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# Hobbes on Public Ministers

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## Abstract

Until recently, scholars paid relatively little attention to chapter 23 of *Leviathan*, in which Hobbes discussed “the public ministers of sovereign power.” In the past few years, however, political theorists have used chapter 23 extensively in discussions of Hobbes’ concept of the state. But what was the significance of the chapter in its own time? This article suggests it served two purposes. First, it allowed Hobbes to bolster and elaborate arguments made elsewhere in *Leviathan*. Second, it responded to 1640s debates between royalists and parliamentarians over the role of subordinate magistrates in a polity. By the time *Leviathan* was published in 1651 these debates were no longer pressing, which explains the chapter’s rapid descent into obscurity. Nonetheless, recovering this polemical context helps to understand the genesis of this small but significant part of Hobbes’ political thought.

## Keywords

*Leviathan* – ministers – magistrates – representation

In chapter 23 of *Leviathan*, Hobbes set out to describe “the parts Organical” of a commonwealth, “which are Publique Ministers.” Putting his own spin on a long tradition of analogies between natural and political bodies, he referred to “*Magistrates*, and other *Officers* of Judicature and Execution” as the “artificiall *Joynts*” of an “Artificiall Man,” which he called *Leviathan* or “the State.” More specifically, he wrote that viceroys were the nerves or tendons of the state, juries were its “organs of Voice,” peace officers were its hands, spies were its

eyes, and those charged with receiving petitions were its ears.<sup>1</sup> Until recently, scholars paid relatively little attention to this chapter, which seemed rather mundane compared to those concerning the nature of sovereignty, liberty, or law. In the past few years, however, David Runciman and Sean Fleming have used chapter 23 extensively in discussions of Hobbes' concept of the state. According to Runciman, both the sovereign and public ministers are able to speak for the state in *Leviathan*. This, he suggests, provides a foundation for later models of government in which politicians compete with each other for the chance to represent the state while the sovereign remains silent. Fleming uses chapter 23 to construct a model of the Hobbesian state as something which cannot act for itself but which can be held responsible for the actions of others. This offers a starting point for a broader theory of state responsibility in international relations.<sup>2</sup> *Leviathan's* account of public ministers, it seems, can shed light on wider themes in twenty-first-century political thought. But what was the significance of chapter 23 in its own time? Given its recent rise to prominence, it seems appropriate to consider what Hobbes was doing when he wrote about public ministers in the shadow of revolution.

In this article I argue that chapter 23 served two central purposes. First, as recognised by Runciman and Fleming, it allowed Hobbes to bolster and elaborate arguments made elsewhere in *Leviathan*, especially his striking claims about authorisation and representation. Second, the chapter responded to contemporary debates about the role of subordinate magistrates in a polity. This was an important subject in the polemics exchanged by royalists and parliamentarians in the 1640s, mobilising older arguments among Protestant theologians and scholars of Roman law. Recovering this context allows us to better understand the chapter on its own terms. By the time *Leviathan* was published in 1651, however, regicide and revolution had created a new political world in which the problem of subordinate magistrates was far less pressing. Chapter 23 was behind the times and largely ignored by Hobbes' early readers and critics. As in its recent resurrection, it was treated as a key with which to unlock the meanings of other, more immediately controversial chapters, not as a substantial intervention in itself.

1 Thomas Hobbes, *Leviathan*, ed. Noel Malcolm (Oxford: Clarendon Press, 2012), 376–84 [123–26], 16 [1].

2 David Runciman, "The Sovereign" in *The Oxford Handbook of Hobbes*, ed. A. P. Martinich and Kinch Hoekstra (Oxford: Oxford University Press, 2016), 372–6; Sean Fleming, *Leviathan on a Leash: A Theory of State Responsibility* (Princeton: Princeton University Press, 2020).

### Chapter 23 in Hobbes' Political Thought

Before the civil wars, Hobbes had relatively little to say about the people he came to call public ministers. Both *The Elements of Law* and *De Cive* included passages which stated that, as it was impossible for a single person or assembly to govern a commonwealth alone, there was a need for officers and magistrates to assist with military, judicial, and executive tasks. These assistants were just as necessary in democracies and aristocracies as in monarchies.<sup>3</sup> In fact, Hobbes thought, subjects often mistook differences in the quality of officers and magistrates for differences in the quality of the regime itself. As he explained in *De Cive*, “the conveniences and inconveniences of any government, depend not on him in whom the authority resides, but on his Officers [*ministri*].” This was why he did not view the capacity of hereditary monarchy to produce female or infant sovereigns as a defect. In such circumstances “the common-weale may be well governed...provided that they be fit for affaires, who are endued with the publique Offices [*qui ministeriis & muneribus publicis praefecti sunt*].” Hobbes gave no specific examples of such officers, nor did he use this vocabulary in his brief passage on spies, who he compared to rays of light – indulging his obsession with optics – and then to threads of a sovereign spider’s web, quivering with intelligence from the outside world.<sup>4</sup> His most consequential statement on the subject of officers, magistrates, or ministers was that they should always be appointed by the sovereign. In both *The Elements* and *De Cive*, he insisted that the choice of those who assisted in the tasks of government was an essential component of sovereignty. This was repeated in *Leviathan*, alongside a far more elaborate account of exactly who those assistants were and the nature of their authority.<sup>5</sup>

Chapter 23 is among the least studied additions to Hobbes’ civil philosophy in *Leviathan*. One way to think about it is as part of a group of new chapters (21–25) which Noel Malcolm has described as being more “functional-descriptive” than the largely “normative” accounts of politics given in *The Elements* and *De Cive*.<sup>6</sup> But these chapters – concerning liberty, corporations, commerce, and counsel, as well as public ministers – did far more than fill descriptive

3 Deborah Baumgold, ed., *Three-Text Edition of Thomas Hobbes's Political Theory: The Elements of Law, De Cive and Leviathan* (Cambridge: Cambridge University Press, 2017), 218 [EL 11.20.11; DC 11.6.10].

4 Thomas Hobbes, *De Cive*, ed. Howard Warrender (Oxford: Clarendon Press, 1983), 139, 159 [11.10.16, 11.13.7].

5 Baumgold, *Three-Text Edition*, 218 [EL 11.20.11; DC 11.6.10; L 11.18.13].

6 Noel Malcolm, “Editorial Introduction” to *Leviathan*, 14.

gaps in Hobbes' vision of politics. Chapter 23 was also closely related to the enormously controversial account of ecclesiastical power in chapter 42 and to chapter 16, where Hobbes laid the groundwork for his major new theory of representation and authorisation.<sup>7</sup> In connection with these better-known chapters, *Leviathan's* discussion of public ministers can be understood as an important and starkly absolutist aspect of his political thought.

The central point of chapter 23, in terms of the internal logic of *Leviathan*, was that public ministers were representatives of the sovereign, and that the sovereign was the author of their actions. This was the final link in a chain of authorisation and representation reaching back to the foundation of the commonwealth. As Fleming has put it, "the subjects authorize the sovereign; the sovereign authorizes public ministers; public ministers represent the sovereign; and the sovereign represents the state." Public ministers, in the language of chapter 16, were "artificial persons." Their words and actions were not their own; instead, they were attributed to an "author," the individual, group, or thing they represented.<sup>8</sup> In the case of public ministers, the author was the sovereign. Characteristically, Hobbes began with a definition: "A Publique Minister, is he, that by the Sovereign (whether a Monarch, or an Assembly) is employed in any affaires, with Authority to represent in that employment, the Person of the Common-wealth."<sup>9</sup> Again following chapter 16, Hobbes used "person" here to mean representative. The "person of the commonwealth" was the sovereign, who was authorised to act on its behalf.<sup>10</sup> Public ministers, in turn, were authorised to act on the sovereign's behalf.

Everything in chapter 23 supported this way of thinking about the relationship between sovereigns and their public ministers. Even the chapter's title pointed in this direction: "Of the Publique Ministers of Sovereign Power." This was not an obvious form of words to use. As we shall see, most of Hobbes'

7 Quentin Skinner, "Hobbes and the Purely Artificial Person of the State," *Journal of Political Philosophy* 7.1 (1999); David Runciman, "What Kind of Person is Hobbes's State? A Reply to Skinner," *Journal of Political Philosophy* 8.2 (2000); Quentin Skinner, "Hobbes on Representation," *European Journal of Philosophy* 13.2 (2005); Paul Sagar, "What is the Leviathan?," *Hobbes Studies* 31 (2018); Sean Fleming, "The two faces of personhood: Hobbes, corporate agency and the personality of the state," *European Journal of Political Theory* 20.1 (2021).

8 Fleming, "The two faces of personhood," 14; Hobbes, *Leviathan*, 106–7 [1.16.2–4].

9 Hobbes, *Leviathan*, 376 [123].

10 The "person of the commonwealth" could be read as referring to the "artificial man" – the state or commonwealth itself – but this would render the phrasing needlessly complex (why not just "represent in that employment, the commonwealth?") More broadly, the notion that public ministers might represent the commonwealth directly, rather than via the sovereign, would contradict almost everything else Hobbes wrote in chapter 23.

interlocutors on this topic referred to “officers” or “magistrates,” not “ministers.” The terminology of “ministers,” “ministry,” and the “ministerial” derived from legal and theological traditions which were adopted in the 1640s to challenge royal power. Parliamentarians used ministerial vocabulary to present the monarch as subordinate to the people. Hobbes took up this language and subverted it, just as he absorbed and upended republican notions of liberty and the founding covenant.<sup>11</sup> The result was an emphatic account of officers’ subordination to the sovereign.

Hobbes’ definition of a “minister” was similar to his definition of an “artificial person.” “The word *Minister*,” he wrote in his discussion of clerical authority in chapter 42, “signifieth one that voluntarily doth the businesse of another man.”<sup>12</sup> For a public minister, that other man was the sovereign. According to chapter 23, “public minister” was a capacious category. First, there were protectors, regents, governors, lieutenants, prefects, and viceroys, who took general charge of all or part of the commonwealth “in the name of the Sovereign.” Then there were various kinds of tax-collectors and managers of public revenue. These served the sovereign and “can doe nothing against his Command, nor without his Authority.” Military commanders were public ministers, as were those “that have authority to teach.” Teachers were “Ministers, in that they doe it not by their own Authority, but by anothers; and Publique, because they doe it (or should doe it) by no Authority, but that of the Sovereign.” Judges too were “but Ministers of him, or them that have the Sovereign Power.” There were numerous public ministers of law enforcement: “all those, that have Authority from the Sovereign, to procure the Execution of Judgements given; to publish the Sovereigns Commands; to suppress Tumults; to apprehend and imprison Malefactors; and other acts tending to the conservation of the Peace.” These shared their position as public ministers with ambassadors, messengers, heralds, and councillors. Hobbes applied this label to everyone who might conceivably wield political authority. More radically, in chapter 42, he applied it to everyone who wielded religious authority as well. In a Christian commonwealth, he argued, “the Civill Sovereign is the Supreme Pastor” and all other pastors “are but his Ministers.” Clergy derived their authority from the sovereign “in the same manner as the Magistrates of Towns, Judges in Courts of Justice, and Commanders of Armies, are all but Ministers of him that is the

11 Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008); Quentin Skinner, *From Humanism to Hobbes: Studies in Rhetoric and Politics* (Cambridge: Cambridge University Press, 2018), chapter 9.

12 Hobbes, *Leviathan*, 840 [291].

Magistrate of the whole Common-wealth, Judge of all Causes, and Commander of the whole Militia, which is always the Civill Sovereign.”<sup>13</sup>

All of this was in stark contrast to established uses of ministerial vocabulary by Hobbes’ contemporaries. He was not unusual in taking “minister” to mean something like a servant, agent, or representative. This was the ordinary meaning of the word in classical Latin, derived from *minus*, connoting inferiority and servility. A Latin *minister* was the inferior counterpart of a *magister*, a master. Many seventeenth-century writers used the word in this sense, which has since become largely obsolete.<sup>14</sup> Common lawyers, for example, regularly distinguished between judicial and ministerial officers; the former were responsible decision-makers, the latter merely servants of higher powers.<sup>15</sup> For Hobbes, however, even the most obviously judicial officers – judges – were in fact ministerial. “All Judicature is essentially annexed to the Sovereignty,” he wrote, “and therefore all other Judges are but Ministers of him, or them, that have the Sovereign power.” Judges might make decisions the sovereign did not like, but the force of those decisions came from their status as the sovereign’s ministers. Even juries, often lauded as a bulwark of English liberty, were swallowed up by the sovereign in Hobbes’ thinking. Chapter 23 was unusually complimentary about certain aspects of the common law (“the excellent constitution of the Courts of Justice...in England”) but there was no concession to common lawyers’ cherished notion that jurors derived their authority from the ancient constitution of the English people. The “twelve men” called upon to judge matters in controversy were, in Hobbes’ view, “publique persons, with Authority from the Sovereign Power”; their verdicts were given in the sovereign’s name.<sup>16</sup>

As in common law, the language of ministry was used in political thought to define a particular office as subordinate or limited. Usually, however, it was used to justify limiting or resisting royal power. If monarchs were “ministers,” they were subordinate to the commonwealth, or God, or the people, on whose behalf they were supposed to act. This was a central strand in the thread followed by Quentin Skinner from fourteenth-century conciliarists to

13 Hobbes, *Leviathan*, 376–82 [123–26], 852 [295–6].

14 *Oxford English Dictionary*, “minister, n.,” 1.

15 William Sheppard, *An Epitome of all the Common & Statute Laws of this Nation Now in force, wherein more then Fifteen hundred of the hardest Words or Terms of the Law are Explained* (London, 1656), 780–82; Matthew Hale (1609–76), *The Analysis of the Law: Being a Scheme or Abstract Of the several Titles and Partitions of the Law of England Digested into Method* (3rd edition, Savoy, 1739), 34–37.

16 Hobbes, *Leviathan*, 380–2 [125–6]. See also Michael Lobban, “Thomas Hobbes and the common law” in *Hobbes and the Law*, ed. David Dyzenhaus and Thomas Poole (Cambridge: Cambridge University Press, 2012).

sixteenth-century jurists and theologians who defended a right to resist tyrannical or ungodly rulers. Jean Gerson, John Mair, Mario Salamonio, John Knox, Philippe de Mornay, and John Ponet all described queens and kings (and in some cases popes) as “ministers” who acted for a power higher than themselves. For Salamonio, a prince was “a mere *minister* of the people” and all lawful princely actions were “done by the authority of the people.” Such ministerial rulers, the argument went, might be justifiably opposed if they failed to act for the good of the higher power.<sup>17</sup>

In the 1640s, parliamentarians took up this line of argument with enthusiasm. William Prynne wrote that “the Parliament is the Superiour Sovereigne power, the King but the Ministeriall; and it is more rationall and just, that the inferiour should condescend to the greater Power, the Ministeriall to those hee serves.” Charles I, according to the Presbyterian pastor Samuel Rutherford, was entrusted “onely with a ministeriall power.” He was no more than “an honourable servant and watchman appointed by the community.”<sup>18</sup> More radical writers in the later 1640s made the same argument about all rulers, royal or otherwise: “The power of the Magistrate is not absolute, his authority is ministeriall, his jurisdiction is restrictive, his power limited.”<sup>19</sup> A tract published in the same year as *Leviathan* announced to the people of England that “power is originally, really, and fundamentally in themselves; it is but Ministerially in the King, as a Publick servant.”<sup>20</sup> Hobbes not only rejected all of this, but turned the tables to suggest that sovereigns, far from being ministers, were the higher power from which ministerial subordinates derived their authority.

### Public Ministers v Inferior Magistrates

Hobbes’ repurposing of ministerial vocabulary served to refute arguments that a monarch was no more than a particularly grand servant. It also, perhaps

17 Quentin Skinner, *The Foundations of Modern Political Thought, Volume 2: The Age of Reformation* (Cambridge: Cambridge University Press, 1978), 106, 117–21, 132–33, 211, 222, 325, 333. The quotation is Skinner’s translation from Salamonio’s *The Sovereignty of the Roman Patriciate*.

18 William Prynne, *The Sovereigne Power of Parliaments and Kingdomes* (London, 1643), 11, 39; Samuel Rutherford, *Lex, Rex: The Law and the Prince* (London, 1644), 398.

19 Enoch Grey, *Vox Coeli, Containing Maxims of Pious Policy* (London, 1649), 21. See also John Warr, *The Priviledges of the People, or, Principles of Common Right and Freedome* (London, 1649), 8.

20 *Anglia Liberata, or, The rights of the people of England, maintained against the pretences of the Scottish King* (London, 1651), 47.

more importantly, undermined claims made by parliamentarians for the independent authority of officers and magistrates. These claims also had roots in the resistance theories of the sixteenth century. The most important of these for the purposes of this article was the theory of resistance by “inferior magistrates.” Hobbes did use the word magistrate, but cautiously, and with a clear sense that (as in Latin) it conveyed a far greater sense of power than “minister.” In the biblical commonwealth of the apostles, he wrote, there were two types of officers, “some were Magisteriall, some Ministeriall.” The apostles themselves were magisterial, chosen by Christ to preach the gospel and administer the sacraments. Far inferior to these, “Ministeriall was the Office of Deacons, that is, of them that were appointed to the administration of the secular necessities of the Church.” An equivalent passage in *De Cive* had these ministerial officers serving the community at table.<sup>21</sup>

Those who argued for the independent authority of inferior magistrates took a far more elevated view of officeholding. Sixteenth-century Protestant theologians, especially in France and the Holy Roman Empire, had argued that inferior magistrates, like monarchs, derived their authority directly from God. This gave them the right to resist monarchs in defence of true religion.<sup>22</sup> As Richard Serjeantson has recently shown, this idea circulated in early seventeenth-century England through the works of Guillaume Du Buc, David Pareus, and the anonymous author of *Vindiciae contra tyrannos*. In 1622, when a young Oxford divinity scholar preached in favour of resistance by inferior magistrates, he was quickly imprisoned and an argument took place which prefigured debates on the same subject in the 1640s.<sup>23</sup> The key battleground was St Paul’s statement in Romans 13 that all earthly powers were instituted by God. Proponents of the resistance doctrine argued that this applied equally to rulers and inferior magistrates. Those who condemned the doctrine held that it applied primarily to monarchs, who then authorised inferior magistrates themselves. Nicholas Byfield, for example, insisted that “all inferior Magistrates receive all their authority from the King; they have no more authority then other subjects, but as it is bestowed upon them by the King.” Another divine, Edward Elton, used

21 Hobbes, *Leviathan*, 830 [287]; Hobbes, *De Cive*, 268 [111.17.23].

22 Richard Roy Benert, “Inferior Magistrates in Sixteenth-Century Political and Legal Thought” (University of Minnesota PhD thesis, 1967).

23 Richard Serjeantson, “Preaching Regicide in Jacobean England: John Knight and David Pareus,” *English Historical Review* 134.568 (2019).

a metaphor later echoed by Hobbes: “the inferiour Magistrate is as the hand of the chiefe Magistrate.”<sup>24</sup>

One of the strengths of the inferior magistrates doctrine was its flexibility: it was often formulated in Latin and could easily be applied to very different contexts. For sixteenth-century Lutherans, inferior magistrates were the princes and electors of German city-states who, they argued, had the right to resist the Emperor’s Catholicism. For Calvin, inferior magistrates were the representatives of the three estates. Most proponents of the doctrine were primarily interested in similarly elevated “inferior magistrates”: members of representative assemblies or high officers of state with extensive executive powers. But uncertainty about who counted as an inferior magistrate made the doctrine vulnerable to mockery. Its opponents could suggest that it applied to the lowest offices in the realm. In 1623, the Catholic physician Matthew Pattenson claimed that Protestants believed “yf the justices of peace, and Constables be perswaded, in ther conscienc, that the Prince erreth in his: then they are authorised...both to judg and geve law to the Prince and not to obey hym.”<sup>25</sup> This line of argument resurfaced after the Restoration in gleeful condemnations of Pareus and others whose work some authors blamed for plunging the British isles into civil war.<sup>26</sup>

When war broke out, royalists began making pre-emptive strikes against the inferior magistrates doctrine. A lecture given by David Owen against the teachings of Pareus, which had been delivered in 1619 and printed in 1622, was republished from the royal stronghold of York in 1642. This included the unambiguous statement that “The inferiour Magistrate in a Kingdome, has no authority, but from the King and under the King.” It could hardly be otherwise, given Owen’s notion of indivisible sovereignty: “The King is Supreme over all; if once he admit a Companion, or Superiour, he is no longer King.”<sup>27</sup> Another text revived for new purposes in 1642 was Francis Bacon’s *Essay of a King*, in which he had described a monarch as “a mortall God on Earth” who granted limited commissions to “subordinate Magistrates.” Like Owen, Bacon

24 Nicholas Byfield, *A Commentary: Or, Sermons upon the Second Chapter of the First Epistle of Saint Peter* (London, 1623), 615; Edward Elton, *A Plaine and Easie Exposition upon the Lords Prayer in Questions and Answers* (London, 1624), 182.

25 Benert, “Inferior Magistrates,” 76–78; Matthew Pattenson, *The Image of Bothe Churches, Hierusalem and Babel, Unitie and Confusion, Obedience and Sedition* (Tournai, 1623), 351.

26 Henry Janson, *Philanx Anglicus, or, A Christian Caveat for all Kings, Princes & Prelates* (London, 1663), 23; Charles Stanley, *The Jesuites Policy To suppress Monarchy Historically displayed* (London, 1669), 31–12, 505.

27 David Owen, *Anti-Paraeus, Or, A Treatise in Defence of the Royall Right of Kings against Paraeus and the Rest of the Anti-Monarchians* (York, 1642), 11, 49; *Anti-Paraeus: sive Determinatio de Iure Regio habita Cantabrigiae in scholis theologis* (Cambridge, 1622).

provided royalists with an emphatic condemnation of claims by magistrates to “have a power derived from other then from the King.”<sup>28</sup> In 1643, the royal chaplain Henry Ferne responded to justifications of the war against his master with another denunciation of the inferior magistrates doctrine. God had not granted power to monarchs and magistrates together, as these rebels suggested. Rather, Ferne argued, “power comes first to the Supream, and from Him to them that are sent by Him, from Caesar to Pilate.” This provoked indignant citations of Romans 13 from those who defended the right of MPs, as inferior magistrates, to resist tyranny.<sup>29</sup>

As the wars continued, arguments on both sides were sharpened through debate. Edward Symmons, a godly preacher of the 1630s who became a staunch royalist in the 1640s, produced one of the more elaborate diatribes against the inferior magistrates doctrine. He admitted that, as stated in Romans 13, “all the powers that be are ordained of God.” But not all ordained powers were equal. “All inferiour powers under the King,” he wrote, “are from God more remotely, namely (*mediante Rege*) by the mediation of the supreme, even as the lesser Starres have their light from God, by the mediation of the Sunne.” Symmons explained this hierarchical relationship in numerous different ways, some of which were later adapted by Hobbes for chapter 23 of *Leviathan*. For example, “the King is the Image of God, and inferiour powers in regard of their dependance upon him, are the Images of the King; they in their places represent Him, as Hee in his place represents God.” Substitute God for the Leviathan, Hobbes’ “mortal God,” and this was the scheme of hierarchical representation laid down in chapter 23: the sovereign represented the state and public ministers represented the sovereign. In the same vein, Symmons described the king as “the mouth of God” and the inferior magistrate as “the mouth of the King,” each speaking for the higher power they represented. Then there was the question of who sat in whose seat: “the Throne of the King is called the Throne of God, wherein the King judgeth for God in Gods stead; but the seat of the inferiour Magistrates is called the Kings seat, where they sit and judge for him.” Hobbes was more concise: “in their Seats of Justice they represent the person of the Sovereign; and their Sentence, is his Sentence.” According

28 Francis Bacon, *An Essay of a King, With An explanation what manner of persons those should be that are to execute the power or ordinance of the Kings Prerogative* (London, 1642), 2, 6.

29 Henry Ferne, *Conscience Satisfied. That there is no warrant for the Armes now taken up by Subjects* (Oxford, 1643), 66; Jeremiah Burroughs, *The Glorious Name of God, The Lord of Hosts, Opened in Two Sermons...with a post-script, briefly answering a late treatise by Henry Ferne, D.D.* (London, 1643), 7; Charles Herle, *An Answer to Mis-led Doctor Fearne* (London, 1643), 4–5.

to Symmons, the king “hath his Patent immediately from God: He is *Rex Dei gratia*, and his title is, Gods Deputy, or the Minister of God, but the Inferiour Magistrates have their Patents from the King, they are *Magistratus Regis gratia*, and are intituled, the Kings Ministers, or the Kings Judges.” Hobbes produced a modified version of this analysis. He wrote that “no man but the Sovereign, receiveth his power *Dei gratia* simply; that is to say, from the favour of none but God: All other, receive theirs from the favour and providence of God, and their Sovereigns; as in a Monarchy *Dei gratia et Regis*; or *Dei Providentia & voluntate Regis*.” Hobbes wanted these arrangements to be emphasised in every administrative act. In a passage in chapter 42 which had no precursor in *The Elements* or *De Cive*, he argued that only monarchs should sign themselves “*Dei gratia*.” Even the most senior clergy should use a form of words befitting their subordination: “Bishops ought to say in the beginning of their Mandates, *By the favour of the Kings Majesty, Bishop of such a Diocese*; or as Civill Ministers, *In his Majesties Name*. For in saying, *Divina Providentia*, which is the same with *Dei gratia*, though disguised, they deny they have received their authority from the Civill State; and sliely slip off the Collar of their Civill Subjection.”<sup>30</sup>

The most extensive riposte to Symmons and others who attacked the inferior magistrates doctrine was made by Samuel Rutherford. His method was to repeatedly minimise or deny any differences between monarchs and other magistrates. Like many of his predecessors, he insisted that according to Romans 13 “Inferiour Magistrates are powers from God.” “There is no reason,” he argued, “to restrain the higher powers to Monarchs onely, or yet principally, as if they onely were essentially powers ordained of God.” Just like the king, “The inferiour Magistrates are also immediate vicars and ministers of God.” Rutherford had no hesitation in applying this principle to the lowest officeholders as well as the highest. In a passage refuting Henning Arnisaeus’ claim that inferior magistrates had only a fictional and derivative form of majesty, he insisted that “this Majesty which is the formall reason of subjection is one and the same in space and nature in King and Constable.” Arnisaeus and all other royalists “proceedeth from this false ground, that the King and inferiour judges differ in nature...it is a fiction that the inferiour judge doth not resemble God, as the King doth, yea there is a sacred Majesty in all inferiour judges.”<sup>31</sup>

In answer to Symmons’ claim that the king was the image and representative of God while lesser authorities were images and representatives of the king,

<sup>30</sup> Edward Symmons, *A Loyall Subjects Beliefe, Expressed in a Letter to Master Stephen Marshall, Minister of Finchingfield in Essex* (Oxford, 1643), 2–3; Hobbes, *Leviathan*, 379–80 [125], 855 [296–7].

<sup>31</sup> Rutherford, *Lex, Rex*, 162, 350–3, 366.

Rutherford argued “This distinction is neither true in Law, nor conscience.” The important distinction was not between monarchs and magistrates but between magistrates and the monarch’s personal servants. He accused Symmons of failing to distinguish “betwixt *Ministros regis, & ministros regni*. The servants of the King are his domesticks, the Judges are *Ministri regni, non regis*; the Ministers and Judges of the Kingdome, not of the King.” The monarch’s personal servants were not to be confused with those who served the state. Similarly, like many parliamentarians, Rutherford distinguished the royal office from the royal person. He wrote that “A King, as a King...cannot doe injustice,” but monarchs could certainly “doe acts of injustice, as men.” Symmons had argued that royal authority was inseparable from the individual monarch, whereas “the distinction holds good of inferiour Governours, that they may be considered as men, & as magistrates.” Rutherford latched on to this inconsistency: “Royalists cannot indure the former distinction as it is applyed to the King, but they receive it with both hands, as it is applyed to inferiour Judges; and yet certaine it is, that it is as ordinary for a King being a sinfull man, to act sometimes as the Lieutenant of God, and sometimes as an erring and misinformed man.”<sup>32</sup> This debate was closely related to the notion of the monarch’s two bodies, to which Hobbes owed a great deal,<sup>33</sup> though he did not apply it systematically to public ministers. He did, however, make the same distinction as Rutherford between the sovereign’s private and public servants. Near the start of chapter 23, he wrote that the sovereign “representeth two Persons, or (as the more common phrase is) has two Capacities, one Naturall, and another Politique.” Only those who served the politic person were public ministers. No domestic servants, “nor Stewards, Chamberlains, Cofferers, or any other Officers of the household of a Monarch, are Publique Ministers in a Monarchy.”<sup>34</sup> Of course, unlike Rutherford, Hobbes did not see this distinction as grounds to suggest that public ministers might use their authority against the sovereign.

32 Rutherford, *Lex, Rex*, 165, 277, 443; Symmons, *Loyall Subjects Beliefe*, 9.

33 For recent discussions, see Christine Chwaszcza, “The Seat of Sovereignty: Hobbes on the Artificial Person of the Commonwealth or State,” *Hobbes Studies* 25 (2012); Laurens van Apeldoorn, “On the Person and Office of the Sovereign in Hobbes’ *Leviathan*,” *British Journal for the History of Philosophy* 28.1 (2020).

34 Hobbes, *Leviathan*, 376 [123–4].

### Roman Law and the Exercise of Sovereign Power

Another way to think about comparisons between monarchs and inferior magistrates was through Roman law. There was a long-running debate in the labyrinthine tradition of commentary on Justinian's *Digest* over the proper location of *merum imperium*. This was a slippery concept related to the power of the sword (*ius gladii*), which was sometimes taken to mean sovereign power. The key question was whether *merum imperium* was the sole property of the emperor or shared between the emperor and subordinate magistrates.<sup>35</sup> This could be quite straightforwardly mapped on to the disputes of the 1640s. The royalist clergyman Griffith Williams, for example, argued that only kings had *merum imperium*, which he defined as “the fulnesse of power, and independent of any creature, and immediately received of God.” Inferior magistrates had no share in this power, which was “not to be imparted by the King to any creature; because he cannot divest himselfe, divide this power, or alienate the same to any subject...without renouncing or dividing his Kingdome.” There was nothing to stop republicans claiming a similar monopoly for the people, so long as they were willing to leave behind the doctrine of inferior magistrates. This became a particularly useful line of argument after 1649 for defenders of the new regime. Henry Parker adopted the Roman law concept in precisely this way, writing that “the chiefe free and meer command...from the beginning and of ancient time resideth in the people onely.”<sup>36</sup>

Hobbes did not use the vocabulary of *merum imperium*, but he was influenced by others who did. The sixteenth-century humanist Andrea Alciato had introduced a new dimension to the question by suggesting a distinction between the ownership of *merum imperium* and the exercise of it. The emperor might delegate the *exercise* of sovereignty to subordinate magistrates, but that did not give them any *ownership* of sovereignty. As Daniel Lee has shown, Alciato influenced Jean Bodin and Bodin in turn influenced Hobbes. The distinction between the right or ownership of sovereignty and its exercise was clearly drawn at several points in *De Cive*.<sup>37</sup> Lee argues that Bodin used this distinction to develop “a non-absolutist notion of sovereignty.” According

35 Peter Stein, *Roman Law in European History* (Cambridge, 1999), 60; Myron Piper Gilmore, *Argument from Roman Law in Political Thought 1200–1600* (Cambridge: Harvard University Press, 1941).

36 Griffith Williams, *Jura Majestatis, The Rights of Kings Both in Church and State* (Oxford, 1644), 121; Henry Parker, *The Government of the People of England precedent and present the same* (London, 1650), 1.

37 Gilmore, *Argument from Roman Law*, 49–54; Daniel Lee, “Hobbes and the civil law: The use of Roman law in Hobbes’s civil science” in *Hobbes and the law*, 229–35.

to Bodin, officers “borrowed” their authority from the state in a kind of contractual arrangement; they did not own it, but neither was their possession of authority entirely dependent on royal whim.<sup>38</sup> Hobbes, at least by the time he wrote *Leviathan*, was not interested in such concessions. Chapter 23 was overloaded with statements to the effect that public ministers’ authority came directly from the sovereign and that they “have no other right, but what depends on the Sovereigns Will.” By excavating Bodin’s model of “lawful government,” Lee set out to challenge “the conventional wisdom that Bodin was nothing more than a crude absolutist who envisaged subordinates of the state to be slavishly dependent upon the arbitrary will of the ruling sovereign.”<sup>39</sup> Hobbes was certainly not crude, but otherwise the description fits his account of public ministers pretty well.

The separation of sovereign right from the exercise of sovereignty is central to Richard Tuck’s genealogy of modern democratic theory. Hobbes – especially in *De Cive* – is an heir and adaptor of Bodin in this story, and both are opposed to Hugo Grotius.<sup>40</sup> In *Leviathan*, however, Hobbes moved closer to Grotius than to Bodin on the subject of public ministers. This had much to do with their shared hostility to arguments in favour of resistance by inferior magistrates. In chapter 4 of the first book of *De Jure Belli ac Pacis*, Grotius took direct aim at proponents of magisterial resistance, referring in a note to Peter Martyr, David Pareus, and the *Vindiciae contra tyrannos*. These “Learned Men,” he wrote, claimed the imperative to obey rulers applied “only in Regard to private Men, but not in Regard to inferior Magistrates, who they think have Right to resist the Injuries of their Sovereign.” Grotius countered this argument in the usual way, insisting that magistrates received their authority from the sovereign, not directly from God or anywhere else. More specifically, he wrote that magisterial authority could not be used against the sovereign because rebellious magistrates ceased to be magistrates at all: “those Magistrates, in Respect to their Inferiors, are publick Persons, but in Respect to their Superiors, are private Persons. All the civil Power, that such Magistrates have, is so subject to the Sovereign, that whatever they do against his Will is done without Authority, and consequently ought to be considered only as a private Act.” Magistrates

38 Daniel Lee, “Office Is a Thing Borrowed’: Jean Bodin on Offices and Seigneurial Government,” *Political Theory* 41.3 (2013), 420–423, 428.

39 Hobbes, *Leviathan*, 378 [124]; Lee, “Office Is a Thing Borrowed,” 411.

40 Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge: Cambridge University Press, 2016), 86–109. See also Kinch Hoekstra, “Early Modern Absolutism and Constitutionalism,” *Cardozo Law Review* 34 (2013).

were only elevated above private persons when they were conveying the sovereign's authority to the people; otherwise, they were no different to anyone else.<sup>41</sup>

Here Grotius was extending the medieval notion that all inferior powers ceased to operate in the presence of the monarch. Bodin also inherited this tradition and wrote about it at length. Just as rivers ceased to be distinguishable when they flowed into the sea, he wrote, "all the commaund and power of the Magistrats cease in the presence of the prince." Unlike Grotius, however, Bodin distinguished between magistrates' authority at a given moment and their possession of office more generally. He anticipated that "some man might object and say, That if the magistrats had no power to commaund in the presence of the prince, they were no more magistrats." This was precisely the move Grotius made. Bodin's pre-emptive answer relied on his model of secure officeholding: "the magistrats by the presence of the prince loose nothing, but still continue in their offices, and so consequently in their dignities and honours, their power to commaund being but suspended." This suspension was necessary to avoid any possibility of a magistrate acting against the sovereign's will (Bodin was no resistance theorist) but it did not interfere with the ongoing attachment of authority to the magistrate. For Bodin, that authority had an independent existence outside actions on behalf of the sovereign.<sup>42</sup>

Hobbes was firmly on the Grotian side of this question. At two points in chapter 23, he argued that public ministers were only public ministers when they were conveying the authority of the sovereign. The first concerned soldiers. Military commanders, those who managed fortifications, equipment, provisions, and personnel both on land and at sea, were public ministers. "But a Souldier without Command, though he fight for the Common-wealth, does not therefore represent the Person of it; because there is none to represent it to." Representation was a communicative act: delegated sovereign authority only existed when it was imposed on someone else. "For every one that hath command," Hobbes wrote, "represents it to them only whom he Commandeth." Those who had no subordinates to command possessed no authority. Unlike Bodin, Hobbes envisaged a kind of official authority which simply vanished when it was not being used on behalf of the sovereign. In the language Hobbes used to discuss representation, public ministers were only public ministers when they were bearing the person of the sovereign. On these terms, it was

41 Hugo Grotius, *The Rights of War and Peace*, ed. Richard Tuck (Indianapolis: Liberty Fund, 2005), vol.1, 354 [I.4.6].

42 Jean Bodin, *The Six Bookes of a Common-weale*, tr. Richard Knolles (London, 1606), 344–5 [III.6].

not just politically wrong for them to resist the sovereign; it was logically impossible. Here, as elsewhere, Hobbes used his theory of authorisation and representation to render resistance absurd. It was illogical for subjects to complain of injustice at the hands of the sovereign because “by this Institution of a Common-wealth, every particular man is Author of all the Sovereigne doth.” A subject could not punish the sovereign for any misdeeds because “every Subject is Author of the actions of his Sovereigne.” Similarly, it was illogical for a public minister to resist the sovereign because anyone who did so would cease to be a public minister. Only actions authorised by the sovereign carried authority. Everything else was the act of a mere private individual.<sup>43</sup>

Most significantly, Hobbes applied this logic to councils. In a well-known passage in chapter 22, he relegated pre-1649 parliaments to the status of councils convened to advise the sovereign. In chapter 23, he spelt out the implications of this move. By treating MPs as councillors, he stripped them of any authority separable from the sovereign. In their advisory capacity, Hobbes argued, no councillor could be “a Publique Person.” This was because “the Advice is addressed to the Sovereign only, whose person cannot in his own presence, be represented to him, by another.” As in Bodin, the inheritance of a medieval idea of the royal presence was clear. But here it served the wider purpose of binding all exercises of public authority to the sovereign. Like soldiers, councillors were only public ministers when they conveyed the authority of the sovereign to others. For example, they could act as conduits between the sovereign and more lowly representatives: “in a Monarchy, they represent the Monarch, in delivering his Commands to the Publique Ministers.”<sup>44</sup> This was the only context in which a councillor had authority as a public person. Needless to say, councillors who only held power when they were conveying the sovereign’s authority were a far cry from inferior magistrates with a mandate to rebel.

### The Reception of Chapter 23

By the time *Leviathan* was published in 1651, the question of magisterial resistance to monarchs was no longer pressing. Most of the book’s early readers and critics were primarily interested in its call for submission to the new republic

43 Hobbes, *Leviathan*, 378 [124], 270 [90].

44 Hobbes, *Leviathan*, 384 [126].

and its strikingly unorthodox account of Christianity.<sup>45</sup> There was little in chapter 23 to generate controversy except insofar as it touched on these larger issues. The Presbyterian clergyman George Lawson approved of its basic argument and Hobbes' choice of title: "The subject of this Chapter is *The Ministers of State*...who are stiled, and that very fitly, Publick Ministers of the Sovereign Power. For in all acts of civil Government, the principal agent is the Sovereign, the instrumental or ministerial are Officers." He agreed with the chapter's portrayal of the relationship between public ministers and the sovereign: "what they act is only good and valid as they are one person with him, and make his will their rule and principle, and do all things in his name." Lawson had only two objections to the chapter. The first related to one of his central problems with Hobbes's work. He accepted that pastors and teachers were subject to the sovereign, "yet as Ministers they derive their power from Christ by the Church, and not from any civil Governors." The second was that although Hobbes "hath done well" in chapter 23, "many before him have done better."<sup>46</sup>

In the 1650s and for decades afterwards, many of Hobbes' critics ignored chapter 23 altogether.<sup>47</sup> In 1673, John Eachard mocked its extended enumeration of Leviathan's limbs, from nerves to hands to eyes to ears: "I profess, this artificial man thrives bravely; I hope the cheeks, and the chin of the Commonwealth will come on by and by."<sup>48</sup> Edward Hyde (Earl of Clarendon) came close to dismissing the chapter as a little more than a literary exercise: "I should with as little trouble have passed by his twenty third Chapter of his Public Ministers, and the fanciful Similies contain'd therein, not thinking it of much importance." His attention was only drawn by what he considered inconsistencies in

45 Mark Goldie, "The Reception of Hobbes" in *The Cambridge History of Political Thought 1450–1700*, ed. J. H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991); Jon Parkin, *Taming the Leviathan: The Reception of the Political and Religious Ideas of Thomas Hobbes in England 1640–1700* (Cambridge: Cambridge University Press, 2007), 85–199.

46 George Lawson, *An Examination of the Political Part of Mr Hobbs his Leviathan* (London, 1657), 78–81.

47 There was no mention of chapter 23 in any of the following critiques of Hobbes: Robert Filmer, *Observations Concerning the Original of Government* (London, 1652); Alexander Ross, *Leviathan Drawn out with a Hook: Or Animadversions upon Mr Hobbs his Leviathan* (London, 1653); Seth Ward, *In Thomae Hobbii Philosophiam Exercitatio Epistolica* (Oxford, 1656); John Bramhall, *Castigations of Mr. Hobbes His Last Animadversions* (London, 1657); Roger Coke, *Justice Vindicated From the False Fucus put upon it, by Thomas White Gent, Mr Thomas Hobbs, and Hugo Grotius* (London, 1660); William Lucy, *Observations, Censures, and Confutations of Notorious Errours in Mr. Hobbes his Leviathan* (London, 1663); Thomas Tenison, *The Creed of Mr. Hobbes Examined* (London, 1670); William Falkner, *Christian Loyalty* (London, 1679).

48 John Eachard, *Some Opinions of Mr Hobbs Considered in a second Dialogue Between Philautus and Timothy* (London, 1673), 170.

Hobbes' account of judges. A lawyer from a family of lawyers, Hyde objected to Hobbes' claim that a litigant dissatisfied with a judicial ruling could appeal to the sovereign. This seemed to him a degradation from the status Hobbes afforded judges as representatives of that same sovereign.<sup>49</sup>

Hobbes himself rarely revisited the subject of public ministers. His Latin translation of *Leviathan*, published in 1668, made chapter 23 more concise but left it essentially unchanged.<sup>50</sup> The ongoing controversy over Hobbes' religious views sometimes brought his thinking on this subject back to the surface, but only tangentially and in passing. In his dispute with Bishop Bramhall, for instance, he briefly returned to the notion of officers as representatives of the sovereign. Bramhall attacked the passage in chapter 42 which explained the Trinity in terms of representation: "God, who has been represented (that is, Personated) thrice, may properly enough be said to be three Persons."<sup>51</sup> Bramhall found this ridiculous, and drew a secular analogy which brought the subject close to chapter 23. "Upon these grounds," he wrote, "every King hath as many persons as there be Justices of the Peace, and petty Constables in his Kingdom." When Hobbes wrote his answer to Bramhall in the late 1660s, he had no qualms about embracing this position: "All that, he objecteth is, That it followeth hereupon, that there be as many Persons of a King, as there be petty Constables in his Kingdom. And so there are, or else he cannot be obeyed." As in *Leviathan*, he portrayed public ministers (in this case constables) as authorised representatives who commanded obedience in the sovereign's name.<sup>52</sup>

The minimal response to chapter 23 and its rapid descent into obscurity may have been due to the demise of the doctrine of resistance by inferior magistrates. This hot topic of the 1640s had lost much of its purchase by 1651. The republican regime had no interest in promoting ideas which might threaten its authority. Royalist opponents of the new settlement were unlikely to turn to a doctrine which had helped to bring down the monarchy. Radical challengers to government by parliament (and later protector) called for divine intervention or a rising of the people, not a march of the magistrates. Samuel Rutherford, the doctrine's leading exponent in the 1640s, was a lone voice when he republished some of his earlier work on the subject in 1656. In 1659, Richard Baxter

49 Edward Hyde, *A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State In Mr. Hobbes's Book Entitled Leviathan* (Oxford, 1676), 102–6.

50 Mónica Brito Viera, "Leviathan Contra Leviathan," *Journal of the History of Ideas* 76.2 (2015). Cf. English and Latin texts in Hobbes, *Leviathan*, ch. 23.

51 Hobbes, *Leviathan*, 776 [268].

52 Bramhall, *Castigations of Mr. Hobbes*, 474; Thomas Hobbes, *An Answer to a Book Published by Dr. Bramhall late Bishop of Derry* (London, 1682), 43–44.

included the maxim that “Inferiour Rulers have no Authority but what is given them from the Sovereign Power” in his *Holy Commonwealth*, but by then it was not clear who he could have been arguing against.<sup>53</sup> From the 1660s, the idea of resistance by inferior magistrates existed principally in the imaginations of Anglican opponents of Protestant non-conformity. Texts from the 1640s were quoted alongside sixteenth-century theologians as evidence of the inherent rebelliousness of various “Pretended Protestants” or “Fanatics,” frequently conflated with “Jesuits.”<sup>54</sup> Some of these attacks used arguments adopted from Grotius which were close to Hobbes’ account of public ministers. An Anglican schoolmaster named William Wasse, for example, wrote in 1663 that although an inferior magistrate was “a publick person in respect of those that are beneath him; so he is but a private person, disabled utterly to resist his sovereign.” Still following Grotius, he argued that “inferior Magistrates be no Magistrates at all, as they related unto the King...and therefore of no more Authority to resist the King, or call the People to Arms, than the meanest Subject.”<sup>55</sup> The resistance doctrine was indelibly tainted by its association with the mid-century conflict, making any serious attempt to revive it unlikely. A generation later, the antiquarian William Dugdale wrote that one of the “Presbyterian Tenets” which had caused the civil wars in the first place was the notion that “Evil Princes ought to be deposed, and inferior Magistrates ought chiefly to do it.”<sup>56</sup>

Hobbes may well have agreed. The fact that he devoted an entire chapter to the subject of public ministers’ subordination to the sovereign suggests he found arguments to the contrary disturbing. But his response to this dangerous doctrine came too late to make any difference. Chapter 23, like some other parts of *Leviathan*, was a ghost of conflicts which remained fresh in the memory in 1651. It was a piece of civil war polemic which found its way into a treatise

53 Samuel Rutherford, *A Treatise of Civil Policy: Being a Resolution of Forty three Questions Concerning Prerogative, Right, and Priviledge* (London, 1656), 10, 159–60; Richard Baxter, *A Holy Commonwealth*, ed. William Lamont (Cambridge, 1994), 187.

54 Henry Foulis, *The History of the Wicked Plots and Conspiracies of Our Pretended Saints* (London, 1662), 201; Janson, *Philanx Anglicus*, 23; Stanley, *The Jesuites Policy*, 83, 311–12, 505; Daniel Whitby, *Three Sermons Preachd at Salisbry* (London, 1685), 5; Abednego Seller, *The History of Passive Obedience Since the Reformation* (Amsterdam, 1689), 184.

55 William Wasse, *A Century of Reasons For Subscription and Obedience to the Laws and Government of the Church of England, both Ecclesiastical and Civil* (London, 1663), 66.

56 William Dugdale, *A Short View of the Late Troubles in England; Briefly setting forth, Their Rise, Growth, and Tragical Conclusion* (Oxford, 1681), 18.

on wider questions of obedience and protection.<sup>57</sup> There it served a narrower purpose, helping to illustrate and link together arguments about authorisation, representation, sovereignty, and ecclesiastical power. But it retained the flavour of a reaction to justifications of resistance. As such, it made a small but significant contribution to the absolutism of *Leviathan*.

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57 Glenn Burgess, "Contexts for the Writing and Publication of Hobbes's *Leviathan*," *History of Political Thought* 40.4 (1990); Johann Sommerville, "Lofty science and local politics" in *The Cambridge Companion to Hobbes*, ed. Tom Sorell (Cambridge: Cambridge University Press, 1996).