

Let the Lord the Judge be judge:
Hobbes and Locke on Jephthah, Liberalism and Martyrdom

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Wherefore I have not sinned against thee, but thou doest me wrong to war against me: the Lord the Judge be judge this day between the children of Israel and the children of Ammon.²

In the Book of Judges, the seventh book of the Hebrew Bible, we encounter the curious story of Jephthah the Gileadite. It is in Judges 11 that we are first introduced to Jephthah, an illegitimate son of Gilead, who is said to be ‘a mighty man of valour’.³ According to the Biblical narrative, Jephthah is appointed by the Israelites to defend their lands against the invading Ammonites who claim the territory originally belonged to them. To focus on the most dramatic part of the story, Jephthah declares that ‘the Lord the Judge be judge this day between the children of Israel and the children of Ammon’ and goes on to win a great victory for the Israelites.⁴ Yet, this figure is principally remembered within the tradition, not for his victory, but for the reckless vow he makes to secure that triumph. If he is successful in overcoming the Ammonites, Jephthah promises God that he will sacrifice whatever comes to greet him after he returns from the battlefield as a holocaust or ‘burnt offering’.⁵ For Jephthah, however, this vow has tragic consequences because he returns home to find that the first thing to welcome him is his only daughter: ‘Alas, my daughter! thou hast brought me very low, and thou art one of them that trouble me: for I have

opened my mouth unto the Lord, and I cannot go back'.⁶ In the shocking conclusion to the story, Jephthah's daughter herself provides the solution to her father's choice between breaking his vow to God and killing his only child: she willingly submits to being sacrificed and so Jephthah kills her in fulfilment of his promise to God.⁷

To be sure, Jephthah is an obscure figure within an equally obscure book of the Hebrew Bible but, nonetheless, his fate has been the subject of many religious, political and artistic iterations over the centuries. Firstly, Jewish and Christian exegeses of the story begin in the first century with Josephus and the Pseudo-Philo and endure up until Martin Luther in the Reformation. If Jephthah understandably captured the religious imaginary, his – tragic or heroic – fate has also been the subject of a succession of artistic re-tellings including George Buchanan's *Jephtes, sive votum* (1554), John Milton's *Samson Agonistes* (1671), G.E. Handel's oratorio *Jephthah* (1751), and the modern Israeli novelist Amos Oz's story 'Upon this Evil Earth' (1981). In political theory, Jephthah is subject to important readings in four of the most seminal treatises of the seventeenth century alone: Hugo Grotius's *The Rights of War and Peace* (1625), Thomas Hobbes' *Leviathan* (1651), John Locke's *Two Treatises of Government* (1689) and Algernon Sidney's *Discourses Concerning Government* (1698).

If Jephthah's story spoke so compellingly to the seventeenth century political imaginary – whether Royalist or Republican – it is perhaps because the Biblical protagonist's choice between his promise to God and his loyalty to his daughter pre-figured precisely the kind of defining political struggles which were remorselessly playing themselves out in the critical period from the English Civil War (1642-51) to the Glorious Revolution (1688). For early modern political theorists, Jephthah – a

figure who could (as we will see) equally be read as everything from an archaic tyrannical patriarch to the prototype of a modern constitutional monarch – seemed to dramatize the essential modern political decision between right and law, the liberty of the individual and obligation to the state, the dying breath of political theological absolutism and the birth pangs of modern constitutionalism. In Jephthah's claim to let 'the Lord the Judge be judge this day between the children of Israel and the children of Ammon', seventeenth century political theory also finds an answer to the classic and yet utterly contemporary political question of what – if anything – legitimizes sovereign violence.

This essay seeks to offer the first comparative study of Thomas Hobbes and John Locke's re-readings of Jephthah the Giltheadite.⁸ It calls into question Hobbes and Locke's enduring reputation as the chief philosophical architects of the modern liberal state by revealing an equally enduring theological residuum with their political theory. As the historian Jonathan Sheehan recently observes, the early modern period has often served as the mythical *fons et origo* of our own political constitution: social contract theory is deemed to preside over the birth of the secular, the disaggregation of political and religious authority into public and private realms and the valorization of the private individual as the origin of all political authority.⁹ However, a long anti-liberal tradition that it seems we must still helplessly call 'political theology' – stretching from Benjamin through Schmitt and Taubes to Agamben – has contested this secular *mythos* by exposing what we might call a religious remainder within the political order itself. To outline my argument in what follows, I focus on a critical moment in Hobbes and Locke's corpus where they both appeal to Jephthah's vow to God to support their – ostensibly 'secular', immanent and contracted – theories of sovereign right: Hobbes' account of the sovereign right

to punish in *Leviathan* and Locke's account of the sovereign right to go to war in the 'Second Treatise of Government'. If Hobbes and Locke's readings of Jephthah differ considerably – the one focusing on Jephthah's daughter, the other on Jephthah himself; the one exploring civil political theory, the other international relations theory; the one seeking to legitimize the right to punish, the other the right to go to war – I contend that both see Jephthah's story as a kind of enabling myth or fiction about the origins of sovereign violence in self-sacrifice or even martyrdom. For Hobbes and Locke, I claim that Jephthah's fate – and, in particular, both father and daughter's decision to martyr themselves, or otherwise perform an act of self-sacrifice for the sake of the greater good, in fulfilment of their promise to God – becomes a kind of arcane theological paradigm for sovereign killing: what begins as the religious power to die ends up as the political power to kill. In the obscure story of Jephthah the Gileadite, I conclude that Hobbes and Locke set in motion what we might call a martyrological machine at the core of the modern liberal state. What if liberalism is constituted less by its professed love of 'life' – private interest, private property, self-preservation, self-determination – than a willingness to sacrifice everything and die?

A. Context

In order to assess Hobbes and Locke's readings of the Book of Judges – and of the question of martyrdom – I begin by placing them within the context of seventeenth century readings of Jephthah more widely. It is impossible to narrate in any detail here the larger reception history of the Biblical story and how a succession of exegetes sought to make sense of the - shocking and apparently senseless – death of Jephthah's daughter.¹⁰ As John L. Thompson has shown, Jewish and Christian

commentators alike devised a range of ingenious strategies to explain the whole episode – variously apportioning praise or blame to all the principal actors in turn – and even (in the case of the twelfth century Rabbinic ‘survivalist’ argument) speculating that Jephthah’s daughter did not actually die but devoted her life to serving God in the temple. To begin with, Jewish commentators like Josephus and the anonymous author of the Pseudo-Philo condemned Jephthah’s sacrifice of his daughter as ‘neither sanctioned by the law nor well-pleasing to God’ as early as the first century.¹¹ Yet, an enduring Christian interpretation of the story defends Jephthah’s act and, moreover, bestows a special religious meaning upon his daughter’s death. For the fifth century Christian theologian Origen, Jephthah’s daughter’s death pre-figures the death of the only begotten son of God and so a story of the Jewish sacrifice of the first-born child is transformed into a narrative of proto-Christian martyrdom. In a full-blooded typological reading of the episode which stretches from Augustine of Hippo up until Denys the Carthusian in the fifteenth century, Jephthah’s daughter’s virginity, her period of mourning before submitting to death and her final submission to God’s will are systematically mapped on to the Passion of Christ. What happens though, when the reception history of the Jephthah narrative reaches the political theorists of the seventeenth century?

To start with, Hugo Grotius’ *The Rights of War and Peace* (1625) is the first major seventeenth century text to seek to recruit Jephthah to a modern political cause. It is in support of Grotius’s natural law theory – and particularly his attempt to establish norms in warfare – that this Biblical warrior is re-mobilized. As Grotius argues in Chapter II, ‘Whether ’tis ever Lawful to make War’, God not only prescribes to his People the rules of making war in Deuteronomy – thus showing that war can be just – but also establishes norms for warfare that exist independently of His own

declarations. For Grotius, Jephthah's decision to wage war against the Ammonites in defense of Israel's own territory constitutes precisely such a rational *jus ad bellum*:

And since he does not declare the just Reasons of making War, he thereby supposes that they may be easily discovered by the Light of Nature. Such was the Cause of the War made by *Jephtha* against the *Ammonites*, in defence of their Borders, *Judges xi*.¹²

If Grotius appeals to Jephthah's decision to make war with the Ammonites to vindicate his claim for the existence of norms of warfare – such as the right of self-defense – we will see later on that Locke uses the exact same episode to draw the opposite conclusion: Jephthah is compelled to appeal to God to judge between the Israelites and the Ammonites precisely because, in a state of war, there are *no* natural or rational norms that we can use to adjudicate between competing interests. In Grotius's account of just war, revealingly, Jephthah's daughter's (arguably unjust) death seems to be a kind of philosophical equivalent to collateral damage: she is conveniently omitted from his narrative altogether.

For Algernon Sidney, whose *Discourses Concerning Government* (1698) is the last major seventeenth century political re-reading of Judges 11, Jephthah is again a figure for the just warrior: he is one of the 'holy men raised up by God for the deliverance of his people from their oppressors'.¹³ It is significant, though, that Sidney puts his finger on another source of Jephthah's legitimacy which also resonates throughout the early modern reception history of Judges 11. As the Biblical narrative shows, Jephthah was not merely chosen by God but elected or articulated by the elders of the Gileadites: 'Come, and be our captain, that we may fight with the children of Ammon'.¹⁴ To put the Book of Judges in the context of 17th century debates around divine right kingship versus constitutional monarchy, Sidney's

Jephthah thus emerges as an archaic prototype of the modern sovereign whose legitimacy proceeds from a contract with the people:

Whosoever will give battle (say the princes and people of Gilead) to the children of Ammon, shall be head over the inheritance of Gilead: and finding Jephthah to be such a man as they sought, they made him their chief, and all Israel followed them.¹⁵

If Sidney depicts Jephthah as a sovereign whose legitimacy derives from the authorization of his subjects – rather than through the inheritance of paternal or divine authority – this reading itself derives, in turn, from Hobbes and Locke’s own reflections on sovereign authority: Locke’s first ‘Treatise’ – famously written against Robert Filmer’s divine right theory of kingship – holds up the Gileadite as a Biblical counter-example of ‘popular’ sovereignty. In Hobbes’ own account of sovereign right in *Leviathan*, Judges 11 becomes the theological paradigm of his famous theory of authorization: Jephthah’s daughter’s decision to accept her own killing at the hands of her father graphically exemplifies Hobbes’ claim that the subject is the true author of every sovereign decision.

What is at stake in seventeenth century political re-imaginings of the story of Jephthah the Gileadite from Grotius to Sidney? To anticipate the larger argument of this essay, I claim that the political Jephthah of the early modern period transforms a Christianized narrative about the theodicy of suffering into a secular story about the legitimacy or normativity of sovereign violence. It is peculiarly appropriate that the Book of Judges – a text which literally, historically and symbolically precedes the Book of Kings – should become the site for this kind of modern retroactive ‘pre-history’ of sovereignty. After all, the story of Jephthah and his daughter in Judges 11 arguably constitutes a special kind of test-case about absolute sovereign power whose

implications exceed even that of more famous ‘survivalist’ narratives such as Abraham and Isaac in Genesis 22 or Saul and Jonathan in 1 Samuel 14: Jephthah *really* kills his child in fulfilment of his promise to God and the child *really* consents to her own killing. For Hobbes and Locke – whose precise religious commitment obviously remain the subject of considerable speculation – I will contend that the Jephthah story is the basis for an extended political theological thought experiment about the origin of the sovereign monopoly upon violence: who (if anyone) has the right to kill, where does that right to come from and how far does it extend. If the two English philosophers are in in no meaningful sense ‘faithful’ to the letter of the Biblical text, what I am interested in here is less the accuracy (or lack thereof) of their readings, but rather how they put the story to work in the construction of their own political theory – a political theory that will, for better or worse, come to be named ‘liberalism’. In what follows, I read Hobbes and Locke’s ‘political Jephthah’ as a reiteration of the Christian martyrological reading of Judges 11 inaugurated by Origen: what we call liberalism has its roots, not in love of life and fear of death, but in a species of political martyrology.

B. Hobbes on Martyrdom

In his political theory, Thomas Hobbes takes seriously only one possible exception to the rule that governs his Commonwealth: the religious martyr. It is now commonplace – following the work of figures like Giorgio Agamben and Roberto Esposito – to see the signature ‘Hobbes’ as the origin of modern biopolitics because of his claim that politics begins and ends with the human desire to preserve its bare physical life. As he first narrates it in *The Elements of Law Natural and Politic* (1640), man possesses a fundamental ‘right of nature’: ‘every man may preserve his

own life and limbs, with all the power he hath'.¹⁶ To put it in the famous terms of Hobbes' social covenant, man creates the Leviathan precisely because it offers him what he most craves – security of life – in exchange for his absolute obedience.¹⁷ If he assumes this desire to survive to be universal – even to the point of regarding suicide not merely as irrational but unnatural – Hobbes also entertains at least the theoretical possibility that there exists a category of man who does *not* desire the preservation of his own life at all costs: a religious martyr who – as defined in earlier works like *The Elements of Law* and *De Cive* (1642) – is willing to suffer persecution and death for their beliefs.¹⁸ In the figure of the martyr, Hobbes' political theory confronts a man who is apparently all too willing his disobey his civil sovereign and lay down his life for his God. Why does *Leviathan* conclude that martyrdom is not merely undesirable but impossible?

To disavow the very possibility of martyrdom, Hobbes mobilizes a range of political, theological and philosophical arguments, but his most audacious claim in *Leviathan* that the state alone has the right to control what he calls 'Publique Worship': all visible words, signs and forms of religious expression.¹⁹ It is only the civil sovereign who can be supreme spiritual leader of the state and he, alone, has the power to decide upon the interpretation of scripture, the appointment of clerics, the performance of religious rites and the administration of sacraments. As William Cavanaugh observes, Hobbes' theory of Publique Worship does not privatize religion here so much as swallow the church whole into its yawning maw.²⁰ If this state monopoly upon public worship would seem to set the sovereign on a collision course with religious groups like Roman Catholics, who pledge allegiance to the Pope, Hobbes makes an important strategic concession that will become the foundation of his reputation as a proto-liberal thinker: the civil subject possesses

internal freedom of conscience and this inner faith cannot be the subject of external coercion.²¹ In a Christian Commonwealth, no subject will ever be compelled to renounce what Hobbes famously sees as their one and only core belief – ‘Jesus is the Christ’²² – and so there can be no grounds for becoming a martyr.

For Hobbes, a Christian subject living in a non-Christian Commonwealth who is called upon to deny that Jesus is the Christ is, revealingly, no less obliged to obey any ‘infidel’ sovereign. It remains their duty to participate in any acts of public worship demanded by their sovereign. As they still possess freedom of conscience, though, this civil duty in no way contradicts their internal faith. To reinforce this point, Hobbes gives a Biblical example from the Book of Kings: Naaman the Syrian, who secretly converted to the God of Israel, but continued to worship outwardly at the pagan House of Rimmon (2 Kings 5: 17). If a Christian is commanded to worship publically in a way that contravenes their faith, Hobbes argues that they have the same freedom that Naaman possessed to profess their real faith privately. This is because their words are not properly to be regarded as their own, but those of their ruler: a sovereign who command a citizen to utter the words ‘Jesus is not the Christ’ is the real author of the heresy and the citizen is absolved of any responsibility for their actions. In direct contrast to what we will see to be Locke’s own position, Hobbes thus refuses the right of the Christian citizen to martyr themselves *even* when living under an infidel regime:

What if wee bee commanded by our lawfull Prince, to say with our tongue, what wee beleeeve not; must we obey such command? Profession with the tongue is but an externall thing, and no more than any other gesture whereby we signifie our obedience...a Christian, holding firmly in his heart the Faith

of Christ, hath the same liberty which the Prophet Elisha allowed to Naaman the Syrian.²³

What is at issue in Hobbes' solution to the problem of religious martyrdom? To judge by the vast majority of modern scholarship from A. A. Martinich onwards, Hobbes' interest in martyrdom is so marginal that it is barely worthy of discussion,²⁴ but I want to propose here that it is a logical outworking of his entire political project of monopolizing sovereign power in civil authority. It is his over-riding objective to concentrate all political and religious authority in the figure of the civil sovereign by reducing, if not eliminating altogether, the grounds on which any subject – and particularly, from Hobbes' Anglican Protestant perspective, Roman Catholics and Puritans – can legitimately disobey. Accordingly, his willingness to grant Christian subjects private freedom of conscience – a 'liberal' concession famously criticized, as we will see later on, by conservatives like Carl Schmitt – is transparently a political machine designed to secure their public obedience. Yet, the philosopher is not content to rest his case upon the claim that martyrdom is unnecessary, because he goes on to play what he evidently regards as his trump card. For the later Hobbes of *Leviathan*, a 'martyr', which derives from the Greek μάρτυς, is etymologically and historically someone who 'bears witness' rather than someone who dies under religious persecution and so, strictly speaking, a Christian martyr can *only* be someone who physically witnessed the Resurrection of Christ. If we telescope the category of 'martyr' to include only the original witnesses of the Resurrection, we thus effectively exclude every Christian martyr after the 1st Century from being a 'martyr' to Christ: they are, at best, only martyrs to the *original* martyrs, witnesses to the original act of bearing witness, no matter whether they die under persecution or not.²⁵ In Hobbes' *Leviathan*, Christian martyrdom is thus theoretically impossible in

modernity and so anyone who claims to be willing to die for their religious beliefs today should be added to the long list of public enemies – rebels, secessionists and so on – enumerated in Chapter 29 ‘Of those things that Weaken, or tend to the Dissolution of a Commonwealth’.²⁶

C. Locke on Martyrdom

In Locke’s political theory, the religious martyr occupies an equally exceptional subject position within the Commonwealth. It is clear that anyone willing to suffer persecution and die for their beliefs – which is again his conventional working definition of martyrdom – contradicts Locke’s own core belief that man’s desire for physical self-preservation is the natural basis of society. As generations of scholars have argued, Locke’s positive description of the state of nature – free, equal, rational, peaceful – breaks radically with Hobbes’ *bellum omnium contra omnes* but Lockean nature is governed by the same inalienable law: ‘Every one as he is *bound to preserve himself...ought he, as much as he can, to preserve the rest of Mankind*’.²⁷ To recall the letter of Locke’s own social contract, man leaves behind the state of nature and enters the Commonwealth in order to better preserve that mysterious political, physical and material field of force that is his ‘*Property*’.²⁸ If Locke again assumes suicide or self-killing to be not only against natural law but divine law as well – because our body is not actually our own property to be disposed of as we like but ultimately the property of God – he is, nonetheless, more willing than Hobbes to entertain the real possibility that human beings can and will martyr themselves for their beliefs. In the figure of the martyr who is all too ready to defy both God and Nature and give up his life, the philosopher confronts a man who is clearly *intolerable* – in every sense of that classic Lockean term – within his political

universe. Why, then, does Locke conclude that, even if martyrdom is not to be politically tolerated, it remains theologically possible?

To understand Locke's – intolerant – toleration of religious martyrdom, we first need to put it in the context of another foundational text in the formation of political liberalism: his *Letter Concerning Toleration* (1689).²⁹ It is the political theorist's aim in this seminal essay to 'put an end to the controversies' that continually arise between church and state by distinguishing exactly 'the business of Civil Government from that of Religion'. According to Locke's diagnosis, political and religious authority occupy entirely separate spheres: the Commonwealth exists to protect worldly interests including life, liberty, health and property whereas the church's exclusive concern should be the extra-worldly good which is the care of souls.³⁰ For Locke, Christian confession thus seems to be purely a matter of private faith or conscience and must be emptied of any public role, status or meaning whatsoever. If Hobbes seeks to obtain state control over religion by effectively inventing a new public or civil religion – *Publique Worship* – Locke could thus be accused of pursuing the opposite strategy of *privatizing* religion out of all public existence: any religious institution (such as, inevitably, the Roman Catholic Church again) which seeks to infringe upon the public sphere is expressly not to be tolerated. In contrast to Hobbes' *Leviathan*, Locke's own political machine does not so much seek to swallow the church whole as definitively expel or vomit it from the Commonwealth.

For Locke, the figure of the religious martyr – whose death bears witness to the *indivisibility* of politics and religion into public and private spheres – would thus seem to be *a priori* politically intolerable. It not only contravenes the fundamental law of nature – which demands that man preserve himself and the rest of mankind –

but impinges upon the civil jurisdiction of the state which seeks to protect life, liberty, health and property. To take the famous example of religious sacrifice from the *Letter on Toleration*, Locke declares that the state can perfectly well tolerate the sacrifice of a calf in a religious rite because animal slaughter does not contravene civil law, but the sacrifice of a human being – such as an infant or presumably (though he does not explicitly say this) an act of self-sacrifice like martyrdom – is clearly intolerable: ‘these things are not lawful in the ordinary course of life, nor in any private house, and therefore neither are they so in the Worship of God’.³¹ Yet, even so, Jennifer A. Herdt observes that Locke’s theory of toleration also contains a curious theological loophole, which may permit the martyr to justify his own death. If Locke generally reinforces Hobbes’ political neutralization of the religious martyr, his *Letter* nonetheless concedes that ‘obedience is due in the first place to God, and afterwards to the laws’.³² In Herdt’s verdict, Locke’s philosophy thus implicitly – and perhaps inadvertently – recognizes the right of the religious believer to follow their faith wherever it takes them even if this faith cannot be tolerated by the state: ‘Locke must grant that they are obliged to follow conscience and pay the penalty, even if that is martyrdom’.³³

What are the political stakes of Locke’s own solution to the problem of the religious martyr? To read self-professedly ‘post-liberal’ critics like John Milbank, Lockean liberalism is merely a recapitulation of Hobbesian absolutism which reinforces the early modern political capture of the church by the state following the so-called ‘Wars of Religion’.³⁴ It is revealing here that Locke’s critique of martyrdom re-treads much of the same ground – inner versus outer, public versus private, faith versus politics – as Hobbes’ own disavowal of martyrdom in *Leviathan*. According to Locke’s earlier *Two Tracts on Government* (1660-1), all religious believers possess

something close to what Hobbes called the ‘liberty of Naaman’: a Christian who is compelled to worship publically in a way that contradicts his private belief cannot be deemed guilty of sin or apostasy and thus has no grounds for martyrdom.³⁵ Yet, as Herdt observes, this position had changed by the time of the *Letter Concerning Toleration* almost 30 years later; Locke now refuses Hobbes’ distinction between private faith and public obedience.³⁶ For the later Locke – contra Hobbes – a religious believer cannot profess one faith in private and another in public: ‘no man can, if he would, conform his faith to the dictates of another’, he argues, and anyone who publically professes a faith without thinking it true and pleasing to God is guilty of hypocrisy.³⁷ If a believer is commanded by their civil magistrate to do or say something that is contrary to their conscience, Locke now advocates a position of passive obedience of the law which must, logically, lead to martyrdom: ‘a private person is to abstain from the action that he judges unlawful; and he is to undergo the punishment, which is not unlawful for him to bear’.³⁸ In affirming the religious subject’s right to die for his beliefs over and above his duty to obey, Locke thus reaches a position that is almost diametrically opposed to Hobbes: religious martyrdom is not merely possible but in certain circumstances necessary.

D. Hobbes on Jephthah

In Chapter 21 of *Leviathan*, ‘Of the Liberty of Subjects’, Hobbes introduces the figure of Jephthah. It is only possible to understand the mysterious appearance of this Biblical character in the context of the philosopher’s wider defence of the sovereign right to punish. To recall Hobbes’ central claim here, a sovereign’s absolute power over life and death expresses itself in his right to punish and, if necessary, put to death any of his subjects.³⁹ Yet, the philosopher is not merely saying that the

sovereign has the right to wield the public sword against those who break the law, but making a much more radical claim for sovereign power. For Hobbes, the sovereign ultimately possesses the right to punish or kill *anyone* – guilty or innocent – in the name of preserving the greater peace of the Commonwealth:

And therefore it may, and doth often happen in Common-wealths, that a Subject may be put to death by the command of the Sovereign Power; and yet neither doe the other wrong.⁴⁰

If Hobbes does go on to qualify this dramatic claim in various complex ways – the law of nature not only compels the sovereign to pursue what is ‘good’ for the Commonwealth but also permits the subject to physically resist any violence inflicted upon them⁴¹ – this does not change what is, for him, the basic fact of absolute sovereign power: *a sovereign who punishes or kills an innocent subject does them no wrong*. What exactly gives Leviathan the right to kill any one of its subjects?

To answer this question, Hobbes proposes a number of possible sources for the sovereign right to punishment – including the much-disputed claim that punishment has a ‘natural foundation’ in the state of nature itself⁴² – but arguably the most philosophically secure basis for this right can be found in what has become known as *Leviathan’s* theory of authorization.⁴³ It is with the subject’s original decision to authorize the sovereign to act on his behalf in all things in the Commonwealth (expounded in the famous Chapter 16, ‘Of Persons, Authors and Things Personated’) that the right to punish can be seen to begin. For Hobbes, as he makes clear on a number of occasions in the text, the subject’s decision to authorize the sovereign at the very birth of civil society necessarily also includes the authorization to punish and even kill that very subject if it should prove necessary to the preservation of the state. In Chapters 18, ‘Of the Rights of Soveraignes by Institution’, and 21 ‘Of the

Liberty of Subjects', Hobbes repeatedly insists that the subject him or herself is the original author of the sovereign right to punish any subject: 'every particular man is Author of all the Soveraigne doth; and consequently he that complaineth of injury from his Soveraigne, complaineth of that whereof he himselfe is author'.⁴⁴

For Hobbes, then, the subject *a priori* also becomes the author of his own potential future death in the form of sovereign punishment or killing. It thus seems that what we historically call sovereign killing might be more properly described as a kind of 'artificial self-killing' carried out by the subject themselves through the persona of Leviathan. According to Sheehan's reading, though, Hobbes' theory of self-authorized sovereign killing contains a curious aporia or paradox that threatens to blow the Hobbesian Commonwealth apart. To claim that the civil subject is the author of his or her own future punishment, Hobbes effectively needs to split that subject in two: they must simultaneously occupy the position of both sovereign and subject, punisher and punished, killer and victim. If the subject is the original author of everything the sovereign does, even to the point of authorizing their own deaths, we confront an aporia – because this act both creates the Commonwealth in the first place and destroys its principal reason for existing, namely, to preserve the physical existence of its members. In Sheehan's analysis, sovereign punishment becomes, legally and civilly speaking, something that Hobbes had (as we saw earlier) hitherto regarded as wholly irrational and unnatural: suicide or self-murder.⁴⁵

What, then, is Hobbes' solution to the aporia at the heart of self-authorizing sovereign killing? It is at this point that the philosopher introduces the obscure Biblical figure of Jephthah. As we will see presently, Hobbes' interpretation of the narrative differs significantly from Locke's because it predominantly focuses, not on

Jephthah's vow to God, but his daughter's decision to consent to her own killing. To concentrate for the moment on Hobbes' own reading of the Book of Judges, Jephthah's daughter becomes the paradigm of the subject's authorship of every sovereign act, including his or her own guiltless putting to death:

[A] Subject may be put to death by the command of the Sovereign Power; and yet neither doe the other wrong: as when *Jeptha* caused his daughter to be sacrificed. In which, and the like cases, he that so dieth had Liberty to doe the action, for which he is neverthelesse, without injury put to death. And the same holdeth also in a Sovereign Prince, that putteth to death an innocent subject.⁴⁶

For Hobbes, Jephthah's daughter's decision to submit to death so that her father does not break his vow to God, transforms her death from an act of murder or filicide into a legitimate act of sovereign violence. If the right to punish has a foundation, then, it would appear to lie, not in an 'unnatural' act of suicide or self-murder, but in something closer to a gesture of civil *self-sacrifice* carried out in order that the community as a whole may live: the subject's decision to die at the hands of their sovereign is the original political theological 'contract' which sets society in motion.⁴⁷ This sacrificial account of the origin of the sovereign right to punish would seem to resolve the aporia in Hobbes' theory of authorization, but only at a very singular price. In order to found his Commonwealth upon the rock of the subject's self-sacrifice, Hobbes is compelled to appeal *to the very figure* he has earlier declared to be impossible: Jephthah's daughter is, at least according to the Christian tradition inaugurated by Origen, a religious martyr.

E. Locke on Jephthah

In Chapter 3 of the ‘Second Treatise of Government’, ‘Of the State of War’, Locke also invokes the figure of Jephthah. It is by no means the first or only occasion that this character appears in Locke’s work. As Samuel Moyn observes, Jephthah is cited no less than 5 times across the *Two Treatises of Government* – more than any other Biblical figure including Abraham, Jacob, Moses and even Jesus.⁴⁸ Yet, it is in Chapter 3 of the ‘Second Treatise’ – which describes the state of war – that Locke’s most significant allusion to Jephthah appears. To return to this key moment, Locke plucks Jephthah from Biblical obscurity in order to solve the problem of sovereign judgement over war:

For where there is an Authority, a Power on Earth, from which relief can be had by *appeal*, there the continuance of the State of War is excluded, and the Controversie is decided by that Power. Had there been any such Court, any superior Jurisdiction on Earth, to determine the right between *Jephtha* and the *Ammonites*, they had never come to a State of War, but we see he was forced to appeal to *Heaven*. *The Lord the Judge (says he) be Judge this day between the Children of Israel, and the children of Ammon...*and then Prosecuting, and relying on his *appeal*, he leads out his army to Battle.⁴⁹

If Locke claims that the state of war is characterized by the absence of any agreed norm or authority – contra Grotius’s argument that the ‘Light of Reason’ enables us to perceive justice in warfare – then the inevitable question arises: ‘*who shall be Judge?*’⁵⁰ In Locke’s reading, Jephthah’s story is not only the story of a state of war – insofar as it dramatizes a territorial dispute between the Israelites and the Ammonites with no common authority on earth to adjudicate upon their claims – but it is also the story of the only legitimate solution to this political impasse: Jephthah’s ‘appeal to *Heaven*’ before he leads the Israelites into battle. What is the

political meaning of Jephthah's famous claim that the 'Lord the Judge be judge this day'?

To pursue his remarkable interpretation of Jephthah's appeal to Heaven, Locke first inserts a crucial caveat: this appeal should not be understood as a plea for divine intervention in human affairs by some *deus ex machina*. It is Jephthah alone who can take the decision that it is just to fight the Ammonites – because there is no other authority that can decide – but, at the same time, he knows that only God will ultimately be able to judge whether that decision is really just or not. According to the philosopher's reading, what the Biblical narrative illustrates is that man must follow his private conscience and be the judge of his own actions in the state of war – but he makes that judgement in the knowledge that God will judge him at the end of time.⁵¹ For Locke, any appeal to Heaven thus seems to involve both a human and a divine, a subjective and an objective, dimension: 'I my self can only be Judge in my own Conscience, as I will answer it at the great Day, to the Supreme Judge of all Men'.⁵² In order to resolve a dispute between parties by making an appeal to Heaven, we must not simply possess subjective certainty of the justice of our own cause, but must also submit ourselves to the objective fact that there just is such a thing as 'justice' and be willing to suffer the consequences one way or another:

And therefore in such Controversies, where the question is put, *who shall be Judge?* It cannot be meant, who shall decide the Controversie; every one knows what *Jephtha* here tells us, that *the Lord the Judge*, shall judge. Where there is no Judge on Earth, the *Appeal* lies to God in Heaven.⁵³

For Locke, then, a sovereign appeal *to* Heaven in order to justify the decision to go to war here and now necessarily involves a future judgment *by* Heaven: 'the Lord the

Judge be judge'. It is neither a simple claim of human independence nor an assertion of divine right or vocation but a human decision taken in anticipation of a divine verdict to come. As Andrew Rehfield has recently shown, however, Locke's account of Jephthah's appeal to Heaven still faces many possible objections – from both within and without his own thought – to the point where it is difficult to understand why he ever alluded to the Biblical story in the first place. To take only the most blatant problem, Locke's reading is directly at odds with the narrative recounted in the Book of Judges: Jephthah explicitly asks God to judge between the children of Israel and the children of Ammon 'this day' – not on the Day of Judgment – and, what is more, God seems to actively make His judgement in the here and now by delivering a decisive victory to the Israelites.⁵⁴ Yet, Locke's reading also runs up against significant problems from within his own political theory and, particularly, his theory of religious toleration. If Locke's theory of toleration is predicated upon the general separation of politics and religion into public and private realms (and a particular prohibition against religious rites like infanticide which violate civil law), it is to say the least curious that he should invoke the story of Jephthah – a sovereign who resorts to his religious beliefs to solve a political dispute and then ends up sacrificing his only child. In the face of such intractable problems, it is perhaps little wonder that (like Hobbes before him) Locke seemingly resorts to the solution of simply excluding the figure of the religious martyr from his imagined Commonwealth: Jephthah's daughter is inexplicably never mentioned anywhere in the *Two Treatises* despite the fact that any account of the appeal to Heaven is clearly incomplete without her.

What is Locke's solution to the problem of political judgment in a situation where there is no common earthly judge? It is revealing that Locke (again like Hobbes)

frames the figure of Jephthah as an answer to the question of who or what authorizes sovereign violence: both seek what Moyn calls a '*warrant for violent action*' in the Old Testament.⁵⁵ As we suggested earlier, though, what Locke finds in the dispute between the Israelites and the Ammonites is not simply the origin of politics – the foundation of civil society, law, punishment and so on – but (recalling Grotius's discussion of just war) the beginning of something closer to international relations, and particularly of *jus ad bellum*. Yet, what connects Hobbes and Locke's accounts of sovereign violence is, as we will see, a curious attempt to ground it in what we might call sovereign 'martyrdom', in a kind of self-authored punishment or death which, in turn, becomes the right to punish and/or kill others. To focus on Locke's reading in the 'Second Treatise', Jephthah's sovereign right to go to war clearly proceeds exclusively from his famous appeal to Heaven:

For where there is no Judicature on Earth, to decide Controversies amongst Men, *God* in Heaven is *Judge*: He alone, 'tis true, is Judge of the Right. But *every Man* is *Judge* for himself, as in all other Cases, so in this, whether another hath put himself into a State of War with him, and whether he should appeal to the Supreme Judge, as *Jephtha* did.⁵⁶

For Locke, as we have seen, Jephthah's appeal to Heaven on behalf of the Israelites is judged not only in the subjective court of conscience but, more importantly, in front of the objective tribunal of God Himself who will pass ultimate judgment upon the right or wrong of his action: 'he that *appeals to Heaven*, must be sure he has Right on his side', he contends, 'as he will answer at a Tribunal, that cannot be deceived, and will be sure to retribute to every one according to the Mischiefs he hath created to his Fellow Subjects; that is, any part of Mankind'.⁵⁷ If the sovereign right to make war has an origin, then, it lies neither in pure human agency nor divine fatalism but in what (recalling Hobbes) we might again call a gesture of political *self-sacrifice*

performed so that the community as a whole can live: the sovereign's decision to subject himself to possible future punishment at the hands of the ultimate sovereign God is again the political theological 'contract' that sets the social order in motion. This sacrificial account of the foundation of sovereign judgment places what we have seen to be Locke's remarkable toleration of religious martyrdom at the heart of his political theory in the figure of the sovereign himself. In arguing that Jephthah's sovereignty proceeds directly from his submission to potential future punishment at the hands of God, Locke's 'Second Treatise' arguably does not so much exclude the figure of his daughter so much as render her own act of martyrdom redundant: Jephthah himself is the (self-)sacrificial victim of his own sovereign violence.

F. Hobbes, Locke and Liberalism

In drawing this essay to a close, I want to place Hobbes and Locke's – seemingly opposed but curiously symmetrical – readings of Jephthah in the larger context of the emergence of modern liberalism. It is now generally agreed (by sympathizers and critics alike) that the two English philosophers are, for better or worse, the main conceptual architects of the modern liberal state. As we will see momentarily, their readings of religious martyrdom in general – and of Jephthah in particular – have even been identified by two of the arch anti-liberal theorists of the 20th century as the very moment at which the private liberal subject enters the historical stage. To reiterate my own – admittedly bold – hypothesis, I claim that Hobbes and Locke read the story of Jephthah's vow to God as a kind of privileged theologeme about the origin of sovereignty and, in particular, of sovereign *violence* – whether it takes the form of the right to punish a domestic citizen or to wage war against a foreign enemy. If Hobbes and Locke's corpuses are often taken to be a foundational moment in the

history of what Mark Lilla has recently described as the ‘great separation’⁵⁸ between religion and politics, I contend that their reading of Jephthah exposes what we earlier called the sacrificial or martyrological origin of the modern liberal state. What if the classic early modern social contract, which allegedly guarantees the preservation of physical life in exchange for civil obedience, is quite literally a kind of mortgage (*mort-gage*, a promise to the death)?

To re-read Hobbes and Locke’s Jephthah in this way, we arguably begin to glimpse the possibility of a new political theology of liberalism which has thus far remained a curious blind spot in the rear-view mirror of both liberal and anti-liberal political theory alike. It is to the say the least surprising just how little attention has been given to the two philosopher’s readings of Judges 11 by major scholars given the – incontestably important – place it occupies within their respective theories of sovereign right. Apart from the studies already cited above, Hobbes scholarship has (with one or two notable exceptions) almost nothing to say about his reading of martyrdom: Richard Tuck is the only major figure to note that the earlier Hobbes of *De Cive* sees the martyr as a possible exception to the general rule of self-preservation that dominates his philosophy whereas the philosopher’s reading of Jephthah’s daughter in *Leviathan* excites no significant commentary.⁵⁹ For Quentin Skinner, to take one influential example, Hobbes’ theory of political obligation proceeds ‘not from any religious sanction’ but from a ‘self-interested calculation made by each individual citizen’ based on the principle of equality and self-preservation.⁶⁰ If Hobbes scholars remain more squeamish about the philosopher’s religiosity than their Lockean equivalents – to the point of treating the notorious third book of *Leviathan* ‘Of a Christian Commonwealth’ as, at best, an elaborate practical joke and at worst a simple embarrassment – this has not led the latter to

any more detailed engagement with the – extensive and repeated – references to Judges 11 throughout the *Two Treatises*. In John Marshall's *John Locke: Religion, Resistance and Responsibility* (1994) – a text which Moyn describes as 'the most imposing monument left (so far) by the Cambridge School on Locke'⁶¹ – the philosopher's various appeals to Jephthah are simply never mentioned.

In the work of the two great anti-liberal critics of Hobbes and Locke – Carl Schmitt and Leo Strauss – we find a still more curious political theological lacuna where Jephthah is concerned. It is Schmitt and Strauss's famous claim that seventeenth century liberalism's reading of scripture constitutes the fatal parting of the ways between religion and politics, the private and the public, the individual and the state in the modern political imaginary. After Hobbes, Schmitt argues that politics is reduced to nothing more than the preservation of physical bodies in time and space: 'Life is of interest only insofar as it concerns the here and the now, the physical existence of the individual, of actual living beings', he notes, and 'the most important and highest goal is security and the possible prolongation of this kind of physical existence'.⁶² To rehearse Schmitt's notorious thesis in *The Leviathan in the State Theory of Thomas Hobbes* (1938), what Hobbes calls the 'liberty of Naaman' – the right to freedom of conscience in matters of religion – is the 'barely visible crack in the theoretical justification of the sovereign state' that liberalism will use to break the mighty Leviathan in two: Spinoza and later Jewish thinkers turn individual freedom of thought from a mere private right into the authentic source of public sovereignty.⁶³ Yet, again, Jephthah, a figure who might have offered an alternative to this classic model of liberal subjectivity, is absent from Schmitt's account. If Leo Strauss does at least note Locke's discussion of Jephthah's 'appeal to Heaven' in *Natural Right and History* (1953), he advances the equally sceptical claim that the philosopher's

ulterior motive is actually to *release* human beings from any sense of divine accountability for their action: ‘the statement of Jephthah [‘The Lord the Judge be judge’ – AB] takes the place in Locke’s doctrine of Paul’s statement “Let every soul be subject to the higher powers”, which he hardly, if ever, quotes’.⁶⁴ For Strauss, Jephthah’s appeal to Heaven is less a solemn and binding religious covenant for Locke than a proto-liberal *carte blanche*: ‘Locke was in effect pioneering a full independence of human conduct from divine superintendence’, Moyn glosses, ‘since the practical effect of availability of the appeal to heaven is to war on-demand’.⁶⁵

Why might we argue that Hobbes and Locke’s readings of Jephthah ultimately refuse to succumb to this (ideal or tragic) narrative of the inevitable political, historical and philosophical triumph of something called liberalism? To risk one speculative answer to this vast question, I think Jephthah’s own terrible fate should be enough to warn us of the bloody price of any apparent ‘victory’ – whether in the theatre of war or on the stage of history – and perhaps twentieth century readers (liberals and conservatives, intellectual historians and political theologians alike) are equally premature in their decision to consign the Book of Judges to a kind of political pre-history. It is particularly difficult to understand why Jephthah should be written out of the Cambridge School and the Chicago School’s official histories of liberalism because, ironically, he confirms many of their suspicions about it. After all, they both – in their very different ways – agree that so-called ‘liberalism’ is a ‘presentist’ or anachronistic fiction, that it was never really liberal at all, that its origins could always be traced back to some pre- or anti-liberal moment – whether it be Republican virtue (Pocock, Skinner) or Roman Catholic theology (Schmitt). However, we might also wonder whether Jephthah’s absence is a sign that this critique of liberalism is still ironically too liberal – whether the allegation of

‘presentism’ is itself residually presentist – because it too often takes as a basic article of faith the classic but fraught claim that modern political order is founded, not on religious authority or tradition, but on the natural law of self-preservation. For Hobbes and Locke, on the contrary, I have argued that this much-vaunted liberal love of life, interest and property is perversely underwritten by something like an originary *love of death*: what sets political order in motion is not so much the Freudian ‘primal crime’ of killing the father but rather the theological killing of the daughter or, better, her self-killing through the persona of her father. If we can find a paradigm for the liberal subject in Hobbes and Locke’s readings of the Hebrew Bible, in other words, it is not the private confessor Naaman the Syrian but – contra even political theologians like Schmitt and Strauss – the public martyr who gives his or her life for the interest of the Commonwealth as a whole: Jephthah and/or his daughter. In all these ways, I think the task of reading the story of Jephthah still remains largely in front of us.

G. Conclusion

In the video testimony he recorded before embarking on the July 7, 2005 suicide bombings in London, the self-proclaimed Islamic *Shahid* (martyr, witness) Mohammed Siddique Khan had the following chilling message for his infidel liberal sovereign: ‘We love death as you love life’.⁶⁶ It is not presentist, I think, to say that Hobbes and Locke would have understood this claim perfectly and recognized the specific threat it poses to the community of ‘we, the living’. As we have seen, the martyr is not merely a real and present political danger to the Commonwealth but a kind of existential threat which – as Khan’s message proclaims – rejects the entire natural and civil foundation of self-preservation upon which the Commonwealth is

organized. To be sure, Hobbes and Locke give many responses to the claim that ‘we love death as you love life’, but this essay has argued that perhaps their most profound (and disturbing) solution to the problem of the martyr is, in a perverse sense, to *become* one – to capture the martyr’s subject position for the sovereign – by effectively saying ‘we love death *more*’. If we can put a name to this act of political martyrology, it would be ‘Jephthah the Gileadite’: Hobbes argues that sovereign punishment originates in Jephthah’s daughter’s decision to authorize her own punishment and death at the hands of her father whereas Locke claims that the sovereign right to go to war proceeds from Jephthah’s own decision to subject himself to potential punishment at the hands of God. For Hobbes and Locke, this is the ultimate meaning of the story of Jephthah and his daughter: *the martyr’s right to die is the origin of the sovereign’s right to kill*. In order to pursue this hypothesis that religious martyrdom is indeed something like the ‘paradigm’ for modern political sovereignty – and clearly a great deal of work would need to be done to specify what is meant by such a term⁶⁷ – we would need to do nothing less than re-think the theory of liberalism from the ground up: what classically presents itself as a rational social contract based upon a universal desire for self-preservation turns out to be a sacrificial economy or dialectic which necessarily contains the possibility of violent death.⁶⁸ What if the martyr who would rather die for his beliefs than obey his infidel sovereign is less the absolute enemy of the liberal state, who must be consigned to religious pre-history, than the very first liberal subject?

¹ I am grateful to Antonio Cerella, Michael Dillon and Michael Greaney for their very helpful comments on this essay as well as to the anonymous reader for *Law, Culture and the Humanities*. In addition, my thanks go to audiences at Georgetown University, St Andrews University, the University of Innsbruck and Alma Mater Europaea, Slovenia, for their responses to earlier versions of the same argument.

² Judges 11: 2. All references to the Book of Judges will be from the King James Version of the Bible.

³ Judges 11: 2.

⁴ Judges 11: 21.

⁵ Judges 11: 31.

⁶ Judges 11: 35.

⁷ Judges 11: 36.

⁸ See Andrew Rehfeld, ‘Jephthah, the Hebrew Bible, and John Locke’s “Second Treatise of Government”’, *Hebraic Political Studies*, 3: 1 (Winter, 2008), pp. 60-93, Samuel Moyn, ‘Appealing to Heaven: Jephthah, John Locke, and Just War’, *Hebraic Political Studies*, 4: 3 (Winter, 2009), pp. 286-303 and Jonathan Sheehan, ‘Assenting to the Law: Sacrifice and Punishment at the Dawn of Secularism’ in *After Secular Law* ed. by Winnifred Fallers Sullivan, Robert A. Yelle and Matteo Taussig-Rubbo (Stanford, CA.: Stanford University Press, 2011), pp. 62-79 for recent readings of Hobbes and Locke’s respective accounts of Jephthah to which I am indebted.

⁹ Sheehan, ‘Assenting to the Law’, p. 63.

¹⁰ See Wilbur Sypher, *Jephthah and His Daughter: A Study in Comparative Literature* (Newark, NJ.: Rutgers University Press, 1948), Deborah Kuller Shuger, *The Renaissance Bible: Scholarship, Sacrifice, Subjectivity* (Berkeley, CA.: University of California Press, 1994), John L. Thompson, *Righting the Wrongs:*

Women in the Old Testament among Biblical Commentators from Philo through the Reformation (Oxford: Oxford University Press, 2001) and Mikael Sjöberg, *Wrestling with Textual Violence: The Jephthah Narrative in Antiquity and Modernity* (Sheffield: Sheffield Phoenix Press, 2006) for studies of the reception of the Jephthah story.

¹¹ Thompson, *Righting the Wrongs*, p. 106.

¹² Hugo Grotius, *The Rights of War and Peace*, 3 vols., ed. Richard Tuck (Indianapolis: Liberty Fund, 2003), book 1, ch. 2, §2, p. 186.

¹³ Algernon Sidney, *Discourses Concerning Government* ed. Thomas G. West (Indianapolis: Liberty Fund, 1996), ch. 2, §24, p. 216. See also Rehfield, 'Jephthah', p. 90 for a discussion of Sidney's reading of Jephthah.

¹⁴ Judges 11: 6.

¹⁵ Sidney, *Discourses Concerning Government*, 2, §9, p. 137.

¹⁶ Thomas Hobbes, *The Elements of Law Natural and Politic* ed. by Ferdinand Toennies, 2nd edition by M. M. Goldsmith (London: 1969), I. 14. 6.

¹⁷ Thomas Hobbes, *Leviathan or The Matter, Forme and Power of a Common Wealth Ecclesiasticall and Civil* ed. by Richard Tuck, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1991).

¹⁸ It is worth recalling here that Hobbes' earlier work does concede that the martyr constitutes a real (though vanishingly rare) exception to the *lex naturalis* of self-preservation that lies at the basis of his Commonwealth. In *De Cive* (1642), Hobbes concedes that a Christian who finds that he cannot obey an infidel Prince's command to deny that Jesus is the Messiah is granted the 'freedom' of breaking his civil covenant and returning to the state of nature by laying down his life for his God: 'Must we resist princes, when we cannot obey them? Truly no; for this is contrary to

our civil covenant. What must we do then? Go to Christ by martyrdom; which if it seem to any man to be a hard saying, most certain it is that he believes not with his whole heart, that *Jesus is the Christ*'. See Thomas Hobbes, *De Cive in Man and Citizen (De Homine and De Cive)* ed. by Bernard Gert (Indianapolis and Cambridge: Hackett, 1991), 2. XVIII. 13, p. 384.

¹⁹ See Jeremy Waldron, 'Hobbes on Public Worship' in *Nomos XLVIII 'Toleration and its Limits'* ed. by Melissa S. Williams and Jeremy Waldron (New York and London: New York University Press, 2008), pp. 31-53 for a recent discussion of Hobbes on public worship.

²⁰ William T. Cavanaugh, "'A Fire Strong Enough to Consume the House": The Wars of Religion and the Rise of the State', *Modern Theology* 11 (1995), pp. 397-420, p. 406.

²¹ Hobbes, *Leviathan*, III, 42, p. 343.

²² To recall Carl Schmitt's famous verdict on Hobbes' decision to reduce Christian confession from doctrinal differences over predestination or transubstantiation to this core belief: 'Jesus is the Christ' is the 'most important sentence of Hobbes', Schmitt writes, because its purpose is 'to neutralize the effect of Christ in the social and political sphere; to de-anarchize Christianity, while leaving it at the same time as a kind of legitimating effect and in any case not to do without it'. See Carl Schmitt, May 23, 1949, *Glossarium: Aufzeichnungen aus den Jahren 1957-51* ed. Eberhard Freiherr von Medem (Berlin: Duncker & Humblot, 1991).

²³ Hobbes, *Leviathan*, III, 42, p. 343.

²⁴ See A. P. Martinich, *The Two Gods of Leviathan: Thomas Hobbes on Religion and Politics* (Cambridge: Cambridge University Press, 1992), pp. 303-4, Gary Remer, *Humanism and the Rhetoric of Toleration* (Philadelphia, PA: Pennsylvania State

University Press, 1996), pp. 169-202 and Eric Brandon, *The Coherence of Hobbes' Leviathan: Civil and Religious Authority Combined* (London: Continuum, 2007) pp, 89-90 for incidental discussions of Hobbes on religious martyrdom.

²⁵ Hobbes, *Leviathan*, III, 42, pp. 344-5. See also J. G. A. Pocock, 'Time, History and Eschatology in the Thought of Thomas Hobbes', in *Politics, Language and Time* (New York: Athanaeum, 1971). In Pocock's words, Hobbes' expulsion of bearing witness to the distant past or the equally distant future renders any experience of God impossible in the present: it is 'conceivable only in the past and the future', p. 147.

²⁶ See Hobbes, *Leviathan*, II. 29, pp. 223-4. In Hobbes' analysis, modern religious 'martyrs' would undoubtedly be found guilty of 'Private Judgement of Good or Evil', 'Erroneous Conscience' and 'Pretence of Inspiration', amongst other offences.

²⁷ John Locke, *Two Treatises of Government* ed. and intr. by Peter Laslett, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1988), II, § 6, p. 271.

²⁸ Locke, *Two Treatises of Government*, II, § 123, p. 350.

²⁹ John Locke, *A Letter Concerning Toleration* ed. James H. Tully (Indianapolis: Hackett, 1983).

³⁰ Locke, *Letter Concerning Toleration*, p. 26.

³¹ Locke, *Letter Concerning Toleration*, p. 42.

³² Locke, *Letter Concerning Toleration*, p. 48.

³³ Jennifer A. Herdt, 'Locke, Martyrdom and the Disciplinary Power of the Church', *Journal of the Society of Christian Ethics* 23: 2 (2003), pp. 19-35, p. 26.

³⁴ John Milbank, *Theology and Social Theory* (Oxford: Blackwell, 1990).

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- ³⁵ John Locke, *Two Tracts on Government* ed. Philip Abrams (Cambridge: Cambridge University Press, 1967).
- ³⁶ Herdt, 'Locke, Martyrdom and the Disciplinary Power of the Church', pp. 23-4.
- ³⁷ Locke, *Letter Concerning Toleration*, p. 26.
- ³⁸ Locke, *Letter Concerning Toleration*, p. 48.
- ³⁹ Hobbes, *Leviathan*, II, 28, p. 214.
- ⁴⁰ Hobbes, *Leviathan*, II, 21, p. 148.
- ⁴¹ Hobbes, *Leviathan*, II, 28, p. 219.
- ⁴² Hobbes, *Leviathan*, II, 28, p. 214.
- ⁴³ See Alan Norrie, 'Hobbes and the Philosophy of Punishment, *Law and Philosophy* 3:2 (1984), pp. 299-320, Thomas S. Schrock, 'The Rights to Punish and Resist Punishment in Hobbes's *Leviathan*' *The Western Political Quarterly*, 44: 4 (Dec., 1991), pp. 853-890 and Dieter Hüning, 'Hobbes on the Right to Punish' in *The Cambridge Companion to Hobbes' Leviathan* ed. by Patricia Springborg (Cambridge: Cambridge University Press, 2007), pp. 217-40 for different accounts of Hobbes on punishment.
- ⁴⁴ Hobbes, *Leviathan*, II, 18, p. 124. See also II. 21, p. 148.
- ⁴⁵ Sheehan, 'Assenting to the Law', p. 71.
- ⁴⁶ Hobbes, *Leviathan*, II, 21, p. 148.
- ⁴⁷ For Roberto Esposito, Hobbes' social contract is thus dependent on a 'sacrificial dynamic' in which '[l]ife is sacrificed to the preservation of life'. See Roberto Esposito, *Bios: Biopolitics and Philosophy* trans. by Timothy Campbell (Minneapolis: University of Minnesota Press, 2008), pp. 61-3.
- ⁴⁸ Moyn, 'Appealing to Heaven', p. 291.
- ⁴⁹ Locke, *Two Treatises of Government*, II, § 121, p. 282.

⁵⁰ Locke, *Two Treatises of Government*, II, § 121, p. 282.

⁵¹ See Moyn, 'Appealing to Heaven', pp. 297-301 for a helpful discussion of this argument.

⁵² Locke, *Two Treatises of Government*, II, § 121, p. 282. See Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of Locke's Political Thought* (Cambridge University Press, 2002), pp. 225-6 and Kiyoshi Shimokawa, 'Locke's Concept of Justice' in Peter R. Anstey, ed., *Philosophy of John Locke: New Perspectives* (New York: Routledge, 2003), pp. 61-85 for recent discussions of the distinctive between subjective certainty and objective validity in Locke's concept of judgment.

⁵³ Locke, *Two Treatises of Government*, II, § 121, p. 282.

⁵⁴ Rehfield, Jephthah, the Hebrew Bible, and John Locke's "Second Treatise of Government", p. 72.

⁵⁵ Moyn, 'Appealing to Heaven', p. 298.

⁵⁶ Locke, *Two Treatises of Government*, II, § 241, p. 427.

⁵⁷ Locke, *Two Treatises of Government*, II, § 177, p. 386.

⁵⁸ Mark Lilla, *The Still-Born God: Religion, Politics and the Modern West* (London: Vintage, 2007).

⁵⁹ Richard Tuck, 'Introduction' to Thomas Hobbes, *On the Citizen* ed. and trans. by Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), p. xxiv.

⁶⁰ Quentin Skinner, 'The Context of Hobbes's Theory of Political Obligation', in Maurice Cranston and Richard Peters eds. *Hobbes and Rousseau* (New York: Doubleday, 1972), pp. 109-42.

⁶¹ Moyn, 'Appealing to Heaven', p. 292.

⁶² Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol* trans. George Schwab and Erna Hilfstein (Chicago and London: University of Chicago Press, 2008), p. 35.

⁶³ Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, p. 57.

⁶⁴ Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), pp. 214–215.

⁶⁵ Moyn, ‘Appealing to Heaven’, p 299.

⁶⁶ Raffaello Pantucci, *We Love Death as You Love Life: Britain's Suburban Mujahedeen* (New York: Columbia University Press, 2013). In fact, Khan’s statement is a common rhetorical trope in Islamist rhetoric and has been used previously by such groups as Hamas and Al-Qaeda.

⁶⁷ Giorgio Agamben, ‘What is a Paradigm?’ in *The Signature of All Things: On Method* trans. by Luca D’Isanto with Kevin Atell (New York: Zone Books, 2009), pp. 9-32. In Agamben’s definition, a paradigm is ‘a form of knowledge that is neither inductive nor deductive but analogical. It moves from singularity to singularity’, p. 31.

⁶⁸ In many ways, I am pursuing a theological reading of liberalism – and in particular of the sacrificial nature of the social contract – which has been mapped by the recent work of Paul Kahn. See Paul W. Kahn, *Sacred Violence: Torture, Terror and Sovereignty* (Ann Arbor: University of Michigan Press, 2008).

(10, 528 words)