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## The Right of Resistance and Religious Motivation according to Thomas Hobbes and Jean Bodin

Creon [*Antigone*]: «Denn herrnlos sein, kein größer Übel gibt es.  
Denn das verderbet Städte [...]»

Jean Bodin: «[...] une licencieuse anarchie, [chose]  
qui est pire que la plus forte tyrannie du monde»

Thomas Hobbes: «the name of Tyranny, signifieth nothing more,  
nor lesse, than the name of Sovereignty»

**Abstract:** This article is an investigation of the religious motivation within the right of resistance according to the works of Jean Bodin and Thomas Hobbes. These authors are known for forging (Bodin) or stressing (Hobbes) the notion of sovereignty in a relevant way for the conception of modern State. The tense relations between religion and politics in the beginning of the Modern Age, characterized by raising political relations to a new standard, independent of confessional varieties, are here indicated and assessed.

**Keywords:** Thomas Hobbes, Jean Bodin, right of resistance, faith and confession.

**Resumo:** Neste artigo, procura-se investigar o tratamento dado à motivação religiosa, no contexto do direito de resistência em Jean Bodin e Thomas Hobbes. Conhecidos por

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forjar (Bodin) ou acentuar (Hobbes) a noção de soberania, marcante para a concepção de Estado moderno, tem-se o intuito de buscar uma demarcação importante para as tensas relações entre religião e política no começo da Idade Moderna, que procura alçar as relações políticas a um novo patamar, sem estarem acoissadas pelas variedades confessionais.

**Palavras-chave:** Thomas Hobbes, Jean Bodin, direito de resistência, fé e confissão.

## 1. Right of Resistance as a Problem

The Hobbesian state reputedly concentrates all political powers and rights; assembling legislative, executive, and judiciary powers, what it comes to proclaim as a «right» can never be unfair. In addition, it also possesses power over miracles and confessions («Macht ... über Wunder und Bekenntnisse»)<sup>1</sup> and spiritual and mundane authority, whose power on Earth is unequalled. By teaching the original covenant toward an almighty state, *pactum societatis* and *pactum subjectionis* are intertwined, diverting its sense in the tradition of natural right of contract. This refined construction of contract mirrors the renunciation of political opposition against the State. Within this fundamental conception, while the «sovereign» detains the rights and powers, the «citizen» (*subject*) is left only with obligations: «since it [the State] has all objective and subjective rights on its side, [...] otherwise [...] again the state of nature prevails»<sup>2</sup>.

In such a picture, there does not seem to be something as a «right to resistance» to the citizens<sup>3</sup>. Hobbes himself will insist against disobedience, insurrection, and tyrannicide<sup>4</sup>. He was convinced that the city's supreme power should even limit

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<sup>1</sup> Cfr. C. SCHMITT, *Der Leviathan in der Staatslehre des Thomas Hobbes*, Klett-Cotta, Stuttgart 1995, p. 84.

<sup>2</sup> Ibid, pp. 71-72: «Dieser Staat ist entweder als Staat wirklich vorhanden, dann funktioniert er als das unwiderstehliche Instrument der Ruhe, Sicherheit und Ordnung, und dann hat er alles objektive und alles subjektive Recht auf seiner Seite, [...] oder [...] herrscht eben wieder der Naturzustand».

<sup>3</sup> As explicitly said in Th. HOBBS, *Citizen*, Cambridge University, Cambridge 1998, p. 100: «which Power, and Right of commanding, consists in this, that each Citizen hath conveyed all his strength and power to that man, or Counsell; which to have done (because no man can transferre his power in a naturall manner) is nothing else than to have parted with his Right of resisting. Each Citizen, as also every *subordinate civill Person*, is called the SUBJECT of him who hath the chiefe command».

<sup>4</sup> Cfr. Th. HOBBS, *Citizen*, Preface and Chapter XXII, art. 3, and Th. HOBBS, *Behemoth ou o longo parlamento*, UFMG, Belo Horizonte 2011, p. 242.

freedom of thought in stimulating a sound doctrine and banning evil doctrines<sup>5</sup>, examining books before publishing them<sup>6</sup>, since «man's tongue is a trumpet to war and sedition»<sup>7</sup>.

*Prima face*, Hobbes seems to be making a case for a doctrine of non resistance. Here we will explore where in the almighty State's wall fissures are opened. *Citizen* already presents us a first clue, clarifying the commitment of obedience: «Though such obedience may sometimes rightly be refused for various reasons»<sup>8</sup>.

This means disobedience to sovereign law. Maybe the best known instance is that of avoidance of imminent death, «since no law can oblige man to renounce to his own preservation». Elsewhere it had been established that theft can only be called such in face of recognition of property of the State. The extreme need, «when a man is destitute of food, or other thing necessary for his life»<sup>9</sup>, turns stealth into utterly pardonable. If, however, in this case, «nature forces the act», when we speak of «right of resistance», in which circumstances could this right be exercised, with legitimacy?

Bodin, on his side, turns his argument toward instability generated by the use of violence as a privileged means of access to sovereign power: «Si donc le sujet veut envahir et voler l'état à son Roi, par quelque moyen que ce soit, ou en l'état populaire, ou Aristocratique, de compaignon se faire seigneur, il mérite la mort»<sup>10</sup>.

## 2. Circumstances for the Right of Resistance

In spite of his general disposition being against resistance to sovereign will, Hobbes acknowledges, under a certain constellation, the right of resistance and the denial of obedience. In the definition of State by acquisition, he explicitly talks about «where the sovereign power is acquired by force»: and such is acquired by

<sup>5</sup> Cfr. TH. HOBBS, *Citizen*, Chapter XII, art. 9, and *Leviathan*, Chapter XXX.

<sup>6</sup> Cfr. TH. HOBBS, *Leviathan*, Chapter XVIII: «it is annexed to the Sovereignty, to be Judge of what Opinions and Doctrines are averse, and what conducing to Peace; and consequently, on what occasions, how farre, and what, men are to be trusted withall, in speaking to Multitudes of people; and who shall examine the Doctrines of all bookes before they be published».

<sup>7</sup> Cfr. TH. HOBBS, *Citizen*, p. 71.

<sup>8</sup> *Ibid.*, p. 82.

<sup>9</sup> Cfr. TH. HOBBS, *Leviathan*, Chapter XXVII, p. 346

<sup>10</sup> Cfr. J. BODIN, *Les six livres de la republique*, Arthème-Fayard, Paris 1986, p. 197.

force when men, individually, or in great numbers and plurality of votes, due to fear of death or captivity, authorize every action from that man or assembly that have their lives and liberty under their command<sup>11</sup>.

From this passage, it could be concluded that men, individually or collectively, are allowed to accept or not a submission pact with their conqueror. This means that Hobbes recognizes the possibility that such a pact be with individuals «singly or many together by plurality of voyces». In situation of war in which the old sovereign loses, the commitment of obedience to him no longer holds, thus arising, again, the natural liberty of action<sup>12</sup>. Here the citizen may exert passive and active resistance against the new sovereign, individually or collectively, since no contract limits him, for «where there is no Common-wealth, there nothing is Unjust»<sup>13</sup>.

In the case of State by acquisition, Mayer-Tasch understands that, where «the individual» (*das Einzelne*) decides upon submitting himself or not to the new sovereign, he cannot be compelled into doing so, even if this is the will of the majority: «The decision of the majority within a great number of subjects commits only the circle of coreligionists, but not automatically every citizen in a declining State»<sup>14</sup>.

Hobbes follows a subtle, if tortuous, path to sustain his position on the constitution and dissolution of the State. Where «by institution» the majority's vote prevails, and everyone is thus automatically included, as said in the beginning of Chapter XVIII of *Leviathan*, the sovereign cannot be impeached by consensus, since «it is not a natural rule that the consent of the majority should be taken for the consent of all»<sup>15</sup>. Mayer-Tasch seems to highlight, in the State by acquisition, that the context is different, since the until now «foreign State» (*fremder Staat*) is already constituted independently of what those defeated may decide.

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<sup>11</sup> Cfr. Th. HOBBS, *Leviathan*, Chapter XX.

<sup>12</sup> Ibid., Chapter XXI, p. 135: «The Obligation of Subjects to the Sovereign is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them».

<sup>13</sup> Ibid., Chapter XV. This also holds when the sovereign abdicates without indicating a successor or dies without declaring the heir; cfr. Th. HOBBS, *Leviathan*, Chapter XXI, p. 273: «If a Monarch shall relinquish the Sovereignty, both for himself, and his heirs; His Subjects returne to the absolute Libertie of Nature».

<sup>14</sup> Cfr. P. C. MAYER-TASCH, *Thomas Hobbes und das Widerstandsrecht*, Mohr, Tübingen 1965, p. 84: «Der Mehrheitsentscheid einer unterwerfungswilligen Vielzahl von Bürgern verpflichtet nur den Kreis der Gleichgesinnten, nicht aber auch automatisch alle Bürger des untergegangenen Staates».

<sup>15</sup> Cfr. Th. HOBBS, *Citizen*, p. 89.

Some points stand out in relation to the State by institution and deserve highlighting. Firstly, the instituted State includes everyone, without exception, both those who have voted against and those who have voted in favor. Secondly, in it every pact is between each and every one and each of all. Thirdly, no pact exists between sovereign and citizen. This agreed, Hobbes does not seem to recognize the differences considered when he says that

«And this kind of dominion, or Sovereignty, differeth from Sovereignty by institution only in this, that men *who* choose their Sovereigne do it for fear of one another, and not of him whom they institute: but in this case, they subject themselves to him they are afraid of»<sup>16</sup>.

Here, once more the submission pact between winner and defeated becomes evident, through which the transfer of individual rights is effected. But how does it occur? Hobbes elucidates: «Dominion acquired by acquisition, or victory in war [...] is then acquired to the victor when the vanquished, covenanteth [...] that so long as his life and the liberty of his body is allowed him, the victor shall have the use thereof at his pleasure»<sup>17</sup>.

This is not, however, the only situation in which the citizen can exercise the right of resistance. It is important to remember that the original pact is formed through a voluntary agreement only from the contractors' original liberty, whose aim is the «*protectio omnium contra omnes*», the guarantee of peace. If the citizen's physical integrity is threatened<sup>18</sup>, he has the right to resist, be it in face of another citizen, be it in face of the sovereign, since no one can, by contract, renounce to resist to violence: «A Covenant not to defend my selfe from force, by force, is alwayes voyd»<sup>19</sup>.

The very content of the original pact is limited by its objective. Yet, resigning the right of resistance, when there is a risk of being deprived of one's own life, is incompatible with the essence of natural right in relation to the first fundamental law: «That every man, ought to endevaour Peace, as farre as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps and advantages of Warre»<sup>20</sup>.

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<sup>16</sup> Cfr. Th. HOBBS, *Leviathan*, Chapter XX.

<sup>17</sup> Ibid.

<sup>18</sup> Cfr. Th. HOBBS, *Citizen*, p. 39: «No one is obligated by any *agreement* he may have made not resist someone who is threatening him with death, wounds or other bodily harm».

<sup>19</sup> Cfr. Th. HOBBS, *Leviathan*, Chapter XIV.

<sup>20</sup> Ibid. Cfr. Th. HOBBS, *Citizen*, p. 34: «The first *law of nature* (the foundation) is: *to seek peace when it can be had; when it cannot, to look for aid in war [auxilia belli]*».

It is important to highlight that the right of resistance is an unalienable right of the individual as man, regardless of what comes to establish any positive law. The right of nature still acts in civil society and attributes «justice» to the act of resistance by the citizen in default of the sovereign will expressed in positive law. «It is outside and at the side of the right of state. To delineate the exercise of a state control will then seem inopportune»<sup>21</sup>.

From what was exposed so far, there is the impression that the right of resistance according to Hobbes can be reduced to the defense of (corporal) liberty, the body and one's own life<sup>22</sup> as it is only *one's own* (corporal) liberty, one's *own* body and one's *own* life, and not that of a third part. He says that «To resist the Sword of the Common-wealth, in defence of another man, guilty, or innocent, no man hath Liberty»<sup>23</sup>.

From this clear passage, one could draw a general rule that seeks to defend the sovereign's prerogative to punish only to protect the citizens from those who have a pernicious behavior. The citizen is an interested part in the State only insofar as it can protect them from the perilous behavior of others. It is clearly apparent in the justification of the previous passage, «since this liberty deprives sovereignty of the means to protect us, thus being destructive to the Commonwealth's own essence». This position, however, does not exclude a possible collective resistance:

«But in case a great many men together, have already resisted the Sovereign Power Unjustly, or committed some Capitall crime, for which every one of them expecteth death, whether have they not the Liberty then to joyn together, and assist, and defend one another? Certainly they have: For they but defend their lives, which the guilty man may as well do, as the Innocent. There was indeed injustice in the first breach of their duty; Their bearing of Arms subsequent to it, though it be to maintain what they have done, is no new unjust act. And if it be lonely to defend their persons, it is not unjust at all»<sup>24</sup>.

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<sup>21</sup> Cfr. P. C. MAYER-TASCH, op. cit., p. 95: «Es steht ausserhalb und neben dem staatlichen Recht. Seine Ausübung einer staatlichen Kontrolle zu entwerfen, muss also unter diesem als abwegig erscheinen».

<sup>22</sup> The case of suicide is a precise example of the qualification of original pact that creates the city. In relation to the difference between saying «I give you the right to command whatever you want» and «I will do whatever you command», we find in Th. HOBBS, *Citizen*, p. 82, the following passage: «Hence if I am told to kill myself, I have no obligation to do so».

<sup>23</sup> Cfr. Th. HOBBS, *Leviathan*, Chapter XXI, p. 270.

<sup>24</sup> Ibid.

The exercise of the right of resistance, individually or collectively, does not change, then, the statute of its agent. He does not go back into the State of nature, since he is a citizen of the State or subject. This is certain if we understand that being a subject of the State excludes the state of nature. The chapter in *Leviathan* wherein Hobbes presents the circumstances in which the legitimacy of disobeying sovereign will is duly titled «Of the Liberty of Subjects». Neither the crime committed by a citizen nor the penalty inflicted to the offender nor the controversy with his sovereign allow both sides to exit the juridical relation that was established between sovereign and subject to enter the essentially non juridical relation established between an individual and his enemies: «If the guilty citizen loses, due to his crime, his citizenship and becomes an enemy of the Republic, the very idea of punishment would lose all its sense»<sup>25</sup>. On the other hand, Hobbes foresees a circumstance in which the subject loses his citizenship: «For a Banished man, is a lawfull enemy of the Common-wealth that banished him; as being no more a Member of the same»<sup>26</sup>. This is not, however, the case of the enemy of the State who, by definition, denies the authority of its representative, has never been subjected to law and, therefore, cannot be called a transgressor<sup>27</sup> in case of harms that may be caused to either parts, but in acts of hostility.

Both Bodin and Hobbes notice in the common use of the word «tyranny» a way of manifesting opposition to the exercise of sovereign power, whose intention is to question its legitimacy and ground a contrary reaction to the figure of the ruler. To withdraw this reaction, Bodin recalls the original sense of the word «tyrant» as being «the one who had achieved power by force or shrewdness»<sup>28</sup>. The subjects should use armed resistance against the usurper of power, but, aside from this case, it would be only a judgment of the sovereign.

### 3. Resistance as a Religious Duty

Were we to stop here, we would be led to believe that, if Hobbes advocates for a sort of right of resistance, this is circumscribed to the defense of (corporal)

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<sup>25</sup> Cfr. Y. C. ZARKA, *Hobbes et la pensée politique moderne*, PUF, Paris 1995, p. 244: «Si le citoyen coupable perd, par son crime, sa citoyenneté et devient ennemi de la république, la notion même de châtement perd tout sens».

<sup>26</sup> Cfr. Th. HOBBS, *Leviathan*, Chapter XXVIII.

<sup>27</sup> Ibid.

<sup>28</sup> Cfr. A. R. BARROS, *A teoria da soberania de Jean Bodin*, Unimarco Editora, São Paulo 2001, p. 276.

liberty, physical and life integrity. However, Hobbes also acknowledges the right to protect some «material assets»:

«A private man has alwaies the liberty, (because thought is free,) to beleeeve, or not beleeeve in his heart, those acts that have been given out for Miracles[...]. But when it comes to confession of that faith, the Private Reason must submit to the Publique; that is to say, to Gods Lieutenant. But who is this Lieutenant of God»<sup>29</sup>.

This excerpt shows a clear claim in favor of inviolable intimacy of belief. For Hobbes, it is preferable to convince or teach than to constrain. Thus, we could ask if this «intimacy» would not also dilute in some behavior, for instance, in the case of the City lead us to offend God or prohibit to worship. For Bodin, even if the sovereign commands things that are judged as against the laws of God and nature, it could not justify resistance, unless by a special and direct commandment of God. On this point, Hobbes affirms that

«it does not follow, and one must not obey; for no one could take a profusion of insults or total absence of worship as a mode of worship. And again before the formation of the commonwealth no one who acknowledged the reign of God had the right to deny the honour due to him, and he could not therefore transfer the right to give such an order to the commonwealth.»<sup>30</sup>.

Even if the citation is clear, further Hobbes will say that, even when one has no obligation to obey to rulers, one should not resist them. In doubt, «Go to Christ through Martyrdom»<sup>31</sup>. The response to martyrdom is understood by Mayer-Tasch as «advice» (*Rat*) or «proposal» (*Vorschlag*), not eliminating the right of resistance<sup>32</sup>. This question is very prized by Hobbes, and he will use all his sharp irony both for those who hesitate in martyrdom and to those who choose this path. In the same part of *De cive*, he will say about the former: «If anyone thinks this a harsh thing to say, it is very certain that he does not believe with his whole heart that *JESUS IS THE CHRIST, the Son of the living God*, (for he would

<sup>29</sup> Cfr. Th. HOBBS, *Leviathan*, Chapter XXXVII.

<sup>30</sup> Cfr. Th. HOBBS, *Citizen*, 183.

<sup>31</sup> *Ibid.*, p. 245.

<sup>32</sup> Cfr. J. M. O. GORRAIZ, «Hobbes: la republica cristiana», *Revista de Estudios Políticos* (Caracas) 5/12 (1980) p. 193, holds a contrary position: «Niega Hobbes el derecho de resistencia al soberano, sea Cristiano o no lo sea». For Gorraiz, Hobbes's response is very clear: to obey the sovereign; cfr. *ibid.*, p. 198. This position is shared by C. SCHMITT, *op. cit.*, p. 71: «Im absoluten Staat des Hobbes ist ein Widerstandsrecht als 'Recht' auf einer Ebene mit dem staatlichen Recht in jeder Hinsicht, faktisch wie rechtlich, widersinnig und eine Absurdität».



long to be dissolved, and to be with Christ)»<sup>33</sup>. And after defining that there is only one article, that *Jesus is Christ*, according to which, dying for him makes one worthy of such a honorable name (martyr), he remarks about the latter:

«Also he that is not sent to preach this fundamentall article, but taketh it upon him of his private authority, though he be a Witness, and consequently a Martyr, either primary of Christ, or secondary of his Apostles, Disciples, or their Successors; yet is he not obliged to suffer death for that cause; because being not called thereto, tis not required at his hands; nor ought hee to complain, if he loseth the reward he expecteth from those that never set him on work»<sup>34</sup>.

Leo Strauss will not arrive at a unanimous answer for the same question, pointing out that Hobbes's strategy was using the authority of the Scriptures in favor of his own theory and, afterwards, unsettle their authority<sup>35</sup>. However, beyond the legitimacy of motives, there is a prevision in Hobbes's formulation of the legitimacy of objective power. This «ambivalence» (*Zwiespältigkeit*) within his theory contemplates, on the one hand, the right of the sovereign's domain over the extent of his power of resistance, and, on the other, the citizen's right to resist up to where his power of resistance stretches. This is how Mayer-Tasch<sup>36</sup> understands the following passage of *Citizen*: «For as by nature no one can punish him if he does not have enough strength to do it, so by right no one can punish him, if he does not have the strength by right to do so.»<sup>37</sup>. This means that those who can accumulate the strength enough to stand have the right to rebel, while those who have not this power, rebel without right.

In Hobbes, even the divine coating possibly attributed by the Christians to natural law does not oppose taking the civil law as the basis of inner disposition as obligatory, allowing him to arrive at the following conclusion:

«It follows therefore that what he was teaching by the laws: *You shall not Kill, you shall not commit Adultery, you shall not Steal, you shall honour your Parents, was simply that*

<sup>33</sup> Cfr. Th. HOBBS, *Citizen*, p. 245.

<sup>34</sup> Cfr. Th. HOBBS, *Leviathan*, Chapter XLII.

<sup>35</sup> Cfr. L. STRAUSS, *The Political Philosophy of Hobbes*, University of Chicago Press, Chicago 1984, p. 71. The question is posed in p. 72. Compare with p. 74: «But this apparent contradiction of the general tendency of the Elements on the one hand and of the later presentations on the other, is explained by the fact that in the later writings Hobbes attaches much less value to conformity with the teachings of Scripture».

<sup>36</sup> Cfr. P. C. MAYER-TASCH, *op. cit.*, p. 124.

<sup>37</sup> Cfr. Th. HOBBS, *Citizen*, p. 81.

*citizens and subjects should absolutely obey their Princes and sovereigns in all questions of mine, thine, his, other's.»<sup>38</sup>.*

Even if natural laws forbid theft, homicide, adultery and all sorts of offenses, it is civil law that will determine what is to be called theft, homicide, adultery or offense. In other words, there are not two different rules about homicide in respect to intentions and another rule about homicide related to actions. In this same excerpt, other passages of the Holy Scriptures are mentioned in which killing is licit, so much so that further it is asked: «What then is forbidden? Only this, that one may not kill anyone whom one has no right to kill, i.e. let no man kill unless it is *his* [*suum*] to do so.»<sup>39</sup> And he concludes, stretching to all other possible cases:

«CHRIST'S law therefore on killing, and thus on every kind of assault and on establishing penalties, commands one to obey the commonwealth alone. [...] the citizen receives just one commanded, not to enter upon or surreptitiously remove; and in general not to call anything murder, adultery or theft unless doing it is against that the civil laws.»<sup>40</sup>.

Naming the application of terms certainly does not belong to the external forum, but to that of understanding. Hobbes seems not to be aiming only at mechanical action by the subjects, external or passive obedience, in default of understanding. Christ did not indicate any other law referring to the city's government «beside those of nature, which is to say, beside the Command of obedience»<sup>41</sup>.

That temporal power is subordinated to spiritual power is not theoretically constraining to Hobbes's formulation, and he accedes that the political community is the mean that leads to «spiritual felicity», since «One Power may be subordinate to another, as the art of a Sadler, to the art of a Rider»<sup>42</sup>. It does not follow that the king has to obey the Pope: «as from Subordination of an Art, cannot be inferred the Subjection of the Professor; so from the Subordination of a Government, cannot be inferred the Subjection of the Governor»<sup>43</sup>.

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<sup>38</sup> Ibid., p. 213.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid. pp. 213-214.

<sup>41</sup> Ibid.

<sup>42</sup> Cfr. Th. HOBBS, *Leviathan*, Chapter XLII.

<sup>43</sup> Ibid.

#### 4. Analysis and Conclusion

Bodin clearly admits that passive resistance is legitimate, but not active resistance within the Republic, whereas Hobbes shows a certain aversion to this very distinction as he rejects the distinction «passive obedience / active obedience»<sup>44</sup>. In addition to this possibility, Bodin accepts the active resistance to the «tyrant without a title», i.e., the sovereign who achieves this position by usurpation. Hobbes concedes the people who lose the war the right to not submit to the conqueror. Curiously enough, while in the standard notion of contract, State by institution, the contract is only between individuals; in the State acquired by force, it is between the individuals of the defeated people and the new sovereign. This brings about another mode in the constitution of relation, in which the whole people or isolated individuals legitimately resist the new pact of submission.

In addition to this case, Hobbes conceives the possibility of legitimate disobedience by the individual in all the cases involving the preservation of his own life, be it in face of another citizen, be it in face of the sovereign, even if recurring to other citizens who share the same conditions. Legitimate disobedience also includes the refusal of abiding by the commandment to kill a relative, suicide or military draft, since this means risking one's life.

Bodin seems coherent with his conceptual grid in restricting the right of resistance. Does acknowledging this right in many circumstances makes Hobbes an incoherent author? It is visible how Hobbes is gathering the consequences of choosing the natural right of life for the constitution of the State, preserving it within civil relations. In this sense, he is being coherent in relation to his point of departure as well as his end. However, this coherence leads him into theoretical snags difficult to overcome. There are at least two considerations to be pointed out. One is related to the resultant: Hobbes conceives two rights that are actually contradictory, since the sovereign has the right to penalize a subject, who, on his turn, has the right to resist it insofar as he is defending his own life. The other consideration is related to the way of justifying this position. The right of punishment and the right to resist cannot be both unalienable rights, since this builds an inner antinomy. The dogmatic solution of the antinomy of the right of resistance and the right of punishment by Hobbes is unsuccessful. As in Zarka's formulation, it «fails». The right of resistance which belongs to human being as

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<sup>44</sup> Cfr. Th. HOBBS, *Citizen*, p. 167.

human being subsists in the citizen; however, without the right of punishment, laws and justice would remain invalid. Zarka's formulation of this antinomy (or «conflicting coexistence») goes as follows:

«If the right of resistance is unalienable, the subjects have never conceded the sovereign the right to punish them; it cannot, thus, be conceived as an essential attribute of sovereignty emanating from the convention that institutes the State. Conversely, if the penal right is an unalienable right of sovereignty, founded on social convention, then the right of resistance cannot be considered an unalienable right of man. Under this contradiction, the political edifice shakes. Or, even worse, it may collapse, since such antimony is made internal, affecting the relation between ends and means of the State. Its end is to secure, by peace and safety, the preservation of being and well-being of the citizens; the means it uses to reach it is the existence of a right to punish, i.e., of suppressing one's being or well-being. Does the State, then, only has the power to secure the perpetuation of life or comfortable life insofar as it has the power of interrupting it or making it burdensome?»<sup>45</sup>

Once the fragile condition of an *a priori* fundament of the sovereign's right to punish is perceived in the *Elements* and *Citizen*, Zarka posits that not only does the *Leviathan* surpasses it as it enhances it. In this sense, using distinctions found in *Leviathan*, Zarka proposes replacing the absence of an *a priori* fundament (from original convention) of the right to punish with an *a posteriori* fundament, i.e., the sovereign's ethics: «The right to punish, which could not be founded on a social convention, finds the justification of its existence in the modalities of its exercise»<sup>46</sup>. The sovereign who is hostile in relation to the subject, for instance, injuring him with no previous public condemnation, puts the public institution in a contradiction with itself and menaces the very existence of the State, since punishment is not defined «only by the fact that it springs from public authority, but also the respect to the procedures that should command its exercise»<sup>47</sup>. Zarka reemphasizes the importance of the distinction between punishment and hostile act from the: «the evil inflicted by publique Authority, without precedent publique condemnation, is not to be stiled by the name of Punishment; but of an hostile act»<sup>48</sup>. With this in mind, Zarka<sup>49</sup> points out what could be a blow in his political edifice. To avoid this «failure», he suggests a conceptual twist explored from

<sup>45</sup> Cfr. Y. C. ZARKA, op. cit., p. 235.

<sup>46</sup> Ibid., p. 249

<sup>47</sup> Ibid., p. 235.

<sup>48</sup> Cfr. Th. HOBBS, *Leviathan*, Chapter XXVIII.

<sup>49</sup> Cfr. Y. C. ZARKA, op. cit., p. 248.

the distinction between punishment and «hostile act», arriving at the expression «morally illegal», (*morelement illégal*) which is strange to Hobbes's system, as strange as the entwined contemporary formulation of «legal crimes»<sup>50</sup> with which Arendt points, in *Eichmann em Jerusalém*, to the implosion of the concepts' ability to account for the totalitarian phenomenon «when the idea of right loses its anchorage»<sup>51</sup>.

With different tones, Bodin (*Les six livres de la republique*) and Hobbes seem to converge in an important point: the unsettling of arguments of disobedience to the sovereign under religious motivation. For many centuries, there was instability in the western European continent generated by disputes between temporal and spiritual power, which came to a peak with the protestant reformation and counter-reformation. Bodin and Hobbes drove their intellectual energies to formulate a political theory that can replace the lost religious unity with a political unity. For such, they sought to show the main hindrances to sovereign power: natural laws, the Holy Scriptures and spiritual power. Both authors do so by drawing the theoretical consequences of the definition and the accent in the core element that the concept of sovereignty occupies, i.e. that of an unlimited and absolute power.

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<sup>50</sup> Cfr. H. ARENDT, *Eichmann em Jerusalém – Um relato sobre a banalidade do mal*, Cia. Das Letras, São Paulo 1999, p. 165.

<sup>51</sup> Cfr. S. GOYARD-FABRE, *Os fundamentos da ordem jurídica*, Martins Fontes, São Paulo 2002, p. 104.