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## THOMAS HOBBS ON BETRAYAL OF THE FATHERLAND (IN WAR)

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My intention is to demonstrate how Hobbes' attempts to adapt two ancient institutions from Roman Law to his own time and knowledge of theology and philosophy. Treason (and the figure of the traitor) could be quite significant within the context of Hobbes' (but not only his) understanding of the figure of the sovereign and sovereignty. The central part of the text is an endeavor to ascertain the source and unconditional condition for treason as such, within the framework of Hobbes' theory of representation (*representatio*) which he writes about in Chapter 16 of the *Leviathan*. The act or performance in which we could perhaps recognize a traitorous gesture (or the dynamic of treason) could be found in the so-called paradox of representation. The "traitor" breaks the chain of the transfer of power and empowerment, thus stops representation, and puts an end to speaking in the name of the other. If it is possible to discover whether this is possible and whether speaking and acting in one's own name always carries elements of treason, then we can conclude that differing forms of "direct" speech and action ("in one's own name") are "acts of treason." In that case, what interests me is whether "treason" is found within the heart of representative democracy, and thus if it is *de facto* an integral part of a democratic order and society.

*Keywords:* treason, betrayal, representation, sovereign, people, Thomas Hobbes, homeland.

## ТОМАС ГОББС ОБ ИЗМЕНЕ ОТЕЧЕСТВУ (НА ВОЙНЕ)

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Мое намерение заключается в том, чтобы продемонстрировать, как Гоббс пытается адаптировать два античных установления из римского права к своему времени и теологическому и философскому знанию. Государственная измена (и фигура изменника) играет весьма значимую

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роль в контексте гоббсова (но не только его) понимания фигуры суверена и суверенитета. Основная часть этого текста представляет собой попытку выявить источник и безусловное условие государственной измены как таковой в рамках гоббсовой теории представительства (*representatio*), которая изложена в 16 главе *Левиафана*. Акт или действие, в котором мы, вероятно, могли бы распознать предательский жест (или динамику государственной измены) может быть обнаружен в так называемом парадоксе представительства. «Изменник» нарушает механизм передачи власти и делегирования полномочий, и тем самым, прекращает представительство и кладет конец говорению от имени другого. Если окажется возможным ответить на вопрос, возможно ли это, и не содержит ли всегда речь и действие от своего собственного имени элементы государственной измены, мы можем сделать вывод, что различные формы «прямой» речи и действия («от своего собственного имени») суть «акты государственной измены». В таком случае интересующая меня проблема состоит в том, не обнаруживается ли «государственная измена» в сердце представительной демократии, и не является ли она, таким образом, *de facto* неотъемлемой частью демократического порядка и общества.

*Ключевые слова:* государственная измена, предательство, представительство, суверен, народ, Томас Гоббс, отечество.

In Thomas Hobbes' *A Dialogue between a Philosopher and a Student of the Common Laws of England*<sup>1</sup>, written between 1668 and 1675 but published after his death (1681), the philosopher presents the student with a question concerning the greatest of all crimes: what is high treason? The student begins to count the different kinds of treason or treasonous acts the subject may commit against his master or sovereign (Hobbes, 1840b, 68–69). He cites and interprets the works of Edward Coke, the leading contemporary jurist in the kingdom. Right away, there is a precondition or preamble to any future condition of treason: due to differing opinions and uncertainties, it is the king/ruler/sovereign who decides and declares, based on traditions and consultations with other lords, what is and is not treason. Following this, the student lists the most serious (evil) deeds necessitating the immediate withdrawal of any sort of trust and obedience. The list begins with the highest treason or high treason, and ends with so-called small or “petty” treason. The highest treason is when someone imagines the idea or manifests a wish [*compass or imagine*] to kill the king or queen, or their eldest son or heir, while the smallest treason takes place, for example, when the same is done by a servant to his master, a wife to her husband, or a man to a priest<sup>2</sup>.

“So that not only killing,” explains Hobbes several pages later, “but the design, is made high-treason; or, as it is in the French record, *fait compasser* [to plot], that is to say,

<sup>1</sup> See (Hobbes, 1840b, 1–161). A new edition of this work was prepared and published by Joseph Cropsey in 1971 (Chicago: University of Chicago Press).

<sup>2</sup> *Petty or petit treason* was annulled in the nineteenth century. Today there is no difference between this crime and murder.

the causing of others to compass<sup>3</sup> or design the King's death is high-treason." (Hobbes, 1840b, 76)

Conspiracy, *plot*, stealth are synonyms for the word *compass*, which Hobbes selects. If someone plans, or plans and then carries out, the murder of a sovereign (king, ruler, prime minister), there are several preconditions which must be met for this (evil) deed even to be considered as treason or high treason. These must be in accordance with right (the law or *statute*), that is, Coke's "institutions," which Hobbes analyzes and criticizes:

- (a) The sovereign or supreme body (for example government) determines if something is or is not treason;
- (b) A treasonous or treasonable attribute is necessarily secret and something that originates in secret (from secret);
- (c) High treason is arrived at backwards or upside-down [*subversion*], from the subject to the ruler, from the inferior to the superior<sup>4</sup> (*superanus*, sovereign);
- (d) High treason is carried out by someone who is under the protection of or allegiance [*ligeance*] to the sovereign (that's why the traitor [*perduellis*] is not the enemy [*hostis*], and the enemy is *a priori* not under the protection [*allegiance*]<sup>5</sup> which the king or sovereign provides);
- (e) High treason deserves the highest form of punishment (hanging, *quartering*, and annihilation)<sup>6</sup>.

The *Philosopher* posing the question to the *Lawyer*, whom Thomas Hobbes is impersonating in this "dialogue," is not pleased with the answers provided in the five points. It would be quite complicated to examine all of Hobbes' intentions, as well as the consequences his objections might have had on the unclear history and transfor-

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<sup>3</sup> "When a man doth compass or imagine the death of our lord the King, or of our lady his Queen..." (the Treason Act 1351 is written in Norman French).

<sup>4</sup> See (Cuttler, 1981, 5).

<sup>5</sup> The word "allegiance," which is used by Hobbes, is the link between the subject and the sovereign, and between the sovereign and the subject. The subject commits to loyalty and obedience, while in return the sovereign owes him protection. The moment the subject is born, he comes under the rule and protection of the sovereign [*regere et protegere*].

<sup>6</sup> See (Hobbes, 1840b, 126). More than one hundred years later Kant writes: "Any attempt whatsoever at this (in question is an attack on the life of [*Vergreifung*] of an individual [*Person*] lawful ruler [*das gesetzgebende Oberhaupt des Staats*], P.B.) is *high treason* [*Hochverrath*] [*proditio eminens*], and whoever (traitor [*Verräther*]) commits such treason must be punished by nothing less than death for attempting to *destroy his fatherland* [*parricida*] [*der sein Vaterland umzubringen versucht*]" (Kant, 1996, 463; 1912–1913, 320).

mation of the figure of treason. After nearly three hundred and fifty years, treason (or high treason), as one of the key institutions of sovereignty and the foundation of sovereignty itself, has been completely transformed, weakened, or completely left out of the constitutions of various states<sup>7</sup>. On the other hand, the word “treason” could never be carried into the field of ethics precisely because of its problematic weight in political law. Of all the arguments concerning loyalty, devotion, commitment, and pledge; of all the attempts to find treason on the fringes of lying, cheating and trickery, simulation and dissimulation—for example treason which began with a lie, treason which occurs only when the truth is avoided, or treason present only while the truth is being discovered etc.<sup>8</sup>; of all the unsuccessful attempts to universalize the act of treason and have it become a behavioral norm in a community; of the ruthless histories where chants of “treason” have occurred; of all the anachronistic codices concerning the traitor within bandit groups and small organizations—the only thing left perhaps is the limitless dynamic of this strategy hidden in the seams of the very different models of community, common life, sacrifice for the community, and the renunciation of the community in the name of life.

I will attempt to systematize Hobbes’ displeasure with the status of treason within law [*statute*]. I will try to consider it in congruence with the end of paragraph 14 (“Of Laws and Trespasses”) of the book *De Cive* [*The Citizen*], first published in 1641 in Latin, and I will suggest that perhaps it is Hobbes, before all others, who is responsible for the specific place treason has in democracy.

We find the famous institutions of Roman jurists within the foundations of statutes or decrees which concern treason, and which Hobbes reads in Edward Coke. Hobbes’ contribution is limited to a kind of demystification of the legal text and uncovering of the elements in law that precede him and do not belong to him. Just as a certain author and member of the *Julia* family, several decades before the first cen-

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<sup>7</sup> What are the consequences of this weakening, or total lack of the institution of high treason? The French constitution, adopted on October 4, 1958, mentions high treason [*haute trahison*] only in section 68, in which it says that the “President of the Republic is responsible for actions related to his duty solely in the case of high treason.” In the constitution of the United States (paragraph 3, section 3) treason is defined as an act which has as its aim to subvert the government of a state or, during war, to help the enemy of this state. “Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.”

<sup>8</sup> Nearly 150 years before Hobbes’ texts, on May 17, 1521, in his famous letter to Francesco Guicciardini, Niccolò Machiavelli describes his practice of evasion, embellishment, and trickery in the following way: “Because, some time has passed since this has been done, I have never said something I believe in, nor have I ever believed in what I have said, and even if once in a while I say something that has truth in it, I hide it between so many lies [*io lo nascondo fra tante bugie*] thus making it difficult to find” (Gaeta, 1961, 405).

tury, tries to “universalize” common marital and familial problems into rules of divorce, and then abstracts these into adultery writing the so-called *Ad Legem Iuliam Maiestatis* [“*Lex Julia* of Treason”]—laws concerning treason in Rome which were insurmountable during both the Republic and Empire—so Hobbes deconstructs “norms” and restores them to natural and customary rights. The laws and rules which are under the so-called Julia Laws of Treason provide several key arguments which Hobbes uses, in various ways as non-legal, and as figures that certainly precede public law:

- First, security (Ulpianus’ definition 4.4.1 reads: “The crime of treason is one that is perpetrated against the Roman people and against their security” [*Maiestatis autem crimen illud est, quod aduersus populum Romanum uel aduersus securitatem eius committitur*]);
- Second, treason is close to sacrilege [*proximum sacrilegio crimen*] (also Ulpianus);
- Third, treason is a performance (or false presentation; Marcianus 4.4.3 indicates that according to Julia law a traitor is also the common citizen [*privates*], who knowingly and with malicious intent acts as a judge [*magistrate*], that is, as if he has such authority)<sup>9</sup>;
- Fourth, *maiestas maiestas*; “treason” is equal to “sovereignty” or treason [*maiestas*] and sovereignty [*maiestas*] are inseparable and inextricable; the source of treason is found in sovereignty, the opposite being true as well<sup>10</sup>.

<sup>9</sup> See (Mommsen, 1985, 802–805). About the institution of the false agent or false procurer [*falsus procurator*] see (Le Bras, 1922, 88; Solazzi, 1972, 569).

<sup>10</sup> *Maiestas* is a noun whose origins are based on comparison. This word signifies a relationship based on superiority. For example, *maiestas* of the father in relation to the child, the husband in relation to the wife, *maiestas* of Rome [*maiestas Populi Romani*] in relation to vanquished nations. The variations of this comparison lead to confusion. The term *crimen maiestatis* supposes treason (but does not replace the Greek word *prodosia* [*proditor* in Latin] but rather the word *ade’beia*, and in the Byzantine period the word *kato’siosis*), in later history the noun *crimen* is systematically left out, leaving only *maiestatis*, used then as a synecdoche. *Maiestatis* (the genitive of *maiestas*), in Julia law, is another name for one who committed treason (high treason). Etymologically, the substantive *maiestas* comes from the verb *magnificare* (magnify) originating in the noun *magnus* (great) (more precisely from the comparative *maior* (greater) in contrast to *minor* (that which is smaller). Therefore, this term signifies an unequal comparison where one component takes the position of the greater, and the other the position of the smaller. This represents the forgotten foundation of the “principle of sovereignty” (a French word with which Jean Bodin designates thus resolving, in his own way, this fundamental inequality between the greater and smaller). Therefore, the same word signifies sovereignty as an inequality in which the greater has an advantage, and treason, as disturbance of inequality and primacy of that which is greater over the smaller. See also (Bauman, 1967, 1–14).

This final point is constructed interestingly and is completely veiled in the history of the interpretation of treason because it is at first glance trivial. Namely, treason assumes the negation of an order (Hobbes is important for us because he determines the institution of sovereignty topologically—what is negated is always found behind, at the rearguard). When I negate something, I spoil the order or sequence, but at the same time I confirm this same order. By committing treason, by transferring (*tradere*) something from one place to another, I confirm the previous or original place. For Hobbes (and he is not alone) the condition necessary for this construction to take place and endure—so that this conveyance does not completely break—is also written within the word *t-reason*. Therefore, *reason* is an absolute condition. It is necessary to calculate the amount and control of information that can be “distributed” (provided)<sup>11</sup> for the original system of information (we can call it without any ambiguity identity or as Hobbes does, *person*) to continue to function.

Perhaps another sort of example could also be useful: a situation in which the state, as one kind of system of information, necessarily supposes manifestations, rituals of exchange and transmission of information, ceremonial witnessing and representation [*representatio*]*—*speeches and actions in its name (in the name of the state), etc. This leads to a supposition—just as has been done in cybernetics by Shannon—that information “exits” and “enters,” that its *feedback* exists, and then that information is certainly “leaking” somewhere. That which is being transmitted, manifested, distributed, but also which is being “leaked,” unabashedly confirms the identity of one system. But what exactly does this misplaced metonymy “information which leaks” cover?

All the possible fantasies, analogies, and associations concerning the disintegration of a state or concerning the instability in a state are always found between *maiestas* and *maiestas*, between treason and sovereignty, and repeat Hobbes’ matrix and his undertaking. So, reason, or the main computer, or brain, or reason of state [*Raison d’Etat*] is found within the sovereign’s head; it is found also in the cabinet with the secretaries and in the state security apparatus which protects the sovereign’s head, by, in fact, protecting a chain of instances which line up “going down” (or “going ahead”) and which end with the very last (or first, or new) and newly born citizen.

Along with the head and body of the one who sits (or stands) before all and presides, with every new birth, a new subject is added<sup>12</sup>, who is immediately and firstly

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<sup>11</sup> *Predat* (provide) is a Russian (old Slavonic) word meaning to betray.

<sup>12</sup> “A multitude of men, are made *One* Person, when they are by one man, or one Person, Represented; so that it be done with the consent of every one of that Multitude in particular. For it is the *Unity* of the Represented, not the *Unity* of the *Represented*, that maketh the Person One. And it is the Representor that beareth the Person, and but one Person [...] This done, the Multitude so united in one



protected from his parents or caretakers (or attorney; at which point the *procuratio* appears, one more key legal institution which Hobbes manipulates and which could be complementary to *representatio*) precisely by the shield of the president or sovereign. In this way the order of authorization and licensing is in constant substitution for protection and security. Therefore, along with Hobbes' famous vision of the sovereign—the *Leviathan* found on the engraving for his book (a great giant who rises above the city and whose body is made up of all the citizens of this city<sup>13</sup>)—the point being that everyone together embodies strength and that this common strength protects the whole from every individual; furthermore, the community has ambitions leading toward the sky, from the bottom leading up, simultaneously the process of power (authority) descending from the sky to the earth is acted out. Power is transferred, simplified, through persons (through re-presentations) who “arise” one from the other and act and speak as one in the name of the other. Everyone in this chain has authority and everyone authorizes, everyone is protected and everyone offers protection. Accepting that the first version of sovereignty—in which fear unites all subjects into the common body of the *Leviathan*—is a sort of manifest equality (in the face of force and law simultaneously), we accept, then, that the second version is pyramidal and hierarchical, slanting and unstable.

Let us now imagine this sequence, this advocatory and custodial sequence which stretches from the top, from the head, down through ministers, judges, fathers, all the way to the womb of the mother<sup>14</sup> (the uncertain position of the mother should

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Person, is called *Common-wealth*, in latine *Civitas*. This is the Generation of that great Leviathan...” (Hobbes, 1996, 114, 120).

<sup>13</sup> In the book *Thomas Hobbes Der Leviathan. Das Urbild des Modernen Staates und seine Gegenbilder — 1651–2001*, Horst Bredekamp analyzes a multitude of differing editions and visual presentations of the *Leviathan*. Although there are some exceptions, the predominant number of illustrations shows the figures of the citizens making up the body of the monster, with their backs turned to us, so that they are facing the sovereign. The face of the sovereign (the whole head, with long hair) is never composed by the figures of his subjects and is always facing the reader.

<sup>14</sup> In Chapter XX “Of Dominion Paternall, and Despotical” of *Leviathan*, Hobbes writes: “Domination is acquired two wayes; By Generation, and by Conquest. The right of Dominion by Generation, is that, which the Parent hath over his Children; and is called Paternall. And it is not so derived from Generation, as if therefore the Parent had Dominion over his Child because he begat him; but from the Childs Consent, either expresse, or by other sufficient arguments declared [...] He that hath the Dominion over the Child, hath Dominion also over the Children of the Child; and over their Childs Children. For he that hath Dominion over the person of man, hath Dominion over all that is his; without which, Dominion were but a Title, without the effect” (Hobbes, 1996, 139–141). This final maximally restrained and sophisticated version of the absolute advantage of the male sex in relation to the female has its two cruder versions in writings published several years prior to this. In the book *De Corpore Politico* (the first edition published in 1640) Hobbes sets out to differentiate the right (title) of the mother (because the child is a part of her body till its separation [*till the time of separation*]) to the

question the responsibility of obedience and the authority for someone to do something in someone else's name for the sake of protection), and turn our attention to the famous Chapter 16 of Hobbes' most important book, *Leviathan*, we will see that Hobbes' vision of the sovereign presupposes the figure of the traitor (or the latent spirit of treason). Both the word "vision" (because the sovereign or mortal god can show and represent himself) and the word "figure" (because the philosopher generalizes or universalizes a small constant disbelief that exists in the foundations of representation and in every step of the translations of power<sup>15</sup>) are themselves proof of Hobbes' distance from Roman legacy and legal tradition. On the other hand, Hobbes reformulates several basic Christian principles that frequently cause him problems. However, this appears to be of secondary importance: it seems that these reformulations are the results of Hobbes' inattentiveness, and the severity of his opponents, and not part of any kind of clear project that might be called secularization. Hobbes' establishing of the institution of the representative and representation, a moment of truly epochal significance that changes our perception of democracy and our understanding of politics and justice, themselves signify the forever lost Roman potential of direct and personal adherence to the law<sup>16</sup>. The origins of representation and *procuratio* in Roman law are based firstly on the rhythm of, and changes in, contemporary everyday life.

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moment when the father or any other male [*father or any other man*] takes over that right from her [*pretendeth by the mother*]. In Chapter 9, "Of the Right of Parents over their Children, and of Hereditary Government" of *De Cive* (1651) (Hobbes, 1841a, 166), a woman or mother has an advantage in the custody of children based on nature (in the state of nature), based on the so-called right of nature, "wherefore (original) the dominion over the infant belongs to him who first hath him in his power" (Hobbes, 1841a, 114–115). The mother has the first right to bring up a child, based on her own will (meaning she does not need to answer to anyone). "If therefore she breed him, because the state of nature is the state of war, she is supposed to bring him up on this condition; that being grown to full age he become not her enemy; which is, that he obey her. [...] But each man is an enemy to that other, whom he neither obeys nor commands" (Hobbes, 1841a, 116). The position of the mother is very complicated: she is simultaneously a part of the sequence (statute, law) and its pre-origin (nature is before right), but it seems that the sequence of rule only begins with the man as the true ruler who *de jure* gives birth to his subjects. Furthermore, the mother, as can be seen in this example about the enemy, enters from the sidelines into the father's order (as such she brings imbalance to the sequence), and in doing so, "betrays the sequence" by adding a new element, a new life into the sequence (*bios*, biology enters the *nomos*); followed by the mother being the first witness (because the child is a part of her body); the mother becomes the traitor as well because the newly born part of her is a traitor (the enemy) who at the very beginning cannot even listen or command.

<sup>15</sup> "...all his pacts, and surrenders, and translations of power." "An Answer to a Book Published by Dr. Bramhall." This text was written in 1667/1668, but published after Hobbes' death in 1682 (Hobbes, 1840a, 286).

<sup>16</sup> The old Roman law did not allow action which would be carried out by one person in the name of another, with the exception of action carried out in the name of *pro populo*, *pro libertate*, and



The absent<sup>17</sup> father [*Pater*] or master, who temporarily leaves his estate (usually for war), is obliged to empower his son or servant or friend with control of his property. These institutions' principal characteristics, which were defined quite late, are a substitution for confidence. An important additional point is that for a long time there was no monetary compensation for this sort of legal action.

Conversely, the absence of the father is latent in Hobbes, while speaking and acting in the name of the other is what stimulates the institutional machine. The origin of the representation of authority is found in the absent God (Hobbes says that Moses does not speak in his name, the son speaks in the name of the father, the first witnesses and disciples speak in the name of the son [in this way the son becomes the father], the servant acts in the name of the sovereign, citizens in the name of the law, etc. [Stolleis, 2005, 35–40]). With all the reservations toward the word, which must endlessly be repeated, treason is a condition for this sequence. The system of authorization and empowerment makes treason at the same time impossible and endless<sup>18</sup>. Before Hobbes models all of these figures of speech, “in the name of someone” or “in the name of other,” into the shape and figure of a traitor for the entertainment of his sovereign (I will attempt to explain this construction of his at the end), I would like to sketch, in the form of several questions, several dilemmas and aporias related to the term “in the name of” [*in Nomine, to o'noma*]. At the same time, these questions will also indicate the elements which are supposed to be the preconditions for any possible treason:

Is it possible to commit treason in someone else's place, to someone else's advantage, in the name of and for other<sup>19</sup>? Does, in reality, the traitor speak only in his own

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*pro tutela*. To an even greater extent, Jewish law strictly limits speaking or taking action in place of another before a priest or judge (or God). See Deut. 19:17; Mak. 1:9; Sanhedrin, 21:8.

<sup>17</sup> *Absentis alicuius procurator praesens imago*. Sec. Papinianus. D.21, 2, 66 3. The procurator is the present image of every absent [person].

<sup>18</sup> Differing colonial and racist analogies begin to appear (and remain), during the seventeenth and eighteenth centuries, on the margins of speeches and actions in the name of other. For example, the phrase “*être nègre*” (to be black, a slave) is frequently used in the French language in its figurative form, and marks a person who writes books or speaks in someone else's name (most frequently in the name of a politician or already known author, who would then sign for them). It is similar with the use of the word “Judas” in French or English. *Judas* or *judas* (in English), a Jew, or “*l'œil de judas*” [eye of the Jew] is the name for the small opening in a door [*spyhole*]. Treason is always on the edge, on the doorstep, before the other (foreigner), in fear, in a place of detection, and of course where there is pleasure.

<sup>19</sup> Why is it that I cannot authorize someone to commit treason instead of me, but, on the other hand, I can commit treason only if I have authority, meaning only if I represent another? In the French and English languages the following syntagma are possible: *trahison par procuration* / *treason by proxy*.

name and without empowerment? But who or what is he committing treason against, if no one has empowered him?

Should a representative [president] do what he is empowered to do or what he thinks is the best for the one who empowered him? If he does what he is empowered to do or if he represents the one who empowered him to do so, does he then stop being a representative?<sup>20</sup>

Is it possible to empower oneself, represent oneself, and then commit treason against oneself? Does treason signify the end of conflict between several empowerments in the wake of giving one of them an advantage?

Who empowered Thomas Hobbes [*obedient servant*]<sup>21</sup> and in whose name does he speak and act? How is it possible to speak about the source of supreme rule, about the secret service and the protection of the sovereign and who empowered me to speak? Who is my master, who protects me, who gave me the right (authorization, legitimacy, etc.), and in whose name am I “inquiring”<sup>22</sup> about something that must be kept secret and unknown?

The opening paradox in this collection of questions and dilemmas, especially where it mentions the possibility of speaking “personally” and in one’s own name, could be a real inspiration for treason in the context of Hobbes’ theory of representa-

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<sup>20</sup> A question formulated in this way departs from Hanna Pitkin’s “paradox of representation” in an almost unseen manner (Pitkin, 1968, 38–42). In the Chapter “Delegation and Political Fetishism” of *Langage et pouvoir symbolique*, Pierre Bourdieu speaks of two important dilemmas launched by the institution of representation: how is it possible that a mandatary has power over those who have given him that power and how is it possible that a mandatary who is designated by a majority (a group) at the same time forms that same group? (Bourdieu, 1982, 259–279) In his study *Repräsentation* Hasso Hofmann writes of the difficulty of a majority being represented by one person (one singularity) or with the majority being reduced to only its single part (11) (Hoffman, 1974). For more on the paradox of the control of many by the one (Thomas Aquinas), see also Bruno Accarino *Rappresentanza* (Accarino, 1999, 48) and Quentin Skinner “Hobbes and the Purely Artificial Person of the State” (Skinner, 1999, 4–6).

<sup>21</sup> This is how Hobbes signs his name at the beginnings of his books and in the dedications to his principles.

<sup>22</sup> “A people should not *inquire* with any practical aim [*in praktischer Absicht unerforschlich*] in view into the origin of the supreme authority to which it is subject, that is, a subject [*der Unterthan*] ought not to reason subtly for the sake of action [*werkthätig vernünfteln*] about the origin of this authority...” (Kant, 1996, 461 / 318).

tion. If the representative chain (every link is made up of an author, the authorization of the next actor and his act [which simultaneously authorizes the future actor]) is based on the continuous circulation of speeches and actions in the name of another (“I speak for or represent the other;” “my speech is the speech of the other/others;” “your speech is my speech,” etc.), the assumption should be that a traitorous “action” should interrupt and suspend the chain of authorization. Hobbes’ belief that there is self-representation and “action” from oneself, opens up the possibility that the chain can be broken, or even that the chain can always be broken (or that it can be endlessly broken and then reconnected). In a broader context, it seems that Hobbes—his referring to Cicero reinforces this notion—implicitly replaced the old “treasonous” idea of false authorization or false representation (*falsus procurator*) with a completely new and epochal idea that in any representational act it is impossible to completely be a person who, while representing something or someone else, at the same time represents themselves.<sup>23</sup> This paradoxical simultaneousness and overlapping of several persons (or roles) in one precedes, and then presupposes, every possible false representation. Namely, I can represent or speak in the name of someone else despite the fact that I do not have the author’s authorization (or mandate). One thing I can never do, and it is at this moment that treason always receives a personal mark (my own and always my own), is, by representing someone who has empowered me (or someone who I imagine has empowered me and because of which I am deceitful), stop representing and presenting myself. I am using representative potential for self-“promotion” and in so doing I am betraying the one I represent.<sup>24</sup> In Hobbes’ theological matrix all this

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<sup>23</sup> The idea of self-representation in the work/thought of some of Hobbes’ contemporaries, for example the poet Mary Wroth, is reduced to the betrayal of oneself. We betray ourselves (Wroth uses the word *bewray* instead of *betray*) when we represent and present ourselves. The Elizabethan Archbishop Edwin Sandy says, in a proverb from 1589: “A man’s speech or gesture will bewray his inner thoughts.”

<sup>24</sup> Here we should take a moment to discern several differing visions and ramifications of “treason.” The word “treason” is a theatrical figure which replaces the non-completion or non-fulfillment of a certain representative task or obligation. Of course, it is taken for granted that a mandate supposes a certain kind of closeness between the author and actor, that a mandate is limited in time (just as the act of treason is dependent on time, having its own timespan and economy—treason cannot be committed whenever, or several times, etc.), that some third party can “verify” (monitor or witness) that treason was indeed committed, etc. Therefore, while I represent the other, I am betraying him because I cannot fully invalidate myself as a person (this is the way Hobbes marks this instance), meaning myself as a subject of representation; by representing myself, I betray myself because I cannot fully invalidate the other who empowered me to act in his name and who is the bearer of representation; by representing myself for the other and at the same time for myself, I interrupt the chain of authorization and the transfer of empowerment and betray a third (or the next link in the sequence of representatives).

can look much worse: I am using up and weakening the “authorial” potential of the first super authorization which is found in any authorization which follows it, because I am never in a position to pass it on (God is the author *par excellence*; the only “natural author,” the one who authorizes, the one who represents no one and who is pure self-inauguration or self-presentation).

At the very beginning of Chapter 16 of *Leviathan*, it seems that the boundary between the author and actor can be recognized, that is, between the one who is empowered to perform and act in the name of the other, between one who acts and presents himself, and one who has “representative ability” to authorize the other:

A Person, is he, whose words or actions are considered, either as his own, or as representing the words or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction. When they are considered as his owne, then is he called a Naturall Person: And when they are considered as representing the words and actions of an other, then is he a Feigned or Artificial person<sup>25</sup>. (Hobbes, 1996, 111–112)

This logic “either [...] or” [*either as his own [...] or of an other man [...] or thing*], either one or the other (but not both at the same time), is first shaken by the introductory word (*Person*<sup>26</sup>) with which Hobbes opens this incredibly complicated chapter of *Leviathan* (after all, this is the novelty he introduces in relation to the complementary fragment of Justinian’s *Institutions*, which is the foundation of Hobbes’ article, and one in which someone who acts instead of us is not named as a person<sup>27</sup>), and this logic is then completely shattered by a short quote from Cicero (Hobbes cites and comments on it in several works) which is supposed to explain the sentence (“... and he that acteth another, is said to beare his Person, or act in his name”), that is, to

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<sup>25</sup> Hobbes leaves out the words “feigned” and “artificial” in his translation of his own text into Latin (1668): “*Persona est is qui suo vel alieno nomine res agit: si suo, persona propria, sive naturalis est; si alieno, persona est ejus, cujus nomine agit, repraesentativa*” (Hobbes, 1841c, 123).

<sup>26</sup> I believe that, in this case, Hobbes owes more to Christian tradition than Cicero’s texts and legal manuals. The main reason for this is because the Greek word *prosopon* (Hobbes mentions it in this chapter as meaning a mask) can be translated as “person” because its use in the period of *Fathers of Church* was frequently a synonym for *ipostas*. For example, Gregory (*Ad Graecos*) does not differentiate between the meanings and uses of these two words. Further arguments in favor of this lack of differentiation between the two words, at least in one important period of human accomplishment and thinking, is Hobbes’ own evaluation of the meaning of these words in the context of the Holy Trinity, done in his work entitled “An Answer to a Book Published by Dr. Bramhall” (Hobbes, 1840, 308–311, 318, 400–403). See also W.M. Thorburn, “What Is a Person?” (Thorburn, 1917, 291–316); F.Lessay, “Le Vocabulaire de la Personne” (Lessay, 1992, 155–186); S.Schlossmann, “Persona und Prosopon” (Schlossmann, 1906, 79–83).

<sup>27</sup> Liber IV, Titulus X. *De his per quos agere possumus*.

clarify the verb *to bear*. Hobbes continues: “In which sense Cicero useth it [the word *bear*. — P.B.], where he saies, *Unus sustineo tres Personas; Mei, Adversarii, & Judicis*, I beare three Persons; my own, my Adversaries, and the Judges”<sup>28</sup>.

This was spoken by Anthony; Cicero conveys his words. Hobbes then repeats and reformulates his words from Latin, while different translators then represent this formulation in different languages. This is the sequence. This is a chain of authorizations. The scene or theater Hobbes speaks of, and which can always be compared to a court, parliament, liturgy, or office, is replenished with every following link in the representative chain. To be a “part” of and “receive” empowerment or a mandate from this chain (no one gave it to me, no one can give it to me, because I can only obtain or receive a mandate which no one gives me [*Ich kann meiner Natur nach nur ein Mandat übernehmen, das niemand mir gegeben hat*, Franz Kafka]), I must first try to repeat the authorizing ability or authoritative potential of Anthony’s report. I (me, my person) must personify Anthony. But this is not enough for me to have (“receive” or “obtain,” but not have someone give, provide or sign it to me) a mandate and “act in the name of” (in whose name?<sup>29</sup>). More than this is necessary. To convey, to personify, in this case Anthony and Anthony’s intention, for me to personify the representative and procurator Anthony, paradoxically, it is necessary to personify all that brings him into

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<sup>28</sup> In his book about the orator, Cicero cites the words of a lawyer, Anthony, who, while preparing his client for his defense simultaneously prepares himself to represent this same client in court. Here is the fragment, translated by E. W. Sutton, *De Oratore*: “It is my own practice to take care that every client personally instructs me on his affairs, and that no one else shall be present, so that he may speak the more freely; and to argue his opponent’s case to him, so that he may argue his own and openly declare whatever he has thought of his position. Then, when he has departed, in my own person and with perfect impartiality I play three characters, myself, my opponent, and the arbitrator” (Cicero, 1942, 273–274). See also Hanna Fenichel Pitkin, *The Concept of Representation* (Pitkin, 1967, 24–25). David Runciman analyzes Cicero’s differing uses of the word “person.” *Pluralism and the Personality of the State*, Chapter “The Mask of Personality” (Runciman, 1997, 225–226).

<sup>29</sup> In whose name does the philosopher or institution of philosophy speak or work? Does the philosopher speak in his own name; is the regime of self-presentation, self-representation, and self-inauguration necessarily philosophical? Can the philosopher represent or does he necessarily authorize? Does he personify God? If he speaks in his own name; does he betray himself or betray someone else? Is philosophical representation false? How are truth, being, the thing itself, and language as such, represented? What is it to speak in the name of reason, a universe, or a university? What does it mean to represent life, the just, the strong, the victors, the excellent, Hobbes’ insane, fools, children? Does the philosopher speak in the name of the ignorant, the fool, Pufendorf’s imbecile, in the name of the invalid, the weak, the sick, the missing, the elderly, the recently deceased? In the name of all who are deceitful? I will speak about the representative tone of the philosopher and philosophy elsewhere.

question, all that betrays and destroys him. In my case, in this text and in my address, for me to truly be a part of a chain which stretches from Cicero and Hobbes to known and unknown interpreters, for me to speak in Anthony's name, I would have to perform a role similar to Anthony's.

Anthony, who is a lawyer (Hobbes adds several analogous functions to better explain his position: *Representer, Representative, Lieutenant, Vicar, Attorney, Deputy, Procurator, Actor*<sup>30</sup>), undertakes three similar operations, he: acts, looks, personifies [*Personate*], performs, represents [*Represent*] the other; he then bears his person [*bear his Person; sustinere*]; and finally, acts in his name. In order to be what he is—a person and an advocate, Anthony expresses a key sentence which Cicero noted—a sentence by which Hobbes was enchanted, but which he never copied in its entirety, nor cited Cicero's true source,<sup>31</sup> and finally, a sentence whose word order Hobbes changed to make it fit in his different texts:

*Itaque cum ille discessit, tres personas unus sustineo summa animi aequitate, meam, adversarii, iudicis.*

Just like after a psychoanalytic session, during which the patient was present without a witness and spoke without restraint and in a true attempt to freely express themselves, at the beginning, Anthony explains that the client has gone. The condition for any future representation and any future treason is the absence of someone in whose name action is still forthcoming. In the second part of this sentence, which is almost a remnant and result of the past session and which the client should have to be able to speak of in a completely equal way (this is precisely the difference between the representative and the one who is being represented: the latter acting and speaking through the first one [*par procuration*]), Anthony attests that he is himself filled by three roles and three persons at once, which stand in complete equality. None of

<sup>30</sup> See (Hobbes, 1996, 112).

<sup>31</sup> In Hobbes' 1668 text "An Answer to a Book Published by Dr. Bramhall" (Hobbes, 1840, 310–311), the final text where Cicero is mentioned, Hobbes cites an incorrect source ("Letter to Atticus") and completely forgets his uncertainty about the verb *to bear* (exchanging it with the verb *to sustain*). "Cicero, in an epistle to Atticus, saith thus: *Unus sustineo tres personas, mei, adversarii, et iudicis*: that is, 'I that am but one man, sustain three persons; mine own person, the person of my adversary, and the person of the judge'; Cicero was here the substance intelligent [emphasis added. — P.B.], one man; and because he pleaded for himself, he calls himself his own person: and again, because he pleaded for his adversary, he says, he sustained the person of his adversary: and lastly, because he himself gave the sentence, he says, he sustained the person of the judge. In the same sense we use the word in English vulgarly, calling him that acteth by his own authority, his own person, and him that acteth by the authority of another, the person of that other. And thus we have the exact meaning of the word person."



them is of greater significance, all are equally represented, and all are equally in play, because he, Anthony, does not favor one over any other. However, there is much imbalance and *contra* (counter) transfer which Cicero and Hobbes relentlessly attempt to hide: (1) Cicero (Anthony) as a *substance intelligent* (this is Hobbes' perfect translation of the word *ipostas* from 1668) is the one who decides, who holds up, who carries these (in)equalities between the persons who could be represented; (2) to be a representative (attorney) is just one of many possible roles (this is the word *meam* in Cicero's sentence); for example, Anthony, the representative, decides when Anthony's person will enter the scene (in question is certainly his role as a representative); and (3) at least two persons are on the stage at the same time, therefore, not at different times and successively (as Hobbes imagined this<sup>32</sup>), because the *substance intelligent* can never suspend itself, that is, represent itself.

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The paradoxes of representation, the secret of empowerment and treason of authorization—at all levels, at every step, at all junctions of an order where there is contact, where two instances touch and add to each other—appeal to Hobbes for an operation which must fundamentally counter law and the Greco-Roman legacy.

For one order to be stable (safety proceeds right, according to Hobbes)<sup>33</sup>, it is necessary for the sovereign to be outside of law, thus making high treason impossible. Conversely: safety is preconditioned on the absolute presence of the sovereign, at every position and in every law, and so high treason is recognized in any crime. For this grandiose fiction concerning the grandiose and giant body of the sovereign, protector of all, to be possible, Hobbes must imagine a great criminal or great traitor (a sovereign super-traitor). More precisely, in order to justify the terrible sovereign, who rises above the city, and the hierarchy and inequality between his subjects (these are only two of many possible objections one who aspires to equality could make), Hobbes must remove the traitor, place him outside all laws, that is, outside order.

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<sup>32</sup> In Hobbes' 1658 book *De Homine*, written in Latin between two versions of the book *Leviathan*, while interpreting Cicero, the author uses an analogy of an actor who can play out different roles, but at different times: "Ut ergo idem histrio potest diversas personas diversis temporibus induere, ita quilibet homo plures homines repraesentare potest" (*De Homine*, in *The Latin Works of Thomas Hobbes*, vol. II, chapter XV, "De Homine Fictitio" (Hobbes, 1841b, 130)).

<sup>33</sup> In *De Cive* (1651), safety is the highest law [*the safety of the people is the supreme law*] (Hobbes, 1841a, 166).

How is this possible? What does it mean to “remove” from order or from right or from law an institution that has for centuries protected the sovereign, firstly from his family, advisors, and associates?

Overstating and exaggerating the size of the crime (criminal offense), changing a crime into evil, into evil itself, into the personification of evil, into an evildoer, into the principle of evil (these are all small steps in the creation of sovereignty), creates a great danger, and great uncertainty, terror, and of course a necessity for the existence of a great protector.

Hobbes accomplishes the transformation of crime into evil by transferring treason from law into theology.

In this way the traitor comprises all the features of an atheist. Hobbes goes on to say that the atheist is not someone who breaks the law, but rather someone who [*neglect the laws*] (Hobbes, 1841a, 197). “Not only the deeds, but even the minds of these men are against the laws. They, who sin only through infirmity, are good men even when they sin; but these, even when they do not sin, are wicked.”

For Hobbes the problem with the atheist, that is, the traitor, begins at the moment at which it is established that there is no law based on which such a completely appalling criminal can be punished. Hobbes believes that it would be best if God punished him immediately, because the traitor cannot be punished as a subject, and by the sovereign, because the traitor “keeps not the laws;” because a subject who refuses to accept the general rules of obedience refuses all the laws at the same time (“at once renounce all the laws”—the main feature of treason); because the subject declares that he will no longer obey a man or body that has been empowered by a supreme power (the traitor puts an end to the sequence of authorization, but only after previously having followed it—therefore someone *becomes* a traitor—but this goes directly against the principle of *a priori* disregard of the law); because the subject proclaims his will through his actions, by committing violence to the sovereign’s person or against someone who is following the sovereign’s orders; because during a time of war the subject crosses over to the enemy’s side. On this basis, Hobbes concludes the following:

...that rebels, traitors [*proditores*], and all others convicted of treason, are punished not by civil, but natural right; that is to say, not as civil subjects, but as enemies to the government [*ciuitatis hostes*]; not by the right of sovereignty and dominion [*iure imperi siue domini*], but by the right of war<sup>34</sup>. (Hobbes, 1841a, 201)

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<sup>34</sup> See also T. Hobbes, *De Cive, the Latin Version* (1642) (Hobbes, 1983, 217).

Twenty years later, in “An Answer to a Book published by Dr. Bramhall,” Hobbes once more speaks about what he wrote in the book *De Cive*, attempting to answer accusations of heresy that were levied against him after the publication of *Leviathan*.

Now his words are even more precise and interesting:

...an atheist is punished not as a subject is punished by his king, because he did not observe laws: but as an enemy, by an enemy, because he would not accept laws.

...an atheist ought to be punished not as a just enemy, but as a disloyal traitor. (Hobbes, 1840a, 290–291)

The theory of punishment of the atheist finally reveals the traitor’s “place.” Further, Hobbes’ dissatisfaction with treason’s “place” in law is concluded with identical results in the text *A Dialogue between a Philosopher and a Student of the Common Laws of England* with which we began our investigation of treason and which was written immediately after “An Answer to a Book published by Dr. Bramhall.” I will rehearse only some of Hobbes’ gestures which should reveal the traitor as an enemy and in so doing satisfy the philosopher.

Hobbes believes that reason can, without the help of norms and laws [*statute*], recognize and define treason because treason is a crime of itself [*malum in se*]<sup>35</sup>, because treason being *malum in se* destroys all laws at once, because it brings into question *salus populi (salus populi is suprema lex)*—the safety of the people and ruler (the ruler who is at the same time supposed to guarantee safety), therefore it is not necessary to wait for a ruler’s opinion about whether something is treason or not (Hobbes, 1840b, 70–75). What follows is that it is possible to know who is a traitor. If one does not belong to the three groups who do not reason (children, fools, and the insane)<sup>36</sup>, then it is precisely known, apart from any laws or rights, who the traitor is.

Hobbes (and not only Hobbes, but before all others, Thomas Hobbes, son of the vicar of Charlton and Westport [*vicarius* or *diakonos* meaning a minister or representative]) takes away the legal and grand status which the traitor enjoyed within the law

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<sup>35</sup> “...*mala in se*, or wrong in themselves and those that are *mala prohibita* and wrong merely because they are punished by statute.” A text with no name and author entitled “The Distinction between Mala Prohibita and Mala in se in Criminal Law” (Anonym, 1930, 74–86). For Schmitt piracy is a “*malum in se*” in the absolute sense, while being a pirate means to be the enemy of all of humanity [*ein Feind der ganzen Menschheit*] and waging war against humanity [*gegen die Menschheit geführter Krieg*] (Schmitt, 1991, 50–54).

<sup>36</sup> “Likewise Children, Fooles, and Mad-men that have no use of Reason, may be personated by Guardians, or Curators; but can be no Authors (during that time) of any action done by them, longer then (when they shall recover the use of Reason) they shall judge the same reasonable” (Hobbes, 1996, 113).

[as *perduellis*] and in so doing destroys the difference between a traitor and a foreign enemy [*hostis*]. The ramifications of this intervention, which has as its legacy the stability of the order framed in the all-powerful rule of the sovereign, are truly countless.

The enemy (the man who “does not obey nor command”) finds himself within the state and not outside it; there is already a state of war within the state; even worse, the state of nature threatens to occur at any moment within the state because the traitor is not honorable but is rather a disloyal and unjust enemy; the sovereign is no longer just a protector because his actions against portions of his own sovereignty are those of an enemy against an enemy; the sovereign can punish the traitor apart from all laws and rights; treason is possible at all levels of rule, not just at the top; there is no small treason because any such occurrence is great.

The most important consequences of Hobbes reconfiguring the traitor into a *variable* which frequently patches up the holes in sovereignty (the traitor changes nationalities, race, becomes a terrorist, unjust enemy, *homo sacer*, pirate, bandit, etc.) seems to be the drastic slowing and never completely thought-out treasonous idea *par excellence* which just might be able to surpass the boundaries of sovereignty (Nagel, 2005, 113–147). I mean the eternal search for the protection of life, which Leibniz, Hobbes’ greatest critic, speaks of more than twenty years after Hobbes’ death<sup>37</sup>, and also the eternal search for a homeland of one of the most famous traitors of all time, Socrates’ favorite, Alcibiades<sup>38</sup>. In Thucydides’ *History of the Peloponnesian War*, which Hobbes translated in 1628, in Alcibiades’ famous speech about his expulsion (the word “treason” is not mentioned), he says the following:

And as to love of country [*filopoli*]—I have it not when I am wronged, but had it when I possessed my civil rights in security.<sup>39</sup> And it is not, as I conceive, against a country still my own that I am now going, but far rather one no longer mine that I am seeking

<sup>37</sup> In his letter to Falaisau, written in Hanover on July 8, 1705, Leibniz for the first time utilizes the Roman [*les Latins*] name for a state, *Respublica*, and defines it as a society whose goal is collective security [*la seureté commune*]. “Those who are conquered are permitted to swear fidelity to their enemy [*de prester serment de fidelité à l’ennemi*], the ruler who conquered them, because their previous ruler was not able to guarantee their safety.” *Die Werke von Leibniz* (Klopp, 1969, vol. IX, letter number 1969, 142–143).

<sup>38</sup> As one of the three commanders of Athens, he surrendered to the enemy, Sparta. He then waged war against Athens with the Spartans, who never trusted him, only to return to Athens and become a general from 411 to 406. Plutarch writes, in his *Lives*, that when Alcibiades first fled Athens someone, recognizing him, asked: “Do you not trust your own homeland, Alcibiades?” “I trust in everything, he responded, but when my life is in question, I do not trust my own mother” (Plutarch, 1914, 22. 2, 59).

<sup>39</sup> Hobbes’ translation is: “I love not my country, as wronged by it, but as having lived in safety in it.” In the footnote Hobbes mentions another version of this translation: “I retain not my love of country, wherein I am wronged by it, but wherein I lived in safety in it as one of the citizens” (Hobbes, 1843, 213).

to recover. And the true patriot [*filopolis*] is not the man who, having unjustly lost his fatherland, refrains from attacking it, but he who in his yearning for it tries in every way to get it back. (Thucydides, 1921, vol. III, book VI. xci. 7 — xcii. 5, 351)

It seems that differing acts of “treason” of one’s homeland do not simply construct an order of discourse found in Alcibiades’ speech — he justifies himself, speaks in his own name, outside of his country and without any responsibility to represent it — rather, paradoxically, it is exclusively through these acts that negation and the treason of one’s homeland reveals the true myth and fiction of the sovereignty.

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