

Ambiguity, *Leviathan*, and the Question of Ultimate Interpreter

DRAŽEN PEHAR

Institute for Social and Political Research, Kralja Petra Krešimira IV b.b., 88000 Mostar,
Bosnia and Herzegovina
dr_pehar@yahoo.com

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ABSTRACT: This essay aims to present, but not fully substantiate, a way of undermining the notion of ‘ultimate interpreter’ in the sense of ‘a limited, appointed or elected, institutional body.’

One effective way of such presentation is, as I argue, in terms of interpretation of Hobbes’s theory as a response to the problem of political ambiguity. Thus interpreted, Hobbes’s theory presses on us the choice between normative and non-normative view of language. If we endorse the former, the argument against ‘ultimate interpreter(s)’ seems to hold.

However, one can to a degree blunt the argument’s razor by making the status of the body dependent fully on the body’s theoretical performance, so that practical finality of the body’s deliberations tracks their theoretical finality, not the other way around.

KEYWORDS: Hobbes, legal interpretation, normative view of language, political ambiguity, ultimate interpreter.

“I tell, I am not told. I am a verb, not an object”
(King George in ‘The Madness of King George’
(1994) movie directed by Nicholas Hytner)

Let us imagine that somebody proposes a five-step argument of the following kind:*

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- a) To resolve large and important social/political conflicts involves, frequently enough, the constructing of the most plausible interpretation of either ambiguous constitutional provisions, or of a joint effect of an interpretable cluster of moral/political norms, that are relevant for the theme of the said conflicts.
- b) To construct the most plausible interpretation of the kind means to construct the most plausible, or defensible, theory in the sense of a relatively exhaustive narrative which draws on a set of valid and plausible premises/reasons, and ultimately issues in a conclusion(s) that instantiates the most plausible interpretation.
- c) Designation, or election, of a limited institutional body, be it a collective one or individual (such as a committee, commission, government, court, or a president), with the purpose of performing the task as defined in a), implies a decision to determine beforehand the question of which group, institution, body, or an individual, should deliver the most plausible theory in the sense of b).
- d) The most plausible theory must not be self-validating, which implies that it must not be, either by institutional or some other means, safeguarded against some plausible counter-reasons. The most plausible theory is determined by, and built on, reasons alone, and the flow of reasons and counter-reasons should not be steered beforehand either in a social, institutional, or political sense.
- e) Since c) seems to be incompatible with d), it is *prima facie* wrong, and ultimately harmful, to design by any method an institutional body, a locus of sovereignty, to act as a guarantor of the conflict resolution, or to perform the tasks, and meet the challenges, as described by a).

There are a number of questions one can pose to the scholar starting to think of the ways to defend the five-step argument. First, is there a way to present the argument in a more concrete form, that is, is there a way to give more concrete meaning to the key terms addressed in the argument? Secondly, are there some further arguments and views that the potential defender of the five step argument should recognize as his implicit argumentative commitments?

This paper will attempt to demonstrate that the answer to the questions is in the positive. Hence, the paper's only argument is to the effect that there may be a defensible version of the five-step argument, a version which commits one to some clearly specified, and not other, doctrines and arguments. The paper does not supply the reasons for actually endorsing the five-step argument; it is a paper of 'if-then' kind. It argues only that, if one accepts some views or theories, then s/he is likely to accept, or deem as highly plausible, the five-step argument. Those further arguments in support of such views or

theories are not addressed or defended here. This may be taken as a serious shortcoming of the paper, but the following are my reasons for proposing it: first, sometimes it is extremely important to be aware of the wider conceptual/argumentative terrain within which one operates; secondly, the awareness of the kind should be taken as, and achieved, prior to the actual substantiating of the views a social scholar deems as worthy of defending; and thirdly, such more general, and wider, approach makes us sufficiently appreciative of the fact that, whenever we defend a complex and pretty abstract social or political argument, we are bound to defend in parallel several distinct theories that normally cross the established disciplinary boundaries.

When it comes to the five-step argument, the idea proposed here is that one can develop a more concrete form of the argument through a discussion of Hobbes's political theory¹ in terms of a theory of political ambiguity. In other words, one of the purposes of this essay is to frame Hobbes's political theory as a kind of response to the problem of political ambiguity and by thus framing it to elucidate the key terms and moves of the five-step argument. The second key purpose of this essay is to build the awareness of conceptual and argumentative connections between the five-step argument, on the one hand, and some further views and perspectives, on the other. In the third section of the essay I address some of more immediate implications of the five-step argument and finish with discussing some ways of responding to it so as to perhaps blunt its razor.

Ambiguity as a problem of political theory and Hobbes

Ambiguity is a word, sentence, or a text, that is open to at least two, *prima facie* mutually irreconcilable and potentially equally viable, interpretations. In other words, ambiguity is a pattern of language to which one, taking into account all the factors required for an interpretation, can attribute at least two mutually incompatible, and merely potential, meanings (For a more detailed explanation of the notion of ambiguity, see Pehar 2001 and Pehar 2005). Hence, it is not difficult to understand why ambiguity, when viewed through the lens of a political theorist, may be presented and considered as a dangerous thing. As there are always at least two 'horns' to any ambiguity, one 'horn' may always be used to deceive or mislead one's opponent, or to generate a situation of persistent, *prima facie* non-opposable and undefeatable, opposition to one's opponent. Ambiguity may be viewed as a verbal means of perpetuation of conflict; hence, political theorist needs to find a plausible means of addressing the issue and resolving it.

¹ In the following, my focus is almost entirely on *Leviathan*, "the greatest single work of political thought in the English language," according to Rawls (2007: 23).

As Quentin Skinner plausibly demonstrates in a number of his books and essays on Hobbes (for an example, see Skinner 1996: esp. 19–40), the latter was, first and foremost, deeply immersed into the rhetorical and humanistic culture of Renaissance England. Hobbes, in forming his views of language and human nature in general, drew on classical rhetorical sources, and studied all the major classical Greco-Roman texts. This, as we shall see, is important for understanding his perspective on ambiguity. Secondly, as Skinner also plausibly argued, there was one particular rhetorical strategy with which Hobbes was very concerned.² It is the strategy of *paradiastole* which consists in ‘ambiguation’ of the terms of moral praise and blame. In other words, imagine that your opponent claims that one is a coward. The strategy of *paradiastole* consists in one’s *prima facie* plausible demonstration to the effect that what looks like a practice, to which the attribute of ‘cowardice’ deserves to be attributed, may be reinterpreted by adding some additional contextual factors; consequently, such ‘cowardice’ may in fact be pictured or presented as an instance of prudence, or of an intelligent and timely caution. This means that the key terms of moral praise and blame are open-ended and inherently ambiguous. The description to the effect that ‘the practice X is of such-and-such moral character’ is always open to reinterpretation, which implies that it may hide another layer of meaning by which one can always oppose one’s opponent’s only initial, but not necessarily true or pertinent, description.

Hobbes’s view of ambiguity, which fully coincides with the view presented in the first paragraph of this section, was formed through his reading of at least four key texts concerning the linguistic, and very political, phenomenon.

First, in his *De Officiis* Cicero (Cicero 1921: I 33) relates the story of a Spartan King Cleomenes who ruled from 520 till 491 BC: the King has signed a truce with a neighboring city stipulating that the truce would last for thirty days (*triginta dierum*). However, Cleomenes attacked the city long before the expiry of the stipulated date, and raided its fields. He explained that his action was fully in accordance with the agreement on the truce as he attacked during a night, not during a day. The truce speaks of days, not nights; hence, Cleomenes claimed his assault was in harmony with the letter of the document he signed. Cicero comments on this by claiming that this represented a ‘*malitiosa interpretation juris*’, a malicious legal interpretation that confirms the old proverb ‘*summum jus summa injuria*’, or ‘the more one extends the law the more one commits a legal injury.’ In other words, Cleomenes exploited what he considered to be an ambiguity inherent in the word ‘days’ in order to mislead, and catch by surprise, his opponent. He took

² See Skinner (2002a) and (2002b) and Thornton (2005: esp. 39–40).

the word in its photo-logical sense, not in a chronological sense. There is no doubt that Hobbes was aware of the text as it was a part of his curriculum.

Secondly, in *The Histories* Herodotus relates the story of a Lydian King, Croesus, who was, as it was generally argued, misled by Delphi, the famous prophecy site (Herodotus 1993: I.53–I.91). Delphi told Croesus that “should he decide to launch attack against the Persians, he would destroy a mighty empire” (Herodotus 1993: I. 53). Croesus took this to mean that he would destroy the Persian Empire against which he was about to launch a preemptive attack. However, ultimately, the prophecy materialized in a different way. Croesus was defeated, and has thus destroyed his own empire, which was mighty one too. One also needs to note here that Aristotle, in his *Rhetoric*, Book III, uses the same prophecy to illustrate the very nature of ambiguity. Drawing on the experience of the poor Lydian King, Aristotle claims that ambiguity serves to hide one’s ignorance, or to misrepresent some information to some and thus mislead them, as Delphi did with Croesus. Hence, unless there is some other purpose, Aristotle argues, the use of ambiguity needs to be avoided (Aristotle 1877: 1407a32–1407b6). Again, Hobbes was not only familiar with the text, but he provided a rough English translation of it, borrowed from it without acknowledgment and, most importantly, held the book in high regard (Skinner 1996: 38–9). Also, in *Leviathan* Hobbes (Hobbes 1994: 69), in full agreement with Aristotle, put his view of Delphi as follows: “...the ambiguous or senseless answers of the priests at *Delphi*, *Delos*, *Ammon*, and other famous oracles (which answers were made ambiguous by design, to own [i.e. claim] the event both ways...)”

Thirdly, in 1629 Hobbes translated *The History of Peloponnesian Warfare* by Thucydides (Skinner 1996: 238–9, and Ball 1995: 90–91), the third book of which contains the famous description of the sedition in Corcyra in the course of which the use of language was fully *paradiastolic*. As Thucydides relates, the words had changed their ordinary meanings, and the warring parties started using them in the ways opposed to the previous, peace-time one. For instance, the acts that used to be called ‘prudent’ were now called ‘a cowardice and weakness,’ and in a typical example of an abuse of the ambiguity of moral terms that characterized the revolution in Corcyra, Thucydides points out that, “the use of fair phrases to arrive at guilty ends was in high reputation.”

Fourthly, in 1606 the English Parliament introduced the following clause into the Oath of Allegiance that the Catholic members, and priests, had to take to confirm their loyalty to the Protestant England: “I do plainly and sincerely acknowledge and swear, according to these express words by me spoken and according to the plain and common sense understanding of the same words, without any equivocation or secret reservation whatsoever”

(Jonsen and Toulmin 1988: 210). Now, why had they decided to forbid officially equivocation, or the use of ambiguity, which in itself is a very strange decision? The reason for this is in the doctrine of equivocation that some of the English Catholic and Jesuit scholars adopted again for a specific reason. Garnet, one of the most famous of such scholars, advocated the use of ambiguity, or equivocation, in dangerous times, when one, who is in danger, needs to say something that contradicts his true beliefs. Garnet believed that the problem of such official self-denial may be solved by endowing one's official, outwardly uttered, oath, or commitment, with an additional layer of intimate meaning that one keeps secretly in mind, in reservation, thereby confirming, not repealing, one's true faith (Jonsen and Toulmin 1988: 207–210). In other words, the Jesuit scholar claimed that, should you succeed to 'ambiguate' your official message, a part of your heart would remain pure and devoted to your true, but now endangered, faith. The question of whether, and under what conditions, to equivocate while uttering an official oath or commitment gained prominence again in 1649, when another Oath was introduced, the Oath of Loyalty to the Republic, or Engagement Oath, following the execution of King Charles I and abolition of the House of Lords and Monarchy (Jonsen and Toulmin 1988: 211).³ But, now, pro-royalists pondered over the question whether the Engagement Oath can be uttered in equivocal terms to safeguard secretly their own devotion and true faith. Interestingly, one of the most prominent defenders of the view that it can be so uttered was Robert Sanderson, an Oxford University Case Divinity Professor. Sanderson proposed the use of ambiguity, and claimed that "the language of the Oath could be interpreted as compatible with allegiance to the king. The Oath contained key words that were in themselves ambiguous" (Jonsen and Toulmin 1988: 212). This means that ambiguity again was treated as a useful means to hide something, to mislead one's opponent and enable oneself to persist in an opposition to those standing on the opposed side. Again, it is very unlikely that Hobbes was unaware of such issues pertaining to the daily English politics or of the notion of ambiguity such political practice was imbued with.

There is no doubt that Hobbes's view of ambiguity, as a political problem, corresponds fully with the key points of the four examples given above. For instance, in his *Leviathan* he describes the attitude of the true Sovereign's counselor to ambiguous expressions in the following way: "And therefore, *rash and unevident inferences...*, *obscured, confused, and ambiguous expressions, also all metaphorical speeches, tending to the stirring up of passion* (because such reasoning and such expressions are useful only to deceive, or to lead him we counsel towards other ends than his own) *are repugnant to the office of a*

³ See also Skinner (2002c) on the importance of 'engagement controversy' for a deeper understanding of *Leviathan*.

counsellor” (Hobbes 1994: 169). Secondly, while discussing the difference between certain kinds of animals that live sociably and peaceably, on the one hand, and the human beings that are not political or social by nature, on the other, Hobbes (1994: 108) claims the following:

...these creatures, though they have some use of voice (in making known to one another their desires and other affections), yet they want that art of words by which some men can represent to others that which is good in the likeness of evil, and evil in the likeness of good, and augment or diminish the apparent greatness of good and evil, discontenting men, and troubling their peace at their pleasure.

Here again he refers to the power of ambiguous expressions, and metaphors, to mislead, deceive, and contribute to the emergence of conflict, war, sedition, or simply unease.⁴ The images of Delphic priests who represented to Croesus that which is evil in the likeness of good, and of Cleomenes who represented his soon-coming assault to the neighboring city in the likeness of a thirty-day truce, spring immediately to our mind.

There is also no doubt that Hobbes considers ambiguity as one of the key problems of political theory primarily because he describes it, in unmistakable terms, as one of the key causes of war, or as one of the key characteristics of the State of Nature.

First, in *Leviathan* he puts it as clear as possible: “To conclude, the light of human minds is perspicuous words, but by exact definitions first snuffed and purged from ambiguity; *reason* is the *pace*; increase of *science* the *way*; and the benefit of mankind the end. And on the contrary, metaphors, and senseless and ambiguous words, are like *ignes fatui* [a fool’s fire], and reasoning upon them is wandering amongst innumerable absurdities; and their end, contention and sedition, or contempt” (Hobbes 1994: 26).

Secondly, let us not forget the terms in which Hobbes, primarily in his *Elements of Law*, frames the State of Nature, the notion which is analyzed in more detail in Hoekstra (2007):

In the state of nature, where every man is his own judge, and differeth from other concerning the names and appellations of things, and from those differences arise quarrels, and breach of peace; it was necessary there should be a common measure of all things that might fall in controversy; as for example: of what is to be called right, what good, what virtue, what much, what little, what *meum* and *tuum*, what a pound, what a quart, etc... This common measure, some say, is right reason: with whom I should consent, if there were any such thing to be found or known *in rerum natura*. But commonly they that call for right reason to decide any controversy, do mean their own. (quote in Tuck 1992: 171)

⁴ For a more detailed theoretical explanation, pertaining specifically to the cases of diplomatic ambiguity, see Pehar (2011: Part One).

Hobbes here pictures a paradigm of political conflict which not only draws on the unsettled meanings of words, names and appellations, but is also structurally equivalent to the conflict of interpretations over an ambiguous expression. To any conflict of interpretations concerning an ambiguity, there are two sides and they both have some reasons to support one interpretation they advocate; however, there are also reasons on the other side, and such reasons support the opposite interpretation of ambiguity. As such reasons and counter-reasons seem to be in balance, the only thing that feeds the conflict is the owning of the reasons, or counter-reasons, by either side. Such balance of reasons and counter-reasons, supporting an interpretation and counter-interpretation, is actually what makes ambiguity alive, difficult to handle, but also interesting. More importantly, we should have in mind that one of the answers Hobbes proposes to the aforementioned controversy is ‘laws as definitions,’ which is how one would typically react to the presence of an unsettled issue of ambiguity, that is, of equally viable, but opposed ways of meaning-attribution. One’s first reaction is to propose the exact meaning, in the form of a definition, of the ambiguous word/sentence/text over which a conflict of interpretations takes place. As Hobbes continues the above passage, “and by them [the laws] the use and definition of all names not agreed upon, and tending to controversy, shall be established. As for example, upon the occasion of some strange and deformed birth, it shall not be decided by Aristotle, or the philosophers, whether the same be a man or no, but by the laws” (Tuck 1992: 172).

Thirdly, in his 1668 Latin version of *Leviathan* Hobbes also claims that, in the State of Nature, “nothing is to be called unjust” (Hobbes 1994: 78), which implies that nothing is to be called just either. For any pair of descriptions of actions, in the State of Nature the ambiguity applies. In other words, ambiguity characterizes the State of Nature in another way, through one’s inability to defend unquestionably one’s interpretation of an action as belonging to the category of ‘just’, or ‘unjust.’

Fourthly, and finally, Hobbes considers ambiguity as very detrimental, and very conducive to conflict, in another context. Imagine that we have a Sovereign, and imagine that we have a code of laws; that is, imagine that we have left, or traversed, the State of Nature, and are endowed with a rich cluster of laws. As Hobbes unmistakably suggests, the presence of ambiguity in such cluster, or code, of laws would undo the laws themselves. In other words, the presence of ambiguous provisions of the law contributes to our unfortunate return to the State of Nature, or the state of conflict. In *Leviathan*, Chap. xxx, 21 and 22, he argues in support of the perspicuity in the words of the law itself, and also of the brevity of the text of the law.

...multiplication of words in the body of the law is multiplication of ambiguity; besides, it seems to imply (by too much diligence) that whosoever can evade the words is without the compass of the law. And this is a cause of many unnecessary processes. For when I consider how short were the laws of ancient times, and how they grew by degrees still longer, methinks I see a contention between the penners and pleaders of the law, the former seeking to circumscribe the latter, and the latter to evade their circumscriptions; and that the pleaders have got the victory. (Hobbes 1994: 229–230)

In other words, Hobbes here suggests that ambiguity lowers the binding force of the laws, and that the more ambiguity we identify in the text of the law the less bound we become by it, or, the less law-abiding citizenry overall we become. Again, when faced with ambiguity, our prospects of peace are slim indeed.⁵

Let us try now to interpret Hobbes's political theory as a kind of grand theoretical response to the issue of political ambiguity. As will be shown in the next section, under such an interpretation, Hobbes's theory seems to be incoherent, or, to put it more charitably, ambiguous itself.

Hobbes's theory as a response to the problem of ambiguity

A part of Hobbes's response to the issue of political ambiguity can be dismissed almost immediately. In some passages of *Leviathan* he claims that all verbal expressions are ambiguous. For instance, in Chap. xxvi 26 he claims the following: "The significations of almost all words are, either in themselves or in the metaphorical use of them, ambiguous, and may be drawn in argument to make many senses" (Hobbes 1994: 183). More explicitly, in Chap. xxx 22, he claims that, "all words are subject to ambiguity" (Hobbes 1994: 229). Such a claim, however, cannot survive a closer scrutiny. First, it would imply that the very same claim is ambiguous too. In other words, the claim "all words are subject to ambiguity" is self-defeating. Secondly, we need to note that an attribution of ambiguity depends on a number of unambiguous sentences. First of all, to attribute an ambiguity one needs to spell out the potential interpretations of it; secondly, one needs to adduce some reasons in support of such interpretations, and finally, one needs to give some evidence for the conclusion that both interpretations and reasons stand in balance; otherwise, one of the interpretations should prevail thereby eliminating our attribution of the ambiguity in question. This, however, implies that the ratio between ambiguities and non-ambiguities should be at least 5:1 in favor of non-ambiguities, in any language. Hence, theoretically it is impossible to claim that all, or almost all, words, or patterns of language, are ambiguous.

⁵ For more detail on Hobbes's understanding of equivocal and ambiguous expressions, in the sense of philosophical/linguistic, not political, analysis, see Danford (1980: 123–125).

Secondly, a part of Hobbes's response to the issue of political ambiguity draws on the notion of positive, pro-life emotions. At the end of Chap. xiii, concerning the Natural Condition of Mankind, he claims that there are some passions that "incline men to peace", and that those passions include primarily the following: "fear of death, desire of such things as are necessary for commodious living, and a hope by their industry to obtain them" (Hobbes 1994: 78). This implies that a part of the mechanism that makes us transcend, or traverse, the State of Nature, which implies a successful elimination of political ambiguity, must be placed in a better part of our passions, and must involve some emotional element (emphasized by Tuck 2004: esp. 132–135). However, this part of Hobbes's answer is of little help as well, as ambiguity typically takes the form of a cognitive riddle that cannot be resolved by drawing simply on better passions of our nature. Hobbes was certainly aware of that; otherwise, he would not propose what is the most famous part of his response, the Construction of Leviathan, which is here taken as a third part of his response to the issue of political ambiguity.

In the *Elements of Law*, Hobbes, continuing the passage quoted above, proposes the introduction of sovereign power as a response to the problem of political ambiguity. He claims that, once the parties to the conflict concerning an ambiguity realize that there is no such thing as 'right reason' *in rerum natura*, that is, objectively, "the reason of some man, or men, must supply the place thereof [in the sense of making up a deficiency due to the lack of a right reason]; and that man, or men, is he or they that have the sovereign power" (Tuck 1992: 171). This means that the Sovereign Power, which he will later christen *Leviathan*, is introduced to serve as the ultimate interpreter, as the sovereign voice whose task is simply to resolve quarrels, and controversy, arising from the conflict of 'names and appellations.' S.S. Wolin (Wolin 2004: 232) describes Hobbesian Sovereign as a 'Great Definer,' and such description is as pertinent as one can be. Such introduction of the Great Definer is an outcome of an original contract, the contract which turns a multitude of people into a single political body, into a single *Persona* (in the sense of 'Mask', or an 'Acting Role') the living bearer of which is to be taken as the Sovereign, according to Skinner (2007: esp. 168–175). Here I will not address the issue of Hobbes's real allegiance, and whether he was really a monarchist, or whether he also considered a parliamentary Sovereign Power as equally legitimate to the royal power, a single person that bears the persona of a unified political body. I do not imply that such issues are not important, but they are not of direct relevance for the topic of this essay. There are, however, two issues, and themes, that are of direct relevance for the present considerations.

First, it is clear that the third, and most important, element of Hobbes's response to the issue of ambiguity comes under a single heading of 'Power.' We resolve our interpretive disagreements by endowing ourselves with a

single, overarching and overwhelming power embodied in a single man, or a collective. The power of a single person, or of a collective body, will decide in the cases of interpretive disagreements, that is, he, or they, are those whose decision will eliminate ambiguity. The power of such a person, or persons, is, according to Hobbes, the greatest of human powers. The frontispiece of *Leviathan* (see Skinner 2008: 182–196) clearly says, in a Latin quote from the book of Job, that ‘*Non est potestas Super Terram quae Comparetur ei*’, ‘Upon earth there is no power that can be compared to him’, that is, to Leviathan. In Chap. x 3 of *Leviathan* Hobbes again clearly writes that “the greatest of human powers is that which is compounded of the powers of most men, united by consent in one person, natural or civil...” (Hobbes 1994: 50) However, the most important thing to have in mind is that such power is inherently symbolic. The parties to the original contract agree to project their unified *Persona* into a single body; hence, the power of the *Persona* is symbolic and founded upon convention.

Secondly, if the Sovereign is introduced as a replacement, or supplement, for ‘right reason’, does this mean that the reasons the Sovereign offers in support of his considerations, laws, and decisions, may be subjective too? That is, should we take the transfer of authority to the Single *Persona* to imply that the parties to the original contract engage in a kind of ‘make-believe?’ In other words, should we take the parties as simply pretending that the right reason is coming from a single place, or voice, that they authorize to act as their Sovereign? Closely related to this, should we take the submission of the multitude to the single Sovereign to imply a kind of irrational obedience? More precisely, should we take the parties to the original covenant as pretending that they would submit fully to decisions by a single body, as required by the covenant, though their submission should not involve a deeper cognitive, or intellectual, consideration of the issues pertaining to the merely ‘make-believe’ nature of Sovereign’s reasons? In other words, does the designation of the Sovereign Power as an ultimate interpreter imply our decision not to tackle, or engage in, the question of whether Sovereign’s ultimate interpretations draw on a set of objectively valid, inherently plausible, or defensible, reasons?

One can easily realize that Hobbes introduces the symbolic Sovereign Power to ensure a practical finality, or closure, of a conflict. The Power’s decision ought to settle and remove the issue, thus introducing or recovering stability, and, especially when it comes to the issue of interpretive disagreement or ambiguity, one’s decision needs to remove the ambiguity to resolve the case of disagreement. However, the finality of a resolution of the case of ambiguity needs to be also of theoretical nature. In other words, we need to see that such finality is acceptable in terms of theory; it needs to be immune, and proved to be immune to counter-reasons, or to alternative kinds of disambiguation/

interpretation. Should the parties to the original covenant be concerned with theoretical finality at all? Or should they rather rest content with the practical finality of the Sovereign Decision/Definition, and take it as it stands, without pondering over the issue of theoretical, and objectively/inter-subjectively valid, reason-grounded finality of the Sovereign Decision/Definition? Common-sense suggests that, when it comes to the issue of interpretive disagreement, theoretical finality must be ranked higher than, and prior to, practical finality. Unless a decision concerning a resolution of ambiguity is theoretically sound, it cannot be taken as final in practical sense. Theoretical finality is a guarantor of practical finality, and not the other way around. However, the presence of Sovereign Power suggests that it is the other way around.

Contrary to the conventional and established ways of interpreting of Hobbes, and contrary to the established image of Hobbes as an authoritarian in disguise and/or anti-republican (Pettit 2008: 153), Hobbes was not only deeply concerned with the aforementioned issues of ‘make-believe’, of merely arbitrary or non-arbitrary nature of Sovereign decisions, and of theoretical vs. practical finality; but, a part of his response to the issue of political ambiguity can in no way be reduced to the heading of ‘Sovereign Power.’ As I argue in the next three paragraphs, the fourth element of his response to the issue of ambiguity goes under the heading of ‘unwritten laws of nature,’ and this element sits very uneasily with, and can be perhaps taken as opposed to, the response in terms of Sovereign Power.⁶

1) Sovereign’s primary task is to pass a set of laws. As Hobbes argues, the Sovereign primarily acts as a legislator. The laws should play the role of a primary ‘disambiguator’ of the ambiguities that are harmful to a civil society, or commonwealth. However, Hobbes also argues that all laws are in need of interpretation. In other words, the application of the laws, in specific cases of adjudication, depends fully on the ways of legal interpretation. Hobbes furthermore argues that the task of legal interpretation is clearly in hands of the judges, and those need to be authorized to act as such by a Sovereign Power. Of course, while interpreting the laws, the judges must not go against the intentions of the legislator, or the Sovereign. As *Leviathan* xxvi 20 put it: “For else, by the craft of an interpreter the law may be made to bear a sense contrary to that of the sovereign, by which means the interpreter becomes the legislator.” (Hobbes 1994: 180) Hence, the power of interpretation of the laws is in the hands of the judges. However, what exactly ought to be interpreted, and, more importantly, how? Hobbes provides the following answer.

⁶ Hence, my reading of Hobbes is, in its tone and general direction, similar to Zarka (2004) and Gauthier (1995: esp. 34–36).

All laws, written and unwritten, have need of interpretation. The unwritten law of nature, though it be easy to such without partiality and passion make use of their natural reason, and therefore leaves the violators thereof without excuse, yet considering there be very few, perhaps none that in some cases are not blinded by self love or some other passion, it is now become of all laws the most obscure, and has consequently the greatest need of able interpreters. The written laws, if they be short, are easily misinterpreted from the divers significations of a word or two. (Hobbes 1994: 180)

2) In other words, all laws, written and unwritten, require interpretation. However, when a judge interprets, it is certain that his interpretation of a written law needs to draw on his interpretation of an unwritten law. Any interpretation needs to draw on a pool of factors that are, at least partly, external to a body of a legal text. One could claim that one can also draw on the contextual factors that are inherent to the body of legal text, for instance, on the laws textually preceding the law in question, or on a preamble; however, this would imply that one would not need the notion of unwritten laws at all, which contravenes Hobbes's key claims. Hobbes additionally specifies the nature of the interpretation of the unwritten law of nature. He claims in *Leviathan* xxvi 23 that,

the interpretation of the law of nature is the sentence of the judge constituted by the sovereign authority to hear and determine such controversies as depend thereon, and consisteth in the application of the law to the present case. For in the act of judicature the judge doth no more but consider, whether the demand of the party be consonant to natural reason and equity. (Hobbes 1994: 181)

Most importantly, however, Hobbes adds even more precision to the task of the judge as an interpreter of the unwritten laws of nature. In *Leviathan* xxvi 26, he claims that,

now the intention of the legislator is always supposed to be equity; for it were a great contumely [insult] for a judge to think otherwise of the sovereign. He ought, therefore, if the word of the law do not fully authorize a reasonable sentence, to supply it with the law of nature; or if the case be difficult, to respite judgment till he has received more ample authority. (Hobbes 1994: 183)

3) Hence, the final image one gets of the unwritten laws of nature, as the fourth part of Hobbes's response to the issue of ambiguity, is as follows. The Sovereign 'supplies' the place of right reason. The right reason takes the form of civil laws. But, civil laws require able interpreters in the figure of judges authorized by the Sovereign. The judges interpret the civil laws in the light of the unwritten laws of nature, in accordance with natural reason and equity. Hence, we end up with the judges 'supplying' the Sovereign's laws with the laws of nature, in the light of natural reasons and, most importantly,

of the principle of equity.⁷ In other words, when it comes to the final step of the Sovereign decision, it must ensure theoretical, not only practical finality. The latter is a side-effect of the former. The unwritten laws of nature, those ‘theorems of peace,’ as Hobbes named them, shed the decisive light on the civil laws passed by the sovereign, and the light they shed must be the light of natural reason, that is, the “right reason” in the objective sense of the word that is independent of the will of the Sovereign (see also Boyle 1987). It is only under such an interpretation that we can understand fully, and not be taken by surprise at, the following passage from *Leviathan* (xxvi 24):

But because there is no judge, subordinate nor sovereign, but may err in a judgment of equity, if afterward, in another like case, he find it more consonant to equity to give a contrary sentence, he is obliged to do it. No man’s error becomes his own law, nor obliges him to persist in. Neither (for the same reason) becomes it a law to other judges, though sworn to follow it. For though a wrong sentence given by authority of the sovereign, if he know and allow it, in such laws as are mutable, be a constitution of a new law in cases in which every little circumstance is the same, yet in laws immutable (such as are the laws of nature) they are no laws to the same or other judges in the like cases for ever after. Princes succeed one another; and one judge passeth, another cometh; nay, heaven and earth shall pass; but not one title of the law of nature shall pass, for it is the eternal law of God. Therefore, all the sentences of the precedent judges that have ever been cannot all together make a law contrary to natural equity, nor any examples of former judges can warrant an unreasonable sentence, or discharge the present judge of the trouble of studying what is equity (in the case he is to judge) from the principles of his own natural reason. (Hobbes 1994: 181)

Therefore, Hobbes’s response to the problem of political ambiguity provides us with two figures. One figure is the figure of Supreme Power, the Great Definer, or the ultimate voice that needs to be obeyed. The primary task of the figure is to ensure practical finality to an interpretive conflict. The second figure is the figure of a judge relying on his own natural reason. He is a figure figuring as a scholar who needs to reflect on the decisions, and the reasons offered, by the others, and to self-reflect on the reasons that he, or she, offers himself.⁸ The eyes of such a judge are focused primarily on the unwritten laws of nature, and his sentences are committed primarily to the eternal law of God that is immutable, in contrast to the princes who are mutable and ‘succeed one another.’ The primary task of the second figure

⁷ This is why, in my view, there is no significant difference between Hobbes’s *Sovereign Persona* and ‘liberal umpire’ as proposed by Gerald Gaus (2003: 218–229).

⁸ It is for such a reason that Hobbes (1994: 184) also claims that a judge needs to be endowed with some particular virtues: “a right understanding of that principal law of nature called *equity*...*contempt of unnecessary riches* and preferments...*to be able in judgment to divest himself of all fear, anger, hatred, love, and compassion*...*patience to bear; diligent attention in hearing; and memory to retain, digest and apply what he hath heard*.”

is to ensure theoretical finality to an interpretive conflict. It seems now that Hobbes provides us with two figures that cannot, and perhaps should not, live together.

Hobbes, in his Review and Conclusion to *Leviathan*, famously presented the core of his argument as being in support of a contract in which obedience to the Sovereign is traded for protection, or, in his more precise terms, life and liberty of the Sovereign's subjects (Hobbes 1994: 491). Now, what if one senses that he, or she, was not fairly protected by some adjudication to which s/he was a party? Hobbes's total response to the problem of political ambiguity would deliver a contradictory guideline. On the one hand, if such adjudication had been delivered by the judges who are currently on top, the subject should be considered as sufficiently protected, hence, as owing his or her obedience, and submission, to the Sovereign. On the other hand, if such adjudication had been found unfair, under the immutable laws of God, by another judge, who took his post a bit later, then the subject should not be considered as legally protected; hence, the contract, through which s/he traded her obedience for protection, seems to have ceased to bind her. Now, the question is of who should, and more importantly how to, decide in such cases of supreme ambiguity?

Hobbes's theory seems to offer a contradictory answer to the question. The contradiction in the answer, however, is informative, and the next section will make an attempt at explaining why this is so. It will also attempt to explain the internal link between the considerations concerning Hobbes's response to the problem of ambiguity, on the one hand, and the argument proposed on the first page of this essay, on the other.

The question of ultimate interpreter and a cluster of further legal/ethical arguments and issues

Imagine now that, instead of 'Leviathan', we read 'Supreme Court.' Imagine also that there are several branches of government, according to the rule of the separation of powers. Furthermore, those branches disagree over the issue of how to interpret a particularly complex, and ambiguous, constitutional provision. Should we assign to the Supreme Court the role of the ultimate interpreter, or, 'the Guardian of the Constitution?'⁹ Let us note that assignment of such a role to the body corresponds fully with the move described by point c) of my opening argument. How should Hobbes respond to the question, and, more importantly, how should we respond to it?

As explained in the previous section, Hobbes endorses a contradictory guideline. Hence, a part of his answer is emphatically 'yes, we should assign

⁹ I think that, even if and when we replace 'Supreme Court' with 'Parliament,' the argument proposed here applies invariably.

such a role to the said body, and such a body would have the status of Leviathan.⁷ Another part of his answer, however, consists in the recognition that the judges, and princes, may err, and that the judge should figure primarily as a scholar who, exploring his own natural reason, and pondering over the reasons and counter-reasons in the light of the unwritten laws of nature, does his best to deliver the most plausible theory of the constitutional provision in question, but may err too. In other words, if the task of the ultimate interpreter is inherently theoretical, then we need to view him, or her, or them, as guided only by the interplay between reasons and counter-reasons. Provided that the previous claim is valid, nothing can prevent another body, or individual, to influence the reasoning of the judge/interpreter, to enter the game of ultimate interpretation with his own counter-reasons, or alternative views and interpretations. Hence, this part of Hobbes's answer seems to imply that it does not make sense to designate beforehand an institutional body whose task would be to deliver the ultimate interpretation. In other words, this part of Hobbes's answer suggests to one to meet the move described in point c) of the opening argument of this essay with skeptical eye.

Therefore, a particularly interesting aspect of the incoherent, or ambiguous, character of Hobbes's theory of political ambiguity consists in the fact that it puts pressure on one to make a reasoned choice, to weigh the arguments and counter-arguments for, and against, both parts of Hobbes's theory.

The opening argument of this essay obviously sides with the second part of Hobbes's answer. It subscribes to the claim that, whichever body we choose to play the role of ultimate interpreter, we make a wrong move by doing so. Any interpreter needs to offer some arguments, and counter-arguments, in favor of some interpretations, and against some. This implies that his work, the work of Hobbesian judge, is fully determined by the flow of reasons and counter-reasons. Now, designation of a body, or an individual, as the ultimate interpreter implies that we have decided beforehand to take his, or their, interpretations as ultimate and unquestionable. It implies that, even if we had strong counter-reasons, or perhaps more plausible interpretations, and views, in our pockets, the body has got the power not to take such counter-reasons, or interpretations, into account. In other words, by assigning to a body the role of an ultimate interpreter, we have decided to deprive ourselves of the right to call the body to book. We have decided to stop the flow of the argument quite arbitrarily, and to perform an arbitrary closure of the space of argumentation, sometimes perhaps even at our own cost. In other words, the move as described in point c) ought to be considered as an instance of, in terms of Philip Pettit (Pettit 2001: 67–79, and Pettit 2004: 77), “discourse-unfriendly influence.” Instead of continuing with the discourse along the reasons, and counter-reasons offered, and with the debate, reflecting further on some alternative views, and additional reasons, or reframing of reasons, we

have decided to stop it and to close our mouth at the time when some more words would like to, and perhaps should, come through it.¹⁰

Hence, designation of an ultimate interpreter is a wrong, harmful, and highly (discourse-) unethical move, under the stipulated preference for the fourth part of Hobbes's response to the issue of political ambiguity.¹¹ This means that the question of who should act as the ultimate conflict resolver, as the ultimate interpreter for a highly polarized conflict of interpretations concerning a constitutional ambiguity, simply cannot be answered *a priori*. We cannot answer it with the thesis of the people as the ultimate interpreter, because, first, such answer is vague, and, secondly, because it means that a numerical might, perhaps a two-third majority, should decide over the issue which requires an exclusively theoretical approach, and may be decided only by the adducing of reasons and counter-reasons. The only viable answer would amount to the claim that the ultimate interpreter is one offering the best reasons for his theory/interpretation of the constitutional provision in question, or of the cluster of norms that support such provision. However, there is no way for one to determine in advance who should, or would, such a person, or a group of persons, be.¹²

This also implies that, when it comes to the key theoretical issues pertaining to the US politics, the five-step argument obviously lends support to those who argue against the claim that the US Supreme Court should, or already does, play the role of the ultimate interpreter of the US Constitution, or of the Guardian of the Constitution. The argument sides with Jefferson, against Hamilton, and it sides with Robert A Burt's views of both the US Constitution and the US Supreme Court. Burt claims that we should resist the idea of a single locus of interpretive sovereignty. The view he endorses, and which he attributes both to James Madison and Abraham Lincoln, is to the

¹⁰ Typically such a condition involves endorsement of the following view: "Even when we believe that the umpire gets it wrong, we still have reason to accept his judgment, for generally we need some practical resolution of our dispute" (as put and endorsed by Gaus 2003: 219); however, the contradiction such a view implies should escape nobody's attention.

¹¹ For a classical statement of the norms of discourse-ethics, see Habermas (1983: 96–104) in contrast to Habermas, I prefer speaking of the values of discourse, rather than norms (see Pehar 2011: 158–184), but, for the purpose of this essay, this is of minor importance.

¹² If I interpret his or her words correctly, one reviewer objected to this by posing the standard claim that designation of a limited body of *de facto* ultimate interpreters should be taken as justified in the conditions of a deep and enduring indeterminacy that is deemed to underlie really hard legal and moral cases/dilemmas; for instance, those revolving around the issues of pornography or perhaps euthanasia, or perhaps abortion. Strictly logically speaking, the condition of indeterminacy amounts to the condition of ignorance, and the latter by itself justifies nothing. Furthermore, once we give a license to a body to issue an arbitrary decision in such condition of indeterminacy, what should, in terms of rationality, prevent an alternative body from issuing an alternative and competing decision in the very same condition?

effect that constitutional interpretation “takes place over time, not in a single instant at a fixed and privileged locus of interpretive authority” (Burt 1992: 68), and that “the institutional competitors for interpretive authority must be linked together in an inextricably nested relationship, so that each would see its interdependence with the others and all would accordingly work toward mutual accommodation” (Burt 1992: 68–9). The US Supreme Court at their best is a court which is self-restrained, which delivers its decisions not in the form of verdicts, or ultimate and unquestionable adjudications, but in the form of accommodating proposals, or suggestions for consideration by the other branches of government, as perhaps exemplified by *Brown vs. Board of Education I and II* according to Burt (Burt 1992: 275). Such a view is also shared, and presented in a similar form, by Devins and Fisher (2004).

The argument presented here also implies that those who view the US Supreme Court with some reverence, including P. Pettit (see Pettit 2006: 308) are somewhat mistaken, and that, whenever the Supreme Court itself backs its own decision by stating “we are the ultimate interpreters of the US Constitution,”¹³ it performs an arbitrary closure of the space of argumentation and commands to us to deny our own right to call any institutional body, or an official, to book. The argument also implies that the following words from 1849 by Justice Taney (as quoted by Wechsler 1999: 311), “that it be regarded hereafter as the law of this court [US Supreme Court], that its opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported,” should evoke an utter sympathy.¹⁴

In the following, I make an attempt to explain where the ambiguity in Hobbes’s response to the problem of ambiguity comes from, and I conclude with a proposal that, in my view, may serve to blunt the razor of the opening argument.

In a recent book Philip Pettit (Pettit 2008) has skillfully offered a reading of Hobbes the focus of which is primarily on Hobbes’s view of language, and

¹³ Actually, the US Supreme Court itself issued such a statement on a few occasions, for which see Devins and Fisher (2004: 222–224).

¹⁴ To an informed reader this should immediately serve as a reminder that Taney in 1857 delivered the notorious *Dred Scott v. Sandford* US Supreme Court Decision, which brings to awareness the following two points: 1. When a supreme court (or any other institutionally designated body) adjudicates or makes a decision that is not supported by reasons, or is supported by an implausible or epistemically unsound chain of reasoning, there is no way for the court to retain the status of an ultimate interpreter across a sufficiently wide spectrum of body politic; 2. Contrary to an objection by a Prolegomena reviewer to the effect that the view I propose here potentially leads to anarchy, decisions by an ultimate interpreter, within a sufficiently polarized political environment, have the potential not only to lead to anarchy, but to contribute causally to an outbreak of civil war as well.

the use of language in social/political setting. Pettit argues in support of the thesis of ‘language as desire-warping device’ in Hobbes (Pettit 2008: 84–97). In other words, according to Pettit, Hobbes’s view of language in the State of Nature is very negative; language does more bad than good because it acts as a contributory cause to a number of desires that sustain the Natural Condition of Mankind. For instance, Pettit claims that ‘positional desire’ (to be ranked higher than the others, or to enjoy more fame), which is one of the factors sustaining the State of Nature, requires the use of language, and is possible only in the language-using creatures (Pettit 2008: 92–6).

However, I think that the story on Hobbes’s view of language is more complicated than one Pettit proposes. In my opinion, Hobbes held an ambiguous, or, more precisely, contradictory view of language, and this can help us explain the dual, or contradictory, nature of his response to the problem of political ambiguity. In brief, Hobbes held both normative and non-normative view of language.

In normative view, the use of language is intrinsically tied to some morally valuable goals, such as truth-telling, sincerity, accuracy, coherence, the articulation of, and a responsible influence through, reasons, and promise-fulfillment.¹⁵ The use of language as such is pulling us towards such goals; hence, it is naturally endowed with a normative force. It is a norm for human beings, as the users of language, to express sincerely their attitudes, to inform each other as accurately and truthfully as possible about the state of affairs, or to bind their future actions through their words that have the status and role of promises. There are a number of passages in Hobbes’s works that clearly attests to his endorsement of such view of language. For instance, he used the phrase ‘abuses of speech’ (that include telling lies, and inducing hatred or unease in the others by speech, and using ambiguity to mislead one) (Hobbes 1994: 17), which clearly implies a normative perspective on the use of language. Secondly, and in support of normative view of language, he famously compared one’s failure to fulfill one’s promises, or to act according to an oath, with absurdity in the sense of contradiction. He called such failure Injury, according to its Latin etymology, and stated that Injury equals Absurdity, that is, it is as irrational, hence condemnable, as is a contradiction (Hobbes 1994: 81).

However, Hobbes, on the other side, also speaks of language in purely instrumental, non-normative, and value-neutral terms. Again famously, he claims that “by *oratio* man is not made better but only given greater possibilities” (originally in his *De Homine* 10.3; a quote in Pettit 2008: 97). In other

¹⁵ For exemplary statements of such a view of language, see Habermas (1983) Williams (2002) and Donald Davidson’s ‘principle of charity’ on which see, for example, Joseph (2004: 62–70).

words, when we compare human beings with other animals, we see that, from the perspective of morality, language is often used as a means to achieve questionable goals. This, which contravenes the normative view, for Hobbes means that language is only an instrument that can be used both for good and evil ends, that there is nothing inherent in language itself that could pull human beings towards an ethical, virtuous, or valuable, and norm-abiding, conduct, as also emphasized in Tuck (1996: 180–183).

The best example of such perspective on language consists in a number of Hobbes's claims concerning the power of word, the claims that in fact serve as premises for his construction of Leviathan as the Sovereign Power. In *Leviathan*, in a number of passages, he claims that words are too weak to determine human conduct, which simply means that human beings overall consider words, or language, as being of minor importance, and of a small and limited binding force. For instance, in *Leviathan* xiv 18 Hobbes claims that "the bonds of words are too weak to bridle men's ambition, avarice, anger, and other passions, without the fear of some coercive power..." (Hobbes 1994: 84) In *Leviathan* xiv 7, he points out that "nothing is more easily broken than a man's word" (Hobbes 1994: 81). And in *Leviathan* xiv 31 he repeats, "the force of words being (as I have formerly noted) too weak to hold men to the performance of their covenants..." (Hobbes 1994: 87)

One needs to note here two things. First, if one endorses non-normative view, then the construction of Leviathan seems to be in order. If one endorses the view that human beings generally tend to break their promises, or to fail to perform their covenants, then it seems that some external and coercive power is really needed. In other words, the door is now widely open to the construction of Leviathan who will back by his swords the covenants that are merely words. This, however, implies that the part of Hobbes's response to the problem of political ambiguity, which is couched in terms of the Sovereign, and Unquestionable, Power (or the Ultimate Interpreter), fully depends on a non-normative view of language he endorsed, and added to the premises for his construction of the Sovereign. On the other hand, he cannot fully deny the normative view of language primarily for the following reason. There is no a Sovereign above the Sovereign. Hence, the Sovereign's words must be of different character than the words of those whose ambition cannot be bridled by words. The Sovereign must bind himself by his words as he is the ultimate coercive power over which there is no another, superior power to supervise his verbal expressions. This means that the Sovereign must stand by his words, and that his words must correspond with the eternal, immutable laws of nature that are the laws of God in Hobbes's terminology. Now, the virtues, or moral norms, that underlie the use of language seem to have been smuggled through the backdoor. This, and only this, can explain why the second part of Hobbes's response to the problem of political ambiguity

is couched in normative terms, why he required from the judges to exercise some special judicial virtues, and why he called on them to rely on their own natural reason, together with the unwritten laws of nature.¹⁶

This is also closely related to the opening argument of this essay. For those who hold normative view of language, the step e) of the argument will seem plausible. However, for those who endorse non-normative view, the step c) will read as fully acceptable.¹⁷ If our use of language is not characterized by inherent normative force, there is nothing to prevent the designated body from acting as the final decision maker in the matters of interpretive conflict, whose words are final in a practical sense, which, within such perspective, is the only thing that matters.

Lastly, there is probably only one way in which one can try to blunt the razor of the five-step argument from the first page of this essay. We strictly adhere to the thesis of the primacy of theoretical finality over the practical one. In other words, if a body delivers the most plausible, the soundest theory, then we take it to be the body which also achieved practical finality and, thus, in this particular case conformed to, and confirmed, its status. This means that the status of the body as an ultimate interpreter should fully depend on its theoretical performance. The status tracks the performance measured by the means and terms of theory, of reasons and counter-reasons, and not the other way around. Should the body under-achieve, or fail to deliver an interpretive result that is satisfactory in terms of theory, we simply refuse to recognize it as the body in question. In the case of its under-performance, the Supreme Court, for instance, should be generally taken as having deprived itself of the status of an ultimate interpreter by having missed the theoretical target. In other words, we decide to designate a body to perform the tasks defined by steps a) and b), but also endow it only with a notional, or potential, status and role. This would mean rescuing a part, or the appearance, of our current, conventional, pre-given landscape of political practice, but it would be a rescue in a minimal and very roundabout sense.

¹⁶ Therefore, one should not find it surprising that Hobbes frames the concept of law not only in terms of 'chains', or 'bonds', as it is generally believed, but also (in Latin version of *Leviathan*) in terms of 'hedges' the purpose of which is "not to restrain people from harmless liberty, but to prevent them from rushing into dangers or harm to themselves or the commonwealth, from impetuous passions, rashness, or foolishness, as roads are hedged not as an obstacle to travelers, but to prevent them from wandering off, with injury to their fellow citizens" (Hobbes 1994: 229). I was unable to find any reference to the metaphor of 'laws as hedges' in Skinner (2008).

¹⁷ One *Prolegomena* reviewer objected that my analysis could be characterized as 'overly optimistic.' That is why I think that the readers need to keep firmly in mind that the distinction which is of major importance for the analysis proposed here is not one between 'optimistic' and 'pessimistic (or less optimistic) view' in a political sense, but, more specifically, one between a normative and non-normative stand on language.

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