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## Authoritarian state vs totalitarian state: *Leviathan* in an early twentieth-century French debate

Luc Foisneau

Early twentieth-century French commentators on Hobbes have been tempted to see in *Leviathan* an anticipatory description of a totalitarian state, as opposed to some run-of-the-mill authoritarian regime. To define the latter in general terms, it may be said that such a state combines two seemingly contradictory features: on the one hand, an overwhelming centralized power in charge of security and, on the other hand, the recognition by the state, in principle at least, of the individuality of its subjects. To define the former, it may be said that a totalitarian state rejects the idea that individuals have rights of their own, or that there might be spheres, in the citizens' lives, abstracted from the state's control. The use of Hobbes to analyse 1930s European political transformations is well illustrated in the context of the French Third Republic by René Capitant's critique of Joseph Vialatoux's interpretation of Hobbes, which the latter entitled *La cité de Hobbes. Théorie de l'Etat totalitaire*.<sup>1</sup> As a young and in many ways atypical law professor at the University of Strasbourg<sup>2</sup> René Capitant was quite interested in the evolution of the political and constitutional situation in the Weimar Republic, and then in National Socialist Germany. His critique of the Catholic professor Vialatoux,<sup>3</sup> in a review article entitled "Hobbes et l'Etat totalitaire",<sup>4</sup> can thus be considered, on the one hand, as a critique of the Catholic reading of Hobbes as the father of modern "naturalist" philosophy and,

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1 Joseph Vialatoux, *La cité de Hobbes. Théorie de l'Etat totalitaire. Essai sur la conception naturaliste de la civilisation* (Paris/Lyon, Librairie Lecoffre/Chronique sociale de France, 1935). This book was republished, after the war, with a new preface, as *La cité totalitaire de Hobbes* (Lyon, Chronique sociale de France, 1952).

2 For a general and very useful introduction to the "first" René Capitant (after the war, he was to become a convinced Gaullist, among the group of the *gaullistes de gauche*), see O. Beaud, "Découvrir un grand juriste: le 'premier' René Capitant", *Droits*, 35 (2002): 163–93. Capitant started teaching at the University of Strasbourg, after his *agrégation des Facultés de Droit*, in 1930. In 1936, he became for a few months *chargé de mission* in the cabinet of the *Front populaire*'s president of council, Léon Blum.

3 When his book was first published, Vialatoux was teaching philosophy at the "Institution des Chartreux de Lyon". His philosophy was influenced by Bergson's *Les deux sources de la morale et de la religion* (1932), but more particularly by the personalist trend in neo-Catholic philosophy, along the line of Emmanuel Mounier, who founded the journal *Esprit* in 1932.

4 René Capitant, "Hobbes et l'Etat totalitaire. A propos d'un livre récent", *Archives de philosophie du droit et de sociologie juridique*, 1–2 (1936).

on the other hand, as a contribution to the political analysis of the Third Reich.<sup>5</sup> As a matter of fact, if it had not been for his interest in the alarming political situation in Germany, Capitant might not have been induced to undertake a reading of Vialatoux's *La cité de Hobbes*, which was quite remote from the usual and more immediate concerns of a jurist – even a jurist interested in constitutional matters. But if his reading of Hobbes is relevant to the experience of totalitarianism, it is not only because it addresses the political situation in Germany in 1936, but also because it contributes to the elaboration of the distinction between authoritarian and totalitarian states.

The aim of this article is to show how the distinction between an authoritarian state compatible with the modern tradition of individualism and a totalitarian state strictly opposed to this tradition is in practice being made by Capitant by dint of his criticism of Vialatoux's interpretation of Hobbes. The debate on Hobbes thus appears for what it really is, i.e., the source of a conceptual elaboration in the wider context of political discussion on the principles of politics.

I shall start with an analysis of Vialatoux's tracing of the origins of modern total states back to their alleged origins in Hobbes's naturalism, before addressing Capitant's critique of the historical illusion that there is an identity in scope between the authoritarian and the totalitarian Leviathans. And I shall then, finally, try to consider Capitant's reading of Hobbes as a defender of the authoritarian state in the wider perspective of his relation to individual rights and checks-and-balances theories.

### *Hobbes and the theory of naturalistic totalitarianism*

In the preface that he later wrote to introduce the second edition of his book on Hobbes, Vialatoux declares that the two first parts of this book were already completed before 1914, and were meant to take their places in a larger history of modern philosophy, which would have focused on the role of naturalism. It is not therefore, he stresses, the political upheavals of the 1920s and 1930s that initially raised his interest in Hobbes, although the third and last part of the book – “La leçon de Hobbes” – was written in the 1930s with a direct concern for the political situation of his time. Reflecting in the 1952 preface on the development of his interpretation, Vialatoux realized that the historical events of the interwar period renewed his early interest in *Leviathan*. Not that the latter book could explain the proximate causes of totalitarian regimes, but because it exposes a

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5 This is the very interesting perspective adopted by Olivier Beaud in his “René Capitant et sa critique de l'idéologie nazie (1933–1939)”, *Revue française d'histoire des idées politiques*, 14 (2001), in which he indicates (p. 352, Note 4) that a short version of the review article on Vialatoux was first published, under the still more explicit title, “Hobbes et le Troisième Reich”, in *L'Allemagne contemporaine*, a journal published by the University of Strasbourg, in April 1936, pp. 55–7.

clear-cut naturalistic conception of civilization, of which those regimes were at the time the latest product. Having carefully read Capitant's review article, which he quotes several times,<sup>6</sup> Vialatoux establishes, after the Second World War, a distinction between the concrete political history of total states, and the theory that can explain their appearance on the historical stage. Although the immediate causes of those political regimes have more to do with mythology than with a rationalist philosophy of the state, it is maintained that Hobbes is the "abstract theorist of statist totalitarianism, probably the purest and the most logical that can be found".<sup>7</sup> Referring to Tönnies's distinction between community (*Gemeinschaft*) and society (*Gesellschaft*),<sup>8</sup> Vialatoux also recognizes that Hobbes's *Leviathan* is no doubt a contractual and artificial society, whereas totalitarian regimes are clearly "instinctive, mythical and mystical" communities. He therefore agrees with Capitant's remark that between the individualistic stance of Hobbes's philosophy and the collective mythologies of modern dictatorship there is a *non sequitur*, but, surprisingly, maintains that Hobbes can be considered as the theorist of totalitarianism, without having contributed to the totalitarian mythologies. How can this surprising assertion be understood? At a primary level, Vialatoux engages in a dubious justification, relying on the classical distinction between theory and myth in order to answer Capitant's straightforward critique that Hobbes cannot be put in the same category as Hitler and Mussolini. Since Hobbes has a mechanical conception of fantasies and imagination, which he derives from movements in the brain, he should be considered as a theorist of what later became political mythologies. And further, since Hobbes derives his *Leviathan* from the vital motions of the individuals, a link can be established with the *Blut und Boden* mythologies. And thus the materialist foundation of totalitarianism can be found in Hobbes, without any of the particular myths later developed by national socialism or fascism. This surprising, and very weak, interpretation is certainly better than

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6 About Capitant's review article, it is said in the preface's first footnote: "Cette thèse [que le *Léviathan* de Hobbes serait l'ancêtre des régimes totalitaires] nous a été attribuée par l'intéressante étude de H. Capitant, 'Hobbes et l'Etat totalitaire' (*Arch. de phil. du droit et de sociol. Jurid.*, 1936)" (quotation marks and italics mine). Surprisingly enough, the text has "H. Capitant", and not "R. Capitant", as if it were Henri Capitant, the father, who was a famous jurist, and not René Capitant, the son, who was the author of the article. When he again quotes René Capitant on page vii, the same mistake is repeated.

7 J. Vialatoux, *La cité totalitaire de Hobbes*, preface, p. vi: "Hobbes n'est pas un 'ancêtre' de nos Etats totalitaires concrets. Mais il est, chose bien différente, le théoricien abstrait du totalitarisme étatique et le théoricien sans doute le plus pur et le plus logique qui se puisse rencontrer." (Wherever the name of a translator is not mentioned, the translations are mine.)

8 Vialatoux recalls that the paradigm of *Gesellschaft* is for Tönnies to be found in Hobbes. Cf. Vialatoux, *La cité totalitaire de Hobbes*, preface, p. vi.

the Schmittian one, which considered Hobbes as a mythologist proper.<sup>9</sup> Nevertheless, it can hardly conceal the major defect of Vialatoux's interpretation. But before turning to Capitant's critique, it is necessary to go a little deeper into the sources of the latter-day neo-Catholic reading of Hobbes.

As a matter of fact, the distinction between a theoretical foundation and the concrete forms of totalitarianism is but a late justification, and of doubtful parentage. The cardinal distinction, which is to be found in the 1935 edition, and is still present in the 1952 preface of the new edition of *La cité totalitaire de Hobbes*, is a direct expression of Vialatoux's neo-Catholicism. Indebted to the personalist philosophy of Emmanuel Mounier, and more generally to the spiritualist philosophy of his time and country, Vialatoux opposes the notion of person to both individualism and sociologism. Unambiguously entitled "Le réveil de l'esprit", the last part of the third chapter is a defence of the spiritual and transcendental dimension of the human person against both individualism and sociologism. This philosophical approach is illustrated by Hannequin, in his preface to Kant's *Critique of Pure Reason*, when he defends the transcendence of human action against the pretensions of a positivist approach to science.<sup>10</sup> For Vialatoux, this preface is a clear, although not the first, expression of a philosophical effort to get rid of "positivist naturalism", of which sociologism was then the latest expression. The benchmarks of this spiritualist revival are Bergson, with his reflection on the internal life, Lachelier, with his deepening of the Kantian idealism, and Maurice Blondel's metaphysics of action. In the 1930s, Vialatoux saw the progressive reconquest of metaphysics over physics, and the affirmation of the "spiritual intention of human thought",<sup>11</sup> notably in a now well forgotten, but then recently published book of Lachièze-Rey.<sup>12</sup> In the words of this latter philosopher, the human person is a "constructive power", or a "liberty", stronger than the natural determinism in which naturalist philosophers like Comte or Durkheim pretend to enclose him. And this spiritual dimension of the human person is itself in close relation with God, with whom mystics seek to establish a link. The political and moral stance of personalism is therefore best summarized as follows: "Cities are nothing but monsters, 'Leviathans', if they are not human. And a City is only human when based on Charity."<sup>13</sup> This clear spiritualist stance allows Vialatoux to unite by contrast Hobbesian individualism and Durkheimian sociologism, despite their obvious

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9 Cf. C. Schmitt, *Der Leviathan in der Staatslehre des Thomas Hobbes* (Hamburg, 1938).

10 Hannequin, "Préface", in Kant, *Critique de la raison pure*, trad. Tremesaygues et Pacaud (Paris, 1905), p. xi.

11 J. Vialatoux, *La cité de Hobbes*, p. 217.

12 Lachièze-Rey, *Le Moi, le Monde et Dieu* (Paris, Boivin, 1935).

13 J. Vialatoux, *La cité de Hobbes*, p. 221.

antagonism. And it is this gathering together of otherwise disparate positions that also allows him to see in Hobbes the main theorist of the totalitarian state.

Above and beyond being a representative of individualistic thinking, Hobbes's philosophy is indeed for Vialatoux the representative *par excellence* of "totalitarian Naturalism".<sup>14</sup> In order to make sense of this somewhat puzzling expression, Vialatoux stresses that naturalism is for Hobbes at its deepest a practical philosophy. It is no surprise, therefore, if politics comes first in the realization of the philosophical system, since the aim of this philosophy is to imprison the whole of humanity within the bounds of nature, that is to say, to reduce anthropology to physics, and physics to mechanics. Naturalism is thus to be defined as a philosophy of man being ruled by nature, as the "proclamation of man being ruled by the laws of nature, or, more exactly, by the science of those laws, which can be reduced to the science of the laws of motion".<sup>15</sup> It is therefore easy to guess why naturalism is being called a "totalitarian naturalism": this is precisely because there is no place in Hobbes's system for a human spiritual dimension that could be said to eschew an ultimate explanation in terms of matter in movement. But it is also because the negation of man's personality is so strong in Hobbes that it can set a paradigm both for individualism, of which he is no doubt a representative, and for sociologism, to which he seems at first glance opposed. As a matter of fact, from Hobbes stem both economic liberalism and socialism. On the one hand, economic liberals start with the assumption of a universal concurrence between individuals, which Hobbes very adequately describes as a war of egoisms. There is no optimism in Hobbes, but the sharp perception that "pure individualism is pure war";<sup>16</sup> no naive belief in the liberal invisible hand, as *Leviathan* is brought forward as the only answer to the war of all against all. For Vialatoux, the invention of the state leaves no place in Hobbes's system for the true liberty of the person. It is therefore logical that he can see no place for liberalism in *Leviathan*, since the state knows nothing but the liberty of motion, and ignores all spiritual dimension in man. The totalitarianism of the Hobbesian state thus goes hand in hand with a materialist metaphysics, and with the absence of personality. In a huge survey of modern political thinking, Vialatoux shows that socialism is not so different from liberalism as it claims to be, since it stems from the same individualist principle, which seeks to meet the needs of the individuals. Stemming from the pessimistic individualism of Malthus and Ricardo, socialism, in politics, and sociologism, its intellectual counterpart, aims at socializing the asocial nature of man, using the state mechanism as a powerful tool. Unless it renounces the

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14 J. Vialatoux, *La cité de Hobbes*, p. 178: "Le mérite de Hobbes est de nous avoir donné du Naturalisme totalitaire un des modèles les plus purs et les plus entiers, et le signalement peut-être le plus fidèle."

15 Ibid.

16 J. Vialatoux, *La cité de Hobbes*, p. 180.

naturalism on which it is often based, socialism is nothing but “individualism” turned into a totalitarian state by means of contract. If he recognizes that all forms of socialism are not based on a materialist conception of man, Vialatoux notes that the most powerful developments of a socialist politics rest on positivism and naturalism. Proudhon and Henri de Man,<sup>17</sup> a Belgian socialist, have not been convincing enough to counterbalance Marx and Engels. Compared to Durkheim, who sometimes tries to ignore the positivist premises on which his reasonings are based, Hobbes always stays true to his mechanistic postulates. Whereas Durkheim is sometimes tempted to speak of the human person as if it were compatible with sociology, Hobbes never forgets that there is in his intellectual world no such thing as a free person beyond necessitarianism. There is therefore a single alternative: either a global war of antagonistic liberties, or the totalitarian empire of Leviathan.<sup>18</sup>

The appearance of totalitarian states on the stage of European politics is seen by Vialatoux as an experimental confirmation of Hobbes’s abstract deduction.<sup>19</sup> Strikingly, the Catholic professor goes so far as to compare Hobbes’s *Leviathan* to Hitler’s National Socialist Germany. This confirmation, which is supposed to put Hobbes’s theory to the test, aims at showing how a “naturalistic civilization” produces states that are in all points similar to Leviathan. The comparison has three main parts, economic, biological and theological.

On its economic side, the comparison is based on the idea that the economy in *Leviathan* is ruled by the state. Just as fascism and national socialism develop a state corporatism, their model, the Hobbesian economy, is a total state economy, in which the order of exchanges is the product of the social contract. Without the contract there would be, for example, no capitalization and no economic security. Vialatoux forces the comparison so that the Hobbesian state appears to be the source of production, distribution, and wealth.<sup>20</sup> Such a caricature nevertheless cannot but allow a vague resemblance to the national socialist economy.

The second element of the comparison bears on the control by the state of the biological life of its citizens. Just as the Hobbesian state claims an absolute right over the bodies that are submitted to its power, the national socialist state

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17 Henri de Man, *L'idée socialiste* (Paris, Grasset, 1935).

18 J. Vialatoux, *La cité de Hobbes*, p. 193: “Et l’impitoyable rigueur de sa déduction a en effet expulsé la personne d’un monde livré par elle sans réserve à l’alternative de la guerre des libertés ou de l’empire totalitaire de Leviathan.”

19 J. Vialatoux, *La cité de Hobbes*, p. 203: “Des ‘Leviathan’ vivants et concrets se dressent sous nos regards, semblables à celui que construisit, schématique et abstrait, l’admirable discours logique de Hobbes sur le postulat explicite du naturalisme.”

20 J. Vialatoux, *La cité de Hobbes*, p. 203: “Leviathan réclame la direction souveraine du travail et de l’économie nationale. ... Le système de Hobbes a déduit d’avance le principe repris aujourd’hui par l’Etatisme sous les noms d’économie dirigée et de Corporatisme d’Etat.” See also pp. 156–7.

develops a politics based on the control of the biological powers of men and women. This state-based racism must be traced back to its source in the physical premises of Hobbesian sovereignty. The eugenicist approach to nativity and race is accompanied by a drive to gain complete control over the minds of children.<sup>21</sup>

But of the three elements of the comparison, the theological one is probably the most interesting. What is at stake here, beyond the control over opinion, which is in the end a control over religions, is nothing less than the existence of the Catholic Church in a National Socialist Germany. Since Hobbes attributes to the sovereign a right of control over doctrines and religions, Vialatoux draws a parallel between this erastian politics and totalitarian politics in matters of religion.<sup>22</sup> Strangely enough, Vialatoux considers the worship of the state in Italy, Germany and USSR as the modern form of the *homo sibi deus* formula. But what he has in mind is the contrast he shows between the persecutions that Catholicism has suffered in Germany and the transformation of some of the Lutheran Churches into a National Socialist Church. Since it is a universal religion, Catholicism is presented as being radically opposed to the “internal logic” of Hitlerism; but at the same time the movement of the German Christians<sup>23</sup> (*die Deutsche Christen*), which was created in Berlin in April 1933, is presented as the logical offspring of Lutheranism. This opposition is itself referred to the Hobbesian critique of Catholicism as the supreme enemy of statism, described in the last part of *Leviathan* under the general name of the “Kingdom of Darkness”. The lesson is all too clear: these latter-day and thoroughly and terminally depraved disciples of Hobbes in Germany could only turn themselves against Catholicism, and develop a kind of national religion, worshipping the state in the name of Christ. If the “Hitlerian theology”,<sup>24</sup> which makes a strong contribution to National Socialist politics, is to be condemned, it is because it identifies the will of the state and the will of God, and identifies the national and the religious communities. To sum up, any form of religion that considers itself bound by the state is untrue to the principles of Christianity, which are only represented rightly by the Catholic Church. It is precisely this forced comparison between Hobbesian and totalitarian states that triggered René

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21 J. Vialatoux, *La cité de Hobbes*, p. 203: “Leviathan réclame, non pas seulement la direction et la surveillance de la transmission de la vie et de la pureté physique de la race, mais aussi et surtout peut-être celles de sa croissance et de son orientation mentale.”

22 J. Vialatoux, *La cité de Hobbes*, p. 204: “C’est de ces théorèmes sur la Religion et l’Eglise tels que Hobbes les déduit du principe naturaliste, qu’il faut rapprocher les manifestations du pouvoir doctrinaire et religieux que s’arrogent les Etats ‘totalitaires’.”

23 One of the main representatives of this movement was Dr Friedrich Wienecke (*Die Glaubensbewegung ‘Deutsche Christen’*, 1933).

24 See J. Vialatoux, *La cité de Hobbes*, p. 206.



Capitant's answer, as he saw in the passages we have just analysed the proof of a major confusion between two very different forms of state.

*The two faces of Leviathan: authoritarianism vs totalitarianism*

The error in interpretation of those who, like Vialatoux, tend to identify the two images of Leviathan, the authoritarian and the totalitarian, is not entirely due to intellectual dishonesty. It is also due to the fact that correctly interpreting Hobbes's absolutism is not such an easy task. Some elements in Hobbes's theory can thus be shared by both types of political regime. Compared to Locke's and Montesquieu's, Hobbes's political theory appears indeed as dangerously deprived of two essential features, whose absence makes it a theory of absolutism, and not a theory of the modern liberal state. If there are elements, as we shall see in our last part, common to all three authors, there are also elements that tend to distinguish them, and to relate Hobbes indirectly to modern totalitarianism. If we want to correct the illusion consisting in seeing this indirect relationship as a proper identity, we must first understand why it has so easily deluded some interpreters, and we must therefore carefully characterize, in this critical perspective, Hobbes's absolutism. This latter theory rests on the negation of two main features of liberal thought: firstly, the idea of individual rights that can be opposed to the state; and, secondly, the idea of an internal limitation of sovereign power. To the first idea, which is very much linked to Locke's theory, and which implies that an individual retains in himself the right to oppose his natural rights to the rights of the sovereign, Hobbes opposes the idea that the transfer of rights, on which the state rests, must be complete, not to say total. If men do retain a right to resist, as Hobbes explicitly says that they do,<sup>25</sup> that is not a right to resist that has to be recognized by the state, but a physical and moral limit to their total subordination to the sovereign. But Capitant is right not to take this residual right into consideration as far as the absolutist conception of the social contract is concerned.<sup>26</sup> By anticipation, Hobbes is indeed against the idea that a declaration of rights might be needed to define *a priori* limits to state action. Although Hobbes is a defender of natural rights, his defence doesn't go so far as to oppose those rights to the rights of the sovereign. Therefore, it is true to say, as Capitant does, that in Hobbes there is no juridical limit to the state's power, and no individual right one can act upon

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25 See *Leviathan*, XIV, 8, pp. 65–6. Page references to *Leviathan* are given as those of the original English edition (1651).

26 “A la différence de Locke, pour qui le contrat social ne réalise qu'une délégation partielle des droits de l'individu à l'Etat, en sorte que l'individu reste maître de ses libertés fondamentales et en droit de les opposer à l'Etat, Hobbes enseigne que le pacte social aboutit à un *transfert total*, imposant à l'individu une soumission absolue à l'Etat” (R. Capitant, “Hobbes et l'Etat totalitaire”, p. 49; italics mine).

in any conflict with the state.<sup>27</sup> The example he gives, of individual property right, which is not to be opposed to the property right of the state, demonstrates the comprehensive juridical competence of the sovereign.<sup>28</sup> This rejection of a liberal theory of natural rights goes hand in hand with the rejection of any internal limitation of sovereign power: there is no individual juridical right to be opposed to the state, but also no political division of sovereignty to limit, as it were from the inside, the almighty power of Leviathan. Not knowing of Montesquieu's theory of *séparation des pouvoirs*, Hobbes had in mind the theories of mixed monarchy (such as Philip Hunton's), or mixed aristocracy, or mixed democracy, named according to the predominant element in the mixture of legislation, judicature and administration.<sup>29</sup> This mixture, which is also a "division of ... sovereignty",<sup>30</sup> would not alleviate the weight of power on the subjects' shoulders, but on the contrary induce "disagreement of those among whom they have distributed the rights of sovereign power",<sup>31</sup> and by way of consequence, provoke war.

This leads to a well-known Hobbesian conclusion, which is that there can be no alternative in Hobbes between sovereignty, i.e. the unity of all powers, and war, i.e. the dissemination of mutually antagonistic powers. If Hobbes willingly acknowledges that an absolute submission is the condition for civil peace, and that this condition may be named slavery by certain authors, he cannot conceive of the least division in the sovereign power as benign. As Capitant puts it, "Hobbes's sovereign concentrates in himself all powers".<sup>32</sup> He has the power of judicature, the power of declaring and waging war, the power of making and imposing laws, and, ultimately, the power of naming the magistrates. His sovereignty is therefore absolute, in the sense that no power at home can be opposed to his: "But that power, greater then which cannot by men, be conveigh'd on a man, we call absolute."<sup>33</sup> This element of absolutism must be stressed first, as it is responsible for the confusion that has arisen between the Hobbesian absolutist state and the totalitarian states. The rejection of absolutism being a central feature of liberal constitutionalism since the English Revolution of 1688 and the French Revolution of 1789, it was easy – too easy, maybe –

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27 "Pas de limitation juridique de l'Etat et, partant, pas de droit individuel opposable à l'Etat" (R. Capitant, "Hobbes et l'Etat totalitaire", p. 50).

28 Capitant only quotes, quite surprisingly, *The Elements of Law* (II. viii. 8, ed. Tönnies, London, 1889, p. 174), and not *Leviathan*.

29 *Elements of Law*, II. i. 15, pp. 114–15. Capitant mistakenly refers this passage to paragraph 16.

30 Ibid.

31 Ibid.

32 "Le souverain de Hobbes concentre en lui tous les pouvoirs" (R. Capitant, "Hobbes et l'Etat totalitaire", p. 51).

33 *De Cive. The English version*, VI. 13, ed. H. Warrender (Oxford, Clarendon Press, 1983), p. 97.

notwithstanding both those revolutions, to trace a direct line between Hobbes and modern totalitarianisms, via counter-revolutionary doctrines (De Maistre, etc.). No wonder, therefore, if some German constitutionalists of the period – we are in 1936 – think that they can find in Hobbes’s absolutism elements in favour of a *Führertheorie*. Capitant, who knew Carl Schmitt’s writings well, and who also met Schmitt in Berlin,<sup>34</sup> is here making a direct allusion to his reading of the German *Kronjurist*. This hint must be interpreted in the light of Schmitt and Capitant’s intellectual relations between 1932 and 1936. If it is true to say, as Olivier Beaud does in his preface to the French translation of Schmitt’s *Verfassungslehre*, that Capitant, in his 1932 article on the *Reichpräsident*, had “not perceived the authoritarian meaning of Schmitt’s thesis in *Der Hüter des Verfassung*, which he mistakenly considers as borrowed from Constant”,<sup>35</sup> the same cannot be said of his 1936 article on Hobbes. Not only does he there perceive the authoritarian bent in Schmitt’s thinking – let us assume that his remarks here on “the German jurists” again allude to the latter; but he also grasps that a new twist has developed, from authoritarian thinking to a totalitarian mindset. As a matter of fact, the article on “Le rôle politique du président du Reich” is still concerned with the late Weimar Republic,<sup>36</sup> whereas the article on “Hobbes et l’Etat totalitaire” was published during the early period of Hitlerism. The distinction between the authoritarian and the totalitarian states contains an implicit criticism of Schmitt’s engagement in the service of the Third Reich. It is therefore very important to understand correctly the distinction and the meaning of the distinction elaborated by Capitant between those two kinds of Leviathan.

If he characterizes the ideology of the Third Reich as “neo-absolutism”,<sup>37</sup> this is not to assert that between the two kinds of absolutisms there is no difference; on the contrary, it is to show that, being two kinds of absolutism, they do not both point to one single kind of state. The first cardinal distinction between the two Leviathans is due to the fact that the Hobbesian one is based on individualism, whereas the National Socialist one is based on organicism, even racism, in the more rigorous acception of the term. The latter conception is very

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34 On Schmitt and Capitant, see G. Le Brazidec, *René Capitant, Carl Schmitt: crise et réforme du parlementarisme* (Paris, L’Harmattan, 1998).

35 O. Beaud, “Carl Schmitt ou le juriste engagé”, preface to the French translation of the *Verfassungslehre* (1928); C. Schmitt, *Théorie de la constitution* (Paris, PUF, 1993), p. 9, Note 17. Beaud stresses the fact that Capitant is the only French jurist who tried to introduce Schmitt in France before the Second World War, notably in his article “Le rôle politique du président du Reich” (*Politique*, March 1932: 216–29).

36 On Schmitt and the late Weimar Republic, see O. Beaud, *Les derniers jours de Weimar. Carl Schmitt face à l’avènement du nazisme* (Paris, Descartes et Cie, 1997).

37 “Mais l’idéologie sur laquelle repose le néo-absolutisme du III<sup>e</sup> Reich est radicalement étrangère à la philosophie de Hobbes” (R. Capitant, “Hobbes et l’Etat totalitaire”, p. 52).

clearly linked to Leviathan's new political mythology. Starting with an analysis of the idea of National Socialism, in his 1935 article on National Socialist ideology,<sup>38</sup> referred to in his 1936 Hobbes article,<sup>39</sup> René Capitant shows that the idea that is at the very basis of National Socialist ideology is the idea of *Volk*, or of *völkische Gedanke*, that is, "the idea of a nation conceived as a super-individual organic reality".<sup>40</sup> Surprisingly enough, this idea is, in the 1935 article, traced back to "the old myth of Leviathan",<sup>41</sup> without any account of the specifics of the Hobbesian contribution. It is therefore the originality of the 1936 article to establish the distinction between the two images of Leviathan. In the National Socialist Leviathan, the isolated individual has no existence whatsoever, he is but "an abstraction, without any life or reality".<sup>42</sup> The individual only becomes real when integrated into the superior reality of his people conceived of in a racist perspective. All his life comes from his being an obedient member of the collectivity. As a consequence, "the totalitarian state sees Leviathan as a collective and real being, and gives itself as its sole aim to help it grow more real and more accomplished".<sup>43</sup> This Leviathan really is a monstrous animal, as it is made of human flesh and blood, becoming more conscious and more real as it incorporates more and more individuals. Yet its soul is totally alien to their individual minds. Indeed, the aims it pursues have nothing to do with the individuals' safety or well-being, but rather seek to overcome and supersede any such individual aims.<sup>44</sup> What is Hobbes's responsibility in introducing the biblical image of Leviathan into the vocabulary of modern political thought? Capitant considers that, by introducing into political discourse "the name and the myth of this fabulous animal"<sup>45</sup> Hobbes has probably *ipso facto* contributed to this strange organicist doctrine. And the

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38 R. Capitant, "L'idéologie nationale-socialiste", *L'année politique française et étrangère*, October 1935, pp. 177–205, re-ed. idem, *Ecrits constitutionnels*, (Paris, Ed. du CNRS, 1982), pp. 445–67.

39 R. Capitant, "Hobbes et l'Etat totalitaire", p. 52, Note 2.

40 R. Capitant, "L'idéologie nationale-socialiste", p. 446.

41 "Idée ancienne [i.e. the *Volk* idea], sans doute, que tout le mouvement sociologique a préparée au cours du XIXe siècle, que le pangermanisme a déjà développée et qui ne fait que ressusciter le vieux mythe du Léviathan" (ibid.).

42 Ibid.

43 "L'Etat totalitaire voit donc dans Léviathan un être collectif et réel, et s'assigne pour mission de l'aider à s'incarner et à s'accomplir. Il en est, en quelque sorte, la loi vitale qui s'empare des individus, les façonne, les organise et les assujettit aux fins de l'organisme social. En lui, Léviathan prend corps et conscience. Il est vraiment l'animal monstrueux, fait de la chair des hommes, mais dont l'âme instinctive est radicalement étrangère à ceux-ci" (R. Capitant, "Hobbes et l'Etat totalitaire", p. 52).

44 "Le national-socialisme est ainsi l'antithèse même de l'individualisme. On ne peut mieux le définir que par cette opposition, ni mieux apercevoir le renversement des valeurs qu'il réalise" (R. Capitant, "L'idéologie nationale-socialiste", p. 447).

45 R. Capitant, "Hobbes et l'Etat totalitaire", p. 52.

image he suggests is certainly in any case ideally adapted to express this political reality. But immediately after he makes this point, Capitant adds that Hobbes himself never considered his own Leviathan in this organicist or racist perspective. Leviathan is for him merely an image, a fiction that expresses more or less adequately the civil and juridical personality of the state,<sup>46</sup> and this state itself is therefore by no means a natural reality, but a juridical fiction in charge of establishing some sense of unity among the multitude of individuals. As a thoroughgoing nominalist, Hobbes doesn't recognize any other social reality than the individual one. At the basis of his Leviathan lies the consent of the individuals, who, albeit they renounce their natural rights in order to enter civil society, never cease to pursue their individual aims. The reproach levelled by Vialatoux at Hobbes's naturalism, therefore, doesn't seem to be at all relevant. The Hobbesian Leviathan is in no way a natural reality: it does not suppress the individual's life as such, but organizes it along juridical principles. If Hobbes's approach to politics can hardly be described as naturalist, it can still be considered as rationalist.

This is the second main distinction Capitant makes between the two kinds of Leviathan. Whereas the totalitarian ideologies present themselves to, and conceive of, the masses along mystical lines, the ideology underlying Hobbes's thought is rationalist: it considers man a rational individual. Like Alain, his main philosophical source of inspiration,<sup>47</sup> and the ideologues of the French Third Republic, Capitant stresses that rationalism, i.e. the attribution (in a Cartesian way) of thought to men, is the main feature of individualism. Whereas mysticism is based on the loss of one's own individuality, only individuals are capable of critical thought. In the National Socialist Leviathan, heredity attaches men to their race, and guides them by instinct, of which belief and mysticism are the best interpreters; in the Hobbesian Leviathan, the social contract rests entirely on the rational consent of the individuals.<sup>48</sup> If in both cases the state

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46 Although he is talking about the symbol of Leviathan and the personality of the state, which are an invention of *Leviathan* (title, and Chapter XVI), R. Capitant persists in quoting only *The Elements of Law* and *De Cive*. It is probable that his English and Latin were responsible for his not reading Hobbes in the originals, and that he relied entirely on the French translations of the time. Yet he could have used R. Anthony's translation of the first part of *Leviathan*, with the variants of the Latin *Leviathan* in its notes, as the latter was published in 1921, in Laval and Paris.

47 On Alain, see R. Capitant, "Les Propos d'Alain ou l'idéologie de la Troisième République", in *Mélanges Negulesco* (Bucharest, 1935), pp. 146–68.

48 "Ce que nous voulons seulement retenir ici, c'est que l'Etat, suivant Hobbes, se fonde sur une adhésion consciente et raisonnée, et non point mystique ou instinctive de l'individu. C'est la passion et la recherche de son intérêt immédiat qui portent l'homme à rester dans l'état de nature, mais c'est la raison qui lui commande de rechercher son intérêt plus éloigné en instituant la cité, et, par là même, en substituant l'état de paix à l'état de guerre" (R. Capitant, "Hobbes et l'Etat totalitaire", p. 52).

appears as an omnipotent being, similar in many ways to a mortal God, the nature of the absolutisms is not comparable, as it is founded, in the one case, on the rational calculus of individuals and, in the other case, on their mystical fascination by their charismatic leader.

*The paradoxical nature of the authoritarian state*

Once this cardinal distinction between two kinds of Leviathan has been made, there is still one important problem to be solved, which is, to understand the paradoxical nature of the authoritarian state. Indeed, it is not enough to say that there is an insuperable gap between a state founded on rationalism and individualism and a state based on mysticism and organicism. It is still necessary to understand how a state can at the same time be endowed with absolute sovereign rights and respectful of individual aims, if not of individual rights. How is it possible to conciliate in the same political regime absolutism and liberalism? The solution to this problem is twofold. At one level, Capitant shows that Hobbesian absolutism, unlike totalitarian absolutism, always goes with what he calls “some kind of moral liberalism”.<sup>49</sup> On a second level, he tries to establish the proximity between Hobbes’s juridical absolutism and Kelsen’s doctrine of juridical positivism. If, in his reading of Hobbes, Capitant succeeds in combining such apparently heterogeneous elements as absolutism and liberalism and absolutism and juridical positivism, then it should be taken as firmly established that there is a real difference between authoritarian and totalitarian states.

The first element of the demonstration is mainly based on textual evidence. To prove that Hobbes’s absolutism is less total and frightful than totalitarian absolutism, Capitant establishes various texts that support the idea that the juridical rights of the Hobbesian sovereign are counterbalanced by moral obligations on the part of the sovereign towards the individuals who have conferred on him such overwhelming power. Being founded on individuals’ rational decisions to renounce their rights to all things in exchange for a safer situation, the sovereign that arises and benefits from this renunciation is to exercise his rights in the service of those individuals’ security. If it is true that the individual cannot oppose natural rights to the sovereign’s rights, this doesn’t therefore mean that the sovereign has no moral obligation towards his subjects. The fact that a citizen cannot oppose his right to be protected to the rights of his protector is due to the fact that the absence of legal resistance is considered by Hobbes as a necessary condition for the sovereign’s protection to be efficient. This paradox to which Capitant tries to find a solution is linked to another paradox, according to which opposing one’s right to be protected to one’s protector himself would be in contradiction to the end of achieving that

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49 R. Capitant, “Hobbes et l’Etat totalitaire”, p. 60.

protection. To put it another way, one cannot, according to Hobbes, lay claim at the same time both to protection and to a right to be protected that is to be capable of being opposed to the protector himself. The only solution to this paradox therefore lies in a moral version of liberalism, or what could also be called a paternalist conception of liberalism. Remembering that his power comes from his subjects, who have contracted with him in order to be protected from each other, the Hobbesian sovereign must not govern his people for his own sake, but for the sake of his people. The maxim *salus populi suprema lex esto* does not aim at saving the people, understood as a substantial reality, thanks to the construction of a certain social order or the pursuit of foreign conquests. The people's *salus* as understood by Hobbes is not different from that of the individual. The good of the subjects lies in their security, which is due to the establishment of peace,<sup>50</sup> and in the procuring of a happy life, which is due to their own industry. Capitant argues, convincingly, that Hobbes's Leviathan is nearer to the ideal of a liberal state than to the programme of a welfare state. Its aim is not to make the state subservient to the well-being of its citizens, but to help men to achieve their own aims by maintaining the condition of peace, at home against civil wars and externally by waging protective wars.<sup>51</sup> Moral liberalism may not be strong enough to avoid all the unpleasant effects of absolutism, but it is the clearer expression of the distinction between an authoritarian state and a totalitarian one. Although individuals have (quite literally) no right to claim that the sovereign has moral obligations towards them, they are allowed to think that the rights of the sovereign have no aim other than their own security. The authoritarian state is thus aimed at preserving the highest possible degree of non-noxious liberty by guaranteeing the highest level of security. This can be proved by a careful analysis of Hobbes's conception of military expenses, taxes, legislation (not too many laws), and penal laws. In all those matters, "Hobbes's political absolutism corresponds to a kind of moral liberalism, and nothing shows better its deeper nature, nor distinguishes it more clearly from totalitarianism."<sup>52</sup>

The second element in Capitant's demonstration that the authoritarian state is a specific kind of state, distinct from the totalitarian state, is that Hobbes's

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50 Ibid., p. 58.

51 "The benefits of subjects respecting this life only, may be distributed into foure kindes. 1. That they be defended against forraign enemies. 2. That Peace be preserved at home. 3. That they be enrich't as much as may consist with public security. 4. That they enjoy a harmlesse liberty; For supreme Commanders can conferre no more to their civill happinesse, then that being preserved from forraign and civill warres, they may quietly enjoy that wealth which they have purchased by their own industry" (*De Cive*, XIII, 6, pp. 158–9).

52 "Dans tous ces domaines, l'absolutisme politique de Hobbes recouvre donc une sorte de libéralisme moral et rien ne montre mieux sa nature profonde, ni ne l'oppose plus clairement au totalitarisme" (R. Capitant, "Hobbes et l'Etat totalitaire", p. 60).

absolutism is, in many aspects, very close to the Kelsenian doctrine of juridical positivism.<sup>53</sup> Among Hobbes's French commentators, Capitant is one of the first to have made this claim.<sup>54</sup> The confirmation of this interpretation rests both on arguments and on quotations. The main argument is that Hobbes shares with Kelsen the idea of a strict – “radical”, says Capitant – separation between positive and natural laws. When we consider it carefully, Hobbes's natural law theory appears for what it is, that is, a set of moral precepts, with no force of constraint. In the absence of a sovereign to interpret it and enforce this interpretation, natural law is unable to establish peace among men, as in the state of nature anyone can decide that it would put him/her in danger to obey it, and prefer behaving according to natural right. The only constraining law is the positive law, proceeding from the sovereign's command and the collective power of constraint. It is therefore not necessary to go beyond the definition of positive law to understand the true meaning of Hobbesian absolutism. If the sovereign is the only source of positive law, and is the condition for the promulgation of that law, it is only too logical that he cannot himself be subject to the law. The moral laws to which he is subject bind him in a non-juridical way: no human sanction could restrain him, if he doesn't respect those laws. On the contrary, if he were responsible before human judges, he would no longer be the unique source of the laws, since the judges, as in the case of the American supreme court, would contribute to them through their decisions. The rejection of the idea of the sovereign's responsibility to any other authority, and therefore the establishment of the sovereign's juridical absolutism, is indeed the outcome of juridical reasoning. But this doesn't mean that any sovereign will do anything he has the power to do. For the sake of his *Leviathan*, he must develop a politics that takes great care of the good of the individuals.<sup>55</sup>

Hobbes's absolutist theory no longer appears as a political monster, but as a logical juridical construction, anticipating liberalism on the one hand and juridical positivism on the other. The shadow of *Leviathan* is no longer so

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53 “Il [Hobbes] apparaît, en vérité, à maintes reprises, tout proche de la doctrine que nous désignons aujourd'hui du nom de positivisme juridique – et peut-être cette dernière procède-t-elle, en effet, par une filiation plus ou moins consciente, mais pourtant réelle, de la pensée du philosophe anglais –. Cette comparaison peut aider, en tout cas, à saisir la véritable portée du *Léviathan*” (ibid.). This direct reference to *Leviathan* is not accompanied by any quotation. Even when talking about *Leviathan*, Capitant only quotes the French translations of *The Elements of Law* and *De Cive*.

54 For a restatement of this argument in a more recent period, see S. Goyard-Fabre, *Le droit et la loi dans la philosophie de Hobbes* (Paris, Klincksieck, 1975).

55 “En droit, le souverain de Hobbes peut tout faire; son pouvoir est absolu et arbitraire. Mais, en raison et en fait, il concentre ses interventions dans un domaine relativement étroit et laisse une vaste zone de liberté à l'usage de ses sujets” (R. Capitant, “Hobbes et l'Etat totalitaire”, p. 62).



threatening. Is nevertheless this resolution of the authoritarian state's paradox sufficient to situate Hobbes's absolutism in the history of the modern state?

The recurring problem with which readers of Hobbes are confronted is the question of his place in the history of political thinking. Is he a liberal thinker? But then why does he lay such stress on the absolutism of his state? Is he a partisan of a strong state? But then why does he lay such stress on the necessity to protect individuals as such? The distinction between authoritarian and totalitarian states appears, in Capitant's reading, as the prerequisite for an interesting placing of Hobbes in the history of political thought. It is evident, from what we have previously seen, that it was not possible to identify Hobbes's Leviathan with those political regimes that were eager to submit the state to the pursuit of ambitions alien to and even remote from the good of the individuals that compose it. If those political regimes have exercised a political fascination, it is perhaps due to the fact that they proposed to humanity a more considerable risk than the ones it is subjected to in a liberal state. As the state sets its sights on objects far remote from the interests of the individual citizens, it can draw the gaze of the citizens towards distant aims that can seem at first sight more stimulating than that preservation of a good life that underlies the liberal ideology. But Capitant very clearly shows that Hobbes cannot be held responsible for this dangerous fascination. If the comparison with National Socialist organicism is of any help in understanding Hobbes, it is precisely because it helps to illuminate the individualistic presuppositions present in *Leviathan*, along with the kind of political thinking to which a superficial survey might have assumed he was alien.<sup>56</sup>

Hobbes's thought represents, according to Capitant, one of four trends in modern individualistic political thinking, namely liberalism, democracy, socialism and authoritarianism. The first three trends are best illustrated, respectively, by Locke, Rousseau and Babeuf. Hobbes illustrates the authoritarian trend in individualistic thinking. Given that one might be somewhat surprised that socialism, and even communism, might be described as individualistic ways of thinking – which is not a surprise as far as Locke, Rousseau and Hobbes are concerned, as all three of these are social contract theorists – Capitant explains that those theories too pursue the establishment of a social order favourable to the individual, through a better organization of

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56 “L'organicisme hitlérien, en incarnant à nos yeux l'anti-individualisme, nous aide, au contraire, à découvrir aujourd'hui la parenté qui relie des courants politiques que nous pouvions croire antinomiques, mais dont l'individualisme constitue pourtant la source commune. De ceux-là est l'absolutisme hobbesien” (R. Capitant, “Hobbes et l'Etat totalitaire”, p. 71).

economics, and better conditions of life.<sup>57</sup> What are the differences, then, between those four thinkers? These differences come from differing appreciations of the nature of individuals' interests; but all four none the less consider that these interests fundamentally underlie their conceptions of the state. For Locke, the highest individual good is individual liberty, and the state cannot attain its aim if it doesn't respect this individual liberty and individual rights. This is the doctrine of liberalism, which finds its expression, in the French revolutionary context, in Article 4 of the 1789 *Déclaration des droits de l'homme et du citoyen*. To put it in other words, the liberal end of the state is to achieve the equalization of the citizens' liberties (*l'égalité des libertés*). Rousseau's perspective is one of democracy, as he is looking for a reconciliation between state and liberty. Inside a state endowed with an absolute right of command, the individual must be as free as possible. As to socialism, it is fundamentally a claim for justice, understood as a claim for equality. It is a negation of liberalism, as its pursuit of equality, which for it is just another name for justice, implies the negation of individual liberties. Can it even so still belong to the same family of ideas as the other examples we have surveyed? According to Capitant, it can and does; but it is an absolutist and messianic form of individualism, as its idea of justice is tainted with mysticism. Even so, it is still at variance with the National Socialist vision of society, which is based on an organicist ideology.

In this historical perspective, Hobbes occupies a particular place. The main *skopos* or objective of his state is indeed close to the liberal's aim, as it is to guarantee some kind of good to the individual; but this good is not liberty as such, nor the preservation of natural rights, but the preservation of life, and even a good life, against the ultimate evil, which is death and the pain of dying. Therefore *Leviathan's* main objective is to guarantee the security of the subjects, which also means that the highest good of the individual is also to be understood as security. As the state of nature is a state of maximum insecurity, the achievement of the goal of a safe civil condition requires a strong conception of authority.<sup>58</sup> Respect for the law proceeds from the fear of sanctions, and so from a respected coercive power. By way of consequence, this authoritative state requires a high expenditure as far as police forces and military forces are

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57 “Et quant au socialisme, il est, jusque dans ses formes dernières, jusque dans la réalisation communiste, lui aussi, profondément imprégné d'individualisme, car il poursuit l'établissement d'un ordre social favorable à l'individu, conçu en vue de l'individu, destiné à fournir à l'individu, par une meilleure organisation économique, des conditions de vie plus large et plus féconde” (ibid.).

58 “Or, l'ordre ne peut être fondé que sur l'autorité. Il ne suffit pas que les hommes s'engagent mutuellement à renoncer à la force, il faut qu'ils instituent une force collective capable de plier irrésistiblement sous sa loi les volontés individuelles” (ibid.).

concerned, and not much protest, if any, on the part of the subjects, as any political expression of the liberty of the subjects is immediately understood as an assertion of natural liberty, which conduces necessarily to war. In such a state, any political expressions of the citizens are all too easily perceived as a threat to public order. If we want to avoid the anarchy of the state of nature, it is necessary, according to Hobbes, to concentrate as many powers as possible in the hands of a single person (which can be an assembly), including even religious and economic powers. The stress laid on security certainly doesn't allow one to go too far in the direction of liberalism, or of religious diversity. Nevertheless, if Hobbes puts security far above liberty (liberalism) and justice (socialism), his is still an individualist system of political thought.<sup>59</sup>

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59 This political synthesis, which Capitant describes as an authoritarian one, can helpfully be used to analyse French political realities, and the strange mixture of individualism and authoritarianism that has characterized some French political regimes since the Revolution, as for example the First Empire, which can be interpreted as a reaction against the anarchy of the *Directoire*, and at the same time (e.g. in the shape of Napoleon's *Code civil*) as an inheritance from revolutionary individualism. It is not the least paradox of Hobbesian thinking to have thus contributed to the theoretical definition of this authoritarian way of thinking that has been analysed by R. Rémond, in his renowned *Les droites en France* (Paris, Aubier, 1982), and commented upon by L. Jaume, in his stimulating *L'individu effacé ou le paradoxe du libéralisme français* (Paris, Fayard, 1997).