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Abstract
Thomas Hobbes's political theory contains conceptual theses on law, including an analysis of the way legal requirements affect practical reasoning. However, Hobbes' account of law and the structure of reasons for political obedience is extremely ambiguous. In this paper, I show that Hobbes develops not one but two different accounts. Also, I argue that the two theories are in tension, something that Hobbes himself seems to recognize to some extent.

Keywords
Hobbes, law, coercion, authority, reason

1. Introduction

Thomas Hobbes' political theory contains conceptual theses on law, including an analysis of the way legal requirements affect practical reasoning. However, Hobbes' account of law and the structure of reasons for political obedience is extremely ambiguous. In this paper, I show that Hobbes develops not one but two different accounts. Also, I argue that the two theories are in tension, something that Hobbes himself seems to recognize to some extent.[1]

Hobbes claims that the sanctions for non-compliance introduced by the law make political obedience prudent in the commonwealth, unlike the state of nature where subjects typically find compliance with natural law contrary to their rational self-interest. Highlighting this idea as a central claim of Hobbes' political theory, the 'carrot-and-stick' account introduces the thesis that subjects have reason to obey because political disobedience is more costly than obeying the

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law.[2] The 'stratified' account involves a different analysis of the normativity of law. The stratified account involves the idea that subjects have reason to obey because so acting is commanded by an authority, rather than because non-compliance is more costly than obedience to the law. The key element to ground this account is Hobbes' analysis of law in terms of 'commands' rather than 'counsels'. In particular, Hobbes' 'command theory of law'[3] involves the idea that the sovereign's requirements introduce reasons that *replace* (and not merely *outweigh*) other considerations that might have been applicable to move rational agents to act one way or another. Hobbes' analysis of arbitration also provides further evidence for the stratified account.

Hobbes' ambiguity is typically passed over by most if not all scholars. 'Orthodox' interpreters endorse the carrot-and-stick model and 'heterodox' readers construe Hobbes' legal philosophy in a stratified fashion. Neither orthodox nor heterodox interpreters make much of an effort to accommodate the insights of each other's readings, thus avoiding in its entirety the passages that ground the alternative interpretation.[4] Trying to remedy this problem, in this paper I analyze Hobbes' two accounts together. Hobbes' texts are multifaceted enough to provide evidence for both the carrot-and-stick and stratified accounts. Any interpretation based on a partial use of the evidence does not do justice to the complexities of Hobbes' work, thus making the reading weak and incomplete. Only by studying both accounts together we may be able to articulate one as Hobbes', or, if that is not really possible, at least to show the tension between the two accounts.

Scholars informally use modern conceptual distinctions to develop their interpretations. Contrary to this trend, I make a systematic use of conceptual tools borrowed from the philosophy of law to get a deeper understanding of the stratified account, for which I rely on Joseph Raz's analysis of authority and arbitration. This allows me to show that Hobbes' two accounts are inconsistent. For, according to each theory, subjects have reasons to obey the law of a different *kind*, which may introduce incompatible requirements. On the carrot-and-stick account, subjects have self-interested reasons to obey; on the stratified account, they have authoritative reasons so to act. To be sure, political obedience may be overdetermined by prudential and authoritative reasons. But prudential and authoritative reasons may also point in different directions. For example, according to one account subjects may have reason to disobey (e.g. because they have self-interested reasons so to act), while according to the other account they may have reason to comply with the law (e.g. because political obedience is required by the sovereign's authoritative directives).

The paper is organized as follows. In Section 2, I characterize the carrot-and-stick account of law and the structure of reasons for political obedience. In Section 3, I describe the stratified account. In Section 4, I engage with Hobbes' analysis of arbitration. In Section 5, I argue that authoritative requirements are only intended to affect subjects' actions. In Section 6, I analyze whether Hobbes' two accounts are compatible. In Section 7, I deal with a possible reply. In Section 8, I bring the paper to a close with some final remarks.

2. Nothing new under the sun

The carrot-and-stick account introduces the thesis that the main feature of law is that it sanctions non-compliance. This basic idea involves an important point. Legal directives merely give incentives to motivate subjects to act out of self-interested calculations as they would have acted in the state of nature if they could trust one another. In this sense, legal directives create conditions under which it is prudent for individuals to follow the laws of nature.[5] This assumes that subjects already have reason so to act. Natural law gives them such reasons; legal directives merely create the appropriate conditions to act in ways that are reasonable, for instance solving cooperation problems, overcoming the influence of anti-social passions, and aligning short- and long-term prudential rationality.

There is strong evidence to ground such an account of law and the structure of reasons for political obedience. In different characteristic passages of *Leviathan* and his other political works, Hobbes claims that coercion is the crucial feature of law, stressing also that sanctions for non-compliance provide subjects with self-interested reasons to obey the law and so act reasonably. To make room for this idea, he introduces different explanations of what prevents subjects from fulfilling the reasonable requirements introduced by laws of nature. All of them make sense of the 'easy truth', 'that covenants, being but words and breath, have no force to oblige, contain, constrain, or protect any man, but what it has from the public sword'.[6]

Hobbes writes that

> [t]he final cause, end, or design of men (who naturally love liberty and dominion over others) in the introduction of that restraint upon themselves in which we see them live in commonwealths is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of war, which is necessarily consequent [. . .] to the natural passions of men, when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants and observation of those laws of nature set down in the fourteenth and fifteenth chapters.[7]

Subjects are incapable of complying with natural law because their violent passions interfere with their reasoning. The distracting role played by such anti-social passions can only be overcome by forcing subjects to honor agreements and other laws of nature. The commands of the sovereign play this role by sanctioning against non-compliance and so activating their fear of harm. In this way, this passage introduces the idea that the passions do not allow subjects to act reasonably and that the sovereign's directives allows them to do so by sanctioning against non-compliance.

Hobbes makes the same point in another way. This time, the crucial point is that agreements without a causal power strong enough to force compliance are insufficient to guarantee peace and security, thus making room for the idea that legal

coercion is required to obtain these precious goods. Hobbes writes:

> the laws of nature (as *justice*, *equity*, *modesty*, *mercy*, and (in sum) *doing to others as we would be done to) of themselves*, without the terror of some power to cause them to be observed, are contrary to the natural passions, that carry us to partiality, pride, revenge, and the like. And covenants without the sword are but words, and of no strength to secure a man at all.[8]

Hobbes also makes the same point in the following passage:

> [t]his security cannot be achieved merely by each of those who are uniting in a commonwealth making an agreement with others, verbally or in writing, *not to kill*, *not to steal*, etc., and to observe other laws of this kind. The wickedness of human character is evident to all, and experience shows only too well how poorly the mere awareness of a promise made without threat of a penalty holds a man to his duty. Hence security is to be assured not by *agreements* but by *penalties*; and the assurance is adequate only when the penalties for particular wrongs have been set so high that the consequences of doing them are manifestly worse than of not doing them. For by necessity of nature all men choose what is apparently good for themselves.[9]

In these passages, Hobbes argues that subjects recognize their natural duty to keep their word and so to honor their agreements. However, humans' wicked nature gets in the way, preventing subjects from fulfilling these requirements. Presumably, individuals are tempted to disregard the laws of nature when so doing satisfies their own interests to a greater degree than fulfilling such requirements would.[10] In this sense, Hobbes argues that subjects are unable to fulfill their agreements unless the sovereign forces them and so makes acting in these ways a self-interested course of action. Hobbes thus introduces the idea that the practical role of law is limited to forcing subjects to do what they have reason to do but cannot do without proper incentives.

Were it possible for subjects to live in accordance with the laws of nature, threats—and so government and hence law—would have been unnecessary:

> if we could suppose a great multitude of men to consent in the observation of justice and other laws of nature without a common power to keep them all in awe, we might as well suppose all mankind to do the same; and then there neither would be, nor need to be, any civil government at all, because there would be peace without subjection.[11]

This, however, is not possible: legal coercion is essential to move subjects to fulfill their natural duties. Without a coercive apparatus firmly in place, subjects would be tempted to disregard the natural laws.

According to the carrot-and-stick account, the practical role of law consists in coercing subjects and so providing incentives to comply with the laws of nature. In particular, by sanctioning against non-compliance, legal directives help subjects to act in ways that are already reasonable.

3. The command theory of law

I now turn to the stratified theory. According to this account, coercion is not the characteristic feature of law, and so the rationality of political obedience is not explained in self-interested terms. Rather, the distinctive feature of law lies in its practical authority, which involves the idea that legal directives introduce reasons of a distinctive kind than normal reasons for action.

Hobbes characterizes law as follows. First, Hobbes explains that a 'COMMAND is where a man saith *do this*, or *do not do this*, without expecting other reason than the will of him that says it. [...] [In contrast, a] COUNCEL is where a man saith *do*, or *do not this*, and deduceth his reasons from the benefit that arriveth by it to him to whom he saith it'.[13] Second, Hobbes writes that 'it is manifest that law in general is not counsel, but command'.[14] Hobbes also writes that 'CIVIL LAW *is, to every subject, those rules which the commonwealth hath commanded him (by word, writing, or other sufficient sign of the will) to make use of, for the distinction of right and wrong, that is to say, of what is contrary, and what is not contrary to the rule*'.[15]

Hobbes' analysis of law in terms of commands rather than counsels introduces a stratified account. When arguing that law involves commands rather than counsels, Hobbes writes that the reason for compliance lies in the sovereign's will. Now, the will of the sovereign is *not* an additional consideration to be taken into account to perform the commanded action – not even a particularly weighty reason which would incline the balance of reasons. Rather, the sovereign's will gives a reason for action of a different *kind*, which has the purpose of interrupting deliberation as well as providing the relevant reason for compliance. In this sense, the command theory stresses that authority, rather than coercion, is the key feature of law.

The commands of the sovereign do not introduce reasons to be added and evaluated together with all other considerations subjects have to act one way or another. Once the sovereign has been instituted, the reasons subjects have to obey derive from his authority. Thus, subjects have reason to obey because the sovereign commands so, which introduces a reason that simultaneously excludes first-order reasons as well as provides the relevant consideration to comply with the law. Thus, Hobbes' command theory of law introduces an account of the normativity of law very similar to the one developed by Raz, who argues that authoritative reasons are 'pre-emptive': 'the fact that an authority requires the performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them'.[16]

The stratified account of law involves the idea that subjects' reasons to obey do not turn on whether obeying the law is good and in particular on whether non-compliance is more costly than compliance. Coercion does not play a central role in this account, although this does not entail that obedience is necessarily against subjects' rational self-interest. Legal directives provide reasons to act in ways that may also be rational from a prudential point of view, although they may also require acting in ways that are contrary to subjects' interests. For the

command theory, to comply with such requirements is not irrational. For authoritative requirements are not merely incentives to promote the efficient satisfaction of subjects' goals but rather they aim at introducing reasons of a different kind, which are not normal reasons for action.[17]

4. Arbitration

According to the stratified account, the sovereign's directives introduce considerations that both exclude first-order reasons and introduce the relevant reasons for obedience. Hobbes' account of arbitration provides further evidence for the stratified account. For Hobbes' political theory introduces the idea that the sovereign is – or can be understood as – an arbitrator writ large.[18]

Hobbes argues that arbitration influences human behavior by introducing preemptive reasons for action. Furthermore, Hobbes' analysis of arbitration introduces the idea that the party's evaluation of how one complies with the arbitrator's decision is self-defeating. In this sense, the analysis of the way arbitration affects practical reasoning allows us to better understand the difference between complying with a requirement by virtue of the recognition of the authority of the commander and complying with the requirement by virtue of one's own evaluation of the merits of the case at hand.

But let us make a little detour first. Once again, we get a better understanding of Hobbes' account comparing it to Raz's view. Raz considers that the arbitrator's function is to decide disputes which cannot otherwise be resolved**.** For the disputing parties would not have resorted to arbitration had they been able to solve the controversy by themselves.[19] Once the parties have consented to submit their own judgment to the judgment of an arbitrator, they have to leave their own assessment of the merits of the case aside and guide their conduct only by the arbitrator's decisions. Raz mentions two characteristic features of arbitration. First, 'the arbitrator's decision is for the disputants a reason for action [of a particular sort]. They ought to do as he says because he says so'.[20] Second, '[t]he arbitrator's decision is also meant to replace the reasons on which it [the arbitrator's decision] depends'.[21] On the basis of these considerations, Raz concludes that '[the] reasons that could have been relied upon to justify action before his decision cannot be relied upon once the decision is given'.[22]

Hobbes' analysis of arbitration shares the characteristic features of Raz's account. The key passage is the following:

> [a]nd as in arithmetic, unpracticed men must, and professors themselves may, often err and cast up false [conclusions], so also in any other subject of reasoning, the ablest, most attentive, and most practiced men may deceive themselves and infer false conclusions; not but that reason itself is always right reason, as well as arithmetic is a certain and infallible art, but no one man's reason, nor the reason of any one number of men, makes the certainty, no more than an account is therefore well cast up, because a great many men have unanimously approved it. And therefore, as when there is a controversy in an account, the parties must by their own accord set up for

> right reason the reason of some arbitrator or judge to whose sentence they will both stand, or their controversy must either come to blows or be undecided, for want of a right reason constituted by nature, so is it also in all debates of what kind soever. And when men that think themselves wiser than all others clamour and demand right reason for judge, yet seek no more but that things should be determined by no other men's reason but their own.[23]

Hobbes writes that this way of acting

> is as intolerable in the society of men as it is in play, after trump is turned, to use for trump on every occasion that suit whereof they have most in their hand. For they do nothing else, that will have every of their passions, as it comes to bear sway in them, to be taken for right reason, and that in their own controversies, bewraying their want of right reason by the claim they lay to it.[24]

Hobbes affirms that the parties should replace their own personal reason by the arbitrator's 'right reason'. The arbitrator's sentence thus excludes and takes the place of their personal evaluation of the case, becoming the definitive reason to act.

This is not the end of the story. It is not merely that the parties' evaluation of the way in which compliance with the commands promotes their own interests fails to play a direct role. It is self-defeating to act on the basis of one's own evaluation of the merits of the case. Raz argues that if the parties rely on first-order reasons 'they defeat the very point and purpose of arbitration. The only proper way to acknowledge the arbitrator's authority is to take it to be a reason for action which replaces the reasons on the basis of which he was meant to decide'.[25] Once again, Hobbes' view shares the characteristic features of Raz's position.

When dealing with the sixteenth law of nature – which prescribes '*that they that are at controversy, submit their right to the judgment of the arbitrator*' – Hobbes writes that

> because (though men be never so willing to observe these [natural] laws) there may nevertheless arise questions concerning a man's action (first, whether it were done or not done; second, if done, whether against the law or not against the law; the former whereof is called a question *of fact*; the latter a question *of right*), therefore unless the parties to the question covenant mutually to stand to the sentence of another, they are as far from peace as ever.[26]

Hobbes claims that, although perhaps perfectly motivated, subjects may have different interpretations of natural law, thus coming into conflict. To really abandon the state of nature, private judgments should be put to the side, thus replacing personal interpretations of natural law by the sovereign's authoritative interpretation. In this sense, Hobbes stresses that acting on one's own interpretation of natural law undermines the very purpose of leaving the state of nature, that is,

to get rid of conflict and civil war. As it is the case for Raz, Hobbes also argues that to act on the basis of first-order considerations is self-defeating.

5. Beliefs or actions?

I now turn to an additional feature of stratified account of law and the structure of reasons for political obedience. Hobbes acknowledges that belief and action are two different things, which thus should be understood differently. We need to consider whether authoritative requirements affect beliefs or actions. For Hobbes, authoritative commands affect actions only. He insists that subjects have to comply with the sovereign's commands, but it does not follow that subjects cannot or should not evaluate the merits of such requirements.

The relevant passages to examine relate to Hobbes' analysis of the political consequences of religious ideas. First, Hobbes claims that '[a]ll that is NECESSARY *to salvation* is contained in two virtues: *faith in Christ*, and *obedience to laws*'.[27] The problem revolves on whether sovereign and subjects may still interpret religious requirements in a different fashion and, if so, what this entails.

Hobbes formulates the problem as follows:

> what [...] if a king, or a senate, or other sovereign person forbid us to believe in Christ? To this I answer that such forbidding is of no effect, because belief and unbelief never follow men's commands. Faith is a gift of God, which man can neither give nor take away by promise of rewards or menaces of torture.[28]

Hobbes argues that subjects' capacity to think cannot be stopped. Moreover, subjects cannot be forced to believe whatever the authorities think fit.[29] However, he also claims that this does not mean that they have to act on their own evaluation of the merits of the case:

> suppose that a Christian king should from this foundation, *Jesus is the Christ*, draw some false consequences, that is to say, make some superstructions of hay or stubble, and command the teaching of the same. [...] Christian kings may err in deducing a consequence, but who shall judge? Shall a private man judge, when the question is of his own obedience? Or shall any man judge but he that is appointed thereto by the Church (that is, by the civil sovereign that representeth it) [?][30]

The sovereign may err in what he commands,[31] while subjects may know the truth of the issue at stake. However, this does not mean that the commands of the sovereign cannot authoritatively guide their actions, for authoritative orders affect actions rather than beliefs. Subjects are bound to obey even in those cases in which they consider it mistaken or otherwise inappropriate.[32]

This does not threaten the authority of law, for the key issue is not how subjects think but how they act.[33] Raz grants that subjects can evaluate the merits of authoritative commands. The point is that subjects should *not* act on their own

evaluation of the merits of the case, but should instead abide by authoritative commands.

6. The two accounts together: Overdetermination or inconsistency?

The authoritative commands of the sovereign have the dual function of excluding other considerations as well as providing the relevant reason to obey. Even so, subjects do not necessarily act against their rational self-interest when obeying the authoritative orders of the sovereign. On the contrary, taking the commands of the sovereign as providing authoritative reasons for action may advance subjects' rational self-interest. Hobbes writes that following the decisions of an arbitrator avoids the chance that the controversy at stake 'come to blows or be undecided', which presumably promotes agents' rational self-interest. In this sense, complying with the arbitrator's authoritative directives allows parties to take coordinated actions and, thus, to promote their interests, while deciding on their own may put them in less happy circumstances.

Hobbes also writes that

> A good law is that which is *needful* for the *good of the people*, and withal *perspicuous*. [. . .] For the use of laws (which are but rules authorized) is not to bind the people from all voluntary actions, but to direct and keep them in such a motion as not to hurt themselves by their own impetuous desires, rashness, or indiscretion, as hedges are set, not to stop travelers, but to keep them in the way.[34]

Legal directives are not merely obstacles but also guides for subjects' actions. A legal order may play the role of an 'enabling rule,' insofar as it not only constrains what subjects can do, but also allows them to achieve their goals more efficiently and to accomplish things they could not have accomplished otherwise.[35] For instance, legal directives expand the range of available options, and so allows subjects to advance their own interests.

We can grant that the sovereign's authoritative commands may point in the same direction as prudential recommendations in several occasions. To be sure, penalties play a key role here, for they change the structure of pay-offs by giving incentives to prevent possible disobedience in such a way as to make compliance prudentially rational.

However, such overdetermination seems contingent rather than necessary, for authoritative requirements may require subjects to act in certain ways while prudential reasoning may recommend acting in opposite ways. An example can illustrate this situation. For instance, the law states that subjects must pay a certain amount in taxes, while in some circumstances they have self-interested reasons not to pay. Although sanctions for non-compliance may bring some prudential considerations to comply, it is by no means necessary that they are successful in this task. In this sense, the two accounts are inconsistent rather than complementary.[36]

Hobbes himself acknowledges the tension between the two accounts, at least to a certain extent. He writes that 'in many cases a crime may be committed through fear'.[37] Legal coercion is not necessarily the only threat subjects may face in the commonwealth. It follows from these two considerations that subjects would have reason to violate the law, rather than to comply with it, in cases where they would put their security in serious danger unless they commit a crime out of fear of someone else's actions the consequences of which (from subjects' point of view) are far worse than the consequences of not complying with the law. If A says B should do X or A will do Y, in case Y be worse than X to B, B may have reason to do X even in case X would be punished by the law; for the consequences of A's action may be far worse than the consequences of the actions of the sovereign in such a case. This makes sense of Hobbes' claim that '[i]t is self-evident that men's actions proceed from their wills and their wills from their hopes and fears; hence they willingly break the law, whenever it seems that *greater good* or *lesser evil* will come to themselves from breaking it'.[38] In addition, this reasoning also makes sense of Hobbes' remark that 'men that once possessed of an opinion that their obedience to the sovereign power will be more hurtful to them than their disobedience will disobey the laws, and thereby overthrow the commonwealth, and introduce confusion and civil war'.[39] In some circumstances, the threats of punishment introduced by the law are *not* the most powerful incentives people face for acting in a particular way.

According to Hobbes, acting on first-order considerations entails or is equivalent to justifying political disobedience and anarchy. To make this point, Hobbes construes religious notions – though perhaps only for argumentative purposes – in terms of what S.A. Lloyd dubs 'specially prudential reasons', that is, particularly weighty reasons that take into account the afterlife. If there were religious authorities other than the political sovereign to interpret religious prescriptions or principles, subjects would have reason to disobey in several occasions. By promising subjects greater rewards, or threatening them with greater harms, than those provided by the sovereign, independent religious authorities may provide rational agents with strong reasons to disobey the law. Hobbes writes that '[a]s much as eternall torture is more terrible then death, so much they [the people] would fear the Clergy more then the King'.[40] Accordingly, Hobbes argues that

> [t]he maintenance of civil society depending on justice, and justice on the power of life and death (and other less rewards and punishments) residing in them that have the sovereignty of the commonwealth, it is impossible a commonwealth should stand where any other than the sovereign hath power of giving greater rewards than life, and inflicting greater punishments than death.[41]

Hobbes recognizes that prudence may give sufficient reason to disobey. To be sure, this is a reason to have both religious and political authority in the hands of the sovereign. But this is a further consideration, which should not distract us here. For

in fact it grants that Hobbes recognizes that prudential and authoritative reasons may diverge.

7. A reply

There seems to be a possible reply to the thesis that stresses the tension between Hobbes' carrot-and-stick and stratified accounts. The key point to consider would be the reason why subjects have abandoned the state of nature and entered into the commonwealth. Once we take this point into account, and also assume that sanctions for non-compliance have the role of guaranteeing (at least to a certain extent) that the commonwealth remains a place of peace and mutual aid, we would conclude that the different reasons subjects would have to obey point in the same direction. Subjects would have reason to obey the sovereign's authoritative commands but on the condition that his orders serve their interest in living in civil society. Thus, subjects would necessarily have both authoritative and prudential reasons to comply.

This argument can be interpreted as variation of the idea that the obligation to obey would exist insofar as it is in subjects' rational self-interest to comply – and when it does not, subjects would not have an obligation to obey, but rather would have the right to overthrow their sovereign and institute a more efficient one.[42] In my view, this interpretation fails to capture the substantive content of Hobbes' theory of political obligation. For Hobbes' theory involves the idea that subjects have an obligation to obey the law that goes beyond rational self-interest. He argues that 'subjects owe to sovereigns simple obedience in all things wherein their obedience is not repugnant to the laws of God'.[43] In turn, this principle of obligation is compatible with the idea that subjects have abandoned the state of nature for prudential reasons. The way to reconcile these ideas is via Hobbes's deontological theory of contractual obligation, which involves the view that contracts introduce obligations whose normativity is independent of agents' contingent desires in discharging them. Accordingly, the obligation to comply with the terms of a contract does not cease once the reasons for entering the contract disappear.[44] Insofar as it relies on his general theory of contractual obligation, Hobbes's contractarian theory of political obligation entails that subjects still have an obligation to comply with the law even when the authoritative commands of the sovereign do not best promote their interests.

8. Final remarks

In this paper, I have described two different accounts of law and the structure of reasons for political obedience. As I have shown, there is evidence for construing a carrot-and-stick account, and there is also textual evidence for describing a stratified account. Also, I have argued that the two accounts are incompatible, a feature seems to be recognized by Hobbes himself to a certain extent.

According to the carrot-and-stick account, reason recommends obeying the law because political disobedience is more costly than with compliance the law. Sanctions for non-compliance are the key element of this theory. According to the stratified account, in contrast, authoritative commands replace first-order

reasoning. According to the two theories, the reasons subjects have to comply with the law are radically different. In the carrot-and-stick account, the relevant reason for compliance is the consideration of the disvalue of the sanctions (weighted by the probability of suffering them). Contrariwise, in the stratified account, the relevant reason for compliance lies in the sovereign's will, which introduces a reason to obey that affects practical reasoning by kind rather than weight.

Once we have reached this point it seems natural to ask: Should we just remain happy stating that Hobbes adopts two different accounts? Or should we select between them? Which theory is really Hobbes'? What would constitute a genuine reason to choose between the carrot-and-stick and the stratified account? Surely, we need to make a decision in this respect, for otherwise one's own favored interpretation might risk being radically weak and incomplete, not doing justice to the complexity of Hobbes' texts. In this sense, our exegetical labor is not finished until we give further reasons to adopt a particular reading based on the analysis of the whole *corpus* and of the different conceptual elements involved, either for somehow adopting one account, explaining the role played by the alternative theory, or for showing the incoherence of Hobbes' political and legal theory by virtue of his adoption of the two accounts of law and the structure of reasons for political obedience.

There are both reasons based on Hobbes' political theory and conceptual reasons to prefer the stratified account. Hobbes argues that acting on first-order reasons – especially moral considerations – entails or is equivalent to justifying political disobedience and anarchy. Hobbes first establishes that moral notions are not merely weighty reasons but rather have a distinctive normativity of their own. If subjects themselves were to take into account their own evaluation of considerations of justice, such reasoning would end up recommending disobedience rather than obedience. In this sense, Hobbes argues that individual interpretation of the morality of the sovereign's commands constitutes one of the main causes of conflict in the commonwealth:

> how many Rebellions have been caused by the doctrine that it is up to private men to determine whether the commands of Kings are just or unjust, and that his commands may rightly be discussed before they are carried out, and in fact ought to be discussed?[45]

Hobbes makes this point further when he claims that one of the main 'diseases of a commonwealth' consists in the idea that subjects should not obey the commands of the sovereign in case they think they are not morally good or right. For this way of acting reintroduces private judgment and so conflict in the commonwealth:

> I observe the *diseases* of a commonwealth that proceed from the poison of seditious doctrines, whereof one is: *That every private man is judge of good and evil actions*. This is true in the condition of mere nature, where there are no civil laws, and also under civil government, in such cases as are not determined by the law. But otherwise, it is manifest that the measure of good and evil actions is the civil law, and the judge the legislator, who is always the representative of the commonwealth. From this

> false doctrine men are disposed to debate with themselves, and dispute the commands of the commonwealth, and afterwards to obey or disobey them, as in their private judgments they shall think fit. Whereby the commonwealth is distracted and *weakened*.[46]

In addition, there are conceptual reasons to prefer the stratified account. In fact, sanctions for non-compliance provide the wrong kind of reasons to obey authoritative directives. In this case, the reason to comply lies in the evaluation of the disvalue of the sanction (weighted by the probability of getting caught). Even if subjects would act in accordance with the sovereign's commands, it would not be the fact of being commanded that would have given them the relevant reason to act. In this sense, they would not be complying with the commands of the sovereign but rather what is in their best interests in the circumstances.[47]

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Notes

1. In what follows I simply assume that the law is legitimate. The issue that concerns me here is the following: how does the law impose its characteristic directives?
2. In this sense, the key feature is the 'stick' rather than the 'carrot'. The image is introduced by Hobbes himself. He writes that 'in matter of Government, when nothing else is turn'd up, Clubs are Trump'. Thomas Hobbes (2005) *A Dialogue between a Philosopher and a Student, of the Common Laws of England*, A. Cromartie (ed), in T. Hobbes *Writings on Common Law and Hereditary Right*, A. Cromartie and Q. Skinner (eds), pp. 114, Oxford: Clarendon Press, Hobbes also uses the traditional 'sword of justice'. See *The Elements of Law* XX.7–9, XXVII.6, *De Cive* VI.5–7 and *Leviathan* XXXIX.5, XLII.111, Conclusion.8.
3. The name is intended to highlight Hobbes' own distinction between counsels and commands, although usually it is used to refer to a theory along the lines of the carrot-and-stick account. For instance, John Austin's own 'command theory' introduces the thesis that law is nothing but orders backed-up by credible threats for non-compliance. See John Austin (2001) *The Province of Jurisprudence Determined*, W.E. Rumble (ed), pp. 21–25, 29–30. Cambridge: Cambridge University Press.

4. Some may consider that SA Lloyd's reading of Hobbes' political theory is perhaps one exception. For Lloyd acknowledges different reasons to obey the law, including narrowly prudential, moral, religious, and especially prudential reasons. In addition, Lloyd also emphasizes the sovereign's authority here and there. Even so, in my view her account is in fact orthodox. See Luciano Venezia (2013) 'Lloyd's Orthodoxy', *Hobbes Studies* 26.
5. Here I prefer to leave open what kind of actions require the laws of nature, that is, whether the laws of nature are necessarily associated with the promotion of the agents' own rational self-interest. Most readings of Hobbes' moral theory typically consider the laws of nature to be rules of prudence. Although this is not necessarily part of the carrot-and-stick account, this view is naturally associated to this interpretation of natural law.
6. *Leviathan* XVIII.4. The quotes are from Thomas Hobbes (1994) *Leviathan, with Selected Variants from the Latin Edition of 1668*, E. Curley (ed). Indianapolis: Hackett.
7. *Leviathan* XVII.1. Cf. *The Elements of Law* XIX.4 and *De Cive* V.4.
8. *Leviathan* XVII.2. Cf. *The Elements of Law* XX.6.
9. *De Cive* VI.4. The quotes are from Thomas Hobbes (1998) *On the Citizen*, R. Tuck and M. Silverthorne (eds). Cambridge: Cambridge University Press.
10. This does not necessarily mean that keeping one's own word may not be prudent in the long-term. In this sense, this explanation is compatible with the idea that it may be even better to disregard the long-term benefits of fulfilling natural law in the short-term.
11. *Leviathan* XVII.4. Cf. *De Cive* VI.13 n.
12. The carrot-and-stick account is either explicitly stated or implicitly assumed by most analytic readings of Hobbes' political theory. See e.g. David Gauthier (1969) *The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes*, pp. 18, 86, 90–1. Oxford: Clarendon Press; (1986) *Morals by Agreement*. Oxford: Clarendon Press, p. 163; Jean Hampton (1986) *Hobbes and the Social Contract Tradition*. Cambridge: Cambridge University Press, pp. 50, 132–5; Gregory S Kavka (1986) *Hobbesian Moral and Political Theory*, pp. 24, 88, 97, 139–40, 160, 165–7, 177, 245–6, 345, 355, 451. Princeton: Princeton University Press; (1995) 'The rationality of rule-following: Hobbes's dispute with the Foole', *Law and Philosophy* 14: 16–18. This account is also found in 'contextualist' readings, such as Quentin Skinner's. See Quentin Skinner (1998) *Liberty before Liberalism*, pp. 4–10, Cambridge: Cambridge University Press; (2002) *Visions of Politics. Volume III: Hobbes and Civil Science*, pp. 221–5. Cambridge: Cambridge University Press; (2008) *Hobbes and Republican Liberty*. pp. 158–160, 170–3. Cambridge: Cambridge University Press. See also Arihiro Fukuda (1997) *Sovereignty and the Sword: Harrington, Hobbes, and Mixed Government in the English Civil Wars*, pp. 57–61, Oxford: Clarendon Press.
13. *Leviathan* XXV.2, 3. Cf. *The Elements of Law* XIII.6, XXVII.6, XXIX.4 and *De Cive* VI.19, XIV.1.
14. *Leviathan* XXVI.2. Hobbes continues writing that it is not 'a command of any man to any man, but only of him whose command is addressed to one formerly obliged to obey him'. In this way, Hobbes stresses that the obligation to obey is not created by the law but in fact precedes it.
15. *Leviathan* XXVI.3. Cf. *Dialogue* 31.
16. Joseph Raz (1986) *The Morality of Freedom* (italics removed), p. 46. Oxford: Clarendon Press. Raz argues that this analysis is valid only for *de jure* authorities.
17. There is a growing literature that emphasizes the authority of law in Hobbes. See David Dyzenhaus (1993) 'Law and public reason', *McGill Law Journal* 38: 373, 381; E.R. Ewin (1991) *Virtues and Rights: The Moral Philosophy of Thomas Hobbes*. Boulder: Westview

Press, pp. 44, 53; Luc Foisneau (2007), 'Hobbes y la autoridad de la ley'. *Derechos y Libertades* 17: 60–1; Leslie Green (1988) *The Authority of the State*. Oxford: Clarendon Press, p. 37; Law and Obligations in J.L. Coleman and S. Shapiro (eds) (2002), *The Oxford Handbook of Jurisprudence and Philosophy of Law*, p. 518 n 13. Oxford: Oxford University Press; H.L.A. Hart (1982) *Essays on Bentham: Studies in Jurisprudence and Political Theory*. Oxford: Clarendon Press, pp. 253–4; Christopher W. Morris (1998) *An Essay on the Modern State*. Cambridge: Cambridge University Press, pp. 175–6, 214 n 101; (2000) 'The Very Idea of Popular Sovereignty: "We the People" Reconsidered'. *Social Philosophy & Policy* 17: 3; State Legitimacy and Social Order, in J. Kühnelt (ed), *Political Legitimization without Morality?* pp. 23, 31 n 32. Heidelberg: Springer; (2012) 'State Coercion and Force', *Social Philosophy & Policy* 29: 39; Gerald J. Postema (1986) *Bentham and the Natural Law Tradition*. Oxford: Clarendon Press, pp. 56–8; Andrés Rosler (2001) 'Racionalidad y Autoridad Política', *Documentos de trabajo del CEMA* 206: 6; (2005) *Political Authority and Obligation in Aristotle*. Oxford: Clarendon Press, p. 99; (2010) El Enemigo de la República: Hobbes y la soberanía del Estado, in T. Hobbes *Elementos Filosóficos. Del Ciudadano*. Buenos Aires: Editorial Hydra, pp. 55–60; (2011) 'Odi et Amo? Hobbes on the State of Nature', *Hobbes Studies* 24: 98; Scott J. Shapiro (2002) Authority, in J.L. Coleman and S. Shapiro (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law*. Oxford: Oxford University Press, p. 396 n 27; Susanne Sreedhar (2010) *Hobbes on Resistance: Defying the Leviathan*. Cambridge: Cambridge University Press, pp. 113–9; Ekow N. Yankah (2008) 'The Force of Law: the Role of Coercion in Legal Norms', *University of Richmond Law Review* 42: 1210.

18. See e.g. David Dyzenhaus (2009) 'How Hobbes met the "Hobbes Challenge"', *The Modern Law Review* 72: 496; (2010) 'Hobbes's Constitutional Theory', in T. Hobbes *Leviathan*, I. Shapiro (ed). New Haven and London: Yale University Press, p. 460; (2010), *Hard Cases in Wicked Legal Systems: Pathologies of Legality*, 2nd ed Oxford: Oxford University Press, p. 213; 'Hobbes on the Authority of Law', in D. Dyzenhaus and T. Poole (eds) (2012), *Hobbes and the Law*. New York: Cambridge University Press, p. 195; Gerald F Gaus (2013) 'Hobbes's Challenge to Public Reason Liberalism: Public Reason and Religious Conviction in *Leviathan*, in S.A. Lloyd (ed), *Hobbes Today: Insights for the 21st Century*. Cambridge: Cambridge University Press, p. 162; Larry Krasnoff (2012) 'Voluntarism and Conventionalism in Hobbes and Kant', *Hobbes Studies* 25: 44; S.A. Lloyd (1992) *Ideals as Interests in Hobbes's* Leviathan*: The Power of Mind over Matter*. Cambridge: Cambridge University Press, p. 119.
19. For instance, arbitration allows the parties to take coordinated decisions when unanimity is difficult or impossible to obtain. See e.g. John Finnis (1980) *Natural Law and Natural Rights*. Oxford: Clarendon Press, pp. 232–3 and Rosler (n. 17), pp. 14–6; (2002) 'Hobbes y el Naturalismo Político en Aristóteles', *Deus Mortalis* 1: 43–4, (n. 17), pp. 202–3. It should be borne in mind, though, that unanimity and arbitration are not the only two options to resolve coordination problems, because customary regulation is a genuine third alternative. See Green (n. 17), pp. 105–8.
20. Raz (n. 16), p. 41.
21. Ibid. p. 42.
22. Ibid. p. 42.
23. *Leviathan* V.3. Cf. *The Elements of Law* XXIX.8.
24. *Leviathan* V.3. Cf. *The Elements of Law* XXIX.8.
25. Raz (n. 16), p. 42.
26. *Leviathan* XV.30. Cf. *The Elements of Law* XVII.6 and *De Cive* III.20.

27. *Leviathan* XLIII.3. Cf. *The Elements of Law* XXV.6-8, *De Cive* XVIII.2–12 and *Leviathan* XLIII.11–21.
28. *Leviathan* XLII.11. Cf. *Leviathan* XXXII.4.
29. See e.g. *Leviathan* XXXII.4, XXXVII.13, XL.2, XLII.11. Hobbes argues that it is a conceptual mistake to make the opposite claim. See *Leviathan* XLVI.37. Hobbes' point seems well-grounded To begin with, it is doubtful whether subjects can choose or decide to believe something. See e.g. Bernard Williams (1973) *Problems of the Self: Philosophical Papers 1956–1972*. Cambridge: Cambridge University Press, pp. 147–151 for a convincing argument to ground the claim that people cannot choose to believe. If subjects cannot choose to believe, it seems to follow that they cannot be forced to hold certain beliefs, and it also seems to follow that it does not make much sense (moral considerations aside) to try to force them to hold certain beliefs. Be that as it may, this does not entail that subjects cannot be conditioned to hold certain beliefs. In fact, Hobbes claims that beliefs are highly malleable and so assigns political education a key role in his account of the stability of the commonwealth.
30. *Leviathan* XLIII.22.
31. See also *Leviathan* XXI.7, XXVI.24.
32. See also Kinch Hoekstra (2004) 'Disarming the Prophets: Thomas Hobbes and Predictive Power', *Rivista di Storia Della Filosofia* 21: 109; (2006) The end of philosophy (the case of Hobbes)' *Proceedings of the Aristotelian Society* 106: 50; Lloyd (n. 18), pp. 140–141, 183, (2009) *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature*. Cambridge: Cambridge University Press, pp. 342, 348–51, 370–2; Martinich A.P. (1992) *The Two Gods of* Leviathan*: Thomas Hobbes on Religion and Politics*. Cambridge: Cambridge University Press, pp. 297–8; James Bernard Murphy (2005) *The Philosophy of Positive Law: Foundations of Jurisprudence*. New Haven and London: Yale University Press, p. 168; Sreedhar (n. 17), pp. 101–2, 117–8; Howard Warrender (1957) *The Political Philosophy of Hobbes: His Theory of Obligation*. Oxford: Clarendon Press, p. 172.
33. Raz (n. 16), p. 39, (1999) *Practical Reason and Norms,* 2nd ed Oxford: Oxford University Press, pp. 184–185; (2009) *The Authority of Law: Essays on Law and Morality,* 2nd ed. Oxford: Clarendon Press, p. 26, n 25.
34. *Leviathan* XXX.20–21. Cf. *De Cive* XIII.15.
35. Stephen Holmes (1995) *Passions and Constraints: On the Theory of Liberal Democracy*. Chicago and London: The University of Chicago Press, pp. 161–4.
36. A related point is granted by the writers that argue that Hobbes' political theory involves an attempt to reconcile morality and rational self-interest. For they acknowledge that there are cases in which subjects have prudential reasons to disobey. See e.g. Lloyd (n. 18), pp. 98, 156–7, (n. 32), pp. 298–9, 324; Sreedhar (n. 17), pp. 51–2, 130–1, 147. Warrender's otherwise heterodox interpretation also grants this point. For he argues that the *only* way to reconcile morality and rational self-interest is by introducing the wrath of God. See Warrender (n. 32), pp. 97–9, 201, 209, 213, 276, 282, 288–9, 292–3. See also Martinich (n. 32), pp. 120–6, 134–5.
37. *Leviathan* XXVII.19.
38. *De Cive* V.1. Admittedly, Hobbes here is dealing with the violation of the laws of nature in the state of nature. Even so, the point is general and so applies to the violation of civil law in the state as well.
39. *Leviathan* XLII.67. Cf. *De Cive* VI.11.
40. Thomas Hobbes (2010) *Behemoth, or, The Long Parliament*, P. Seaward (ed), p. 125. Oxford: Clarendon Press.

41. *Leviathan* XXXVIII.1. Cf. *De Cive* VI.11.
42. See e.g. Hampton (n. 12), pp. 203, 235, 236, 239, 257, 277.
43. *Leviathan* XXXI.1. Cf. *De Cive* XI.6, XV.1, XVIII.13 and *Leviathan* Conclusion.17.
44. Reasons of space do not allow me to elaborate on this interpretation of Hobbes' theory of contractual obligation. See Luciano Venezia (2013) 'Crucial Evidence: Hobbes on Contractual Obligation', *Journal of the Philosophy of History* 7: 110–3.
45. *De Cive* Preface.5. Hobbes recommends to his readers that '[i]f any preacher or confessor or casuist says that this doctrine is consistent with the Word of God: that a sovereign may rightly be killed, or any man without the sovereign's orders, or that citizens may rightly take part in any rebellion, conspiracy or covenant prejudicial to their commonwealth, do not believe him, but report his name' (*De Cive* Preface.21).
46. *Leviathan* XXIX.6. Cf. *The Elements of Law* XXVII.4–5 and *De Cive* XII.1.
47. Raz (n. 33), pp. 178–82. This does not mean that sanctions for non-compliance play no role whatsoever in an account that stresses authority rather than coercion as the key feature of law. Sanctions for non-compliance provide auxiliary reasons, which are relevant when agents do not recognize or question the exclusionary character of law, and so act in virtue of their own evaluation of the merits of the action at stake.