

THOMAS HOBBS'S CHILDREN¹

Children therefore, whether they be brought up and preserved by the father, or by the mother, or by whomsoever, are in most absolute subjection to him or her, that so bringeth them up, or preserveth them. And they may alienate them, that is, assign his or her dominion, by selling, or giving them, in adoption or servitude to others; or may pawn them for hostages, kill them for rebellion, or sacrifice them for peace, by the law of nature, when he or she, in his or her conscience, think it to be necessary. —*The Elements of Law* 23.8 (EW 4 157)

Introduction

Hobbes held that social institutions, such as government, are the product of voluntary agreement among free individuals. The correct explanation of human society therefore has two components, namely an account of free individuals in pre-social circumstances (the state of nature), and an account of the agreements they would reach (the social contract). Hobbes's argument in *The Elements of Law*, *De cive*, and *Leviathan* concentrates on

1 The textual situation for Hobbes's works in political philosophy is as follows: [1] *The Elements of Law*. Written in English. Manuscript began circulating in May 1640. Eventually published in an unauthorized edition in London in 1650, consisting in the two books "Human Nature" and "De corpore politico" (despite the Latin title the text is English). The latter was itself divided into two parts with chapters numbered independently (and remains so in EW 4). Text in Gaskin [1994], which numbers the chapters consecutively. Page references to EW 4. [2] *De cive*. Written in Latin. Published in Paris in April 1642, with a second edition in Paris in January 1647. Text in Warrender [1983a]. An inaccurate English translation, not authored though perhaps authorized by Hobbes, was published in London by March 1651 under the title "Philosophicall Rudiments Concerning Government and Society" (text in Warrender [1983b]). All references, unless noted otherwise, are to the Latin text. [3] *Leviathan*. Hobbes published an English version in London in late April or early May 1651 (text in Tuck [1991]), and a Latin version in Amsterdam in 1668 (text in OL 3). Tricaud [1971] argues that most of the Latin text predates the English version, but the relative chronology of any given passage is impossible to determine. Page references are to Tuck/EW 3 and to OL 3 respectively, to the English version unless noted otherwise. [4] *A Dialogue Between a Philosopher and a Student of the Common Laws of England*. Written in English in 1666 and published posthumously in London in 1681. Text in Cropsey [1971], also used for page references. Translations from the Latin are mine: I follow Hobbes's example for the *Leviathan* but not the anonymous English *De cive*. Punctuation and spelling appears as it does in each edition listed above.

the rationality of establishing what he calls a “commonwealth by institution”: mutual consent to a specific agreement establishing a sovereign power as a means to rectify the drawbacks of the state of nature. In the absence of any form of social or political organization, Hobbes argues, rational individuals who are relatively equal will, under conditions of moderate scarcity, be prudentially motivated to enter into a mutual covenant setting up a government that holds a monopoly on the use of force. This innovative train of thought, and especially the role Hobbes gives to consent, ushers in modern political philosophy and the age of the liberal state.

Hobbes also admits a “commonwealth by acquisition” in which “the Sovereign Power is acquired by Force” (*Leviathan* 2.20 138/101). Such power acquired by force—Hobbes calls it “dominion”—comes in two forms: master over servant, and parent over child.² Furthermore, Hobbes maintains, the rights of sovereignty arising from institution and from acquisition are the same (139/102). The child is therefore “in most absolute subjection” to the parent, as the servant is to the master. For Hobbes, childhood is a period of servitude we would call slavery.

Hobbes informs us in *The Elements of Law* 23.10 that children can be treated as subjects rather than as servants by their parents. But this is due to “the natural indulgence of the parents” rather than any rights possessed by or obligations owed to the children. Parents are equally free to treat their children as servants. Furthermore, freedom from dominion is conceptually identical for servants and for children, as Hobbes states in *De cive* 9.7 (166):³

A child is freed from subjection in the same ways in which a subject and a servant are. For emancipation, manumission, and abdication with banishment are the same thing.

Adulthood, therefore, does not release one from filial bonds of obedience; an explicit act of emancipation is required.

Sovereignty by acquisition, unlike sovereignty by institution, involves force, and thereby need not involve consent. This would fit well with the

² Two distinctions. First, I follow Hobbes in using “parent” in the extended sense of the child’s primary caregiver, reserving “biological parent” to mean just that. (Hobbes isn’t careful in his use of “father” and “mother” but it’s usually clear from context whether he has a social or a biological relation in mind.) Second, Hobbes distinguishes between slaves and servants, in that the former are kept bound and hence under no obligation of obedience to their master, whereas the latter enter into a covenant of trust and obedience with their master (and the tacit sign of their agreement is that they aren’t bound). As we shall see, Hobbes’s servants are slaves in all but name.

³ *Etiam subiectione iisdem modis Filius liberatur, quibus subditus & servus. Eadem enim res est emancipatio, cum manumissione, & abdicatio cum exilio.*

modern view of slavery (or Hobbesian servitude) as a coercive social institution rather than a consensual one; on this score it is closely analogous to parental authority, which is likewise not a matter of consent, involving power if not force. Yet Hobbes rejects this view when he discusses dominion in *The Elements of Law* 23, *De cive* 9, and *Leviathan* 2.20. Legitimate sovereignty not derived from consent would undermine his contractarian project, since social institutions could then be explained by differential power relations in society (and perhaps buttressed by a doctrine of natural inequalities or patriarchalism)—too close to the political theories Hobbes was struggling to overcome. Might, not reason, would make right out of the state of nature. Nor are there evident grounds on which to insist that children or servants are obliged to obey.

Therefore, Hobbes argues in general that force is compatible with consent: promises made out of fear or under threat are in general morally binding, at least in the state of nature.⁴ For instance, someone might offer to become a servant rather than be killed on the battlefield (*Leviathan* 2.20 141/103–104).⁵

And this Dominion is then acquired to the Victor, when the Vanquished, to avoyd the present stroke of death, covenanteth either in expresse words, or by other sufficient signes of the Will, that so long as his life, and the liberty of his body is allowed him, the Victor shall have the use thereof, at his pleasure. . . . It is not therefore the Victory, that giveth the right of Dominion over the Vanquished, but his own Covenant.

Children and servants accordingly make the best choice available to them. The inequality of the bargaining situation and the position held by the stronger translates into the battery of rights enumerated above: the power to dispose of the child or servant, roughly, however the holder of dominion sees fit.

Hobbes's reasoning, whatever its merits,⁶ applies to servants better than it does to children. While parents and children (especially infants) are grossly unequal in power, in the case of children there is no obvious instance of a forced choice comparable to that offered to the vanquished on the battlefield, and in any event it isn't clear that children are able to enter into bargains since they may lack the requisite cognitive capacities to

⁴ See *The Elements of Law* 15.13 (EW 4 92–93), *De cive* 2.16 (104), *Leviathan* 1.14 97–98/69.

⁵ See *The Elements of Law* 22.2–3 and *De cive* 8.3 for the same point.

⁶ Its merits have been examined and criticized extensively in Hampton [1986] Chapter 8 and briefly in Kavka [1986] 395–396.

do so. What, then, is the ultimate source of parental dominion and filial obligation?

Hobbes, I think, cannot give a satisfactory answer to this question in the end. His failure is instructive, since it brings to the fore unresolved problems with his contractarian project. There are three distinguishable strands in Hobbes's analysis of parental dominion and filial obligation, each of which leads to a different set of challenges to contractarianism. First, Hobbes suggests that gross inequality of power may explain why parents have the right to command and children the obligation to obey. Exploring this suggestion—it is no more than that—brings us to question the validity of Hobbes's fundamental premiss of natural equality in the state of nature. Second, Hobbes proposes that filial obligation is necessitated by gratitude. But this rides roughshod over the distinction between acts stemming from love or respect and those that discharge debts created in advance, or, more generally, between trust and promise. Third, Hobbes argues that filial obligation is contractual in nature. Yet although this is his "official" solution, it isn't worked out to the level one might expect: Hobbes begins with tacit consent and, in the face of difficulties, turns instead to hypothetical consent, which he ultimately abandons; this leaves him with no support for his claims about filial obligation, and raises serious problems with the binding force of his contractarian moral and political theory.

Natural Inequality

Hobbesian political theory begins in the state of nature. Although consent is the key element in contract, Hobbes does not begin with a prior commitment to consent, or even to the social contract itself, but rather deduces the need for both from a single premiss—the factual equality of persons in the state of nature.⁷ His famous description of the state of nature opens by making this very point (*Leviathan* 1.13 86–87/60–61):⁸

⁷ Hobbes's contractarianism therefore has a very different internal structure from theories that are advertised as contractualist nowadays: see *e. g.* Scanlon [1982].

⁸ Compare *The Elements of Law* 14.2 (81–82): "And first, if we consider now little odds there is of strength or knowledge, between men of mature age, and with how great facility he that is the weaker in strength or in wit, or in both, may utterly destroy the power of the stronger; since there needeth but little force to the taking away of a man's life, we may conclude, that men considered in mere nature, ought to admit amongst themselves equality; and that he that claimeth no more, may be esteemed moderate." See also *De cive* 1.3. In these works Hobbes seems to draw an intermediate normative conclusion apparently dropped in *Leviathan*, namely moral egalitarianism, from factual equality. (Reconstructions of Hobbes's argument in *Leviathan* that take

Nature hath made men so equall, in the faculties of body, and mind; as that though there bee found one man sometimes manifestly stronger in body, or of quicker mind then another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himselfe any benefit, to which another may not pretend, as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himselfe. And as to the faculties of the mind. . . I find yet a greater equality amongst men, than that of strength. . . From this equality of ability, ariseth equality of hope in the attaining of our Ends.

Factual equality under conditions of scarcity leads to competition for attaining necessary ends, and the distrust this engenders leads to the war of all against all: the impetus behind the social contract.

What about inequality in the state of nature, though, such as might be expected between parents and children? Hobbes seems inclined to dismiss such questions out of hand. He introduces his discussion of sovereignty by acquisition with the following remark in *De cive* 8.1 (160):⁹

So let us return to the state of nature once again and consider men as though they were suddenly sprung from the earth (like mushrooms) as adults right now, without any obligation of one to another. . .

Is Hobbes's state of nature meant to describe historical reality, or is it merely an analytic device? The counterfactual proposal in this passage supports the latter interpretation,¹⁰ and Hobbes's explicit mention of adulthood would seem to rule out worries about inequality between parents and children. Hobbes's talk about the state of nature, it might be said, only serves to isolate features relevant to political analysis, and interpreting his description literally just misses the point of his theory.

The attractions of this line of thought notwithstanding, I think we have to reject it. Hobbes often talks about children in the state of nature:

vainglory as a central element may want to retain this conclusion.) But moral egalitarianism holds only for relatively equal parties, not for the unequal relation parents bear to children or infants.

⁹ *Vt redeamus iterum in statum naturalem, consideremusque homines tanquam si essent iamiam subito e terra (fungorum more) exorti & adulti, sine omni vnus ad alterum obligatione, tres tantum modi sunt, quibus alter in alterius personam Dominium habere potest.*

¹⁰ I do not mean to take a stand on this contested point; there is evidence on both sides, and the debate continues among Hobbes scholars. See for example Hobbes's remarks about America in *Leviathan* 1.13 89–90/63.

witness *Leviathan* 1.13, where children (along with wives and cattle) are objects of potential gain, or any of his discussions of dominion.¹¹ But there is a deeper reason. Even if the state of nature is a purely analytic device, we may ask what it tells us about the political standing of children, and if it has nothing to say about them it won't be a particularly useful analytic device. Children have to be theoretically accommodated one way or another.

In *The Elements of Law* 23.3 (EW 4 155), Hobbes directly addresses the issue of inequality between parent and child in the state of nature:¹²

The title to dominion over a child, proceedeth not from the generation, but from the preservation of it; and therefore in the estate of nature, the mother, in whose power it is to save or destroy it, hath right thereto by that power, according to that which hath been said, Part I. chapter [xiv]. sect. 13. . .

The mother's dominion stems from her choice to preserve the child rather than bringing about its death. But how does that choice confer a right? Hobbes refers us to his earlier discussion in *The Elements of Law* 14.13 (EW 4 85–86):

Seeing this right of protecting ourselves by our own discretion and force, proceedeth from danger, and that danger from the equality between men's forces, much more reason is there, that a man prevent such equality before the danger cometh, and before the necessity of battle. . . He therefore that hath already subdued his adversary, or gotten into his power any other, that either by infancy, or weakness, is unable to resist him, by right of nature may take the best caution, that such infant, or such feeble and subdued person can give him, of being ruled and governed by him for the time to come. . . Out of which may also be collected, that irresistible might, in the state of nature, is right.

Might—"irresistible" by factual gross inequality—makes right without any

¹¹ Hobbes does say that we can't make any sense of a child's being in the state of nature, but he explains that this is due to the fact that children are always and immediately (*simul*) in someone's power. See *De cive* 1.10 note (96): *Filium in statu naturali, intelligi non posse, ut qui simul atque natus est, in potestate & sub imperio est ejus cui debet conservationem sui: scilicet, Matris vel Patris, vel ejus qui praebet ipsi alimenta*. To say that a child is always under someone's dominion, though, is not to explain what it is to be there, so this won't answer the question at hand.

¹² Hobbes's claim that biological parenthood doesn't confer rights on the parent is a deliberate rejection of patriarchal theories. He argues that since each child has two biological parents, the fact that sovereignty is indivisible prevents parenthood from conferring sovereignty: see *The Elements of Law* 23.2, *De cive* 9.1, and *Leviathan* 2.20.

need for contract. We therefore have rights over infants, children, or any “feeble and subdued person” in much the same way we have dominion plain and simple over animals.¹³ Now this Hobbesian claim can be read in two ways. First, we can take it as no more than a vivid description of the *force majeure* accompanying the exercise of a person’s right to use anything for self-preservation, dominion over others being a special form of use. On this interpretation, there is nothing special about the rights exercised over children or the feeble; they are just easier to subdue than others in the state of nature, with whom we are engaged in a perpetual struggle for gain.

This reading, I think, fails to do justice to the special attention Hobbes is giving such gross inequalities of power in the state of nature—“irresistible might.” Furthermore, while it might explain parental dominion through *force majeure*, it doesn’t provide an explanation of filial obedience. At best, it assumes that the solution for servitude carries over to children, a dubious claim (as noted above).

There is a second and stronger interpretation suggested by the text: differential powers may lead to distinctions in rank, so that one group may be rightfully more pre-eminent than another, as humans are of a higher nature and order than animals. That is Hobbes’s point in noting that the power is “irresistible.” Furthermore, when Hobbes describes the war of all against all in *Leviathan* 1.13 he says that this is due to the lack of a common power “to keep them all in awe” (88/62), and an irresistible force would be such an awesome power. A superhuman being among us, it seems, would merit our awe and obedience. (This is how we are related to the divine in Hobbes’s view.) Analogously, adults are “super-children,” and so are awesome to the child or infant.

The second interpretation is no more than a suggestion in Hobbes’s text, however, perhaps because of the obvious difficulties it poses. How great a differential is required to establish a difference of rank? Differential power relations in the state of nature might plausibly be construed to reflect natural inequalities, and used to underwrite natural differences of rank—the line of reasoning put forward by mediæval aristotelian political theory—and render consent largely irrelevant to social organization. Furthermore, Hobbes owes us an explanation of how awe can generate a moral hierarchy. Yet even were he to provide one, infants and young children seem to lack the requisite cognitive apparatus for awe, as well as for obedience (to say

¹³ For our rights over brute animals see *The Elements of Law* 22.9 and especially *De cive* 8.10 (163): *Eodem modo acquiritur ius in animalia ratione carentia, quo in personas hominum; nimirum viribus & potentiis naturalibus*. The state of nature need not generate a social contract.

nothing of consent).

The strong reading of Hobbes's claim points up difficulties in his account of the state of nature, particularly the normative role of Hobbes's claims about equality and inequality. Yet the weaker first reading fails to resolve the problem. Perhaps Hobbes recognized that this line of thought was unproductive, for he develops two other ways of addressing the problem.

Trust and Gratitude

Another suggestion Hobbes toys with is that filial obligation is produced by gratitude for the benefits conferred by the parent. In *Leviathan* 2.20 (140/103) he writes:

Again, seeing the Infant is first in the power of the Mother, so as she may either nourish, or expose it; if she nourish it, it oweth its life to the Mother; and is therefore obliged to obey her, rather than any other; and by consequence the Dominion over it is hers.

Filial obligation comes from the bestowal of life. The same idea is put more sharply in *De cive* 9.4 (165):¹⁴

The life that the mother gave [to the child] (not by giving birth to it but by nourishing it) she takes away by exposing it. Accordingly, the obligation that sprang from her gift of life was cancelled through the exposure.

Now the idea that mere conferral of benefit can generate an obligation, without any positive act on the part of the recipient, seems to cut against the grain of Hobbes's thought as expressed in passages such as *Leviathan* 2.21 (150/111):

There [is] no Obligation on any man, which ariseth not from some Act of his own.

Yet there is another strain of thinking found in Hobbes that acknowledges the importance of trust and gratitude. For example, in *Leviathan* 2.30 (235/178) Hobbes declares:

And because the first instruction of Children, dependeth on the care of their Parents; it is necessary that they should be obedient to them, whilst they are under their tuition; and not onely so, but that also afterwards (as gratitude requireth,) they acknowledge the benefit of their education, by externall signes of honour.

There is no mention here of consent. Children are to be grateful to their parents for "the benefit of their education." In fact, the link between the

¹⁴ *Vitam enim quam mater (non generando sed alendo) dederat, exponendo tollit; quare est obligatio, quae orta est ex vitae donatione, per expositionem sublata est.*

receipt of benefits and gratitude is a law of nature, as Hobbes tells us in *e. g. Leviathan* 1.15 (105/75):¹⁵

As Justice dependeth on Antecedent Covenant; so does GRATITUDE depend on Antecedent Grace; that is to say, Antecedent Free-gift: and is the fourth Law of Nature; which may be conceived in this Forme, —it That a man which receiveth Benefit from another of meer Grace, Endeavour that he which giveth it, have no reasonable cause to repent him of his good will. For no man giveth, but with intention of Good to himselfe; because Gift is Voluntary; and of all Voluntary Acts, the Object is to every man his own Good; of which if men see they shall be frustrated, there will be no beginning of benevolence, or trust; nor consequently of mutuall help; nor of reconciliation of one man to another. . .

Gratitude for benefits received is ultimately rational because it encourages benevolence, confidence, mutual aid, accomodation, and the like, which we can conveniently summarize under the heading of “trust” (as the opposite of diffidence).¹⁶

Trust is a fundamental constituent of every Hobbesian contract—more precisely, trust is what makes a contract into a covenant.¹⁷ It is linked to the social virtues listed above. We might, then, try to construct a Hobbesian account of the parent-child relation out of trust. The trustworthiness of a parent, for instance, would render that parent worthy of filial obedience, and the benefits conferred on the child merit gratitude.¹⁸ For evidence we could point to *De cive* 14.9, where Hobbes mentions among several the civil law that one should give parents their due honor, and then asserts that the natural law prescribes the same thing implicitly (*Leges naturales eadem praecipunt sed implicite*: 209). We ought to honor our parents, it seems, to the extent that they merit it, without mention of debts or agreements.

¹⁵ This is the Fourth Law of Nature in the *Leviathan*; it appears as the third law in *The Elements of Law* 16.6 and *De cive* 3.8.

¹⁶ In *The Elements of Law* 16.6 (98–99) Hobbes explicitly says that one person may benefit from another “without any covenant, but only upon confidence and trust”—and without appropriate gratitude there will be mistrust (“general diffidence”). So too *De cive* 3.8 (111): *Nam absque hoc, contra rationem fecerit, si quis quod periturum videt beneficium, prior contulerit; atque eo modo omnis sublata erit inter homines beneficentia & fiducia, vnaque omnis benevolentia; neque esset inter eos quidquam mutuae opis, nec vllum gratiae conciliandae initium.*

¹⁷ See *The Elements of Law* 16.5, *De cive* 2.9, and *Leviathan* 1.14—the last discussion is unusually restrictive, suggesting that the assurance problem is all there is to trust.

¹⁸ See Baier [1994] for an account of parent-child relations along the lines of trustworthiness, rejecting Hobbes’s official contractarian model.

But there is ample evidence that Hobbes rejected this line of thought. He even overturns the evidence mentioned in the preceding paragraph by describing the honor due one's parents as a kind of bargain in *De cive* 9.8 (167):¹⁹

Hence it should always be understood that whoever is freed from subjection, whether he be a servant or a son or some colony, promises at least all the external signs by which superiors are honored by their inferiors—from which it follows that the precept about honoring parents belongs to the natural law not only under the heading of gratitude but also of contract.

The child has filial obligations, Hobbes suggested, solely in virtue of the parent preserving the child's life. But that parental decision need not entail that the parent is trustworthy. The parent might raise a child to sell into servitude, for instance, as Hobbes recognizes. Parental dominion does not bind the parent to looking after the good of the child, whereas trustworthiness seems to require it, and so much the more does gratitude.

Furthermore, gratitude for conferred benefits mislocates Hobbes's problem. It seems plausible to say, as Hobbes does, that children should be grateful to their parents for benefits they have received—say, for their education, or for their medical care. But such gratitude is retrospective. Hobbes clearly has in mind emancipated adult children who are to honor their parents. Well and good, but that will not explain occurrent filial obligation throughout childhood.²⁰ Even if the natural law of gratitude binds emancipated adult children, it does not obviously address the case of minor children, and the younger the child the less plausible the suggestion.

Our discussion of trust and gratitude points up a more fundamental problem with Hobbes's contractarianism. To the extent that it is a law of nature that we acknowledge and reciprocate received benefits, we are obliged to do so. But this misconstrues the nature of the trust and gratitude characteristic of parental love. (This is in part obscured by the free use of the term "obligation" in both contexts.) Favors may create debts that have

¹⁹ *Intelligendum igitur semper est, eum qui liberatur subiectione, siue sit seruus, siue filius, siue colonia aliqua, promittere saltem externa signa omnia quibus superiores ab inferioribus solent honorari. Ex quo sequitur praeceptum illud de parentibus honorandis esse legis naturalis, non modo sub titulo gratitudinis, sed etiam Pactionis.* The anonymous English translation mentioned in n. 1 above (known as "Philosophicall Rudiments Concerning Government and Society") obscures Hobbes's point by rendering the last clause "not only under the title of gratitude but also of agreement," despite the fact that '*pactio*' is Hobbes's Latin term for 'contract', not 'agreement'.

²⁰ Especially if, as is all too evident to parents, children do not appreciate the benefits at the time when they are received.

to be repaid, but friendship or love arguably do not—they are gift relations, plain and simple, characterized by mutuality rather than reciprocity: friends and lovers give one another what they can without regard to the amount of benefits exchanged; their duties to one another are not discharged when each does roughly the same for the other.²¹ Yet there is no room in contract theory for this distinction, since duty is analyzed without remainder into debt, narrowly construed.

There are several points at issue here. First, do the benefits conferred by parents on children morally obligate the children? Second, if children do have such an obligation, is it best analyzed as discharging a debt owed to the parents (or more generally as keeping a bargain)? Skepticism about Hobbes's account could arise on either score. If conferred benefits are gifts rather than bribes or bargaining chips, they come with no strings attached; such is love. But even if we grant an obligation on the part of children to recognize the benefits they have received from their parents, and to respond appropriately—perhaps with love and gratitude – Hobbes still has to argue that children thereby relinquish dominion over their persons to their parents. And this he has not done. Instead, he rides roughshod over the differences between trust and promise, construing the former on the model of the latter without argument.

The Official Solution: Consent

Hobbes's "official" solution is that filial obedience is contractual in nature, ultimately based on consent. He states it in outline in *Leviathan* 2.20 (139/102):²²

The right of Dominion by Generation, is that, which the Parent hath over his Children; and is called PATERNALL. And is not so derived from the Generation, as if therefore the Parent had Dominion over his Child because he begat him; but from the Childs Consent, either expresse, or by other sufficient arguments declared.

At the end of this passage Hobbes refers to what has come to be called "express (or actual) consent" and "tacit consent." He introduces this dis-

²¹ See English [1979] for the distinction referred to here.

²² The Latin version of this passage is less explicit (OL 3 151): "There is another kind of dominion acquired by generation, which is called 'paternal': the right of which belongs to the parent not because he begat the child but because the child consented, or according to some other arguments." (*Est etiam dominiū acquisiti genus aliud per generationem, quod paternum dicitur: cujus jus patris est, non quia filium genuit, sed quia consensit filius, vel propter alia aliqua argumenta.*) The contrast between express and tacit consent is present here but muted to the point of unintelligibility.

inction earlier in *Leviathan* 1.14 (94/66–67):

Signes of Contract, are either *Expresse*, or by *Inference*. *Expresse*, are words spoken with understanding of what they signifie. . . Signes by *Inference*, are sometimes the consequence of Words; sometimes the consequence of Silence; sometimes the consequence of Actions; somtimes the consequence of Forbearing an Action: and generally a signe by *Inference*, of any Contract, is whatsoever sufficiently argues the will of the Contractor.

Very roughly, express consent is a matter of uttering certain words in the right context, whereas tacit consent is a matter of an appropriate performance in the right context.²³

The way the distinction between express and tacit consent works in the case at hand is obscure. Express consent clearly isn't an option, since infants lack the power of speech. Therefore, Hobbes must take tacit consent to be the operative notion in his account of filial obligation. But it is hard to see how it is supposed to work. After arguing that parental dominion is presumptively the mother's, Hobbes states in *Leviathan* 2.20 (140/103):

Again, seeing the Infant is first in the power of the Mother, so as she may either nourish, or expose it; if she nourish it, it oweth its life to the Mother; and is therefore obliged to obey her, rather than any other; and by consequence the Dominion over it is hers. But if she expose it, and another find, and nourish it, the Dominion is in him that nourisheth it. For it ought to obey him by whom it is preserved. . .

The same train of thought is found in *The Elements of Law* 23.3 (EW 4 155):

The title to dominion over a child, proceedeth not from the generation, but from the preservation of it; and therefore in the estate of nature, the mother, in whose power it is to save or destroy it, hath right thereto. . . And if the mother shall think fit to abandon, or expose her child to death, whatsoever man or woman shall find the child so exposed, shall have the same right which the mother had before; and for this same reason, namely, for the power not of generating, but preserving.

Hobbes reasons that the person who provides sustenance to the child thereby acquires parental dominion over it. Maybe so, but where does the child's

²³ Since uttering certain words is a certain kind of performance, namely a linguistic performance, express consent is a species of tacit consent—not quite the distinction Hobbes is after. But this is a bit of conceptual sloppiness we can ignore for our purposes.

tacit consent enter the picture?

Despite Hobbes's suggestion that filial obligation is a debt incurred for the child's life, the only candidate in these passages for the role of tacit consent is the acceptance by the child of sustenance. Let us grant Hobbes the claim that accepting nourishment can be a "sign by inference" of consent; the question remains whether it is such a sign in the case at hand.²⁴

There is an insuperable obstacle to an affirmative answer. In the passages under consideration, Hobbes is clearly dealing with infants (neonates in fact), who completely lack the cognitive capacities that would allow them to give consent. It seems impossible for an infant to bind itself morally without having the remotest idea of what it is doing—indeed, arguably without having ideas at all, on Hobbes's account of psychology. Even young children may not qualify, since it presumably takes a certain degree of experience before a child can grasp the idea of consent, that is, of binding itself for the future.²⁵

Now Hobbes might object that by definition a sign by inference, as accepting sustenance is said to be, need only be such that it "sufficiently argues the will of the Contractor"; since the infant certainly wants to eat, there is no technical barrier to insisting that this be a genuine instance of tacit consent. But this would be quibbling, and even Hobbes recognized it as such, for in *Leviathan* 2.26.8 he explicitly states that children cannot enter into a covenant because they lack the ability to do so (187/140):

Over naturall fooles, children, or mad-men there is no Law, no more than over brute beasts; nor are they capable of the title of just, or unjust; because they had never power to make any covenant, or to understand the consequences thereof. . .

Since children cannot understand the consequences of their actions they cannot enter into covenants. Tacit consent, then, is a dead end in explaining filial obligation.²⁶

²⁴ We might want to know more before conceding this point—for instance: what makes accepting sustenance a sign of anything but hunger? Do we really have a clear instance of tacit consent when we dangle food before a starving adult? But the problems with Hobbes's account can be brought out even granting him the claim.

²⁵ Hobbes asserts in *Leviathan* 1.5 that children acquire reason when they are able to speak (roughly 4–5 years old). Yet in *Leviathan* 1.3 he says (23/11): "There be beasts, that at a year old observe more and pursue that which is for their good, more prudently, than a child can do at ten." Thus mere reasoning ability appears before prudence, which, from the above passage, seems to be what Hobbes should require for consent.

²⁶ Filmer gets Hobbes dead to rights on exactly this point: "How a child can express consent, or by other sufficient arguments declare it before it comes to the age of discretion

Hobbes seems to have recognized this. In his discussions of parental dominion he is traditionally understood to make use of a completely different, and unannounced, distinction to clarify filial obligation, namely that between actual consent (which may be either express or tacit) and so-called “hypothetical consent.” It is important to recognize just how radical a change this is. For hypothetical consent is no more a kind of consent than an imaginary basketball is a kind of basketball. Instead, hypothetical consent is a matter of what a person would consent to were the situation somehow altered—if more information were available, or false beliefs removed, or only true beliefs retained; if circumstances were different in some given way or set of ways; if other things were equal (they never are); and so on.

Some of these forms of hypothetical consent won’t help. More information can’t help a non-cognitive infant; different circumstances aren’t likely to have much impact on it. But Hobbes has a somewhat different philosophical move up his sleeve. He continues *Leviathan* 2.20 (140/103), cited above, by giving the reason why the infant should obey its caregiver:²⁷

For it ought to obey him by whom it is preserved; because preservation of life being the end, for which one man becomes subject to another, every man is supposed to promise obedience, to him, in whose power it is to save, or destroy him.

A similar train of thought can be seen in the continuation of the passage cited above from *The Elements of Law* 23.3, if we put aside its misleading suggestion that filial obligation is created through the conferral of life (EW 4 155–156).²⁸

I understand not; yet all men grant it is due before consent can be given. . .” Robert Filmer, *Observations Concerning the Originall of Government* §11 (Sommerville [1991] 192).

²⁷ The Latin text of the *Leviathan* leaves out the last clause, which, on my reconstruction below, is the key move in the passage (OL 3 152): *Servati enim semper dominus est servator, quia finis, propter quem alteri alteris se subjiciunt, conservatio est.*

²⁸ *De cive* 9.3 makes a related point (164): “If [the mother] therefore takes care of the child, since the state of nature is a state of war she is understood to care for him in accordance with the rule that he not become an enemy as an adult—that is, in accordance with the rule that he obey her. For since by natural necessity we all desire that which appears good to us, it cannot be understood that anyone has given life to someone who can simultaneously gain strength with age and rightly be an enemy.” (*Siquidem ergo educet (quoniam status naturae status belli est) ea lege educare intelligitur, ne adultus, hostis fiat, hoc est, ea lege vt ipsi obediat. Cum enim necessitate naturali velimus omnes id quod nobismetipsis apparet bonum, intelligi non potest, quemquam ita vitam dedisse cuiquam, vt possit simul, & vires aetate acquirere, & iure hostis esse.*) The anonymous English translation renders ‘*ea lege*’ by “on this condition” rather than “in accordance with the rule,” thereby making it seem as

And though the child thus preserved, do in time acquire strength, whereby he might pretend equality with him or her that hath preserved him, yet shall that pretence be thought unreasonable, both because his strength was the gift of him, against whom he pretendeth, and also because it is to be presumed, that he which giveth sustenance to another, whereby to strengthen him, hath received a promise of obedience in consideration thereof. For else it would be wisdom in men, rather to let their children perish, while they are infants, than to live in their danger or subjection, when they are grown.

Hobbes tells us that the infant is “supposed” to promise obedience, since that would be necessitated by self-preservation, and that it is “presumed” that the caregiver “hath received a promise of obedience” for sustaining the infant or child (since the caregiver would otherwise not be rational). The consent at issue here is hypothetical, not actual, and explicitly recognized by Hobbes as such. But what is the hypothesis under which the infant consents?

qWhatever we may propose for the counterfactual situation, there is no clear sense in which the very infant in question can be said even to consent hypothetically. We encounter serious difficulties with personal identity in trying to spell out the hypothesis under which the infant consents, and these difficulties are not readily resolved and perhaps not capable of resolution. For no matter what we try to put into the hypothesis, we will have recourse to (nonexistent) cognitive capacities. Do we claim that the infant would have made such a promise were it to have adult cognitive capacities as an infant? That once grown it would have wished to have made such a promise were that the only way to survive infancy? That were the infant a helpless adult it would enter into such a promise? But such a helpless adult, grown infant, or infant with adult intelligence is clearly not the person the infant in the here-and-now is, and pointing out that it could be or become such a person is to beg the question.

Hobbes, though, takes a different tack. The impersonal formulations of his assumptions (“presumed”/“supposed”) suggests that he is thinking not so much of a counterfactual situation based on the infant itself, but rather what the interests of the infant require. An infant may have interests without cognitive states, after all, and its interests may be respected or damaged by the actions of others. Clearly being nurtured is better for the infant’s interests than being exposed or killed outright. Therefore, we might

though Hobbes is talking about actual consent.

take the hypothesis relevant to establishing filial obligation to be a matter of the infant's interests rather than its actual behavior (in either the actual situation or in some hypothetical situation).

Yet if we follow Hobbes along this line of thought, we are finally turning our backs on consent, and on the guiding intuition of contract theory itself. For there is no sense in which anything like consent – even possible, counterfactual, or merely imaginary consent—plays a role in explaining filial obligation. Interests are now the fundamental notion.²⁹ (Why not then appeal to interests in all cases and simply ignore consent?) But even so it isn't clear how to move on from infant interests. At best we could offer something akin to a hypothetical consequentialist argument to the effect that parents wouldn't raise children unless they expected filial obedience, and we are all better off if this belief is maintained. But that isn't very plausible, and it has little to do with filial obligation.

There is some indirect evidence that Hobbes himself found his account unsatisfactory. When he returned to the question of sovereignty by acquisition years later, in his 1656 *Questions Concerning Liberty, Necessity, and Chance* §14, he simply bypasses all claims about infant filial obligation, providing instead actual consent from older children (EW 5 180):

The conqueror makes no law over the conquered by virtue of his power; but by virtue of their assent, that promised obedience for the saving of their lives. But how then is the assent of the children obtained to the laws of their ancestors? This also is from the desire of preserving their lives, which first the parents might take away, where the parents be free from all subjection; and where they are not, there the civil power might do the same, if they doubted of their obedience. The children therefore, when they be grown up to strength enough to do mischief, and to judgment enough to know that other men are kept from doing mischief to them by fear of the sword that protecteth them, in that very fact of receiving that protection, and not renouncing it openly do oblige themselves to obey the laws of their protectors; to which, in receiving such protection, they have assented.

Filial obligation, then, is identical to servile obligation, only applying to the older child. Yet we are in deep waters with the collapse of Hobbes's account of hypothetical consent, and I want to end by explaining why.

²⁹ Interests are prior to consent and so cannot be defined in terms of it. Actual or counterfactual consent is at best only an indicator (or symptom, or sign, or...) of a persons's interests.

Conclusion: The Binding Force of Reason

It might be thought that Hobbes's difficulties in explaining filial obedience, though real, are after all an isolated part of his philosophical system. But I think not. For the sense in which an infant was to hypothetically consent to its parent is exactly the same sense in which the ordinary person is to be bound by Hobbes's laws of nature. Consider Hobbes's classic definition of the laws of nature put forward in *Leviathan* 1.14 (91/64):

A LAW OF NATURE, (*Lex Naturalis*,) is a Precept, or generall Rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which he thinketh it may be best preserved.

A law of nature is a general rule “found out by Reason.” But whose faculty of reason is he referring to? Hobbes readily admits that many, if not most, of us are not able to arrive at his theorems connecting self-preservation with social norms. That is, like the infant, many or most people lack the requisite cognitive abilities—the infant because of general incapacity, the rest of us because of our specific intellectual incapacity. How can reason have any binding force, in Hobbesian terms, on those who do not have enough of it?

This is a question that goes to the heart of Hobbes's philosophical system—indeed, to the heart of contractarianism. To the best of my knowledge Hobbes addressed this question only when considering the moral obligations of children (apart from his brief mention of the retarded and insane). And, as we have seen, he gives no clear answer to it. The threadbare character of his discussion becomes all too evident when we transpose it to the social sphere. Let us look at each of his proposals in this light.

The first suggestion Hobbes considered was that filial obligation stems from the gross inequality of power between children and adults. Likewise, the Hobbesian state was designed to overawe the individual. But Hobbes is careful not to ground citizen obligation on the raw power of the state but on the (initial) consent of the governed. Besides, we have seen too much of raw state power in this century to think that it can by itself create moral obligation on the ordinary citizen—that is, on the part of those not up to the job of thinking it all through in order to consent.

Hobbes's second proposal was that filial obligation is necessitated by gratitude for benefits conferred. Perhaps the ordinary citizen is likewise obligated to the Hobbesian state through gratitude. But again, Hobbes is explicit that acceptance of benefits is tacitly consenting to the full assortment of powers and rights possessed by the sovereign—and how can anyone do that without working through Hobbes's theorems about gov-

ernment and self-interest, the necessary features of sovereignty, and, in a word, the whole of *Leviathan*? After all, it is precisely because children cannot see the consequences of their actions that they cannot enter into a covenant. The ordinary citizen seems to be equally unable to work through the consequences of accepting benefits from the state.

Hobbes's final solution to the problem of filial obligation (to the extent that he didn't turn his back on it altogether) was eventually to claim that such obligations are in the infant's best interests. Likewise, he might hold, a government that acts in the best interests of its citizens can thereby be said to create binding moral obligations on them. But to maintain this is precisely to beg the important political question, namely who gets to say what is in someone's "best interests." Why should we be bound by hypothetical connections that purport to outline our best interests, for example, rather than remaining ourselves the judges of our own best interests? Why defer to those who claim to be able to derive truths about our best interests?

These questions are the fundamental questions of political philosophy, not merely peripheral issues about isolated subjects. If Hobbes had paid more attention to children, he would have been forced to confront the problem that lies behind them: how does "reason" (in its abstract, idealized, philosophical form) create moral obligation in the real world?—and we would be the richer for it.

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