

Book Review

Perez Zagorin: Hobbes and the Law of Nature

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by *Rudolf Schüssler*

Perez Zagorin died in 2009 and *Hobbes and the Law of Nature*, his last monograph, is a kind of legacy. It brings the expertise of one of the leading scholars on English early modern thought to bear on Thomas Hobbes, England's most innovative philosopher of the era (as Zagorin argues). *Hobbes and the Law of Nature* is an essay not only on the law of nature but on many central concepts in Hobbes's philosophy. Zagorin displays his views lucidly and with experienced skill. His main claim is that Hobbes was a natural law theorist in a novel but distinctly early modern fashion. All attempts to remove natural law and natural rights from Hobbes's political and moral thought are bound to fail. This is, of course, no novel approach and one should not expect to find completely new directions for Hobbes scholarship in Zagorin's book. The strengths of his treatment of longstanding issues derive from the nuances of his argument and his skillful handling of controversies. In general, Zagorin takes the side of those who read Hobbes against the background of early modern intellectual history. To my knowledge, no recent intellectual historian has emphasized the self-interest motive in Hobbes to the exclusion of natural law and morality. The champions of rational egoism in Hobbes usually prefer immanent interpretations and they therefore miss, here I agree with Zagorin, the subtleties of Hobbes's morality which come into profile only in comparison with the thought of his time.

With respect to natural law and natural rights Hobbes's intellectual background extends back into the Middle Ages but the early modern era was also rich in treatises on the subject. Zagorin supplies the reader (in Chapter 1) with a concise overview of Catholic and Protestant natural law thinking. Hobbes intended to renovate both, and Zagorin emphasizes that this intention entailed an implicit critique of Hugo Grotius. Whereas it was traditionally assumed that the principles of natural law were immediately evident, as "writings in the heart" or via some faculty of moral insight, Hobbes believed that they had to be deduced. The Hobbesian roots of natural law can be found as dispositions in the book of nature and may be deciphered by anybody who reads that book with a clear and receptive mind. Such a reader will study nature as a system of bodies in motion and notice that all things tend to preserve their being. Hence, self-preservation is a basic drive which gives rise to a natural right to do everything that serves

one's own preservation. Zagorin contends that Hobbes was the first philosopher who did not derive natural right from natural law. I am not sure whether this is right. Our knowledge concerning the rise of natural rights in late medieval and early modern thought is far from satisfactory, not least because the text production "On Justice and Rights" (*De iustitia et iure*) and related subjects was so immense in these eras. Konrad Summenhart (c. 1455–1502), whose ideas pervaded all subsequent scholastic studies "On Justice and Rights" but who is not mentioned by Zagorin, did already translate physical dispositions into the language of rights. In any case, Hobbes thinks that a direct logical road leads from a natural right of self-preservation to natural laws which help to maintain peace. For this reason, obedience to natural law is in the interest of each individual because it renders self-preservation much more likely. However, Zagorin points out that Hobbes's precepts of natural law are also commands of God and guidelines for making men virtuous. One might suspect redundancy here, but this objection shall be postponed for the moment because Zagorin answers it more fully in Chapter 4.

Chapter 2 of *Hobbes and the Law of Nature* puts some flesh on the bones of the book's argument. Here, human nature and the state of nature come to the foreground and the Hobbesian creation of the commonwealth is outlined. These are, of course, moves which are familiar from most treatments of Hobbes's political philosophy and I will only comment on what seems to me Zagorin's peculiar contribution to the ongoing Hobbes debate. This also means that we regard the approaches of Taylor, Warrender, and Martinich as not completely off the mark and concentrate on Zagorin's additions and corrections. His main point in Chapter 2 touches upon the relation of natural law and civil law. From a traditional Christian perspective civil law should be an outflow of natural law. It should codify what natural law demands and if the implications of natural law are uncertain or leave room for design, civil law should take care not to contradict natural law. (For this reason, early modern handbooks of moral theology were full of rules for moral risk management. They were explicitly thought to be relevant for lawyers and hence implicitly for the design and interpretation of civil law). According to Zagorin it is an important aspect of Hobbes's thought that he breaks with the tradition of regarding natural law as a higher or covering law. He rather equates natural and civil law and thus creates a form of legal positivism. Zagorin quotes Hobbes saying that civil law and natural law "contain each other and are of equal extent". This is a strong claim. I believe that Hobbes is rather concerned with the interpretation of both kinds of law here. Since the sovereign is arbiter of both and his interpretation practically establishes the meaning of laws, civil law and natural law cannot contradict each other. However, this does not entail that natural law and civil law cannot diverge in principle. Natural law embodies the conclusions of right reason from the natural right of self-preservation. A sovereign may fail to draw the right conclusions in his interpretation of civil law, although nobody can aspire to have an elevated enough epistemic status to correct the sovereign. In my view, Hobbes is alluding

to the consequences of this epistemic shortcoming in his remark but he does not regard the sovereign as absolutely infallible.

The sovereign fully takes centre stage in Chapter 3. Here, Zagorin crosses swords with Quentin Skinner on the subject of republican liberty. Republican liberty means not being dominated by others as human being and as citizen. The importance of this concept of liberty not only in the early modern era but also before should be out of question. Nevertheless, I agree with Zagorin that it has only secondary importance for Hobbes who is a classical champion of negative liberty. Hobbes's understanding of liberty is strongly influenced by his natural philosophy and thus unimpeded motion becomes the core concept for political liberty. As a further point, Zagorin argues that the Hobbesian sovereign will be a moral ruler. Zagorin follows Larry May in regarding equity as the central category of Hobbes's political and legal philosophy. Indeed, although the sovereign cannot be unjust he can fail to be equitable, and therefore moral standards exist against which he can be judged. However, such judgements are matters of conscience and the only judge who may punish the moral faults of a sovereign is God. Zagorin takes account of Hobbes's view that breaches of natural law will lead to natural punishments through diseases, disasters or wars. God is at best indirectly involved in these chains of consequences but that does not mean that Hobbes fails to regard him as the ultimate cause.

The focus of Chapter 4 is on Hobbes the moral philosopher. Zagorin insists that Hobbes does develop a moral philosophy, he quotes authors approvingly who ascribe a virtue theory to Hobbes, and he takes care to show that Hobbes goes beyond mere moral contractualism. It is true that Hobbes's concept of obligation is contractualist because no obligation can arise without the consent of an agent. Yet moral duties or virtuous action can arise apart from obligations in a Hobbesian world. Obligation is traditionally defined as "bondage of law" (*vinculum juris*) in medieval Roman law and it therefore presupposes a legal context besides which moral contexts may exist. It should also be clear that the traditional definition of obligation undercuts all talk of "prudential obligation". As far as prudence is concerned we should also handle with care Hobbes's alleged identification of this virtue with a rational interest calculus, especially if this calculus is tailor-made for modern *homo oeconomicus*. Zagorin makes use of the distinction between psychological and tautological egoism in order to show that Hobbesian rational man need not be restricted to a classical set of selfish motivations (e.g. power, money, sex). It is tautological to assume that everybody acts for his own good because what he acts for is for this very reason his own perceived good. This point was already made *ad nauseam* by the medieval scholastics. The self-interest school of Hobbes studies is on stronger ground with the claim that natural laws hold because they are in the interest of individual agents. It is customary to quote Hobbes's reply to "the fool" in this respect. The fool says that there is no justice and he intends to break covenants even if the other party has already performed. This setting becomes relevant because fear of non-performance by the other side might be a legitimate cause for breaking a covenant. If the other side has already performed such a fear would obviously be

nonsensical. Without fear as a legitimate excuse, it becomes unjust not to fulfil one's own part in a covenant, although it may appear very much in one's interest to do so. Hobbes then goes on to show that nobody can have a real interest in breaking covenants as a second mover. Such behavior, if noticed by third parties, would lead to the exclusion of the agent from civil society. The agent would have to remain in a state of nature and perish there rather quickly and nastily. Now, isn't that a perfectly egoistical reason devoid of any moral connotations? Zagorin concedes the point but adds that Hobbes is arguing with a fool here. The fool understands only the language of rational egoism, which does not entail that Hobbes would not accept moral reasons for *pacta sunt servanda*. Zagorin's rejoinder makes a point but I think it concedes too much. We should ask: Why is the fool's risk assessment objectively wrong in Hobbes's eyes? From a modern point of view the whole question centers on the assessment of probabilities of stealth combined with utility gains that might counterbalance a small risk of becoming stuck in the state of nature. Without assumptions about these magnitudes it remains open whether the fool is right or wrong—and thus whether he is a fool at all. For Hobbes things look different. Breaking covenants as a second mover cannot earn anything *in principle* that might outweigh a loss in survival security, despite Hobbes's subjective understanding of "personal good". Securing one's survival is a right of nature but not a mere license. It grounds a duty of self-preservation and therefore embodies the old, morally charged notion of *ius*. In the argument against the fool, Hobbes relies on objective interest against the subject's understanding of its own interest. This objective interest gives rise to a duty not to risk one's self-preservation even for possible utility gains of arbitrary size. Hobbes therefore answers the fool with a moral argument.