

Liberty and Leviathan

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abstract

Hobbes made a distinctive contribution to the discussion of freedom on two fronts. He persuaded later, if not immediate, successors that it is only the exercise of a power of interference that reduces people's freedom, not its (unexercised) existence – not even its existence in an arbitrary, unchecked form. Equally, he persuaded them that the exercise of a power of interference always reduces freedom in the same way, whether it occurs in a republican democracy, purportedly on a 'non-arbitrary' basis, or under a dictatorial, arbitrary regime. But the basis on which Hobbes maintained those two propositions was very different from any that successors would have found plausible. This article explores the idiosyncratic principles that led Hobbes to develop his influential point of view.

keywords

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No one has written with greater influence on the topic of liberty or freedom than Hobbes. Although he was an absolutist in politics, his way of thinking about liberty left a deep impact on the liberal and libertarian traditions that emerged a century or more after his death. It helped overturn the dominance of the rival way of conceptualizing freedom that had been associated with his neo-Roman, republican opponents.¹

But despite the fact that Hobbes has been very influential on this front, and despite the great attention given by scholars to his work, I think that there are aspects of his view that have not yet been properly understood and appreciated. Certainly, there are aspects that I missed myself. Annabel Brett's research on the origin of the notion of 'natural liberty', and its survival in Hobbes,² has convinced me that the two different ways in which Hobbes represents liberty³ combine into an overall view that is quite different from that which I had ascribed to him.

I have argued previously that Hobbes made a distinctive contribution to the discussion of freedom on two fronts.⁴ He persuaded later, if not immediate, successors that it is only the exercise of a power of interference that reduces people's freedom, not its (unexercised) existence – not even its existence in an arbitrary, unchecked form. Equally, he persuaded them that the exercise of a power of interference always reduces freedom in the same way, whether it occurs in a republican democracy, purportedly on a 'non-arbitrary' basis, or under a dictatorial, arbitrary regime. I still think that those claims stand, but I now see the Hobbesian image on which they are based in quite different terms. This article is an attempt to sketch out that image.

The article is in two sections. I begin by outlining the main elements, as I see them, in Hobbes's view of liberty. Then, in the second section, I show how those elements are deployed to give him a picture of freedom in the commonwealth. I shall draw mainly on *Leviathan* (hereafter referred to as L) for my exegesis, in particular, on the original English version that appeared in 1651.⁵ But I will also refer frequently to other works, principally *The Elements of Law* (hereafter referred to as EL),⁶ circulated privately in an English version in 1640; *De Cive* (hereafter referred to as DC), published in Latin in 1642 and again, with some additional material, in 1647;⁷ and the excerpts from his exchanges with Bishop Bramhall⁸ in the 1640s and 1650s on free will and determinism (hereafter referred to as HB).⁹

While the account of freedom ascribed here to Hobbes may strike some as strange to the point of being barely credible, it should be remembered that it struck contemporaries in this light too. As on so many other topics, Hobbes saw himself as breaking quite new ground on the nature of freedom: 'so far as I know, no writer has explained what liberty and servitude are' (DC: 111). He did so precisely by setting up definitions so at variance with common usage that his readers were often deeply exasperated. Thus James Harrington famously complained that Hobbes was deliberately putting the notion of freedom from the law in place of the common notion of freedom under the law or by the law.¹⁰ 'The mountain hath brought forth and we have a little equivocation!'

Harrington must have felt the same sort of irritation that was voiced by Hobbes's Oxford opponent on mathematical questions, John Wallis. 'Mr Hobs is very dexterous in confuting others by putting a new sense on their words rehearsed by himself: different from what the words signifie with other Men. And therefore if you shall have occasion to speak of Chalk, He'll tell you that by Chalk he means Cheese: and then if he can prove that what you say of Chalk is not true of Cheese, he reckons himself to have gotten a great victory.'¹¹

1. Hobbes's theory of freedom

Hobbes recognizes two quite different categories of freedom or liberty in *Leviathan* and other works, as is often remarked (EL: 127; DC: 11–12; L: 138). But I think that the two categories have quite a different complexion from that which is ordinarily ascribed to them. The first category of freedom that he acknowledges is one's freedom to choose between certain alternatives, uncommitted by prior decision or obligation; and the second, the freedom to enact the choice one has made in any instance. We might regard the first freedom as non-commitment and the second freedom as non-obstruction.

Freedom as non-commitment

Hobbes first draws attention to his conception of freedom as non-commitment in his argument, found throughout his work, that there is a sense in which the very fact of deliberating and making a decision reduces one's freedom. So long as one has not yet deliberated and formed a decision between certain alternatives (formed a will, as Hobbes would put it), one is free to do one or another of the alternatives. The very fact of deliberating and making up one's mind means that that freedom is lost.

Deliberation, Hobbes says in *The Elements of Law*, is the 'alternate succession of appetite and fear, during all the time the action is in our power to do, or not to do' (EL: 71; see also DC: 152). The desire that emerges successfully from deliberation represents the agent's will; it is 'the last appetite or aversion immediately adhering to the action, or to the omission thereof' (L: 33). Once we have deliberated and formed a will as between alternatives, then Hobbes says that we have lost the liberty that goes with being uncommitted; deliberation 'is a putting an end to the liberty we had of doing or omitting, according to our own appetite or aversion'. He suggests that, etymologically, to deliberate is to de-liberate or make unfree; actually, the word comes from *librare*, to weigh (a metaphor on which Hobbes (DC: 152) himself draws), not from *liberare*, to liberate.

The freedom given up as a result of any decision is 'the liberty we had of doing or omitting, according to our own appetite or aversion', 'the liberty of putting aside either choice' (HB: 97). Before deliberation one is not committed to any particular alternative among those contemplated and so one is free to do one or the other, depending on how one's decision or will goes. This is a freedom to choose between those alternatives that one no longer has when choice or will have materialized. Hobbes thinks, of course, that the process whereby one's choice or will forms is itself a deterministic, mechanical process involving the causal interplay of different appetites and aversions: 'from the use of the words free will, no liberty can be inferred of the will, desire, or inclination' (L: 136) and 'a man can no more say that he will will, than he will will will, and so make an infinite repetition of the word will' (EL: 72). But consistently, with deliberating being deterministic, we can still speak of the freedom an agent enjoys up to the

point where that process is complete and see this as a form of freedom that is lost thereafter.

There is a question, however, as to how long thereafter can be. Suppose I make a decision now to do something tomorrow. Is my freedom as non-commitment lost in respect of that action tomorrow? It would seem not, so long as I can reconsider and change my mind. Indeed, Hobbes appears to concede this point. He suggests that so long as an agent remains free 'to change his mind', he should still be 'taken to be deliberating' (DC: 36). Thus, 'he that promiseth to give, without any other consideration but his own affection, so long as he hath not given, deliberateth still, according as the causes of his affections continue or diminish' (EL: 84). The implication is that while deliberation takes away my freedom as non-commitment, it does so only in the case in which it leads straight to action, not in the period intervening between decision and action; in any such period, so it seems, I will always be able to reconsider and so must count as deliberating still.¹²

If this were Hobbes's final position, then freedom as non-commitment would not be a particularly interesting category; it would be lost only in decision-cum-action, not in decision alone. But freedom as non-commitment remains very significant in his theory, because he recognizes one particular sort of episode in which deliberation and decision can remove someone's freedom as non-commitment in advance of action. This is the event in which I do not just make a decision, but I make a decision that obligates or ties or binds me to another (EL: 83–4; L: 83; DC: 35).

Freedom as non-commitment is compromised in this significant way, for example, when I make certain substantive commitments to another person. I decide on giving the other something, whether as a gift or in exchange for some past or promised return, and I manifest my will to do so 'by some voluntary and sufficient sign or signs' (L: 81). Assuming, for example, that promises are made under conditions in which it is evident to all both what I, the promisor, intend and what the promisee expects, the promises 'are obligatory' and will deprive me in a very serious way of my freedom as non-commitment: 'obligation begins where liberty ends' (DC: 36). The promises will have this effect, Hobbes stresses, only when the intentions and expectations really are fully evident, there being unambiguous 'signs of will, that is . . . signs of the last act of deliberation'. He thinks that 'it is not reasonable that people who are full of goodwill to others should be put under an obligation by every promise reflecting their momentary feelings; and for that reason such a promisor is to be taken to be deliberating and to be as free to change his mind as the recipient of the promise is capable of renouncing what is owed to him' (DC: 36).

The species of freedom as non-commitment that can be lost in advance of action may be called 'freedom as non-obligation'. This freedom is lost, not by making any old decision, but only by making the sort of decision that involves contracting an obligation to another. All obligation comes from a voluntary commitment to another in Hobbes's view, paradigmatically, from entering into a

contract or covenant; a covenant is a contract which one party has to trust the other to perform later (L: 82). There is ‘no obligation on any man which ariseth not from some act of his own’ (L: 141); that is why natural laws are said to express only theorems or maxims of prudence, not obligations proper (L: 100).¹³

Why does one lose one’s freedom as non-obligation on entering into a contract or covenant or on making a binding promise? Not just, to take a first possibility, because of having formed one’s will, as one might in a decision that involves no others. After all, one may have second thoughts about enacting the contract made without thereby being released from the bondage incurred; Hobbes signals the possibility of second thoughts in acknowledging the need for sanctions against non-performance (L: 84, 87). Besides, one may be released from the bondage by the other party’s forgiveness (L: 86). Neither of these possibilities would make much sense if one was bound through contract just by virtue of having formed a will to do one’s part.

Does one lose one’s freedom in a contract just by virtue of the fact that one would offend against natural law, and do something inequitable, by breaking the contract, as well as do something akin to contradicting oneself, so far as one would will to do something one had previously willed not to do (L: 81; EL: 88)? Is one’s freedom forfeit, in other words, because the fact of having made a contract means that to break it would be to offend against the third law of nature, namely, ‘that men perform their covenants made’ (L: 89)? This cannot be right either. Hobbes regards the sovereign as being governed by natural law (a natural law the sovereign may often offend against, of course (L: 112–4)), but still takes the sovereign to enjoy absolute liberty (L: 138). That would not make sense, if being subject to natural law made one unfree in the sense of being obligated.¹⁴

Why, then, do you lose your freedom (your freedom as non-obligation) on entering a covenant or contract or on making a binding promise to another? Hobbes’s picture is that on entering such an arrangement you give over rightful control of your will (you transfer the right to act as your own, later will may prompt you to act) in the domain of the contract. You cannot give over that control credibly or effectively just by giving the other your word that you will behave appropriately, ‘the force of words being . . . too weak to hold men to the performance of their covenants’ (L: 87). You have to put something more in the hands of the other in order to give the other an assurance that control really is being alienated and that there is no danger of their being duped (L: 84–5); in effect, you have to give the other something that can be used against you, should that be necessary, in order to enforce the control that has been officially ceded.

You cannot avoid putting your reputation in the hands of the other, of course, since you will want to win the esteem of being found to be true to your word and to avoid the disesteem of being found to be duplicitous. But even the concern with reputation is not going to be enough to empower the other properly, being ‘a generosity too rarely to be found to be presumed on’ (L: 87–8). Hobbes thinks that what you will have to do in order to make the other’s control effective is to

expose yourself to the prospect of a sanction, a feared penalty, in the event of not performing appropriately. 'The passion to be reckoned upon is fear', he says (L: 88), in particular, 'the fear of some coercive power' (L: 84). This means, of course, that two or more people will be able to alienate control of their wills and make binding contracts with one another (and so attain all the associated benefits) only when there is 'a common power set over them both, with right and force sufficient to compel performance' (L: 84), that is, in practical effect, when a commonwealth has been established.

Hobbes takes the alienation of rightful control that materializes under a contract or covenant, or even under serious promise-making, to be a way of subjecting yourself to another (within the scope or domain of the contract) that is as effective as giving the other direct control over your body, say, by allowing yourself to be held in chains. Thus, he says in the case of the slave contract (a contract that is more or less unbounded in scope) that the other enjoys a degree of mastery that is second to none, not even to the mastery that would come with holding you in chains. The other may say of you, as of anything he or she owns, '*This is mine*' (DC: 104). The other will have 'property' in you (EL: 129).

A good way to think of Hobbes's picture of how one loses freedom as non-obligation, becoming subjected to another, is by analogy with ownership. One will lose one's freedom as non-obligation so far as one's will is subjected to another. Moreover, such subjection of the will amounts to more than mere oppression, as ownership amounts to more than mere possession.

The analogy with ownership emphasizes two aspects of the subjection of the will in which freedom as non-obligation is lost. The first is that the transfer as a result of which it occurs has to be valid, so that the control ceded is rightful. The second is that the transfer has to be properly enforced, so that the control ceded is effective.

The validity condition is easily met under Hobbes's view of natural law. It requires that the transfer does not jeopardize any party's interest in self-preservation and, more generally, that it does not involve them agreeing to act in a way that they know to be impossible, being against human nature (L: 86–7). In addition, it requires that each party is assured against 'reasonable suspicion' that the other may defect, through sanctions being put in place by 'a common power set over them both' (L: 84). That is about all.

Crucially, and notoriously, the transfer can be valid even if it is made under fear of what may otherwise transpire. Hobbes treats fear, like aversion, as a negative form of appetite. Since he thinks that deliberation is nothing less than the natural process in which positive and negative appetites work themselves out, he can argue without embarrassment that there is nothing inimical to making a valid transfer of right in the fact that the consent one gives wholly or in part from fear. The point is consistently emphasized from his earliest work onward: 'there appeareth no reason, why that which we do upon fear, should be less firm that that which we do for covetousness. For both the one and the other

maketh the action voluntary' (EL: 86).¹⁵ Typically, Hobbes reinforces this philosophical point with a pragmatic observation: 'if no covenant should be good, that proceedeth from fear of death, no conditions of peace between enemies, nor any laws could be of force; which are all consented to from that fear'.

So much for what is required to make the subjection of one's will to that of another rightful, ensuring that it issues from a valid transfer. But as with ownership, the subjection of one's will has to involve an effective as well as a valid transfer. This is ensured in Hobbes's picture, of course, so far as there is a structure of mutual understanding among the parties (or 'mutual acceptance' (L: 85), as he phrases it) that is enforced, where necessary, by a regime of sanctions on non-performance. The transfer is not something of merely psychological significance, then, that might disappear with a change of heart on the part of one of the parties. It is established on a public, reliable basis. That one person's will is subjected to that of another is a matter of social fact, as we might put it – a social fact that no one in society can miss.

Lastly and on a historical note, the freedom as non-obligation that Hobbes recognizes can be identified with what had come to be known among some late-Scholastic and post-Scholastic writers as 'natural liberty'.¹⁶ This is the freedom that people have so far as no covenants have yet been formed among them, so that, unbound to one another, they live in a state of nature, not a state of society. Hobbes himself does not use the term 'natural liberty' consistently in his works, but at least in *The Elements of Law* it clearly and uniquely refers to freedom as non-obligation; thus, he says that 'the estate of men in this natural liberty is the estate of war' (EL: 80) and he speaks of 'the liberty of nature' that is abridged once a sovereign power is established by covenant (EL: 182).

Someone's liberty as non-obligation is described in *Leviathan* as a natural right. A person's exercise of natural right may be curtailed by external impediments, to anticipate our discussion of freedom as non-obstruction. What it essentially requires is 'the power left him' by those obstacles 'to do what he would', 'according as his judgment and reason shall dictate him' (L: 79).¹⁷ With that liberty in mind, Hobbes says, as we should expect, that obligation and liberty 'in one and the same matter are inconsistent' (L: 80).

Freedom as non-obstruction

So much for freedom as non-commitment and, in particular, freedom as non-obligation. The second category of freedom that Hobbes recognizes is freedom as non-obstruction. This is the freedom to enact the choice one has made, assuming that one has the ability in oneself to enact it. What is likely to stop one enacting a choice already made (acting on a will already formed), assuming that one has the capacity in oneself to enact it? External obstruction is Hobbes's answer: 'external impediments, which impediments may oft take away part of a man's power to do what he would' (L: 79).

Hobbes (L: 136) introduces this notion of freedom ('corporal freedom' or

‘physical freedom’, as he often calls it) in a way that involves no essential reference to choice and agency:

Liberty, or freedom, signifieth properly the absence of opposition (by opposition, I mean external impediments of motion); and may be applied no less to irrational and inanimate creatures than to rational. For whatsoever is so tied, or environed, as it cannot move but within a certain space, which space is determined by the opposition of some external body, we say it hath not liberty to go further. And so of all living creatures, whilst they are imprisoned, or restrained with walls or chains; and of the water whilst it is kept in by banks or vessels that otherwise would spread itself into a larger space; we use to say they are not at liberty to move in such manner as without those external impediments they would.

Hobbes’s natural analogy, in particular the analogy with water, supports three important points that he makes about liberty as non-obstruction (see also DC: 111, 151). One is that freedom in this sense presupposes the inherent ability, external impediments permitting, to act in the relevant manner. He argues for this point by explicit analogy with natural things: ‘when the impediment of motion is in the constitution of the thing itself, we use not to say it wants the liberty, but the power to move’ (L: 136). That an agent is said to be free or unfree to do something presupposes an ability to do it, then, and if this ability is lacking, then the question of freedom simply does not arise.¹⁸ It will not be the case that the agent is free and it will not be the case that the agent is unfree.

A second point that Hobbes’s natural analogy supports is perhaps counter-intuitive. Had the water in his example no disposition to spread itself, then the banks described would be no impediment to it: ‘that which is not subject to motion is not subject to impediment’ (L: 136). By inescapable analogy, Hobbes wants to say that if an external impediment is to take away an agent’s freedom as non-obstruction, then the agent must already be disposed to act in the manner obstructed, having already made a decision on what to do. The agent confronts a ‘stop, in doing what he has the will, desire, or inclination to do’. I am not deprived of my freedom as non-obstruction, then, by obstacles to options I might come to will, but only by obstacles to my actual will. If I choose to do A and there are no obstacles to my doing so, for example, then I will be free in doing A, and this even if there are obstacles to every alternative.

Hobbes vividly expresses the point to which he is committing himself in an exchange with Bishop Bramhall. His opponent had argued that if the door to the tennis court is closed, perhaps unbeknown to someone, then that person is unfree to play tennis, whether or not they have any wish to do so. Hobbes responds: ‘it is no impediment to him that the door is shut till he have a will to play, which he has not till he has done deliberating whether he shall play or not’ (HB: 91). The lack of ability to perform a certain action, as we saw, may mean that the question of whether the agent is free or unfree to do it does not arise. Equally, we now see that the fact that an agent has not made a decision to perform a certain action means that the question of his or her freedom to do it does not arise. It will

not be the case that the agent is free and it will not be the case that the agent is unfree.

The third point that the analogy with natural things supports is that freedom as non-obstruction can only be removed by physical obstacles – including, no doubt, the obstacles deployed in forcing the agent, against his or her will, to take a particular course of action or to take no action.¹⁹ Freedom as non-obstruction is not lost as a result of psychological states such as fear or duress or of the coercive threats that rouse fear or distress. ‘Fear and liberty are consistent: as when a man throweth his goods into the sea for fear the ship should sink, he doth it nevertheless very willingly, and may refuse to do it if he will’ (L: 137). The physical obstacles that remove freedom will do so by rendering a choice or choice impossible.²⁰

Hobbes sums up his view of freedom as non-obstruction in the famous definition that follows his introduction of the analogy with water: ‘a Free-man is he that in those things which by his strength and wit he is able to do is not hindered to do what he has a will to’ (L: 136). The three points signaled are all encoded in this definition. Freedom or unfreedom is predicated only on the agent who is able to do the action in question; he has the ‘strength and wit’ required. Freedom or unfreedom is predicated only on the agent who has decided on a certain action; he ‘has a will to’ perform it. Whether the agent is free or unfree turns simply on whether he is ‘hindered’ or obstructed in the attempt to perform an action; psychological inhibition, such as that which danger or threat induces, does not count.

Relating the two categories

Hobbes clearly takes it that freedom as non-commitment (in particular, as non-obligation) and freedom as non-obstruction are the only categories of importance in the ledger of liberty. Being a materialist and determinist, he rejects the idea that there could be anything deserving to be called ‘freedom as non-necessitation’. ‘Liberty and necessity are consistent: as in the water, that hath not only liberty, but a necessity of descending’ (L: 137). Equally, he rejects the notion that there is an important form of freedom that might be described as ‘freedom as non-coercion’: freedom from threats and psychologically inhibiting, but not physically obstructing, hurdles. He is blocked on both philosophical and pragmatic grounds, as we saw earlier, from thinking that fear or fear-related factors might remove freedom: fear is one of the appetites activated in ordinary deliberation, not something special, and fear is often present at the origin of contracts and treaties that serve us well in promoting peace. He emphasizes the philosophical point in debate with Bishop Bramhall: ‘he that does anything for fear, though he say truly he was compelled to it, yet we deny not that he had election to do or not to do, and consequently that he was a voluntary and free agent’ (HB: 78).

But given that freedom as non-obligation and freedom as non-obstruction are

each important, how do they relate to one another? From *De Cive* on, Hobbes accords center place to freedom as non-obstruction,²¹ speaking of this as ‘the proper and generally received meaning of the word’ (L: 136). He even suggests, in one passage from *De Cive*, that the difference between them is that, while each involves impediments to the will of the agent, those impediments are unwilled in the case of freedom as non-obstruction and are willed into existence by virtue of one’s prior choice (one’s prior contract, for example) in the case of freedom as non-obligation. Obstacles in this second case, he says, ‘are discretionary; they do not prevent motion absolutely but incidentally, i.e. by our own choice’ (DC: 111).

The idea here is that I may be obstructed either by impediments that happen to lie in my way or by impediments that derive from past, obligating choices. What are the impediments that are put in place by my prior obligating choices? The only possible answer is the impediments represented by other people, so far as I have given them the power of regulating my conduct by imposing penalties in the event that I do not discharge my obligations. But it is not so clear that this will work happily for Hobbes, since he always denies that the existence of penalties (in effect, the fear that penalties occasion) can represent an impediment or obstacle in a literal sense.

My own view is that the best way of thinking about the relationship between the two sorts of freedom in Hobbes goes back to the distinction between being free to decide between certain options, according to one’s wishes at the time of action, and being free to enact the decision one makes. To be free to decide is to enjoy freedom as non-commitment. To be free to enact the decision one has made presupposes that a decision has indeed been made, and so freedom as non-commitment has gone. That explains why, for Hobbes, it makes no sense to raise the question of whether someone is obstructed and deprived of the freedom to perform a certain action (obstructed from playing tennis by the locked door in Bramhall’s example) if the agent has not actually made a decision to act.

There are two quite different ways, then, in which freedom can be lost according to Hobbes. The fact of having given rightful control of one’s will to another will take away the first form of freedom (or, more weakly, just the fact of having made up one’s mind); the fact of facing an insurmountable obstacle or impediment will take away the second. Neither fact will mean that the other sort of freedom is affected. That someone has made a contract will not put any literal impediment in the way of his acting in breach of it. That someone confronts an obstacle to his doing something ‘cannot hinder him from using the power left him, according as his judgment and reason dictate to him’ (L: 79).

We need not dwell on how exactly the two forms of freedom are connected in Hobbes’s mind. Quentin Skinner is surely right to stress that, rather than being variations on a common theme, they are deeply contrasted.²² Obstruction represents loss of liberty in ‘the sphere of nature’; obligation the loss of liberty in ‘the sphere of artifice’. That one is obstructed will be a natural fact, as we might put it; that one is obligated (subject to the will of another) is a social fact. The

important point is that Hobbes clearly sees each category as significant, and significant in a distinct way, in the characterization of real-life cases of freedom and unfreedom.

The important point is that each form of unfreedom involves a person being held in bondage. Obstruction and obligation, however different in themselves, both mean that a person is subjected to another. That one is obligated does not just mean, for example, that it would be normatively objectionable to act against the obligation, as it might be normatively objectionable to break a natural law. That one is obligated means that as a matter of social fact one is bound to another (in the way that it is a matter of social fact that this or that object belongs to another) and that that bond, if required, will be enforced by recourse to sanction.

Hobbes's picture of the two forms of unfreedom comes out particularly clearly in a distinction he makes, across all his works, between two ways in which a private master may have dominion over servants, and so hold them in servitude or unfreedom. Some servants are unfree so far as they are locked up, and in that sense subject to obstruction. They are 'kept bound in natural bonds, as chains, and the like, or in prison' (EL: 127). 'This kind of servant is that which ordinarily and without passion, is called a slave'; elsewhere, Hobbes refers to such servants as *ergastuli* or 'workhouse slaves' (DC: 103). But other servants are unfree by virtue of 'verbal bonds of covenant' (verbal bonds assumed, no doubt, in fear-driven submission to the master), not 'natural bonds' such as chains. 'The Romans . . . comprehended all under the name of *servus*; whereof such as they loved and durst trust, were suffered to go at liberty, and admitted to places of office, both near to their persons, and in their affairs abroad; the rest were kept chained, or otherwise restrained with natural impediments to their resistance.'

Servants in the first category are deprived of their freedom as non-obstruction, according to this picture; servants in the second, of their freedom as non-obligation. According to Hobbes, they are equally unfree; they are equally subjected to the master. 'A master therefore is to be supposed to have no less right over those, whose bodies he leaveth at liberty, than over those he keepeth in bonds and imprisonment; and hath absolute dominion over both; and may say of his servant, that he is *his*, as he may of any other thing' (EL: 127; see also L: 130–1; DC: 104).

2. The political application of the theory

The comment on masters and servants offers a nice segue into Hobbes's view of freedom in the political context, for he clearly thinks that we each relate to the commonwealth, whether that be ordered as a democracy, an aristocracy or a monarchy, in the manner of servants to a master; in particular, as we shall see, in the manner of servants tied by verbal bonds, not natural or physical bonds, to the will of the master (EL: 132).

The commonwealth as master

Hobbes explains the nature of the commonwealth by directing us to how it came about or could have come about: in the primary case, he discusses how it could have come about by institution or design or agreement, where everyone covenants with everyone to accept a common sovereign; in the secondary case, which he obviously takes to be historically more common (L: 77), he mentions how it could have come about by acquisition, that is, when a stronger party cowers everyone else into submission (EL: 107; L: 109–10; DC: 74).

Hobbes argues in his natural philosophy that the best way to understand something may often be to see, not how it was actually generated, but how it could have been generated, in the same way Economics 101 explains what money is by showing how it could have emerged from a barter economy. Thus he says that no matter how an actual circle was produced, the best way to understand it may be to see that it could have been produced in the canonical manner (indeed, that we ourselves could have produced it in that manner) by the use of a compass. He writes in *De Corpore*: ‘by knowing first what figure is set before us, we may come by Ratiocination to some Generation of the same, though perhaps not that by which it was made, yet that by which it might have been made’.²³

In line with this idea, Hobbes argues that we can understand the commonwealth by grasping the rules (abstract principles that may not be widely accessible) whereby we might produce a commonwealth, even if commonwealths did not actually come about that way. ‘The skill of making and maintaining commonwealths consisteth in certain rules, as doth arithmetic and geometry, not (as tennis-play) on practice only; which rules, neither poor men have the leisure, nor men that have had the leisure have hitherto had the curiosity or the method to find out’ (L: 135).

The story as to how the commonwealth might have emerged by institution or design or agreement brings out the relevant rules or lessons. These include the familiar Hobbesian themes, as follows:

1. People’s relative equality and their rational fear of one another give them reason in natural law, based in the desire for survival and peace, each to submit their wills to the will of a single sovereign (to the laws of the commonwealth) provided others do so too (L: Chs 13–15).
2. People can covenant to do this without putting themselves illegitimately at risk (L: 84) because each can see that should any one individual among them break the law then the sovereign will be powerful enough to bring that person into line: his actions will be ‘avouched by them all, and performed by the strength of them all, in him united’ (L: 112).
3. The fact of covenanting with one another to submit to a sovereign gives individuals a common will as a people or commonwealth (previously they were just a multitude), whether the sovereign is a democratic assembly, an aristocratic elite, or a single monarch (L: Chs 16–17).

4. This will have to be absolutely sovereign over each if it is to ensure peace: it must be able to lay down commands or laws in a process unchecked by rival powers and unlimited by legal or other constraints (L: Ch. 18).
5. In submitting to the sovereign's will, individuals obligate themselves not to disobey the laws, when 'refusal to obey frustrates the end for which the sovereignty was ordained' (L: 142).

The story as to how the commonwealth might have been produced by institution or design reveals the important aspects of the commonwealth, as an account of how a circle might be produced will reveal the important aspects of that geometrical figure. In effect, it shows that the sovereign, as the representative of the commonwealth, has the status of a master in the lives of its members, in particular, the status of a master whose subjects are bound verbally rather than physically. Furthermore, what the story shows to be true of the commonwealth remains true even if the commonwealth was produced, not by the institution that figures in that story, but by acquisition: 'whatsoever rights be in the one, the same also be in the other' (EL: 133). In each case, there is submission and in each case that act of submission amounts to a contract to let the will of the sovereign be one's own will. The existence of a contract to obey the sovereign may be inferred, Hobbes suggests, 'from the express words *I authorize all his actions*, or from the intention of him that submitteth himself to his power . . . which intention is to be understood by the end for which he so submitteth' (L: 141).²⁴

Hobbes downplays the difference that the contrast in the origin of the commonwealth would make. In the one case, people are driven by fear of one another to form a commonwealth; in the other, they are driven also and more pointedly by a fear of that person who aspires to being recognized as sovereign. 'And this kind of dominion or sovereignty differeth from sovereignty by institution only in this, that men who choose their sovereign do it for fear of one another, and not of him whom they institute; but in this case they subject themselves to him they are afraid of' (L: 127).

But to focus on the presence of fear is to look on the dark side of his story about the formation and nature of the commonwealth. The bright side is that when people submit themselves to the commonwealth (to Leviathan, as represented in the sovereign) then short of offending and being arrested, they are not put in the position of prisoners bound by natural bonds. As already mentioned, they are bound only by verbal bonds: 'artificial chains, called civil laws, which they themselves by mutual covenants have fastened at one end to the lips of that man or assembly to whom they have given the sovereign power, and at the other end to their own ears' (L: 138).

Is this not an absurd comment, given that the sovereign may have bullied and cowed others into submission, as in the commonwealth by acquisition? Not for Hobbes. He says that even the person who submits to a victor in war is bound by the voluntary act of submission. 'It is not therefore the victory that giveth the

right of dominion of the vanquished, but his own covenant' (DC: 131). Holding this view of someone taken in war, Hobbes is naturally going to take a similar view of people who submit to a sovereign in the case of a commonwealth by acquisition. It will not be the power of that person, but the submission of the people (the free, if fearful, submission of the people) that will give him the right of sovereignty.

The application of the theory

With these points made, we can begin to see how the theory of liberty, sketched in the last section, applies for Hobbes in the political case. The subjects of a commonwealth, whatever its origin and whatever its constitution, are not deprived of their freedom as non-obstruction just by their subjection; the laws may punish transgressions, but they do not prevent them. But such subjects are deprived of their freedom as non-obligation in the domain over which the will of the sovereign expresses itself in laws, or at least this is so when 'refusal to obey frustrates the end for which the sovereignty was ordained' and so long as the sovereign is not 'disabled to provide for their safety' (L: 142, 144).

One way in which refusal to obey will not frustrate the ends of sovereignty, according to Hobbes, is when I struggle for my life or the lives of my friends against a sovereign who would have us killed. This is so even when the sovereign is acting within the terms of the covenant, as in ordering my execution for a crime, for 'no law can oblige a man to abandon his own preservation' (L: 198). 'For though a man may covenant thus *unless I do so, or so, kill me*, he cannot covenant thus *unless I do so, or so, I will not resist you, when you come to kill me*' (L: 87).

These claims about freedom as non-obstruction and freedom as non-obligation under the commonwealth are more or less explicitly articulated by Hobbes in an *ad hominem* to would-be rebels: 'if we take liberty in the proper sense, for corporal liberty (that is to say, freedom from chains and prison), it were very absurd for men to clamour as they do for the liberty they so manifestly enjoy. Again, if we take liberty for an exemption from laws, it is no less absurd for men to demand as they do that liberty by which all other men may be masters of their lives' (L: 138). This second claim is absurd because it amounts to calling for a return to the state of natural liberty, in which no one is obligated to others and the hope for peace is forlorn: 'if each man allowed to others, as the law of nature requires, the liberty which he demands for himself, the state of nature would return, in which all men may rightly do all things; and they would reject that state as worse than any civil subjection, if they knew it' (DC: 121).

Hobbes's view leads him explicitly to compare the position of the subjects of a commonwealth to the servants of a master. The comparison is fairly exact in the case of the commonwealth in which one person forces others into submission, of course, but Hobbes thinks that the comparison holds even when the commonwealth is set up by institution and not by acquisition. 'The subjection of them

who institute a commonwealth amongst themselves, is no less absolute, than the subjection of servants' (DC: 132).

The commonwealth, as Hobbes sees it, is like a master who binds servants by verbal or social bonds, not physical or natural ones. The subjection it imposes deprives people of their freedom as non-obligation, while allowing them the possibility of a great deal of freedom as non-obstruction. But this does not soften things greatly for, by Hobbes's lights, the commonwealth still has the same dominion over individuals that would hold if it constrained them by physical or corporal means, that is, if it deprived them of their freedom as non-obstruction in the same way as prisoners. For, as we saw in discussing the private master, the two forms of subjection remove freedom equally. A master, Hobbes tells us, 'has no less right and dominion over the unbound slave as over the bound, for he has supreme dominion over both; and he may say of his slave no less than of any other thing, animate and inanimate, *This is mine*' (DC: 104).

Hobbes recognizes three sorts of constitution (democratic, aristocratic, and monarchical), but thinks that his line on subjection applies equally in all. In taking this view, he is setting himself in direct conflict with those of a republican persuasion, who would say that, whereas the citizens of a republic such as classical Athens or Renaissance Lucca have the status of free citizens, the subjects of a despotic regime are dominated by the law of the despot, and so are unfree. Hobbes denies that the citizens of such a democracy need have any more freedom, in the sense of non-obstruction or of non-obligation. In each case, subjects may retain their full freedom as non-obstruction, at least if they escape imprisonment or execution, since whatever punishments are threatened by the laws and however inhibiting or intimidating they prove to be, they will not actually prevent people from offending. In each case, subjects will be bound in the same way to obey the will of the sovereign, as that will expresses itself in laws and other decisions.

This aspect of Hobbes's claims is absolutely central to his argument against those who espouse republican learning and argue that there is no freedom under a monarchy. They would argue, as of course many did, that there could be no freedom under the absolutist regime that Hobbes thinks is required by the cause of peace. His main claim in response is that no matter what form a political regime takes, its laws will deprive people of their liberty in the same manner, engaging their commitments to one another or to the sovereign: 'the citizens have no greater liberty in a popular state than in a Monarchical' (DC: 121).

Does anything mark off the citizens of a republic from the subjects of a more absolutist regime? Just the fact, as Hobbes notes in *The Elements of Law*, that 'freemen' will tend to enjoy 'employments of honour' in a popular state (EL: 133). He gives a sharp edge to this claim in *De Cive*, arguing that, relative to the sovereign, slaves enjoy just as much and just as little freedom, properly understood, as the 'free citizens' who are their private masters. What free citizens 'have more than the slaves is that they perform more honourable services in the

commonwealth . . . and enjoy more luxuries' (DC: 111). The fact that Hobbes is prepared in both these works to allow the use of the word 'freemen' or 'free citizens' to describe those who enjoy such democratic 'employments of honour' may explain why on one occasion (and one only) he condones Aristotle's associating their liberty with democratic arrangements (EL: 164). Hobbes's increased hostility to the classical tradition in *Leviathan*, though not unprecedented (EL: 176), causes him to make a shift on this terminological front. But unlike Skinner,²⁵ I see no evidence of any significant change in the theory of freedom maintained in the relevant works.²⁶

So far, we have seen that whether a commonwealth be set up by institution or acquisition, and whether it be monarchical, aristocratic or democratic in form, its subjects can enjoy freedom as non-obstruction, but not freedom as non-obligation. But this is not to say that, for Hobbes, freedom as non-obligation disappears completely in the political context. A certain liberty as non-obligation will remain to the subjects of a commonwealth so far as the sovereign does not express a will in regard to how they should behave: so far as the sovereign fails to legislate over a certain domain. 'In cases where the sovereign has prescribed no rule, there the subject hath the liberty to do or forbear, according to his own discretion' (L: 143); the subject, as this formulation makes clear, enjoys freedom as non-commitment or, more specifically, freedom as non-obligation. Such liberties as subjects have of this kind 'depend on the silence of the law'. They are not trivial, in Hobbes's view, since 'the things that are neither commanded nor forbidden must be almost infinite' (DC: 150). But the important point, to return to his rejection of republicanism, is that they are available on the same basis, if not in the same measure, within every sort of regime; no regime has any greater title than others to be described in republican language as a 'free state'.²⁷

Law and liberty

I believe that the interpretation I have been offering of Hobbes on liberty, and in particular of Hobbes on liberty within a political context, fits extremely well with his texts. But it may seem to be unlikely on at least one specific count. For all that I have said in interpretation, Hobbes thinks that laws take away people's freedom as subjects only insofar as they testify to the rightful control that people have given the sovereign over their will. This is the control they alienate in covenanting with one another, or with the sovereign, to accept the sovereign's will as binding. There is no suggestion in the foregoing that laws reduce people's freedom on the distinct count that they put penalties in the way of certain choices, seeking to coerce subjects into obedience.

This may seem to be downright counterintuitive. After all, it is common lore within the broad liberal tradition that while laws do not prevent people from making certain choices, and so do not obstruct them in Hobbes's sense, they take away from the liberty of those who live under them by the threats of punishment with which they are accompanied.²⁸ Bentham argued on precisely those grounds

(and certainly not for the sort of reason ascribed here to Hobbes) that ‘all laws creative of liberty, are, as far as they go, abrogative of liberty’.²⁹ Contrary to what I previously held,³⁰ however, I am now persuaded that as a matter of fact Hobbes does not take Bentham’s line.³¹ He certainly bequeathed to the Benthamite tradition the view that all laws, democratic and otherwise, take away equally from a person’s freedom. But he is not the source of the consideration that led later thinkers to take that view, only of the view itself.

This, as it happens, should not be surprising, for how could Hobbes have thought that laws take away the freedom of subjects through threatening and thereby coercing them, given the central position in his thought of the idea that neither fear nor any factor that mobilizes fear can reduce a person’s freedom? It would have required rank inconsistency for him to say, on the one hand, that covenants made out of fear are freely made, but on the other, that the fear of punishment means that the person’s covenanted obedience to the law is unfree: ‘that which could not hinder a man from promising, ought not to be admitted as a hindrance of performing’ (L: 85; compare DC: 37).

When we obey laws, according to Hobbes’s way of thinking, we do not do so freely, and this whether we live in a democracy, an aristocracy, or a monarchy. But that is only because we are obligated by our covenants (to one another when the commonwealth is instituted and to the sovereign when it is acquired) to accept and live by the laws that the sovereign makes in pursuit of the commonwealth’s ends. Whatever form the political covenant may have taken, it means that we are subjected to the sovereign. While fear of sanction plays a part in the sovereign’s making that subjection effective, it is the subjection, not the sanction, that makes us unfree.³²

Hobbes is close to completely explicit on this point. ‘We are obligated by an agreement; we are kept to our obligation by a law’, as he puts it in *De Cive* (DC: 155). He adds a further comment on this remark in the 1647 edition of the work, in case the point is not clear:

Some have thought that being obligated and being kept to one’s obligation are the same thing and that consequently this is a verbal not a substantial distinction. So I will put it more clearly. A man is obligated by an agreement, i.e. he ought to perform because of his promise. But he is kept to his obligation by a law, i.e. he is compelled to performance by fear of the penalty laid down in the law.

The fact that sanctions play the role of holding people to the obligations they have contracted (the obligations in virtue of which they lose their freedom) suggests that with each law the associated sanction should be strong enough generally to motivate compliance. Hobbes agrees that this is so, and argues that the sovereign ought to design penalties accordingly. Assuming that it would be bad policy to impose the ultimate penalty on each sort of crime, he maintains that the sovereign ought to tailor the penalty in each case, so that it matches the motive that people will have in that case for offending. ‘If the penalty which a

legislator attaches to a crime is too small to make fear weigh more heavily than greed, the legislator, i.e. the sovereign is responsible for the fact that the greed outweighs the fear of the penalty (the excess of greed over fear being the cause of the crime)' (DC: 152).

The regulative importance that Hobbes gives to penalties may explain why many assume that he thought coercive laws, just in virtue of threatening sanctions, took away from people's freedom: not their freedom as non-obstruction, but what we might call freedom as non-coercion. Hobbes does not recognize any category of freedom as non-coercion, however, and it is important in getting the measure of his views that we keep that observation in place. Ironically, he may have sponsored the tradition in which the coercion of the law came to be seen as inimical to freedom. But his own view, clearly, was that laws are hostile to freedom only so far as they reveal to people the extent of their existing commitments and obligations – the extent to which they have already tied their own hands or, rather, have allowed them to be tied by others.

Conclusion

As mentioned in the introduction, I argue elsewhere that Hobbes made a distinctive and original contribution in persuading successors, first, that it is only the exercise of a power of interference that reduces people's freedom, not its existence; and second, that the exercise of a power of interference always reduces freedom in the same way, whether it occurs in a republican democracy or under an elitist, dictatorial regime.³³ These claims still stand in the light of the foregoing discussion.

To interfere with people, in the sense in which we might speak of the state interfering in the lives of subjects, would have meant either of two things for Hobbes: obstructing them or exploiting a prior covenant in order to obligate them. Under this theory, the mere existence of a commonwealth with such an obstructing or obligating power would not have made them unfree, if the power was not exercised: subjects enjoy freedom, according to Hobbes, in the silence of an obligating or, indeed, an obstructing law. Under this theory, of course, the exercise of an obstructing or obligating power restricts freedom, whatever the nature of the obstructing or obligating commonwealth: whether the commonwealth be democratic, aristocratic, or monarchical. Thus the two propositions I ascribed to Hobbes remain firmly in place.

The upshot of these twin theses is quite dramatic, as I have tried to argue elsewhere.³⁴ No longer is it the case that the existence of an absolute state (or of any absolute master) makes its subjects unfree, independently of the extent to which that power is exercised. Moreover, no longer can the exercise of 'non-arbitrary' power (say, the power of a democratic, rule-of-law republic) be hailed as more benign in its effect on people's freedom than the interference of an absolute state. In the ledger of liberty, there is nothing left to differentiate the absolute state from

the republican alternative. Neither offends against the liberty of subjects, so far as it abstains from coercive interference; and both offend equally against that liberty so far as they impose such interference. The claims of rival constitutions will have to be judged, then, on other grounds. These may include a consideration of how far different regimes can serve effectively to protect people's liberty, not in regard to the state, but in relation to one another. But they need not otherwise engage with the question of liberty; they need not connect with what had been the central issue in constitutional thought down to Hobbes's period.

Hobbes's two theses assumed a very different form in the work of writers such as William Paley³⁵ and Jeremy Bentham,³⁶ and more broadly in the liberal and libertarian traditions. The writers in that tradition led modern thinking about the nature of freedom in a distinctively Hobbesian direction, arguing that there was no loss of liberty without actual interference and that the interference of the law, no matter how 'non-arbitrary', was as inimical to freedom as any other form of interference. But while they took their tradition in a Hobbesian direction, none of these later authors marched to a Hobbesian drum. Perhaps Hobbes himself was the only one who ever did.

notes

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1. See P. Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997); Q. Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998); M. Viroli, *Republicanism* (New York: Hill and Wang, 2002).
2. A. Brett, *Liberty, Right and Nature* (Cambridge: Cambridge University Press, 1998).
3. Q. Skinner, *Visions of Politics* (Cambridge: Cambridge University Press, 2002), III: p. 225.
4. Pettit, *Republicanism*.
5. T. Hobbes, *Leviathan* (Indianapolis: Hackett, 1994).
6. T. Hobbes, *Human Nature and De Corpore Politico: The Elements of Law, Natural and Politic* (Oxford: Oxford University Press, 1994).
7. T. Hobbes, *On the Citizen* (Cambridge: Cambridge University Press, 1998).
8. T. Hobbes and J. Bramhall, *Hobbes and Bramhall on Freedom and Necessity* (Cambridge: Cambridge University Press, 1999).
9. There are differences between *The Elements of Law* (EL), *De Cive* (DC), *Leviathan* (L), and Hobbes's exchange with Bramhall (HB), but none, I think, that deeply

- affects the account I offer. True, as Skinner, *Visions of Politics*, p. 227 notes, there is a passage in *The Elements of Law* where Hobbes takes a softer line on Aristotle on liberty than he does later, but, as we shall see, this does not appear to signal a radically different attitude.
10. J. Harrington, *The Commonwealth of Oceana and a System of Politics* (Cambridge: Cambridge University Press, 1992), p. 20.
 11. S. Shapin and S. Schaffer, *Leviathan and the Air-Pump* (Princeton, NJ: Princeton University Press, 1985), p. 118.
 12. Brett, *Liberty, Right and Nature*, p. 212. Hobbes makes the point most explicitly in *Leviathan*, Ch. 26, Section 2: 'he is free, that can be free when he will: Nor is it possible for any person to be bound himself; because he that can bind, can release; and therefore he that is bound to himselfe onely, is not bound'.
 13. Hobbes says in the English edition of *Leviathan* that, considered 'as delivered in the word of God', natural laws may be 'properly called laws', but as noted by the editor, Edwin Curly, this sentence was omitted from the later Latin edition (L: 100–1). See also Hobbes, *Human Nature and De Corpore Politico*, p. 97.
 14. I do not ask whether a contract makes someone unfree so far as it is unjust to break it under the commonwealth, not just in breach of natural law. The reason, of course, is that this could not be the source of unfreedom associated with contractual obligation, since the commonwealth itself springs from the contract of the people with one another to establish a sovereign or from a contract with a powerful individual who cows them into making him sovereign. Yet that contract is the source of the obligations whereby laws take away the freedom of subjects. More on this later.
 15. As suggested earlier, I disagree with Quentin Skinner in thinking that there is no major shift in Hobbes's thinking about liberty between *The Elements of Law*, written in 1640, and later works. Skinner, *Visions of Politics*, p. 236 of vol. III mentions as one indication of a different view in the earlier work that Hobbes there distinguishes between 'the voluntary offer of subjection, and yielding by compulsion' (EL: 126). But that distinction, motivated as it is by taxonomic purposes, should not be taken to suggest that Hobbes thinks that the fear activated by compulsion makes an act of submission less than voluntary; he does not think that, as the quotation in the text clearly shows.
 16. Brett, *Liberty, Right and Nature*.
 17. This gloss may help to explain why I think that there is no confusion in Hobbes's introducing a mention of liberty as non-obstruction at this point in his characterization of liberty as non-obligation. See also Brett, *Liberty, Right and Nature*, p. 226.
 18. Skinner, *Visions of Politics*, p. 213.
 19. *Ibid.*
 20. The obstacles may affect what the agent can do on a narrower or wider front. This latter point, too, is suggested by the analogy. 'Water . . . when it is open on all sides spreads; and the more outlets it finds the freer it is' (DC: 151).
 21. Skinner, *Visions of Politics*, II: ch. 7.
 22. *Ibid.*, p. 225.
 23. T. Hobbes, *Elements of Philosophy: The First Section Concerning Body* (London: Andrew Crock, 1656).

24. This reading means that Hobbes must be taken to endorse the idea that people actually submit to government, and so have actually contracted with one another to accept the will of the sovereign. I am grateful to Jim Wilson for having helped me to become clear about this.
25. Skinner, *Visions of Politics*, pp. 226–7.
26. There may well be important differences in other respects, of course. For example, it appears that in *The Elements of Law*, Hobbes envisages the covenant whereby the commonwealth emerges by institution, not as a covenant made by people with one another, as in the later works, but as a covenant made with the sovereign (EL: 106–7). This fits with the principle that he enunciates in that work: ‘In all violation of covenant, (to whomsoever accrueth the damage) the injury is done only to him to whom the covenant is made’ (EL: 88).
27. Skinner, *Liberty Before Liberalism*.
28. But see H. Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994) and I. Carter, *A Measure of Freedom* (Oxford: Oxford University Press, 1999).
29. J. Bentham, *The Works of Jeremy Bentham* (Edinburgh: William Tait, 1843), p. 503.
30. Pettit, *Republicanism*.
31. Our views of Hobbes differ in other ways, but in taking this line I was following a lead that I found in Brett, *Liberty, Right and Nature*.
32. This reading also suggests, of course, that Hobbes does not endorse the command theory of the law that is often ascribed to him.
33. Pettit, *Republicanism*.
34. Ibid. See also Skinner, *Liberty Before Liberalism*.
35. W. Paley, *The Principles of Moral and Political Philosophy, Vol. 4, Collected Works* (London: C. and J. Rivington, 1825).
36. J. Bentham, *The Works of Jeremy Bentham*.