Martin Rhonheimer · Gregory B. Sadler
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FORUM: HOBBES ON LAWS OF NATURE AND MORAL NORMS

In the previous issue of our journal, we published Gregory B. Sadler's article "The Laws of Nature as Moral Norms in Hobbes's *Leviathan*" [I, vol. 15 (2006), pp. 77-94].

We invited Prof. Martin Rhonheimer and Prof. Michael Zuckert to discuss various aspects of the problem. We thank them both, and Prof. Sadler once again, for the prompt collaboration that rendered possible the publication of this forum possible.

1. Martin Rhonheimer[1] on G. Sadler's[2] "The Laws of Nature as Moral Norms in Hobbes' *Leviathan*"

The fundamental thesis of Gregory B. Sadler's paper says that in Hobbes there is a "moral philosophy" (the theory of the natural law) and there are "moral norms" which have validity prior to the institution of a sovereign and civil law. This thesis, I think, is basically correct. I also appreciate Sadler's methodological principle to presuppose in Hobbes an intention of coherence and to seek this coherence (this principle is the one I followed also in my own book on Hobbes[3]). In particular, I belief Sadler is right in rejecting the view of Alasdair MacIntyre, mentioned in footnote 1, according to which Hobbes would be guilty of a self-contradiction by presupposing for the stipulation of the original contract moral rules which however can only be valid once the contract is stipulated. Such a criticism reveals a major misunderstanding and fatal underestimation of Hobbes' political philosophy.

However, in my judgment the article contains some fundamental mistakes regarding the explicit and commonly known teaching of Hobbes. This renders its argument weak and easily open to critique. My critique does not affect the basic thesis of the article, mentioned above, nor much of its textual analy-

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sis. On the contrary, perhaps the following suggestions would even strengthen Sadler's argument as well as prevent the impression that its author is not enough acquainted with Hobbes' thought. In his article, Gregory Sadler does not take into consideration that, according to the logic of Hobbes' political philosophy, the "natural law" and the "civil law" have different objects: the natural law refers to the distinction between *"good"* and *"evil"* (the science of the natural laws, thus, belongs to "moral philosophy" and its summary, known to everybody, is, as Hobbes boldly affirms, the Golden Rule). The civil law, however, does not make distinctions between good and evil, but establishes the distinctions between *"just"* and *"unjust";* these distinctions between the just and the unjust do not yet exist in the state of nature; in the state of nature, there exists only what Hobbes calls the "right of nature" (or *ius naturale)* which is the complete *liberty* of using all necessary means to preserve oneself in life (see *Leviathan* chapter 14, beginning); Sadler does not mention the existence of a "natural right" in Hobbes, which, however, is fundamental *and previous to the natural law*. He tries unfortunately, therefore, to refute MacIntyre's view on the grounds of the same failure of not distinguishing between "morality" (the level of the natural laws) and rules of justice (established by civil law). Once these distinctions are acknowledged, MacIntyre's view becomes more easily refutable. This, of course, does not mean that Hobbes' political philosophy becomes true or that MacIntyre is not right in saying that the idea of an *original* contract which would "be the foundation of all shared and common standards and rules" is internally self-contradicting. This is accurate, but it does not apply in any way to Hobbes, who is not guilty of *this* kind of self-contradiction.

On the other hand, it is certainly correct to say, as Sadler affirms, that according to Hobbes it is only the civil law which gives legal vigor and brings into force the natural law. Yet, this does not succeed in the way Sadler seems to suggest, that is to say, by bringing into force the "moral norms" contained in the natural laws. Civil law *as such* (that is, sovereign power) brings into force the *aim* of the natural law *as such* (the ending of the *bellum omnium contra omnes* and a state of peace). The 19 natural laws mentioned by Hobbes – there are, he says, other natural laws also, those regarding temperance for example, which are not however to be treated in the context of political philosophy – show the way out from the state of nature, which is a state of war:

«These are the laws of nature, dictating peace, for a means of the conservation of men in multitudes; and which only concern the doctrine of civil Society. There be other things tending to the destruction of particular men; as drunkenness, and all other parts of intemperance; which may therefore also be reckoned amongst those things which the law of nature hath forbidden; but are not necessary to be mentioned, nor are pertinent enough to this place».

(*Leviathan*, chapter 15, *EW III*, p. 144)

Thus, the "morality" or the "moral norms" which Hobbes treats in the *Leviathan* serve to overcome the state of nature and to enter into a state of civil society – a state of peace, security and prosperity in which human beings become benefactors to each other (*homo homini Deus*, as he writes in the Dedicatory letter of *De cive*). For this, each one renounces his natural right to self-preservation, and thus, renouncing his natural liberty, he authorizes a sovereign who, then, for the end of pacification, issues civil laws. Civil law establishes what is just and what is unjust, and the sovereign holds the monopoly of interpretation regarding this legal distinction (which most importantly creates a legal institution, and thus secures property); in this sense the sovereign establishes peace. Exactly in this sense also, the civil law (i.e., the sovereign) brings into force, or better, *realizes* the natural law, which commands him to seek peace. Both sovereignty and civil law are instruments of pacification. In other words, the civil law brings natural law into force exactly because that which creates peace is *pure legal positivism* (legal positivism overcomes the different interpretations of the natural law by lawyers, theologians, philosophers etc., which lead to civil war: «*Authoritas, non veritas facit legem*»).[4]

So, civil law really accomplishes what natural law demands. And it secures most effectively the only natural standard of justice (*ius naturale*) which is the right to conserve one's life. That is, the "moral norms" of natural law command the creation of a state in which the positive law *exclusively*, according to the arbitrary will of the sovereign (who above all must seek to maintain his own power), obtains *justice,* and is its only standard. This means that in order to evaluate the civil law one can never refer to any natural law, because in the state of society *the positive law alone legitimately interprets what the natural law commands*. There is only one exception, which, however, is not a properly exception, but rather the only *natural* standard of justice which is the basis of all others: the *natural right* which originally was the unfettered liberty to defend oneself for the preservation of one's life, and to use *any* means to that end. Although natural right always remains dominant, as long as sovereign state power is functioning and able to preserves one's life, one is obliged (by the natural law!) to obey civil laws. For this reason, says Hobbes, a citizen may licitly oppose any who intent to kill him, even the power of the state (as, for example, if he were condemned to capital punishment, even justly). This follows because the end of the very purpose for the sovereign's authority, and

[4] Hobbes, *Opera Latina* (ed. Molesworth), iii, p. 202. This sentence is not to be found in the English version of *Leviathan*. It is, however, contained in the *Dialogue between a Philosopher and a Student of the Common Laws of England* (*ew vi*, p. 5), «It is not wisdom, but authority that makes a law». This formulation is even more clearly directed against the legitimacy of challenging positive law by "private" and thus peace-disturbing opinions on justice.

for the creation of the state, was precisely the preservation of life. Thus, the "Right of Nature" or *ius naturale* is never abolished.

Consequently, Sadler's error is that he seems to suggest (if I understood him well) that according to Hobbes the *material* content of civil law depends in a way on the materiality of the moral norms contained in the natural laws (e.g., on page 13, paragraph 2; p. 18, iv, paragraph 1; page 25 ff.); that is, he seems to suggest that the natural law contains some norms regarding the distinction between the "just" and the "unjust" to be regulated and given full legal vigor by civil law. Yet, the point of Hobbes' argument is precisely that this is not the case. According to Hobbes, the natural law in no way predetermines the normative content of the civil law because the natural law contains only the commands or rational rules which are necessary to seek and establish a state of peace (civil society); this because such a state is recognized as more advantageous for survival and a life in prosperity. It is the most appropriate means to secure the natural right to self-preservation. Hobbes' genius – which is often underestimated – is to base his extreme legal positivism on a *ius naturale* and on his 19 natural laws! (So he can also say, even though personally perhaps he did not believe it, that both natural and civil law correspond to the will of God, because the natural law is part of the order of creation and, thus, created by God. Furthermore, the civil law, *any* civil law as long as it serves peace, is nothing other than what natural law commands to establish.) Hobbes' idea, thus, is that the civil law above all serves to secure the *natural right* which is the (subjective) right to self-preservation. Now, Sadler gives at least the impression of not being aware of all these essential features of Hobbes' political philosophy which, duly considered, would very much strengthen his case against MacIntyre's view that Hobbes's view is self-contradictory.

Nonetheless, the fundamental idea of the article remains untouched by these omissions, that is, the idea that according to Hobbes there are really valid moral norms (the natural laws) *prior* to the institution of a sovereign and *prior* to civil law. And these moral norms which command one to seek peace and, therefore, to obey the sovereign's commands (the civil laws) remain always in force as the morality of the citizen. They properly express the rationale of civilized behavior in a state of peace.

Yet, in my judgment it is erroneous to say, as Sadler does, that the natural laws are simply "counsels", and not precepts. He does not provide any clear textual evidence for this (the quotation on page 13 from EW page 247 is out of context). Hobbes (e.g. in *Leviathan* beginning of chapter 14, EW page 116 f.) clearly says that the natural law is a "precept or general 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". Hobbes continues asserting that "right" is equal to "liberty" (so the "right of nature"), and that

"law" (as natural law) is equal to "obligation". So, Sadler seems to pass over capital features of Hobbes's doctrine.

Sadler arrives at his unusual interpretation of natural laws as mere "counsels" perhaps because he does not give sufficient importance to another fundamental aspect of Hobbes' political philosophy, commonly acknowledged by scholars: *its mechanistic anthropological basis* (only mentioned in passing on pages 79 and 82 of Sadler's article). As Sadler actually does mention, according to Hobbes the natural laws are "articles of peace" and "dictates of reason" etc. They are, thus, judgments of reason which with rational coherence compel human beings to seek peace (as the best way of preserving their life). When reason understands that peace is the most advantageous state wherein to secure one's natural right to self preservation, it most importantly, always *presupposes* (1) the all-dominating passion of fearing of violent death and (2) that for human beings seeking one's own interest is a psychological necessity. The remaining laws of nature can therefore be deduced as logical and *necessary presuppositions* for the possibility of mutual renunciation of defending one's natural right and of leaving this in the hands of an authorized sovereign (this is why Hobbes calls them "conclusions or theorems"). These "dictates of reason" therefore are "rational precepts" on the basis of (1) the fear of violent death, (2) the desire of self-preservation and (3) the insight that a state of peace is the most advantageous state for attaining what is one's natural right. So, to secure liberty, natural liberty must be partly relinquished and limited by obligation: first, the obligation of natural law, and then, the obligations created by civil laws. Hobbes, thus, analyzes a process which is rationally compelling and therefore psychologically coercive, putting into movement the seeking of peace. The "natural laws" are authentic "natural laws" in the sense of natural science. Only pride and any form of moral corruption, says Hobbes, impedes human beings from recognizing the truth of his moral philosophy. This is why he calls the state *Leviathan*: it is the monster coming out of the sea to dominate the "children of pride".

At this point, something else is to be mentioned: Sadler is still too much indebted to the idea – to my knowledge rather dated – that Hobbes' scientific paradigm was Euclidean geometry. It is true that Hobbes originally was fascinated by Euclid's Geometry, which to him always remained a paradigm of a rigorous science (among others). However, after his encounter with Galileo on one of his trips to Italy he discovered Galileo's Physics with its method of *resolutio-compositio,* together with the idea of nature as a mechanism. This formed his idea of creating a *political science* (and first a "science of man"). Hobbes intended to elaborate the definitive "physics of politics": he treats the state as a (man-made, artificial) body and individual human beings – natural bodies – as "matter in motion". In the beginning of his introduction to the *Leviathan,* Hobbes writes:

«Nature, the art whereby God hath made and governs the world, is by te *art* of man, as in many other things, so in this also imitated, that it can make an artificial animal. For seeing life is but a motion of limbs, the beginning whereof is in some principal part within; why may we not say, that all *automata* (engines that move themselves by springs and wheels as doth a watch) have an artificial life? For what is the *heart*, but a *spring;* and the *nerves*, but so many *strings;* and the *joints,* but so many *wheels*, giving motion to the whole body, such as was intended by the artificer? *Art* goes yet further, imitating that rational and most excellent work of nature, *man*. For by art is created that great LEVIATHAN called a COMMONWEALTH, or STATE, in Latin CIVITAS, which is but an artificial man; though of greater stature and strength than the natural, for whose protection and defence it was intended …».

(*EW* p. ix).

According to the first step of Galileo's method (which by the way was already Aristotle's, but used differently) he first "decomposes" (*resolutio*, analysis) society into its most basic elements, which are the individual human beings. Then he recomposes (*composition*, synthesis) the *Leviathan*, an artificial body politic. In this process of composition, the laws of nature are the proper laws from which springs this artificial body. Both naturally and rationally compel human individuals, who, living in constant fear of a violent death, are generally caught in the predicaments of the state of nature; striving for self-preservation, they renounce the natural liberty to defend themselves, and seek peace. To call these natural laws "counsels" is, thus, not only contrary to what Hobbes explicitly says about these laws but also alien to the whole architectonic structure and the methodological inspiration of Hobbes' political philosophy.

These laws are rather laws of the self-preserving and self-interested rationality and, as such, they are a *cause of movement* towards the seeking of peace. Hobbes does not pretend, of course, that the 19 laws of nature as he elaborates them are known in this way to everybody; he rather affirms the contrary, that is, that they are very sophisticated and too difficult to be known by everybody. They appear in this explicit form only in Hobbes' "moral philosophy" as part of political science, that is, as *science*. They have been discovered-constructed by Hobbes (as Galileo has discovered and constructed his laws of mechanics). Their "popular" version is the Golden Rule. But even though they are not explicitly known, they are effective: they accomplish; and it is Hobbes' political science which makes them explicit so that every person of good will must recognize that it is precisely the solution contained in Hobbes's political philosophy which is the only way to peace and prosperity.

With this eye, Hobbes also reconstructs and interprets *moral obligation*: as any law, Hobbes explicitly says, the natural law also creates moral obligation: the 19 natural laws mentioned in the *Leviathan* oblige on the basis of their

peace-creating rationality. The peculiarity of this kind of obligation is that, according to Hobbes, it is created in the same way as the peace-creating rationality itself is created. Both result from the passion of fearing a violent death, the desire for self-preservation (along with the corresponding natural right to use all the means necessary for self-preservation), and by the dominance of a rational self-interest that recognizes peace as the only promising way to leave the state of nature and attain a secure and prosperous life. The foundation of moral obligation – a kind of psychological "mechanism" – is, therefore, a pure utilitarianism, based on self-interest and on the recognition of one's advantage. It is a perfect formulation of the early liberal-bourgeois ideal of a state securing the security and prosperity of people's private lives, expressed with the pathos of modern science, and written through the terrible experience of civil war in England (during which Hobbes himself, due to his fear of being killed, preferred to emigrate temporarily to France).

In my view, it is this utilitarian theory of founding "morality" and moral obligation where criticism of Hobbes should start. For all the reasons given, I think that what Sadler writes from page 91, last paragraph, to the end of his paper, and also on page 84 («The laws of nature and indeed Hobbes' entire moral philosophy are counsels, not commands or laws, which require the coercive power of a sovereign authority»), is rather wide of the mark. It simply disregards the fact that for Hobbes the proper function of civil law is not to "confirm" and enforce moral norms contained in the natural law, but to define what is just and what is unjust, a distinction which by civil law is properly *created* and does not exist before a sovereign power is instituted. So, in my view Sadler misconstrues Hobbes's understanding of the relationship between "natural morality" and positive, civil law in a way which rather clearly runs against textual evidence provided in Hobbes's *Leviathan*.

2. Michael P. Zuckert[5] on G. Sadler's "The Laws of Nature as Moral Norms in Hobbes' *Leviathan*"

Professor Sadler's interesting paper on Hobbes and the moral status of the laws of nature is addressed to a "deep tension" or even "fundamental and irreconcilable contradiction" said to characterize Hobbes's philosophy. On the one hand, Hobbes identifies a set of laws of nature, which are presented as moral norms existing even in the state of nature; on the other hand, he insists that sovereign authority and civil law are needed to establish moral norms. It is a bit of a chicken and egg problem, for Hobbes seems to require moral norms to precede and guide sovereign authority, but at the same time to require sovereign authority to establish and ground moral norms. A version of

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this paradox served as the basis for David Hume's critique of the idea of an "original contract" as the ground of authority and obligation, and then as the basis for Alasdair MacIntyre's forcefully put critique of the social contract tradition. (Hume, "Of the Original Contract;" MacIntyre, as cited in Sadler, 1 n.1)

Sadler, by contrast, finds Hobbes's "doctrine" to be «both coherent and consistent» (16). His strategy is to show that Hobbes has a way of affirming both sides of his paradox in a consistent manner. Thus the laws of nature do provide a "moral foundation in some sense prior to sovereign authority" but not in a full sense. (The laws of nature are not laws.) The sovereign and civil law are required in order to make the laws of nature fully effective and normative. Hobbes can blur over the relationship because the laws of nature do not «derive their ultimate moral force…from themselves in the abstract but from the fact that humans actually do live in already constituted societies» where the civil laws do incorporate and specify laws of nature. (Sadler, 16)

In my opinion, Sadler's solution is correct so far as it goes; it certainly foils MacIntyre's root and branch rejection of contractarianism. However, Sadler's account is not complete. Professor Rhonheimer chides him for failing to mention the Hobbesean right of nature, a right intimately connected to the Hobbesean laws of nature. I believe that is a fair criticism and is indeed one of the important omissions in Sadler's account. I will leave that point to Rhonheimer, however, and focus my attention on another important omission in Sadler's essay. Strangely enough for an essay on the laws of nature in Hobbes, he gives us remarkably little concrete detail about the laws of nature. The first law of nature, which is the root of all the others, has "two branches": the first is «to seek peace, and follow it», the second is «by all means to defend ourselves» (*Leviathan*, ch. 14, paragraph 4). If, as Hobbes maintains, our natural goal is to preserve ourselves, then the precept to "seek peace," if peace is possible, is the most reliable means to preservation. If peace is not possible, then it follows that one "defend oneself" as best one can. This is less reliable as a means of preservation than living in peace, but it is more effective than acting in a pacifist way when peace is not prevalent. Self-defense is less reliable, because, as Hobbes has emphasized, all are vulnerable to all (or less hyperbolically, almost all) others. Self-defense does not guarantee one's preservation to the degree peace does.

Since peace is the preferable state, the second law of nature provides that each shall lay down his right of nature, i.e., the right to do whatever he thinks necessary for the sake of his preservation, provided that others are willing to do the same. This in turn requires a sovereign to whom individuals transfer this right of nature, or who retains his while the others renounce theirs, and who uses his power to maintain or guarantee the peace, thus establishing the conditions under which the renunciation of natural rights and the mandate to seek peace become attainable.

This fuller account of the laws of nature in Hobbes fills in two features of the story that Sadler has insufficient limned. It brings out, in the first place, the element of Hobbes's argument that first attracted the attention of Hume and others more clearly than Sadler's version does. Hobbes establishes the authority of the sovereign under a law of nature mandated "covenant," requiring therefore some prior moral norm that makes consent binding. (*See* his third law of nature, ch. 15) But it is the covenant or consent that supposedly establishes obligation. Hume concluded that the contract was superfluous – whatever grounded the obligation to keep promises (covenants) also could directly ground legal and political obligation. Thus one could eliminate the middle man, that is, the contract. Sadler does not bring out sufficiently strongly the relation between the laws of nature and the obligations to sovereign authority. The above account shows more clearly how Hobbes derives obligation from his almost morally vacant natural universe. Given the fact that nature mandates preservation, then we are "obliged" (in a perhaps eccentric sense of that term) to seek peace, to renounce the right of nature, to make and keep covenants, to obey the sovereign. These are, one and all, means to our natural "end."

More importantly in our present context, Sadler's failure to attend to the actuality of the laws of nature leads him to ignore the way in which the laws of nature are themselves bearers of the "tension" he discusses. "Seek peace through renunciation of right and obedience to the Sovereign *when that is possible*". Exercise your right of nature when it isn't. That is to say, the laws of nature are far more complex and Janus-headed than Sadler's truncated account brings out. They themselves in their own content establish their limited normativity, or perhaps better put, the limited normativity of the laws of nature as "moral" rules. They themselves also bring out perfectly lucidly the dependence of the answer to the question of which branch of the law of nature one is to follow on the real possibility of peace, i.e., on the existence of an effective sovereign.

Another way to resolve the Hobbesean paradox is to note that there is a preexisting, but conditional obligation (in Hobbes's special sense of "obligation") to establish and support (i.e., obey) a sovereign, which means to accept the sovereign's will as the rule of one's action, i.e., as law. The laws of nature, of course, specify more than the single command to obey the sovereign; they also specify what we might call a moral attitude conducive to peaceful social life; one such law is against pride, another against arrogance. (ch. 15) The difficult moment in Hobbes's philosophy arises when the sovereign fosters through law and example a society with a different moral tone or one embodying practices contrary to practices mandated by the law of nature, for example, that there should be impartial judges. Hobbes is clear that unless one's own survival is directly threatened, one is to obey the sovereign rather

than the law of nature, in part on the grounds Sadler much emphasizes, that the specific content of the laws of nature are vague and subject to variable and self-interested interpretation if left to each to construct for himself. In such a case as I have posited, the sovereign, as generally interpreted by Hobbes, is taken to be specifying and applying the law of nature rather than countering or violating it. In addition, it appears to be Hobbes's view that obeying the sovereign, that is, the public will of the society is the simply and singly most important means to peace, even if the sovereign will is straying from what rational political science identifies as the true path. Hobbes, of course, is hoping that rulers will take guidance from his moral laws and bring their legislation and the moral code of their societies into better conformity with the "eternal" laws of nature. The moral norms established in civil law are almost all the time to be adhered to, but a wise sovereign will conform his legislation to the preexisting moral norms embodied in the laws of nature.

In closing, let me reiterate that these reflections are not meant to disagree with him so much as to suggest some ways in which he might make his generally sound argument more comprehensively attuned to the contours of Hobbes's argument.

3. G. Sadler's response to Rhonheimer and Zuckert

I thank Professors Rhonheimer and Zuckert for their learned comments and criticisms, and *Acta Philosophica* for this opportunity to respond briefly to them. On the matters they raise and the contentions they bring forward, it will be possible, I hope, to entirely satisfy Prof. Zuckert, but not, I fear, Prof. Rhonheimer. I will return to the former's comments after addressing several points the latter makes but I would like to acknowledge one of his main points, that my paper provides "remarkably little concrete detail about the laws of nature", by which I take him to mean the specific contents of the individual laws. Turning to them in greater detail is a profitable and interesting study, but I saw no need to encumber my paper's discussions with those additional details.

I would also like to immediately correct one claim made by both commentators, namely that, as Prof. Rhonheimer puts it, «the author of the paper does not mention the existence of a 'natural right' in Hobbes». I do mention it on the very first page, in the fourth sentence of the paper: «[i]n the state of war and *natural right*, moral distinctions seem to be purely subjective, even deceptive». My paper in fact stresses one aspect of the problem posed by natural right. It is not merely a liberty to do or not to do what one wills, but to think, to evaluate, to make moral distinctions, use moral language, even to determine for oneself what rationality consists in, in any way one wishes. In one sense Prof. Zuckert is entirely correct in his felicitous ascription to Hobbes

of the viewpoint of an "almost morally vacant universe." The problem is the generation or derivation of *objectively* valid moral norms, but it is against a background of too *many* competing moral claims, the "problematic moral situation" I outlined in the first section of my paper.

In Prof. Rhonheimer's view, Hobbes exegesis seems relatively straightforward, and my interpretation has mistaken "the explicit and commonly known teaching of Hobbes", at one point at least making statements "alien to the whole architectonic structure and the methodological inspiration of Hobbes' political philosophy". Faced with such criticism three interconnected questions are in order. First, *whose* interpretation of Hobbes' explicit and commonly known doctrine and its entire architectonic structure and methodological inspiration? Universal consensus on these matters is definitely *not* the case in Hobbes scholarship, except in particular circles, schools of interpretation, if you will.[6] Comparative study confined solely to the works of scholars mentioned in my paper reveals fundamental disagreements about interpretation of Hobbes' philosophy. Polin, Wolin, Curley, Dietz, LeBuffe, Lloyd, Nauta, Alford, and MacIntyre are an admittedly idiosyncratic list of Hobbes interpreters and critics whose inclusion was motivated by my paper's aims and debts, but adding other significant interpreters and critics of Hobbes, would simply *strengthen* the point.[7] My purpose in raising these considerations here is not to relativize Hobbes interpretation, to lapse into a sort of skepticism or an "anything goes" attitude, but to indicate that in contemporary study of Hobbes' thought, there is a rich variety of well-articulated interpretations disagreeing not only on small details, but on fundamental aspects, its "architectonic structure."

This leads to the second question. Hobbes' writings, particularly *Leviathan*, *are inconsistent* if everything he writes is taken at face value. As enough commentators have pointed out for a small cottage industry of studies on this to develop in recent years, one of his most glaring inconsistencies is Hobbes'

[6] Edwin Curley's article cited in my paper does considerable service in summarizing several main schools of Hobbes interpretation, and their differences on central issues. It is confined to the period between 1975 and 1989, and unfortunately he focuses almost exclusively on Anglo-American Hobbes interpretation.

[7] Let us take just one issue assumed entirely settled: the self-accorded scientific status of Hobbes' philosophy, articulated according to a mechanistic and geometric model, or as Prof. Rhonheimer puts it, "its mechanistic anthropological basis". David Boonin-Vail, providing an overview on the scholarly controversy in this matter, summarizes the situation, arguing that since the work of Leo Strauss, «the existing literature on Hobbes ... offers essentially two alternatives: Hobbes is a scientist who uses the language of morality as window dressing, or he is a moralist who uses the language of science as window dressing». Boonin-Vail's own project is to provide an interpretation whose «guiding thought ... is that to understand Hobbes as a moralist one must also understand him as a scientist» (D. Boonin-Vail, *Thomas Hobbes and the Science of Moral Virtue*, Cambridge: Cambridge University Press. 1994, p. 13-14).

condemnation of rhetoric in a work where he astutely employs rhetoric on more than one level. This raises the question: what passages have a primarily rhetorical function and which passages do in fact represent Hobbes' doctrine? Again, there is not one simple, straightforward, and universally (by all right-thinking and reading Hobbes' interpreters) agreed-upon answer for making this distinction. This leads to the third question: is not one philosophically legitimate purpose of interpretation of a thinker whose works are deeply marked by inconsistencies the attempt to generate a coherent and re-interpretation of their thought?

The deep problem in Hobbes' thought my paper addresses, the tension between moral norms prior to the institution of civil society and the seeming dependency of moral norms upon the institution and apparatus of civil society, sovereign authority, and civil law can be resolved in four ways. 1) One can, as MacIntyre, among many others does, regard this as a sign of the ultimate incoherence of Hobbes' thought. 2) One can interpret Hobbes as actually holding that moral norms, as more than purely subjective desires and self-serving use of a moral vocabulary, do have their basis in their imposition by authority in civil society. 3) Alternately, one can see in Hobbes' laws of nature moral norms prior to and possessing all their moral normativity prior to civil society. These then lead to the institution of civil society, authority, and the apparatus of civil law, all of which only instantiate these pre-existing moral norms. This is Profs. Rhonheimer's and Zuckert's position, and they are in wide and good company. 4) One can regard the second and third ways as both partially correct, representing genuine aspects of Hobbes' philosophy which still, however, have to be brought together somehow, aspects for which a coherent interpretation can be provided, but which remain in tension. One can arrive at these different positions at the end of one's study (or at least one round of it) of Hobbes, but one will usually (particularly if one has been studying Hobbes for a significant time) *also* approach Hobbes from one of these positions, precisely because this tension in Hobbes' thought is a fundamental tension. This can color one's assessment of other interpretative attempts to resolve these problems raised in Hobbes' philosophy.

And, that is what happens in Prof. Rhonheimer's criticism, leading him to reject, for instance, my stress on Hobbes' dictum that the natural laws are counsels as "erroneous", and "without any clear textual evidence", claiming that the passage I cite simply belongs to another context, ignoring its context in my own paper, in which it is brought into relation with other relevant passages supporting my contention. This matter need not turn into disagreements about what counts as proper context, since it can be resolved by referring to other passages. In chapter 26, in the passage where Hobbes claims that «[t]he law of nature and the civil law, contain each other, and are of equal extent», he states:

«[T]he laws of nature, which consist in Equity, Justice, Gratitude, and other moral virtues on these depending, in the condition of mere nature (*as I have said before in the end of the 15th chapter*) are not properly laws, but qualities that dispose men to peace and obedience. When a common-wealth is once settled, then they are actually laws, and not before».

[emphasis mine]

Given that Hobbes stresses this repetition, we may assume this passage is authoritative and definitive. What does Hobbes say in chapter 15? At the end of the chapter, something that contravenes Prof. Rhonheimer's rejection of my interpretation. The natural laws, «dictates of reason, men use to call by the name of laws; but improperly, for they are but conclusions, or theorems concerning what conduceth to the conservation and defense of themselves» (133).

In chapter 15 we also find passages providing clear textual counter-evidence to Prof. Rhonheimer's remarkable assertion that "the 'natural law' and the 'civil law' have different objects: the natural law refers to the distinction between '*good*' and '*evil*'... The civil law, however, does not make distinctions between good and evil, but establishes the distinctions between '*just*' and '*unjust*'". There are, to be sure, passages in *Leviathan* that this assertion can be based upon, but also many that contravene it, marking yet another area of tension requiring interpretation. Where this assertion goes wrong is in making too absolute a distinction between the objects of these distinctions, assuming that Hobbes neatly, consistently, and entirely sunders the values of good and evil, just and unjust, from each other. The science of the laws of nature "is the true and only moral philosophy", "the science of what is good and what is evil," the "science of virtue and vice". What "virtues" does Hobbes have in mind? What virtues do the laws of nature embody? "*Justice*, Gratitude, Modesty, Equity, Mercy, & the rest of the Laws of Nature, are good; that is to say, Moral Virtues; and their contrary Vices, evil." [my emphasis] One could perhaps think that this passage (where again Hobbes is reasserting his position, explicitly referring back to an earlier passage) represents a momentary lapse on Hobbes' part. More textual evidence might be desired.

The 3rd law of nature, to which Prof. Zuckert directs our attention, is the one in which "consisteth the Fountain and Original of justice," provoking a considerable amount of discussion of justice and injustice on Hobbes' part.[8]

[8] Incidentally, this section is the one to which those who interpret Hobbes' moral theory as a deontological ethics or a virtue ethics appeal, since Hobbes distinguishes between justice and injustice of people and actions, and discusses their relations. For review of deontological interpretations, cf. M. Harvey, *Teasing a Limited Deontological Theory of Morals Out of Hobbes*, «The Philosophical Forum», vol. 35, n. 1 (2004). For the most comprehensive attempt to read a virtue ethics into Hobbes, cf. David Boonin-Vail, *loc. cit.*

Much later, in chapter 18, discussing the seventh right of the sovereign, Hobbes accords a right of decision about several different values: «These rules of propriety and of Good, Evil, Lawful, and unlawful in the actions of subjects, are the civil laws; that is to say, the laws of each commonwealth in particular». One of the passages cited in my paper (p. 79) likewise indicates that sovereign authority and civil law decide "the common rule of good and evil". In chapter 29, one "seditious doctrine" Hobbes singles out is "That every private man is Judge of Good and Evil Actions," and why so? As he says "it is manifest, that the measure of Good and Evil actions, is the Civil Law; and the Judge the Legislator". There *are* differences between the natural laws and the civil laws, but they are not primarily their objects or the ranges of values they deal with and determine. Hobbes does think that «[t]he law of nature, and the civil law, contain each other and are of equal extent», and that produces the deep-running tensions whose basis I attempted to bring to light in my paper.

As noted above, Prof. Zuckert's suggestion for more detailed study of the specific contents of the natural law is one I welcome and find valuable, but still view as unnecessary to this paper. I agree entirely with his insights that "the laws of nature are themselves bearers of this tension," and that the laws of nature specify more than simply the mechanics of contracting, giving up rights, and pledging oneself to a sovereign authority, i.e. «what we might call a moral attitude conducive to peaceful social life». This latter point is particularly overlooked in interpretative reconstruction of Hobbesian moral theory. However, in my reading of Hobbes, I do not think that the laws of nature «themselves in their own content establish their limited normativity». In passages where Hobbes details their content, he seems to suggest that coming to know and understand them is a relatively easy and straightforward application of reason, motivated by the right passions, an impression entirely belied by his insistence at many other points on reason's liability to be corrupted, the possibility of the natural laws to be misunderstood and wrongly appealed to in social conflict, the misunderstanding of the laws by previous scholars and in previous and existing commonwealths, the uniquely scientific status of Hobbes' own study and articulation of the natural laws, and Hobbes' own insistence that the fruits of his study still do not have normative force except "because in all commonwealths in the world it is part of the civil law". The limited normativity of the natural laws does not stem solely from themselves, but their interconnection with, or one might even say dependence, on (usually badly) reasoning human beings already living in flawed civil societies, in which the natural laws have not only to be backed by legitimate force, but made definite and fully normative by authority.

4. Rhonheimer's second reply

Sadler's response seems to me to confirm that he disregards essential and explicit elements of Hobbes' *Leviathan*. I admit that I overlooked the casual mention of the term "natural right" in the opening section of his essay. Yet, this mention does not alter the fact that in his article Sadler completely ignores Hobbes' crucially important teaching on natural right. But what is even more important: Hobbes does not share Sadler's personal agenda in reading Hobbes, which I only understood fully when I read his response: he wants to resolve the problem of the "only limited normativity of the natural laws" so as to make them "definite and fully normative by authority". Hobbes's concern is a different one: he wants to overcome civil war and to provide an infallible recipe for establishing a stable state of peace.

Although I share Sadler's fundamental thesis that according to Hobbes in the state of nature and prior to the institution of a sovereign there exist moral norms, I wish now to add that if there is one idea which is totally alien to Hobbes's explicit thought, it is the idea – suggested by Sadler – that the task of civil law is to enforce preexisting norms of natural law. Hobbes' civil law is not an enforcement of natural law in this sense, but only in the sense that it realizes the peace-seeking logic of the natural laws. Natural law is realized by *any* command of the sovereign's will; it is realized by the *fact* of there being civil law efficiently backed by state power and thus guaranteeing what natural law commands: peace. In those spheres in which civil law does not establish any legal norm, liberty persists. So, by the sovereign power's pacification of society, citizens will become their neighbor's benefactors.

In the state of nature, however, which is a state of complete liberty, there are no distinctions between "just" and "unjust" and, therefore, between right and wrong *behavior*, because there is no sovereign authority and no corresponding legal framework which could enforce it. So in *Leviathan,* chapter 15, Hobbes asserts:

> «Therefore before the names of just, and unjust can have place, there must be some coercive power, to compel men equally to the performance of their covenants, by the terror of some punishment, greater than the benefit they expect by the breach of their covenant. … [W]here there is no *own*, that is no propriety, there is no injustice; and where there is no coercive power erected, that is, where there is no commonwealth, there is no propriety; all men having right to all things: therefore where there is no commonwealth, there nothing is unjust».
>
> (*EW* p. 131)

This renders Hobbes' thought incompatible with any attempt of making of him a philosopher who claims that the task of civil laws is to enforce moral norms naturally preexisting. He instead simply asserts that «the definition of

INJUSTICE, is no other than *the not performance of covenant*. And whatsoever is not unjust, is *just*» (*EW* 131; emphasis is in the original). The whole range of possible civil laws falls into the sphere of justice; any other virtue is considered only in so far as it is a necessary condition for peace. Thus, the "moral norms" contained in the natural law do not restrict the sovereign's total liberty in making distinctions between "right" and "wrong" as he pleases, and as he thinks useful to upholding sovereign power.

As to Sadler's idea that for Hobbes the natural laws are only "counsels", it clearly runs against textual evidence. Hobbes is a nominalist; therefore, *in so far as they are not commands of a sovereign will,* but only "theorems" or "conclusions of reason", the natural laws for him are not "laws" in the proper sense. Nevertheless, Hobbes affirms that «if we consider the same theorems, as delivered in the word of God, that by right commandeth all things; then are they properly called laws» (*EW* 147). Hobbes could not have said such a thing if he really held the natural laws to be mere "counsels".

Moreover, in chapter 14 Hobbes explicitly asserts that the natural laws are certainly not *counsels*. He says (the emphasis is mine): «A law of nature, *lex naturalis,* is a *precept* or general rule, found out by reason, by which a man is *forbidden* to do that which is destructive of his life» (*EW* 116 f.). The first one of these laws, which says "that every man, *ought to* endeavour peace, as far as he has hope of obtaining it", is called the "fundamental law of nature, by which men are *commanded* to endavour peace". This is not the language of mere "counsels", but rather of command. This is consistent with chapter 25, from which Sadler takes his out-of-the-context-quotation to prove that natural laws are counsels. Ironically, chapter 25 shows that for Hobbes the counterpart to "counsel" is not "law", but – "command"! Now, as we have seen Hobbes does call the natural laws commands, but commands of *reason*, and therefore not laws "in the proper sense"; only commands of a superior *will* are real laws.

When it is said that for Hobbes these natural laws, as "theorems concerning what conduceth to the conservation and defense of themselves", are "dictates of reason" and actually do have a morally compelling force (they "command to endeavour peace") we have to consider – and this is the whole point of the story – that "moral" for Hobbes only means "reasonable" and reasonable in turn means nothing other than being "advantageous for self-preservation". "Self-preservation" finally is considered to be a necessary impulse of nature, the motion-principle of human beings. Self-preservation is the all-underlying drive of everything and creates the natural *right* of human beings to use all means to defend themselves. So, in Hobbes's thought there is a clear consistency, and one needs not *not* to take his words at face value, as Sadler suggests one should.

Thus, what Sadler in his response calls to be my position (position no. 3) obviously is not *my* position. Sadler seems to misread my understanding of

Hobbes in the perspective of his own agenda. He presupposes that according to Hobbes the role of civil law is to secure or to give validity in a way to "moral norms" which in the state of nature pre-exist in some way in the natural laws. But this is precisely what I consider to be a wrong assumption and a misleading starting point for understanding the argument of the *Leviathan*. Thus, the alleged inconsistencies of Hobbes's thought seem to me to be rather the fruit of the inappropriateness of Sadler's hermeneutical approach.

5. Zuckert's second reply

The editor has strictly limited the space available for this reply so I must be very concise and I fear overly schematic in replying to Professor Sadler's scholarly and spirited response to his critics. I have a number of points, more or less in the order in which they appear in Sadler's "Response".

(1): It is true that Professor Sadler *mentions* natural right but my point in endorsing Professor Rhonheimer's point was not that it was not mentioned at all, but that it was not given enough weight, or, I think, explicated properly where (very briefly) mentioned. Any discussion of Hobbesian natural law requires a careful discussion of the relation between that and natural right.

(2): Professor Sadler goes to some lengths to deflect Rhonheimer's implication that there are points of overwhelming consensus in the Hobbes literature. Sadler gives us a long list of Hobbes scholars who disagree among themselves a fair amount, and a typology of them, in which he locates both Rhonheimer and me. Speaking for myself, I do not think he has located me correctly. The cubby-hole in which he places me is the one that sees "in Hobbes' laws of nature moral norms prior to and possessing all their moral normativity prior to civil society." I described the laws of nature as bearing "limited normativity" in my original statement, by which I meant that sovereign authority and civil laws were needed in order to render them "fully morally normative." The issue lurking in this discussion is one that neither Sadler nor I have sufficiently explored: what do we mean when we speak of "normativity"? Do we not need to distinguish different types of normativity and to be clear which types are relevant to which parts of Hobbes's discussion? This point about normativity is closely connected to one that Rhonheimer well raises at the end of his comments, that is, the question of obligation in Hobbes. As Rhonheimer gently says, Hobbes "reconstructs" moral obligation. None of us, however, explores adequately just what this involves, or whether Hobbes even has a right to a concept one could call "moral obligation". In his closing Rhonheimer suggests that he does not. These suggestions, I think, go beyond what Sadler himself achieves in his essay.

(3): Professor Sadler concedes my point that a fuller discussion of the specifics of the law of nature would be useful, but he does not think it necessary in

this context. He describes such a discussion as likely to "encumber" his paper with "additional details." I appreciate his desire to have a "lean and mean" thematic essay, but I did not have in mind the mere addition of details. I am of the opinion that Sadler's main line of argument cries out for a discussion of the first law of nature in particular: "That every man, ought to endeavor peace, as farre as he has hope of obtaining it; and where he cannot obtain it, that he may seek, and use, all helps, and advantages of Warre". Or, as Hobbes restates the two parts of the law: "to seek peace and follow it," and "by all means we can, to defend ourselves," which, Hobbes brings out, includes preemption and offensive war. So, we might restate Hobbes' restatement of the two parts: (1): seek peace when possible; (2) make war, when not. The law of nature is decidedly ambivalent and could not be held to possess the categorical normativity associated with moral laws. As he makes clear, the provision and maintenance of sovereign authority is the prerequisite for any reliable possibility of following the first branch of the law, so that the sovereign and his civil law are in effect built in to make the law, as a law restraining behavior, in any way "normative". My original point that the very ambivalence of the first law of nature and the way it plays out in subsequent laws is, to say the least, relevant to Sadler's thesis and supplies an important buttress but also qualification and refinement of his argument, of such import that its inclusion in the discussion would be no mere detail.

So perhaps I am less satisfied with his reply than Sadler expected me to be, but to repeat my original point, I see these continuing reservations to be not so much disagreements as ways in which he might strengthen his generally sound argument.