

## HOW SCHOLARS HAVE UNDERSTOOD THE INTENTIONS OF HOBBS IN *A DIALOGUE*

**A** *Dialogue* has received little attention from scholars interested in Hobbes.<sup>1</sup> Most critics interpret Hobbes' study on the English law as a minor writing. In fact, most of their works barely mention this book.<sup>2</sup> Moreover, they consider *A Dialogue* a work on its own, independent from *Leviathan's* theoretical system. Accordingly, this writing does not highlight any fundamentally new aspect of the relation between Hobbes' political theory and English legal history. Obviously, there are some exceptions. For instance, Peters dedicated one chapter of his study on Hobbes to the interpretation of the English institutional system.<sup>3</sup> Nevertheless, there exists only the single critical edition in English of *A Dialogue* by Cropsey.<sup>4</sup> The title of some writings published in Italy might suggest an important break in this almost total lack of interest. However, this is only partially true. Indeed, the translation in Italian of *A Dialogue* by Bobbio in 1959 was not followed by any other accurate study of the text.<sup>5</sup> Bobbio himself downplayed the importance of the book, considering *A Dialogue* a minor writing determined by circumstances.<sup>6</sup> Bobbio thought that Hobbes did not

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1 This is an opinion expressed by Susan Moller Okin in 'The Sovereign and His Councillours: Hobbes' Reevaluation of Parliament' (1982) 10(1) *Political Theory* 49.

2 See for example Maurice Goldsmith, *Hobbes's Science of Politics* (1966) 230; Miriam Reik, *The Golden Lands of Thomas Hobbes* (1977) 102–12; George Croom Robertson, *Hobbes* (1886) 199; Leo Strauss, *The Political Philosophy of Hobbes, its Basis and its Genesis* (1936) 63; John Watkins, *Hobbes's System of Ideas: A Study in the Political Significance of Philosophical Theories* (1965) 39.

3 R S Peters, *Hobbes* (1956) 215–40.

4 Thomas Hobbes, *A Dialogue Between a Philosopher and a Student of the Common Laws of England* (Joseph Cropsey, ed) (1971).

5 This is true even for Bobbio himself, who has included the same short introduction to *A Dialogue* that he wrote during 1959 in a newly arranged collection of his writings on Hobbes. See Norberto Bobbio, *Thomas Hobbes and the Natural Law Tradition* (1993) 105–110.

6 *Ibid.*

express any significant new ideas concerning the English laws and their history in his last writing about juridical matters. He argued that the book was merely a polemical instrument against the attempt of Hobbes' enemies to put him into gaol (or worse) for heresy. On this view, here is a book written for practical reasons that never played its intended role. Hobbes never actually had to face the charge, not because he wrote his study on English law, but thanks to the protection of Charles II. Supposedly, therefore, what this book says does not directly belong to the fundamental structure of Hobbes' philosophical system. Bobbio's attitude may contribute to explaining the small impact in Italy of Hobbes' study on English law, and the fact that other Italian academics interested in Hobbes' thought, such as Ascarelli, Pacchi and Magri, adopted the same view.<sup>7</sup> So Bobbio's translation and notes to *A Dialogue* is an interesting and useful work of erudition, but does not focus on its theoretical importance for Hobbes. This is true especially in comparison with the other philosophically oriented writings of the Italian scholar.

Hobbes' confutation of Coke seems to have caused almost the same reaction in the Anglo-Saxon world as in Italy. In fact, to a certain extent although in a different way, Cropsey, in the United States, unwittingly engendered a similar attitude to that brought about by Bobbio in Italy. Cropsey saw *A Dialogue* as being concerned mostly with specific issues, and not with a clarification of how Hobbes' juridical theory relates both to history and to the core of *Leviathan's* philosophical system. Any such clarification would:

1. deal with the theme of law and reason;
2. show the shortcomings of Coke's ideas;
3. confute the legal views of the political opponents; and
4. define the role of parliament in England.

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7 Pacchi wrote only a few sentences about *A Dialogue*. He focused mainly on the fact that Hobbes, with this book and with *An Historical Narration Concerning Heresy*, wanted to defend himself against possible accusation of heresy. See A Pacchi, *Introduzione a Hobbes* (1979) 118–19.

Cropsey specifically underlined the political differences between *A Dialogue* and *Leviathan*. Allegedly, *A Dialogue* shows the great wisdom of moderateness; Hobbes sought a compromise between king and parliament, between royal prerogative and common law. According to this interpretation, *Leviathan*, on the contrary, took a dangerously radical stand. It advocated an absolutist conception of sovereignty, which left no room for any institutional compromise.<sup>8</sup> I suggest that Cropsey wrongly overvalued the significance of Hobbes' prudence in *A Dialogue*.<sup>9</sup> Rather, his new cautious attitude was due, inter alia, to a modified rhetorical strategy. Hobbes was more careful than in other works to appease as many readers as possible. According to Cropsey *A Dialogue* went so far as to advocate an institutional compromise between the king and the House of Commons, and made substantial changes to Hobbes' previous political positions. However, all this is not directly connected with the overall picture of Hobbes' philosophical system, but only with some of its parts. Paradoxically, even for Cropsey, Hobbes' criticism of Coke did not add anything new to the substance of Hobbes' legal and historical positions. Most scholars interpret the book in the same way. This understanding of *A Dialogue* suggests that its purposes, and so in a way its relevance, were rather limited.

Moreover, interest in the work is low because it remained unknown to the majority of readers. To the best of contemporary knowledge, while Hobbes was alive *A Dialogue* was not published and did not exercise any major influence. All this may seem enough to reduce the meaning and significance of *A Dialogue*: any interest in such a work could appear as an act of erudition reserved to very few researchers. That means two categories of people. First, *A Dialogue* may interest some specialists on Hobbes. There are scholars willing to analyse even one of his minor and almost forgotten works, and it could also help in understanding better the ideas of the man who wrote *Leviathan*. Second, Hobbes' critique of Coke can be important for legal theorists interested in studying a criticism of common law.

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8 Joseph Cropsey, 'Introduction' in Hobbes, above n 4, 13–15.

9 For a criticism of Cropsey's position concerning the difference between *Leviathan* and *A Dialogue* see Okin, above n 1, 50, 71.

While many people are concerned with Hobbes, they have not regarded *A Dialogue* as worthy of detailed analysis, thinking that it does not provide any major contribution to our understanding of Hobbes' philosophical position. Basically, it is just a defence against political opponents. These enemies were especially numerous among the common lawyers. Yet, if Hobbes was worried about being accused of heresy, it was the canon lawyers and the church courts he should have been concerned about. Nevertheless, to Hobbes, the religious critics, although vociferous, did not look dangerous.<sup>10</sup> Restoration clergy were notoriously high church, politically Hobbist in fact! Surely Hobbes' confuted Coke as the patron of those jurists representing a real threat to his philosophy, rather than to his person. Paradoxically, Hobbes had more need to defend *Leviathan's* philosophical enterprise than his own life!

#### A NEW EXPLANATION OF HOBBES' INTENTIONS

It is worth considering another way of understanding *A Dialogue*. It can be considered as Hobbes' attempt to show that the legal and political model outlined by *Leviathan* was a historical reality in the past. Such an interpretation results from looking at the core statements of the text. In other words, Hobbes may be seen to be trying to prove that his theory of sovereignty corresponded to the English constitutional system. If so, the book attempted something similar to the historical parts of Machiavelli's *Il Principe*. According to this interpretation, Hobbes did not limit his life-long task to drawing a distinctive picture of the state and power. He wanted to demonstrate the empirical validity of his previous writings. To this end, in *A Dialogue* Hobbes tried to ground his own legal and political model on what he presented as an objective study of history.<sup>11</sup> Hobbes claimed that in the English past the relation between sovereign and subjects was indeed the one theorised by *Leviathan*: Hobbes' conception of civil authority was a clarification of the true English constitutional system. The actual political system conformed to Hobbes' theory of a sound institutional structure, with the obvious exception of the period during the civil wars. The citizens recognised the absolute *dominium* of

10 P Milton, 'Hobbes, Heresy and Lord Arlington' (1993) 14(4) *History of Political Thought* 501.

11 D E C Yale, 'Hobbes and Hale on Law, Legislation and the Sovereign' (1972) 31 *Cambridge Law Journal* 121, 123.

the king, and in exchange they received protection over their lives and wealth. Hobbes implied that things were like this in spite of the fact that some lawyers tried to claim special privileges, and so complicated the situation. According to Hobbes, kings could rule the country well because they were confident of their absolute rights. Therefore, Hobbes' theory of sovereign power was presented in *A Dialogue* as the best interpretation of how the English legal system was formed (although the issue of the dynamics never really became the crucial one).<sup>12</sup> On this view, *A Dialogue's* fundamental purpose seemed to be to stress the correspondence between *Leviathan's* conception of sovereignty and the actual laws.

At this point, it is possible to postulate two conflicting, or at least very different, hypotheses concerning Hobbes' primary intentions in *A Dialogue*:

1. Hobbes wanted to study the structure and history of the English legal system in order to prevent a possible conviction for heresy.
2. Hobbes used the legal history of England in order to justify juridically *Leviathan's* philosophical and political positions.

One important consideration confirms the likelihood of the second supposition. This is the fact that the same two hypotheses apply also to *Behemoth*. However, Hobbes, in the history of the civil wars, instead of analysing the ancient laws, looked to historical events to justify his theory. In other words, during that period of his life, Hobbes engaged himself in finding empirical confirmation for the political philosophy he had previously developed. So he studied historical fact. Likewise *A Dialogue* looked at various actual laws and judicial proceedings, and in so doing put the rational approach of *Leviathan* in direct relation with the concrete legal issues. It may help a modern reader to understand the relation between Hobbes' philosophical theory and English legal and political history. Hobbes was trying to find a historical confirmation for his juridical views. In doing so, he reinterpreted the past according to *Leviathan's* principles. The result was a coherent rational construction.

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12 J G A Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (1957) 164–5.

However, such an interpretation was based on the logic of Hobbes' philosophical system rather than on historical facts. Pocock assumes that *A Dialogue* shows that Hobbes believed that his philosophical approach could successfully illuminate the historical facts and the actual processes of the emergence of law.<sup>13</sup> Therefore, *A Dialogue* is a complex work, concerned not only with the legal disputes about heresy but essentially with the relation between law and history in England.

*A DIALOGUE* SEEN AS HOBBES' ATTEMPT TO EXPLAIN THE NATURE OF  
THE ENGLISH CONSTITUTIONAL SYSTEM

Hobbes wanted to demonstrate by historical documentation that the English state had always been what *Leviathan* theorised it to be, namely an absolute monarchy. This means that no authority, legally speaking, has the right to pose any limit to the king's power as the ruler of the country. Hobbes suggested that the ancient constitution depended entirely on a pact of absolute subjection made by the citizen to the king. This entails that the nature of the kingdom corresponded to Hobbesian juridical prescriptions. Moreover, in *A Dialogue* Hobbes seemed to assume that the English state had continuously been the same since the ancient past. There appeared to be no difference between medieval and modern times. In the same way, the Reformation became a mere rejection of papal interference in the secular authority. Even the recent civil wars were just dramatic parentheses at odds with a substantial continuity in the way sovereignty expressed itself. Still, with equal conviction, Hobbes tried to show how bad were the consequences of the conception of civil power where political authority is shared between the king and the other two estates; this meant a mixed government. This conception of sovereignty in the seventeenth century is called 'Gothic', although Hobbes does not use this term.<sup>14</sup> The 'mistaken' attitude shared by Hobbes' opponents was still, he believed at the time, a dangerous cause of subversion. According to Hobbes, the king did not need the consent of parliament in order to exercise his sovereignty. His undivided political authority must always

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13 Ibid 163.

14 B Worden, 'English Republicanism' in J H Burns (ed), *The Cambridge History of Political Thought, 1450–1700* (1991) 450–2.

keep every subject fearful of the punishments annexed to the civil laws.<sup>15</sup> Hobbes thought that to say otherwise meant favouring disorder and rebellion. *A Dialogue* attempted to show that sovereignty in England had always been absolute and substantially the same since at least the time of William the Conqueror.

In Pocock's view, the work was a rare method of advocating obedience to the present laws as a result of the ancient conquering sovereign's will, although he points out that this argument never became the pivotal argument put forward by Hobbes in favour of royal absolutism.<sup>16</sup> However, as I shall show, *A Dialogue* assumed that William the Conqueror acquired an absolute right of *dominium* over his subjects that transmitted itself intact to all the kings of England.<sup>17</sup> Supposedly, this happens almost automatically, because every English person, if enjoying the advantages of citizenship, must accept the duties derived from joining civil society, no matter whether they become a subject by acknowledging conquest, as actually happened after England was conquered by the Normans, or by contract. *Leviathan* and *A Dialogue* do not justify sovereignty by conquest, only by submission following conquest. Consequently, Hobbes tried to blame the theories supported by those standing against *Leviathan's* conception of government for all the periods of disorder ever occurring in the country.<sup>18</sup> This recalls the views on the origin of the Civil Wars fully expressed in *Behemoth*.<sup>19</sup> There seems to be some equivocation, maintained at least in part on purpose, about whether or not Hobbes' absolutism in *A Dialogue* is totally consistent with the actual practice of the English constitutional system.

#### THE NATURE OF HOBBS' INTENTIONS IN *A DIALOGUE* AND THE ENGLISH POLITICAL ENVIRONMENT OF THE TIME

To analyse *A Dialogue's* political and juridical objectives, together with its alleged conservatism, requires comparing the aims of the book with the positions expressed by the major political parties of the time. Hobbes

15 G Sorigi, *Quale Hobbes? Dalla Paura Alla Rappresentanza* (1989) 188–217.

16 Pocock, above n 12, 148–50, 162–5.

17 Hobbes, above n 4, 67

18 Ibid 64–5.

19 Thomas Hobbes, *Behemoth* (1679) Dialogue I.

claimed to share the same aspirations as those of the most loyal Stuart supporters. These people regarded the king and the royal family as the supreme warrantors of the freedom and unity of the country. During the following decades, such people became known as the Tories. In spite of holding a wide range of views, the Tories wanted to maintain the exercise of sovereignty steadily in the hands of the king-in-parliament. The Whigs were their main opponents. The political aims of the Whigs, like those of the Tories, cannot be easily identified with unequivocal stands. Nevertheless, generally speaking most proto-Whigs, like Sidney (who, however, was an unequivocal anti-monarchist, unlike Locke), considered the initiative of the citizens, not the monarchy, as the ultimate foundation of civil society.<sup>20</sup> This is not in principle at odds with *A Dialogue's* position. However, it becomes so politically as the Whigs rejected Hobbes' political purposes, in particular his attempt to enhance the arguments in favour of royal absolutism, and his attempt to undermine the authority of common law.

In order to understand their different aims, it is necessary to compare Hobbes' understanding of law with the subsequent conservative interpretation of English juridical history. The seventeenth-century Tories were at one with Hobbes in seeing one particular fault in the opposing Whig views. They blamed those willing to limit the royal prerogatives for misunderstanding the principles characterising the juridical structure of the country.<sup>21</sup> Their opponents supposedly based their interpretation of the English constitution on a few declarations made either by some kings or parliaments. Acts like Magna Carta attributed early privileges to the English subjects.<sup>22</sup> Yet this, for both Hobbes and the Tories, did not contradict what truly expressed the nature of the kingdom. For example, Brady thought that Magna Carta did not express the fundamental nature of the English legal system, but only feudal privileges of the baronage and the church granted and approved by kings.<sup>23</sup> The sovereign king could still

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20 Algernon Sidney, *Discourses Concerning Government* (3<sup>rd</sup> ed, 1751) 380. Also, Pocock, above n 12, 342–3.

21 Pocock, *ibid* 127.

22 *Ibid* 218.

23 *Ibid* 207–8.



revoke these privileges, like any other liberties.<sup>24</sup> The status of Magna Carta was in no way similar to that of a constitutional charter.

Hobbes, like all the conservative royalists, regarded the monarchy and the Church of England as the two major institutions embodying the very idea of legitimacy and righteousness; only some stubborn ideological prejudices, grounded on rhetorical arguments, could lead to a different stand. For Hobbes, though not for all Tories, the crucial point was that the church and the Crown must have one head. Some Anglicans stressed the relative autonomy of Synod and even Tories did this, once Whig appointees secured the bench.<sup>25</sup> However, Anglicanism is also distinguished by an Erastian position. No Anglican could deny the monarch's position as head of church and remain an Anglican.

*A Dialogue* was of no use to the subsequent anti-Whig writings. *A Dialogue* shows only a similarity with them, as Hobbes wanted to emphasise the constitutional significance of the personal loyalty that citizens owe to the king. Hobbes, like many future Tories, tried to make allegiance to the Crown more important than the authority of any other political institution. However, Hobbes' fundamental difference with other royalists was that he derived political obligation from the social contract; for the Tories, by contrast, allegiance to the Crown depended on the obedience due to a divine natural order. Most conservative royalists do not base their support for the monarchy on Hobbesian secular absolutism, the direct origins of which lie in modern rationalism.

Some followed ideas similar to those expressed by Filmer's *Patriarcha*<sup>26</sup> in which the divine right of kings to govern their subjects derives from the natural power that Adam exercised over his children, and from God's

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24 Ibid 211.

25 Gareth Vaughan Bennett, *The Tory Crisis in Church and State, 1688–1730: The Career of Francis Atterbury, Bishop of Rochester* (1975) 4. Also, Richard Ashcraft, 'Latitudinarianism and Toleration' in Richard Kroll, Richard Ashcraft and Perez Zagorin (eds), *Philosophy, Science and Religion in England 1640–1700* (1992) 164–5, 175.

26 Robert Filmer, *Patriarcha, or the Natural Power of Kings* (1680).

creation.<sup>27</sup> Yet, *Patriarcha* may maintain a position that even Filmer's admirers find problematic because it is easy to confute. Some interpreted this writing as saying that the legitimate rule of the present sovereign ultimately relies on the transmission from one generation to another of Adam's paternal domain, which it extended to the whole human society.<sup>28</sup> Obviously, as Locke would claim, since by right of primogeniture there can only be one heir of Adam, and nobody knows who he is, the authority of the kings becomes questionable.<sup>29</sup> Nevertheless, this is only one version of patriarchy and, despite Locke's attack on it, not the one advanced by Filmer. Other royalists, such as Clarendon and Falkland, were not Filmerian partriarchalists, but mixed constitutionalists who simply disagreed with parliament about the character of the balanced constitution. Even those conservative royalists who did not accept that the Salic law originated from Adam, and these were the overwhelming majority, found themselves at odds with Hobbes' contractualism, which was seen as too democratic. They rather considered the dynastic rules as directly deriving from the will of God. Moreover, the Tories were in line, or at least they genuinely tried to be, with English traditions. In fact, they always tended to maintain a *de jure* allegiance towards the present legal system. It is true that often this attitude only reflects a *nominal* submission to custom, not a *factual* one. There is such a thing as royal ancient constitutionalism, but it increasingly becomes feudal legalism, which denies almost everything common law stands for. In England, feudal law becomes the juridical instrument used by royalists to vindicate the authority of the king against the limitations posed by parliament and by the judicial system.<sup>30</sup> Consequently, a conservative position can challenge, as in the case of Brady, or even the teachings of Coke.

*A Dialogue*, however, besides attacking the *Institutes*, was critical towards all existing customs and usages. This corresponds to Hobbes' self-consciously established aims. Hobbes knew that the principles characterising case law implied something radically different from

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27 Peter Laslett, 'Introduction' in John Locke, *Two Treatises of Government* (Peter Laslett, ed) (1960) 45. Also, Pocock, above n 12, 247.

28 Locke, *ibid* 247.

29 *Ibid* 256, 268, 269, 271.

30 Pocock, above n 12, 215–16.

*Leviathan's* theory, so he was obliged to criticise them. Yet, Hobbes also preferred to focus his argument primarily against the common lawyers, and particularly Coke, rather than against the legal model to which they refer. So Hobbes hid his real intentions as much as possible. In *A Dialogue*, Hobbes tried to make his confutation of Coke as close as possible to a traditional, and politically acceptable, conservative view. Nevertheless, Hobbes' secular and rationalist attitude and purposes, together with his contractualism, made him quite different from the various kinds of Filmerian royalists, and from the mixed constitutionalists. *A Dialogue's* general aim was neither to identify how the will of God applied to English politics and jurisprudence, nor to identify the real legal foundations of the kingdom, nor to defend the freedom of the people. Hobbes' main purpose was to establish those juridical principles that can best secure self-preservation for the citizens.

#### CONCLUSION

A number of Hobbes' scholars assume that *A Dialogue's* main aim is to show that heresy is no longer a crime. On this view, Hobbes' juridical study is only of minor significance. However, an analysis of *A Dialogue* shows something different: that Hobbes tried to establish both a legal and a historical justification for the political positions expressed in his earlier works. At the same time, Hobbes seemed to recognise the existence of differences between his ideas and the real juridical structure of the country as it developed through history. The way in which *A Dialogue* considers English institutions depends on its theoretical approach to the study of law.<sup>31</sup> Modern rationalism represents the most evident philosophical background of the book.<sup>32</sup> What Hobbes claimed to be doing with his rationalistically orientated juridical and historical analysis was to express a critical but honest defence of the contemporary political establishment. In real terms, in spite of his rhetorical allegiance to the contemporary legal system, in *A Dialogue* Hobbes advocated a definite political change towards a more complex form of royal absolutism. *A Dialogue* could be regarded as subversive, because it suggested changes in the legal system. Also, Hobbes' scarcely concealed mistrust for common law, together with

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31 Richard Tuck, *Natural Rights Theories: Their Origin and Development* (1979) 137.

32 *Ibid* 139–40.

his contractual theory and secular purposes, made his position different from the ideological backgrounds of most future Tories. Indeed, the Tories do not differed from the Whigs in their general praise for customs and tradition. Hobbes' studied English law with a very ambitious project in mind. Not only did he want to avoid being convicted as a heretic, but *A Dialogue* was also an answer to his plan to find historical and juridical confirmations for *Leviathan's* science of politics. So such an unfinished, and perhaps failed, attempt to achieve these goals becomes an interesting instrument for better understanding Hobbes' legal and historical conceptions.