

# Daniel Eggers, Liberty and contractual obligation in Hobbes (final manuscript)

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*Abstract: The paper critically discusses the deontological interpretation of Hobbesian contractual obligation which has been advocated by commentators such as Brian Barry, D. D. Raphael and Bernd Ludwig. According to this interpretation, the obligation to comply with contracts and covenants is fundamentally different from the obligation to observe the laws of nature. While the latter is taken to be a prudential obligation that is logically dependent upon the individual aim of self-preservation, the former is viewed as an absolute or unconditional moral obligation that solely follows from the fact that the individual has bound himself to the performance or omission of certain actions. As can be shown, the deontological interpretation suffers from inherent problems and does not provide an appropriate interpretation of the Hobbesian texts. In particular, it can be demonstrated that the attempt to use Hobbes's concept of 'freedom as deliberation' in order to explain how obligations arise from contractual agreements faces serious difficulties.*

Keywords: Thomas Hobbes; Obligation; Laws of Nature; Contracts and Covenants

## *Introduction*

Hobbes's theory of obligation is one of the most intensely discussed elements of Hobbes's moral and political philosophy. The discussion of this theory is closely associated with the works of Alfred Taylor and Howard Warrender,<sup>1</sup> and in particular with Warrender's influential book *The political philosophy of Hobbes*, originally published in 1957. Taylor and Warrender forcefully challenged the traditional interpretation of Hobbes according to which Hobbesian moral laws, the laws of nature, are maxims of self-interest which impose upon the individual merely prudential obligations. According to Taylor and Warrender, Hobbes

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<sup>1</sup> See A. E. Taylor, "The ethical doctrine of Hobbes" in P. King (ed.), *Thomas Hobbes. Critical Assessments. 4 Volumes*. Volume 2: Ethics (London; New York: Routledge Kegan, 1993), pp.22-39; Howard Warrender, *The political philosophy of Hobbes. His theory of obligation* (Oxford: Oxford University Press, 1957); Howard Warrender, "A Reply to Mr. Plamenatz" in K. C. Brown (ed.), *Hobbes Studies* (Oxford: Blackwell, 1965), pp.89-100; Howard Warrender, "A Postscript on Hobbes and Kant", in R. Koselleck/ R. Schnur (eds.), *Hobbes-Forschungen* (Berlin: Duncker & Humblot, 1969), pp.152-157; Howard Warrender, "Hobbes and Macroethics: The Theory of Peace and Natural Justice" in C. Walton/ P. J. Johnson (eds.), *Hobbes's 'Science of Natural Justice'* (Dordrecht; Boston; Lancaster: Martinus Nijhoff, 1987), pp.297-308; Howard Warrender, "Hobbes's Conception of Morality" in P. King (ed.), *Thomas Hobbes. Critical Assessments. 4 Volumes*. Volume 2: Ethics (London; New York: Routledge & Kegan, 1993), pp.130-145; Howard Warrender, "Obligations and Rights in Hobbes" in P. King (ed.), *Thomas Hobbes. Critical Assessments. 4 Volumes*. Volume 2: Ethics (London; New York: Routledge & Kegan, 1993), pp.155-161.

understands the natural laws first and foremost as divine commands and therefore as obligating in a non-prudential, genuinely moral way.

While few commentators have since followed Taylor's and Warrender's interpretation, the 'Taylor-Warrender thesis' has undoubtedly made a strong overall impact on Hobbes scholarship, not least because it has led to some interesting revisions of the traditional interpretation. One and perhaps the most important of these revisions is represented by what I would like to call the deontological reading of Hobbes's theory of contracts and covenants. According to this reading, there is a fundamental difference between obligations which derive from the Hobbesian laws of nature and obligations which derive from contractual agreements: The obligation to observe the laws of nature is dependent upon the individual's striving for self-preservation and hence purely prudential, as claimed by the traditional interpretation; the obligation to keep contracts and covenants, however, is a genuine moral obligation, that is, an absolute or unconditional obligation that is independent of individual goals and interests; it follows solely from the fact that in making those contractual agreements, the individuals have freely and voluntarily given up a particular part of their natural right and bound themselves to the performance or omission of certain acts.

The deontological reading of Hobbes's theory of contracts and covenants, has first been advocated by D. D. Raphael and Brian Barry in the 1960s<sup>2</sup> and has recently found an increasing number of followers. Among those who have subscribed to it are R. E. Ewin, Bernd Ludwig and Martin Harvey. Ludwig has so far provided the fullest elaboration of the reading.<sup>3</sup> Unlike Raphael, Ewin and Harvey, however, Ludwig explicitly adds an evolutionary thesis to the deontological interpretation of Hobbesian contractual obligation, a thesis already

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<sup>2</sup> See D. D. Raphael, "Obligations and Rights in Hobbes" in P. King (ed.), *Thomas Hobbes. Critical Assessments. 4 Volumes. Volume 2: Ethics* (London; New York: Routledge & Kegan, 1993), pp.146-154; and Brian Barry, "Warrender and his critics" in P. King (ed.), *Thomas Hobbes. Critical Assessments. 4 Volumes. Volume 2: Ethics* (London; New York: Routledge & Kegan, 1993), pp.177-196. See also D. D. Raphael, *Hobbes. Morals and Politics* (London: Allen & Unwin, 1977); and D. D. Raphael, "Hobbes on Justice" in G. A. J. Rogers/ A. Ryan (eds.), *Perspectives on Thomas Hobbes*, (Oxford: Oxford University Press, 1988), pp.153-170.

<sup>3</sup> See R. E. Ewin, *Virtues and rights. The moral philosophy of Thomas Hobbes* (Boulder; San Francisco; Oxford: Westview Press, 1991); Bernd Ludwig, *Die Wiederentdeckung des Epikureischen Naturrechtes. Zu Thomas Hobbes' philosophischer Entwicklung von De Cive zum Leviathan im Pariser Exil 1640-1651* (Frankfurt a. M.: Klostermann, 1998); Bernd Ludwig, "Auf dem Wege zu einer säkularen Moralwissenschaft: Von Hugo Grotius' De Jure Belli ac Pacis zu Thomas Hobbes' Leviathan", *Jahrbuch für Recht und Ethik*, 8 (2000), 3-31; and Martin Harvey, "Teasing a limited deontological theory of morals out of Hobbes", *The Philosophical Forum*, 35 (2004), 35-50.

suggested in Barry's article of 1968.<sup>4</sup> According to Ludwig, Hobbes does not arrive at a straightforward and consistent distinction between the prudential force of the laws of nature and the genuine moral force of contractual agreements until the composition of the English *Leviathan* (1651). Therefore, the deontological reading provides an appropriate interpretation of the *Leviathan* but not necessarily of the earlier versions of Hobbes's theory, as they are presented in *The Elements of Law* (1640) and *De Cive* (1642). Moreover, Ludwig somewhat distances himself from Raphael's distinction between the "natural obligation" towards the laws of nature and the "artificial obligation"<sup>5</sup> towards contracts and covenants. Following Ludwig, in the English *Leviathan*, Hobbes does not any longer use the concept of 'obligation' to describe the force of the natural laws at all but resolutely reserves it for describing the normative consequences of contractual agreements.<sup>6</sup>

To say that contractual agreements are the source of moral obligations in the strict sense of the word, however, does not yet explain why and how such obligations arise from those agreements. Thus the deontological interpretation needs to be backed up by an explanation of how the notion of voluntarily binding oneself to the performance or omission of certain actions can be made sense of and, in particular, how it can be made sense of *within the Hobbesian system*. The few advocates of the deontological reading who have explicitly addressed this question so far have tried to answer it by appealing to an element of Hobbes's treatment of human liberty which is usually referred to under the heading "freedom as deliberation"<sup>7</sup>. While there has been much discussion in the past about whether Hobbes's treatment of liberty underwent significant changes and revisions after 1640,<sup>8</sup> there can be no doubt that the notion of 'freedom as

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<sup>4</sup> See Ludwig, *Die Wiederentdeckung des Epikureischen Naturrechtes*, 246. See also Barry, "Warrender and his critics", 177f.

<sup>5</sup> See Raphael, "Obligation and Rights in Hobbes", 149.

<sup>6</sup> See Ludwig, *Die Wiederentdeckung des Epikureischen Naturrechtes*, 251. See also Barry, "Warrender and his critics", 188.

<sup>7</sup> Wolfgang von Leyden, *Hobbes and Locke. The Politics of Freedom and Obligation* (London: St. Martin's Press, 1982), 38. See also Wernham who employs the somewhat ambiguous term "freedom of choice" (A. G. Wernham, "Liberty and Obligation in Hobbes" in K. C. Brown (ed.), *Hobbes Studies* (Oxford: Blackwell, 1965), pp.117-139, 123.

<sup>8</sup> See, for example, J. R. Pennock, "Hobbes's confusing 'clarity' - the case of 'Liberty'" in K. C. Brown (ed.), *Hobbes Studies* (Oxford: Blackwell, 1965), pp. 101-116; Wernham, "Liberty and Obligation in Hobbes", F. C. Hood, "The Change in Hobbes's Definition of Liberty", *The Philosophical Quarterly*, 17 (1967), 150-163; von Leyden, *Hobbes and Locke*; D. D. Raphael, "Hobbes" in Z. Pelczynski/ J. Gray (eds.), *Conceptions of Liberty in Political Philosophy*, (New York: Athlone Press, 1984), pp.27-38; M. M. Goldsmith, "Hobbes on Liberty", *Hobbes Studies*, 2

deliberation' is developed in all of Hobbes's major political works, and that it is always developed in about the same way. In the *Elements*, the concept is introduced in chapter XII, in the framework of Hobbes's discussion of deliberation and the human will. In describing appetite and fear as the first unperceived beginnings of human action, Hobbes defines deliberation as the alternating succession of appetite and fear and advances a somewhat dubious etymological thesis which links his notion of deliberation with the notion of liberty.

This alternate succession of appetite, during all the time the action is in our power to do, or not to do, is what we call DELIBERATION; which name hath been given it for that part of the definition wherein it is said that it lasteth so long, as the action whereof we deliberate, is in our power; for so long we have the liberty to do or not to do: and deliberation signifieth the taking away of our own liberty.<sup>9</sup>

The etymological thesis associated with Hobbes's concept of 'freedom as deliberation' has, as far as I can see, failed to find any devoted followers. However, some commentators have drawn upon the suggested connection between deliberation and the will in order to explain how obligations can be said to arise from the making of contracts and covenants. Thus Ludwig holds that in making an agreement and declaring the will to comply with a certain course of action, Hobbesian individuals put an end to the deliberative process regarding the actions in question and determine themselves to act in the promised way.<sup>10</sup> Similarly, von Leyden equates the obligations arising from agreements with the termination of deliberation and the loss of the liberty to perform or not to perform a certain action.<sup>11</sup> That there is conceptual connection between the loss of freedom

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(1989), 23-39; Annabel S. Brett, *Liberty, right and nature* (Cambridge: Cambridge University Press, 1997); Matthew H. Kramer, "Freedom, Unfreedom and Skinner's Hobbes", *The Journal of Political Philosophy*, 9 (2001), 204-216; Matthew H. Kramer, "On the Unavoidability of Actions: Quentin Skinner, Thomas Hobbes, and the Modern Doctrine of Negative Liberty", *Inquiry*, 44 (2001), 315-330; Quentin Skinner, "Hobbes on the proper signification of liberty" in Q. Skinner, *Visions of Politics, Volume 3: Hobbes and Civil Science* (Cambridge: Cambridge University Press, 2002), pp.209-237; Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008).

<sup>9</sup> Thomas Hobbes, *The Elements of Law: Natural and Politic*. Reprint of the 1889 edition by F. Tönnies with a new Introduction by M. M. Goldsmith (London: Frank Cass, 1969), I.12.1, 61.

<sup>10</sup> See Ludwig, *Die Wiederentdeckung des Epikureischen Naturrechtes*, 337f.

<sup>11</sup> See von Leyden, *Hobbes and Locke*, 76.

of deliberation and the obligation to act in a particular way has also been claimed recently by Michael LeBuffe and Rosamond Rhodes.<sup>12</sup>

I will argue in the present paper that the attempt to link the notion of ‘freedom as deliberation’ with a deontological interpretation of Hobbesian contractual obligation fails and, more generally, that the deontological reading does not provide a convincing account of Hobbes’s theory of contractual agreements. It cannot be denied that in his earlier works Hobbes at some points suggests a connection between the loss of deliberative liberty and the obligation to keep one’s contracts and covenants. However, it can be shown that the suggested position faces a number of problems and does not provide a sound basis for understanding contractual obligation as moral obligation in the strict sense of the word. Moreover, it can be demonstrated that after the composition of the *Elements*, Hobbes more and more gives up his attempt to link the notion of obligation with the notion of ‘freedom as deliberation’. Contrary to Ludwig’s thesis, the *Leviathan* provides the least evidence for the claim that Hobbesian contractual obligation could be independent of the third law of nature and could be anything other than prudential in character.

My analysis will proceed as follows: I will start with a brief account of Hobbes’s discussion of contractual obligation. My focus will be on the text of the *Elements* which will turn out to contain the version of Hobbes’s theory most sympathetic to the deontological reading. I will then try to show that not even the *Elements* allows for the interpretation of contractual obligation forwarded by Raphael, Barry, and Ludwig. In order to address Ludwig’s claim that the true character of Hobbesian contractual obligation is not spelled out in full clarity in the earlier works, I will also examine the development of Hobbes’s treatment of contractual obligation after 1640. By highlighting the most important revisions of Hobbes’s argument, I will show that the development runs counter to Ludwig’s thesis. The revisions in Hobbes’s argument not only allow us to reject Ludwig’s reading. They also strongly suggest that by the time of the English *Leviathan*, Hobbes himself had become aware of the serious problems inherent in every attempt to explain contractual obligation in terms of the loss of deliberative liberty.

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<sup>12</sup> See Rosamond Rhodes, “Obligation and Assent in Hobbes’s Moral Philosophy”, *Hobbes Studies*, 15 (2002), 45-67; and Michael LeBuffe, “Hobbes on the origin of obligation”, *British*

## I.

Given the outward structure of Hobbes's theory and the internal structure of Hobbes's argument, the deontological interpretation must first strike as odd. A repeated objection against the 'Taylor-Warrender thesis' has been that it interprets Hobbes's theory in stark contrast to the way in which this theory is presented by Hobbes.<sup>13</sup> A similar objection can undoubtedly be launched against the deontological reading of Hobbesian contractual obligation. In all of his works, Hobbes develops his theory of contractual agreements within the context of his natural law doctrine. By being inserted into the deduction of the various laws of nature, the theory of contracts and covenants is outwardly presented as being an integral part of the theory of natural law. Moreover, Hobbes explicitly connects his discussion of contractual agreements and contractual obligation with the deduction of the laws of nature. Thus he makes the requirement to enter into contractual agreements the object of the second law of nature;<sup>14</sup> and he makes the obligation to keep valid covenants the object of the third law of nature: "That every man is obliged to stand to, and perform, those covenants which he maketh"<sup>15</sup>. This third law of nature is explained by Hobbes with the help of a prudential argument. Without such a law, Hobbes claims, the making of contractual agreements, demanded by the second law of nature as a necessary means to peace and self-preservation, would not be of any "effect" and "benefit"<sup>16</sup>.

Still, there are indications in Hobbes's text, that the normative force of the laws of nature and the normative force of contractual agreements could in a fundamental sense be different. The first thing to be noted is that in referring to those respective forces, Hobbes makes use of slightly different terminologies. Thus he calls the violation of contractual agreements, but not the violation of the

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Journal for the History of Philosophy, 11 (2003), 15-39.

<sup>13</sup> See, for example, S. M. Brown, "Hobbes: The Taylor Thesis" in P. King (ed.), *Thomas Hobbes. Critical Assessments. 4 Volumes. Volume 2: Ethics* (London; New York: Routledge & Kegan, 1993), pp. 99-115, 102f.; Thomas A. Spragens Jr., *The Politics of Motion. The World of Thomas Hobbes* (London: Croom Helm, 1973), 31; and Michael Esfeld, *Mechanismus und Subjektivität in der Philosophie von Thomas Hobbes* (Stuttgart-Bad Cannstatt: Frommann-Holzboog, 1995), 285.

<sup>14</sup> See *The Elements of Law*, I.15.2, 75.

<sup>15</sup> *The Elements of Law*, I.16.1, 82.

<sup>16</sup> *The Elements of Law*, I.16.1, 82.

laws of nature, “injury”<sup>17</sup>; he reserves the terms ‘property’ and ‘meum’/‘tuum’ for those individual rights which arise from contractual agreements;<sup>18</sup> and while he sometimes uses the terms ‘oblige’, ‘obligation’ and ‘obligatory’ to denote the force of the natural laws,<sup>19</sup> he tends to employ these terms only in contexts where contractual agreements are being discussed or the civil laws which ultimately derive their binding force from such agreements.<sup>20</sup>

What is most important, however, is that in discussing the various forms of agreements, Hobbes sometimes does not explain their obligatory force – or their lack of obligatory force – by drawing upon the third law of nature or the underlying aims of peace and self-preservation. Instead, he develops a second line of argument according to which contracts and covenants oblige in virtue of being the result of voluntary actions. The first relevant passage can be found in Hobbes’s analysis of free gifts in chapter XV of the *Elements*. After discussing which declarations are to be understood as sufficient ‘significations’ of the will for an agreement to come about, Hobbes first gives a formal definition of the term ‘free gift’. He then emphasizes that unlike actual donations, promises of future donations do not give rise to any obligations. As Hobbes’s repeated references to the deliberation and the will of the promiser show, the theoretical background for his central claim is provided by the earlier discussion of ‘freedom as deliberation’ in chapter XII.

And in free gift no other words can be binding, but those which are *de praesenti*, or *de praeterito*: for being *de futuro* only, they transfer nothing, nor can they be understood, as if they proceeded from the will of the giver; because being a free gift, it carrieth with it no obligation greater than that which is enforced by the words. For 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; and he that deliberateth hath not yet willed, because the will is the last act of his deliberation.<sup>21</sup>

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<sup>17</sup> *The Elements of Law*, I.16.2, 82. See also I.16.3, 83 and II.2.3, 119.

<sup>18</sup> See *The Elements of Law*, II.1.2, 109. See also II.5.2, 139f.

<sup>19</sup> See *The Elements of Law*, I.16.1, 82; II.2.10, 124; and II.9.2, 179.

<sup>20</sup> See *The Elements of Law*, I.15.9, 78; I.15.12, 79; I.15.13, 80; I.15.17, 81; I.19.7, 103f.; II.1.18, 116; II.1.19, 117; II.2.11, 124; II.2.12, 125; II.3.7, 130; II.6.3, 146; II.8.4, 170; II.8.6, 172; and II.10.2, 185.

<sup>21</sup> *The Elements of Law*, I.15.7, 77.

According to Hobbes, a promise to make a donation at some later time cannot be said to bind or oblige the promiser to actually do so because the promiser cannot be said to have put an end to his deliberation concerning the future action and to have formed a determinate will. Thus Hobbes connects this concept of ‘freedom as deliberation’ with the concept of obligation and presents obligations as the result of the loss of deliberative liberty. We find the same connection in Hobbes’s subsequent discussion of covenants. Hobbes defines covenants as contractual agreements in which at least one party does not perform his or her part of the bargain immediately, but gives a promise for the future. He then emphasizes that, unlike promises of future donations, covenants do create obligations, and again uses the notion of ‘freedom as deliberation’ to explain this fact.

In all contracts where there is trust, the promise of him that is trusted, is called a COVENANT. And this, though it be a promise, and of the time to come, yet doth it transfer the right, when that time cometh, no less than an actual donation. For it is a manifest sign, that he which did perform, understood it was the will of him that was trusted, to perform also. Promises therefore, upon consideration of reciprocal benefit, are covenants and signs of the will, or last act of deliberation, whereby the liberty of performing, or not performing, is taken away, and consequently are obligatory.<sup>22</sup>

In addition to the sections just discussed, there are some other passages which suggest that Hobbes conceives of contractual obligations as independent of any prudential considerations and as the result of the agreement itself or of the will formed and expressed in making the agreement. One of these passages is Hobbes’s discussion of oaths at the end of chapter XV. One crucial question which Hobbes considers is whether an oath that is attached to a promise adds to the obligation to keep it. In answering the question, Hobbes not only claims that a covenant carries obligatory force in itself. He also emphasizes that the only effect of an oath is to provoke additional negative consequences for the case of non-performance.<sup>23</sup> This seems to support the view that it is not the negative consequences of non-compliance which give rise to contractual obligations in the first place, contrary to what Hobbes’s prudential justification of the third law of nature suggests.

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<sup>22</sup> *The Elements of Law*, I.15.9, 78.

<sup>23</sup> See *The Elements of Law*, I.15.17, 81.

In a passage in chapter XVI, Hobbes seems to be making the same point. It is perhaps the passage most often quoted as evidence for the deontological reading.

There is a great similitude between that we call injury, or injustice in the actions and conversations of men in the world, and that which is called *absurd* in the arguments and disputations of the Schools. For as he, that is driven to contradict an assertion by him before maintained, is said to be reduced to an absurdity; so he that through passion doth, or omitteth that which before by covenant he promised not to do, or not to omit, is said to commit injustice. And there is in every breach of covenant a contradiction properly so called; for he that covenanteth, willeth to do, or omit, in the time to come; and he that doth any action, willeth it in that present, which is part of the future time, contained in the covenant: and therefore he that violateth a covenant, willeth the doing and the not doing of the same thing, at the same time; which is a plain contradiction.<sup>24</sup>

Hobbes's claim that the violation of covenants is a form of self-contradictory behaviour has not only inspired Taylor and Raphael to argue that Hobbesian contractual obligation must be seen as a strict moral obligation. It has also led both commentators to see important similarities between Hobbes's understanding of contractual obligation and Kant's understanding of the categorical imperative.<sup>25</sup> However, our subsequent analysis of the passage will raise serious doubts about this line of interpretation. Not only is Taylor's and Raphael's implicit interpretation of what the passage is about far from being compelling. Given the inherent problems of Hobbes's comparison, there also seem to be good reasons not to place so much interpretive weight upon the passage. As our further analysis will reveal, similar results can be reached with regard to the other Hobbesian passages quoted above.

## II.

There are two main reasons why it seems problematic to make Hobbes's comparison of injury and absurdity the cornerstone of a deontological interpretation of Hobbesian contractual obligation. The first reason is that Hobbes

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<sup>24</sup> *The Elements of Law*, I.16.2, 82.

simply does not claim that covenants are to be kept *because* their violation would amount to some sort self-contradiction. Hobbes is certainly interested in discrediting the violation of valid covenants by describing it as self-contradictory and perhaps as irrational. There is no evidence, however, that he intends his statement to be a statement about obligation. In the preceding paragraph – where he *does* speak about obligation – Hobbes has just made the obligatory force of covenants the object of a particular law of nature and explained it in prudential terms. It does not seem plausible that the function of the subsequent comparison of injury and absurdity should be to belatedly provide an account of the true grounds of this obligation, grounds completely independent of the law of nature formulated and discussed before. Rather, it seems plausible to suppose that the comparison is meant to ‘recommend’ the performance of one’s contractual obligations with a supplementary argument.

The second problem is that Hobbes’s analogy between injury and absurdity is, itself, extremely absurd. Even if one concedes that, strictly speaking, Hobbes does not equate injury and absurdity, but only asserts a “great similitude” between the two: His claim that all violations of covenants include a contradiction in the will of the agent cannot be justified. Hobbes’s central thesis according to which a person who promises a certain act for the future, but then fails to perform it, “willeth the doing and the not doing of the same thing, *at the same time*”<sup>26</sup>, is not only false. Since Hobbes does not simply ignore the aspect of time, but explicitly claims a temporal continuity between the promise and the later breach of it, his thesis even seems a bit unabashed. The statement that the time of performance is already “contained in the covenant” is, at best, true in a metaphorical sense. It cannot obscure the fact that the point at which the covenant is made and the promise is given and the point at which the performance is due represent two distinct and possibly widely separated points in time. That a person X should at point A have the will to promise a certain action with regard to the future point B, but should then, at point B, have the diverging will not to act as promised, neither contradicts the laws of logic nor Hobbes’s own theory of the human will. On closer inspection, therefore, the claim that the making and breaking of one and the same covenant includes a logical contradiction collapses.

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<sup>25</sup> See Taylor, “The ethical doctrine of Hobbes”, 23f.; Raphael, “Obligation and Rights in Hobbes”, 153; and Raphael, *Hobbes*, 32f.

<sup>26</sup> My emphasis.

However, if this claim collapses, then any argument according to which the keeping of covenants is obligatory just because any violation would include such a logical contradiction must equally collapse.

This shows that even if one interprets Hobbes's comparison of injury and absurdity as a statement about the grounds of contractual obligation, it does not provide a very firm theoretical basis for interpreting this obligation as a moral obligation in the strict sense of the word. A similar problem arises with regard to the other passages quoted above, passages in which Hobbes undoubtedly raises the issue of obligation. As has been shown, Hobbes holds that promises of future donations do not oblige the promiser. In opposition to that, contracts which involve promises, i.e. covenants, do oblige, and Hobbes tries to explain this fact by appealing to the connection of deliberation and the human will. However, given the way in which Hobbes develops this notion of 'freedom as deliberation' in chapter XII, it is not at all plausible why in terms of obligation, there should be such a fundamental difference between promises of future donations and promises of future covenant-keeping. Either, it seems, Hobbes should already recognize the promise to carry out a certain action itself as the end of a deliberative process and hence as an act of the will. Then, however, not only covenants would be obligatory (in a sense of obligation still to be discussed), but just as well promises of future donations. Or, Hobbes only recognizes the actual performance of the actions promised as true acts of the will. Then, however, the mere making of a covenant deserves not to be seen as such an act any more than the promise to make a donation. In both cases, the agent promises a certain behaviour for the future; in both cases, however, it is still possible for him to change the will or the intention expressed in the promise. Hobbes's claim that, unlike such promises relating to future donations, covenants are promises which deprive the agent of the "liberty to do, or not to do" the action in question, is simply false.

Given that the will to perform a certain action can change after an agreement is made, there are only two ways to defend the connection between present and future will that Hobbes suggests. One would have to attribute to Hobbesian individuals either the capacity of conclusively determining the will they are going to have at a later point in time or the capacity of actively keeping to a certain will after once expressing it. However, such an interpretation of Hobbes's statements is problematic in two respects. On the one hand, one would

be committed to the further claim that the individuals are under an obligation to do so determine their own will – which obligation itself could not be grounded in the act of determination. On the other hand, the interpretation seems incompatible with Hobbes’s own deterministic theory of the will. According to Hobbes, the process of deliberation consists in nothing other than the alternating succession of “appetite” and “fear”, and the will is nothing other than that inclination which ultimately gains the upper hand in this process. With this understanding, however, it seems hard to even explain how the individuals should be able to actively influence whether a process of deliberation commences or ends. It is even less intelligible how they should be able to actively determine the result of their deliberation, that is, to actively determine which inclination will ultimately persist.

Thus, the making of covenants cannot be understood as a predetermination of the future will of the parties involved in the sense that this predetermination takes place automatically and is only passively experienced by the individuals. Nor can it be understood as a predetermination of the will in the sense that the possible deviations from a will once expressed can be, and should be, consciously avoided by the individuals. This second point has not sufficiently been acknowledged by the advocates of the deontological reading in the past. Ludwig admits in some passages that Hobbesian individuals cannot really choose their future will. Nevertheless, he takes the act of covenanting to be an act in which the parties ‘freeze’ their present will and guarantee that, with regard to the action in question, they will henceforth dispense with any deliberation.<sup>27</sup> Similarly, LeBuffe, who holds that an individual who has promised a certain behaviour for the future, but then has the will to break his promise, ought to simply abandon or suppress this new will in favour of the earlier one,<sup>28</sup> attributes capacities to the Hobbesian individuals which they do not possess.

As long as the capacity of actively clinging to a will once expressed is not conceded, it cannot be ruled out that an individual who has made the promise to act in a specified manner in the future will happen to have another will when performance is due: a will passively received, which the individual is unable to suspend or ignore and by which he is led to refuse to act as promised. That Hobbes has not been completely unaware of this problem is indicated by a

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<sup>27</sup> See Ludwig, *Die Wiederentdeckung des Epikureischen Naturrechtes*, 337f.

passage in chapter XIX in which Hobbes speaks about the obligation to comply with the commands of the civil sovereign.

And though the will of man, being not voluntary, but the beginning of voluntary actions, is not subject to deliberation and covenant; yet when a man covenanteth to subject his will to the command of another, he obligeth himself to this, that he resign his strength and means to him, whom he covenanteth to obey; and hereby, he that is to command may by use of all their means and strength, be able by the terror thereof, to frame the will of them all to unity and concord amongst themselves.<sup>29</sup>

Hobbes's concession that the human will is itself not subject to either deliberation or covenant (which latter remark can be taken to mean that the will itself cannot be promised), perfectly fits the deterministic theory of the will defended in all of Hobbes's works. However, it clearly stands in contradiction to the statements of chapter XV we have discussed above. Despite his concession, Hobbes still seems to hold to the view that the making of a covenant creates an obligation to keep it. Yet, as the concluding sentence reveals, Hobbes sees the true ground of this obligation not in the covenant as such or in the will expressed in making it. He sees it in the fact that the sovereign, as the person to whom performance is due, is able to ensure performance – by posing the threat of punishment and thus creating the will of performance in the person obliged. According to this, the citizens are not committed to the will of obedience because they had this will when they were making their promise or because they have actively framed their will in a certain way. Rather, they are committed to it insofar as the sovereign has the power to influence their future wills and make them correspond to their promises.

The passage last quoted, therefore, strongly suggests that the true grounds of contractual obligation lie in the negative consequences which would result from the violation of one's agreements. In most cases, these negative consequences will ensure that the parties will not actually come to have a new will – even if this could, in principle, have happened. It deserves to be emphasized that these consequences do not only include short-term disadvantages like civil sanctions. They also, and most importantly, include the disadvantages associated with a possible failure of the overall contractual enterprise whose ultimate

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<sup>28</sup> See LeBuffe, "Hobbes on the origin of obligation", 37.

<sup>29</sup> *The Elements of Law*, I.19.7, 103f.

purpose is to overcome the state of war. According to this interpretation, the obligation described by Hobbes in chapter XV is just the obligation expressed in the third law of nature and purely prudential in character. Hobbes's intention in drawing upon the notion of 'freedom as deliberation' and providing an additional line of argument would then be, not to describe the grounds of obligation, but rather to describe how the prudential considerations underlying contractual obligations affect the will and determine human behaviour.

### III.

There are a couple of further passages in the later chapters of the *Elements* which provide additional support for the interpretation just sketched. Whatever importance one is willing to attribute to these passages, however: The most serious problems of the deontological interpretation are independent of the concession that Hobbes himself presents contractual obligations as prudential in the end. The first problem is the following: In order to claim that contractual obligations arise from the agreement itself and are independent of any prudential considerations, it seems necessary to attribute to Hobbesian individuals the capacity to act from duty. It seems absurd to on the one hand emphasize that the individuals ought to keep their promises *just because they have made them*, but on the other hand to admit that the mere fact of having made a promise and incurred an obligation cannot actually motivate the individuals and influence their behaviour at all. An advocate of the deontological reading, therefore, seems to be committed to the view that among the things that can frame or determine the will of Hobbesian individuals is the abstract fact that a certain action would be in accordance with one's duties.

The claim that Hobbesian individuals can indeed perform actions for the duty's sake has in the past been made by Taylor and Harvey.<sup>30</sup> However, even Warrender, whose interpretation corresponds to Taylor's in many respects, has rejected this possibility as being incompatible with Hobbes's psychology.<sup>31</sup> Given Hobbes's theory of deliberation, his deterministic theory of the will and his

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<sup>30</sup> See Taylor, "The ethical doctrine of Hobbes", 24; Martin Harvey, "Moral justification in Hobbes", *Hobbes Studies*, 12 (1999), 33-51, 38f.; and Harvey, "Teasing a limited deontological theory of morals out of Hobbes", 48f.

<sup>31</sup> See Warrender, *The political philosophy of Hobbes*, 87f.

repeated claims according to which what moves human beings to act is always and only the consideration of some good for themselves,<sup>32</sup> it seems indeed extremely doubtful whether the idea of duty itself can bring about a certain will in the Hobbesian individuals. However, Taylor and Harvey have defended their view by claiming that in his description of the just man, Hobbes does nothing other than describe actions done from duty and thereby implicitly admit their possibility. Yet, with regard to the *Elements*, where the distinction between just and unjust persons is made early in chapter XVI, this claim seems challengeable.

It can be conceded that Hobbes's characterisation of the unjust person as one who only "abstaineth from injuries for fear of punishment"<sup>33</sup> suggests that, in opposition to this, the just person refrains from performing unjust actions simply *because* they are unjust. Given Hobbes's general characterisation of the justice and injustice of persons ("when justice and injustice are attributed to men, they signify proneness and affection, and inclination of nature, that is to say, passions of the mind apt to produce just and unjust actions"), however, the argument does not provide a sufficient basis for the claim that the actions of the just person are done from duty. According to Hobbes, the just person is characterised by a strong natural *inclination* to only perform just actions and keep his promises. Strictly speaking, the actions of the just person are then not to be described as actions done from duty, but as actions done from an inclination to duty-conformable behaviour. The just person, therefore, need not have the capacity to act from duty, but can be one who simply possesses certain desires or traits of character which lead him to act in accordance with the demands of justice. One may think, for example, of somebody who is strongly interested in living in perfect harmony with the people around him, or of somebody who has a strong desire to generally behave straightforwardly and consistently. According to this, the just person acts from certain inclinations or habits which are useful for life in society and the maintenance of peace. In contrast, the person who only acts from fear of punishment is one who does not possess these traits of character, but who nevertheless, as long as her actions remain within the realm of justice, meets her obligations just as well as the just person does.

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<sup>32</sup> See, for instance, *The Elements of Law*, I.14.6, 71.

<sup>33</sup> *The Elements of Law*, I.16.4, 83.

The interpretation of Taylor and Harvey is also problematic because the limited concession that *some* individuals, namely the ones whom Hobbes describes as just, can perform actions done from duty, would not meet the demands of the deontological interpretation. The alleged strict moral duty to comply with one's agreements simply because one has made them is meant to apply to all individuals in the same way, independently of their specific character. Therefore, this duty can sensibly be claimed only when *all* Hobbesian individuals generally possess the capacity to act from duty. What needs to be shown, then, is that both just and unjust persons can be moved to action by the mere rightfulness of the action in question. Hobbes's distinction between the justice of actions and the justice of persons, however, does not allow for this demonstration at all. On the contrary, the description of the unjust person as one that is *only* moved by the threat of punishment rather points in the opposite direction. The deontological reading can, therefore, in a second relevant sense be said to attribute abilities to the covenanting parties which they do not possess and whose presumption is incompatible with Hobbes's anthropological statements.

The second main problem is that, even if Hobbes's reduction of contractual obligation to the notion of 'freedom as deliberation' were carried out consistently and convincingly, it would still not establish a genuinely normative understanding of obligation, but only a descriptive one. If the obligation to comply with contractual agreements consists in the fact that the parties have committed themselves to a certain future will – be it actively or passively – then the terms 'obligation' or 'obliged' can only be taken to mean that it is practically impossible for the parties to not act in accordance with the agreement. The term 'obligation' would then have to be interpreted as being roughly analogous to the terms 'necessitation' or 'compulsion'.<sup>34</sup> In this case, however, contractual agreements would not give rise to the kind of obligation which the advocates of the deontological reading are concerned with and which consists in the fact that the parties certainly *can* violate their agreements, but *ought not* to do so.

The omission to sufficiently acknowledge the difference between the normative and the descriptive notion of obligation represents the crucial defect of all those studies which have tried to make sense of Hobbes's attempt to reduce contractual obligation to the notion of 'freedom as deliberation'. Thus von Leyden

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<sup>34</sup> See also F. S. McNeilly, *The Anatomy of Leviathan* (London; Melbourne; Toronto; New York:

and Rhodes have interpreted the binding force of covenants as consisting in an actual determination of one's will and an actual loss of deliberative liberty, namely in the individual belief of being obliged to act as promised.<sup>35</sup> With this specification, the contractual obligations of parties to a covenant could indeed sensibly be linked to the formation of their particular will and to the impossibility of not acting as promised. One problem with this reading, however, is that Hobbes attributes to *all* individuals who have entered into an agreement the obligation to keep it – that is, just as much to those individuals who do not actually believe in their being obliged or who do not have a feeling of duty. The second problem is that von Leyden's and Rhodes's interpretation does not establish obligation as a strictly normative or moral category, that is, as an obligation which *can* be, but *should not* be violated. If the obligation to keep one's covenants follows from the actual belief to be obliged and from the actual will to act accordingly, then the paradigm case for every strict normative or moral understanding of obligation, namely the case of unjust violation, can simply not occur. Thus all individuals who break their promises will, in forming the will to do so and in giving up their belief to be obliged, at the same time lose their very obligation. Interpreting Hobbesian contractual obligation in terms of 'freedom as deliberation', therefore, inevitably turns the notion of duty into a descriptive psychological phenomenon which can hardly make any decisive contribution to a deontological moral theory.

#### IV.

It can first be concluded, therefore, that even with regard to the argument of the *Elements*, the deontological reading of Hobbesian contractual obligation faces serious difficulties. If one subscribes to the reading and takes the relevant passages of the *Elements* to mean that Hobbesian contractual obligation is a strict moral obligation and logically independent of the third law of nature, one not only bases one's interpretation of Hobbes on statements that are not very clear, are in some respects inconsistent and provide a possible foundation only for a very different sense of obligation. One also brings Hobbes's notion of contractual obligation into contradiction with Hobbes's psychological assumptions and with

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Macmillan, 1968).

<sup>35</sup> See von Leyden, *Hobbes and Locke*, 37, 42 and 76ff.; and Rhodes, "Obligation and Assent in Hobbes's Moral Philosophy", 51f.

the principle ‘ought implies can’, a principle whose validity Hobbes repeatedly acknowledges.<sup>36</sup> By claiming the obligation to perform valid covenants to be a strict moral obligation, one is therefore committed to also claim Hobbes’s overall theory of contracts and contractual obligation to be a complete failure.

The prudential interpretation of Hobbesian contractual obligation is thus not only superior to the deontological reading in that it can be based on much more than on a few scattered remarks, namely on the whole outward and internal structure of Hobbes’s argument. It is superior also because it allows to avoid these fatal consequences and to rescue the coherence of Hobbes’s overall theory. What remains to be done in order to ensure the prudential interpretation of Hobbes’s notion of contractual obligation and our rejection of the deontological reading, is to try to make sense of those terminological differences in Hobbes’s treatment of natural and contractual obligation which we have pointed out in the beginning of section I. If one claims that the obligation to keep covenants is nothing more than one specific case of the obligation to observe the natural laws, one ought to give reasons for why Hobbes should be so keen on, for instance, applying the term “injury” only to the violation of contractual obligations.

From my point of view, however, this can quite easily be done. There are, after all, at least four relevant differences between natural and contractual obligation which can justify the shifts of emphasis in Hobbes’s terminology. First, it can be stressed that those obligations which arise from contractual agreements are obligations which the individuals impose upon themselves by action and which they hence individually create or, at least, actuate. Secondly, as Hobbes himself points out in chapter X of the second book of the *Elements*, contractual obligations are obligations that directly relate to specific actions or performances in certain specified conditions. In opposition to that, the obligation to observe the natural laws is only an abstract obligation to follow general rules of behaviour.<sup>37</sup> Thirdly, contractual obligations are distinguished from the obligation to observe the laws of nature in that they directly relate to particular other individuals, namely to those to which the performance of what was promised is owed. Contractual obligations are, therefore, always in a basic sense duties *towards* other persons. Fourthly, the making of covenants gives rise to moral or jural differences between the individuals. Before the making of covenants, all

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<sup>36</sup> See, for instance, *The Elements of Law*, I.16.18, 81.

individuals have exactly the same rights and duties and everything is owned by all. The introduction of contracts and covenants, however, introduces a new distribution of rights and duties in which one individual will possess rights and duties which another individual will not possess. In light of this fact, Hobbes's restricted use of the terms 'property' and 'meum'/'tuum' seems absolutely plausible even if those terms are not meant to denote rights and duties of any distinct normative character.

Thus even without assuming that contractual obligations are logically independent of the obligation to observe the laws of nature, one can still allow for a couple of relevant differences between natural and contractual obligations. Our concluding examination of the development of Hobbes's theory of contracts and covenants after 1640 will provide strong evidence that it was exactly these differences which Hobbes had in mind when describing natural and contractual obligation with the help of a slightly different terminology.

## V.

Before entering into the particulars of the revisions Hobbes made to his theory of contractual obligation after the completion of the *Elements*, one important point can already be emphasized: The two main problems of the deontological reading apply in exactly the same way to *De Cive* and the English and Latin versions of *Leviathan* as they apply to the *Elements*. They hence provide a strong basis for rejecting the deontological reading with regard to all of Hobbes's major political works. Thus the failure to derive a strictly normative notion of obligation from the concept of 'freedom as deliberation' is not dependent upon the particular way in which the derivation is carried out. It is a result of the general impossibility of reducing genuinely moral obligations to actual psychological phenomena. It can, therefore, not be prevented by making some adjustments to the general argument or by presenting it with greater clarity and consistency.

Moreover, given that Hobbes sticks in all of his works to his deterministic theory of the will and his understanding of deliberation and human motivation, the incompatibility of Hobbes's psychology with the necessary presuppositions of the deontological reading cannot be overcome in this way, either. The deterministic

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<sup>37</sup> See *The Elements of Law*, II.10.2, 185.

theory of the will is not only developed in all of Hobbes's major political works. It is spelled out and vehemently defended in the long and controversial debate with John Bramhall starting in 1645. As has already been indicated, Hobbes's treatment of deliberation in the later works also follows the same paths as in the *Elements*. Similarly, the thesis that what human beings desire is always a good for themselves is contained in *De Cive* and both versions of *Leviathan* just as it was contained in the first formulation of Hobbes's theory.<sup>38</sup> Moreover, the deontological allusions in Hobbes's distinction between just and unjust persons cannot be said to be more obvious or more prominent in the later works. As in the *Elements*, Hobbes's characterisations suggest at some points that the just person could be acting for the sake of justice. As before, however, the unjust person clearly does not have this ability. And as before, the relevant statements can just as well be interpreted as simply referring to certain positive or useful inclinations or habits that some individuals possess and others do not.<sup>39</sup> The capacities of acting from duty or of actively determining their future will, therefore, cannot any more be attributed to the Hobbesian individuals with regard to the later works than they could be attributed to them with regard to the *Elements*.

Given all this, it seems impossible to defend the crucial claims of the deontological reading with regard to any of Hobbes's works. However, given that Hobbes's theory of human nature and his deterministic theory of the will represent far more fundamental and far more comprehensive theoretical positions than his alleged deontological understanding of contractual obligation, Raphael's passing and laconic conclusion that, for the sake of consistency, Hobbes should better have abandoned determinism,<sup>40</sup> cannot be said to be of much help, either. Whatever the modifications made to Hobbes's discussion of contractual obligation after 1640 may turn out to be, therefore, they can surely not suffice to salvage the interpretation forwarded by Raphael, Ludwig and the others advocates of the deontological interpretation in its original form.

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<sup>38</sup> See, for example, Hobbes, Thomas, *De Cive. The latin version entitled in the first edition Elementorum Philosophiae Sectio Tertia De Cive and in later editions Elementa Philosophica De Cive*. A critical edition by Howard Warrender (Oxford: Oxford University Press, 1983), II.7, 94; Hobbes, Thomas, *Leviathan* (1651). 2nd revised student edition. Edited with an introduction by Richard Tuck (Cambridge: Cambridge University Press, 1996), 65f.; and Thomas Hobbes, *Leviathan, sive De Materia, Forma, & Potestate Civitatis Ecclesiasticae et Civilis* (Amsterdam: Blaeu, 1668), 67f.

<sup>39</sup> See *De Cive*, III.5, 110; *Leviathan* (1651), 74; and *Leviathan* (1668), 74.

## VI.

As has already been indicated, however, Hobbes is far from developing his explanation of contractual obligation in terms of voluntary actions and deliberative liberty with greater clarity and consistency in his later works. On the contrary, he more and more gives up this line of argument and instead emphasizes and enhances his prudential justification of the obligatory force of contractual agreements.

That Hobbes increasingly distances himself from his earlier attempt to present the making of covenants as a loss of 'freedom as deliberation' and a commitment to a certain future will can already be seen from the changes made to the comparison of injury and absurdity. In *De Cive*, Hobbes's comparison is still virtually the same as in the *Elements*.<sup>41</sup> It deserves to be mentioned, however, that Hobbes adds a new passage to his discussion of the violation of covenants in which he explains the proverb *volenti non fit iniuria* and makes the general concession that after a covenant has been made, the will expressed in the covenant can, and may, change.<sup>42</sup> In the English *Leviathan*, then, Hobbes noticeably revises the comparison of injury and absurdity itself. In particular, he refrains from claiming a temporal continuity between the making and the breaking of a covenant and presents the actions instead as two separate voluntary acts ("For as it is there called an Absurdity, to contradict what one maintained in the Beginning: so in the world, it is called Injustice, and Injury, voluntarily to undo that, which from the beginning he had voluntarily done."<sup>43</sup>). In its new form, the passage does not suggest that in making a covenant, the parties could in any way commit themselves to a certain future will. Given this, there remains no basis for the view that the obligatory force of covenants could arise from such a commitment and that the passage is meant to explain this fact.

The same can be said with regard to the Latin version of *Leviathan*, published as part of a collection of Hobbes's Latin works in 1668. The explicit concession that the making and the breaking of a covenant represent two separate voluntary acts is only implicitly contained in the Latin text ("Sicut enim iis quae

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<sup>40</sup> See Raphael, *Hobbes*, 67.

<sup>41</sup> See *De Cive*, II.3, 109.

<sup>42</sup> See *De Cive*, III.7, 111.

<sup>43</sup> *Leviathan* (1651), 65.

initio supposita erant contradicere Absurdum; ita quod faciendum voluntariè susceperis, irritum facere, Injustum appellatur.”<sup>44</sup>). However, there is again no suggestion of a temporal continuity between both acts or of a contradiction in the will of the person thus nullifying her earlier promise.

What is even more important is that in those passages in which Hobbes before clearly tried to link the obligatory force of contractual agreements to the notion of ‘freedom as deliberation’, he more and more refrains from doing so. Again, the text of *De Cive* only shows some minor revisions which leave the argument of the *Elements* largely intact.<sup>45</sup> It is striking, however, that in discussing contractual obligation Hobbes now repeatedly refers to the prudential aspect of whether the parties involved have received a benefit from their agreement. Thus, Hobbes explains the fact that promises of future donations do not oblige, not exclusively and not even primarily by pointing out that the promising person has not yet put an end to his deliberation. He first and foremost explains it by asking whether the promiser can be said to have gained any benefit from his promise and by emphasizing that in the case of a free gift, this is, *per definitionem*, not the case. In addition, in a passage not included in the text of the *Elements*, Hobbes holds that covenants in which one party has promised a performance for the future which performance later turns out to be impossible do not necessarily lose all their obligatory force. The reason for this, according to Hobbes, is that the person obliged has already received a personal gain from the covenant.<sup>46</sup>

In the English *Leviathan*, no real attempt is made by Hobbes to explain contractual obligations by drawing upon the concept of ‘freedom as deliberation’ at all. This is due to the fact that Hobbes significantly revises the remaining two passages in which such an attempt was made in *De Cive*. In arguing that promises of future donations do not oblige, Hobbes still refers to the question of whether there are signs that sufficiently declare the will of the promising person. However, he refrains from introducing the notion of deliberation and from presenting the promising person as one who yet has the “liberty to do, or not to do”.<sup>47</sup> Likewise, in his discussion of covenants, Hobbes no longer explains the obligatory force of

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<sup>44</sup> *Leviathan* (1668), 67.

<sup>45</sup> See *De Cive*, II.8 and II.10, 101f.

<sup>46</sup> See *De Cive*, II.14, 103f.

<sup>47</sup> See *Leviathan* (1651), 67.

covenants with the fact that the parties have put an end to a deliberative process and lost their deliberative liberty. Instead, he ties the obligation of a second party solely to the fact that the party has already received the “benefit for which he promiseth”<sup>48</sup>, that is, the benefit of the first party’s performance.

There is one further interesting difference between the argument of the English *Leviathan* and the earlier argument of *De Cive*. In discussing contractual obligations, Hobbes now not only considers whether the parties have expressed a certain will or received a benefit. He also tends to put even more emphasis on the abstract question of whether the parties have effectively transferred a right. This tendency is continued in the Latin *Leviathan*. Thus in explaining why covenants motivated by fear do nevertheless oblige, Hobbes now omits his reference to the benefit received from the covenant and instead points out that two rights are successfully transferred (“Contractus enim est, in quo alter Ius in Vitam, alter in Pecuniam transfert.”<sup>49</sup>). Apart from that, the argument of the Latin *Leviathan* is largely equivalent to that of the English version. Again, no attempt whatsoever is made by Hobbes to reduce the obligatory force of agreements to the fact that a deliberative process has come to an end. Moreover, in denying the obligatory force of promises of future donations, Hobbes now explicitly draws upon the fact that no human being is the master of his own future will, thereby directly contradicting the suggestions made in his own earlier discussion of covenantal obligation and injury (“quia Voluntatis suae Crastinae dominus nemo est”<sup>50</sup>).

Regarding the development of Hobbes’s theory of contractual agreements after 1640, therefore, a first important conclusion can be drawn. Hobbes entirely gives up his attempt to draw upon the concept of ‘freedom as deliberation’ in order to provide an additional explanation or justification of contractual obligation, supplementing his formulation and justification of the third law of nature. Given the revisions of both Hobbes’s comparison of injury and absurdity and his discussion of free gifts and covenants in the English *Leviathan*, there remains no evidence that, for Hobbes, the obligation to comply with contractual agreements could result from the fact that in making an agreement, the parties have put an end to deliberation and lost the “liberty to do, or not to do”.

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<sup>48</sup> *Leviathan* (1651), 67.

<sup>49</sup> *Leviathan* (1668), 70.

<sup>50</sup> *Leviathan* (1668), 68f.

This significant shift in Hobbes's discussion of contracts and covenants has not explicitly been acknowledged so far. On the contrary, Harrison has explicitly claimed that the attempt to provide a non-prudential explanation or justification of contractual obligation is found in all of Hobbes's works in about the same way.<sup>51</sup> However, the undeniable shift in Hobbes's discussion may very well be the reason why, especially with regard to the English *Leviathan*, some advocates of the deontological reading have tried to defend their positions by drawing upon the new emphasis Hobbes puts on the abstract aspect that contractual agreements represent transfers of right. Thus Ludwig seems to see the true justification for the obligatory force of contracts and covenants in Hobbes's repeated references that in making a valid agreement, the parties have successfully given up a right. Similar suggestions have also been made by Barry and Harvey.<sup>52</sup> However, Hobbes's claim – that contractual obligations only arise when the parties have effectively given up a part of their natural right – does not provide a theoretical justification of contractual obligation at all. Given Hobbes's general opposition of *jus* and *lex*, right and law, liberty and obligation – an opposition strongly emphasized in all of Hobbes's works – the above claim states no more than a necessary terminological truth. As Barry himself emphasizes,<sup>53</sup> having given up a right is simply *what being contractually obliged means* for Hobbes. If this is true, however, then in pointing out that parties to a valid covenant have given up their right to carry out a certain action, Hobbes can only be said to be stating *that* the parties are obliged to omit the action in question. He cannot be said to be explaining *why* they are obliged, that is, to be describing the normative *grounds* of contractual obligation. Hence, the claim that Hobbesian individuals are obliged to perform their covenants *because* they have given up a right is either tautological, and hence necessarily true, or, if taken to be a statement about the normative grounds of obligation, empty. If understood in this latter sense, the claim provides no answer to the crucial question of why one ought to act in accordance with one's agreements and not make further use of the liberties to whose renouncement one has once agreed. This being so, the stronger emphasis

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<sup>51</sup> See Ross Harrison, *Hobbes, Locke, and Confusion's Masterpiece. An Examination of Seventeenth Century Political Philosophy* (Cambridge: Cambridge University Press, 2003), 114.

<sup>52</sup> See, for example, Ludwig, *Die Wiederentdeckung des Epikureischen Naturrechtes*, 339ff. See also Barry, "Warrender and his critics", 188; and Harvey, "Teasing a limited deontological theory of morals out of Hobbes", 38.

<sup>53</sup> See Barry, "Warrender and his critics", 188.

put on the connection of contractual obligation and the renouncement of rights does not provide any important support for the deontological reading. It fails to provide any help in explaining why and how a person declaring its willingness to have certain rights or liberties forfeited can be said to have bound himself to a certain behaviour.

## VII.

Given the fact that in both versions of *Leviathan*, Hobbes does not try to explain or justify contractual obligations with a second line of argument, his prudential argument for the obligatory force of contracts and covenants generally becomes more prominent. The discussion of the third law of nature now provides the only explanation or justification of contractual obligation whatsoever. Viewed independently of the earlier versions of Hobbes's theory, the argument of *Leviathan* can thus hardly be said to suggest that the force of contractual agreements could be logically independent of the force of the natural laws and non-prudential in character. However, both versions of *Leviathan* also provide some additional positive evidence for the view that contractual obligations are prudential obligations grounded in the third law of nature. Hobbes's repeated attempts to link the obligatory force of covenants to the benefit received from the covenant, can already be read in this way. What is more important is that in the English *Leviathan*, Hobbes adds three new passages to the text in which the necessity to comply with one's agreements is discussed from a prudential perspective. In the first of these passages, Hobbes starts by describing the words or actions by which rights are transferred as the "bonds" by which men are obliged and bound. He then emphasizes that the said bonds "have their strength, not from their own Nature, (for nothing is more easily broken than a mans word,) but from Feare of some evill consequence upon the rupture"<sup>54</sup>. The second passage precedes the discussion of oaths at the end of chapter XIV. Hobbes emphasizes that the force of the words spoken in making agreements needs to be strengthened, and he again presents the negative consequences following violations as the power to be reckoned upon.<sup>55</sup> A third passage of this kind is Hobbes's famous 'reply to the Foole' following in chapter XV. In his reply,

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<sup>54</sup> *Leviathan* (1651), 65.

Hobbes tries to demonstrate that it is not against one's own interest to keep one's covenants. Hobbes concludes his prudential refutation of the fool's argument by, once again, presenting covenant-keeping as being demanded by the laws of nature ("Justice, therefore, that is to say, Keeping of Covenant, is a Rule of Reason, by which we are forbidden to do any thing destructive to our life; and consequently a Law of Nature."<sup>56</sup>).

It can be conceded to the advocates of the deontological reading that the passages just discussed need not necessarily be seen as addressing the issue of obligation. Thus it can and has been argued that the passages are only addressing the issue of efficacy, i.e. the practical problem of what can and will make the individuals actually meet their obligations. However, the passages can still be said to add to the prudential tone of Hobbes's discussion of contractual agreements in *Leviathan*. Moreover, it strikes as counterintuitive that Hobbes should refrain from providing any real justification for the alleged moral obligation towards contracts and covenants, but then be keen to discuss the secondary question of whether meeting one's moral obligations provides any personal gain with particular thoroughness.

What is most important, however, is that there are two further passages in which Hobbes clearly discusses the issue of contractual obligation and reveals the prudential basis of this obligation. The first passage is part of Hobbes's discussion of covenants. After pointing out that in contracts, promises for the future do oblige, Hobbes first remarks that the party to which performance is due is generally said to "merit" what he is to receive by the performance. A couple of sentences later, he tries to more precisely describe the basis of the second party's merit, and in doing so, he emphasizes that "In Contract, I Merit by vertue of my own power, and the Contractors need"<sup>57</sup>. What is presented here as the basis of the rights arising from contractual agreements and thus also as the basis of the corresponding obligations, is not that in making the agreements, the parties have expressed a particular will, have given up liberty or rights or have bound themselves to act in a certain way. Instead, it is what provides the basis for the Hobbesian laws of nature: The natural "needs" or desires of the individuals; the danger associated with having other individuals as enemies, given their "power"

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<sup>55</sup> See *Leviathan* (1651), 70.

<sup>56</sup> *Leviathan* (1651), 73.

<sup>57</sup> *Leviathan* (1651), 67.

and equal strength; and the necessity to cooperate and to stick to certain rules which follows from these two sources.

In the Latin *Leviathan*, this last passage, which also contains repeated references to the scholastic distinction between *meritum congrui* and *meritum condigni*, has been noticeably shortened. As I have argued elsewhere,<sup>58</sup> there are good reasons to assume that the abridgement of the passage stands in relation to Hobbes's purpose – visible in the Latin *Leviathan* throughout the entire discussion of natural law and contractual agreements – of removing all religious or theological allusions from the chapters XIV and XV. Among the statements thus removed, however, is also the characterisation of the grounds of contractual “merit”. Yet, what makes up for this loss is that one of the other passages, namely the one discussing the relation of oaths and contractual obligation, now contains an even clearer piece of evidence for that the obligatory force of contractual agreements is ultimately grounded in the laws of nature. While in *De Cive* no important revisions are made to Hobbes's discussion of oaths, the English *Leviathan* already shows some interesting modifications. On the one hand, Hobbes refrains from emphasizing that oaths are only relevant in so far as that they add to the negative consequences of covenant-breaking. Due to this alteration, the earlier suggestion that the obligatory force of contractual agreements could be entirely independent of such prudential considerations is absent from Hobbes's argument. On the other hand, instead of explicitly admitting contractual agreements to have obligatory force in themselves, Hobbes only emphasizes that every lawful covenant “binds in the sight of God”<sup>59</sup>. In its new form, the passage does not at all suggest that the obligatory force of covenants emerges from the covenant itself and is independent of the laws of nature. On the contrary, given Hobbes's frequent concession that the laws of nature can also be interpreted as laws of God, there are good reasons to interpret the reference to God as an indirect reference to the laws of nature.

What is most important is that in the Latin *Leviathan* the passage is altered again, and altered in a way that leaves no room for doubt. Hobbes keeps to his claim that oaths do not add to the obligatory force of covenants. However, instead

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<sup>58</sup> See Daniel Eggers, *Die Naturzustandstheorie des Thomas Hobbes. Eine vergleichende Analyse von The Elements of Law, De Cive und den englischen und lateinischen Fassungen des Leviathan* (Berlin; New York: de Gruyter, 2008), 502f.

<sup>59</sup> *Leviathan* (1651), 71.

of pointing out that even without such an oath, covenants bind in the sight of God, Hobbes now remarks that even without such an oath, covenants oblige *in virtue of the law of nature* ("Pactum enim, si licitum sit, obligat per vim Legis Naturalis sine Iurejurando; sin illicitum sit, ne addito quidem Iurejurando obligare potest."<sup>60</sup>). These last two changes, even if taken on their own, provide conclusive evidence against Ludwig's claim that in the later works, Hobbes finds to a straightforward and consistent separation of his natural law doctrine and his theory of contractual agreements. Contrary to what Ludwig claims, Hobbes even links both theories together more explicitly and more frequently than he had done in the *Elements* and in *De Cive*.

There is one last modification in Hobbes's argument that indirectly supports our non-deontological interpretation of Hobbesian contractual obligation. It does so because it provides confirmation for our attempt to make sense of the slight deviations in Hobbes's terminology without appealing to two fundamentally different types of obligation. In defending the non-deontological interpretation in section II, we tried to explain the fact that Hobbes reserves the term 'injury' for violations of contractual obligations by describing a series of other important differences between natural and contractual obligation. Now one important change made to Hobbes's text in the second edition of *De Cive*, is that Hobbes adds an explicit distinction between 'injuria' and 'injustitia' to his argument which indirectly confirms our interpretation of his restricted use of the term 'injury' in the *Elements*.<sup>61</sup> According to Hobbes, the term 'injustitia' refers to the violation of a law and hence to a violation which is done to all persons living under that law in exactly the same way. In opposition to that, the term 'injuria', which signifies the violation of covenants, refers to a form of unjust or wrong behavior that both violates a law and the rights of a specific person, namely those rights which directly resulted from the agreement. The distinction of 'injustitia' and 'injury', therefore, strongly suggests that it is exactly those differences between natural and contractual obligations described in section II which led Hobbes to describe the violation of contractual obligations with a term of its own.

It is true that in the English and the Latin versions of *Leviathan*, Hobbes in part gives up his distinctive use of 'injustitia' and 'injury'. Thus he starts using the

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<sup>60</sup> *Leviathan* (1668), 72.

<sup>61</sup> *De Cive*, III.4, 109f.

term ‘injustice’ to also denote the violation of contractual agreements.<sup>62</sup> However, he tries to rescue the theoretical point of his former distinction by integrating it into his distinction between the ‘injustice of actions’ and the ‘injustice of persons’. Thus he equates the ‘injustice of actions’, and only the ‘injustice of actions’, with the violation of valid covenants. On the other hand, he describes the ‘injustice of persons’, to which he also refers to with the term “injustice of manners”, as a form of injustice that, unlike the violation of covenant, does not presuppose any individual or specific person injured.<sup>63</sup> In addition, Hobbes begins to use a distinct term, namely the term ‘inequity’, in order to describe actual violations of the laws of nature,<sup>64</sup> even if this term is only consistently used in this way and explicitly established in the Latin *Leviathan*.<sup>65</sup> This shows that by the time of *Leviathan*, it still makes an important theoretical difference for Hobbes whether the obligations violated by certain ways behaviour are obligations that specifically relate to other persons or whether they are only part of the general obligation to observe the laws of nature. There is, therefore, sufficient positive evidence for our earlier claim that Hobbes’s decision to describe the violation of contractual obligations with a specific term does not indicate any fundamental difference of the normative force of these obligations if compared to the obligations posed by the laws of nature.

## VIII.

As has been sufficiently demonstrated above, there are numerous changes in Hobbes’s discussion of contracts and covenants which support the prudential reading of Hobbesian contractual obligation and deprive the deontological reading of even the limited foundation it could be said to have in the text of the *Elements*. In order to conclude the refutation of Barry’s and Ludwig’s evolutionary thesis, it only remains to be shown that the later versions of Hobbes’s theory do not contain any new passages or statements that run counter to the changes just discussed and could therefore be used to defend the deontological reading. That the revisions made to Hobbes’s distinction between the justice of persons and the justice of

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<sup>62</sup> See, for example, *Leviathan* (1651), 71.

<sup>63</sup> *Leviathan* (1651), 74.

<sup>64</sup> See, for example, *Leviathan* (1651), 90 and 109f.

<sup>65</sup> See *Leviathan* (1668), 88.

actions provide no basis for such a defense has already been emphasized above. Likewise, it has been made clear that the more frequent references to the fact that contractual agreements include the renouncement of rights cannot be used to strengthen the deontological reading, either.

A third important point is that, contrary to what both Ludwig and Barry claim, Hobbes continues to present the laws of nature, and not only contractual agreements, as obligatory. An examination of Hobbes's text shows that in *De Cive* and both versions of *Leviathan*, Hobbes not only applies the terms 'obligation', 'obligatory' and 'oblige' to the force of the natural laws just as he did in the *Elements*. He even applies those terms much more often than in the first formulation of his theory where he had used them only thrice.<sup>66</sup> Given this, there is no reasonable basis for the claim that in his later works, Hobbes separated the concept of obligation from his doctrine of natural law and reserved it for his theory of contractual agreements.

The reason why this claim has nevertheless been put forward may be that the later versions of Hobbes's theory contain a couple of passages which seem to suggest that all obligations human beings are under are the result of contractual agreements and hence of voluntary actions. Given the above result, however, it has to be emphasized that the suggested view would directly contradict Hobbes's own use of the terms 'obligation', 'obliged' and 'obligatory'. To read the passages in the way sketched above, would, therefore, mean to charge Hobbes with inconsistency. Given this, there is good reason to thoroughly examine whether the passages allow for an alternative interpretation under which the charge of inconsistency can be avoided.

The first of the said passages is new to the argument in *De Cive*. In chapter VIII, Hobbes discusses the relationship of masters and slaves, and in doing so, he describes the obligation of a slave towards his master as resulting from a contractual agreement.

Obligatio igitur *serui*, aduersus *Dominum*, non nascitur ex simplici vitae condonatione, sed ex eo quod non vinctum eum, vel incarceratum teneat; obligatio enim ex pacto oritur,

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<sup>66</sup> See *De Cive*, III.24, 116f.; III.26, 117; III.27, 118; III.28, 118f.; III.29, 19; IX.14, 169; and XIII.10, 199; *Leviathan* (1651), 64, 71, 79, 98, 140, 175, 176 and 185f; and *Leviathan* (1668), 66, 67, 78, 79, 105f. and 200.

pactum autem nisi fide habitâ nullum est, vt patet ex cap. 2. Articulo 9. vbi definitur, Pactum esse promissum eius cui creditur.<sup>67</sup>

That the passage possesses a certain relevance for the issues at hand, is due to the fact that the sentence “obligatio enim ex pacto oritur” has usually been interpreted as a general statement applying to all kinds of obligation or to obligation as such. Thus in Tuck’s and Silverthorne’s English translation of *De Cive*, the sentence reads “For an obligation arises from agreement...”<sup>68</sup>, and in Gawlick’s German translation the sentence is given as “Denn jede Verbindlichkeit entspringt aus einem Verträge...”<sup>69</sup>. However, it does not seem necessary to interpret the sentence in this way. If one takes the rest of the passage into account, the similar structure of the sentences “obligatio igitur *serui* [...] non nascitur ex simplici vitae condonatione” and “obligatio enim ex pacto oritur” suggests that the latter sentence could refer to exactly the same kind of obligation to which the first sentence refers, and which is already the object of the previous passage: the particular obligation of a slave towards his master.

That both Gawlick and Tuck and Silverthorne have interpreted the sentence as a general statement about obligation, may be due to the fact that in the beginning of chapter VIII, Hobbes starts from the state of nature and refers to this state as one in which the individuals do not possess any obligations towards one another (“Vt redeamus iterum in statum naturalem, consideremusque homines tanquam si essent iamiam subito è terrâ (fungorum more) exorti & adulti, sine omni vnus ad alterum obligatione”<sup>70</sup>). If, it might appear, the individuals originally do not possess any obligations towards one another, but only create those obligations by entering into covenants, then it can be said not only of the particular obligation of a slave towards his master that it arises from contractual agreements, but of all obligation whatsoever. However, this interpretation does not give due attention to the addendum “ad alterum”. As we have seen in section IV, the difference of whether an obligation relates to a specific person or not is deemed sufficiently important by Hobbes to describe the violations of the respective obligations with distinctive terms. That individuals in the state of

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<sup>67</sup> *De Cive*, VIII.3, 161.

<sup>68</sup> Hobbes, Thomas, *On the Citizen*. Edited and translated by Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), VIII.3, 103.

<sup>69</sup> Hobbes, Thomas, “Vom Bürger” in Hobbes: Thomas, *Vom Menschen. Vom Bürger. Elemente der Philosophie II/III*, hg. von Günter Gawlick (Hamburg: Meiner, 1994), pp.57-327, VIII.3, 162.

nature do not originally possess obligations towards one another, that is, towards other persons, need thus not be taken to mean that they do not have any obligations at all. It is clearly compatible with Hobbes's statement to assume that, although not having any obligations towards other persons, the state of nature individuals possess the obligation to observe the laws of nature. Hobbes's explicit distinction between 'injustitia' and 'injuria' in chapter III of *De Cive* leaves little doubt that the expression "sine omni vnus ad alterum obligatione" has to be read in exactly this way.

If the expression is read in this way, however, and if the sentence contained in the later discussion of masters and slaves is read in light of these earlier more general statements, then the addendum "ad alterum" should be taken to be implied in the later statement as well. The sentence "obligatio enim ex pacto oritur" would then state that 'every obligation (towards another person) arises from agreement'. In this way, the sentence does not suggest any differences between the normative force of the natural laws and the normative force of contractual agreements that our prudential interpretation of Hobbesian contractual obligation could not allow for.

A similar result can be reached with regard to two further passages which are added to Hobbes's argument in the English *Leviathan* and which, in some sense, replace the passage of *De Cive* which is now omitted. The first passage directly precedes Hobbes's comparison of injustice and absurdity. After justifying and explaining the second law of nature, according to which the natural 'right to all things' needs to be given up, Hobbes first describes 'renouncing' and 'transferring' as the two ways in which the giving up of this right can take place. He then describes the person who has thus given up parts of his right as being henceforth obliged.

And when a man hath in either manner abandoned, or granted away his Right; then is he said to be OBLIGED, or BOUND, not to hinder those, to whom such Right is granted, or abandoned, from the benefit of it: and that he *Ought*, and it is his DUTY, not to make voyd that voluntary act of his own: and that such hindrance is INIUSTICE, and INIURY, as being *Sine Jure*; the Right being before renounced, or transferred.

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<sup>70</sup> *De Cive*, VIII.1, 160.

The second passage can be found in chapter XXI which discusses the nature and extent of the liberty of subjects. As Hobbes emphasizes, the question of what liberty the citizens of a commonwealth possess can only be answered by considering which liberties exactly are given up in making the social contract and authorising the sovereign. In doing so, however, Hobbes also makes a general statement about liberty and obligation which suggests that all obligations human beings are under are contractual obligations.

To come now to the particulars of the true Liberty of a Subject; [...] we are to consider, what Rights we passe away, when we make a Common-wealth; or [...] what Liberty we deny our selves, by owning all the Actions [...] of the Man, or Assembly we make our Sovereign. For in the act of our *Submission*, consisteth both our *Obligation*, and our *Liberty*; which must therefore be inferred by arguments taken from thence; there being no obligation on any man, which ariseth not from some Act of his own; for all men equally, are by Nature Free.<sup>71</sup>

It is hardly surprising that the advocates of the deontological reading have made extensive use of these two passages in trying to prove that for Hobbes, the force of natural laws and of contractual agreements is fundamentally different and that only contractual agreements give rise to real obligations. As with the passage of *De Cive*, however, the suggested interpretations are not compelling. With regard to the first passage, it needs first to be pointed out that, strictly speaking, Hobbes does not make a general statement about obligation, that is, about obligation as such, at all. It is true that the passage seems to be meant to provide a formal definition of the notion of obligation. The only statement that can undoubtedly be attributed to Hobbes, however, is the statement that individuals who have in fact given up a right and made an agreement are henceforth obliged to perform or omit certain actions. What cannot as clearly be attributed to him is the view that *only if* or *only when* they have acted in this manner, individuals are obliged to perform or omit certain actions. Since this latter statement would directly contradict Hobbes's own use of the terms 'obligation', 'obliged' and 'obligatory' in the English *Leviathan*, there are good reasons to allow for the possibility of obligations which do not arise from contractual agreements and to reject both Barry's and Ludwig's

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<sup>71</sup> *Leviathan* (1651), 111.

interpretations who read the passage as if Hobbes was saying “only when” where he says “when”.

There can be no doubt, however, that, in virtue of the sentence “there being no obligation on any man, which ariseth not from some Act of his own”, the second passage has the more general character we have just denied the first. Even here, however, the conclusion that Hobbes is and must be talking about obligation as such can be questioned. The passage and the entire chapter are meant to discuss one specific form of liberty, namely the “Liberty of subjects”, that is, the liberty which citizens possess towards one another or towards the civil sovereign. Given this, it seems plausible to suppose that where Hobbes is referring to ‘obligation’ as the counter-term of ‘liberty’, he could also be speaking specifically about the ‘Obligation of Subjects’. Under this reading, he would be speaking about those obligations which the citizens of a commonwealth possess towards their fellow citizens and their sovereign – and those, undoubtedly, do result from agreements.

This interpretation is supported by the fact that in the sentence directly following, Hobbes indeed explicitly refers to the ‘obligation of subjects’ thereby placing his statements into the narrower context we have just tried to develop.

And because such arguments, must either be drawn from the expresse words, *I Authorise all his Actions*, or from the Intention of him that submitteth himselfe to his Power, [...] The Obligation, and Liberty of the Subject, is to be derived, either from those Words, [...] or else from the End of the Institution of Sovereignty [...] <sup>72</sup>

Thus regarding the seemingly general statements about obligation added to the argument in the English *Leviathan*, an alternative interpretation to the one forwarded by Barry and Ludwig is in fact available. This interpretation is superior to Barry’s and Ludwig’s in that it allows us to salvage the compatibility of Hobbes’s statements on obligation with his own use of the term. This alternative interpretation draws upon an aspect of Hobbes’s argument which has not sufficiently been acknowledged in the past and which has already been emphasized in the previous section, namely the fact that in discussing injustice and injury in both *De Cive* and *Leviathan*, Hobbes emphasizes the difference between such obligations as relate to specific other persons and such obligations as do not so relate. This distinction provides a sufficient basis for justifying

Hobbes's seemingly general statements on obligation, and for justifying them in a way that is perfectly consistent with our claim that contractual obligation is just one specific case of the prudential obligation to observe the laws of nature.

One last point ought to be added. Even if the passages could not but be read in the way suggested by Barry and Ludwig and even if one decided to ignore Hobbes's own use of the term 'obligation' as being simply the result of confusion: The passages would still only provide a very weak support for the deontological interpretation of contractual obligation. Even under Barry's and Ludwig's interpretation, the passages do not prove the obligatory force of contractual agreements to have a particular, deontic character and to have arisen from the agreement itself. They would still only show that for Hobbes, there is an important difference between the force of the laws of nature and the force of contractual agreements, without, however, positively determining wherein this difference consists. The difference, therefore, might still simply be the one which, on the basis of Hobbes's distinction between the 'injustice of actions' and the 'injustice of manners', we have already thoroughly described.

### *Conclusion*

It has been shown in this paper that the deontological interpretation of Hobbes's theory of contracts and covenants cannot be justified with regard to any version of Hobbes's political theory. The deontological reading, and in particular the attempt to reduce the alleged strict moral obligation to keep covenants to Hobbes's concept of 'freedom as deliberation', faces a series of fundamental difficulties. These difficulties prove the prudential interpretation of Hobbesian contractual obligation to provide the more appropriate reading of Hobbes's theory, both with regard to Hobbes's particular statements about contractual obligation and with regard to the structure of his overall argument. The obligation to keep one's contracts and covenants, then, – and likewise the obligation to observe the civil laws which derives from the social contract – is ultimately based on the self-interest of the Hobbesian agents. That the parties to a covenant ought to keep their promises is, in the last instance, due to the fact that general non-compliance of covenants would jeopardize the overall contractual enterprise and make it

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<sup>72</sup> *Leviathan* (1651), 111.

impossible to overcome the state of war, a state in which everyone's self-preservation is constantly threatened.

Our thorough discussion of the changes made to Hobbes's theory of contracts and covenants between 1640 and 1668 has clearly demonstrated that the deontological reading does not fare any better with regard to the later versions of Hobbes's argument than it does with regard to the *Elements*. The comparison of the different works has not confirmed Ludwig's evolutionary thesis, according to which the deontological character of Hobbesian contractual obligation and its independency of the third law of nature are spelled out more clearly and more consistently in Hobbes's later works. On the contrary, it has rather provided the basis for an additional evolutionary argument against the deontological reading.

In the *Elements*, Hobbes at least attempts, if unsuccessfully, to establish a link between the loss of deliberative liberty and contractual obligation and to thereby provide an explanation of contractual obligation which does not draw upon the force of the laws of nature. In the later works, however, and especially in both versions of *Leviathan*, Hobbes more and more refrains from thus trying to make sense of contractual obligation in terms of freedom and deliberation and, instead, adds a series of passages to his argument which emphasize the prudential character of contractual obligation and its connection with the laws of nature.

In view of the straightforward and consistent character of this development, there are good reasons to presume that after the composition of the *Elements*, Hobbes himself more and more came to acknowledge the problems of his supplementary explanation of contractual obligation. The development of Hobbes's discussion of contractual obligation, therefore, not only allows us to reject the evolutionary thesis forwarded by Ludwig. It also allows us to reject the possible claim that Hobbes's earlier writings contain the 'true' Hobbes and the 'true' doctrine of Hobbesian contractual obligation.