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## Odi et Amo? Hobbes on the State of Nature

**Andrés Rosler**

Associate Research Fellow, National Council of Scientific and Technological Research (CONICET), Associate Professor of Philosophy of Law  
Faculty of Philosophy and Letters, University of Buenos Aires  
La Pampa 1839 Apt 6 A, 1428 Buenos Aires, Argentina  
E-mail: andres.rosler@gmail.com

### Abstract

Very few—if any—will doubt Hobbes's aversion to the state of nature and sympathy for civil society. On the other hand, it is not quite news that it would be inaccurate to claim that Hobbes rejected the state of nature entirely. Indeed, he embraced or at the very least tolerated the state of nature at the international level in order to escape from the individual state of nature. Hobbes's recommended exchange of an individual state of nature for an international one does seem to have a smack of contradiction, arguably first noted by Rousseau. There is yet another charge of contradiction lurking around Hobbes's account of the state of nature. Hobbes's political thought would still reflect an ambivalent attitude towards a third instantiation of the state of nature, i.e. civil war. This is one of the main reasons why the political allegiance of Thomas Hobbes has been an issue ever since the publication of *De Cive* at the very least. This paper deals with Hobbes's differential treatment of the original and the international states of nature and discusses the source of Hobbes's somewhat ambivalent attitude towards civil war. It is here argued that Hobbes can fairly hold his ground *vis-à-vis* Rousseau's criticism, in spite of the normative resemblance between the international state of nature and the initial state of nature, and that Hobbes's ambivalent attitude of attraction and repulsion towards civil war is actually due not so much to opportunism on his part as to the normative autonomy he has granted to the state of nature.

### Keywords

state of nature, war, civil war, negative association

Although at first sight Hobbes's relationship with the state of nature looks like a foregone conclusion, it might prove to be rather ~~cautious~~ <sup>captious</sup>. In effect, on the one hand, very few—if any—will doubt Hobbes's aversion to the state of nature and sympathy for civil society. Indeed, the first thing that comes most likely to mind every time we hear the very idiom 'state of nature' is Hobbes's vivid and dreadful picture of what goes on in that condition, as stated, for instance, in chapter XIII of *Leviathan*: "it is manifest, that during the time men live without a common Power to keep them all in awe, they are in that

condition which is called Warre; and such a warre, as is of every man, against every man”. “In such condition”, adds Hobbes in a remark that is surely one of the greatest hits in the history of political thought, the life of man is “solitary, poore, nasty, brutish, and short”.<sup>1</sup> In *De Cive* Hobbes had already described the state of nature as a “miserable and hateful state”, from which all men want to exit “by a necessity of their nature, as soon as they understand such misery”.<sup>2</sup>

On the other hand, it is not quite news that it would be inaccurate to claim that Hobbes rejected the state of nature entirely. Indeed, he embraced or at the very least tolerated the state of nature at the international level in order to escape from the individual state of nature. Hobbes claims that by being in a state of nature sovereigns “uphold thereby, the Industry of their Subjects” and hence “there does not follow from it, that misery, which accompanies the Liberty of particular men”.<sup>3</sup> At first sight, Hobbes’s recommended exchange of an individual state of nature for an international one does seem to have a smack of contradiction, arguably first noted by Rousseau. According to him, the transition from the individual to the international state of nature not only fails to eliminate the state of nature but it rather steps up the level of belligerent activity dramatically since it implies the passage from low-scale crime to massive murder or war.<sup>4</sup>

There is yet another charge of contradiction lurking around Hobbes’s account of the state of nature. Even if his political theory were well equipped to support the transition from an original state of nature into an international one, Hobbes’s political thought would still reflect an ambivalent attitude towards a third instantiation of the state of nature, i.e. civil war. This is one of the main reasons why the political allegiance of Thomas Hobbes has been an issue ever since the publication of *De Cive* at the very least.<sup>5</sup> As it has been recently pointed out, although Hobbes was a champion of order and “his

<sup>1</sup> Thomas Hobbes, *Leviathan*, 2nd revised student edition, ed. with an introduction by Richard Tuck (Cambridge, Cambridge University Press: 1996), 88, 89 [1651 = 62].

<sup>2</sup> Thomas Hobbes, *De Cive. The Latin Version*, ed. H. Warrender (Oxford, Oxford University Press: 1983), 79, my translation.

<sup>3</sup> *Leviathan*, XIII, 90 [1651 = 63].

<sup>4</sup> Jean-Jacques Rousseau, *Discours sur l’origine et les fondements de l’inégalité parmi les hommes*, ed. by Jean Starobinski (Paris, Gallimard: 1985), 109.

<sup>5</sup> See, e.g. Jon Parkin, *Taming the Leviathan. The Reception of the Political and Religious Ideas of Thomas Hobbes in England, 1640–1700* (Cambridge, Cambridge University Press: 2007), 9, 61, 87.

initial political sympathies were with Charles I”, he was also “a defender of core elements of the revolutionary cause”.<sup>6</sup>

Seen in this light, Hobbes seems to use a differential approach to the state of nature in that he neither accepts nor rejects the state of nature lock, stock, and barrel. He does reject its lock of an initial war of every one against every one, and he is at the very least not against its stock of international war. It is just its barrel of civil war which seems to attract both rejection and some approval of sorts from Hobbes. What remains to be seen is whether Hobbes’s differential treatment of the state of nature holds water.

In what follows, I would like to focus upon Hobbes’s differential treatment of the original and the international states of nature, and to discuss the source of Hobbes’s somewhat ambivalent attitude towards civil war. I shall argue that Hobbes can fairly hold his ground *vis-à-vis* Rousseau’s criticism, in spite of the normative resemblance between the international state of nature and the initial state of nature, and that Hobbes ambivalent attitude of attraction and repulsion towards civil war is actually due not so much to opportunism on his part as to the normative autonomy he has granted to the state of nature.

This paper has four sections. The first one deals with the normative structure of the state of nature and attempts to show that it is essentially symmetrical in nature, although not in the standard Hobbesian style. The second one discusses Hobbes’s espousal of an international state of nature in return for the avoidance of the individual one. Special attention will be given in this section to a group-formation mechanism that operates in the state of nature and which is in keeping with the normative symmetry of that condition. The third section addresses in some detail the viability of Hobbes’s exchange of one state of nature for another in the light of Rousseau’s charge of contradiction against it. The fourth and final section attempts to show that Hobbes is drawn dangerously closer to the state of nature in the form of civil war than we—and arguably Hobbes himself—would have expected at first glance.

## I The Normative Structure of the State of Nature

The very invocation of the idea of a Hobbesian state of nature seems to unavoidably conjure the image of a chaotic condition of indiscriminate

<sup>6</sup> Jeffrey R. Collins, *The Allegiance of Thomas Hobbes* (Oxford, Oxford University Press: 2005), 58–9. See also Kinch Hoekstra, “The *de facto* Turn in Hobbes’s Political Philosophy”, in Tom Sorell and Luc Foisneau (eds.), *Leviathan after 350 years* (Oxford, Oxford University Press: 2004), 33–73.

violence in which no agent can take the normative high ground against any other agent.<sup>7</sup> The moral high ground, in turn, might be unreachable simply because there is no moral high ground in the first place as a result of a moral fall equally spread among *all* agents pretty much along the rather Augustinian lines of W. B. Yeats's "The Second Coming": "Things fall apart; the centre cannot hold; / Mere anarchy is loosed upon the world".<sup>8</sup>

However, Hobbes's position is more nuanced than this Hobbesian vulgate of utter and mutual Tom-and-Jerryism seems to indicate. As Yeats's poem itself suggests, there are at least *some* that could take the moral high ground but are actually overpowered by those who cannot: "everywhere / The ceremony of innocence is drowned; / The best lack conviction, while the worst / Are full of passionate intensity". In effect, having offered his famous and above-mentioned 'solitary-poore-nasty-brutish-and-short' speech in chapter XIII of *Leviathan*, Hobbes anticipates right away that people who would raise their eyebrows at "this Inference, made from the Passions, desire perhaps to have the same confirmed by Experience". At this point Hobbes's examples of people arming themselves and travelling "well accompanied", "when going to sleep" locking their "dores", and while at home locking their chests, show us a picture of pervasive law-breaking indicating that the main issue in the state of nature is not so much indiscriminate violence but poor law enforcement.<sup>9</sup> Indeed, it has been rightly pointed out that in the Latin *Leviathan* Hobbes adds Cain's killing of Abel to the list,<sup>10</sup> an action which Hobbes clearly deemed to be a case of murder: "Did not Cain out of envy kill his brother Abel, a crime so great he would not have dared it if there had at that time been a common power which could have punished him?".<sup>11</sup> Thus, these instances of criminal

<sup>7</sup> The relationship between parents and children might qualify this statement to some extent. See, e.g., Ferdinand Tönnies, *Thomas Hobbes: Leben und Lehre*, ed. Karl-Heinz Ilting (Stuttgart-Bad Cannstatt, Frommann-Holzboog Verlag: 1971), 215, and K. Hoekstra, *The Savage, the Citizen, and the Foole: The Compulsion for Civil Society in the Philosophy of Thomas Hobbes* (Oxford, Oxford University D.Phil. dissertation: 1998), 42–43.

<sup>8</sup> W. B. Yeats, *Selected Poems*, rev. ed. by Timothy Webb (London, Penguin: 2000), 124.

<sup>9</sup> *Leviathan*, XIII, 89 [1651 = 62].

<sup>10</sup> Kinch Hoekstra, "Hobbes on the natural condition of mankind", in Patricia Springborg (ed.), *The Cambridge Companion to Leviathan* (Cambridge: Cambridge University Press, 2007), 111.

<sup>11</sup> Edwin Curley duly points out the variant from the Latin edition (*Opera Philosophica*, vol. II, ed. by W. Molesworth (London: 1839), 101) and comments that "The Biblically alert reader might object that Cain *was* living under a power able to punish his misdeeds. (Genesis 4:6–16 relates that God punished him immediately.)" (Thomas Hobbes, *Leviathan*, ed. by E. Curley (Indianapolis, Hackett: 1994), 77, n. 7). As far as we are concerned, the issue is not so much whether there is (not) *institutional* law enforcement in the state of nature as whether its normative structure is symmetrical or asymmetrical.

offenses (e.g. theft, assault, murder) seem to bring to mind an undoubtedly *asymmetrical* normative condition: a criminal offender is no normative match for his victim. Finally, should such an encroachment upon somebody's right take place, the imposition of punishment would be very much in order. Hobbes's comment on Cain's behavior precisely points in that direction. Thus, so far, impunity rather than indiscriminate violence seems to be the main issue in the state of nature.

In *De Cive* I.4 Hobbes seems to be more specific about the normative status of violence before the establishment of civil society as he claims that "In the state of nature there is in all men a will to do harm, but not for the same reason or with equal culpability". In effect, he distinguishes between two types of agency with their attendant wills to do harm. Whereas a first and aggressive kind of agent "supposing himself superior to others, wants to be allowed everything, and demands more honour for himself than others have", a moderate or modest kind of agent "has a true estimate of his own capacities", so that he "practises the equality of nature, and allows others everything which he allows himself".<sup>12</sup> Hence, the moderate man's will to do harm would only be a justified response to the aggression practised by the immoderate agent. This distinction between types of will to do harm and grades of culpability is picked up and supported by Hobbes's precepts of the law of nature regarding "Mutual accommodation, or Compeasance",<sup>13</sup> equality, and modesty. In effect, it is a law of nature that "*everyone should be considerate [commodus] of others*". Given that "every man is not only *right*, but *naturally compelled*, to make every effort to win what he needs for his own preservation", "anyone who tries to thwart him for the sake of luxuries will be to blame for the war which breaks out, because he was the only one who had no need to fight; and is therefore acting against the *fundamental law of nature*".<sup>14</sup> Another precept of the law of nature holds that "*everyone should be considered equal to everyone*", and Hobbes adds that "Contrary to this law is PRIDE".<sup>15</sup> Finally, the law of nature also dictates that "*whatever rights each claims for himself, he must also allow to everyone else*".

<sup>12</sup> Thomas Hobbes, *On the Citizen*, ed. by R. Tuck and Michael Silverthorne (Cambridge, Cambridge University Press: 1998), 26.

<sup>13</sup> *Leviathan*, XV, 106 [1651 = 76].

<sup>14</sup> *On the Citizen*, III.9, 48. See also *Leviathan*, XV, 106 [1651 = 76], and Thomas Hobbes, *The Elements of Law, Natural and Politic*, ed. by J. C. A. Gaskin (Oxford, Oxford University Press: 1994), XVI.8, 90–91.

<sup>15</sup> *On the Citizen*, III.13, 50. See also *Leviathan*, XV, 107 [1651 = 77], and *The Elements of Law*, XVII.1, 93.

Hobbes explains that “Observance of this law is called *Modesty*, its violation *πλεονεξία* [arrogance]”.<sup>16</sup>

Now, the impossibility of taking the normative high ground in the state of nature may actually be due to the fact that *no one* is morally handicapped in that condition simply because the state of nature is normatively autonomous from morality. In effect, even if Hobbes’s natural law by definition establishes some kind of normative asymmetry between those who abide by it and those who do not, in *The Elements of Law* Hobbes also seems to imply that what is at stake in the state of nature is not simply a matter of impunity or fallen creatures dealing with their attendant defective natures—the standard alternative of a total moral failure in the state of nature should be *hors de combat* by now—or even just a question of scarcity and interaction:

seeing then to the offensiveness of man’s nature one to another, there is added a *right* of every man to every thing, whereby one man invadeth with right, and another with right resisteth; and men live thereby in perpetual diffidence, and study how to preoccupate each other; the estate of men in this natural liberty is the estate of war.<sup>17</sup>

In *De Cive* we find a similar account: “If to the natural tendency of men to exasperate each other, the source of which is the passions and especially an empty self-esteem, you now add the right of all men to all things, by which one man *rightly* attacks and the other *rightly* resists...”<sup>18</sup> Thus, there is reason to believe that

the primary state of conflict between individuals posited by Hobbes is not a contingent, factual conflict which might not exist if people ceased to be irascible or competitive, but rather a necessary jural conflict between people whose *rights* overlap or conflict in some sense with one another until they have been renounced.<sup>19</sup>

Hence, the alternatives are not just moral symmetry brought about by immorality all around *or* moral asymmetry; people in the state of nature may well also face each other in full normative equipoise without reference to any moral or rational shortcoming: this is precisely what is conveyed by Hobbes’s gladiatory metaphor of the state of nature.<sup>20</sup>

<sup>16</sup> *On the Citizen*, III.14, 50. See also *Leviathan*, XV, 107–8 [1651 = 77], and *The Elements of Law*, XVII.2, 94.

<sup>17</sup> *The Elements of Law*, XIV.11, 80 (emphasis added).

<sup>18</sup> *On the Citizen*, I.12, 29.

<sup>19</sup> Noel Malcolm, “Hobbes and Spinoza”, in J. Burns (ed.), *The Cambridge History of Political Thought, 1450–1700* (Cambridge, Cambridge University Press: 1991), 535. See also Georg Geismann and Karlfriedrich Herb, *Hobbes über die Freiheit* (Würzburg, Königshausen & Neuman: 1988), 24–5, 118, 129.

<sup>20</sup> *Leviathan*, XIII, 90 [1651 = 63]; *On the Citizen*, XVII.27, 231–2.

Thus, according to Hobbes, the only type of rights originally available to agents in the state of nature, voluntary engagements aside, are liberty-rights. These liberty-rights respond to the necessity on the part of a defender to resist an attack she has no duty to suffer, and also to the necessity on the part of an attacker to commit an act of aggression she has no duty to refrain from. Those who are parties to the central case of conflict in the state of nature are thus totally on a moral and legal par. Although they can be said to be harming or imposing *damnum* on one another, no wrongdoing or *iniuria* as an infringement upon a claim-right has taken place.<sup>21</sup>

The normative equipoise of agents in the state of nature may be actually compounded by the fact that, although the state of nature is not a lawless condition entirely in that the laws of nature are precisely meant to offer guidance as to how to proceed in that condition, they may also provoke some disagreement of their own. In effect, Hobbes is convinced that

Men may agree to all these laws of nature and whatever others there may be, and try hard to observe them, yet doubtful points and disputes will arise every day about their application to actions, namely whether something that has been done is contrary to law or not (this is called a question of right). It is a source of conflict, as both parties to a dispute believe themselves to be the injured party.<sup>22</sup>

In *Leviathan* we find a similar description:

though men be never so willing to observe these Lawes [of nature], there may nevertheless arise questions concerning a mans action; First, whether it were done, or not done; Secondly (if done) whether against the Law, or not against the Law; the former whereof, is called a question *Of Fact*; the later a question *Of Right*.<sup>23</sup>

Once again, neither irrationality nor immorality can account for the emergence of genuine normative conflicts, like those involved in the application or interpretation of natural law in the state of nature.

## II The new Normative Seal: Forward to the State of Nature

Much as the state of nature is not necessarily a condition of utter irrationality or immorality, it is a violent state nevertheless. Agents in the state of nature have to find out a way to change the individual warlike symmetry they find

<sup>21</sup> *On the Citizen*, III.4, 45.

<sup>22</sup> *On the Citizen*, III.20, 51.

<sup>23</sup> *Leviathan*, XV, 108–9 [1651 = 78].

themselves in into the peaceful asymmetry of civil society. In *De Cive* XIV.5 Hobbes brightly describes the passage from the normative equality entailed by the possibility of private judgement on our actions to the normative hierarchy of civil society:

the state of man outside the commonwealth is a state of enmity; and because in that state no one is subject to anyone else, there are no laws beyond the dictates of right reason, which is divine law. But in a commonwealth, the commonwealth alone, . . . , is the legislator, and the laws of the commonwealth are civil laws.<sup>24</sup>

The state of nature, on the contrary, “was a state of war, and hence [it was] licit to kill”.<sup>25</sup> Indeed, after the sovereign has been appointed, the normative structure has been radically transformed: a symmetrical but rather pointless enjoyment of liberty-rights<sup>26</sup> has been superseded by a full-blown net of mutual rights and duties so that in civil society agents’s rights correspond to enforceable duties on the part of other agents. This normative transformation is accompanied by the conceptual transformation of mutual infliction of harm into asymmetrical punishment. Once sovereignty is in place, should subjects break the law they may lawfully be the object of punishment due to their new duty to abstain from such kind of behavior.

We should bear in mind that the sovereign not only enforces natural law by way of punishment but has also a normative power capable of creating new reasons for action for its subjects, i.e. rights and duties they would not otherwise have but for the sovereign dictates and which enable people to resolve the jural conflict, since, as we have seen, what was essentially at stake in the state of nature was not just the motivational problem of getting people to do what they already know that is expected of them, but mainly a jural conflict so that the established sovereign authority will conclusively settle what is to be done in the first place. This explains why, according to Hobbes, “laws are obeyed not for their content, but because of the will of the instructor, *law* is not *advice* but *command*, and is defined thus: LAW is *a command of that person (whether man or council) whose instruction is the reason for obedience*”.<sup>27</sup>

Now, the contract of union or authorization is mainly responsible for the normative transformation that takes place in the passage from the state of

<sup>24</sup> *On the Citizen*, XIV.9, 158.

<sup>25</sup> *On the Citizen*, XIV.9, 158.

<sup>26</sup> See *On the Citizen*, X.1, 115.

<sup>27</sup> *On the Citizen*, XIV.1, 154. In *The Elements of Law*, XIII.6, 76, the authoritative nature of the law is even clearer: “when the command is a sufficient reason to move us to the action, then is that command called a LAW”.



nature to civil society.<sup>28</sup> However, for all the attention the contractualist argument has attracted—in both its “institutive” and “acquisitive” versions—as being responsible for the transition from the state of nature to civil society, there is an often overlooked group-formation mechanism in the state of nature which is in keeping with the normative structure of such condition, and, although it is independent from the contractualist explanation it may well oil its wheels. In effect, we often proceed on the assumption that Hobbesian agents, be it hypothetically or historically, somehow manage to gather all together to set up a sovereign and do so rather simultaneously: the transition from an original state of nature to civil society is assumed to be rather straightforward or immediate. However, neither the temporal nor the agency details of this assumption are quite accurate, as Hobbes indicates in *De Cive*:

Anyone who believes that one should remain in that state, in which all is allowed to all, is contradicting himself; for by natural necessity every man seeks his own good, but no one believes that the war of all against all which naturally belongs to such a state, is good for him. And so it comes about that we are driven by mutual fear to believe that we must emerge from such a state and seek allies [*socii*]; so that if we must have *war*, it will not be a war against all men nor without aid.<sup>29</sup>

In this passage it is clear that Hobbes is not talking about the transition out of the state of nature altogether, but about what happens in the state of nature itself: “~~In short,~~ the war of each against all is immediately transformed into the war of some against others; it endures neither as a war of each nor as a war against all”.<sup>30</sup> Hobbes here makes a fine-grained distinction between an originally and purely individual state of nature and a rather social one, a distinction not necessarily made along natural or familial lines but on the rather prosaic grounds of self-preservation. Thus, from an initially individual or degree zero of cooperation, a considerable degree of fruitful social interaction or collective action might take place in the state of nature.

On the other hand, in *Leviathan* Hobbes brings our attention to the fact that members of a multitude, unless directed by a single judgement, can expect no defence or protection, “neither against a Common enemy, nor against the injuries of one another”, “being distracted in opinions”, and hence “when there is no common enemy, they make warre upon each other, for their particular interests”. In fact,

<sup>28</sup> See *On the Citizen*, V.7, 72, and *Leviathan*, XVII, 120–1 [1651 = 87–8].

<sup>29</sup> *On the Citizen*, I.13, 30.

<sup>30</sup> K. Hoekstra, *The Savage, the Citizen, and the Foole*, 21.

when either they have no common enemy, or he that by one part is held for an enemy, is by another part held for a friend, they must needs by the difference of their interests dissolve, and fall into a Warre amongst themselves.<sup>31</sup>

Thus, Hobbes seems to be of the idea that against the background of a symmetrical and individual state of nature, the very existence of an external enemy may well be thought to contribute to internal social cohesion and thus act as a catalyser for collective action so that the normatively symmetrical structure of human conflict is redirected withoutwards. Individuals may relate to or identify themselves with other individuals similarly situated *vis-à-vis* what amounts to be an external entity.

This type of group formation has been usefully called “negative association”. What actually seems to happen in the original or purely inter-individual state of nature is that two agents who “otherwise have nothing in common and have every reason to be apprehensive towards each other are now threatened by the same enemy, and given that they value their self-preservation above all else, they have to address the immediate threat before they deal with other, more distant ones”.<sup>32</sup> Thus, all agents in the state of nature would *ex ante* agree that any two of them may well be better off by joining forces against any third one than by remaining in a war of all against all: the exclusion of a third party will make it possible for the very idea of a group to arise—even if, of course, most, if not all, will prefer to find themselves on the including end rather than on the receiving or excluding end of such an union or alliance.

Against this background it would not be totally unwelcome should some people decline to enter civil society, since not only “If anyone refuses consent, the rest will notwithstanding form a commonwealth without him” and hence “the commonwealth retains its original Right against the dissenter, i.e. the *right of war*, as against an enemy”,<sup>33</sup> but also because such potentially external or out-group hostility is a condition of possibility of civil society itself.

Actually, negative association would allow us to improve our condition in the state of nature even if it would not lead us into civil society at one stroke but would enable us to enter into a rather social state of nature that would fall far short of civil society. Indeed, it would be surprising if it did take us into civil society immediately given the structure of interaction in the original state

<sup>31</sup> ~~Respectively,~~ *Leviathan*, XVII, 118, 119 [1651 = 86].

<sup>32</sup> Ioannis D. Evrigenis, *Fear of Enemies and Collective Action* (Cambridge, Cambridge University Press: 2007), 119. ~~The employment of external war as a means to internal civil peace had also been dubbed “Sallust’s theorem”: see N. Wood, “Sallust’s theorem: a comment on ‘fear’ in western political thought”, *History of Political Thought*, 16:2, (1995), 181.~~

<sup>33</sup> *On the Citizen*, VI.2, 77.

of nature. The most urgent task of negative association is not so much to get us *into* civil society but *out* of the individual state of nature, i.e. to allow us to form any group at all.

Hobbes's espousal of the principle of negative association was not quite original in its conception but rather a variation on a Tacitist theme characteristic of English humanism at the turn of the sixteenth and seventeenth centuries. For instance, during the reign of Elizabeth I Essex's supporters held that there was a crisis in the Elizabethan society and that such a crisis was "brought about by the policy of peace with Spain".<sup>34</sup> According to this Tacitist approach, there is a causal link between foreign war and the avoidance of civil war. Hobbes himself picks up the point that not even republics were ~~not~~ exempt from this policy:

no great Popular Common-wealth was ever kept up; but either by a forraign enemy that united them; or by the reputation of some one eminent Man amongst them; or by the secret Counsell of a few; or by the mutuall feare of equall factions; and not by the open Consultations of the Assembly.<sup>35</sup>

What seems to be original on Hobbes's part is his application of the principle of negative association to group formation itself rather than to the enhancement of extant groups.

Thus, it was part and parcel of the idea of sovereignty that to be able to contain domestic political conflict states claim for themselves the normative asymmetry of enjoying a monopoly of violence be it in terms of the exercise of punishment within or as war without as exclusively state activities. Of course, what is sauce for the goose is also sauce for the gander and hence the avoidance of internal normative symmetry carries with it the creation of an external normative symmetry: states bestow upon one another the classical Roman treatment of equally justified belligerents. Indeed, Roman jurists "openly treated the Romans' enemies as in some sense in a moral par with the Romans".<sup>36</sup> Early modern states were thus happy to grant each other such a monopoly of violence, because even if it meant that free rein was given to war as the

<sup>34</sup> Richard Tuck, *Philosophy and Government, 1572–1651* (Cambridge, Cambridge University Press: 1993), 105–6.

<sup>35</sup> *Leviathan*, XXV, 182 [1651 = 136].

<sup>36</sup> R. Tuck, *The Rights of War and Peace*, 32. In effect, according to the Roman Digest, "Enemies (*hostes*) are those who declared war on us or on whom we have declared war; all the rest are bandits (*latrones*) or plunderers (*praedones*)" (Brent D. Shaw, "Bandits in the Roman Empire", *Past & Present*, 105:1, (1984), 21). See Cicero, *On Duties*, ed. by M. T. Griffin and E. M. Atkins (Cambridge, Cambridge University Press: 1991), III.108, 142, on Roman enemies as just and legitimate.

continuation of policy or politics by other means, that appeared to work as a constraint on domestic political conflict.

### III Rousseau's Charge of Contradiction

Thus, Hobbes's strategy regarding the state of nature does not consist in disposing of the state of nature or war entirely, but rather in displacing it so that the state of nature subsisted but with nation-states, instead of individuals, as its participants. This apparently glaring mismatch between the rejection of an initial state of nature and the endorsement of an international one was spotted early on by Rousseau. According to Rousseau, the transition from the individual to the international state of nature not only fails to eliminate the state of nature but it rather steps up the level of belligerent activity dramatically since it implies the passage from low-scale crime to massive murder or war. In effect, in his *Discourse on the Origin of Inequality* Rousseau claims that in the international state of nature "men massacre each other by the thousands without knowing why", and as a result of "national wars" and "reprisals", "more murders were committed in one single day of combat and more horrors in the capture of one single town than had been committed in the state of nature during entire centuries on the whole face of the earth".<sup>37</sup> In his *Extrait* from Saint-Pierre's *Paix Perpetuelle*, Rousseau ascertains in a similar spirit that "each one of us being in the civil state with our fellow citizens and in the state of nature with the rest of the world, we have prevented particular wars only to light general wars, which are a thousand times more terrible".<sup>38</sup> This is why Rousseau detects "a manifest contradiction" in Hobbes's political theory:

as man with man, we live in the civil state and subject to laws; as people with people, each one enjoys natural liberty: this renders at bottom our situation worse than if these distinctions were unknown. For living at the same time in the social order and in the state of nature, we are subject to the inconveniences of the one and the other, without finding security in either.<sup>39</sup>

Rousseau has a point. If Hobbes is so keen on admonishing us to leave the state of nature, why should we find any comfort in the idea that be it as a by-product or as a deliberate means of avoiding a state of nature another state of

<sup>37</sup> Jean-Jacques Rousseau, *Discours sur l'origine et les fondements de l'inégalité parmi les hommes*, 109, my translation.

<sup>38</sup> J.-J. Rousseau, *Écrits sur l'Abbé de Saint-Pierre*, ed. by Sven Stelling-Michaud, in *Oeuvres complètes* III (Paris, Gallimard: 1964), 564.

<sup>39</sup> *Ibidem*, 610.

nature is created at the international level, even if civil war is avoided as a result? Hobbes would have to explain in the face of Rousseau's criticism why his international state of nature is still "the most proper for peace".<sup>40</sup> In another words, he must come up with a disanalogy argument according to which a significant feature that exists at the international state of nature is absent at the national one—or the other way around—and thus it is able to account for his differential assessment of the initial and the subsequent international states of nature.<sup>41</sup>

Now, that is precisely what Hobbes seems to assume as he claims that by being in a state of nature sovereigns "uphold thereby, the Industry of their Subjects" and hence "there does not follow from it, that misery, which accompanies the Liberty of particular men".<sup>42</sup> We have already seen that Hobbes does not stand against the state of nature as such, but takes exception to "Anyone who believes that one should remain in *that* [AR] state, in which all is allowed to all", i.e. to "*the war of all against all* [emphasis added] which naturally belongs to such a state". Hobbes's point is that "*if* [additional emphasis] we must have *war*, it will *not be a war against all men nor without aid* [additional emphasis]".<sup>43</sup>

In fact, according to some contemporary anthropological findings Hobbes seems to sail closer than Rousseau to the truth on the state of nature, in that state-peddled wars, despite their massive death tolls, have a much less lethal demographic effect overall than did pre-state fighting.<sup>44</sup> Greater internal security and lesser exposure to killing from outside were the key factors. First of all, by altering fighting patterns state warfare reduced intergroup violence so that overall violent death rates decreased significantly: deaths as a result of war represent a lower mortality rate than homicides and feuds, i.e. than the war of all against all. There is no doubt that group fighting did grow in scale with the growth in size of the communities themselves; however, overall violent mortality rates were reversely proportional to the growth and complexity of the community. Hence, there is reason to believe that the state's success in imposing internal peace was probably the major reason for the decrease in violent

<sup>40</sup> J.-J. Rousseau, *Discours sur l'origine et les fondements de l'inégalité parmi les hommes*, 83.

<sup>41</sup> For the idea of a disanalogy argument see Simon Caney, *Justice Beyond Borders* (Oxford, Oxford University Press: 2006), 270.

<sup>42</sup> *Leviathan*, XIII, 90 [1651 = 63].

<sup>43</sup> *On the Citizen*, I.13, 30. In *Leviathan*, XXIX, 221 [1651 = 167], Hobbes explains that individuals leave the state of nature "as they become at last weary of irregular justling, and hewing one another". In this passage "irregular" may not be emphatic but rather attributive.

<sup>44</sup> These anthropological considerations draw on Azar Gat, *War in Human Civilization* (Oxford, Oxford University Press: 2008), 131–2, 408–9.

mortality. Secondly, the key factor in the transition from inter-individual to inter-state violence seems to be the level of the population's exposure to danger, either by direct engagement in war or through violence against non-combatants.<sup>45</sup> As states grew in size, civilians became less exposed to fighting and adult male participation rates in their armed forces declined. To give a taste of the difference made by state warfare, *vis-à-vis* general mortality, death in war in France, one of the most warlike nations in Europe, is estimated by one source at 1.1 per cent in the seventeenth century, in comparison to average human violent mortality rates among adults in the state of nature which may have been in the order of 15 per cent—and 25 per cent for men.<sup>46</sup>

On the other hand, the very symmetrical status of agents in the individual state of nature which may well have been responsible for the high intensity or harshness of the fight in that condition, may prove to be beneficial at the supra-individual level. Inter-state symmetry enables those who face each other as collective enemies to treat each other not in personal terms as evil-doers but instead in rather impersonal terms as incumbents of positional tasks or roles, so that war is not conceived of as a personal question but as strictly business. Actually, this argument has been put forward by Rousseau himself: “War is not... a relation of man to man but a relation of state to state, in which individuals are enemies but accidentally, not at all as men or even as citizens, but as soldiers, not as members of the fatherland, but as its defenders”.<sup>47</sup> Thus, this shift in emphasis from the justice of the war to the justice of the enemy performs a decisive damage-control function.<sup>48</sup>

We should also bear in mind that even if, according to Hobbes, sometimes the omission of some things contained in natural law, if done for the sake of peace and self-preservation, may be considered as fulfilling rather than as violating natural law, Hobbes also holds in one of the notes he added to the second edition of *De Cive* that “*there are some natural laws whose observance does not cease even in war*”. In effect, Hobbes is adamant that he “*cannot see what drunkenness or cruelty (which is vengeance without regard to future good) contribute to any man's peace or preservation*”.<sup>49</sup> In *Leviathan* Hobbes also envisages an

<sup>45</sup> Deborah Baumgold's *Hobbes's Political Theory* (Cambridge, Cambridge University Press: 1988), 87, has rightly brought out the role played by professional soldiers in Hobbes's theory of sovereignty.

<sup>46</sup> See Azar Gat, *War and Human Civilization*, 131.

<sup>47</sup> J.-J. Rousseau, *Du Contract Social*, ed. by R. Derathé, in *Oeuvres complètes* (Paris, Gallimard: 1964), 357.

<sup>48</sup> This is also the line of argument pursued by Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (Berlin, Duncker & Humblot: 1950), 91, 114–15.

<sup>49</sup> *On the Citizen*, III.27, n., 54.

international state of affairs in which warfare is conducted within certain constraints. He holds that in former times “in all places, where men have lived by small Families” although it was thought to be within the domain of honour to engage in mutual robbery and spoilage, these activities were pursued within the observance of “the Lawes Honour”, i.e. they “abstain[ed] from cruelty, leaving to men their lives, and instruments of husbandry”. Since war was at stake, it seems safe to presume that those who were spared were thought to be civilians or non-combatants. And Hobbes immediately adds “And as small Families did then; so now do Cities and Kingdoms which are but greater Families...”.<sup>50</sup> All constraints on war in the individual or initial state of nature are thus enhanced by the impersonal character of the international sphere.

#### IV The Other Side of Normative Symmetry: Back to the State of Nature

Even if Rousseau’s charge of contradiction against Hobbes’s international state of nature turned out to be unsupported, Hobbes’s political theory could end up being contradictory in another sense.

As a reason-of-state opponent of the republican humanist paradigm of politics as a reasoned debate on the good life, Hobbes shared in the Tacitist move of importing “war into *civil* life: all politics was now seen as at least potentially civil war, and our fellow citizens were no different from enemies with whom we lived in uneasy peace”. Indeed, Tacitists “took a view of war between states derived from humanist historians and political writers, and inserted it into their view of domestic politics, presenting civil life as a matter of quasi-military tactics”.<sup>51</sup> As domestic politics is held to be on a par with war, the friend-enemy opposition becomes the distinctive political standard both internally and externally. In this spirit Hobbes rhetorically asks “what are countries [*respublicae*] but so many camps fortified against each other with garrisons and arms...?”.<sup>52</sup>

At first sight the importation of military terms into politics seems to enhance the position of the state. In fact, those who are happy to propose a comparison between politics and war also often champion the cause of the state in the conservative spirit of taking the political wind out of the domestic sails. But the comparison of politics with war may well allow the normative symmetry

<sup>50</sup> *Leviathan*, XVII, 118 [1651 = 86].

<sup>51</sup> R. Tuck, *The Rights of War and Peace*, 10–11.

<sup>52</sup> *On the Citizen*, X.17, 126.

of the state of nature to slide back into the domestic sphere, and thus thwart Hobbes's efforts to shore up internal pacification.

To start with, there is the often-mentioned Hobbesian liberty of subjects to disobey the sovereign when their life is at stake, "though justly condemned".<sup>53</sup> Hobbes holds that this not only applies to individual subjects but also that "in case a great many men together, have already resisted the Sovereign Power unjustly, or committed some Capitall crime, for which every one of them expecteth death", they "have... the Liberty then to joyn together, and assist, and defend one another", for

they but defend their lives, which the Guilty man may as well do, as the Innocent. There was indeed injustice in the first breach of their duty; Their bearing of Arms subsequent to it, though it be to maintain what they have done, is no new unjust act. And if it be only to defend their persons, it is not unjust at all.<sup>54</sup>

However, recalcitrants are not exclusively to blame for bringing the state of nature back to life amidst civil society. The Hobbesian sovereign may well be responsible for doing it as well. Let us see why.

It goes without saying that the Hobbesian sovereign will try to make sure that those who disobey the law will have a hard time getting out of harm's way. The main question is what kind of harm will come their way. Under the heading of "harme" or "evill" Hobbes distinguishes three main types: punishment, banishment, and war or "hostility". Hobbes holds that "A PUNISHMENT, is an Evill inflicted by publique Authority, on him that hath done, or omitted that which is Judged by the same Authority to be a Transgression of the Law; to the end that the will of men may thereby the better be disposed to obedience".<sup>55</sup> Thus, "evill inflicted by publique Authority, without precedent publique condemnation, is not to be stiled by the name of Punishment; (...)"<sup>56</sup> On the other hand, harm inflicted upon

declared enem[ies], fals not under the name of Punishment: Because seeing they were either never subject to the Law, and therefore cannot transgresse it; or having been subject to it, and professing to be no longer so, by consequence deny they can transgresse it, all the Harmes that can be done them, must be taken as acts of Hostility.<sup>57</sup>

<sup>53</sup> Hobbes's test on disobedience is that "When... our refusall to obey, frustrates the End for which the sovereignty was ordained; then there is no Liberty to refuse: otherwise there is" (*Leviathan*, XXI, 151).

<sup>54</sup> *Leviathan*, XXI, 151–2 [1651 = 111–12].

<sup>55</sup> *Leviathan*, XXVIII, 214 [1651 = 161].

<sup>56</sup> *Leviathan*, XXVIII, 215 [1651 = 162]. The marginal title adds that "pain inflicted without publique hearing" is not punishment.

<sup>57</sup> *Leviathan*, XXVIII, 216 [1651 = 163].



In effect, war is “the Infliction of what evill soever, on an Innocent man, that is not a Subject, if it be for the benefit of the Common-wealth, and without violation of any former Covenant”, against “whom the Common-wealth judgeth capable to do them hurt”. In this case, “the Sword Judgeth not, nor doth the Victor make distinction of Nocent, and Innocent, as to the time past; nor has other respect of mercy, than as it conduceth to the good of his own People”. Finally, Hobbes explains that “*Exile*, (Banishment) is when a man is for a crime, condemned to depart out of the dominion of the Common-wealth, or out of a certaine part thereof; and during a prefixed time, or for ever, not to return into it”. Exile or banishment “seemeth not in its own nature, without other circumstances, to be a Punishment; but rather an escape, or a publique commandment to avoid Punishment by flight”, and hence “a Banished man, is a lawfull enemy of the Common-wealth that banished him; as being no more a Member of the same”.<sup>58</sup>

We may construe Hobbes’s distinction between kinds of harm as follows. Regarding time, whereas punishment in the strict sense is essentially backward-looking in that a criminal is punished on the grounds of his past wrongdoing—although Hobbes also claims that the point of punishment is forward-looking, enemies are rather anticipated as they attempt to inflict harm on us. From a normative viewpoint, whereas punishment entails a strict asymmetry between the act and the punitive reaction to it, Hobbesian war is rather more liberal in assigning equal rights to attack and defence. In other words, whereas X is a criminal in relation to Y if X does not call into question Y’s authority, i.e. X does not deny he is transgressing the law but simply wants to get away with it,<sup>59</sup> X is an enemy of Y if X is not so much interested in getting away with a crime but in denying he has committed any relevant transgression at all. From an institutional standpoint, punishment is less demanding than war in that as far as the infliction of punishment is concerned, the authority of local magistrates will do: there is no need to turn to the sovereign for that. Punishment is on the other hand more demanding than war in that it requires at least a fair amount of tribunal activity or the bare trappings of a legal process at least: arraignments, trial, conviction. War is, as it were, rather more to the point. Punishment, as we have seen, and as a result of its typical normative asymmetry, has also strict rules regarding the assignment of guilt: only individual responsibility can be subject to punishment. War, on the other hand, typically involves the attribution of collective inculpation. Finally, whereas

<sup>58</sup> *Leviathan*, XXVIII, 218 [1651 = 165].

<sup>59</sup> As Hobbes says, “notwithstanding that such Criminals have consented to the Law, by which they are condemned” (*Leviathan*, XIV, 98 [1651 = 70]).

punishment seems to be meant for internal affairs or jurisdictional issues, war, as we have seen above, seems to be cut out for international affairs. Banishment, for its part, seems to steer a middle course between punishment and war. Although it derives from a crime committed *ex hypothesi* by a member of the commonwealth, it ends up making a foreign enemy of the former subject or member.

Now, on the assumption of the argument on the transition from the state of nature to civil society we would expect Hobbes's sovereign to criminalize disobedience, i.e. to bring the full weight of the normative asymmetry between sovereignty and subjection to bear upon disobedience. However, sometimes he prefers to treat disobedience as a case of hostility instead. In fact, Hobbes claims that "all Crimes are not... of the same allay".<sup>60</sup> In effect, the "Crimes the Latines understand by *Crimina laesae Majestatis*" those "Facts of hostility against the present state of the Commonwealth". These "are greater Crimes, than the same acts done to private men: For the dammage extends it selfe to all".<sup>61</sup> Thus, treason or rebellion is not considered simply a crime against the person of the sovereign or a breach of faith or fidelity but rather a crime against sovereignty as such and hence it is dealt with in "political" terms, i.e. it is taken as war. But by doing so, what started out as a type of crime ends up crossing the line into outright war. In effect, Hobbesian sovereigns would not treat those who revolt against its authority as subjects and hence as criminals or mere traitors but as enemies: "subjects, who deliberately deny the Authority of the Common-wealth established" are lawfully pursued as enemies "because the nature of this offence, consisteth in the renouncing of subjection; which is a relapse into the condition of warre, commonly called Rebellion; and they that so offend, suffer not as Subjects, but as Enemies. For *Rebellion*, is but warre renewed".<sup>62</sup> "Punishments set down in the Law, are to Subjects, not to Enemies".<sup>63</sup>

Thus, states put themselves on a par with their former subjects as they declare them enemies not only as a result of disobedience on their part but even without any prior wrongdoing at all:

it may, and doth happen in Common-wealths, that a Subject may be put to death, by the command of the Sovereign Power; and yet neither doe the other wrong:

<sup>60</sup> *Leviathan*, XXVII, 207 [1651 = 156].

<sup>61</sup> *Leviathan*, XXVII, 212 [1651 = 160, 159].

<sup>62</sup> *Leviathan*, XXVIII, 219 [1651 = 165–6].

<sup>63</sup> *Leviathan*, XXVIII, 216 [1651 = 163]. Note that whereas Rousseau takes the rather harsh line of claiming that all criminals are rebels, traitors and enemies (*Du Contract Social*, II.5, 376), Hobbes pursues a more moderate path as he distinguishes between sheer criminal behaviour and defiance of sovereign authority.

As when *Jeptha* caused his daughter to be sacrificed: In which, and the like cases, he that so dieth, had Liberty to doe the action, for which he is nevertheless, without Injury put to death.<sup>64</sup>

Given that sovereigns have the duty to protect the safety of the people, sovereigns were empowered, when the very existence of the commonwealth was at stake, to make decisions that in ordinary times would be illegal or immoral, such as taking away a citizen's property, civic rights or even killing her without trial. Hobbes thus grants his sovereign a paraphrase of the Roman *senatus consultum ultimum* as he explains that sovereigns "must sometimes take steps to see that no harm comes to the Country" from unlimited private power. "When the source of that power has been wealth, they have decreased it by decreasing the wealth; if it has been popular *favour*, they have got rid of the powerful man himself without making any other charge against him".<sup>65</sup>

Why does Hobbes disappoint our expectations about the criminalization of disobedience? Of course, part of Hobbes's point is that, "in declared Hostility, all infliction of evill is lawfull".<sup>66</sup> As we have seen, the rationale of treating punishment or rebellion as war seems to be clear: it cuts much of the legal red tape of the procedural justice of municipal law, and thus those who oppose the authority of the state may be dealt with in more expeditious ways. No legal prosecution, trial or hearings was required to harm them; they may be captured or detained merely for their membership, no assessment of personal guilt or wrongdoing was required; enemies are judged—if at all—by the more relaxed natural law standards, not by positive law, and no prior action is required on the part of an enemy but the sheer capability of harming the state.

However, for all its advantages, turning punishment into war is not without untoward consequences for the state. In effect, unlike punishment, the relation of hostility is *ex hypothesi* reciprocal: if sovereigns are entitled to treat subjects as if they were enemies, sovereigns are *eo ipso* in the position of enemies themselves *vis-à-vis* their former subjects. Hence, the exercise of sovereignty, instead of preventing the normative symmetry of the state of nature from breaking into civil society, may actually deliberately summon it up itself.

If this is the case, there is a seemingly striking resemblance between enemies in the external sphere and enemies in the domestic front, precisely what the sovereign deal was meant to avoid at all costs. But in doing so, what started

<sup>64</sup> *Leviathan*, XXI, 148 [1651 = 109].

<sup>65</sup> *On the Citizen*, X.7, 120–1.

<sup>66</sup> *Leviathan*, XXVIII, 216.

out as a handy or expeditious way of dealing with disobedience and thus might have looked like as a degradation of the rebel subject from friend to enemy may rather end up actually implying an upgrading and equalizing reversal which attributes political status to the recalcitrant(s), and thus instead of ejecting the political from the domestic sphere Hobbes actually perpetuates it.<sup>67</sup> Hobbes's political theory ends up endorsing what he claimed sovereigns could not afford to do: "since... it is true that the state of commonwealths towards each other is a natural state and a state of hostility, Princes who permit faction are as good as admitting an enemy within the walls".<sup>68</sup> And this is bound to have dramatic political consequences if the opponents face up to the challenge.<sup>69</sup>

To be sure, Hobbes himself is not totally unaware of the ironical effects of exercising the power of sovereignty. He points out that banishment does not always

tend to that benefit of the Common-wealth, for which all Punishments are ordained, (that is to say, to the forming of mens wils to the observation of the Law;) but many times to the dammage of the Common-wealth. For a Banished man, is a lawfull enemy of the Common-wealth that banished him; as being no more a Member of the same.<sup>70</sup>

But he does not seem to be similarly aware of the effects of the declaration of hostility.

<sup>67</sup> Hobbes's own admission that the "that right of Punishing, which is exercised in every Common-wealth" is not a new one given by the subjects to the sovereign but simply a strengthened version of the sovereign's own right "as entire, as in the condition of meer Nature, and of warre of every one against his neighbour" (*Leviathan*, XXVIII, 214 [1651 = 162]), gives us reason to believe that Hobbes's distinction between crimes of different "allays" was bound to collapse from the get-go.

<sup>68</sup> *On the Citizen*, XIII.13, 149.

<sup>69</sup> This is something that has also caught the eye of Carl Schmitt, a well-known defender of the normative autonomy of the political himself, who holds that "Every state provides, ..., some kind of formula for the declaration of an internal enemy" and grants that such a declaration "depending on the attitude of those who have been declared enemies of the state, is possibly the sign of civil war, i.e., the dissolution of the state as an organized political entity, internally peaceful, territorially enclosed, and impenetrable to aliens" (*The Concept of the Political*, translation, introduction and notes by G. Schwab, foreword by T. B. Strong (Chicago, The University of Chicago Press: 1996), 46, 47 [emphasis added]). Since Schmitt does not deny that civil war may be an instance of the political (see, e.g., *The Concept of the Political*, 53) and acknowledges at the get-go of his famous essay that "The concept of the state presupposes the concept of the political" (*The Concept of the Political*, 19), this might spell trouble for his own theory as well.

<sup>70</sup> *Leviathan*, XXVIII, 218 [1651 = 165]. Precisely, in Shakespeare's play Gaunt prophetically advises Bolingbroke: "Think not the King did banish thee, / But thou the King" (*Richard II*, I.iii.279–80).

At any rate, Hobbes's ambivalent attitude towards civil war is thus not necessarily explained by opportunism on his part as his royalist critics claimed but rather by the normative structure of the state of nature. And there is reason to believe that Hobbes's views on the civil war, i.e. his defence of order and sympathy for revolutionary regimes, are not necessarily contradictory. But this is something that will have to be dealt with on another occasion.

