested with the moral qualities (virtues) of individual citizens, having instead a ‘boffin-like preoccupation’ with constitutional machinery.

For Harrington, an adequate constitution was the only foundation for peace. Get the constitutional architecture right, or so he thought, and there is no reason why the commonwealth should not flourish for eternity.

---

79 Leviathan, 239.
80 David Hume, ‘Essay Twenty-Seven: Idea of a Perfect Commonwealth’ in Hume, Political Essays (Cambridge: Cambridge University Press, ed. Knud Haakonssen, 1994), 221-222: ‘All plans of government, which suppose great reformation in the manners of mankind, are plainly imaginary. Of this nature, are the Republic of PLATO, and the Utopia of Sir THOMAS MORE. The OCEANA is the only valuable model of a commonwealth, that has yet to been offered to the public.’
81 Parkin, Taming the Leviathan, 177 ff, puts them both in the same ‘conservative republican’ tradition.
82 Pocock, Machiavellian Moment, 384.
84 Oceana, 30: ‘Machiavel, the sole retriever of this ancient prudence’. See also 155.
85 Oceana, 20.
86 Scott, Commonwealth Principles, 141.
Oceana is an account of the founding of a republican constitution for England. Much of the work is given over to a fictional account of a constitutional convention at which a law-giver\(^8\) guides debate out of which springs a model of the commonwealth contained in a series of basic laws or ‘orders’. From the start, Harrington is involved in a wrestling match with Leviathan,\(^9\) a typical strategy being to accept much of Hobbes’s analysis only to harness it to republican ends.\(^0\) While he follows Hobbes in his structural analysis of sovereignty, his ambition is to fold sovereignty into the constitution of the commonwealth and thereby tame it. Sovereign power, like gunpowder for the soldier, is at one and the same time a means of keeping the people safe and a potential source of oppression. The ability to channel power upwards from the people to institutions and agents with the authority to command and the ability to take decisions is an enormous source of strength and can be used to ward off threats at home or abroad. But that same structure of power can be turned on the people themselves in order to deprive them of their liberties, or even their lives. The ideal constitution, then, distributes sovereign power in such a way that it can still be used for beneficial purposes but stops it from being used as an instrument of tyranny.\(^1\) It is no point trying to improve individuals or to get politicians to be more virtuous. Those who think of politics as a ‘war between a party of vice and a party of virtue’\(^2\) make a basic mistake. People are what they are.\(^3\) You will only change behaviour if you change the structures in which and through which people operate. That being the case, if you establish the right institutions and procedures there is no reason why you should not achieve perpetual peace within the commonwealth.

A republican structure of government consists of separate assemblies for debating and voting as we have seen, and a dispersed and rotating executive magistracy. Oceana also provides comprehensive instructions about elections to each of these institutions,

---

\(^8\) Ideally, the law-giver should be one man and the constitution made at one moment. The extraordinary situation requires extraordinary means and ‘whereas a book or a building hath not been known to attain perfection, if it had not had a sole author or architect, a commonwealth, as to the fabric of it, is of the like nature’ (Oceana, 67).

\(^9\) Scott, ‘Classical Republicanism: England, the Netherlands’, 72: ‘The objective of Oceana, as of Leviathan, is peace. It is the second great interregnum work of settlement in continuous dialogue and competition with the first.’

\(^0\) Blair Worden, ‘Harrington and “The Commonwealth of Oceana”’, 91: ‘Oceana seeks to provide a “political architecture” that will accommodate Hobbes’s sceptical insights into the functions of the passions and of instinct within the republican language of virtue and reason.’

\(^1\) Oceana, 99-100.


\(^3\) Oceana, 163: ‘where there is a liquorishness in a popular assembly to debate, it proceedeth not from the constitution of the people, but of the commonwealth’.
incorporating the Venetian ballot system. The goal of Harrington’s enterprise (like Hobbes’s) is perpetual peace, the strategy for achieving that goal is the equal commonwealth, and the tactics balance in government: ‘in an equal commonwealth, there can be no more strife than there can be overbalance in equal weights’. But in the process of transforming the people into ‘materials’ in the greater construction of the commonwealth, Harrington in fact does away with the idea of popular participation in government. Political action is based around the repetition of prescribed rituals that cannot be changed.

Harrington identifies two basic principles of balance, rotation and the agrarian. The latter, modeled on the troubled practice of republican Rome, is a ‘perpetual law’ imposing limits of wealth and property holding. The point is to prevent individuals or groups from becoming too powerful. The balance of property yields the balance of power, so a commonwealth must maintain relatively equal fortunes in order to survive. ‘Equal rotation’ provides for the frequent succession of office holders on the basis of the ‘free election or suffrage of the people’. Rotation prevents the stagnation and capture of the republic: ‘if you allow not a commonwealth her rotation, in which consists her equality, you reduce her to a party’. 

The chaotic situation in which England found itself in the 1650s provided an opportunity from which to build a new republic capable of transcending its existing divisions and enmities, a commonwealth modeled on Venice which ‘being always changing, is forever the same’. Harrington’s project was not to align himself with any of those positions against another but rather ‘to draw upon all of them in a holistic

---

94 Oceana, 114.
95 Nelson, Greek Tradition in Republican Thought, 49-68. Nelson argues that Harrington’s account of Roman land law and the political troubles that surrounded it derive from Plutarch: ‘Harrington sees the Roman agrarian laws through the eyes of a Greek’ (95).
96 Oceana, 33.
97 Oceana, 123.
98 Oceana, 33. Neo-Harringtonians share this fascination with Venice – and with constitutional detail. See e.g. Henry Nevile, Plato Redivivus, or A Dialogue concerning Government [1681] in Caroline Robbins (ed.), Two English Republican Tracts (Cambridge: Cambridge University Press, 1969), a work which also contains a fascinating proposal for splintering the royal prerogative and exercising it through the king acting through various parliamentary committees (although the king is allowed a free hand with imperial and mercantile concerns). Nevile was Harrington’s literary partner and close friend.
99 Oceana, 145. Blair Worden, ‘James Harrington and “The Commonwealth of Oceana”, 1656’ in Wootton, Republicanism, Liberty, and Commercial Society, 88: ‘Harrington, writing in a time of … instability and offering himself as “a lover of antiquity” who could end it, proposed a remedy in which virtuous government would not merely outlast revolutions of the sun but acquire their regularity and permanence.’
opposition to disunity itself. It is characteristic that Harrington does not seek to exclude political opponents from office, unlike his fellow republicans Nedham, Sidney and Milton. What he is after is not outright victory, whether religious or political, but reconciliation.

But what do these historical laws entail for Oceana's foreign policy? One might have expected the advocate of reconciliation and stability at home to opt for peace abroad. To the contrary, Harrington is every bit as expansionary as his most bellicose republican contemporaries, apparently believing just as fervently 'that God had singled out England for a critical responsibility at a critical moment in His scheme of history. Her duty is to rid the world of its “sick” and “corrupted” monarchies.' Oceana is ordered as a martial polity where subjects are soldier-citizens on a permanent war footing. Harrington intends Oceana to combine the qualities of both Venice and Rome. It was to be a Rome in respect of unlimited expansion but a Venice in respect of perpetual stability, liberty and virtue. Staying true to commonwealth principles in the international arena means aping Cicero’s injunction that the Romans should undertake the patronage or protectorate (as opposed to the empire) of the world:

This is a commonwealth of the fabric that hath an open ear and a public [general] concernment; she is not made for herself only, but given as a magistrate of God unto mankind, for the vindication of common right and the law of nature … A commonwealth, I say, of this make is a minister of God upon earth, to the end that the world may be governed with righteousness.

Expansion is thus a necessity – the best form of defence – and a moral obligation. Oceana’s mission is to rescue nations labouring under the yoke of Gothic Empires existing in a zombie-like state: ‘yet tumbling and tossing upon the bed of sickness, they cannot die, nor is there any means of recovery for them but by ancient prudence.’ It is true that Harrington is responsive to the moral core of the case against empire, expressed

---

100 Scott, Commonwealth Principles, 143.
101 Oceana, 62: ‘To the commonwealthsman I have no more to say but that if he exclude any party, he is not truly such, nor shall ever found a commonwealth upon the natural principle of the same, which is justice’.
103 Oceana, 205: ‘this commonwealth [is] constituted … of two elements, arms and councils’.
104 Armitage, ‘Empire and Liberty: A Republican Dilemma’, 36.
105 Pocock, Machiavellian Moment, 393.
106 Pagden, Lords of all the World, 127-130.
107 Oceana, 221.
108 Oceana, 232.
in Tacitus’s charge, alluded to above, that Roman imperialism ‘created a desert and called it peace’.\(^{109}\) Understood as a tutelary mission, conquest (‘patronage’) is conditional upon maintaining liberty and justice at home.\(^ {110}\) Harrington’s image of the English republic as hegemon is more oceanic than continental.\(^ {111}\) As a theorist who linked political power to land-based wealth, it is not surprising that he saw the proliferation of overseas plantations as central to Oceana’s fledging empire.\(^ {112}\)

In Oceana’s constitution, liberty and empire are almost two sides of the same coin. The principles that undergird the commonwealth also drive its overseas mission. Similarly, Oceana’s foreign exploits spill back into the republic. This is not just a strategic observation – that expansion can often be the best form of defence – a point with which Harrington agreed: ‘If your liberty be not a root that grows, it will be a branch that withers’.\(^ {113}\) What he is really suggesting is that only through the act of expansion does the commonwealth fully realize itself. Just as Rome ‘in confirming her liberty propagated her empire’ so too must Oceana become ‘an holy asylum unto the distressed world’, acting as ‘a minister of God upon earth’.\(^ {114}\) Empire of this sort, far from being a threat to liberty, rather confirms the republic in its liberty – and thus the people in its power. ‘Excellent patriots, if the people be sovereign, here is that which establish their prerogative.’\(^ {115}\) The evangelical streak to Harrington’s theory of liberal empire is consistent with the overarching objective of political immortality.\(^ {116}\) The reason of the commonwealth, radiating justice around the globe, may become as ‘perfect and immortal’ like the cosmos itself.\(^ {117}\) It is this perspective, in which glory and peace become one, that makes sense of the apocalyptic Song of Solomon inspired rhapsody that closes this section of Oceana:

---


110 The parallel with the nineteenth-century liberal justification for empire is striking. See chapter 6, below.

111 See also John Streater, *Observations* no. 3, 19-26 April 1654, p.21: ‘it is safer to chuse some remote place or new Plantation, which no State claimeth, for by this means the Commonwealth … that doth do so, avoideth many wars’.


113 *Oceana*, 223.

114 *Oceana*, 221.

115 *Oceana*, 233.

116 Scott, ‘Rapture of Motion’, 147.

Oceana is as the rose of Sharon; and the lily of the valley … She is comely as the tents of Kedar, and terrible as an army with banners. Her neck is as the tower of David, builded for an armoury, whereon there hang a thousand bucklers and shields of mighty men … The south hath dropped and the west is breathing upon the garden of spices. Arise, queen of the earth; arise, holy spouse of Jesus. For lo, the winter is past, the rain is over and gone.118

[CONCLUSION TO FOLLOW!]

---

118 Oceana, 233.