

A Tale of Two Hobbes: Brief Remarks (through Turinese eyes) on the Second Chapter of David Dyzenhaus' The Long Arc of Legality

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Abstract

The paper focuses on some relevant features of the chapter *The Puzzle of Very Unjust Law II: Hobbes* of David Dyzenhaus' *The Long Arc of Legality. Hobbes, Kelsen, Hart* (Cambridge University Press, 2022). The essay discusses some of the key points of Dyzenhaus' fascinating, unorthodox and highly controversial interpretation of Hobbes: namely, the question of «the legal constitution of the Sovereign». By contrasting some elements of Norberto Bobbio's interpretation of Hobbes with the reading proposed by Dyzenhaus, it is emphasized that the latter does not satisfactorily address (and reconstruct) the radical reformulation of the conceptual apparatus of traditional natural law theory operated by Hobbes, especially with regard to central concepts such as the notion of “reason”, the framing of natural law and its relation to civil law, and not least the crucial questions of the limits of the sovereign.

Keywords: Natural Law. Positive Law. Sovereign. Legality. Thomas Hobbes. David Dyzenhaus.

1. Introduction

David Dyzenhaus' *The Long Arc of Legality. Hobbes, Kelsen, Hart* leads the reader through a fascinating, momentous and thought-provoking journey, acutely exploring a cluster of interesting puzzles surrounding one of the core issues of modern legal philosophy – namely, the problem of «explaining the authority of the modern legal state»¹ – through an analysis of the work of three classics of the discipline:

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¹ Dyzenhaus 2022: xi.

Thomas Hobbes, Hans Kelsen and HLA Hart.

So, the journey is quite long and adventurous, its course is far more complex than the elegant linearity of the map suggests at first glance, and the landscape along the road is far too rich in striking elements to be adequately captured in a short article. I will therefore limit myself to a few (rather cursory) reflections on some of the most important elements of the interpretation of Hobbes developed in the second chapter of the book, *The Puzzle of Very Unjust Law II: Hobbes*².

Despite the many interesting features of the chapter itself, such a choice may probably appear too partial and narrow, if compared to the mentioned vastness and richness of the legal-philosophical panorama outlined by Dyzenhaus.

However limited, though, the choice is not without justification.

Hobbes is indeed the starting point of the long arc of legality that Dyzenhaus traces, and above all one of the cornerstones of the book. To fully appreciate the importance of Hobbes in this work, it is perhaps sufficient to point out that in discussing his decision not to choose «Rousseau, Kant or any other classic philosopher of law» as the point of departure of his journey, Dyzenhaus argues for such a preference claiming that «Hobbes is *the* theorist of modern legal state»³.

Furthermore, at least in my understanding, precisely when he approaches Hobbes's work, Dyzenhaus fully displays that fresh look, unabashed by the "orthodox" interpretations, that from the very preface he presents as one of the methodological features of his work⁴.

Now, while this approach is in itself very valuable and even indispensable for (fruitful) philosophical inquiry, I nevertheless have several doubts about various outcomes of Dyzenhaus' fascinating assessment of Hobbes' work.

The reading that the book offers us could perhaps be better understood as a re-interpretation of Hobbes' main ideas through post-Hartian eyes. Indeed, the reader cannot help feeling, at least sometimes, that Dyzenhaus' Hobbes is not only a brilliant disciple of Hart, but also an attentive reader of Fuller, Dworkin and Raz.

This is, of course, far from being a problem: as Friedrich Nietzsche showed long ago, it is intellectually healthy to temper antiquarian history with critical history. So, reinterpretation can be a very useful enterprise in advancing our ideas. Nevertheless, this is a very different endeavor from attempting to read a text in its own cultural context, and it is useful to maintain a sharp distinction between these two processes.

In this sense, and this explains my quasi-Dickensian title, I would like to counter Dyzenhaus' interpretation (I would say: Dyzenhaus' Hobbes) with a different read-

² Dyzenhaus 2022: 88-148

³ Dyzenhaus 2022: 3, at footnote 6.

⁴ See especially a passage of the preface in which the author makes it clear that the interpretations he provides of the classics in which he focuses his treatment are «often against the orthodox understanding of their work, and with Kelsen and Hart at times against their self-understandings» (Dyzenhaus 2022: ix-x).

ing (thus, a different Hobbes), namely that provided by Norberto Bobbio⁵. I am inclined to think that the latter Hobbes is easier to reconcile with central features of (the historical) Hobbes' work than the former.

Indeed, Dyzenhaus does not need at all to be reminded of Bobbio's interpretation, to which in facts he refers on various occasions⁶. But, somewhat surprisingly, he still does not fully engage in a detailed discussion of the reading that Bobbio provides. On the contrary, he dismisses it rather quickly.

However, if the chapter is meant to provide a new, fresh and unorthodox reading of Hobbes, viz an interpretation capable of considering facets of his work neglected by many scholars⁷, then I have the impression that Bobbio's interpretation is a stumbling block on the path that Dyzenhaus purports to follow, a significant alternative reading that presents very strong counterarguments that cannot simply be ignored.

Due to the limitations of the present contribution, I cannot fully address the whole reading of Hobbes that Dyzenhaus offers in his highly detailed and well-reasoned examination, and, thus, I will focus my comments on a specific point, «the legal constitution of the sovereignty»⁸, perhaps one of the central elements of Dyzenhaus' account, and, especially, one around which many of the key notions of his reading of Hobbes' system converge.

The analysis of this topic makes it possible to consider fundamental concepts of Hobbes' system, such as the figure of the sovereign, but also the relationship between civil law and natural law.

In Dyzenhaus' view, contrary in many aspects to the common view, Hobbes' claim would be that «the sovereign's authority is legally constituted both by the public criteria for what counts as law and [...] by the laws of nature»⁹.

More precisely, contrary to those who, like Bobbio, hold that, in Hobbes' work, natural laws provide the ground of the political obligation of subjects, and essentially disappear once civil society is in place and working, Dyzenhaus think that, in Hobbes' system, the «function of the laws of nature is to condition the content of the sovereign's laws in a way which makes it possible for legal subjects to understand its rule as a matter of right rather than unmediated coercive power. [...] The laws of nature

⁵ I'm referring to Bobbio 1993. It is interesting to observe that Bobbio's assessment of the relevance of Hobbes in modern legal philosophy is very much alike that of Dyzenhaus: «if we wish to encompass in one formula the meaning of Thomas Hobbes' political philosophy, we might say that it expresses the first modern theory of the modern State» (Bobbio 1993: 74).

⁶ See, for example, Dyzenhaus 2022: 4, at footnote 10; Dyzenhaus 2022: 100, at footnote 43. More generally, Bobbio is often evoked also in some of the pivotal debates of the chapter three «The Constitution of Legal Authority / The Authority of Legal Constitutions» (Dyzenhaus 2022: 149-223; especially, at 219-222).

⁷ Dyzenhaus 2022: 100.

⁸ Dyzenhaus 2022: 100-121.

⁹ Dyzenhaus 2022: 105-106.

provide a standard of right or justice which is internal to law – the *jus of lex*»¹⁰.

This thesis is perhaps at the core of a “package of points” that constitutes, so to speak, the theoretical framework of Dyzenhaus’ reading of Hobbes.

Such a package consists of three points: «the sovereign is a legally constituted artificial person; Hobbes’s laws of nature are part of the legal constitution of sovereignty; in constituting sovereign authority, the laws of nature condition the content of the civil law in a way which makes plausible Hobbes’s claim that there is an antecedent obligation of obedience to the sovereign such that the subject should regard the law as a public conscience»¹¹. According to Dyzenhaus, jointly the three points concur in showing that, despite the orthodox view and even if Hobbes himself seems to assert the contrary, «the understanding of the Hobbesian sovereign as legally unlimited is wrong»¹².

Thus, I will briefly recall (closely following Bobbio’s arguments) the main features of Bobbio’s interpretations of these components of Hobbes’ apparatus, namely the very notion of “natural reason”, the relationship between natural and civil law and the configuration of the Sovereign. As we will see, the result is a reconstruction of these fundamental notions of the Hobbesian framework that is very different from (and, in many ways, radically alternative to) the one proposed by Dyzenhaus.

2. Natural Law and Civil Law

It is perhaps useful to begin our examination of Bobbio’s interpretation with a helpful methodological note from John Rawls, according to whom, when examining an author, it is important to identify the philosophical problems that the author in question regards as fundamental¹³.

Bobbio seems to follow a quite similar method, in his collection of essays devoted to Hobbes’ work, as he identifies the “leading idea” by which Hobbes’s work is driven as the antithesis “anarchy vs. unity”¹⁴. Hobbes’ philosophical ideal is thus the preservation (not of liberty against oppression), but of unity against anarchy, and his enemy is the dissolution of authority, the disruption of the unity of the state.

¹⁰ Dyzenhaus 2022: 101.

¹¹ Dyzenhaus 2022: 99.

¹² Dyzenhaus 2022: 99.

¹³ «[...] we must try to think ourselves into each writer’s scheme of thought, so far as we can, and try to understand their problem and their solution from their point of view and not from ours. When we do this, it often happens that their answers to their questions strike us as much better than we might otherwise have supposed». (Rawls 2007: 103). A comparative reading of Dyzenhaus’, Bobbio’s and Rawls’ interpretation of Hobbes would undoubtedly be of great interest, but, due to the limited extension of this paper, it has to be postponed to another occasion.

¹⁴ Bobbio 1993: 29.

In this sense, Bobbio remarks that Hobbes employs the more elaborated tools of the natural law tradition (such as the state of nature, the social contract, individual rights, natural law), which are all traditionally used as weapons to limit State power, but, on the contrary, he uses them ingeniously «to build a gigantic obedience machine»¹⁵.

Let's start with natural law.

Bobbio analyzes the many differences between Hobbes' conception and the traditional conceptions of natural law, especially regarding the hierarchical primacy of natural law over positive law¹⁶. In the traditional forms of natural law theory (despite their variances), natural law is superior to positive law, Bobbio notes, in the sense that a positive norm which is contrary to natural law is invalid: the conformity to natural law is, thus, the ultimate test of validity of each norm of positive law¹⁷. However, there is also another version of the theory of natural law that is closer to Hobbes'. Even if we can still maintain here that natural law is superior to positive law, since it is the basis for both its legitimacy and its binding force, there is a fundamental difference.

Indeed, according to this version of what we can dub "the thesis of superiority", natural law constitutes the foundation of validity of the positive legal order *considered as a whole*, instead of the single norms.

After the civil power has been constituted, although on the ground of natural law, the individual norms belonging to the system no longer derive their validity from natural laws, but exclusively from the authority of the sovereign, so that single norms can be valid without conforming to the natural law¹⁸.

Of course, this is the short (and rather superficial) version of the story, but Bobbio offers a meticulously detailed and sophisticated analysis of the topic, especially in his seminal essay *Natural Law and Civil Law in the Political Philosophy of Hobbes*¹⁹. Here I will only mention some of the main steps of Bobbio's analysis, again closely following Bobbio's arguments.

As I mentioned before, one of the most important elements of Hobbes' theoretical construction – and one whose appreciation enables us to fully understand why and how Hobbes, starting from natural law assumptions, arrives to firmly and strongly positivistic conclusions – is the deep reformulation of the conceptual apparatus of the natural law tradition that he develops.

One of the most important cases is that of the notion of "reason".

As Bobbio sharply points out, while in the traditional conceptions the *naturalis ratio* (natural reason) is the faculty that finds the essential truths of the first principles, in Hobbes' instrumental view reason is simply a faculty of calculating and

¹⁵ Bobbio 1993: 171.

¹⁶ Bobbio 1993: 149-171 (especially, at pp. 154-167).

¹⁷ Bobbio 1993: 166.

¹⁸ Bobbio 1993: 167.

¹⁹ Bobbio 1993: 114- 148.

drawing conclusions from given premises²⁰. Therefore, rather than discovering (and thus prescribing) what is good or bad *per se*, it shows what is good or bad (or, rather, convenient or inconvenient) in relation to a specific aim or end. “Shows”, rather than “prescribes”: indeed, as Bobbio highlights, Hobbes states many times that natural laws are improperly called laws, because they are better understood, due to the instrumental notion of reason already mentioned, as prudential rules or technical norms²¹. They do indeed oblige, but only in conscience, *in foro interno*, not in external behavior²²: this is a particularly important point, to which I will return shortly.

The problem is therefore to determine the aforementioned end. According to Hobbes, and again unlike in many traditional versions of natural law, the end in question is not a self-evident truth that imposes itself on natural reason but is deduced by reasoning (a series of logical operations) from premises to consequences, through an examination of human nature²³. Being dominated by the instinct of self-preservation, human beings consider life as the higher value. Therefore, the supreme aim, the ultimate end that the fundamental natural law suggests pursuing is the peace (which allows for the preservation of life)²⁴.

If the given end is the preservation of peace, then the first principle of nature prescribes the institution of the civil society and the state, which is the most expedient instrument for obtaining peace and hence preserving life, thus fulfilling the mandate of natural law. Therefore, the state is built upon natural law and civil laws (produced by the state) are thus justified by natural law itself²⁵.

But, according to Bobbio’s assessment, the Hobbesian revisitation of the traditional natural law conceptual apparatus is even deeper and more finely carved.

As I have mentioned before, in Hobbes’ view, natural laws oblige only in conscience. Bobbio comments that, while this seems *prima facie* to be a rather standard element in natural law doctrines, once again, in Hobbes’ theory there is a crucial difference, and an extremely significant modification of this traditional notion²⁶.

According to natural law doctrines that have a religious (or ethical) matrix, indeed, natural law implies absolute values, and, thus, obligation in conscience is un-

²⁰ Bobbio 1993: 118-119

²¹ Bobbio 1993: 56. On this point, see more in detail Bobbio 1993: 44-46.

²² Bobbio 1993: 45-46.

²³ Bobbio 1993: 120.

²⁴ Bobbio 1993: 120. From such first principle of practical reasoning, all other natural laws can be derived almost in a deductive fashion.

²⁵ Bobbio 1993: 122. See, also, the following passage by Bobbio: «Hobbes has thus relied on the law of nature only as a device, which is all the more effective because of its long-standing and authoritative use in the tradition of political thought. Hobbes employs it to provide an acceptable foundation for the absolute power of the sovereign, and thus to ensure the undisputed supremacy of positive law» (Bobbio 1993: 123).

²⁶ Bobbio 1993: 125.

conditioned and stronger than external obligation, which pertains to positive law²⁷. In Hobbes' conception, on the contrary, "obligation in conscience" means nothing other than that natural laws drive us to desire that they be implemented²⁸. And we are only able to move from merely wishing to implement them to actually implementing them when (and if) we have the certainty that we will not harm ourselves in the process²⁹. For if, as we have seen before, natural laws are relative to a purpose (peace and the preservation of life), then it follows that the obligation arising from them is not unconditional but, on the contrary, is tied to the achievement of that very purpose.

Such a certainty is only provided in civil society, in which human conduct is (not conditionally but) unconditionally prescribed³⁰. As Bobbio points out, Hobbes thus turns the traditional «relationship between internal and external obligations upside down. [In his system,] the obligations [...] unconditioned are those that the citizen assumes towards the civil power»³¹. After the establishment of the state, citizens are bound to an absolute obligation of obedience to the sovereign's commands, purely because these are commands of the sovereign and, notably, in complete independence of any evaluation of the content of the commands in question³².

However, exactly here lies one of the major points of discrepancy between Bobbio's and Dyzenhaus' Hobbesian readings. Dyzenhaus, indeed, fiercely opposes the conclusion that natural law basically disappears after the institution of the civil society.

In his view, on the contrary, the laws of nature maintain a fundamental role, conditioning the content of the laws posited by the Sovereign and, thus, providing a criterion of justice internal to positive law, a criterion that enables the legal subjects «to understand its rule as a matter of right rather than unmediated coercive power»³³. It is interesting to note that Bobbio seems to anticipate such an objection by evaluating the argument that the content of positive law is still provided by natural law, which therefore ultimately seems to retain «a function which is both relevant and irreplaceable»³⁴.

The fact is that, if we go down this road (as Dyzenhaus proposes we should do) towards its logical end, Hobbes ends up almost being a sort of Locke *ante litteram*³⁵. In Locke's view, indeed, the state's principal goal is to enforce, with its coercive power, the set of natural rights and duties that precedes the establishment of the state itself.

²⁷ Bobbio 1993: 126.

²⁸ Bobbio 1993: 126-127.

²⁹ Bobbio 1993: 126-127

³⁰ Bobbio 1993: 127

³¹ Bobbio 1993: 126

³² Bobbio 1993: 126.

³³ Dyzenhaus 2022: 101.

³⁴ Bobbio 1993: 128. This conclusion seems to be corroborated, furthermore, also by a famous passage of *Leviathan*, in which Hobbes states that «the law of nature and the civil law contain each other and are of equal extent» (Hobbes 1998: 177).

³⁵ As Bobbio keenly perceives (see Bobbio 1993: 128).

Accepting a similar view implies, thus, accepting a limited state, something that is quite contrary to the central idea of Hobbes' system³⁶. Thus, even if we resist the almost Lockean reading that Dyzenhaus advocates, we seem compelled to accept that the adoption of a natural law apparatus, even if profoundly refined, was a dangerous move on Hobbes' part, a move due to which relevant structural tensions and rather sinister crackles seem to permeate his theoretical construction.

However, in Bobbio's opinion, such a conclusion is not warranted.

Indeed, if we consider attentively Hobbes' work, we discover that not only does positive law confers legal validity to natural laws but is also considerably involved in the determination of its content. Due to their indeterminacy, indeed, the laws of nature are nothing but «empty formulas, which civil power alone can fill with a specific content»³⁷.

A (crucial) passage of the *De Cive* is very explicit, on this point:

Theft, murder, adultery, and all injuries, are forbid by the laws of nature; but what is to be called *theft*, what *murder*, what *adultery*, what *injury* in a citizen, this is not to be determined by the natural, but by the civil law³⁸.

According to Bobbio, this passage is pivotal because, in it, it is possible to fully appreciate the scope of Hobbes' revisitation of the (traditional) relationship between natural and civil law. While the first argumentative moves of Hobbes appeared to suggest that he was stating that natural law exists but is not binding, it is now clear that, actually, he is striking a much heavier blow to natural law tradition: natural law, indeed, is «so indeterminate as to be inapplicable»³⁹. If it depends on civil law to determine what are theft, murder, injury and so on, then, far from receiving its content from natural law, civil law shapes itself completely.

However, Bobbio warns us, an important problem is still to be discussed, a problem that, at first glance, seems to leave the backdoor of Hobbes' system fully open to natural law⁴⁰.

For Hobbes, positive law lies on (and it is justified by) a preexisting natural order. Therefore, in the case of gaps, when positive law is lacking, natural law returns triumphantly on stage, providing juridical solutions to cases which are not expressly regulated by positive laws⁴¹.

³⁶ Bobbio 1993: 128-129.

³⁷ Bobbio 1993: 130.

³⁸ Hobbes 1983: 101. Curiously, while Bobbio focuses with great attention on this passage in his reconstruction, Dyzenhaus, in his rather quick assessment of Bobbio's position on this (central) point, seems to overlook it (see Dyzenhaus 2022: 100, especially at footnote 43).

³⁹ Bobbio 1993: 131.

⁴⁰ Bobbio 1993: 132-135.

⁴¹ As Bobbio remarks, here we can find probably the most significant difference between Hobbes'

But, of course, as already observed, to be applied to concrete cases, natural law must be interpreted. And the authorized interpreter is, not surprisingly, the sovereign, through the person of the judge: it is at the judge's discretion to identify, determine and specify the content of natural law. The sovereign as legislator thus completely shapes the meaning of natural law by creating civil laws, while the sovereign as judge completely determines the meaning of natural law by deciding a question that is not regulated by the legislative power⁴².

To conclude this brief account of some of the key points of Bobbio's reading of Hobbes, we have now to take into considerations the question of the Sovereign and of its (alleged) limitations.

3. A Limited Sovereign?

Concluding his interpretative *tour de force* (both fascinating and controversial) on the topic of "the legal Constitution of the Sovereign", Dyzenhaus states that, contrary to the whole argumentative line developed by Bobbio, «the sovereign as ultimate judge is constrained by the laws of nature, not because it owes duties to its subjects, and despite the fact that Hobbes rejected arguments for the separation of powers. Rather, the constraints come about because of the duty the judges owe to the sovereign to interpret enacted law in the light of their understanding of the laws of nature»⁴³.

Leaving aside the (various) interpretative problems generated by this reading, I would like, at least, to emphasize that it fails to match Bobbio's main challenge: the (radical) indeterminacy of natural law.

However, Bobbio's analysis of Hobbes' system offers also other notable points to be considered regarding the configuration of the sovereign and, especially, the relationship between the sovereign and natural law that, when carefully considered, appear to put to test Dyzenhaus' reconstruction⁴⁴.

Hobbes states very clearly that, while citizens are subject to civil laws, the sovereign himself is not bound to comply with civil laws⁴⁵. However, Hobbes states also very clearly, and apparently very orthodoxly (in a traditional natural law perspective), that the sovereign is bound to observe natural law⁴⁶. Once again, thus, it seems

theory and rigorously positivistic theories (Bobbio 1993: 133).

⁴² Bobbio 1993: 135-136.

⁴³ Dyzenhaus 2022: 136. Dyzenhaus also adds that «[...] the sovereign as first and ultimate judge can either preclude or override such interpretations. However, that does not make the constraints cease to be such; it simply makes them overridable by very explicit words» (ibidem).

⁴⁴ Bobbio 1993: 136-141.

⁴⁵ Hobbes 1983: 99-100; Hobbes 1998: 176.

⁴⁶ Hobbes 1998: 141.

that at the core of Hobbes' system lies a notable tension, that, apparently, paves the way for Dyzenhaus' reading⁴⁷. However, in Bobbio's interpretation, Hobbes avoids even this last pitfall set by traditional natural law theories.

To assess the (real) effectiveness of natural law regarding the Sovereign, let's consider, Bobbio suggests⁴⁸, the two varieties of intersubjective relationship that the sovereign establishes: international relations (i.e. relations with other sovereigns), and internal relations (i.e. relations with his subjects).

As for international relations, in regard to the other sovereigns, the Sovereign finds himself in the same condition as an individual in the state of nature. In other words, he cannot be sure that he will not harm himself if he respects natural law; he cannot be sure that other sovereigns will respect natural law, at least until he and other sovereigns have established a power superior to them all, a power capable of exercising coercive power over those who do not abide by natural law.

As for internal relations, in regard to the subjects, Hobbes states very clearly that, by entering the social contract, every subject bound himself to do all that the sovereign commands, and to avoid all that the sovereign forbids. Every subject considers the actions of the sovereign as his own, thus granting the sovereign the power to establish what is just and what is unjust. It follows, therefore, that the sovereign cannot commit an injustice toward his subjects⁴⁹.

But what if a sovereign violates natural law, for example condemning an innocent to death? Well, the fact is that, in such a case, he commits a wrong toward God, not toward the subjects⁵⁰. And, since no wrong has been committed toward subjects, they do not have the right of resistance, i.e. to react justly and legitimately to an act that is considered unjust and illegal⁵¹.

⁴⁷ See, in this regard, Dyzenhaus 2022: 105-106.

⁴⁸ Bobbio 1993: 138.

⁴⁹ Bobbio 1993: 139.

⁵⁰ Both Bobbio and Dyzenhaus refers to a famous, biblical example of *Leviathan*: «And the same holdeth also in a sovereign prince, that putteth to death an innocent subject. For though the action be against the law of nature, as being contrary to equity, (as was the killing of Uriah, by David) yet it was not an injury to Uriah, but to God. Not to Uriah, because the right to do what he pleased, was given him by Uriah himself: and yet to God, because David was God's subject; and prohibited all iniquity by the law of nature. Which distinction, David himself, when he repented the fact, evidently confirmed, saying, To thee only have I sinned» (Hobbes 1998: 141-142). Dyzenhaus is especially interested in discussing the example (see Dyzenhaus 2022: 123-127), devoting many ingenious, strenuous (and perhaps also a bit tortuous) interpretive efforts to show that adopting such example was a rather clumsy choice, by Hobbes, because «the story cannot be on Hobbes's own terms an exercise of power through law» (Dyzenhaus 2022: 125). Despite the reading which he attempts to foster, however, Dyzenhaus himself recognizes that while Hobbes was clear that David violated the laws of nature, his point was that the subject is precluded from bringing the sovereign to account, that is, from punishing it, because whatever the sovereign does is authorized by the subject [...] Subjects cannot then claim that the sovereign has injured them or treated them unjustly» (Dyzenhaus 2022: 124).

⁵¹ Bobbio 1993: 139-140.

There is, of course, a notable exception, derived from the very premise of Hobbes' system: as already mentioned, such fundamental value is (preservation of) life. The right to life is, thus, inalienable, and, consequently, the duty of obedience ends when the order of the sovereign threatens the subject's life, for example in the case of a death sentence.

But, unlike Beccaria⁵² (who will start from Hobbesian assumptions, while rejecting Hobbesian conclusions), Hobbes does not conclude that capital punishment is unjustifiable. On the contrary, the sovereign has the right to sentence a subject to death who, in his judgment, deserves it. The point is that the covenant between the sovereign and the subject has been broken, at that moment, and both are back in the state of nature⁵³. The sovereign has the right to use force to see his order carried out, in the same way that John Dillinger has the right to try to run faster than the bullets of the marshals, as well as to shoot back.

The elements until now briefly (and rather superficially) recalled help us to understand a last, extremely significant revisitation of the traditional natural law conceptual apparatus that, according to Bobbio, Hobbes operates.

Despite the efforts of Dyzenhaus to suggest otherwise⁵⁴, indeed, as Bobbio acutely observes, completely lacking, in Hobbes' works, is a theory of the abuse of power.

That's not surprising: abuse consists in going beyond established limits, and, therefore, «there cannot be abuse where there are no limits»⁵⁵. Thus, as Bobbio points out, Hobbes rejects, once again, a traditional and even vexed distinction: that between pure and corrupts forms of government, between king and tyrant⁵⁶. This is a particularly important step that once again demonstrates the powerful innovation and radical reformulation of the natural law apparatus developed by Hobbes. Such a reformulation, when fully appreciated, seems to pose extremely significant challenges to the fascinating yet controversial reading that Dyzenhaus proposes to us.

⁵² And as, nowadays, Luigi Ferrajoli does, starting from social-contractarian, and especially Hobbesian, assumptions and explicitly criticizing those authors, like Hobbes, who, on the same basis, justified, on the contrary, the death penalty (see Ferrajoli 2016: 200-203).

⁵³ Bobbio 1993: 140-141.

⁵⁴ See, especially, Dyzenhaus 2022: 120-121.

⁵⁵ Bobbio 1993: 59.

⁵⁶ Bobbio 1993: 59-60. As Bobbio points out, indeed, in Hobbes' view, a (legitimate) reason for subjects to regard themselves as exonerated from the duty of obeying to the Sovereign, rather than the excess of his power is the lack of it. Indeed, a sovereign (being it a man or a civil person) who is no longer capable of protecting the subjects, avoiding the collapse again in the state of nature, is no more fulfilling its task, and subjects are therefore absolved of their obedience. See, on this point, Hobbes 1998: 147: «The obligation of subjects to the sovereign, is understood to [114] last as long, and no longer, than the power lasteth, by which he is in what cases able to protect them. For the right men have by nature to protect subjects are themselves, when none else can protect them, can by no covenant be absolved of their relinquished».

4 Concluding Remarks

As I mentioned at the outset, the brief length of an essay cannot hope to do justice to even a single chapter, let alone Dyzenhaus' volume in all its fascinating complexity, especially one as dense, provocative and stimulating as that devoted to Hobbes. I hope, however, to have picked up at least some of the key elements on which Dyzenhaus bases his interpretation, and at the same time to have given some of the reasons that make Bobbio's Hobbes, at least in my opinion, still more convincing than the Hobbes that Dyzenhaus proposes to us.

Of particular relevance are the (significant) revisions of the traditional natural law theory's apparatus that, according to Bobbio, Hobbes develops.

Among the most notable of these revisions we find: the reformulation of the very notion of "natural reason", which, as before mentioned, for Hobbes is nothing more than a faculty of calculating and of drawing conclusions from certain premises; the depletion of the (traditional conception of) natural law, whose (radical) indeterminacy is often highlighted by Hobbes; the revision of the traditional relationship between natural and civil law; the abandonment of the traditional theory of the abuse of power.

Minimizing these radically innovative elements of Hobbes' system, Dyzenhaus' reading ends up being often uneconomical, unduly emphasizing tensions internal to Hobbes' systems that, after such an invigorating treatment, require complex (and sometimes convoluted) interpretative efforts to be solved.

For sure, I am not claiming at all that the system of Hobbes is always perfectly consistent and exempt from any structural tension. On the contrary, as also Bobbio recognizes⁵⁷, Hobbes' theoretical construction is far from the consistency of a (completely) positive law theory and, furthermore, Hobbes didn't explore all the possible consequences following from the natural law premises based on which he built his system.

Still, it seems to me that the Bobbian reading of Hobbes is best suited to make sense of the logical rigor, the overall internal coherence, the brave novelty and the intellectual audacity of the path that leads Hobbes, not without dangerous turns and rather adventurous passages, from natural law premises to positive law conclusions.

Reading Dyzenhaus' captivating prose, one sometimes wonders why this author did not choose Locke directly as the starting point of his journey instead of going to such lengths to elaborate this quasi-Lockean Hobbes. No less classic than Hobbes, Locke (at least, that's my impression) would have fit Dyzenhaus' picture far better and also been far less controversially open to reinterpretation through Hartian eyes.

However, enough with the idle curiosity of the reader. Luckily, the author decided otherwise, presenting us with a controversial, interesting and thought-provoking

⁵⁷ Bobbio 1993: 167.

Hobbes, which, surely, will be among the many reasons of the widespread attention, the heated debates and the influential reflections that Dyzenhaus' remarkable book, it is easy to predict, will not fail to generate.

References

- Bobbio, N. (1993). *Thomas Hobbes and the Natural Law Tradition* (Translation by Daniela Gobetti of N. Bobbio, *Thomas Hobbes e il diritto naturale*, Torino, Einaudi, 1989), Chicago-London, The Chicago University Press.
- Dyzenhaus, D. (2022). *The Long Arc of Legality. Hobbes, Kelsen, Hart*, Cambridge-New York- Melbourne-New Delhi, Cambridge University Press.
- Ferrajoli, L. (2016). *Il paradigma garantista. Filosofia e critica del diritto penale* (first edition 2014, edited by Dario Ippolito and Simone Spina), Napoli, Editoriale Scientifica.
- Hobbes, Th. (1983). *De Cive (the English Version, 1651, Latin Version 1642)*, ed. By Howard Warrender, Oxford-New York-Toronto, Oxford University Press.
- Hobbes, Th. (1998). *Leviathan* (1651), edited and introduced by J.C.A. Gaskin, Oxford- New York, Oxford University Press.
- Rawls, J., (2007). *Lectures on the History of Political Philosophy*, ed. by S. Freeman, Cambridge-London, Harvard University Press.

